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Colorado Court of Appeals Rules in Favor of SDS Water Quality Certification

The Colorado Court of Appeals today reversed a Pueblo County judge's ruling against a state water quality certification for the Southern Delivery System (SDS) project.

The Colorado Court of Appeals ruled that the state Water Quality Control Commission's approval of the SDS certification was consistent with applicable laws and regulations and was supported by substantial evidence. The decision reverses Pueblo County District Court Judge Victor Reyes' April 2012 ruling against the Water Quality Control Commissions' unanimous decision approving the 401 water quality certification.

"We are pleased that the Colorado Court of Appeals has ruled in support of the 401 water quality certification for SDS," said John Fredell, SDS Program Director. "We always believed that the state Water Quality Control Division did a thorough and complete evaluation of SDS and correctly decided that it would meet State water quality standards. We are pleased that the Court of Appeals has recognized that. It is unfortunate that this matter had to be resolved in the courts, which is a costly process and one that goes against our approach of collaborating with other local governments and stakeholders."

SDS was required to obtain a water quality certification from the Water Quality Control Division of the Colorado Department of Public Health and Environment (CDPHE) in conjunction with obtaining the Army Corps of Engineers section 404 dredge and fill permit for the project under the Clean Water Act. The CDPHE Water Quality Control Division certified that the construction and operation of the project would comply with all applicable state water quality requirements. The Division issued that certification with conditions, and in April 2010, the Water Quality Control Commission unanimously upheld the certification.

Bill Thiebaut, the Pueblo County District Attorney at the time, and The Rocky Mountain Environmental Labor Coalition appealed the Commission's decision in Pueblo County District Court. In April, 2012, Pueblo County District Court Judge Victor Reyes ruled against the Commission's decision. The state and Colorado Springs appealed the District Court's decision to the Colorado Court of Appeals, which issued today's decision overruling the District Court and upholding the original 401 certification.

"Today's decision is one more major milestone for the SDS project, which is proceeding on schedule and under budget," said Fredell.

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