



Colorado Springs Utilities

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September 28, 2017

Ms. Joan Armstrong, Director
Pueblo County Department of Planning and Development
1041 Permit Administrator
229 W. 12th Street
Pueblo, CO 81003-2810

Subject: 2016 SDS Permitting and Compliance Annual Report

Dear Ms. Armstrong:

Colorado Springs Utilities ("Colorado Springs") is in receipt of your letter of July 26, 2017 regarding the 2016 Southern Delivery System ("SDS") Permitting and Compliance Annual Report. Thank you for your response to the annual report. Colorado Springs agrees that the annual report needs to be complete and address the requirements of the Pueblo County ("County") SDS 1041 Permit ("Permit"). We believe that there are some areas where Colorado Springs' interpretation of the Permit differs from those which you have set forth in your letter. To provide a basis for reaching a common understanding, we offer the following response by numbered paragraph. We also ask you to review the letter that was sent to the County through Mr. Styduhar, dated February 25, 2016, a copy of which is attached.

1. Revegetation and reclamation of rights-of-way. In February 2016, the Pueblo Board of County Commissioners adopted Resolution 16-007, which addressed revegetation obligations. In response to that resolution, Colorado Springs sent Mr. Styduhar the attached letter to ensure that our disagreement with several of the statements or conditions in that resolution were on record.

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Because the Permit should be interpreted by its specific terms, we continue to take the position that there is no requirement in Permit Condition 22 or Appendix C-9 that refers to “maintenance of revegetation.” Colorado Springs fully complied with the revegetation requirements of the Permit, and appreciated the County’s release of its security bonds intended to ensure that result. We submit the following for your consideration:

A. Colorado Springs obtained two types of easements for the construction and operation of the SDS. It obtained permanent easements for the construction and operation of the pipeline, and it also obtained temporary construction easements to provide sufficient area to safely install the pipeline. The temporary construction easements have all lapsed, after full revegetation, and are now solely the private property of the landowner, unencumbered by any right or authority on the part of Colorado Springs to control the land use occurring thereon.

B. The permanent pipeline easements owned by Colorado Springs for the SDS project do provide Colorado Springs with the ability to ensure that non-conforming uses do not occur and that the pipeline right-of-way is properly maintained. However, the land surface of the easements belongs to private landowners who are free to make whatever use thereof that they desire as long as it does not threaten the buried pipeline or aboveground appurtenances. Colorado Springs believes that the suggestion that it is obligated to permanently maintain a vegetation condition on its right-of-way that matches a measured condition in 2008 is arbitrary, capricious, unreasonable, and inconsistent with the permit language. The quality of vegetation throughout the right-of-way area will change over time



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depending on weather conditions and land use patterns. As an example, the City of Pueblo operates an off-road motor sports park on the surface over the SDS pipeline right-of-way. Depending on how the City of Pueblo manages the off-road vehicle activity in this area, there may be more or less vegetation due to the City's management decisions. Another example involves a situation where a landowner chooses to intensively graze a portion of his property, including an area encompassed within a portion of the pipeline right-of-way, and to then rest it while recovery occurred. That decision on grazing management is not the responsibility of Colorado Springs, and as such there is no obligation on the part of Colorado Springs to maintain a certain standard of vegetative cover when the landowner is intent on using the land in another manner.

C. Colorado Springs will maintain its right-of-way in accordance with the standards of the utility pipeline industry. There is nothing in the Permit or the attached Conditions that mentions or requires that there be annual vegetation surveys as implied by your letter. As a result, we will not be including a report detailing the maintenance of the right-of-way nor will we be conducting annual surveys concerning the level of vegetation along the right-of-way. Those requirements are not contained in the Permit. At your request, Colorado Springs will accommodate vegetation inspections of the SDS pipeline alignment with your staff within Pueblo County's jurisdiction. In addition, it will agree to inform County staff of any on-the-ground conditions of which Colorado Springs becomes aware and which it determines may be of concern to the County.

2. Storage diversion and delivery of water in Pueblo County. Your letter requests that the annual report include a tabulation of all water deliveries to the SDS participants in Pueblo County instead of just water deliveries through the SDS pipeline. However, in reviewing Enf-1(2), the first sentence reads that Colorado Springs must “Submit an annual report to Pueblo County that will provide a summary of activities related to the SDS Project and the conditions of the Permit.” This sentence limits the application of the subsequent sub-headings including Enf-1(2)(b) *to activities related to the SDS Project*, and Colorado Springs maintains that Enf-1(2)(b) only requires a tabulation of total deliveries to the SDS participants through the SDS pipeline. That information was contained in the provided operations report.

Your letter also requests that the report provide information on exchanges or trades of water by the SDS participants utilizing the Fountain Valley Authority (“FVA”) pipeline. The FVA pipeline was constructed by the Bureau of Reclamation (“Bureau”) and is operated by the FVA in conjunction with the Bureau. The FVA pipeline was not the subject of the Permit and the Permit confers no jurisdiction to Pueblo County over the FVA pipeline or its operation. To the extent there are trades or exchanges of water between the SDS participants and those of the FVA, the result of any such trade or exchange of capacity is reflected in the SDS operations report already submitted. These trades or exchanges do not increase the amount of water moving from Pueblo Reservoir to El Paso County through either system when taken together. These trades or exchanges only change the physical path by which delivery occurs within El Paso County. As a result, the report on the total flow through SDS is what is required by Enf-1(2) and was provided.



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3. Return flows to Fountain Creek. Again, the first sentence of Enf-1(2) requires Colorado Springs to “Submit an annual report to Pueblo County that will provide a summary of activities related to the SDS Project and the conditions of the Permit.” To the extent that the return flows to Fountain Creek pre-existed the development of the SDS Project, they are not the subject of the conditions of the Permit. You were correct, however, that Attachment 9 did not break out return flows from lawn irrigation. They were included in the “Total Return Flow” amounts shown in Attachment 9. The “total return flow” figures should provide the County with all the information necessary for it to evaluate any potential project impacts as requested in the Permit.

4. Summary of exchanges to Pueblo Reservoir. With regard to Attachment 10, we reiterate that these reports are specifically limited to “a summary of activities related to the SDS Project per Enf – 1(2)c.” Attachment 10 meets the requirements of that condition. Colorado Springs would point out that the attachment includes all exchanges of SDS participants through the Pueblo Flow Management Program’s (“PFMP”) reach of the Arkansas River.

5. Operations of Pueblo Flow Management Program. Colorado Springs is including with this correspondence a table that shows operations of the 2016 PFMP per Condition #9. The attached table shows the dates, times and quantities of the foregone exchanges as well as where the water was ultimately used. Colorado Springs was the only SDS entity impacted by the PFMP in 2016. The low flow program did not operate during 2016, as the flows in the



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reach below Pueblo did not drop to 50 cubic feet per second to necessitate a release of water from Pueblo, Colorado Springs, or any of the other SDS participants.

We are more than happy to discuss these issues with you further. It is, however, our fundamental position that the Permit did not grant Pueblo County the ability to demand a full accounting of all the water resource operations of the SDS participants. Rather, the Permit only requires reporting on water resource operations of the SDS participants specifically utilizing and relying upon the SDS facilities.

Respectfully,

David Padgett
Chief Environmental Officer

Cc:

Michael Gustafson
Abigail Ortega
Joseph Rasmussen
Philip Tunnah
David Robbins
Keith Riley

Attachments:

- Styduhar Letter, February 1, 2016
- 2016 Southern Delivery System Flow Management Program Summary tables

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February 25, 2016

Mr. Gregory J. Styduhar
Pueblo County Courthouse
215 W. 10th Street
Room 312
Pueblo, Colorado 81003

Re: **SDS 1041 Permit 2008-002 Condition 22 and the Compliance Letter of
February 1, 2016**

Dear Greg:

Mr. Fredell is in receipt of the above referenced letter concerning the reclamation of disturbed lands. Colorado Springs Utilities appreciates the thoroughness of the letter and the release of the relevant bonds. To the extent the letter suggests that Colorado Springs Utilities has an ongoing commitment to maintain 90 percent vegetative cover on the right-of-way in perpetuity, we respectfully disagree. The provisions of Condition 22 were time limited, namely the 90 percent cover was to be achieved and the bonds released without mention of any ongoing obligation. For the reasons that I described in testimony to the County Commission and that were contained in our letter to the County we respectfully reserve our objections to the portion of Ms. Armstrong's letter suggesting that there is an ongoing and enforceable responsibility on the part of Colorado Springs Utilities to maintain the 90 percent cover for the life of the project.

February 25, 2016

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In preserving this objection Colorado Springs Utilities, in no way, wishes to suggest that it will not continue to work with the County with respect to the maintenance of the right-of-way, bearing in mind that a great percentage of the right-of-way crosses private land and, with the release of bonds, the City's obligations to the landowners are as set forth in the respective easement documents not through the conditions of the 1041 permit.

Hopefully, as matters proceed into the future, a cooperative environment will exist so that our concerns will not ever have to be addressed in any other way. Thank you again for your cooperation and achieving the release of the bonds.

Very truly yours,



David W. Robbins

DWR/jlm

cc: Joan Armstrong
John Fredell
Rick Griffith
Jerry Forte

Southern Delivery System
1041 Permit Reporting

Entity: Colorado Springs Utilities

Pueblo Flow Management Program Summary

Low Flow Program Summary (Colorado Springs and BWWP only)

Date	Start Time	End Time	Amount acre-feet	Rate cfs	CS aug acre-feet	Colo Canal aug acre-feet	Leased acre-feet
May 6, 2016	11:00	24:00	30.80	28.67	0.13	6.60	24.07
May 7, 2016	0:00	24:00	56.44	28.45	0.13	12.19	44.12
May 8, 2016	0:00	08:45	18.36	25.39	0.13	4.44	13.79
July 29, 2016	10:00	24:00	43.41	37.52	3.35	7.80	32.26
July 30, 2016	0:00	24:00	74.64	37.63	3.35	13.19	58.10
July 31, 2016	0:00	24:00	69.74	35.16	3.35	13.02	53.36
September 30, 2016	7:00	24:00	23.58	16.78	0.78	9.27	13.53
October 1, 2016	0:00	24:00	31.92	16.09	0.13	13.08	18.71
October 2, 2016	0:00	24:00	30.99	15.62	0.13	13.08	17.77
October 3, 2016	0:00	09:00	11.15	14.99	0.13	4.91	6.12
October 7, 2016	7:00	24:00	27.13	19.31	0.13	9.27	17.73
October 8, 2016	0:00	24:00	38.26	19.29	0.13	13.08	25.04
October 9, 2016	0:00	24:00	40.73	20.53	0.13	13.08	27.52
October 10, 2016	0:00	08:30	15.25	21.70	0.13	4.63	10.48

no releases in 2016