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MCFADYEN  
CHAIR  
DISTRICT 2

SAL PACE  
CHAIR PRO TEM  
DISTRICT 3



TERRY A. HART  
COMMISSIONER  
DISTRICT 1

JOAN ARMSTRONG  
DIRECTOR  
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**PUEBLO COUNTY  
DEPARTMENT OF PLANNING AND DEVELOPMENT**

**MEMORANDUM**

TO: Pueblo Board of County Commissioners

FROM: Joan Armstrong *ja*

DATE: October 15, 2015

SUBJECT: 1041 Permit No. 2008-002  
Southern Delivery System  
Condition No. 22: Reclamation of Disturbed Lands  
Condition No. 28 Mitigation Appendix C-9 Site Restoration  
Colorado Springs Utilities, Applicant

**PURPOSE**

The Board of County Commissioners, at its public hearing held on September 25, 2015, voted to continue the public hearing on the compliance status of the Southern Delivery System ("SDS") 1041 Permit No. 2008-002 Condition No. 22 Reclamation of Disturbed Lands and Condition No. 28 Mitigation Appendix C-9 Site Restoration per Resolution No. P&D 09-22 Approving 1041 Permit No. 2008-002. The continuance was to allow Colorado Springs Utilities ("CSU") to respond to the questions and issues raised during the hearing.

This Memorandum is to update the Board on CSU's response. Attached as **Exhibit 1** is the Memorandum dated October 5, 2015 from Colorado Springs Utilities, Southern Delivery System (SDS) Program with the list of questions and answers taken by CSU's SDS staff at the September 25, 2015 Board of County Commissioners hearing. **Exhibit 2** is an email from Kevin Binkley, SDS pertaining to the noxious week monitoring commitment.

Following is the description of Condition No. 22 and Condition No. 28 Mitigation Appendix C-9 of 1041 Permit No. 2008-002.

## **22. Reclamation of Disturbed Lands**

*Applicant shall conduct a preconstruction evaluation of existing vegetation to be disturbed during construction of the SDS Project within Pueblo County. Upon reclamation of the site, the vegetation cover shall be of the same seasonal variety native to the area of the disturbed land, or a reasonable substitute pursuant to agreement with the landowner. The revegetated area will be considered acceptable if its cover will be not less than 90 percent of the pre-construction vegetation cover with similar species diversity. Applicant shall provide to Pueblo County a security bond equal to \$2,000/acre of land in permanent or temporary construction easement in each work package. The security bond shall be released upon establishing 90 percent of pre-construction vegetation cover on the impacted land segment.*

## **Condition No. 28 Mitigation Appendix C-9 Site Restoration**

*Applicant shall provide Pueblo County Residents with replacement vegetation and property to match pre-construction conditions or better.*

### **PROJECT DETAIL**

1. *Grade disturbed areas to preconstruction contours so preconstruction drainage paths are reestablished.*
2. *Reclaim disturbed land, except water areas and surface areas of roads, by seeding or planting to achieve a permanent vegetation cover as specified below.*
  - a. *In accordance with Construction Condition C-5, a pre-construction evaluation of existing vegetation will be conducted to determine species diversity, woody plant density, and seasonal variety.*
  - b. *Vegetation cover will be of the same seasonal variety native to the area of disturbed land, or species that support the post-construction land use. In those areas of disturbed vegetation where such seeds are not commercially available, seeds will be collected on-site to be used in revegetation, including, rare plants identified in the FEIS, by the Colorado Natural Heritage Program or by other qualified investigators.*
  - c. *Seeding and planting of disturbed areas will be conducted during the first normal period for favorable planting conditions after final preparation for seeding Or' planting.*
  - d. *Soil stabilization practices will be used on all regraded and topsoiled areas.*
  - e. *The revegetated area will be considered acceptable if the revegetated area cover is not less than 90 percent of the pre-construction vegetation cover with similar species diversity. The pipeline access road will not be included in the 90 percent coverage calculation.*
3. *Restore roads and driveways so that:*
  - a. *Surfaces are finished level with existing surfaces.*
  - b. *Sealed roadways are finished to match existing seal (asphalt, spray seal, etc).*

*c. Unsealed roadways are to be finished to match existing surface. Concrete roadways/driveways shall be reinstated in such a manner as to match existing surface. Portions of slab damaged or rendered unstable by undermining (whether inadvertently or deliberately) should be included in the portion to be restored.*

- 4. Restore damaged or injured property including outbuildings, to a condition similar or better to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.*
- 5. Restore or replace fences and gates that are disturbed during construction.*
- 6. Provide Pueblo County a security bond equal to \$2,000 per acre of land in permanent or temporary construction easement in each work package. The security bond shall be released in full to the Applicant two years following the final completion of the construction contract, upon successful revegetation, as described above. If successful revegetation is not achieved, the security bond will be forfeited in the amount of \$2,000 for each acre, or fraction of an acre, that has not been successfully revegetated.*

### **GENERAL DESCRIPTION OF LANDS AFFECTED**

The Southern Delivery System includes a 66-inch diameter raw water pipeline which extends from its connection at Pueblo Dam and proceeds north for approximately 20 miles through permanent easements across lands in Pueblo County to the southern boundary of El Paso County. The pipeline extends northward out of Lake Pueblo State Park into Pueblo West, under and across U.S. Highway 50 West approximately 3,600 feet east of Pueblo Boulevard, and continues northward through the central portion of Pueblo West crossing both public and privately owned lands.

### **WALKER RANCHES SETTLEMENT AGREEMENT**

Walker Ranches, LLLP Settlement Agreement with the City of Colorado Springs executed on June 25, 2015 is attached as **Exhibit 3**.

### **HEARING PROCESS**

At the conclusion of the hearing, the Board of County Commissioners may make comments and will then take the matter under advisement. Thereafter, the Board may take any one or more of a number of actions including, but not limited to:

- 1) acceptance of Applicant's reclamation and revegetation for all or a part of any particular segment of the pipeline easement as being complete for purposes of Condition No. 22 and Mitigation Appendix C-9 and release of any associated bond;
- 2) a determination that reclamation and revegetation of all or a part of any segment of the pipeline easement is not in compliance with Condition No. 22 and Mitigation Appendix C-9 with direction to the Applicant regarding remaining efforts necessary to achieve compliance; and

3) conditional acceptance of reclamation and revegetation for all or a particular portion of the pipeline easement subject to Applicant's performance of certain additional work; and/or such other action as the Board deems appropriate in view of the evidence presented.

### **ONLINE DOCUMENTS**

1041 Permit No. 2008-002 can be viewed on Pueblo County's webpage:

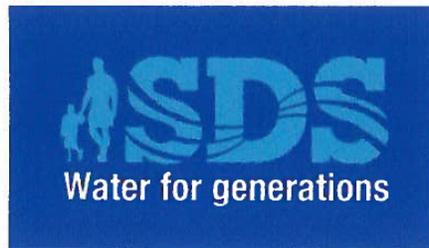
<http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/cases3.p?caseNum=1041%202008-002>

and via QR Code:



Attachments: Exhibit 1 – Colorado Springs Utilities, Southern Delivery System (SDS) Program Memorandum, d. 10/5/2015  
Exhibit 2 – Kevin Binkley Email, sent 10/13/2015  
Exhibit 3 – Walker Ranches, LLLP Settlement Agreement with the City of Colorado Springs executed on June 25, 2015

c: Greg Styduhar, County Attorney  
Marci Day, Assistant County Attorney  
Gary Raso, Special Assistant County Attorney  
Ray Petros, Special Counsel to Pueblo County  
Dr. Warren Keammerer, Vegetation Consultant to Pueblo County  
Alf Randall, Director Dept. of Engineering and Public Works  
David Benbow, Project Manager, Dept. of Engineering and Public Works  
John Fredell, SDS Program Director, Colorado Springs Utilities  
Mark Pifher, Permitting and Compliance Manager, Colorado Springs Utilities  
Kevin Binkley, PMP, SDS, Colorado Springs Utilities



## Memorandum

**To:** Joan Armstrong, Pueblo County Planning and Development Director

**From:** Colorado Spring Utilities, Southern Delivery System (SDS) Program

**Date:** 10/5/2015

**Re:** **September 25, 2015 Public Hearing Regarding Revegetation Conditions**

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During the September 25, 2015 public hearing on the revegetation conditions of the SDS 1041 permit, the Commissioners, staff and public raised a number of questions. The Commissioners decided it would be beneficial if the Southern Delivery System (SDS) staff would address those questions in writing. SDS offered to do so within ten (10) days of the hearing so that the responses would be available well in advance of the October 19, 2015 work session of the Commissioners, at which time discussion of this subject is scheduled to resume.

The attached list of questions and answers is based upon notes taken by SDS staff at the September 25 hearing. If Pueblo County believes that there are additional questions, or that SDS staff has misinterpreted any of the questions, upon request, SDS will gladly supplement these responses.

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## Pueblo County Follow-Up Questions

Received September 25, 2015

- 1. Is SDS willing to address revegetation issues brought to its attention by individual property owners located along the alignment prior to project completion and implementation? If so, how does it propose to do so?**

Yes, the SDS Program has, and will continue to, address questions and evaluate needs brought to its attention by individual property owners regarding revegetation in the former construction area. SDS has made extensive efforts to monitor property owner satisfaction over the last several years and address issues as they arose. Accordingly, SDS has adjusted grading in specific areas, reseeded some areas, and replaced ornamental plants for two property owners as requested.

SDS is not aware of any unresolved concerns regarding revegetation at this time. After many outreach efforts, as described to the Commissioners on September 25, 2015 and outlined in the Public Communications section of the Revegetation Compliance Summary Notebook submitted to Commissioners, all revegetation issues identified by, or brought to the attention of, SDS have been addressed. The project will continue to maintain a telephone hotline through the end of 2016 in order to provide a single point of contact to property owners along the alignment. As referenced in Question 10, pre-construction photographs and videos for each property are available, which allows for an assessment of changed conditions should a future concern arise. Pueblo County is in possession of a copy of these photos and videos.

- 2. Is it possible that there will be erosion issues along the alignment in the future that will damage revegetated areas? If so, will SDS address these issues?**

Given the nature of the topography, soils and precipitation events in the area of the SDS alignment, erosion has occurred in this landscape over the millennia and will continue to occur in the future. These erosion features are, in fact, the primary type of topographic relief in this region. As indicated by the expert reports and testimony, the SDS Program was a state-of-the-art effort that achieved all objectives.

In the event future storms occur of a severity to disrupt existing vegetative cover, it would stand to reason such a storm event would have disrupted vegetation even in the absence of SDS. In other words, given the 90 percent of pre-disturbance criteria applied to the project, which exceeds the State's 70 percent post-construction stabilization criteria under the stormwater program, the post-construction vegetative condition is the same or better than the pre-construction condition. The environment will react to severe storm event in the same manner. Nevertheless, as further referenced in response to Question(s) 3, 6, and 13, the SDS project partners have a significant, long term investment

**Pueblo County Follow-Up Questions**  
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underground which they will continue to attempt to protect from future damage, and a permanent easement, the conditions of which they will continue to honor.

3. **Relative to noxious weed control along the SDS alignment, who is specifically responsible for it, for what period of time does such control obligation run, and at whose expense will the work be performed?**

The Record of Decision (ROD) issued by the US Bureau of Reclamation requires List A and List B noxious weeds be monitored and mitigated for a period of three (3) years following construction. In addition, the Pueblo County 1041 Mitigation Appendix Construction Condition C-16 (Noxious Weed Control) states, "Applicant shall control spread of noxious weeds resulting from the project construction, including both Class or List A and B species." SDS has, and will continue to, monitor and mitigate these listed noxious weeds along its permanent easement. SDS will also monitor and attempt to control the spread of List C species on the pipeline alignment and associated permanent easements. This will occur for three years following construction. With a long history in southeast Colorado, the SDS project partners are committed to maintaining and protecting the local landscape and their assets located within Pueblo County, and to do so in accordance with the conditions of the permanent easements.

4. **Is SDS willing to work with the Turkey Creek Conservation District relative to noxious weed control and, if so, who will be the SDS contact person?**

The SDS project partners are willing to work cooperatively with the Turkey Creek Conservation District relative to noxious weed control and the implementation of a control program within the project limits (ref. Mitigation Appendix Construction Condition C-16, Project Detail 3). The SDS revegetation project manager has contacted the District and set up a time to meet and discuss use of weed identification field guides for SDS operations staff to utilize. Operations staff will be on the alignment most frequently, and will be provided protocols for contacting the appropriate Colorado Springs Utilities department to mitigate weeds, as referenced in the response to Question 3 above, should List A, B or List C noxious weeds be observed on the alignment.

5. **Are there any remaining areas of measurement within any of the various soil types along the SDS alignment where even though the soil type met the standard following the agreed upon methodology, these individual areas continue to fall short of the 90% benchmark? If so, is there a plan to address them?**

The only areas where plant cover may fall below the 90 percent benchmark are limited to specific transect locations. However, the agreed upon sampling methodology and permit standard is not based on individual transect results but rather allow calculation of an average across transects, within soil groups.

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Within the sampling methodology used in the 2014 and 2015 studies, the mean value of plant cover was determined using randomly located 50-meter transects. In all work package/soil group units, the sampled mean exceeded the applicable standard. As was expected, among the 10 to 15 transects sampled in each of these sampling locations, plant cover varied upward and downward. In both natural vegetation and natural vegetation developed through revegetation, plant cover is not spatially uniform. This lack of homogeneity or uniformity is the result of varying environmental conditions, especially soils.

Although many locales that were extremely bare in pre-construction have achieved strong cover, some locales with the most severe soil limitations simply cannot support high plant cover. Where cover is low in post-revegetation sites, it is also true that pre-construction cover was low. As a result of the influence that pre-construction soil conditions play in the ability of plants to establish and grow, there are no plans to address these areas as they simply represent the heterogeneity of plant cover that existed prior to construction and will continue into the future.

**6. Are there any identified areas where “sink holes” or similar such features continue to present a concern relative to pre-existing contour restoration?**

No. The isolated areas of differential settling above the pipeline in the southern portion of the SDS S3 work package alignment were repaired in 2014 and restored. Based on post-construction and warranty inspections, no other areas of differential settling have been identified in the S1, S2 or S3 alignments to date. Although not anticipated, if areas of differential settling are identified above the pipeline in the future, the SDS team will repair the area(s) and restore the surface to the match the surrounding area as part of the SDS Programs continued operation and maintenance commitments to protect the pipeline.

**7. Is it expected that the revegetated areas will continue to meet the 90% revegetation criteria in the future given the absence of irrigation and a variable climate?**

Plant cover naturally varies from year to year depending upon weather patterns, climatic conditions, and uses of the area, such as grazing, electric utility maintenance, etc. Below average precipitation years will normally show some reduction in plant cover and above average precipitation years will show some increase in plant cover. What is most important is that the revegetation process has been very successful in establishing native plants that are highly adapted to the growing conditions in Pueblo County. Given the success observed to date, in future years these plants, and their offspring, can be expected to maintain a cover that will equal or exceed the plant cover observed in natural areas adjacent to the pipeline easement.

## Pueblo County Follow-Up Questions

Received September 25, 2015

8. **Is the 90% criteria a “continuing” or ongoing expectation under the permit?**  
Condition #22 of the SDS 1041 permit states, in part: “....The revegetated area will be considered acceptable if its cover will not be less than 90 percent of the pre-construction vegetation cover with similar species diversity. Applicant shall provide to Pueblo County a security bond equal to \$2,000/acre of land in permanent or temporary construction easement in each work package. The security shall be released upon establishing 90 percent of pre-construction vegetation cover on the impacted land segment. See Mitigation Appendix C-9.”

Mitigation Appendix C-9 of the SDS 1041 permit provide construction conditions which call for the replacement of vegetative cover with “the same seasonal variety native to the area...,” with seeding and planting of the disturbed area to “be conducted during the first normal period for favorable planting conditions after final preparation for seeding or planting.” The Appendix goes on to reiterate the 90 percent revegetation requirement and, most importantly for purposes of this question, states that: “....The security bond shall be released in full to the Applicant two years following the final completion of the construction contract, upon successful revegetation, as described above.” Thus, revegetation “success” is measured based upon the achievement of the 90 percent metric in the two year timeframe.

There is no continually or perpetually applicable compliance threshold, which is logical given the property owners have regained control over the temporary easement, while the Program has only limited control over the use of the permanent easement area (e.g., grazing or other activities that could occur in the future). Further, there exists the potential of totally natural events (e.g., prolonged drought or torrential rains) that could influence vegetative cover not only along the easement, but throughout this geographic area.

9. **Will there continue to be variability in vegetation stands in the future?**  
As discussed above in Questions 5, and 7, it is normal for variability in environmental conditions in space and in time to elicit differing levels of plant growth which will yield variability in vegetation stands in the future.
10. **Is there data or other information in the SDS permit record concerning the pre-construction condition and the restoration of the properties located along the SDS alignment to pre-existing contours? If so, what does that information tell us?**  
In finalizing the location of the SDS alignment and as part of the initial design process of the SDS pipeline through Pueblo County, the SDS alignment was surveyed from the ground and the air to develop one-foot contour maps of the pipeline alignment and associated project boundaries. These one-foot contour lines were included in the construction drawings and were used by the

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construction contractors as a baseline to return the areas disturbed by construction to within a one-foot tolerance of the pre-existing contour grade. This baseline and tolerance approach was discussed with, and accepted by, Pueblo County staff during regular monthly meetings at the time of the restoration activities.

In accordance with Mitigation Appendix C-9, Project Detail 2, SDS conducted a pre-construction evaluation of existing vegetation as part of the pre-existing condition assessment requirement outlined in Mitigation Appendix C-5 of the 1041 Permit. This included a measurement of pre-existing cover conducted by the Colorado Natural Heritage Program (CNHP) in 2011 of the entire SDS alignment through segments S1, S2 and S3 in Pueblo County prior to any construction disturbance, in addition to photographic and video documentation of the pre-existing vegetation condition of each parcel conducted prior to the start of construction for each individual Pueblo County work package. A copy of the 2011 CNHP report is included under Tab 2 of the Technical Section of the Revegetation Compliance Summary Notebook submitted to Commissioners.

Copies of the Mitigation Appendix C-5 pre-existing condition assessment photographs and videos were provided to each property owner with copies of all documentation provided to the Pueblo County 1041 permit administrator in accordance with Mitigation Appendix C-5, Project Detail 4, to "be used as indisputable evidence in ascertaining whether and to what extent damage occurred as a result of the Applicant's operations." Samples of the SDS pre-construction communications regarding the pre-existing condition assessment are included under Tab 1 of the Public Communications section of the Revegetation Compliance Summary Notebook submitted to Commissioners.

Following construction and prior to commencement of revegetation activities, SDS developed a process for obtaining property owner acceptance of post-construction contours for each work package. A summary of this process is outlined under Tab 2 of the Public Communications section of the Revegetation Compliance Summary Notebook submitted to Commissioners. Approximately five individuals, apart from Mr. Walker with whom an agreement is now in place, expressed contour related concerns at that time, and all of them were appropriately addressed. Tab 4 of the Public Communications section additionally documents recent communications with property owners following completion of the revegetation efforts.

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<i>S3 Soil Group</i>	Required % Cover
<i>Group A,</i>	15.5
<i>Group B</i>	23.9
<i>Group C</i>	31.5
<i>Group D</i>	15.3
<i>Group E</i>	21.0
<i>Group F</i>	37.2

2015 measurements of levels of cover in undisturbed portions of the laydown/staging area (located in Midway Ranch) established that cover by acceptable species was at 41.5 percent (exceeding the required 31.5 percent). Barring the effect of grazing by domestic livestock, all expectations are that plant cover on Soil Group C will continue to improve with time as these soils have favorable plant growth characteristics.

15. **Did the fact that the first half of 2015 proved to be quite wet serve to skew the revegetation results in some manner that the parties should be concerned about?**

No. By far the bulk of data that was brought to bear on the question of compliance with the 90 percent of pre-existing cover requirement were collected in 2014. The 2015 data was collected on Soil Group C areas at the far north end of work package S3 and on reworked areas of mostly Soil Group B in the S3 work package.

In the 2015 measurements of first year cover in the reworked Soil Group B areas, mean cover by acceptable species in that young cover averaged somewhat above the standard of 23.9 percent. It should be noted that that standard (23.9 percent) was skewed upward in 2011 sampling by omitting the pre-construction data from the six samples in the S3 area later reworked. This was done to compensate for the poor vegetation cover present in these excluded areas. Actual sample data (six samples that were not allowed to contribute to the standard) from the reworked Soil Group B areas in 2011 in S3 showed an average cover by acceptable species of only 13.7 percent. Thus, meeting the standard of 23.9 percent cover represent an increase of over 10 percent over what was actually present in pre-construction conditions.

Therefore, the fact that 2015 proved to be wetter than normal did not skew the revegetation results in a manner that the parties should be concerned about.

16. **Is SDS currently aware of any existing, factually supported restoration of pre-existing contours issue on the Maxwell property?**

SDS was not aware of any outstanding issues with Mr. Maxwell's property until the September 25, 2015 hearing before Commissioners. At that time, Mr. Maxwell identified a grading concern that he had not mentioned during many

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previous interactions with SDS Construction Facilitators. As recently as August 2015, Mr. Maxwell requested and oversaw removal of an underground sprinkler line on his property by SDS. At that time he made no mention of grade issues or other revegetation related concerns. This grading question may be related to an area of his property that was reviewed and modified at his request in July/August 2012 before seeding was performed. At that time, a release of claims regarding construction and revegetation was signed. (Reference attached release.) Nevertheless, SDS has continued to try to work cooperatively with Mr. Maxwell. On September 28, and again on September 30, SDS staff contacted him to set up a meeting. Mr. Maxwell stated that he could not meet until the week of October 5<sup>th</sup>. SDS staff will attempt to meet with him at his convenience to review this matter.

17. **Will there be a “normalization” of vegetation density along the SDS alignment over time?**

Revegetation of the SDS pipeline easement was performed using the latest state-of-the-art revegetation techniques. The effort was designed to achieve a high restoration standard and will result in an easement that will blend in with the surrounding landscape, with no “scar” such as may be associated with past revegetation efforts following earlier pipeline construction projects. As noted previously, the revegetation experts have stated the revegetation efforts in Pueblo County incorporated state-of-the-art methodology which achieved the high threshold set by the County.

If by “normalization” it is meant establishment of a homogeneous cover of plants such as would be expected in a lawn, the answer is no. If by “normalization” it is meant establishment of a diverse assemblage of native species that have the opportunity to perpetuate the semi-arid grasslands typical of the area, the answer is yes. Reference response to Question 5 above for more information on vegetation diversity and cover in semi-arid environments. There will be no “scar” across the landscape given the techniques and success standards employed in association with this project.



Colorado Springs Utilities  
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**REVEGETATION LICENSE AGREEMENT  
(YEAR ONE)  
Pueblo County**

APN: 9520004010

Owner: Dwain and Helen Maxwell Tenant: NA

Address: 1123 Kirkwood Drive,  
Pueblo West, CO 81007

Contact Info: 719-647-5815

Property Address: 1123 Kirkwood Drive, Pueblo West, CO 81007

Owner ("Licensor") hereby authorizes the City of Colorado Springs, a home rule city and municipal corporation, on behalf of its enterprise, Colorado Springs Utilities ("Licensee"), its agents or contractors to enter upon said property for the purpose of Revegetation Activities within the lands described in Exhibits B and C attached hereto and incorporated herein by reference. These Revegetation Activities shall include the following: seeding, re-seeding, irrigation, irrigation installation, irrigation and irrigation maintenance, soil preparation, soil amending, minor grading, fence installation, fence maintenance, fence removal, and/or weed control. Any activities outside these defined activities are subject to the property owners consent.

Licensor hereby certifies that he/she is the owner of the property at the address indicated above.

As consideration for the rights granted by this License, the Licensor shall be compensated the sum of Three Hundred and no/100 Dollars (\$300.00), and other good and valuable consideration upon execution and acceptance of this License.

This License shall commence on Sept. 10<sup>th</sup> 2012 and terminate one year thereafter. This License shall be non-exclusive and may be terminated by Licensor upon thirty (30) days written notice.

This License shall not be recorded at the Office of the Clerk and Recorder for the county in which the property is located.



**Colorado Springs Utilities**

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**This License shall be construed in accordance with the laws of the State of Colorado.**

**Notices shall be sent to the following addresses:**

**if to Licensor:**

**Dwain &  
Helen Maxwell  
1123 Kirkwood Drive  
Pueblo West, CO 81007**

**if to Licensee:**

**Colorado Springs Utilities  
c/o Deputy Program Director  
P.O. Box 1103, Mail Code 930  
Colorado Springs, CO 80947-0930**

*10<sup>th</sup> Sept.*

Dated this 30<sup>th</sup> day of August, 2012

Owner/Licensor:

*Helen Maxwell*

*Dwain Maxwell*

Colorado Springs Utilities/Licensee:

*[Signature]*

**APPROVED AS TO FORM  
CITY OF COLORADO SPRINGS  
CITY ATTORNEY'S OFFICE**

*Charles Bishop*  
Name: *Charles Bishop*

Addenda 1 For Revegetation                      Property Owner: Dwain and Helen Maxwell  
Southern Delivery System                      Segment Work Package: S2  
Property Address: 1123 Kirkwood Drive, Pueblo West, CO 81007

Colorado Spring Utilities (CSU) or its representatives will remove the existing temporary chain link construction fence from the property owners property.

Colorado Springs Utilities or its representatives will install a new commercial grade 5-foot high chain link fence as indicated on the attached drawing. Separate end posts shall be installed at the northwest and northeast corners adjacent to the neighbors' fence line, but shall not be connected to the neighbor's fence. The fence shall consist of: commercial grade posts and top rails matching the neighbor's fence, concrete post footers, one 8-foot double swing gate near the northwest corner of the fence, one pedestrian gate near the house and two 12-foot double swing gates next to the house along the southeast and northeast corners of the fence. The poles shall be located at maximum 8-feet on center. The property owner will allow CSU, SDS and/or its contractors access to areas inside and outside the area described in the attached exhibit A for the purposes of fence installation. The owner shall own and maintain such fence, poles, posts and gates upon completion of the installation.

Owner shall sign any necessary application or permit required for the construction of the fence by the Pueblo West Architectural Committee or designee. Any permit fee shall be paid for by CSU or its agents.

CSU, SDS or any other agency will not modify or remove any fencing without permission from the property owner. If fencing is to be removed, it will only be removed if there are no other methods to complete any projects within the permanent easement.

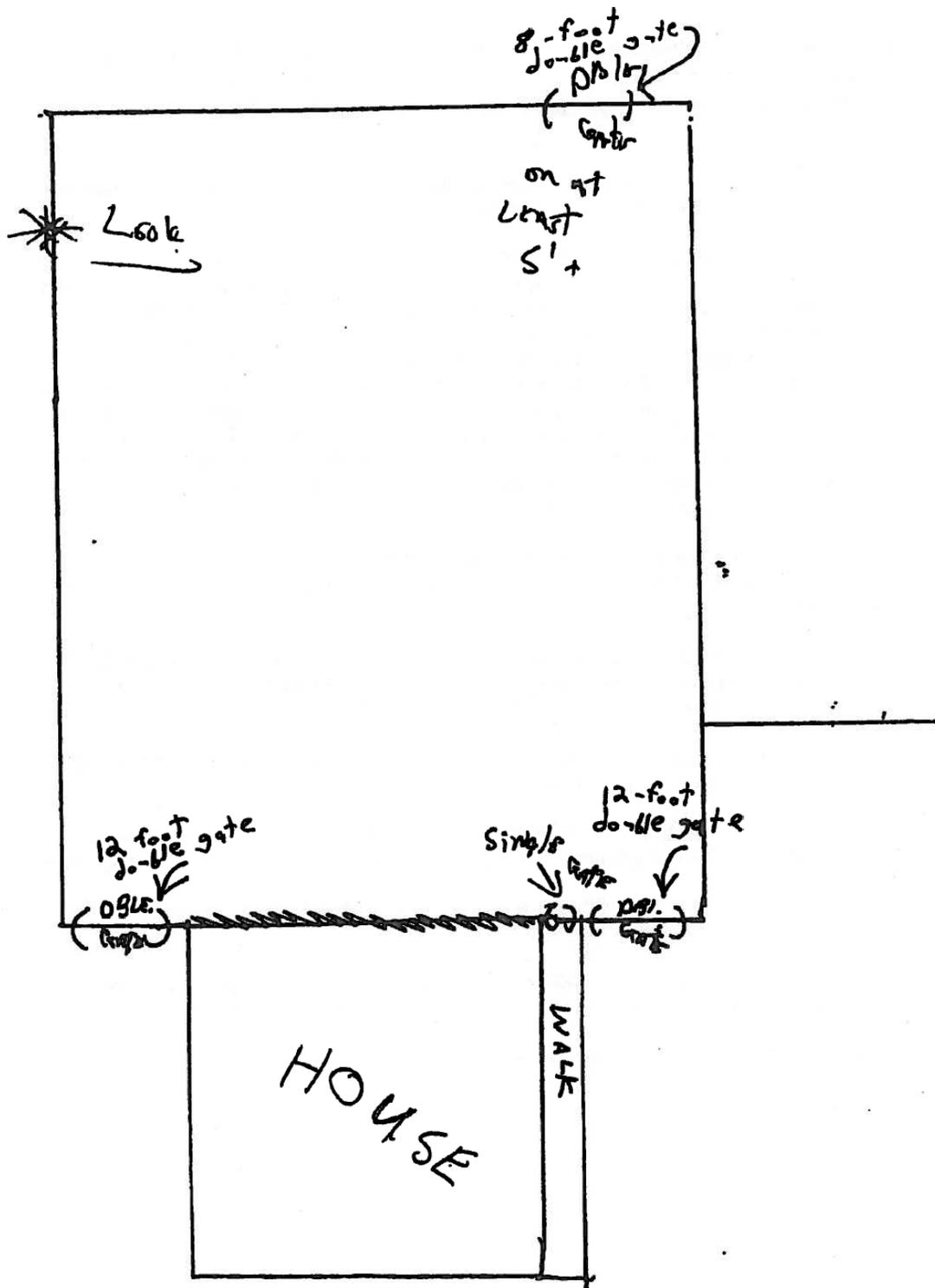
Should it become necessary to remove or modify the fence, CSU will take full responsibility for the cost, replacement or repair of the fence.

CSU may only allow any other entity, business, city, town, county, state or government to use this easement or install anything on this easement with written consent from the property owner.

Irrigation shall consist of an underground temporary line and sprinkler heads located inside the Permanent Utility Easement area that is fenced.

The property owner will accept \$400 in lieu of SDS planting yuccas and pear cacti in the easement to replace those plants that were removed or damaged during construction.

Owner shall sign the attached Release



**RELEASE**

The undersigned hereby acknowledge(s) receipt from Colorado Springs Utilities (CSU), the sum of One and no/100 dollar (\$1.00) and other good and valuable consideration as full and final payment for any claims of damage or loss related to the construction of the Southern Delivery System Project on the real property described in the attached Exhibit A. The undersigned hereby releases the City of Colorado Springs acting by and through Colorado Springs Utilities, and its contractors, agents and employees, from any and all claims and demands of whatsoever nature related to construction and revegetation of the Southern Delivery System to date, including but not limited to stucco damage, loss of use and restoration to property directly or indirectly resulting from said construction. This agreement does not release SDS/CSU from any claims arising out of future construction or revegetation activities.

Signed and delivered this 10<sup>th</sup> day of Sept., 2012.

Owners:

Dwain B. Maxwell  
Dwain B. Maxwell

Helen E. Maxwell  
Helen E. Maxwell

Approved as to Form:

Amie Boehm  
Assistant City Attorney - Utilities

Approved:

Juan R. [Signature]  
Real Estate Services  
SDS Land Team  
[Signature]  
SDS Deputy Director

PARCEL DESIGNATION:	9520004010	DATE:	December 3, 2009
OWNER:	MAXWELL, DWAIN B. & HELEN E., (Owner current as of the date of certification hereon)		

**EXHIBIT A**

LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Ave., Suite 700, Colorado Springs, Co, 80903

9520004010\_EXA.doc

PARCEL DESIGNATION:	9520004010	DATE:	December 3, 2009
OWNER:	MAXWELL, DWAIN B. & HELEN E., (Owner current as of the date of certification hereon)		

**EXHIBIT B**  
**LEGAL DESCRIPTION**

A permanent easement situated in LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 85 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County, more particularly described as follows:

The east 52.51 feet of the west 60.01 feet of said Lot 9.

Said easement contains 7,352 square feet or 0.169 acres more or less.

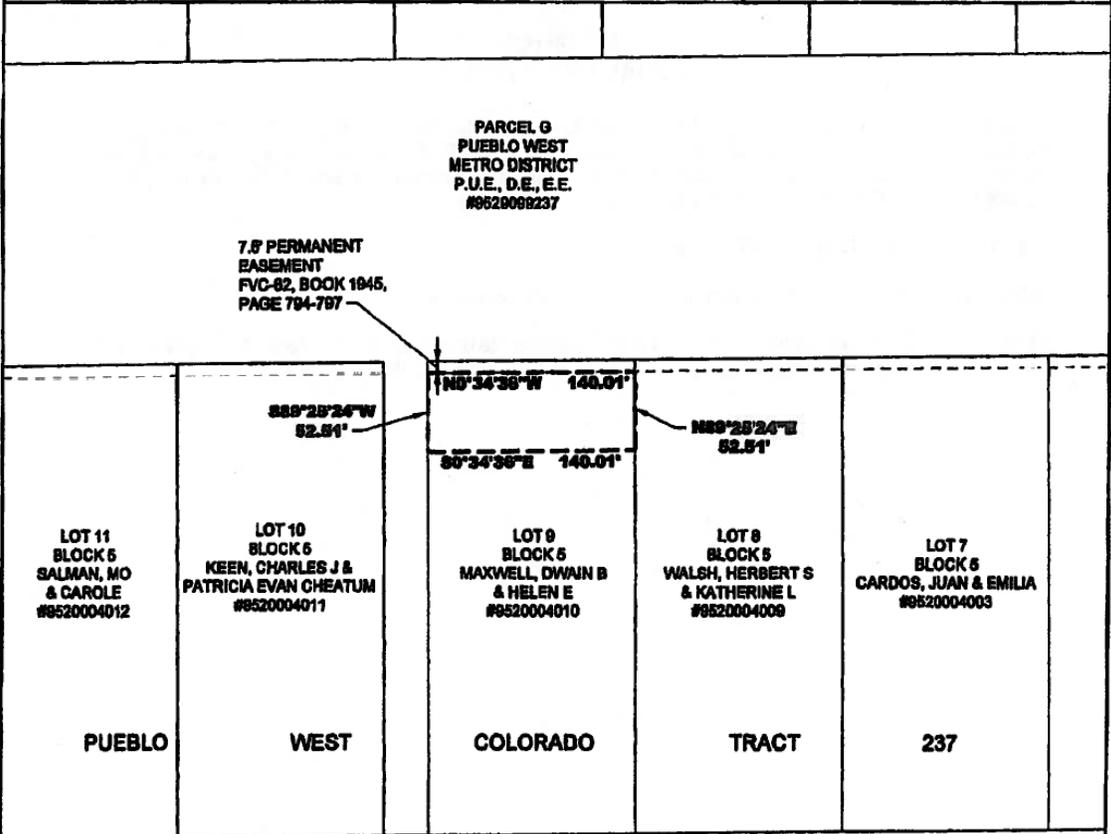
EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Ave., Suite 700, Colorado Springs, Co, 80903

9520004010\_EXB.doc

DATE: 24-NOV-2009	<b>EXHIBIT C SKETCH</b> PERMANENT EASEMENT PARCEL #9520004010 SECTION 20 T19S, R65W, 6TH P.M. PUEBLO COUNTY, COLORADO	<b>CITY OF COLORADO SPRINGS</b>
DRAWN BY: L STUDER		
CHECKED BY: B HANSON		
APPROVED BY: T SHAUGHNESSY		
DRAWING: 9520004010_EXC		



**NORTH KIRKWOOD DRIVE**

**NOTES:**

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.
2. Bearings are based on a line from NGS Station "Pueblo CBL 873" (PID JK1355), monumented by a 3" brass disk set in 1.5" diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Krikham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.
3. P.U.E., D.E., E.E. = Public Utility Easement, Drainage Easement and Equestrian Easement. Per Subdivision Plat.

0 100 150 200

SCALE: 1" = 100'

**SHEET 1 OF 1**

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PARCEL DESIGNATION:	9520004010	DATE:	March 17, 2010
OWNER:	MAXWELL, DWAIN B. & HELEN E. (Owner current as of the date of certification hereon)		

**EXHIBIT A**

LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9520004010TE\_EXA.doc

PARCEL DESIGNATION:	9520004010	DATE:	March 17, 2010
OWNER:	MAXWELL, DWAIN B. & HELEN E. (Owner current as of the date of certification hereon)		

**EXHIBIT B**  
**LEGAL DESCRIPTION**

A temporary construction easement situated in LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County, more particularly described as follows:

The west 7.50 feet and the east 35.01 feet of the west 95.02 feet of said Lot 9.

Said easement contains 5,952 square feet or 0.137 acres more or less.

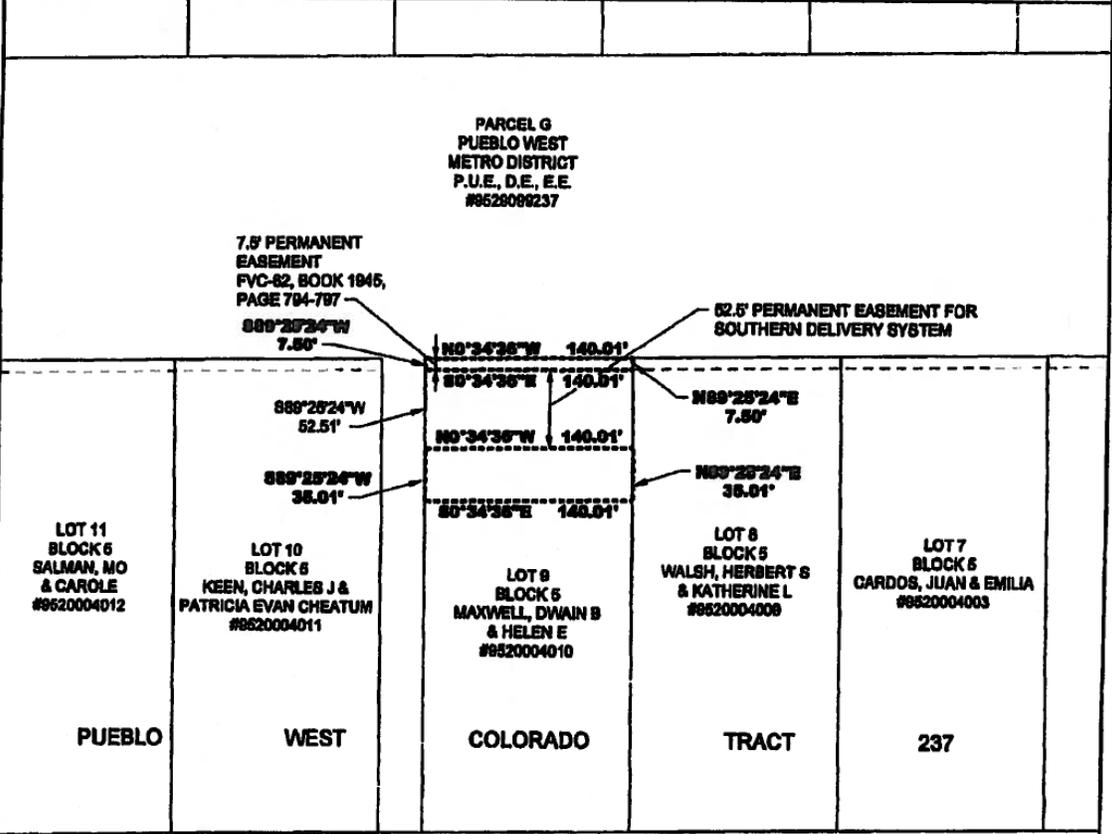
EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B – Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9520004010TE\_EXB.doc

DATE: 18-MAR-2010	<b>EXHIBIT C SKETCH</b>	TEMPORARY CONSTRUCTION EASEMENT PARCEL #9520004010 SECTION 20 T19S, R85W, 6TH P.M. PUEBLO COUNTY, COLORADO	<b>CITY OF COLORADO SPRINGS</b>
DRAWN BY: L STUDER			
CHECKED BY: B HANSON			
APPROVED BY: T SHAUGHNESSY			
DRAWING: 9520004010TE_EXC			



**NORTH KIRKWOOD DRIVE**

**NOTES:**

- This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.
- Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1365), monumented by a 3" brass disk set in 1.8' diameter concrete pad to NGS Station "Cleverger" (PID JK1363), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.
- P.U.E., D.E., E.E. = Public Utility Easement, Drainage Easement and Equestrian Easement. Per Subdivision Plat.



Z



SCALE: 1" = 100'

**SHEET 1 OF 1**

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**From:** Kevin Binkley [mailto:kbinkley@csu.org]  
**Sent:** Tuesday, October 13, 2015 10:31 AM  
**To:** Armstrong, Joan  
**Cc:** Alec Hart; Mark Pifher  
**Subject:** Noxious Weed Monitoring Commitment

Hi Joan,

Per our conversation and based on my understanding, according to the vegetation section of the Participant's Commitments in the Bureau of Reclamation Record of Decision (ROD), we are committed to monitoring "the 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."

To define the 3 year monitoring commitment timeframe after construction of the construction areas, this timeframe commenced on the date immediately after the SDS pipeline was installed, the disturbed areas returned to pre-construction contours and the initial planting and seeding of disturbed areas was completed for each individual construction work package. In Pueblo County, these dates are as follows:

SDS Construction Work Package	Noxious Weed Monitoring Start Date	Noxious Weed Monitoring End Date
PDC1A	7/11/2012	7/11/2015
S2	8/12/2012	8/12/2015
S3	9/12/2012	9/12/2015
S1	5/24/2013	5/24/2016
PDC1B	6/30/2014	6/30/2017

As seen in the table above, the noxious weed monitoring 3-year timeframe has been completed for 3 of the 5 construction work packages in Pueblo County. S1 is scheduled to be completed in May of 2016 and PDC1B on BOR property in June 2017. We will continue to work with the Turkey Creek Conservation District to develop a cooperative noxious weed control plan; however, routine monitoring of the SDS alignment beyond the 3-year ROD commitment is not anticipated as we do not have property ownership rights of the land surface where we have permanent easements for the buried pipeline.

I hope this helps. Let me know if you have questions or want to discuss further.

Kind regards,

-Kevin.

**Kevin Binkley**  
Southern Delivery System  
121 S Tejon St, 3rd Floor  
Colorado Springs, CO 80947  
**719.668.3748 (o)**  
**719.339.3394 (c)**  
[kbinkley@csu.org](mailto:kbinkley@csu.org)

Exhibit 2

## CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement (“Agreement”) is entered into by and between the City of Colorado Springs, Colorado (“City”), and Walker Ranches, LLLP (“Walker Ranches” which shall include Gary Walker, Georgia Walker and their family, together with their agents and attorneys) (collectively, the “Parties”) and shall be binding upon their successors and assigns.

### Recitals

- A. On May 11, 2011, the City filed a Petition in Condemnation to acquire certain property interests, including a permanent easement (“Easement”), from Walker Ranches. The condemnation action, filed in Pueblo County District Court, is styled as City of Colorado Springs, Colorado v. Walker Ranches, LLLP, et al., Case Number 2011-CV-313 (“Case”).
- B. On May 6, 2015, following a nine day jury trial in the Case, the court entered judgment in the amount of \$82,900.00 for the easements acquired and \$4,665,000.00 in damages to the remainder. Pursuant to the Entry of Judgment, as of May 7, 2015, the City was required to pay \$5,779,954.40, and an additional \$1,192.60, for each day after that.
- C. On May 8, 2015, the City deposited \$5,781,147.00 into the court registry, and the funds were to be placed into an interest bearing account.
- D. On May 7, 2015, the City filed a Notice of Appeal. On May 14, 2015, Walker Ranches filed a Notice of Cross-Appeal. The City’s appeal and Walker Ranches’ appeal are referred to collectively as the “Appeals.”
- E. On May 14, 2015, Walker Ranches filed its Bill of Costs and its Motion for Attorney Fees. The City’s response has not been filed pending this settlement.
- F. As more fully set forth below, the Parties have reached an agreement to settle various matters, including, without limitation, the Case and the Appeals.

### Agreement

For and in consideration of the foregoing recitals and of the conditions, covenants and agreements set forth below, the amount and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The City shall, upon execution of this Agreement, dismiss with prejudice its appeal of the Case.
2. Walker Ranches shall, upon execution of this Agreement, dismiss with prejudice its cross-appeal of the Case.

3. Upon such dismissals, Walker Ranches shall be free to withdraw from the court registry the entire amount of the judgment, as deposited with the court on May 8, 2015, plus any accrued interest

4. Within seven days of the execution of this Agreement, Colorado Springs Utilities ("CSU"), on behalf of the City and the Southern Delivery System ("SDS") participants, shall provide to Walker Ranches a check in the amount of \$1,340,000 in full and final settlement of all claims for all costs and expenses in the Case and pursuant to the provisions of the Pueblo County 1041 Permit, No. 2008-002, for the SDS project ("1041 Permit"). The check shall be made payable to "Hamre, Rodriguez, Ostrander & Dingess, P.C. COLTAF Account" and delivered to the attention of Donald Ostrander at Hamre Rodriguez, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Denver, Colorado 80237. Walker Ranches shall make no further claims in any forum for either costs or expense reimbursement in conjunction with the City's acquisition of the Easement.

5. Walker Ranches acknowledges that the City has diligently undertaken efforts to revegetate and reclaim the Easement in compliance with conditions 20 and 22 of the 1041 Permit, and the associated Mitigation Appendices including, but not limited to, conditions C-9, C-12, and C-20. The Parties acknowledge that rain storms occurring over, and in the vicinity of, the Easement in the years since commencement of such revegetation and reclamation activities have delayed achieving full revegetation and reclamation of the Easement. In furtherance of the effort to satisfactorily complete such revegetation and reclamation, the parties agree that:

- a. CSU representatives will meet with Gary Walker for purposes of seeking his assistance in identifying those areas on the Easement in need of additional revegetation work in order to achieve the degree of revegetation success as referenced in condition 22 and Mitigation Appendix C-9 of the 1041 Permit on those areas. The focus shall be on those areas that were newly re-seeded in the fall of 2014. The areas covered by this provision are depicted on a map attached to this Agreement as Exhibit A, which is made a part hereof.
- b. CSU shall continue to perform revegetation and reclamation work on the Easement until such time as Pueblo County has determined that the obligations imposed by the 1041 permit have been met.

6. Walker Ranches agrees to allow temporary fencing of the Easement to the extent the City's experts have determined that such fencing is advisable in order to ensure revegetation success. Walker Ranches shall be compensated at an annual rate of \$300 per acre or portion thereof of land which is fenced. Fencing will include appropriate structures to allow reasonable passage for cattle at locations shown on Exhibit A.

7. The City is aware that Gary Walker and Walker Ranches are interested in placing one or more conservation easements on Walker Ranches' property in the vicinity of the Easement. The City shall not oppose the establishment of such conservation easements so long

as the easements are consistent with, and do not materially interfere with, the City's rights under its Easement. That said, should it be determined that the Easement language, including the right to construct future pipelines, is an impediment to the execution of a bona fide conservation easement agreement covering the property where the easement exists, the City represents that it is amenable to a modification of its Easement language which would eliminate or modify its right to install one or more additional water delivery pipelines from Pueblo Reservoir to the City along the Easement to the extent required by the proposed owner of the affected conservation easement(s). Even if the Easement is modified, the City reserves the ability to seek and obtain approval from the owner of the conservation easement and Walker Ranches to undertake to construct additional pipelines pursuant to applicable law at some time in the future.

8. Walker Ranches agrees that it shall not:
  - a. Request that Pueblo County impose any additional conditions upon the SDS project.
  - b. Provide information to Pueblo County in an effort to influence Pueblo County to make a determination of noncompliance with any of the 1041 Permit conditions placed upon the SDS project.
  - c. Challenge before Pueblo County or any other court or agency with jurisdiction over the SDS the adequacy of the reclamation work, including, but not limited to, the revegetation and recontouring efforts, as performed by the SDS on the Walker Ranches property or to seek additional compensation therefor.
  - d. Request that Pueblo County require CSU to provide additional reimbursement of costs and expenses, including under condition 15 of the 1041 Permit that provides for reimbursement of "out-of-pocket expenses."

9. The Parties agree to keep strictly confidential the terms and subject matter of this Agreement, and the discussions and negotiations leading up to this Agreement. Specifically, the Parties agree that no comments will be made to the media about this Agreement other than comments that are mutually agreed to in terms of both form and substance. The Parties will agree to comments confirming that these matters have been resolved. The Parties agree that CSU may inform Pueblo County that this Agreement was reached and that it resolves landowner concerns about compliance with Conditions 15, 20 and 22 of the 1041 Permit.

10. Notwithstanding the above, the Parties agree that they cannot be held responsible nor liable under this Agreement for any information that is presently disclosed within the general community, nor for any information dispensed by a third party prior to the execution of the Agreement. Also notwithstanding the above, the provisions of paragraph 9 shall not prevent the Parties from disclosing the terms of this Agreement as follows: (1) in connection with an action seeking to enforce the terms of the Agreement; (2) to their respective legal, tax or financial

advisors, including auditors, as may be necessary to obtain advice from any of them related to this Agreement; (3) as may be required to comply with a properly issued, lawful and valid judicial order, subpoena or other legal process, or requirement of or proper request from any securities regulatory or self-regulatory authority. If a court or if a lawful subpoena or other legal process, including a request under the Colorado Open Records Act, requests any information about this Agreement from a Party, that Party shall notify the other Party in advance of providing any such information. If the other Party so demands, the Party will cooperate in any effort by the other Party to contest, modify, condition or limit such request or demand for information. The Party demanding cooperation shall be responsible for all reasonable attorney fees and costs incurred by the other Party in the effort to contest, modify, condition, or limit such request.

11. Except as may be otherwise provided herein, Walker Ranches agrees to release CSU from any claims, liabilities, or damages related to site restoration, reclamation, site contours, drainage, erosion control, surface and groundwater hydrology, revegetation, and similar issues resulting from the City's use of the Easement.

12. Except as may be otherwise provided herein, the City, on behalf of the CSU participants, agrees to release Walker Ranches and Gary Walker from liability for damage to the Easement resulting from normal ranching operations on, or in the vicinity of, the Easement.

13. It is the intent of the Parties that this Agreement and its terms shall apply to all activities associated with the construction and reclamation of the current SDS pipeline installation only. Future construction activities on the Easement, not associated with the current SDS pipeline construction and reclamation, will be addressed separately, including any damages resulting from such future construction activities on a new or different pipeline or pipeline facility.

14. It is agreed and understood by the Parties that Walker Ranches believes that there are some additional surface drainage treatments ("Treatments") that would improve the ability of the Easement to manage and control stormwater flows on and across the Easement directing the water in a more beneficial way. In order to encourage these Treatments, Walker is willing to provide necessary and suitable material to construct the treatments if CSU will provide the construction equipment and labor. A description of the Treatments is provided in the attached and incorporated Exhibit B.

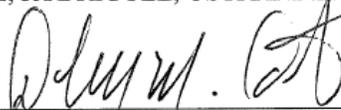
15. Walker Ranches expects that portions of the Treatments may extend off the Easement and it grants to CSU at no cost, the necessary right-of-way to construct the Treatments at the agreed upon locations off the Easement.. Walker Ranches agrees to identify the location and dimensions of the Treatments and the Parties agree that if the Treatments are constructed at the location and with the materials specified by Walker Ranches do not function as intended by Walker Ranches, then CSU will not be held responsible for any resulting damage to Walker Ranches' property and that CSU will be entitled to do any additional work required to protect the Easement and pipeline from risk of damage. If the facilities function as intended, CSU will

incorporate them into its ongoing Easement maintenance. To the extent that it is necessary to extend Treatments off the Easement, the location of the off-Easement Treatments will be described on a map incorporated into this Agreement as Exhibit A.

16. Any dispute about the terms of this Agreement or compliance with the terms of this Agreement shall be subject to mandatory, binding arbitration conducted in accordance with the rules of the American Arbitration Association, with the prevailing party to recover its costs and fees.

Respectfully submitted this \_\_\_\_\_ day of June, 2015.

HAMRE, RODRIGUEZ, OSTRANDER & DINGESS, P.C.

By:   
\_\_\_\_\_  
Donald M. Ostrander, No. 12458  
Richard F. Rodriguez, No. 25105  
Joel M. Spector, No. 36561

ATTORNEYS FOR RESPONDENT WALKER RANCHES,  
LLLP

HILL & ROBBINS, P.C.

By:   
\_\_\_\_\_  
David W. Robbins, No. 6112

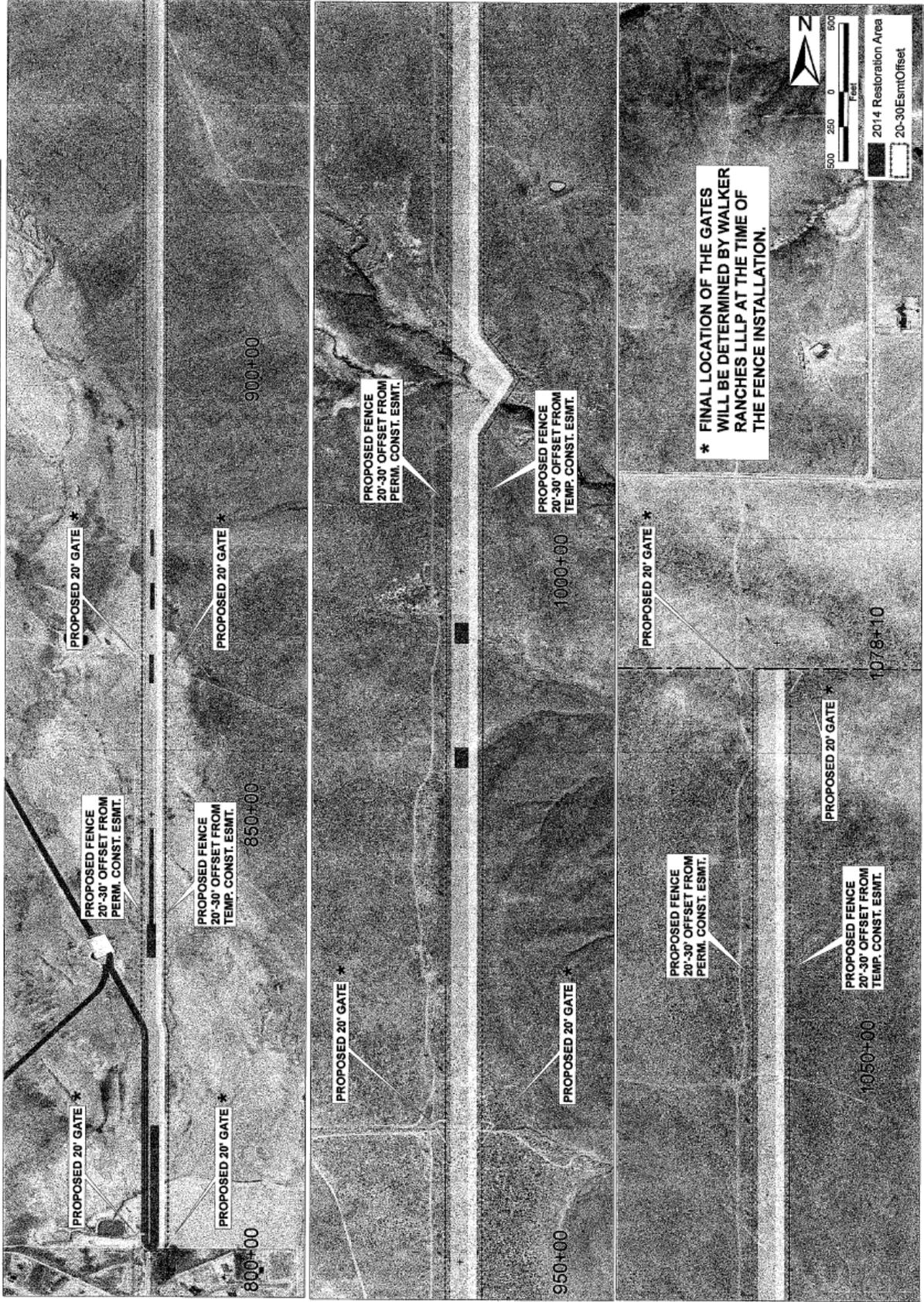
CO-COUNSEL FOR PETITIONER

WELBORN SULLIVAN MECK & TOOLEY, P.C.

By:   
\_\_\_\_\_  
Edward J. Blieszner, No. 11161

CO-COUNSEL FOR PETITIONER

# EXHIBIT A - WALKER RANCH RESTORATION AREA FENCE



**EXHIBIT B TO CONFIDENTIAL SETTLEMENT AGREEMENT  
BETWEEN WALKER RANCHES, LLLP AND COLORADO SPRINGS UTILITIES**

This Exhibit B is referred to in Paragraph 14 of the Confidential Settlement Agreement and is incorporated therein and made a part thereof.

The purpose of this Exhibit B is to describe in greater detail the agreed upon fencing as discussed in Paragraph 6 of the Agreement and the agreed upon additional surface drainage treatments discussed in Paragraphs 14 and 15 of the Agreement.

1. Fencing of Easement.

- a. The entire length of the SDS Easement on Walker Ranch will be fenced at the location depicted on Exhibit A to the Confidential Settlement Agreement.
- b. The fence will be of the type used by the Colorado Highway Department with a top wire at 42 inches above the ground and the bottom wire at an elevation of 12 inches above the ground.
- c. The fence material, upon the completion of Colorado Springs reclamation activities, will become the property of and the responsibility of Walker Ranches, LLLP to remove or maintain as Walker Ranches, LLLP determines.

2. Description of Additional Berms.

Mr. Walker has recommended that a maximum of 12 additional berms be constructed across the easement (including the temporary construction easement). The construction of each berm to start or commence approximately 20 feet beyond the edge of the current easement, traverse the easement diagonally downhill and terminate approximately 20 feet beyond the edge of the current easement.

- a. Mr. Walker will provide native material from Walker Ranches to construct the berms at no cost to Colorado Springs.
- b. Colorado Springs will provide the equipment and manpower to do the construction.
- c. It is acknowledged that the construction of these berms will result in some disturbance to the current revegetation activities and that additional revegetation on the disturbed areas will occur.
- d. It is acknowledged that the construction of the berms will disturb the lands both on and off the easement while berm construction occurs and this disturbance is anticipated and will be the subject of revegetation efforts.
- e. It is anticipated that the berms will be approximately 24 to 30 inches high with a crest of approximately 24 inches with a gradual slope off the crest downhill.

- f. The locations of the berms will be as agreed to by Mr. Walker and the designated representative from Utilities both by indicating the location on Exhibit A and by placing stakes in the ground showing the location and aspect of the berms.
- g. Mr. Walker has recommended that Colorado Springs utilize a local contractor to do the earth work for the placement of the berms.

3. Crossing Gates.

Colorado Springs will place 4 sets of gates in the fencing along the easement. One gate set will be located at the south edge of the Walker Ranch, one gate set will be placed at the north edge of the Walker Ranch and two gate sets will be placed at locations specified by Mr. Walker and Colorado Springs representative where current ranch roads already cross the easement. The “alleys” between the two gates across the easement will not be fenced.

4. Irrigation Pipeline.

Colorado Springs will move its current irrigation delivery pipeline from its current location parallel to the western edge of the easement to a location crossing Walker Ranch agreed to by Mr. Walker and the representative from Colorado Springs.

5. Temporary and Permanent Easements.

As part of this Agreement Walker Ranches, LLLP grants to Colorado Springs Utilities temporary and permanent easements to accomplish the purposes set forth above to include, but not by way of limitation:

- a. A temporary easement for the irrigation water supply pipeline that is being realigned.
- b. A temporary easement for the perimeter fencing on the east and west side of the easement.
- c. A temporary easement for any revegetation activity required on the former 50 foot temporary construction easement.
- d. A permanent easement for the construction and maintenance of the diagonal berms both across the easement and extending off either side of the Easement as described in Paragraph 2 above.

6. Need for Cooperation by the Parties.

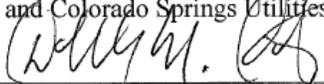
Colorado Springs will be operating its Southern Delivery System Pipeline for an extended period of time. Mr. Walker will continue to be the landowner over which the Pipeline traverses. As a result it is important for both parties to communicate and cooperate in the maintenance of the right-of-way. To that end Colorado Springs agrees to consult with Mr. Walker as set forth above in this Exhibit B and to continue to communicate and cooperate with

Mr. Walker as the above listed activities occur and as future maintenance activities occur. Mr. Walker agrees on his behalf and on behalf of Walker Ranches, LLLP to communicate and cooperate with Colorado Springs Utilities in the conduct of the above listed activities and future maintenance activities. Both parties recognize that this relationship will be a long term relationship and communicating and working issues out to the satisfaction of both parties is a preferable way to accomplish the mutual goal of completing the reclamation and proper maintenance thereafter of the SDS right-of-way.

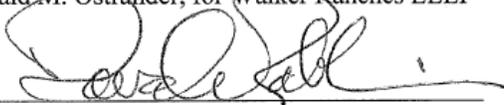
7. Point of Contact.

Colorado Springs Utilities agrees to designate Mr. Lyman Ho as the point of contact for Mr. Walker and the representatives from Walker Ranches, LLLP for the immediate future. At such time that Mr. Ho is no longer involved on behalf of Colorado Springs Utilities it is agreed that a replacement point of contact will be identified in writing and before that point of contact is designated Mr. Walker will be consulted.

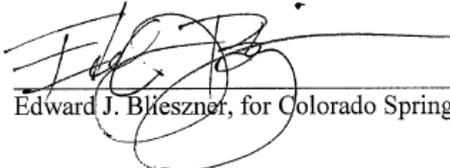
Approved as Exhibit B to the Confidential Settlement Agreement between Walker Ranches LLLP and Colorado Springs Utilities.



Donald M. Ostrander, for Walker Ranches LLLP



David W. Robbins, for Colorado Springs Utilities



Edward J. Blieszner, for Colorado Springs Utilities