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**PUEBLO COUNTY  
DEPARTMENT OF PLANNING AND DEVELOPMENT**

March 11, 2016

Ms. Jacklynn L. Gould, Area Manager  
U.S. Bureau of Reclamation  
Great Plains Region  
Eastern Colorado Area Office  
11056 West County Road 18E  
Loveland, Colorado 80537-9711

Subject: Southern Delivery System Permit Compliance Annual Report (PCAR) for  
Calendar Year 2015

Dear Ms. Gould:

We received your letter on February 1, 2016, requesting verification that the SDS project is meeting its commitments to Pueblo County's permits, approvals and agreements, and if it is not meeting those requirements, you requested detailed descriptions of areas of noncompliance. You also invited the comments of our staff on the 2015 Permit Compliance Report prepared by Colorado Springs Utilities (Utilities) as SDS project manager. We appreciate Reclamation's consent to extending the period for submitting this response.

As explained in this letter, although SDS in 2015 has made progress on permit compliance with respect to certain terms and conditions, Pueblo County cannot verify at this time that SDS is meeting its commitments to Pueblo County's SDS 1041 permit. Based upon information currently known and available to the County, County staff has identified several concerns, including those issues described in this letter, which arose or have continued during 2015 to the present. It should also be noted that the listing of concerns addressed in this letter is not intended to be exhaustive and should not be interpreted as precluding the County from identifying or raising other compliance issues, either in this forum or otherwise.

1. **Stormwater Management and Funding by Colorado Springs.** Effective stormwater management throughout the life of the SDS Permit by the City of Colorado Springs is an important premise, commitment of record, and subject of several findings and terms and

conditions of the SDS 1041 Permit. (See, e.g., Findings, 21, 25, 27, Conditions 8, 19, 23, Mitigation Appendix E-1 and E-2, and the FEIS and other studies submitted by the Applicant in support of the SDS and relied upon for projections of impacts to be mitigated.) Effective stormwater management within Colorado Springs is essential to mitigate and offset the effects of increased flows and volumes in Fountain Creek caused by SDS and SDS-induced growth (degraded water quality, erosion, sediment transport, flooding, and threats to public health and safety).

In 2009, shortly after the 1041 Permit was issued, the City of Colorado Springs abolished its Stormwater Enterprise Fund (“SWENT”) and has not put an alternative program in place. A ballot measure to establish a regional stormwater fee program in El Paso County was defeated by the voters in November, 2014. Consequently, for the past 6 years since the SDS 1041 Permit and ROD were issued, there has not been an assured, sustainable, and adequate funding source for stormwater infrastructure and maintenance within Colorado Springs, as assumed in the FEIS. Colorado Springs has acknowledged the deficiency in funding in its draft Stormwater Program Implementation Plan (Jan. 15, 2016) at page 2 wherein it states: “The Colorado Springs stormwater program is underfunded and understaffed compared to similar communities and to the Colorado Springs Stormwater Enterprise that operated from 2006 to 2009.”

In its 4<sup>th</sup> Quarter 2015 Report for SDS, Colorado Springs also acknowledges that it recently received notice of MS4 permit stormwater discharge violations of Section 402 of the Clean Water Act from the Environmental Protection Agency (EPA), Colorado Department of Public Health and Environment, and the U.S. Department of Justice. The associated 30-page Inspection Report by the EPA team, dated August 18-19, 2015 contained several findings and alleged Clean Water Act violations, including Failure to Provide Adequate Resources to Develop, Implement and Enforce the MS4 Program.

On May 11, 2015 County staff reported and recommended to the County Board of Commissioners (“BOCC”) that there is adequate justification for the County to issue an order to Colorado Springs to show cause at a public hearing why the SDS 1041 Permit should not be suspended or amended as a result of Colorado Springs’ repeal, and failure to replace, the dedicated funding mechanism under SWENT. Upon further recommendation of County staff, the BOCC has deferred action temporarily to consider suspending or amending the Permit, pending staff negotiations with Colorado Springs on an intergovernmental agreement (“IGA”) to commit the City and Utilities to minimum, long-term stormwater funding, to the construction of needed stormwater control projects, and to other mitigation measures.

The negotiations on a proposed IGA continue to progress. However, absent an enforceable IGA between the County and Colorado Springs to address inadequate stormwater funding and controls, it is likely that County staff will renew its

recommendation to the BOCC to temporarily suspend commercial operations of the SDS in Colorado Springs, to hold hearings on SDS compliance with the SDS 1041 Permit and to determine whether the Permit should be suspended or amended.

2. **Fountain Creek Monetary Mitigation Payments.** Condition 6 of the 1041 Permit requires monetary mitigation of just under \$50M (as increased by annual indexing) to be paid by the SDS Applicant to the Fountain Creek Watershed, Flood Control and Greenway District (FCWFCGD) for Fountain Creek impacts. These monies are to be paid in five annual installments beginning on January 15 of the year following “completion and commencement of water deliveries through the SDS Pipeline from Pueblo Reservoir to Colorado Springs.” In 2015, water reportedly was delivered through the SDS Pipeline to Colorado Springs treatment plant. No installment payment, however, was made to the District on or before January, 2016. The issue of whether the first installment is delinquent is being discussed between representatives of the County, Colorado Springs, and the FCWFCGD, and may be resolved in the proposed IGA between the County and Colorado Springs.
3. **Clear Springs Ranch Mitigation Project.** Condition 8 of the SDS 1041 Permit incorporated the SDS mitigation requirement imposed by Reclamation to construct new wetlands and redirect a portion of the channel of Fountain Creek to reduce the slope and improve channel stability at the Clear Springs Ranch prior to SDS operation. As stated in Condition 8, the “purpose of this mitigation activity is to reduce sediment transport down Fountain Creek into Pueblo County, improve water quality and reduce flood threat downstream.” In the 4<sup>th</sup> Quarterly 2015 report to Pueblo County, it is reported by Utilities that flooding during 2015 has impacted wetlands, plantings and sediment retention capacity associated with the Springs Ranch mitigation project, and that an assessment is being conducted, future options are being evaluated, and designs have begun for repair.
4. **Restoration of Disturbed Areas.** Condition 22 of the SDS Permit, together with Mitigation Appendix C-9, required reclamation of lands disturbed by the SDS construction. Among other requirements, the SDS Applicant is to revegetate disturbed areas in Pueblo County to not less than 90 percent of the pre-construction vegetation cover with similar species diversity. The Applicant provided the County security bonds equal to a penal amount of \$2,000/acre of land in permanent or temporary construction easements, to be released upon establishing 90 percent of pre-construction vegetation cover. By Resolution P&D 16-007 dated February 1, 2016, the Pueblo County Board of Commissioners determined that the 90% vegetation cover has been achieved initially and that the security bonds therefore should be released, subject to ongoing inspection and maintenance by SDS of the revegetation standards throughout the life of the SDS 1041 Permit.

5. **Dismissal of Pueblo West Lawsuit against 1041 SDS 104 Permit.** Pueblo West Metropolitan District, as one of the proposed SDS Participants, had challenged the enforceability of Condition 9 in Pueblo County's approval of 1041 Permit No. 2008-002 (SDS 1041 Permit). Condition 9 requires all SDS Participants to cooperate in and comply with the Pueblo Flow Management Plan and its requirements for maintaining certain flows through Pueblo below Pueblo Reservoir by cessation of exchanges. Pueblo West filed a lawsuit in 2009 against the County in Case No. 09CV695 in Pueblo County District Court to prevent the County's enforcement of this Condition 9 and the SDS 1041 Permit. A Settlement Agreement, dated November 23, 2010, was executed between Pueblo West, Pueblo County, the City of Colorado Springs on behalf of its Utilities, and the Board of Water Works of Pueblo, under which the Parties agreed to stay further action in the lawsuit pending the satisfaction of several preconditions to settlement set forth in the Settlement Agreement. The Settlement Agreement provided, in part, that Pueblo West could not utilize the features and facilities of the SDS Project until it dismissed its lawsuit against the County in accordance with the Settlement Agreement or until a final court judgment was entered that Pueblo West is entitled to utilize the SDS features and facilities. On August 24, 2015, this lawsuit was dismissed by Order of the Pueblo County District Court pursuant to the Stipulation and Joint Motion of Pueblo West and Pueblo County. Accordingly, because Case No. 09CV695 has been dismissed, and in conformity with Paragraph 10.e of the Settlement Agreement, Pueblo West's rights to utilize the SDS fixtures and facilities are no longer to be held in abeyance as a result of the lawsuit.
  
6. **Wastewater System Improvements.** In the 2015 annual report, Utilities describes its progress related to wastewater system improvements. Under Condition 7 of the 1041 Permit, Utilities committed to invest an additional \$75,000,000 in its wastewater system between January 1, 2009 and December 31, 2024. Utilities is to provide an annual report to Pueblo County describing such expenditures for the prior year. According to the 2015 report, Utilities expended \$8,741,264 in 2015 for its LCERP, MHERP, R&R, and SSCC programs. The total expended to date since 2009 is reportedly \$47,427,271. The County appreciates the detailed lists of reported projects which Utilities now has added to its report beginning with the 2013 report. However, County staff has not been able independently to verify and confirm the reported amount spent by Utilities. The County also has a continuing concern as to whether Utilities will be able to meet its full commitment by 2024.
  
7. **Pueblo Reservoir Management Plan.** Condition 16 of the 1041 permit states *"Colorado Springs Utilities commits to Pueblo County as a part of the 1041 process that it will voluntarily participate, when and if the Southeastern Colorado Water Conservancy District, the Bureau of Reclamation, and any other affected party agree to participate, in developing a reservoir management plan for Pueblo Reservoir designed to protect reservoir levels and recreational opportunities on Pueblo Reservoir to the extent feasible"*

*given the potential for future changes in hydrology and water demands by project beneficiaries.” We are unaware of any efforts by any of the parties to implement this condition. A reservoir management plan is particularly critical given Reclamation’s pending approval process for the Arkansas Valley Conduit, Interconnect, and Master Storage Contract projects at Pueblo Reservoir.*

8. **Transfer of Permit.** Condition 3 of the 1041 Permit provides that the “Permit may be transferred in whole or in part to another party only with the written consent of the Board of Pueblo county Commissioners. A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and condition contained in the Permit.” The County is investigating whether the Applicant is in compliance with this condition. As an example, the County understands that the SDS Applicant is in the process of transferring to Reclamation the ownership and control of all or part of the North Outlet of the Pueblo Reservoir which was constructed by Applicant as part of the SDS Project. This topic was raised in last year’s letter from County staff to Reclamation but no discussion with the County has been initiated by Reclamation or the SDS Applicant.

Thank you for the opportunity to provide the foregoing comments in connection with the Bureau’s SDS 2015 PCAR. Pueblo County reserves the right to provide additional or supplemental comments or concerns to the Bureau, or request that the Bureau pursue corrective action related to SDS permit compliance, as necessary or if Pueblo County is unable to finalize the IGA with Colorado Springs.

Sincerely,



Joan Armstrong  
Director  
1041 Permit Administrator

cc:

Greg Styduhar, County Attorney  
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