

RESOLUTION NO. P&D 16- 007

**THE BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO**

**CONCERNING COMPLIANCE BY COLORADO SPRINGS UTILITIES WITH
CERTAIN TERMS AND CONDITIONS OF 1041 PERMIT NO. 2008-002 REQUIRING
THE RECLAMATION OF DISTURBED LANDS**

WHEREAS, the Board of County Commissioners (“Board”) held a hearing conducted over several days to consider compliance by the Permit Applicant, Colorado Springs Utilities, with those terms and conditions of 1041 Permit No. 2008-002 requiring the reclamation of disturbed lands, and having considered the testimony and the documentary evidence submitted, does hereby find and conclude as is hereinafter set forth:

1. On April 21, 2009 the Board adopted Resolution No. P&D 09-22 (“Resolution”) approving 1041 Permit No. 2008-002 (“Permit”) with terms and conditions for construction and use of a municipal water project known as the Southern Delivery System (SDS) within Pueblo County, Colorado. Two of the principle features of the SDS project in Pueblo County are the Juniper Pump Station and the SDS pipeline. The Juniper Pump Station includes an approximately 14,000 square foot, 42 foot high building with auxiliary power facilities and a parking lot in addition to the pumping equipment and facilities. The pumping station is located on land leased from the United States Bureau of Reclamation. The SDS pipeline is a 66 inch diameter raw water pipeline which runs from the Juniper Pump Station north through Pueblo County for approximately 20 miles to the southern boundary of El Paso County.
2. The Applicant for the Permit, Colorado Springs Utilities (CSU) is an enterprise owned and operated by the City of Colorado Springs. CSU is the project manager charged with the responsibility to oversee the permitting, construction, and operation of the SDS project pursuant to an agreement with the other project partners, the City of Fountain, the Security Water District, and the Pueblo West Metropolitan District.
3. The Permit was issued on the basis and terms of twenty-nine (29) findings set forth in the Resolution and was further based upon the Record made at the public hearings on the Permit application. Approval of the Permit was also made subject to thirty (30) general terms, conditions, and commitments, together with a detailed description concerning those terms, conditions, and commitments contained in a Mitigation Appendix which was incorporated into the approving Resolution by reference.
4. Permit Condition No. 25: Compliance, Monitoring, and Reporting provides in full as follows:

Applicant shall monitor and periodically report to Pueblo County on its compliance with this Permit. During project construction in Pueblo County, Applicant will submit a quarterly report to Pueblo County summarizing the activities during that period, forecasting activities scheduled for the upcoming period, and addressing compliance with the terms and conditions of the Permit. After commencing deliveries of water through the SDS pipeline, Applicant shall submit annual reports to Pueblo County summarizing its activities related to the SDS Project, the Permit, and addressing compliance with the terms and conditions

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of the Permit. Pueblo County may, at its discretion, hold public reviews of the reports and Permit compliance, including hearings in accordance with its regulations. *See Mitigation Appendix ENF-1.*

CSU has monitored its construction and installation of the pipeline and related facilities and periodically reported to Pueblo County on its progress and compliance with the Permit. The periodic reports submitted by CSU have included considerable detail on its efforts and progress at restoring the lands in Pueblo County disturbed during construction of the pipeline.

5. Pursuant to Permit Condition No. 25, Pueblo County, at the direction of the Board of County Commissioners, held public hearings to review the reports and the status to date of compliance with the Permit terms and conditions related to reclamation and revegetation of lands in Pueblo County disturbed during construction of the pipeline. The principal Permit Condition concerning these matters is Condition No. 22, Reclamation of Disturbed Lands. It reads in full as follows:

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 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 bond shall be released upon establishing 90 percent of pre-construction vegetation cover on the impacted land segment. *See Mitigation Appendix C-9.*

The referenced provision of Mitigation Appendix C-9 provides:

“Applicant shall provide Pueblo County residents with replacement vegetation and property to match pre-construction conditions or better.”

The Project Details accompanying this provision provide, in pertinent parts, that the Applicant is required to:

1. Grade disturbed areas to pre-construction contours so pre-construction 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.

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- 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 the similar species diversity. The pipeline access road will not be included in the 90 percent coverage calculation.

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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.

Additionally, Permit Condition No. 28, Mitigation Appendix, provides in full as follows:

The provisions of that certain Mitigation Appendix previously referenced herein and attached hereto is hereby incorporated by this reference as though fully set forth. In the event of a conflict between the provisions of the Mitigation Appendix and the terms and conditions set forth in this Resolution, then the terms and conditions set forth in this Resolution shall prevail.

Applicant asserts that the conditions cited herein have been met and that completion of the project has been achieved and has requested Pueblo County to assess and determine compliance with the Permit conditions and to release the bonds.

6. The public hearing and deliberations of the Board on these matters commenced, pursuant to notice, on September 25, 2015, and was continued, successively, to October 19, 2015, December 8, 2015, December 21, 2015, December 28, 2015, January 11, 2016, and January 25, 2016. The notice consisted of two (2) successive notices published in the Pueblo Chieftain preceding the commencement of the hearing, written notice sent by certified mail to every landowner owning lands in Pueblo County subject to the easement for the SDS pipeline, posted notice in the rotunda

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of the Pueblo County Courthouse and posted notice displayed on the Pueblo County website prior to the commencement of the hearings and updated and displayed continuously to the present date.

7. Prior to taking final action, the Board posted Proposed Findings and Conclusions in the Courthouse rotunda, the Pueblo County Website, and made the same available to the Applicant and all interested citizens on January 12, 2016 and on January 25, 2016 the Board opened the matter for further comment and the hearing was concluded and the Board adopted Findings and Conclusions.

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Pueblo County, Colorado, 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, the Board concludes 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 therefor 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.

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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 therefor 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 therefor 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. 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

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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 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 land owner. The Board further takes notice that in certain other sections of the pipeline easement in Pueblo County, agreements with the land owners 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

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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 therefor 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;

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.

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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.

PASSED AND ADOPTED this 1st day of February 2016, in Pueblo County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO**

By: 
Liane "Buffie" McFadyen, Chair

ATTEST:

By: 
Gilbert Ortiz, County Clerk

