

Creek, in any application for a change of water rights or exchange implicating that reach of the river;<sup>1</sup>

- E. Pro rata participation in any water quality monitoring or studies to the same degree and extent as undertaken by the Applicant under this permit; and
- F. Support of any studies of a flood control dam or dams on Fountain Creek.

Upon the submission of contracts or agreements to Pueblo County evidencing the acceptance of the foregoing terms and conditions, Applicant shall be entitled to enter into third-party contracts for the delivery of water from Pueblo Reservoir to entities located in El Paso County or Teller County within the Arkansas River Basin. Nothing herein shall provide a right in the Applicant or any other entities to operate the SDS Project at a rate of flow in excess of 78 mgd without applying for and receiving an amended 1041 Permit satisfying any additional terms and conditions which might then be imposed.

### 5.3. **Reservation of Permit Authority.**

Colorado Springs currently does not have the authority to enlarge the storage capacity of Pueblo Reservoir. Should the enlargement of Pueblo Reservoir occur in the future, and should Colorado Springs become a participant in that enlargement, Pueblo County reserves the right to assert, at that time, that those actions constitute a permissible activity under its 1041 regulations, subject to the right of Colorado Springs to assert any defenses to the exercise of the County's authority that may exist.

### 6. **Monetary Mitigation for Fountain Creek Impacts.**

In order to mitigate the impacts of SDS to Fountain Creek in Pueblo County, Applicant will pay fifty million dollars (\$50,000,000) to the Fountain Creek Watershed, Flood Control and Greenway District ("District") described in the Intergovernmental Agreement for the Management and Conservation of Fountain Creek executed by El Paso County on December 15, 2008 and Pueblo County on December 16, 2008.

Three hundred thousand dollars (\$300,000) of that amount shall be paid in equal annual installments of one hundred thousand dollars (\$100,000), commencing July 1, 2009. These payments shall be used to assist in the identification and prioritization of projects, and to fund a study or studies of opportunities for constructing flood control and sediment control facilities which may include the

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<sup>1</sup> The term "Pueblo RICD" refers to case no. 01CW160, District Court, Water Division 2, Colorado.

feasibility of a dam or dams on Fountain Creek or its tributaries in order to improve the flood protection for the City of Pueblo and the Fountain Creek Basin.

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.

Payments shall be made to the District, provided: it is created by legislation supported by Pueblo County and El Paso County for the management and conservation of Fountain Creek; it provides for participation by Pueblo County and the City of Colorado Springs as voting members of the board of directors; it has equal representation of entities from Pueblo County and El Paso County as voting members of the board of directors; and it has power to levy taxes and impose fees. If the District is not so created, then Pueblo County and Colorado Springs will establish a not for profit corporation pursuant to the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101, et seq, governed by a board of directors having an equal number of directors from Pueblo County and from Colorado Springs, for the purposes specified herein. The Foundation, if established, will be referred to as the Fountain Creek Restoration Foundation ("FCRF").

The District (or if not created, the FCRF) may use funds provided by the Applicant under this permit condition only for one or more new projects in the Fountain Creek watershed between Colorado Springs and the Arkansas River confluence in Pueblo that create a significant and not merely incidental benefit to Fountain Creek within Pueblo County for improvement of water quality, for flood control, or for prevention of erosion and sedimentation. Subject to these criteria, acceptable projects may include:

- A. those projects that have been identified by the United States Corps of Engineers ("Corps") as high priority erosion, sedimentation or flood control projects in a formal Corps recommendation for Fountain Creek;
- B. erosion, sedimentation, flood control or water quality improvement projects identified as part of the Fountain Creek Corridor Master Plan adopted by Colorado Springs Utilities and the Lower Arkansas Valley Water Conservancy District;
- C. any other sedimentation and erosion control, flood control, including a dam or dams, or stream improvement project that is found to be acceptable by the District or, if not created, the FCRF.

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%.

#### **7. Expenditures for Wastewater System Improvements.**

In order to continue its efforts to protect against future spills to Fountain Creek, to increase its opportunities for reuse, and to mitigate possible water quality impacts by the SDS Project to Fountain Creek, Colorado Springs Utilities shall commit to invest an additional seventy-five million dollars (\$75,000,000) in its wastewater system. Expenditures will be made as part of the wastewater collection system rehabilitation programs or wastewater reuse systems between January 1, 2009 and December 31, 2024 as required. These expenditures shall be for projects not currently required by other regulatory permits, agency enforcement or court orders, consent agreements, or governmental regulations existing as of January 30, 2009. These expenditures will include the Local Collector Evaluation and Rehabilitation Program (LCERP) for the improvement and fortification of wastewater lines which could adversely affect Fountain Creek or its tributaries. These expenditures are subject to annual appropriation by the Colorado Springs City Council. Beginning in 2010, by January 31 of each year, Colorado Springs Utilities shall provide an annual report to Pueblo County describing such expenditures for the prior year.

#### **8. Sediment Control/Dredging and Clear Springs Ranch.**

It is acknowledged by Pueblo County and Applicant that one mitigation commitment will be a project to reduce the sediment load in lower Fountain Creek through dredging and the construction of sediment collection devices. These efforts will occur prior to the construction of the SDS Project. These sediment removal activities are of vital importance to Pueblo County because they will assist the City of Pueblo in preserving the flood protection of the Fountain Creek levees at or above the 100 year flood level. This mitigation commitment may be conducted in cooperation with a project or projects of the U.S. Army Corps of Engineers. It is acknowledged that there will have to be sampling done on the bed sediments in Fountain Creek to insure that no hazardous materials exist that would make a dredging and sediment removal project technically or financially impracticable. Applicant, as a condition of this permit, will pursue vigorously its efforts to complete this sediment removal project at the levels committed to in the final Environmental Impact Statement process. In the event that sediment removal is not practicable because of the quality of the