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**PUEBLO COUNTY  
DEPARTMENT OF PLANNING AND DEVELOPMENT**

February 1, 2016

Mr. John Fredell, SDS Program Director  
121 South Tejon Street, 3<sup>rd</sup> Floor  
P.O. Box 1103, Mail Code 930  
Colorado Springs, Colorado 80947-0930

Re: 1041 Permit No. 2008-002, Concerning Compliance by Colorado Springs Utilities with Certain Terms and Conditions of 1041 Permit No. 2008-002 Requiring the Reclamation of Disturbed Lands

Dear Mr. Fredell:

Please be advised that the Pueblo Board of County Commissioners, at its public hearing held on February 1, 2016, concludes that based upon the documentary evidence and the testimony of interested parties and citizens presented at the hearing including, but not limited to, the written reports submitted by: 1) the Applicant, Colorado Springs Utilities (CSU); 2) Pueblo County staff from the Departments of Planning and Development and Engineering and Public Works; 3) the qualified revegetation experts retained by each of CSU and Pueblo County, and 4) the personal inspection of portions of the disturbed lands by members of the Board of County Commissioners as disclosed on the record, that:

**1. Juniper Pump Station.** In accordance with Permit Condition No. 21, Juniper Pump Station Architectural Review, Pueblo County has previously appointed its Director of the Department of Planning and Development (Director) who participated in the final selection of the architecture and landscaping for the Juniper Pump Station. The Director is hereby ordered to review the landscaping at the pump station for conformance with the previously reviewed plans and to report back to the Board on the status of the conformance of the approved plan. The review shall continue on a periodic basis until full conformance has been achieved.

**2. Pipeline Easement Segment Denoted as Pueblo Dam Connection 1A and 1B.** The terms and conditions of Permit Condition No. 22 and the related provisions and conditions set forth in Mitigation Appendix C-9 have, to the date of this Resolution, been met, to wit: The vegetation cover is not less than 90% of the pre-construction vegetation cover with similar species diversity; disturbed areas have been graded to pre-construction contours such that pre-construction drainage paths have been re-established or, pursuant to written agreements with landowners, reasonable substitutes therefore have been established.

Accordingly, the Board concludes that the revegetation bonds previously posted as security for the initial revegetation obligation by the Applicant, and more particularly described as:

- a) Bond No. 105765206 for the easement at Pueblo Dam Connection 1A in the amount of \$2,000; and
- b) Bond No. 105692964 for the easement at Pueblo Dam Connection 1B in the amount of \$12,000;

are, in accordance with the Board's conclusions stated on the record of this proceeding on December 28, 2015, hereby released.

**3. Pipeline Easement Segment Denoted as S-1.** The terms and conditions of Permit Condition No. 22 and the related provisions and conditions set forth in Mitigation Appendix C-9 have, to the date of this Resolution, been met, to wit: The vegetation cover is not less than 90% of the pre-construction vegetation cover with similar species diversity; disturbed areas have been graded to pre-construction contours such that pre-construction drainage paths have been re-established or, pursuant to written agreements with landowners, reasonable substitutes therefore have been established.

Accordingly, the Board concludes that the revegetation bonds previously posted as security for the initial revegetation obligation by the Applicant, and more particularly described as:

- a) Bond No. 105692962 for the easement at S-1, Juniper Pump Station to Spaulding Ave., in the amount of \$205,000;

is, in accordance with the Board's conclusions stated on the record of this proceeding on December 28, 2015, hereby released.

**4. Pipeline Easement Segment Denoted as S-2.** The terms and conditions of Permit Condition No. 22 and the related provisions and conditions set forth in Mitigation Appendix C-9 have, to the date of this Resolution, been substantially met, to wit: Except as indicated below, the vegetation cover is not less than 90% of the pre-construction vegetation cover with similar species diversity; disturbed areas have been graded to pre-construction contours such that pre-construction drainage paths have been re-established or, pursuant to written agreements with landowners, reasonable substitutes therefore have been established.

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Accordingly, the Board concludes that the revegetation bonds previously posted as security for the initial revegetation obligation by the Applicant, and more particularly described as:

- a) Bond No. 105692956 for the easement at S-2, Spaulding Ave. north to the northern boundary of the Pueblo West Metropolitan District, in the amount of \$157,000;

is, in accordance with the Board's conclusions stated on the record of this proceeding on December 28, 2015, hereby released.

Notwithstanding the foregoing, the Board finds that certain portions of the S-2 segment have been disturbed by the actions of a third party, Black Hills Energy. By letter dated December 11, 2015, Black Hills Energy has acknowledged the disturbance and stated its intention to address the same in a manner that restores the disturbed areas to the condition existing prior to the disturbance. The Director is ordered to inspect the disturbed areas and to report back to the Board on the status of the restoration.

As further regards a portion of the S-2 segment, the Board finds that in response to concerns expressed by Mr. Dwayne Maxwell about drainage that ran from a location off of the SDS easement and to and across the SDS pipeline easement and a trail established and maintained by the Pueblo West Metropolitan District upon that easement and resulted in gravel or other debris being deposited on the Maxwell property, CSU, in consultation with Mr. Maxwell, Pueblo County staff, and Pueblo West staff, undertook some remediation activities in the area of concern. The evidence of the activities was submitted into the record of this proceeding. To the extent that future rains and run-off over the course of the next 12 months demonstrates that such mitigation work is not adequate to prevent the trail erosion and the deposition of crushed rock or other such debris on the Maxwell Property, CSU shall, in consultation with the staffs of Pueblo County and Pueblo West, undertake such additional remedial measures as are reasonably necessary to protect the Maxwell Property from the impacts of such erosion.

As further regards a portion of the S-2 Segment, the Board finds that a portion of the easement at or near the intersection of the northern boundary of the Pueblo West Metropolitan District and the southern boundary of the Walker Ranches lies in part of a much larger drainage alluvial plain. The Pueblo West Metropolitan District is working to solve drainage issues at this location and, to the extent that the easement is involved, is working with CSU to address and remediate the drainage issues. The Director shall include, as part of its annual inspection of the pipeline easement, a report on the status of the efforts at this location.

**5. Pipeline Easement Segment Denoted as S-3.** The remaining section of the Pipeline Easement for the Southern Delivery System located in Pueblo County and commonly referred to and denoted by the parties as S-3, which segment runs from the Northern boundary of the Pueblo West Metro District North to the Southern boundary of El Paso County is located primarily on the lands of one land owner, Walker Ranches, LLP. Pueblo County staff, as part of its written reports on this matter, has submitted a copy of a document entitled "Confidential Settlement Agreement Between Walker Ranches, LLP. and Colorado

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Springs Utilities", dated and signed June 2015. Although the Agreement, by its express terms, requires continued compliance by CSU with Permit Condition No. 22, it also indicates actions concerning the reclamation of the land as agreed to by the parties which may preclude strict compliance with the Permit condition. Subsequently, in a written report submitted by CSU, the Board has been informed of an Amendment to Confidential Settlement Agreement, dated December 3, 2015 which, according to the report, provides:

Walker Ranches acknowledges the City's efforts in fulfilling the requirements of the Confidential Settlement Agreement, and in particular acknowledges that the City has met the reclamation and revegetation provisions in the Confidential Settlement Agreement and has met or exceeded the requirements of Conditions 20 and 22 of the 1041 Permit as well as the provisions of the associated Mitigation Appendices. The Parties agree that the City may inform Pueblo County of this Recital.

The Board takes notice of the fact that Permit Condition No. 22 contemplated reasonable substitutes to the stated standards for the reclamation of disturbed lands pursuant to agreement with the landowner. The Board further takes notice that in certain other sections of the pipeline easement in Pueblo County, agreements with the landowners concerning reclamation of the disturbed land have called for reclamation different than that set forth in the permit standard and the Board has deferred to such agreements and found compliance with, and satisfaction of, the permit condition. Finally, the record of this proceeding will show that the Board was informed through the testimony of CSU representatives that Walker Ranches, LLP. has granted a Conservation Easement to the Nature Conservancy on a portion of its ranch which includes the land subject to the pipeline easement. The provisions of the Conservation Easement, presumably, are acceptable to both Walker Ranches, LLP. and the Nature Conservancy.

The terms and conditions of Permit Condition No. 22 and the related provisions and conditions set forth in Mitigation Appendix C-9 have, to the date of this Resolution, been substantially met, to wit: The disturbed areas have been graded to pre-construction contours such that pre-construction drainage paths have been re-established or, pursuant to written agreements with landowners, reasonable substitutes therefore have been established; The vegetation cover in areas that have not otherwise been disturbed pursuant to written agreements with the land owner is not less than 90% of the pre-construction vegetation cover with similar species diversity, and those areas that have been disturbed pursuant to written agreements with land owner are in the process of meeting the related provisions and conditions.

Accordingly, the Board concludes that the revegetation bond previously posted by the Applicant as security for the initial revegetation obligation by the Applicant, and more particularly described as:

- a) Bond No. 105692963 for the easement at S-3, from the Northern Boundary of the Pueblo West Metropolitan District north to the Southern Boundary of El Paso County, in the amount of \$298,000;

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is, in accordance with the Board's conclusions stated on the record of this proceeding on December 28, 2015, hereby released.

6. The Board further concludes that the Revegetation Bonds as required by the Permit and previously referenced in these findings and conclusions were security for the obligations concerning revegetation in the permit and were, and are, not a substitute for the revegetation obligation itself. Accordingly, the obligations of the permit concerning annual reporting by CSU and maintenance of the permanent revegetation standard set forth in Permit Condition No. 22 and Mitigation Appendix C-9 are continuing and not released or extinguished through the release of the bonds. Based upon the testimony and the reports submitted by the revegetation experts and upon the additional reports submitted by CSU and Pueblo County staff, the Board finds that the revegetation, having initially achieved the 90% threshold, is intended, in the future, to respond to natural precipitation and climatic conditions in much the same manner as will the adjacent lands which were used in setting the revegetation standard in the first instance. However, the Board further finds that only the passage of time will tell whether this intended restoration will, in fact, occur. The Board is also mindful of the fact that the owners of the lands across which the easement runs may, through agreements with CSU or of their own volition, take actions on the land which are not consistent with the revegetation standard. The Permit contemplates this possibility and the Board will accommodate the same as they arise. However, the revegetation standard set forth in Permit Condition No. 22 and Mitigation Appendix C-9 stands and continues throughout the life of the permit.

7. Pursuant to the express provisions of Permit Condition No. 25, CSU shall address in its required annual report continued compliance with the provisions of Permit Condition No. 22. In addition, the Director is ordered, as part of its review of the CSU annual report, to inspect the easement and report its opinion of continued compliance with Permit Condition No. 22.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Joan Armstrong  
Director

LRS

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, Department of Engineering and Public Works  
David Benbow, Project Manager, Department of Engineering and Public Works  
Mark Pifher, Permitting and Compliance Manager, Colorado Springs Utilities  
Kevin Binkley, PMP, SDS, Colorado Springs Utilities