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November 30, 2012

Via U.S. Mail and Email

J. Signe Snortland (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. On September 30, 2012, we submitted comments at the request of the Pueblo County planning staff and the Pueblo County Attorney on the August, 2012 Draft Environmental Impact Statement (DEIS) for the three proposed federal actions referenced above. We are writing to request additional clarification on certain elements of the DEIS as they relate to the cumulative impact on Fountain Creek that will result from the Master Contract in the above-referenced federal action when combined with the repeal of the Colorado Springs Stormwater Enterprise (SWENT).

As background, Comment 8 of our September 30, 2012 letter raised issues relating to the impact of increased return flows on Fountain Creek. Specifically, the DEIS suggested that there would be a direct impact on return flows to Fountain Creek due to the Master Contract, and that there would also be a cumulative impact on Fountain Creek due to increases in return flows from Colorado Springs. We remain, however, uncertain as to the extent of the increased return flows expected to occur in Fountain Creek and the consequent impacts of those increases when combined with increased stormflows.

The Record of Decision for the Southern Delivery System (SDS), and the Final Environmental Impact Statement (FEIS) on which it was based, considered the continuation of SWENT to be a reasonably foreseeable action that would prevent increased stormwater flows to Fountain Creek. Because SWENT has been repealed, the DEIS for the Master Contract now states that SWENT is no longer a reasonably foreseeable action. The DEIS, however, does not discuss the effect that the repeal of SWENT has on Fountain Creek flows forecasted in the DEIS.

Given the foregoing, we have certain questions that we were hoping the Bureau of Reclamation would answer so that we can better understand both the physical impacts of those increased flows in Fountain Creek and the institutional mechanisms, if any, available to address them. Those questions are as follows:

1. Effect of Repeal of SWENT. What effect did the repeal of SWENT have on the calculation of flows in Fountain Creek for purposes of the Master Contract DEIS when compared to the previous flow calculations performed in connection with the SDS?
2. Peak Flow Analysis. Why does the Master Contract DEIS lack an analysis of the cumulative effects of peak flows, especially in Fountain Creek? It would seem appropriate to perform such an analysis given the cumulative increases in stormwater peak flows in Fountain Creek that will certainly occur given the Master Contract and the repeal of SWENT. By comparison, the FEIS and associated reports prepared for the SDS examined the cumulative effects of peak flows under various short-term and long-term scenarios. The SDS FEIS stated that SWENT “would require future peak flows (up to the 100-year recurrence interval) to remain at current peak flow levels following future development,” and that “because of the Stormwater Enterprise, cumulative effects future peak flows would be equal to Existing Conditions peak flows for areas within the City of Colorado Springs service area or directly downstream of the city’s service area.” SDS FEIS pp. 317, 329. As indicated above, SWENT was considered to be a reasonably foreseeable action under the SDS FEIS that would prevent increased stormwater impacts to Fountain Creek from Colorado Springs.
3. Enforcement Remedies. Please describe the enforcement mechanisms, if any, available to Reclamation under which the increased stormwater flows in Fountain Creek resulting from the repeal of SWENT will be reduced or eliminated under either the SDS ROD or the proposed action for the Master Contract. Are those enforcement actions reasonably foreseeable actions for purposes of the DEIS?
4. Discrepancies in Projected Flows. At the Fountain Creek at Pueblo gage, it appears that there is a 24 c.f.s. difference between the average existing conditions for the AVC/Master Contract DEIS (164 c.f.s.) and the SDS FEIS (188 c.f.s.). See AVC/Master Contract DEIS at Table 4-12, SDS FEIS Table 47. Please explain why there is a discrepancy in the existing conditions between the AVC/Master Contract DEIS and the SDS FEIS. Moreover, there is a 21 c.f.s. difference in the average annual streamflow cumulative effect of the SDS preferred alternative (250 c.f.s.) when compared to the annual cumulative effect of the Master Contract (271 c.f.s.). *Id.* If the existing conditions numbers are reconciled (i.e., the DEIS existing condition is brought up to 188 c.f.s.), the cumulative effects of the Master Contract rises to 295 c.f.s., and the difference between the cumulative effect of the SDS preferred alternative and the Master Contract is 45 c.f.s. As the Master Contract is the only action under the DEIS that will have an additional impact on Fountain Creek, please also explain the reason for the 45 c.f.s. difference in the cumulative effect of the SDS preferred alternative when compared to the Master Contract.

Ms. J. Signe Snortland

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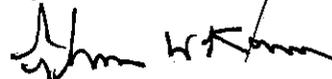
5. Additional Environmental Studies. Does the Bureau of Reclamation intend to reopen the SDS Record of Decision or FEIS to consider the environmental impact resulting from the repeal of SWENT? If the Bureau of Reclamation chooses not to do so, does the Bureau intend to prepare a Supplemental Information Report to consider the environmental impact resulting from the repeal of SWENT, much like the Bureau recently prepared in connection with the Windy Gap Firing FEIS?

Responses to the foregoing questions will be greatly appreciated as they will provide additional clarity on the cumulative environmental impacts to Fountain Creek in Pueblo County resulting from the Master Contract and SDS. We thank you for the opportunity to pose these questions and ask that you contact us if you need any clarifications in order to answer them.

Sincerely,



Raymond L. Petros, Jr.



Thomas W. Korver