



Colorado Springs Utilities
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1041 2008-002



May 26, 2020

Mr. William Banks
Executive Director
Fountain Creek Watershed Water Activity Enterprise
P.O. Box 26373
Colorado Springs, CO 80936

Subject: 2020 SDS 1041 Permit Condition 6 Monetary Mitigation Final Interest Indexing Decrease and Resulting 2020 1041 Permit Condition 6 Monetary Mitigation Overpayment

Dear Mr. Banks:

Prior to the Bureau of Labor Statistics November 2019 Producer Price Index (PPI) data for Finished Goods (WPUFD49207) being "Finalized" in April 2020, an initial payment of \$10,706,513 was made by Colorado Springs Utilities (Utilities or CSU) to the Fountain Creek Watershed Flood Control and Greenway District's Watershed Water Activity Enterprise (District) on January 15, 2020. This initial payment was made in accordance with Condition 6 of the Southern Delivery System (SDS) 1041 Permit and as outlined in Resolution No. P&D 14-15 (confirming the commencement date for the annual indexing and approving the annual indexing methodology for purposes of calculating monetary mitigation).

As outlined in Resolution No. P&D 14-15 and the associated attachment, "On or before March 31 of each year, CSU staff shall meet with Pueblo County Staff for purposes of confirming the PPIs for each of the November to November twelve month periods used in the calculation and reaching agreement upon the index-based amount to be paid by CSU utilizing the calculation methodology (described)...." This confirmation was postponed until April 2020 when the previously reported "Preliminary" November 2019 PPI value of 206.6 for Finished Goods (WPUFD49207) was updated to a "Finalized" published value of 206.4, 0.2 points less than the original published "Preliminary" value.

Based on this decrease in the index value, the Total Annual Payment Amount with Indexing for the 2020 payment should have been \$10,696,183, which includes the \$36,303 underpayment from 2019, as outlined in the attached finalized 2020 annual indexing methodology spreadsheet. However, based on the "Preliminary" value of 206.6 used for the January 2020 payment, a total payment of \$10,706,513 was issued to the District. This in turn has resulted in an overpayment of \$10,330 made by Colorado Springs Utilities and the SDS Partners to the District as it relates to 2020 payment associated with Condition 6 of the SDS 1041 Permit.

\$10,706,513 preliminary paid in 2020 (2016-2019 preliminary indexing)
\$10,696,183 final due in 2020 (2016-2019 final indexing)
(\$10,330) credit for additional interest paid in 2020 (2016-2019 final indexing)

A copy of the finalized 2019 Annual Indexing Methodology Attachment A spreadsheet for the 2016-2019 indexing period is attached to this document for reference.

1521 S. Hancock Expressway
Mail Code 1821
Colorado Springs, CO 80903

On April 29, 2020, the SDS Partners (Colorado Springs Utilities, City of Fountain, Security Water District, and Pueblo West Metropolitan District) unanimously agreed as part of the SDS Operating Committee's quarterly meeting to allow the Fountain Creek Watershed Flood Control and Greenway District's Watershed Water Activity Enterprise to retain the \$10,330 overpayment in 2020 for future uses as approved by Utilities on behalf of the SDS Partners. This overpayment amount is in addition to the \$50,000,000 paid to date with interest in full satisfaction of Condition 6 of the SDS 1041 Permit closing out all obligations under that provision of the Permit. As such, this overpayment should be considered as an additional contribution towards a future project, program, or study within the Fountain Creek watershed on behalf of the SDS Partners.

If you have any questions regarding this matter, or to discuss approval of the District's use of the excess funding, please feel free to contact me at 719-668-3748 or kbinkley@csu.org, or Mark Shea at 719-310-2083 or mshea@csu.org.

Sincerely,



Kevin Binkley
Colorado Springs Utilities
Project Management Supervisor

Attachments:

- 2020 Annual Indexing Methodology Attachment A Spreadsheet for the 2016-2019 Indexing Period (Preliminary and Finalized Index Values)
- Pueblo County Resolution No. P&D 14-15

cc: David Benbow, Pueblo County Engineering/Public Works
Carmen Howard, Pueblo County Planning and Development
Keith Riley, Colorado Springs Utilities
Mark Shea, Colorado Springs Utilities
Phil Tunnah, Colorado Springs Utilities
Earl Wilkinson, Colorado Springs Utilities
Elizabeth Baston, Colorado Springs Utilities

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins.	2018
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends.	2019
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1.	204.4
4	PPI for End of indexing Calculation. Published PPI Value ^(a) for November of the year identified in Line 2.	206.4
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4.	2.0
6	Annual PPO Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c) .	0.978474%
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for seven years prior to the year identified in Line 1.	\$10,556,587
8	Annual Advance Payment Amount (if any). Total of advance payment made between October of the year in Line 1 and October of the year in Line 2.	\$0
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7.	\$10,556,587
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-.	\$103,293
11	Total Annual Payment Amount with Indexing. Add Line 9 and Line 10. This is the total annual payment if the amount identified in Line 9 is paid by January 15 of the year following the year identified in Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI (d) for use in Line 4. If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period.	\$10,659,880
	Balance due after final PPI published on 05/01/2019	\$36,303
	Total FINAL Annual Payment Amount with Indexing and 2019 Balance	\$10,696,183
	Total Preliminary Annual Payment with Indexing Issed 01/15/2020	\$10,706,513
	Total January 15, 2020 Underpayment or (Overpayment)	(\$10,330)

Notes:

- (a) Data Source: U.S. Department of labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at [HTTP://www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm) (select "Top Picks" under "Commodity Data including stage-of-processing indexes, Producer Price Index - PPI and then select "Finished Goods"- WPUFD 49207 (WPUSOP3000).
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utilites.
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6.
- (d) U.S. Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

Data extracted on: April 14, 2020 (3:36:25 PM)

PPI Commodity Data

Series Id: WPUFD49207
 Not Seasonally Adjusted
Series Title: PPI Commodity data for Final demand-Finished goods, not seasonally adjusted
Group: Final demand
Item: Finished goods
Base Date: 198200

Download: [XLS](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2010	178.0	176.9	179.1	179.5	179.9	179.0	179.5	180.0	180.0	181.2	181.6	182.6
2011	184.5	186.7	189.3	191.6	192.7	191.6	192.4	191.8	192.8	191.9	191.9	191.2
2012	192.1	193.0	194.5	195.0	193.8	192.9	193.3	195.5	196.9	196.4	194.5	193.8
2013	194.9	196.4	196.7	196.0	196.9	197.3	197.3	197.9	197.3	196.9	196.1	196.5
2014	198.1	198.9	200.3	202.1	201.8	202.9	203.0	202.5	201.7	200.4	198.2	195.4
2015	192.2	192.6	193.6	193.1	196.0	197.7	197.4	196.3	193.4	192.4	191.6	190.1
2016	189.9	188.8	189.2	190.3	191.7	193.8	193.5	192.6	193.2	193.7	192.4	193.7
2017	195.4	196.0	196.3	198.0	197.0	197.8	197.6	198.4	199.6	199.4	200.4	199.9
2018	201.0	201.3	202.1	202.8	205.0	205.9	206.0	205.8	205.9	206.7	204.4	202.5
2019	201.8	202.4	204.9	207.1	207.6	206.9	207.4	206.4	205.7	206.3	206.4	206.4(P)
2020	206.8(P)	204.9(P)	203.0(P)									

P : Preliminary. All indexes are subject to revision four months after original publication.

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins.	2018
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends.	2019
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1.	204.4
4	PPI for End of indexing Calculation. Published PPI Value ^(a) for November of the year identified in Line 2.	206.6
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4.	2.2
6	Annual PPO Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c) .	1.076321%
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for seven years prior to the year identified in Line 1.	\$10,556,587
8	Annual Advance Payment Amount (if any). Total of advance payment made between October of the year in Line 1 and October of the year in Line 2.	\$0
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7.	\$10,556,587
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-.	\$113,623
11	Total Annual Payment Amount with Indexing. Add Line 9 and Line 10. This is the total annual payment if the amount identified in Line 9 is paid by January 15 of the year following the year identified in Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI (d) for use in Line 4. If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period.	\$10,670,210
	Balance due after final PPI published on 05/01/2019	\$36,303
	Total Annual Payment Amount with Indexing and 2019 Balance	\$10,706,513

Notes:

- (a) Data Source: U.S. Department of labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at [HTTP://www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm) (select "Top Picks" under "Commodity Data including stage-of- processing indexes, Producer Price Index - PPI and then select "Finished Goods"- WPUFD 49207 (WPUSOP3000).
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utilites.
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6.
- (d) U.S. Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

Data extracted on: December 27, 2019 (1:05:53 PM)

PPI Commodity Data

Series Id: WPUFD49207
 Not Seasonally Adjusted
 Series Title: PPI Commodity data for Final demand-Finished goods, not seasonally adjusted
 Group: Final demand
 Item: Finished goods
 Base Date: 198200

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009	170.4	169.9	169.1	170.3	171.1	174.3	172.4	174.2	173.2	173.8	175.7	176.0
2010	178.0	176.9	179.1	179.5	179.9	179.0	179.5	180.0	180.0	181.2	181.6	182.6
2011	184.5	186.7	189.3	191.6	192.7	191.6	192.4	191.8	192.8	191.9	191.9	191.2
2012	192.1	193.0	194.5	195.0	193.8	192.9	193.3	195.5	196.9	196.4	194.5	193.8
2013	194.9	196.4	196.7	196.0	196.9	197.3	197.3	197.9	197.3	196.9	196.1	196.5
2014	198.1	198.9	200.3	202.1	201.8	202.9	203.0	202.5	201.7	200.4	198.2	195.4
2015	192.2	192.6	193.6	193.1	196.0	197.7	197.4	196.3	193.4	192.4	191.6	190.1
2016	189.9	188.8	189.2	190.3	191.7	193.8	193.5	192.6	193.2	193.7	192.4	193.7
2017	195.4	196.0	196.3	198.0	197.0	197.8	197.6	198.4	199.6	199.4	200.4	199.9
2018	201.0	201.3	202.1	202.8	205.0	205.9	206.0	205.8	205.9	206.7	204.4	202.5
2019	201.8	202.4	204.9	207.1	207.6	206.9	207.4	206.3(P)	205.4(P)	206.3(P)	206.6(P)	

P : Preliminary. All indexes are subject to revision four months after original publication.

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins.	2017
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends.	2018
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1.	200.4
4	PPI for End of indexing Calculation. Published PPI Value ^(a) for November of the year identified in Line 2.	204.4
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4.	4.0
6	Annual PPI Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c) .	1.996008%
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for seven years prior to the year identified in Line 1.	\$10,350,000
8	Annual Advance Payment Amount (if any). Total of advance payment made between october of the year in Line 1 and October of the year in Line 2.	\$0
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7.	\$10,350,000
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-.	\$206,587
11	<p>Total Annual Payment Amount with Indexing. Add Line 9 and Line 10.</p> <p>This is the total annual payment if te the amount identified in Line 9 is paid by January 15 of the year following the year identified Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI (d) for use in Line 4.</p> <p>If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period.</p>	\$10,556,587

Notes:

- (a) Data Source: U.S. Department of labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at [HTTP://www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm) (select "Top Picks" under "Commodity Data including stage-of-processing indexes, Producer Price Index - PPI and then select "Finished Goods"- WPUFD 49207 (WPUSOP3000).
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utiliites.
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6.
- (d) U.S. Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins.	2016
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends.	2017
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1.	192.4
4	PPI for End of indexing Calculation. Published PPI Value ^(a) for November of the year identified in Line 2.	200.4
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4.	8.0
6	Annual PPI Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c) .	3.500000%
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for seven years prior to the year identified in Line 1.	\$10,000,000
8	Annual Advance Payment Amount (if any). Total of advance payment made between October of the year in Line 1 and October of the year in Line 2.	\$0
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7.	\$10,000,000
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-.	\$350,000
11	<p>Total Annual Payment Amount with Indexing. Add Line 9 and Line 10.</p> <p>This is the total annual payment if the amount identified in Line 9 is paid by January 15 of the year following the year identified Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI (d) for use in Line 4.</p> <p>If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period.</p>	\$10,350,000

Notes:

- (a) Data Source: U.S. Department of labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at [HTTP://www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm) (select "Top Picks" under "Commodity Data including stage-of-processing indexes, Producer Price Index - PPI and then select "Finished Goods"- WPUFD 49207 (WPUSOP3000).
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utiliites.
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6.
- (d) U.S. Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

RESOLUTION NO. P&D 14-15

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

A RESOLUTION CONFIRMING THE COMMENCEMENT DATE FOR THE ANNUAL INDEXING AND APPROVING THE ANNUAL INDEXING METHODOLOGY FOR PURPOSES OF CALCULATING MONETARY MITIGATION REQUIRED UNDER SDS 1041 PERMIT NO. 2008-002, CONDITION NO. 6

WHEREAS, on April 21, 2009, the Board of County Commissioners of Pueblo County, Colorado enacted Resolution No. P&D 09-22 approving "1041 Permit No. 2008-002 with Terms and Conditions for Construction and Use of a Municipal Water Project Known as the Southern Delivery System within Pueblo County, Colorado" ("SDS 1041 Permit"). Colorado Springs Utilities ("Utilities") filed the SDS 1041 Permit Application on behalf of itself and its named project partners ("collectively, the Permit Applicant"). Condition No. 6 of the SDS 1041 Permit, entitled "Monetary Mitigation for Fountain Creek Impacts," requires the Permit Applicant to pay the sum of fifty million dollars (\$50,000,000.00) in accordance with a specified schedule to mitigate the impacts of SDS to Fountain Creek in Pueblo County. All such payments are to be made to the Fountain Creek Watershed, Flood Control and Greenway District ("District"); and

WHEREAS, in compliance with paragraph 2 of Condition No. 6, three hundred thousand dollars (\$300,000.00) of the required Monetary Mitigation--payable in equal annual installments of one hundred thousand dollars (\$100,000.00) that commenced on July 1, 2009--has been made by the Permit Applicant to the District in accordance with the schedule specified in Condition No. 6; and

WHEREAS, by Resolution No. 09-259 passed and adopted by the Pueblo Board of County Commissioners on September 29, 2009, the Board approved Utilities' payment of another three hundred thousand dollars (\$300,000.00) to the District as a payment toward the Monetary Mitigation for Fountain Creek impacts under Condition No. 6 of the SDS 1041 Permit, thereby reducing the Monetary Mitigation required to be paid by Applicant to the remaining sum of forty-nine million four hundred thousand dollars (\$49,400,000.00); and

WHEREAS, the principal remaining amount of forty-nine million four hundred thousand dollars (\$49,400,000.00) for Monetary Mitigation is to be paid on January 15 of the year following completion and commencement of water deliveries through the SDS Pipeline from Pueblo Reservoir to Colorado Springs, in five equal annual payments, with nine million four hundred thousand dollars (\$9,400,000.00) to be paid in the first annual installment, and with ten million dollars (\$10,000,000.00) to be paid in each of the four succeeding years; and

WHEREAS, the last paragraph of Condition No. 6 provides that:

"In the event completion of the SDS Project is delayed beyond 42 months after the effective date of the permit because of an affirmative decision made by Applicant, then the payments to be made by the Applicant pursuant to this paragraph shall begin to be made on such date, without regard to project construction status, or such payments shall be subject to annual indexing commencing 42 months after the effective date of the permit, to increase the amount of such payments as required to preserve their present

RESOLUTION NO. P&D 14- 15 (CONT.)

values, using the Colorado Front Range Producer Price Index, but not to exceed a maximum annual increase of 3.5%.”, and

WHEREAS, in a letter dated May 1, 2014 with Attachments “A”, “B”, and “C” from Utilities to Pueblo County (collectively, the “May 1, 2014 Letter”) attached hereto and made part of this Resolution, Utilities acknowledges that the annual indexing of the forty-nine million four hundred thousand dollars (\$49,400,000.00) remaining balance of the Monetary Mitigation pursuant to Condition 6 began on October 21, 2012; and

WHEREAS, as further stated in the May 1, 2014 letter, Utilities staff and its consultants, as well as Pueblo County staff, have been unable to locate an index by the name listed in the 1041 SDS Permit (i.e., “Colorado Front Range Producer Price Index”). It is therefore proposed that the parties agree upon the use of the U.S. Department of Labor, Bureau of Labor Statistics “Producer Price Index for Finished Goods”. The website location of this Index is identified in the May 1, 2014 Letter. Pueblo County staff concurs with Utilities that this National Producer Price Index (“PPI”) represents the entire marketed output of finished goods from U.S. producers and fulfills the stated intent of Condition No. 6, which is to preserve the present value of the monetary mitigation amount established in the 1041 SDS Permit; and

WHEREAS, Pueblo County staff concurs that the May 1, 2014 Letter provides a reasonable methodology for calculating the indexing factors to be applied to the annual installment payments due to the District. Additionally, in the May 1, 2014 Letter, Utilities concurs and agrees that the index factor shall never drop below zero in any given year even though there might be a negative PPI value in a given year (i.e., deflation); and

WHEREAS, using the methodology set forth in the May 1, 2014 Letter, the index factor on the first annual installment of nine million four hundred thousand dollars (\$9,400,000.00) for the period November 1, 2012 to November 2013 is calculated to be 0.77%, thereby adjusting that payment by an additional seven-two thousand three hundred eighty dollars (\$72,380.00), or to nine million four hundred seven-two thousand three hundred eighty dollars (\$9,472,380.00).

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pueblo County, Colorado, that (1) the indexing of the Monetary Mitigation payments due pursuant to Condition No. 6 of the SDS 1041 Permit began on October 21, 2012; (2) the U.S. Department of Labor, Bureau of Labor Statistics “Producer Price Index for Finished Goods” shall be used in lieu of the “Colorado Front Range Producer Price Index” in Condition No. 6; and (3) the indexing methodology shall be used as set forth in the May 1, 2014 Letter.

PASSED AND ADOPTED this 14th day of May 2014, in Pueblo County, Colorado

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

By: 
Terry A. Hart, Chairman

ATTEST:
By: 
Gilbert Ortiz, County Clerk

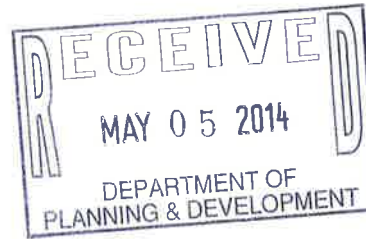


Colorado Springs Utilities

It's how we're all connected

May 1, 2014

Ms. Joan Armstrong
Director of Planning and Development
Pueblo County
229 W. 12th Street
Pueblo, CO 81003



Subject: Condition 6 – Monetary Mitigation for Fountain Creek Impacts, Southern Delivery System (SDS), 1041 Permit No. 2008-002

Dear Ms. Armstrong,

This letter is in response to both your January 14, 2013 letter requesting written acknowledgement that the annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012, and our subsequent conversations since that time on choosing an appropriate indexing calculation methodology that is consistent with the permit language.

The last paragraph of Condition 6 states as follows:

“In the event completion of the SDS Project is delayed beyond 42 months after the effective date of the permit because of an affirmative decision made by Applicant, then the payments to be made by the Applicant pursuant to this paragraph shall begin to be made on such date, without regard to project construction status, or such payments shall be subject to annual indexing commencing 42 months after the effective date of the permit, to increase the amount of such payments as required to preserve their present values, using the Colorado Front Range Producer Price Index, but not to exceed a maximum annual increase of 3.5%”

Colorado Springs Utilities (“CSU”) acknowledges that annual indexing of the \$49,400,000 remaining balance of the monetary mitigation pursuant to Condition 6 began on October 21, 2012.

That said, however, CSU and its consultants, as well as Pueblo County staff, have been unable to locate an index by the name listed in the permit (“Colorado Front Range Producer Price Index”). Hence, as recently indicated to you, we propose that the parties agree upon the use of the U.S. Department of Labor, Bureau of Labor Statistics “Producer Price Index for Finished Goods”, as can be found at <http://www.bls.gov/ppi/data.htm> (select “Top Picks” under “Commodity Data including stage-of-processing indexes (Producer Price Index - PPI)” and then select “Finished goods - WPUSOP3000”). This national PPI represents the entire marketed output of finished goods from U.S. producers and would fulfill the stated intent of Condition 6, i.e., to preserve the present value of the monetary mitigation amount established in the 1041 permit.

121 South Tejon Street, Third Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, CO 80947-0930

Phone 719.668.4800
Fax 719.668.8734
<http://www.csu.org>

✓

In addition to obtaining an agreed upon understanding of the actual indexing metric to be employed in performing the Condition 6 calculation, CSU also wants to ensure that both the Applicant and Pueblo County agree upon the actual calculation methodology to be followed. In that regard, Condition 6 provides that:

“Payment shall be made as to the remaining forty-nine million seven hundred thousand (\$49,700,000) as follows: nine million seven hundred thousand (\$9,700,000) on January 15 of the year following completion and commencement of water deliveries through the SDS Pipeline from Pueblo Reservoir to Colorado Springs and in equal annual installments of ten million dollars (\$10,000,000) on January 15 of each of the four years thereafter.” [Note that an additional \$300,000 was paid by CSU to the FCWFCD, with the concurrence of Pueblo County, in 2009].

CSU believes that the following proposal represents an indexing calculation approach that honors the intent of this permit language. It has been prepared with the assistance of the Chief Financial Officer for Utilities and an independent outside economic consultant. A calculation procedure that incorporates a hypothetical example can be found as Attachment “A” hereto. In summary, the methodology would work as follows:

- As noted above, the parties have agreed that the 42-month date for commencing annual indexing as referenced in Condition 6 of the 1041 permit is October 21, 2012.
- Under one scenario, Condition 6 provides that if the SDS Pipeline is complete and water delivered to Colorado Springs on or before December 31, 2015, the initial payment would be due on January 15, 2016¹. Under this scenario there would be three “annual” twelve month indexing periods prior to the January 15, 2016 date, i.e., October 21, 2012 to October 21, 2015 (36 months total). The amount of the payment due on January 15, 2016, would thus reflect a net present value calculation for each of the three indexing periods: for administrative convenience, the PPI annual rate of inflation corresponding most closely to the indexing period will be used in the calculations, e.g., the published PPI for November 2012 and November 2013 will be used to calculate the net present value for the indexing period from October 21, 2012, to October 21, 2013. A copy of the applicable published preliminary PPI tables to be utilized can be found as Attachment “B” hereto and is provided for illustrative purposes only. The “final” PPI tables, as referenced in Step 11 of Attachment “A”, will also be employed. Copies of such tables shall be provided by CSU to the County as part of the confirmation process identified below.
 - For example, assuming that the PPI increased at a rate of 3.33% for each of the three annual periods, the amount owed would be calculated initially by multiplying \$9.4M by 3.33%. The resulting product would be added to the base amount (resulting in approximately \$9.713M) and that figure would then be multiplied again by 3.33% for the second annual period, with the resulting product added to the base amount and then increased a final time by the same 3.33%, resulting in a first payment in the approximate amount of \$10.37M on January 15, 2016.
 - The next payment, due on January 15, 2017, was originally in the amount of \$10M. This payment would now also be three years later in time than if the SDS Pipeline had been

¹ Each annual payment will be completed through two transactions. The principal due will be paid by January 15. The index-based payment will be paid within one month of the Bureau of Labor Statistics’ publication of a final PPI for November, typically in March.

May 1, 2014

completed by October 21, 2012. Rather than being paid on January 15, 2014, it would be paid on January 15, 2017. Thus, the parties would look to the annual PPI changes from October 21, 2013 to October 21, 2016, using the November to November PPI numbers, for purposes of adjusting this payment. If, once again, the PPI increased by 3.33% for each of the three one-year periods, the January 15, 2017 payment would be approximately \$11.03M.

- The same three twelve-month adjustments, reflecting the annual PPI changes, would be made for each of the next three \$10M payments, e.g., the adjustment for the January 15, 2018 payment would encompass the PPI changes for the three one-year periods from October 21, 2014 to October 21, 2017.
- Under a second scenario, if the SDS Pipeline was not completed and water was not delivered to Colorado Springs until some date in 2016, the first payment would be due on January 15, 2017. However, that payment would reflect four periods of PPI indexing, i.e., from October 21, 2012 to October 21, 2016. The amount of each of the remaining annual payments would be calculated following the same procedure outlined above, but each one would have four years of PPI indexing to maintain net present value.
- Within thirty (30) days of the adoption of the Board's Resolution as referenced below, and on or before December 31 of each year thereafter, CSU staff shall meet with Pueblo County staff for purposes of confirming the calculation and reaching agreement upon the principal amount to be paid by CSU on or before January 15 of the following year utilizing the calculation methodology more fully described above and in Attachment "A". On or before March 31 of each year, CSU staff shall meet with Pueblo County staff for purposes of confirming the PPIs for each of the November to November twelve month periods used in the calculation and reaching agreement upon the index-based amount to be paid by CSU utilizing the calculation methodology more fully described above and in Attachment "A". A sample calculation which assumes a 3.33% annual PPI and no further advance of principal beyond the \$600,000 paid to the FCWFCGD to date is provided as Attachment "C" hereto for illustrative purposes only. All documentation associated with such PPI determinations and subsequent calculations shall be retained by Pueblo County staff as a record of the process followed in reaching the payment amount.
- Though such a situation is not anticipated, to the extent there is a "negative" PPI in any annual period utilized in the calculation, the parties have agreed that such annual period will be treated as zero, or "no change" for that annual period.

Though the payments under Condition 6 are not due for a number of years, it would be in our mutual interests to confirm our agreement upon the intended index and calculation methodology at this time. It is my understanding that the Pueblo County Attorney's office will be preparing a separate Resolution for the Board of County Commissioners consideration which would reflect that confirmation.

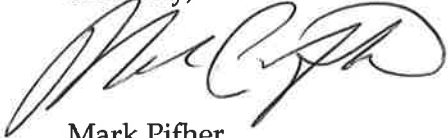
Thank you for your assistance.

Pifher Letter to Armstrong re: Condition 6

Page 4

May 1, 2014

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Pifher', written in a cursive style.

Mark Pifher

SDS Permitting and Compliance Manager

Attachments: A (2 pages), B, and C

cc:

John Fredell

Rick Griffith

Keith Riley

Attachment A.

Procedure for Applying Annual Indexing to Monetary Mitigation Amounts under Condition No. 6

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit. Annual indexing of the first planned mitigation payment began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins	
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends	
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1	
4	PPI for End of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 2	
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4	
6	Annual PPI Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c)	
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for years prior to the year identified in Line 1	
8	Annual Advance Payment Amount (if any). Total of advance payments made between October of the year in Line 1 and October of the year in Line 2	
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7	
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-	
11	<p>Total Annual Payment Amount with Indexing. Add Line 9 and Line 10.</p> <p>This is the total annual payment if the amount identified in Line 9 is paid by January 15 of the year following the year identified in Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI ^(d) for use in Line 4.</p> <p>If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period</p>	

Notes:

- (a) Data Source: U.S. Department of Labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at <http://www.bls.gov/ppi/data.htm> (select "Top Picks" under "Commodity Data including stage-of-processing indexes (Producer Price Index - PPI)" and then select "Finished goods - WPUSOP3000").
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utilities
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6
- (d) U.S Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

Attachment A.

Procedure for Applying Annual Indexing to Monetary Mitigation Amounts under Condition No. 6

This procedure is for calculating annual indexing pursuant to Condition 6 of the 1041 permit. Annual indexing of the first planned mitigation payment began on October 21, 2012.

Line	Instruction	Input/Result
1	Start Year for Annual Indexing Calculation. Year for which this annual indexing calculation begins	2012
2	End Year for Annual Indexing Calculation. Year for which this annual indexing calculation ends	2013
3	Producer Price Index (PPI) for Start of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 1	194.5
4	PPI for End of Indexing Calculation. Published PPI value ^(a) for November of the year identified in Line 2	196.0
5	Annual PPI Value Change. Subtract Line 3 from Line 4, enter -0- if Line 3 is more than Line 4	1.5
6	Annual PPI Percent Change. Divide Line 5 by Line 3 and multiply by 100, enter -0- if Line 5 is -0- ^(b) , enter 3.5 if calculated value is greater than 3.5 ^(c)	0.77
7	Maximum Amount to be Indexed. Annual payment identified in Condition No. 6, including any unpaid annual indexing for years prior to the year identified in Line 1	\$ 9,400,000
8	Annual Advance Payment Amount (if any). Total of advance payments made between October of the year in Line 1 and October of the year in Line 2	\$ -
9	Current Amount to be Indexed (principal and prior years' indexing). Subtract Line 8 from Line 7	\$ 9,400,000
10	Annual Index-based Amount. Multiply Line 9 by Line 6 and divide by 100, enter -0- if Line 4 is -0-	\$ 72,380
11	Total Annual Payment Amount with Indexing. Add Line 9 and Line 10. This is the total annual payment if the amount identified in Line 9 is paid by January 15 of the year following the year identified in Line 2 and the amount identified in Line 10 is paid within one month of U.S. Bureau of Labor Statistics' publication of a final PPI ^(d) for use in Line 4. If these amounts are not paid, repeat the steps in Lines 1 through 10 using information for the next annual indexing period	\$ 9,472,380

Notes:

- (a) Data Source: U.S. Department of Labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at <http://www.bls.gov/ppi/data.htm> (select "Top Picks" under "Commodity Data including stage-of-processing indexes (Producer Price Index - PPI)" and then select "Finished goods - WPUSOP3000").
- (b) Negative annual percentage change is considered 0% by mutual agreement of Pueblo County and Colorado Springs Utilities
- (c) Annual percentage increase is capped at 3.5% by Condition No. 6
- (d) U.S. Department of Labor, Bureau of Labor Statistics considers monthly PPI values to be preliminary and subject to revision for four months after original publication.

Databases, Tables & Calculators by Subject

FONT SIZE:

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Data extracted on: May 1, 2014 (5:01:21 PM)

Producer Price Index-Commodities

Series Id: WPUSOP3000
Not Seasonally Adjusted
Group: Stage of processing
Item: Finished goods
Base Date: 198200

Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2004	145.4	145.3	146.3	147.3	148.9	148.7	148.5	148.5	148.7	152.0	151.7	150.6	148.5
2005	151.4	152.1	153.6	154.4	154.3	154.2	155.5	156.3	158.9	160.9	158.3	158.7	155.7
2006	159.9	158.0	159.1	160.7	161.2	161.8	161.7	162.3	160.3	158.9	159.8	160.5	160.4
2007	160.1	161.8	164.1	165.9	167.5	167.2	168.5	166.1	167.4	168.6	171.4	170.4	166.6
2008	172.0	172.3	175.1	176.5	179.8	182.4	185.1	182.2	182.2	177.4	172.0	168.8	177.1
2009	170.4	169.9	169.1	170.3	171.1	174.3	172.4	174.2	173.2	173.8	175.7(R)	176.0	172.5
2010	178.0	177.0	179.1	179.5	179.8	179.0	179.5	179.9	180.0	181.2	181.6	182.6	179.8
2011	184.4	186.6	189.1	191.4	192.5	191.4	192.2	191.7	192.6	191.8	191.7	191.1	190.5
2012	192.0	192.9	194.4	194.9	193.7	192.8	193.2	195.4	196.7	196.3	194.5	193.7	194.2
2013	194.8	196.3	196.6	195.9	196.8	197.2	197.2	197.9	197.3	196.9	196.0	196.1(P)	196.6(P)
2014	197.7(P)	198.8(P)	199.9(P)										

R : Revised
P : Preliminary. All indexes are subject to revision four months after original publication.

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ATTACHMENT C

Progressive Installment Approach

Annual % Increase in Index	0.00%	3.33333333%	3.33333333%	3.33333333%	3.33333333%	3.33333333%	3.33333333%	3.33333333%	3.33333333%	3.33333333%
Annual Accrual Date	10/21/2012	10/21/2013	10/21/2014	10/21/2015	10/21/2016	10/21/2017	10/21/2018	10/21/2019	10/21/2020	
Payment Date	1/15/2013	1/15/2014	1/15/2015	1/15/2016	1/15/2017	1/15/2018	1/15/2019	1/15/2020		
Payment 1	\$ 9,400,000	\$ 9,713,333	\$ 10,037,111	\$ 10,371,681	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment 2	\$ 10,000,000	\$ 10,000,000	\$ 10,333,333	\$ 10,677,778	\$ 11,033,704	\$ -	\$ -	\$ -	\$ -	\$ -
Payment 3	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,333,333	\$ 10,677,778	\$ 11,033,704	\$ -	\$ -	\$ -	\$ -
Payment 4	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,333,333	\$ 10,677,778	\$ 11,033,704	\$ -	\$ -	\$ -
Payment 5	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,333,333	\$ 10,677,778	\$ 11,033,704	\$ -	\$ -
REMAINING BALANCE	\$ 49,400,000	\$ 49,713,333	\$ 50,370,444	\$ 41,011,111	\$ 31,011,111	\$ 21,011,111	\$ 10,677,778	\$ -	\$ -	\$ -
TOTAL PAID										\$ 54,506,496

NET PRESENT VALUE CALCULATION

Payment 1	\$ (9,400,000)	\$ -	\$ -	\$ 10,371,681	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment 2	\$ -	\$ (10,000,000)	\$ -	\$ -	\$ 11,033,704	\$ -	\$ -	\$ -	\$ -	\$ -
Payment 3	\$ -	\$ -	\$ (10,000,000)	\$ -	\$ -	\$ 11,033,704	\$ -	\$ -	\$ -	\$ -
Payment 4	\$ -	\$ -	\$ -	\$ (10,000,000)	\$ -	\$ -	\$ 11,033,704	\$ -	\$ -	\$ -
Payment 5	\$ -	\$ -	\$ -	\$ -	\$ (10,000,000)	\$ -	\$ -	\$ 11,033,704	\$ -	\$ -

npv @ 3.33% =	\$0
npv @ 3.33% =	\$0
npv @ 3.33% =	\$0
npv @ 3.33% =	\$0
npv @ 3.33% =	\$0
TOTAL	\$0