

PETROS & WHITE LLC  
ATTORNEYS AT LAW

1999 BROADWAY, SUITE 3200  
DENVER, COLORADO 80202

TELEPHONE (303) 825-1980

FACSIMILE (303) 825-1983

October 30, 2012

*Via U.S. Mail and Email*

J. Signe Snortland ([jsnortland@usbr.gov](mailto:jsnortland@usbr.gov))  
Reclamation Environmental Specialist  
Bureau of Reclamation, Dakotas Area Office  
P.O. Box 1017  
Bismarck, ND 58502

Re: Draft Environmental Impact Statement for the proposed Arkansas Valley Conduit (AVC), Long-Term Excess Capacity Master Contract (Master Contract), and Outlet Works Interconnect (Interconnect)

Dear Ms. Snortland:

Our law firm serves as special counsel to Pueblo County on water rights and related land use and environmental matters. We are submitting this letter at the request of the Pueblo County planning staff and the Pueblo County Attorney (Pueblo County) to furnish comments on the Draft Environmental Impact Statement (DEIS), dated August, 2012, for the three proposed federal actions referenced above. Pueblo County previously submitted comments dated June 1, 2012 on the Cooperating Agency Review Draft, which comments are attached hereto and the County incorporates by reference herein.

Pueblo County supports the Bureau of Reclamation's (BOR) efforts to enhance the quality of drinking water supplied to residents in the Lower Arkansas River basin. The County also supports the efficient utilization of surplus storage capacity in Pueblo Reservoir and the redundant delivery options provided by the proposed Interconnect. Those efforts must, however, be undertaken with a thorough assessment and mitigation of the impacts and costs to local governments and the environment within Pueblo County. Pueblo County wishes to ensure that the costs and impacts of the three projects are not imposed unfairly and involuntarily upon Pueblo County residents and its governmental entities.

The Final Environmental Impact Statement (FEIS) will be used by Pueblo County and other local governments to help them reach decisions on conditions of local approvals. Accordingly, it is important that the DEIS fully examine and clearly report the costs and impacts of the alternatives.

**COMMENT 1. The DEIS does not contain a preferred alternative; when a preferred alternative is selected, the BOR should provide the opportunity for additional comments before issuance of the FEIS.**

The 402-page DEIS explains the proposed action and the “economic, environmental, technical, and other factors” that may result from the seven alternatives presented therein. The 2,080 pages of appendices to the DEIS (and 1,318 pages of engineering supplements) expand on the seven alternatives and attempt to further explain the consequences of each alternative.

The BOR should be commended for not selecting a preferred alternative without a clear consensus. The lack of a preferred alternative, however, makes it difficult to provide focused comments on the DEIS. In this case, parties are forced to comment on the myriad consequences of all alternatives included in the DEIS, with no indication of which alternative is most likely to be approved. When a preferred alternative is selected, the public should be given another opportunity to comment on the preferred alternative before the FEIS.

**COMMENT 2. The preferred alternative needs to maximize the benefits to Pueblo County while minimizing the detriments to Pueblo County.**

The majority of the benefits of the alternatives presented in the DEIS will occur outside Pueblo County. For example, only 28% of the annual deliveries are proposed to be for the benefit of AVC participants within Pueblo County, and 27% of the storage requested under the Master Contract is for participants in Pueblo County. Conversely, the majority of the impacts of the alternatives presented in the DEIS will occur within Pueblo County. The alternative ultimately chosen by the BOR will impact roads, bridges and other infrastructure owned and maintained by Pueblo County. It will likely reduce flows in the Arkansas River below Pueblo Reservoir, might adversely reduce lake levels in Pueblo Reservoir and impact recreation in Pueblo State Park, and might cause the additional impacts discussed in the DEIS and in these comments below.

The differences in the AVC configurations are also mainly within Pueblo County. Accordingly, Pueblo County urges the BOR to accommodate the needs of the residents of Pueblo County and to obtain consensus among Pueblo County residents and entities in selecting the appropriate alternative. The alternative chosen should enhance the benefits in Pueblo County to the extent possible, minimize the detriments in the County, and not preclude participation by Pueblo County entities as a result of the chosen AVC configuration.

**Comment 2.1. The River South alternative avoids much pipeline construction through Pueblo and preserves river flows through Pueblo.**

The River South alternative appears to be the least expensive of the AVC alternatives. It also maintains flows in the Arkansas River below Pueblo Reservoir while also reducing the cost of piping and the impacts of road and other damage near Pueblo. The River South alternative has the added benefit of providing St. Charles Mesa Water District with the non-filtered water it prefers, and does not impose duplicate filtering costs on St. Charles Mesa. The DEIS claims water diverted from the Arkansas River at the River South location would not meet secondary

water quality standards. Pueblo County urges the BOR not to summarily dismiss this alternative and BOR should, at a minimum, carefully analyze and compare the treatment cost to meet secondary standards under the River South alternative and compare them to the costs of piping water from Pueblo Reservoir to that location. The River South alternative might also provide an opportunity for a regional water treatment facility in conjunction with the existing facilities at St. Charles Mesa Water District.

**Comment 2.2. The JUP Alternative may offer a meaningful opportunity for regional water treatment facilities and associated cost savings; and alternate southern pipeline routes for the JUP alternative should be studied as possible variations.**

Pueblo County agrees with the October 12, 2012 comments of the Board of Water Works of Pueblo County (Pueblo Water Board) that the BOR should conduct a fair examination of the opportunities for regionalization and consolidated treatment as part of its examination of alternatives. There may be opportunities for water treatment at the Water Board's Whitlock Plant that provide cost savings and enhanced treatment that are not available to separate smaller facilities. As variations within the JUP alternative, the BOR should assess configurations of the AVC pipeline south of the Arkansas River or along the Bessemer Ditch from the Whitlock Plant, instead of just a northern route. These other routes should be explored further to determine if there are ways to use existing water conveyance and treatment mechanisms to decrease pumping or infrastructure costs.

**Comment 2.3. Comanche South avoids urban areas but appears to be the most expensive; it may preclude participation by St. Charles Mesa and other Pueblo entities.**

Another possible consensus opportunity is the Comanche South alternative, which has the advantage of avoiding many urban areas in Pueblo County but also will have more of an impact on County roads than other alternatives. The Comanche South alternative, however, might not offer advantages to the St. Charles Mesa Water District by providing filtered water which St. Charles Mesa does not require because of its existing treatment facility. To the extent that any alternative would preclude the participation of St. Charles Mesa it should be avoided as it would result in only 3% of the annual AVC deliveries occurring within Pueblo County, reducing the benefit to Pueblo County even further. St. Charles Mesa should not be required to subsidize the costs of filtered water in order to participate in this AVC alternative.

**COMMENT 3. AVC construction and operation must comply with county and local permitting and land use requirements.**

The DEIS is unclear as to what local permits will be required during the construction and operation of the AVC, Master Contract and Interconnect, or whether the BOR intends to seek local approvals and will require its project participants or contractors to do so. The DEIS merely states that permit applications will be submitted to federal, state, or local agencies with jurisdiction over reasonably foreseeable actions "if required." DEIS p. 4-1. Similarly, Appendix B.5 to the DEIS lists the best management practices (BMPs) that are to be required for the AVC construction and includes Compliance with "Federal, State and local laws and regulations," but

qualifies the commitment by stating that compliance is only necessary for “all appropriate” such laws and regulations.

Construction of the AVC will cause significant impacts to infrastructure and resources maintained by Pueblo County. Depending on the alternative chosen, the installation of pipelines and the construction of treatment and pumping plants will impact roads, bridges and drainage crossings, not to mention the impacts on residential, commercial and agricultural property, and on natural resources. As an example, the costs to rehabilitate Pueblo County roads after construction in connection with the Southern Delivery System (SDS) pipeline project has recently been estimated in the approximate amount of \$15,000,000, which costs Colorado Springs Utilities, as project manager for the SDS, has agreed to pay to Pueblo County. Pueblo County should not have to bear similar costs in connection with the AVC.

The BOR’s intent in the FEIS and Record of Decision (ROD) regarding compliance with local regulations and permits needs to be clear so that Pueblo County and other local agencies can assess whether additional action on their part will be required in order to protect infrastructure and resources within their jurisdictions. Incorporating specific requirements that would otherwise be imposed on the project by such local agencies will result in less conflict when permitting decisions are made. If all necessary standards and requirements of local regulations are already included in the FEIS and incorporated by reference in the ROD, permitting by local agencies will be expedited. At a minimum, the major regulations and requirements that should be incorporated in the FEIS and ROD include the following.

A. Pueblo County Zoning and 1041 Regulations. A commitment should be made in the FEIS and incorporated in the ROD that the BOR and all participants in the AVC, Master Contract and Interconnect must comply with County zoning regulations and obtain “1041 permits” from Pueblo County for construction and operation in an area of State and local interest within Pueblo County, or when they propose to conduct a designated activity of State and local interest as set forth in Title 17, Land Use, Division II of the Pueblo County Code. Applicable 1041 activities would include Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems (Ch. 17.164) and Major Facilities of Public Utilities (Ch. 17.168); and Efficient Utilization of Municipal and Industrial Water Projects (Ch. 17.172)

B. County Road Improvements and Restoration. A 1041 permit was issued by Pueblo County to Colorado Springs Utilities as project manager for the SDS (available at [http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/cases3.p?CaseNum=1041\\_2008-002](http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/cases3.p?CaseNum=1041_2008-002) at Doc. No. 192624). Paragraph 13 of that permit required Colorado Springs Utilities to comply with certain Pueblo County requirements due to the damage that would be caused to roads and the nuisance of construction activities. The requirements in Paragraph 13 of the SDS 1041 permit similarly should be imposed on the BOR, the BOR’s contractors and incorporated in the FEIS and ROD. In particular, the requirements should include:

- Obtaining and complying with excavation permits from the Pueblo County Public Works Department (“Department”);
- Submitting a detailed traffic plan for each stage of construction to the Department for its approval;

- Submitting a staging area plan to the Department that defines construction work times, material delivery hours, noise suppression, dust abatement, construction methods and other mechanisms to mitigate construction nuisances;
- Submitting a detailed haul route plan for each stage of construction to the Department for its approval;
- Repairing all local roads during construction, and after construction rehabilitating all haul roads and all other roads impacted by the AVC to current Pueblo County Roadway Design and Construction Standards;
- Providing a cash payment, escrow, or other financial instrument acceptable to the County in an amount estimated by the Department to cover total costs for rehabilitation of roads to current Pueblo County Roadway Design and Construction Standards; and
- Coordinating, designing and constructing facilities and pipelines to anticipate and accommodate future roadways and utilities.

The DEIS and FEIS should analyze and incorporate the cost for repair and rehabilitation of all roads impacted by project construction to current Pueblo County Roadway Design and Construction Standards. In addition, the AVC pipeline should be designed and constructed so as to accommodate any future roads, water and sewer lines and other infrastructure adjacent to or near the AVC pipeline to ensure that construction costs for such future infrastructure is not more expensive.

C. Reclamation of Disturbed Lands. The only discussion in the DEIS concerning revegetation indicates “disturbed areas would be restored to original grade and reseeded with native vegetation.” DEIS, p. 2-28. No discussion of bonding requirements was discovered in the DEIS. The reclamation and bonding requirements included in paragraph 22 of the SDS 1041 permit should be imposed on the BOR, the BOR’s contractors and incorporated in the FEIS and ROD. At a minimum, the requirements should include:

- A preconstruction evaluation of existing vegetation to be disturbed during construction;
- Reclaiming the vegetation cover to the same seasonal variety native to the area disturbed or to a reasonable substitute vegetation agreed to by the landowner;
- Revegetating and irrigating disturbed areas so that the revegetated cover is not less than 90% of preconstruction vegetation cover with similar species diversity;
- Returning disturbed lands to the original contours; and
- Providing a security bond equal to \$2,000 per acre of land in permanent or temporary construction easement, which bond shall be released once 90% of preconstruction vegetation cover has been achieved on the impacted land segment after an adequate "grow-in" period (3 years minimum).

As with road rehabilitation, the DEIS and FEIS should analyze the cost for reclamation of disturbed areas to meet the above conditions. Properly reclaiming disturbed areas and providing bonding is especially important given the significant testimony that was received during the SDS 1041 permit hearings concerning the unsuccessful reclamation of the Fountain Valley Authority pipeline right-of-way.

**COMMENT 4. The DEIS alternatives should include an analysis with all components included for each alternative in order to provide an adequate comparison.**

Pueblo County agrees with the Pueblo Water Board's assessment that the DEIS provides an incomplete comparison due to the BOR's exclusion of components from certain alternatives. The DEIS "mixes and matches" several components in each alternative without separating out the costs of each component. Some alternatives exclude treatment plants, pumping stations and the Interconnect while others do not. This makes a cost comparison of alternatives difficult, and does not lend itself to examining other variations under the alternatives. Separating out the costs of each component would allow a comparison of alternatives not considered by the BOR, such as using a southern pipeline route from the Pueblo Water Board's Whitlock plant, rather than just a northern route.

**COMMENT 5. The EIS, ROD and implementing documents should include an explicit term and condition mandating compliance with the flow targets of Pueblo Flow Management Program (PFMP) for all diversions and exchanges by AVC and Master Contract participants.**

Pueblo County is encouraged that the BOR has incorporated the PFMP as a BMP for the action alternatives. However, the DEIS does not specify whether compliance with the PFMP will be enforced and required of all project participants. The DEIS includes a BMP that "participants would commit to the Pueblo Flow Management Program under action alternatives, and continue according to current agreements under the No Action Alternative." DEIS Table 2-8. However, the impacts to various resources "assumed that the best management practices in Table 2-8 would be implemented under each action alternative." DEIS p. 2-30.

The PFMP was created under intergovernmental agreements whereby water users temporarily reduce their water exchanges to allow more water to flow in the Arkansas River below Pueblo Reservoir through Pueblo while allowing the water to be recaptured downstream for later exchanges. A purpose of the PFMP is to maintain target flows downstream of Pueblo Reservoir. These target flows protect fisheries, riparian habitat, and water quality. It thereby advances the Legacy Project, a federal and local effort that has created improvements in the river channel and helped turn an abused river into a recreational and aesthetic amenity.

If the PMP is to function, it is important that there be universal compliance. Under the terms of the intergovernmental agreements creating the PFMP, if other third-party water users divert or exchange against the increased flows created by the PMFP, the PMFP participants need not forgo their exchanges to preserve target flows. *See* March 1, 2004 IGA, ¶ I.D; May 1, 2004 IGA Exhibit 1, p. 2. Diversion by AVC, Interconnect, or Master Contract participants of increased flows created by the PFMP could suspend the PFMP. Given the environmental, economic and social importance of the PFMP, the BOR should require that all project participants comply with the PFMP by reducing diversions into storage or curtailing exchanges to the extent necessary to meet PFMP flow targets.

**Comment 5.1. The DEIS does not adequately examine impacts on the environment because it does not study impacts with and without mandatory compliance with the PFMP.**

There is minimal discussion in the DEIS concerning the percentage of time the PFMP may be met under the various alternatives. *See e.g.* DEIS Table 4-11. There is no discussion or comparison of the impacts of the various alternatives with and without mandatory compliance with the PFMP. Such an analysis should be included in the DEIS. Moreover, if the PFMP is not enforced against all proposed project participants, the analysis of impacts provided in the DEIS will be faulty, and the DEIS, EIS and ROD must be reopened to re-examine those impacts and provide an accurate analysis of them.

**Comment 5.2. The proposed Fish and Wildlife Mitigation Plan should be enforced and used in conjunction with the PFMP.**

The DEIS states that a “Fish and Wildlife Mitigation Plan” will be developed to mitigate the effects of low streamflow on water quality and aquatic life immediately below Pueblo Reservoir, and that the BOR will assist in reserving storage water annually for possible releases to maintain minimum flows. DEIS p. 4-35. The DEIS currently provides very little detail on the Fish and Wildlife Mitigation Plan, and so the FEIS and ROD should include a detailed plan that is enforceable. At a minimum, the BOR should commit to promulgating the Fish and Wildlife Mitigation Plan to meet the targets and goals of the PFMP. The FEIS and ROD should also include a requirement that the Project participants contribute to and maintain an appropriate storage pool in Pueblo Reservoir that will release water during times of low flow in the Arkansas River. As a useful comparison, Paragraph 10 of the SDS 1041 permit included a provision whereby Colorado Springs Utilities and the Water Board agreed to release water (up to 3,000 acre-feet) into the Arkansas River below Pueblo Reservoir during times when the flow would otherwise fall below 50 cfs.

**Comment 5.3. The DEIS does not report clearly the cumulative impacts of activities on meeting the PFMP.**

Various actions in the past and proposed actions in the future will impact the PFMP. The DEIS examined some of those past activities and reasonably foreseeable actions for certain areas impacted by the AVC and Master Contract. *See e.g.* DEIS Table 4-1 and related discussion. The only discussion of cumulative impacts on the PFMP in the DEIS states “climate change could reduce days that Pueblo Flow Management Program flows would be met.” DEIS p. 4-103. Given the significant amount of additional future activity that will impact the PFMP reach, an analysis of cumulative effects on the PFMP is essential to determine appropriate mitigation measures or modifications to the PFMP.

**COMMENT 6. The DEIS simulation of existing and future conditions does not provide an informative assessment of projected changes to historical conditions on rivers and reservoirs.**

The DEIS compares the direct and cumulative effects of the alternatives to “existing” conditions or to a “no action” alternative. However, these “existing” conditions are simulated

and are substantially different from historical baseline conditions. Using a simulated existing condition as a baseline can significantly understate the effects of the alternatives and cumulative future conditions. The DEIS compounds the confusion by assuming that “historical hydrology (basin runoff) is indicative of future hydrology,” and that “current minimum flow requirements and flow programs continue to be operated.” DEIS p. 4-17.

There also is a lack of clarity concerning whether and to what extent climate change and other factors are examined in the past, existing and future simulations. *See e.g.* DEIS pp. 4-5, 4-11, D.2-1. Moreover, on page D.2-3 the DEIS indicates that several studies have confirmed the original estimated yield of the Fry-Ark Project, while a July 9, 2012 memorandum included in Appendix C.2 suggests that there could be dramatic changes to the Fry-Ark yield due to climate change. In short, the extent to which the DEIS simulates conditions together with the confusion concerning whether certain factors were analyzed creates a lack of confidence in the modeling conducted for the DEIS.

**Comment 6.1. The failure to use actual historical data as a comparative baseline of existing conditions results in understating future impacts.**

Similar to the SDS DEIS, the AVC/Master Contract DEIS uses a comparison to “existing” conditions to quantify the changes in rivers and reservoirs caused by the various alternatives. Also similar to the analysis performed in the SDS DEIS, it is apparent that the synthetic existing condition may not represent the actual existing condition or accurately reflect historical conditions. The problems associated with this mixing of data becomes apparent when the AVC/Master Contract DEIS is compared to the SDS DEIS and associated reports such as the MWH Americas Inc. Water Resources Technical Report for the SDS and the Environmental Assessment for the Aurora Excess Capacity Contracts, as represented in the following table.

	Aurora EA	MWH	SDS DEIS	SDS FEIS	AVC/Master Contract DEIS
Wellsville Gage historical mean monthly flow		726 cfs (1982-2004)			717 cfs (1982-2009)
Wellsville Gage existing conditions	724 cfs (2004)		673 cfs (2006)	677 cfs (2006)	712 cfs (2010)
Above Pueblo historical mean monthly flow		725 cfs (1982-2004)			694 cfs (1982-2009)
Above Pueblo existing conditions	622 cfs (2004)		614 cfs (2006)	631 cfs (2006)	646 cfs (2010)
Pueblo Reservoir historical annual average		181,434 (1982-2004)			174,410 (1995-2009) <sup>1</sup>
Pueblo Reservoir existing conditions	181,857 af (2004)		173,700 af (2006)	170,700 af (2006)	203,300 af (2010)

<sup>1</sup> Calibration Run Average Monthly Summary.

The wide variety of results obtained by using simulated conditions in the DEIS leads to misleading assumptions when comparing the impacts of the various alternatives and, at the very least, leads to confusion regarding those impacts. Clarification should be provided in the FEIS.

Both the public and permitting authorities understand impacts in the context of their actual historical experience with the resource being examined. This makes comparisons to historic conditions essential when deciding whether those additional impacts should be allowed. This is especially true when the resource is already planned for impact that has not yet occurred, such as the Aurora contract and the SDS. The analysis of impacts, whether they be direct or cumulative, should be made against actual historic conditions rather than simulating historic or simulated existing conditions. For example, the historical mean monthly flow at the above Pueblo gage is 694 cfs. *See* p. D.1-21, Table 11. When the cumulative effects of the SDS and other activities are considered, the overall average monthly streamflow under three of the five action alternatives is reduced to 481 cfs (p. D.4-108, Table 79), a 31 percent decrease. The BOR needs to be alert to and appropriately mitigate the water quality and other impacts that cumulative reductions in streamflow levels and reservoir contents may cause.

**Comment 6.2. The DEIS fails to adequately explain the differences in the hydrologic study periods used.**

The DEIS uses a 1982–2009 study period for hydrologic data “because it characterizes typical hydrologic years, contains extreme low and high flow years, and includes operations of many important past actions that have affected hydrology analysis in the overall EIS study area.” DEIS p. 3-7. However, in discussing yield, the DEIS uses a 1950-2009 study period “because it contains several extended drought, average, and wet periods that affect Fry-Ark yield.” DEIS p. D.2-1. The DEIS does not explain why it chose to use two different periods of record in its analysis.

**COMMENT 7. The narrative descriptions of impacts to streamflows in the Arkansas River and in affected reservoirs are generally uninformative and often misleading.**

The tables in Section 2 of the DEIS often describe the impacts to streamflows as “negligible” or “minor.” The discussion of “minor effects” and “negligible effects” in the DEIS without context becomes tedious and uninformative. The confusion is compounded by the often nebulous manner in which the results are presented. As just one example, p. 4-22 of the DEIS states “in general, the AVC and Master Contract excess capacity accounts could both increase and decrease storage contents in Pueblo Reservoir, depending on configuration of the alternatives.” This provides no useful information.

The actual data used to create the tables also shows that the narrative descriptions do not adequately describe the impact of the alternatives. For example, the DEIS indicates “occasional moderate effects would occur downstream from Pueblo Reservoir during some winter and spring months in dry and normal years (Table 4-6).” DEIS p. 4-13; *see also* p. 4-162 predicting minor decreases in streamflow in Arkansas River flows through Pueblo under some alternatives. In Appendix D.4, however, Table 75 shows consistent decreases in normal year monthly

streamflow at the above Pueblo gage for the direct effect of the alternatives when compared to existing conditions, and decreases in streamflow as high as 28.6 percent. When cumulative effects are considered, the normal year decreases can be as high as 65.2 percent. Appendix D.4, Table 80. For dry years, the direct effect of the alternatives on monthly streamflows when compared to existing conditions is as high as 35.7 percent (Table 77), and the cumulative effects are as high as 67.7 percent (Table 82). These drastic changes to streamflows noted in the DEIS appendices are not adequately represented in either the narrative of the DEIS or the tabular summaries.

As another example, the DEIS states that “direct and cumulative effects on all average monthly Pueblo Reservoir storage contents would be negligible to minor (greater than 2 percent change) for all alternatives.” DEIS p. 4-13. The tables in Appendix D.4, however, reveal that direct effect monthly storage contents in a normal year could decrease by as much as 26.7 percent when compared to existing conditions (Table 178), and as much as 45.7 percent when cumulative effects are considered (Table 182). In a dry year, the direct effect monthly storage contents could decrease by as much as 27.6 percent when compared to existing conditions (Table 180), and as much as 46.2 percent when cumulative effects are considered (Table 184). The same effects are shown for the tables examining surface elevations in Pueblo Reservoir.

**COMMENT 8. The DEIS does not adequately address the impacts of increased return flows on Fountain Creek.**

The DEIS suggests that there could be increases in return flows to Fountain Creek due to Master Contract exchanges (p. 4-22) and that the cumulative effect of Colorado Springs’ return flows would increase streamflow in Fountain Creek compared to direct effects (p. 4-35). The DEIS needs to quantify return flows in order to assess impacts on Fountain Creek. The SDS FEIS and ROD assumed the continuation of the Colorado Springs Stormwater Enterprise, as a reasonably foreseeable action, would control and prevent increased stormwater flows in Fountain Creek thus lessening the impact of increased flows from the SDS. Since the SDS 1041 permit was issued, however, the Colorado Springs Stormwater Enterprise has been abolished and the American Society of Civil Engineers has published a report giving Colorado Springs poor or failing grades for stormwater control.<sup>2</sup>

As noted in an August 17, 2012 letter to the BOR from the Special Counsel for the Lower Arkansas Valley Water Conservancy District, repeal of the Stormwater Enterprise has reduced Colorado Springs’ revenues for stormwater maintenance and enhancement by approximately \$15 million per year, and there is a \$498 million backlog in stormwater capital improvement projects. Given these developments and the further impact of the Master Contract use, the DEIS should undertake additional analysis of the impact of return flows on Fountain Creek, both direct and cumulative. Moreover, any additional conditions and costs resulting from the repeal of the Stormwater Enterprise should be borne by the SDS participants and not just by the participants to the instant Master Contract. The SDS FEIS should be reopened to quantify those costs and to

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<sup>2</sup> See <http://www.asce-scbranch.org/pdfs/ASCE%20Report%20Card.pdf>.

impose terms and conditions to address the repeal of the Stormwater Enterprise. In no event should BOR allow increased flows to damage Fountain Creek.

**COMMENT 9. Terms and conditions should be added to alleviate impacts to visual resources.**

The DEIS contains a “Visual Resources” BMP that indicates “permanent aboveground structures and facilities would be designed to blend with local surroundings.” This BMP should be made a specific term and condition imposed on any contractor or AVC participant, and should also apply to power substations and overhead power lines, especially within Pueblo State Park or its environs. In addition, representatives of Pueblo County and other local authorities should be invited to participate in the evaluation and selection of the architecture and landscaping for any proposed water treatment plant and other buildings within Pueblo County, as was done for the SDS Project.

**COMMENT 10. The DEIS does not adequately address water quality impacts due to potentially reduced streamflows and should address the comments of the Pueblo County District Court in overturning the 401 certification for the SDS Project.**

Reduced streamflows downstream of Pueblo Reservoir may lead to water quality impacts due to the inability of the limited flows to dilute stormwater and other sources entering the Arkansas River. This is particularly evident with respect to impacts on instream temperatures. However, the DEIS simply makes the statement that “streamflow temperature effects in the Upper Arkansas River were qualitatively assessed as streamflow effects would be negligible.” DEIS p. 4-48. Neither the main body of the DEIS nor the appendix on water quality (Appendix F.2) provide an adequate discussion of these kinds of impacts to water quality below Pueblo Reservoir.

A thorough analysis of water quality impacts is especially necessary in light of the findings made by Pueblo County District Court Judge Victor Reyes in Case No. 11CV174 concerning the inadequacy of the 401 certification for the SDS Project. In particular, Judge Reyes found an overreliance on future adaptive management in connection with the assessment of the water quality impacts and that the BOR did not adequately consider future growth in its analysis. *See* April 12, 2012 Order Reversing Decision of the Colorado Water Quality Control Commission.

**COMMENT 11. The DEIS, EIS and ROD should include a term and condition that wastewater discharges from Pueblo West Metropolitan District originating from its storage in Pueblo Reservoir be returned to Wild Horse Dry Creek. Otherwise, the DEIS, EIS and ROD should provide that they be reopened for further examination of impacts if wastewater from Pueblo West is not discharged to Wild Horse Creek but returned to Pueblo Reservoir.**

The DEIS assumes as a reasonably foreseeable action a wastewater discharge pipeline from Pueblo West Metropolitan District to Wild Horse Dry Creek and not to Pueblo Reservoir as was once proposed by Pueblo West. Consequently, maintaining the location of the Pueblo West

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wastewater discharge at Wild Horse Dry Creek should be included as a term and condition of any Master Contract for Pueblo West to ensure that its wastewater is not discharged to Pueblo Reservoir, particularly because its storage contents will be lower in the future. If such a term and condition is not included, the DEIS, EIS and ROD should contain a requirement that they be reopened and storage contracts be suspended in the event of discharges of wastewater to Pueblo Reservoir by Pueblo West.

**COMMENT 12.** The AVC and Master Contract beneficiaries should be limited to currently anticipated participants or the DEIS, FEIS and ROD should be reopened to examine future impacts of additional participants.

The DEIS only evaluates currently proposed AVC and Master Contract participants. DEIS pp. 1-4, 1-8. Subsequent unanticipated impacts could result from adding other participants to the AVC and/or Master Contract without having evaluated such additional participants in the DEIS. The BOR should either limit the AVC and Master Contract to only those examined in the DEIS or commit to reopening the DEIS, FEIS and ROD if participants are added in the future.

**COMMENT 13.** A representative of Pueblo County should be included on the Environmental Review Team.

The DEIS commits to establishing an Environmental Review Team "to ensure that project activities are completed concurrently and in full compliance with all environmental commitments specified in this EIS" and to "advise Reclamation regarding implementation of environmental commitments and will review changes in engineering design, such as pipeline routing." DEIS p. 4-1. The environmental commitments made in the DEIS and the routing of the pipeline through areas within its jurisdiction are vitally important to Pueblo County. Accordingly, a representative of the County should be invited to participate on the Environmental Review Team.

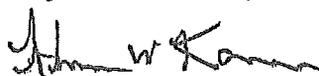
**Conclusion.**

Pueblo County acknowledges the complexities of the issues confronting the BOR when studying the environmental and economic impacts of the proposed federal actions. We offer these comments in the sincere hope that they will assist BOR in further evaluating and reporting such impacts, and in crafting enforceable terms and conditions in the ROD and implementing contracts. Pueblo County especially encourages the BOR to incorporate county and local permitting and land use requirements in the FEIS and ROD to expedite future permitting by local agencies.

Sincerely,



Raymond L. Petros, Jr.



Thomas W. Korver

# RECLAMATION

*Managing Water in the West*



## Arkansas Valley Conduit Long-Term Excess Capacity Master Contract Environmental Impact Statement Fryingpan-Arkansas Project, Colorado

### Document Review Form

**Document:** Cooperating Agency Review Draft, App. B.5 – BMPs and Mitigation Measures (5/11/12)

**Agency:** Pueblo County Planning and Development Department (Raymond Petros, Special Counsel)

**Reviewers (initials):**

**Date submitted for review:** 6/1/12

**Date reviews due:** 6/1/12

Item No.	Page No.	Line No.	Reviewer Initials	Comment	Response
1	3	1		<u>Local Regulation.</u> In 2009, Pueblo County issued a 1041 Permit No. 2008-002 for the construction and use of the SDS Pipeline from Pueblo Reservoir. (Permit attached) The County anticipates similar terms and conditions for mitigation would be employed with the AVC and master contract project.	
2	3	1		This BMP should be amended as follows: "Construction <u>and project</u> activities . . ." Mitigation measures would obviously apply to both construction and project operation.	
3	3	20		This section should be amended as follows: "Structures affected by pipeline construction <u>and hauling</u> , including . . ." This clarifies that County roads used for construction transport would be replaced, repaired or restored to their current condition or better after construction to County standards.	
4	3	24		Damage to County roads has occurred as a result of SDS construction; roads are being maintained and repaired by SDS participants and will be rehabilitated to County standards after construction. In this regard, an additional sentence or section should be added as follows: "A Haul Route Plan shall identify county roads utilized for construction vehicle traffic, shall provide for maintenance of those roads at participants' expense during the project, and shall require	

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				rehabilitation of those roads to county standards at participants' expense."	
5	3	32		<u>Surface Water/Pueblo Flow Management Program.</u> It is essential that all participants commit to the PFMP. Under the terms of the IGAs creating the PFMP, if other water users divert the increased flows created by the PMFP, the PMFP participants need not forgo their exchanges to preserve target flows. (IGA between Pueblo, Colorado Springs, Pueblo Board of Water Works, dated March 1, 2004, paragraph I.D. at page 4; and IGA, dated May, 2004, between Pueblo, Colorado Springs, Pueblo Board of Water Works, SCWCD, and Fountain, Exhibit 1 at D, page 2).	
6	3	34		<u>Surface Water/Arkansas River Low-Flow Program.</u> As part of the SDS permit, Colorado Springs Utilities and the Pueblo Board of Water Works entered into an agreement to release water (up to 3,000 acre feet) into the Arkansas River below Pueblo Reservoir during times when the flow would fall dangerously low, below 50 CFS. The proposed project participants similarly should commit appropriate amounts of water and participate in this program. The following mitigation measure should be added to this section on surface water: "The participants will contribute to and assist in the maintenance of a storage pool in Pueblo Reservoir designed to permit the release of water into the Arkansas River during times when the flow and the river could fall dangerously low, to levels at or below 50 CFS, and to not exchange against reservoir releases during such periods of low flow."	
7	4	1		<u>Mitigation of Water Quality Impacts.</u> The section on water quality does not address mitigation for impacts to Pueblo Reservoir and the Arkansas River as a result of the proposed project. In this regard, it should be noted that the Pueblo County District Court recently voided and remanded back to the Colorado Water Quality Control Commission its 401 certification of SDS; the Court found inadequate assessment, faulty methodology and overreliance on future adaptive management. This Court order (attached) should be reviewed to ensure that this EIS addresses any similar deficiencies.	
8	6	15		<u>Revegetation, Reclamation.</u> An objective standard should be given to evaluate the success of revegetation and reclamation. During the SDS hearings before the County, there was testimony that the FVA pipeline right of way was inadequately reclaimed and still does not have adequate cover. The following requirements should be added: "A preconstruction evaluation of existing vegetation shall be conducted to determine species diversity, plant density, and seasonal variety. The revegetated area shall be considered acceptable only if the revegetated area cover is not less than 90% of preconstruction vegetation cover with	

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				similar species diversity, or if a reasonable substitute reclamation is approved by the landowner. Irrigation of newly reclaimed areas shall be done as required for sustainability. Reclamation success shall be monitored and approved only after an adequate "grow-in" period. A reclamation bond should be posted to insure successful reclamation."	
9	7	40		<u>Visual Resources/Architectural and Landscape Review of Water Treatment Plant.</u> This section should be amended to add an additional sentence: "Constructed facilities would be designed to blend with the architectural characteristics of surrounding structures. <u>Representatives of the County and other local authorities are to be invited to participate in the evaluation and selection of the architecture and landscaping for the proposed water treatment plant at Pueblo Reservoir.</u> "	
10	11	7		<u>Recreation/Lake Level Management at Pueblo Reservoir.</u> Similar to Condition 16 in the SDS permit, there should be added a mitigation measure for developing a reservoir management plan for Pueblo Reservoir. A mitigation term should be added as follows: "To the extent there is flexibility when storing and releasing water, a reservoir management plan for Pueblo Reservoir shall be designed to maintain reservoir storage levels to minimize impacts on recreation and fisheries; the project participants shall coordinate in developing such a plan with other affected parties and users of the reservoir."	

(add additional rows as necessary)

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