

780

Mr. Commissioner Norden moved the adoption of the following Resolution:

**RESOLUTION NO. 14
Series of 2009**

**RESOLUTION FOR SPECIAL REVIEW USE PERMIT
DEPARTMENT OF PLANNING AND ZONING FILE #SRU 08-004
SOUTHERN DELIVERY SYSTEM**

BE IT RESOLVED by the Fremont County Board of County Commissioners (hereafter "Board"):

THAT WHEREAS, Colorado Springs Utilities, (hereafter "applicant") has made application for issuance of a Special Review Use Permit pursuant to 8.2 of the Zoning Resolution of Fremont County to allow for the construction of a water intake and pump station, along the Arkansas River, two additional pump stations, and seventeen (17) miles of a sixty-six (66) inch diameter pipeline, on property owned by various property owners, which application has been designated as file **#SRU 08-004 Southern Delivery System**;

AND WHEREAS, pursuant to the Fremont County Zoning Resolution previously adopted; the Planning Commission of Fremont County reviewed the application at its **December 2, 2008** and **January 6, 2009** regular meetings and recommended the **DENIAL** of such application; and

WHEREAS, a notice containing the specific request, proposed use, date, time, location, telephone number of the Fremont County Department of Planning and Zoning (hereafter "Department"), and a site plan and vicinity map were mailed fourteen (14) days prior to the public hearing, by certified mail, return receipt to the Department, to all property owners within five-hundred (500) feet of the centerline of the easement of the proposed pipeline and within five hundred (500) feet of the boundary lines of the proposed pump station sites and to appropriate reviewing agencies; and

WHEREAS, a notice containing the specific request, proposed use, date, time, location, and telephone number of the Department where additional information may be obtained, was posted at fourteen (14) locations along the proposed pipeline route fourteen (14) days prior to the public hearing; and

WHEREAS, a notice of the public hearing was published by the Department, in a newspaper of general circulation in Fremont County, fourteen (14) days prior to the public hearing, and which contained the specific request, time and place of the public hearing, and an explanation of the proposed use and its location; and

WHEREAS, the Board held a public hearing concerning said application on February 10, 2009, at which time comments and evidence were considered, including all materials contained as part of the application and which were in the Department's file concerning the application; and

WHEREAS, on February 24, 2009, the Board met in regular session to make a decision on whether CUP 08-004 should be approved or denied; and

WHEREAS, on March 10, 2009, the Board met in regular session to finalize the conditions of the Special Review Use Permit; and

WHEREAS, after due deliberation and full consideration of the record in this matter, it appears that the issuance of a Special Review Use Permit is appropriate;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners for Fremont County that in consideration of SRU 08-004,

1. The Board makes the following findings with respect to the application for issuance of a Special Review Use Permit to Applicant as follows:
 - a. This approval of the special review use permit is subject to all conditions and contingencies imposed by the Board and the findings are based upon the compliance by Colorado Spring Utilities, Inc. with all conditions of the CUP.
 - b. The procedural requirements of the Fremont County Zoning Resolution (FCZR or Zoning Resolution) have been met and the application is complete.
 - c. The proposed use is in accordance with the provisions of the Zoning Resolution. The requested use is public utility building, regulators, substations. The properties (intake, pump stations and pipelines) are located in various zone districts, all requiring the issuance of a Special Review Use Permit.
 - d. The location of the proposed use is compatible and harmonious with the surrounding neighborhoods. The proposed intake structure and pump stations will be architecturally designed to blend in with the surrounding neighborhood. As to the construction of the pipeline other than blow-offs and air pipes all pipelines will be buried underground and all disturbed surfaces will be reclaimed (re-vegetation) to a standard that is equal to or greater than historical use. The right to use the property for the pipeline will be acquired through purchase of easements which will allow continued use of the surface of the property for any purpose that is consistent with Applicant's use of the easement for the pipeline. The properties that will house the intake and pump stations will be owned in fee simple by Colorado Spring Utilities. The construction of the pipeline will be temporary, after which complete surface reclamation will be performed on all areas of disturbance. Applicant will also implement stormwater measures for blow-off valves

- (no discharge rates to exceed two year storm event and no drainage on to roadways) and surface runoff.
- e. The proposed use will not have detrimental effects on property values. The Applicant will be required to pay to County an annual sum equal to any lost property tax revenue suffered by Fremont County as a result of the pipeline project.
 - f. The site is served by roads of sufficient capacity to carry the traffic generated by the proposed use and the proposed use will not result in undue traffic congestion or traffic hazards. The applicant has agreed to use only specified haul routes and has agreed to maintain and rehabilitate any roads used in construction of the project. Applicant will warrant the rehabilitation or reconstruction of all affected roads for a period of two years following the acceptance of the road construction work by the County Road Foreman.
 - g. The proposed use will not impair public health, welfare, prosperity and safety by creating undesirable sanitary conditions. The proposed use of portable toilets during construction is reasonable and no other sanitation issues exist. The Board is satisfied that there will be no overburdening of utilities or other adverse environmental influences of this type. The applicant will be required to comply with all conditions of the permit which include compliance with all environmental concerns addressed in the Environmental Impact Statement and with any other applicable environmental requirements of all Federal, State or Local government requirements.
 - h. The sites will be of sufficient size to accommodate the proposed use and no credible evidence or comment to the contrary has been presented.
 - i. The proposed use, if it complies with all conditions on which approval is made contingent, will not adversely affect other property in the vicinity or the general health, safety, and welfare of the inhabitants of the County, and will not cause significant air, water, noise, or other pollution. The conditions imposed as a part of this Special Review Use Permit will address hours and days of operations, control of noise, dust, traffic, wildlife habitat, weeds, ground and surface water concerns and other potential problems.
2. A Special Review Use Permit shall be issued contingent on the acceptance and observance by the Applicant of the following specified conditions:
 - A. Special Review Use Permit shall be issued for life of use.
 - B. The Department shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board for its review as required by regulations. It shall be the responsibility of the permit holder to provide the Department with copies of other permits, licenses, or other documentation showing

compliance with the requirements of any other governmental agency (*to include items such as changes to the documents, updates, renewals, revisions, annual reports*). Further it shall be the responsibility of the permit holder to provide the Department with copies of any documents that would affect the use of the subject property, such as but not limited to updated or renewed leases for use of or access to the subject property. Copies of these documents shall be submitted to the Department prior to the anniversary date of the approval of the use permit each year. If the Department has to notify the permit holder that the anniversary date has passed and / or request said documentation, then a penalty fee shall be charged to the permit holder. If the required documentation and penalty fee are not submitted to the Department within twenty (20) days following notification to the permit holder, then violation procedures may be commenced, which could result in termination, revocation, rescission or suspension of the use permit.

- C. The Applicant shall conform to all plans, drawings, and representations submitted with or contained within the application, including supporting and accompanying documents, except as may be inconsistent with the other provisions of the permit.
- D. The Applicant shall comply with all applicable laws and regulations of the County of Fremont, its agencies or departments, the State of Colorado, its agencies or departments and the United States of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.
- E. Applicants shall obtain, prior to operation, and keep in effect, throughout operation, all other applicable permits, licenses or the like, including renewals, required by any other governmental agency and as otherwise may be required by Fremont County and shall provide copies of such to the Department. Revocation, suspension or expiration of any such other permits may be cause to revoke, suspend or terminate the permit authorized hereunder, as the case may be.
- F. If a Special Review Use is abandoned, discontinued or terminated for a period of six (6) months, the approval thereof shall be deemed withdrawn, and the use may not be resumed without approval of a new application. Provided, however, if the holder of the permit intends to or does temporarily cease the special review use for six (6) months or more without intending to abandon, discontinue or terminate the use, the holder shall file a notice thereof with the Department prior to the expiration of the six-month period stating the reasons thereof and the plan for the resumption of the use. The requirement of a notice of temporary cessation shall not apply to applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In no case, however, shall temporary cessation of use be continued for more than two (2) years without approval by the Board.

- G. If a Special Review Use Permit is to be transferred, the transfer shall be done in compliance with all applicable Federal, State and County regulations.
- H. Days and hours of operation of the project after completion of construction shall not be limited. Construction hours will be limited to Monday through Friday from 7 a.m. to 7 p.m. unless the Applicant submits a written request detailing the circumstances that justify work hours outside of this limitation, in which case the County may grant an exception.
- I. Applicant shall provide an executed copy of the Fire Protection Plan Form and compliance with any requirements of the Florence Fire Protection District.
- J. Applicant shall install fire protection at the SDS pump stations and install a reasonable number of fire hydrants along the pipeline in coordination and cooperation with the recommendations of BLM, Fremont County Sheriff, Colorado State Forest Service and the Florence (Penrose) Fire Protection District.
- K. Applicant shall provide documentation as to the development of an acceptable noxious weed control plan, which shall be reviewed and updated annually by the Fremont County Weed Coordinator. Applicant shall comply with all requirements of the plan.
- L. Reclamation plans for soil, reseeding, revegetation, and other appropriate conservation measures shall be reviewed by the Fremont County Natural Resources Conservation Service (NRCS) Office. All future maintenance of the project that results in disturbance of surface soils or vegetation shall be reclaimed using the best management practices to include salvaging topsoil, using NRCS-recommended seed mixes and washing machinery and vehicles offsite, prior to entry, to prevent weed contamination.
- M. Any land disturbance greater than one acre in the aggregate shall be bonded for five years at the rate of \$2,000 per acre, increased by the rate of inflation each year as determined by the Denver/Boulder/Greeley Consumer Price Index, indexed from 2010. Partial or full releases of acreage from the bonding requirements may be authorized by Fremont County, upon its determination that the disturbed areas have been successfully reclaimed.
- N. Applicant shall provide copies of any required Fremont County Flood Damage Prevention permits for construction or work done in any FEMA flood hazard areas.

- O. Applicant shall provide documentation showing compliance with any requirements of the Bureau of Reclamation related to the recommendations outlined in the letter from Dean Winstanley, Director, Colorado State Parks, dated June 13, 2008.
- P. Applicant shall provide a copy of a Cultural Resources Programmatic Agreement, executed by all appropriate authorities.
- Q. Applicant shall provide documentation showing compliance with the requirements of the Bureau of Reclamation related to the recommendations of the Fremont County Reviewing Engineer, as per letter dated November 18, 2008 and October 10, 2008.
- R. Applicant shall provide a copy of all permits listed in Exhibit 44.1 of the application or documentation as to why they were not required.
- S. Applicant shall comply with all applicable requirements of the final Environmental Impact Study (EIS).
- T. With respect to Chapters 3 & 5 of the Environmental Impact Study, if the Fremont County alternative is selected as the Preferred Alternative, Applicant shall insure that the EIS for Fremont County-specific issues has been updated and shall submit such updates as proposed changes to the SRU, subject to review and approval (with or without additional conditions) by the Fremont County Board of Commissioners.
- U. Applicant shall comply with all the terms and agreements of the Southern Delivery System (SDS) Commitments document, dated February 10, 2009. If the SDS Commitments are inconsistent or conflict with the conditions set forth in this SRU permit, the SRU permit shall control over the SDS Commitments.
- V. Applicant shall develop a web site page for notification to all agencies and the general public of construction details and plans. The web page should note any road closure and any planned detours forty-eight (48) hours prior to any road closure and any planned detours. Applicant shall notify the Florence and Cañon City dispatch centers, Fremont County Road & Bridge Department, Sheriff's Office and the Penrose Fire Protection District, forty-eight (48) hours prior to any road closure and any planned detours.
- W. Applicant shall provide documentation in writing and with photos of the pre-construction condition of any structure adjacent to the construction easement that could be potentially damaged or altered by construction.
- X. All contractors, subcontractors, etc. shall be limited to the use of the County right-of-ways designated in the Southern Delivery System Commitments document,

dated February 10, 2009). The Applicant shall provide a Haul Route Plan to the Road and Bridge Department for review and approval, which shall identify the roads utilized for or impacted by construction vehicle traffic, maintenance of those roads at Applicant's expense during the project and rehabilitation of those roads to current Fremont County standards at Applicant's expense after construction is complete. The Applicant shall obtain and comply with all necessary permits from the Fremont County Road and Bridge Department for each road crossing within the County and access point onto a County road. The Applicant shall coordinate, design and construct the SDS pipeline facilities so as to anticipate and accommodate future roadways and utilities across the SDS easement so as not to unreasonably preclude them or increase their costs. Applicant shall warrant the rehabilitation or reconstruction of the affected roads for a period of two years following acceptance by the District Two Road Foreman of the road construction work. The warranty shall cover settling, subsidence or other road failure resulting from the SDS construction in or across county road rights-of-way.

- Y. The Road and Bridge Department shall be notified at least 24 hours in advance of filling any road cut on a county right-of-way, to allow a county road official the opportunity to observe and inspect the filling of any road cuts.
- Z. Prior to the commencement of construction in Fremont County the Applicant will develop and implement a sediment removal/management plan at the Arkansas River intake of the SDS Project that is designed to maintain the naturally-occurring sediment load in the Arkansas River downstream of the SDS Project intake structure and in the Lester and Attebery Ditch. As a part of the sediment removal plan, the Applicant shall include a detailed description of how compliance with the plan shall be monitored and reported. At a minimum, the monitoring shall occur on a monthly basis and shall be reported to the Fremont County Department of Planning and Zoning on an annual basis. CSU shall consult with County regarding coordination and cooperation in the disposal of sediment, if the sediment may be put to beneficial use for the County. The sediment removal plan shall be submitted to the Fremont County Department of Planning and Zoning for review and approval. Such approval may result in the addition of one or more conditions to this SRU permit. CSU shall reimburse Fremont County for any costs incurred in the review of the sedimentation plan, including plans for final disposal of the sediment.
- AA. The Applicant shall consult with owners of the Lester and Attebery Ditch and owners of water rights in the Lester and Attebery Ditch before determining the final design of any required modifications of a new diversion works at or near that location. The Applicant shall provide the Planning and Zoning Department with

appropriate documentation that the final design and construction of the diversion works for the SDS Project will guarantee the protection of the water rights and ability to divert water by the owners of the Lester and Attebery Ditch and that it will also provide reasonable accommodation for diversion of water by the Penrose Water District and Beaver Park Water, Inc., should either entity so require, consistent with the applicable MOUs between Applicant and those entities.

- BB. Applicant shall provide documentation demonstrating its commitment to the City of Florence to improve the Florence River Park.
- CC. Applicant shall allow the Florence City Council, or its designee, to select the final exterior architectural design for pump station number one, located along the north bank of the Arkansas River. Applicant shall allow the Board of County Commissioners, or its designee, to select the final exterior architectural design for pump stations number two and three.
- DD. On or before April 30 of each year, Applicant shall pay to Fremont County a payment in lieu of taxes equal to any reduction in taxes assessed by the Fremont County Assessor for any reduction demonstrated by the Fremont County Assessor to be a direct result of the property acquisition by CSU for the pipeline project.
- EE. Applicant shall establish goals and use its best efforts for the use of Fremont County contractors, businesses and laborers. CSU shall also purchase materials, supplies, or other goods and services from Fremont County businesses, to the extent feasible.
- FF. Applicant shall design the area or lands surrounding the "blow-off" valves and any other SDS feature that could potentially discharge water, in such a manner as to limit the rate of flow of all pipeline-discharged water in to existing drainages and at rates of flow that do not exceed a two year storm event for the drainage. Applicant shall also prevent drainage on to roadways.
- GG. The County shall retain the right to modify any condition of the permit, if the actual use demonstrates that a condition of the permit is inadequate to serve the intended purpose of the condition. Such modification shall not be imposed without notice and a public hearing being provided to the Applicant at which time applicant and members of the public may appear and provide input concerning the proposed modifications to the conditions of the permit.
- HH. Only the named party on the permit shall be allowed to operate this Special Review Use Permit. Board approval shall be required prior to allowing any other person or entity to operate at the site under the conditions of this permit. All persons, entities or others requesting Board approval to operate under this Special Review Use Permit must agree to abide by all terms and conditions of this Special Review Use Permit

- and shall be required to be named on this Special Review Use Permit as additional parties who are bound by the terms and conditions of this Special Review Use Permit.
- II. An application and approval of a Special Review Use Permit will be required for the "stand alone" 115kV electrical substation, located westerly of the intersection of Colorado State Highways 115 & 120, prior to operation and contingent upon approval of this application.
- JJ. Fremont County officials shall have the right to perform random inspections and/or observations of the construction as it progresses to ensure compliance with all applicable permits and requirements.
- KK. Applicant shall consult and coordinate with Fremont County regarding the location and manner of final disposition of soil material removed from the pipeline corridor in Fremont County during construction, which is deemed by Applicant to be unsuitable for further use in the SDS construction project. Fremont County may direct that the soil be deposited for stock-piling at designated locations in reasonable proximity to the pipeline corridor so that it may be used for future public works projects in Eastern Fremont County. The applicant will cooperate with NRCS' proposed construction of storm detention ponds north of Highway 50 to protect the Penrose area from flooding. If suitable excess soils excavated from the pipeline corridor are available the applicant will assist in delivery of those materials to the stormwater dam construction sites. The applicant will be consulted during engineering/design of the dams to assure that ponding water does not negatively impact their pipeline or power line utility easement.
- LL. In the event that Applicant and Penrose Water District are unable to reach agreement as partners in the SDS project, Applicant shall use its best efforts to acquire sufficient rights-of-way, or to construct the SDS Project pipeline within its rights-of-way in such a way that would allow Penrose Water District to construct its facilities adjacent to the portion of the SDS Project located in Fremont County. To permit that to occur, Applicant shall cooperate with the Penrose Water District in its effort to obtain rights to construct and maintain its facilities adjacent to and, to the extent physically practical or when not precluded by physical properties or attributes of the site, within Applicant's SDS Project easement, rights-of-way and properties for the construction of the project contemplated in the District's preliminary plan, contingent upon the District obtaining all necessary approvals and, with the respect to Applicant-owned properties, payment of fair market value for the use granted.
3. Approval of this SRU permit is made contingent upon the following items being provided to the Department, by the applicant, within twelve (12) months (*no extensions except*

through regulatory process) after approval of the application by the Board of County Commissioners:

- A. Proof of ownership for all parcels and/or documentation as to right of use of the property for all parcels or easements. *A subdivision or similar process in accordance with the Fremont County Subdivision Regulations may be required for the creation of the final SRUP parcel(s).*
- B. All final site plan drawings shall note the setbacks, distances between, and other dimensions for all structures on each parcel.
- C. Submission and approval of any required zone changes shall be in accordance with the FCZR to assure compliance with minimum lot size requirements, allowed uses of property, and other zoning requirements.
- D. Applicant shall negotiate in good faith with both Beaver Park and Penrose Water on the terms of memoranda of understanding ("MOUs") addressing the concerns of those two entities related to interference with their respective water systems, their continued ability to provide water service to their customers, project design to insure compatibility with future modifications to their systems, the potential for future increase in cost due to the existence of the SDS Project, and the potential for one or both of those entities to participate in the SDS Project in lieu of constructing similar types of parallel infrastructure. The terms of the respective MOUs will be the subject of negotiations between Applicant and Beaver Park and Penrose, respectively, and must be pursued in good faith before the commencement of construction on the SDS Project in Fremont County. The Board of County Commissioners encourages cooperation and the avoidance of duplicate infrastructure. As part of any partnerships or MOUs between the parties, the applicant agrees to address the issue of other easements that exist within its easement to assure mutual protection of all pipelines, ditches or canals that cross those easements. The Applicant, Penrose Water District, and Beaver Park Water will negotiate towards the goal of assuring residents of Penrose that there will be no interruption to domestic and agricultural water supplies unless mutually agreed upon by the parties involved. The County requires compliance with any MOUs if developed. As part of these negotiations, Applicant agrees to the following schedule:
 - (1) Beaver Park Water and Penrose Water District shall provide information to Applicant regarding their water capacity needs and point of delivery by March 17, 2009.

- (2) Applicant shall provide cost estimate options for participation by Beaver Park Water and Penrose Water District in the SDS pipeline project by March 31, 2009.
 - (3) After receiving the cost estimate information, the parties are encouraged to continue negotiations toward a final MOU or MOUs. If the parties are unable to reach agreement by April 21, 2009, then the primary decision makers for the parties shall meet to resolve the issues.
 - (4) If the parties are unable to reach agreement on final MOUs by May 5, 2009, then the parties will participate in a formal mediation process, the cost for which will be paid in full by Applicant.
 - (5) Applicant shall report to the Board of Commissioners regarding the status of the negotiations no later than June 2, 2009. If it appears that all attempts at negotiations have failed despite the Applicant's good faith efforts under the schedule outlined above, this contingency shall be deemed to be fulfilled and completed and Applicant may proceed with the project, subject to all remaining conditions and contingencies of this Permit.
 - (6) By mutual agreement among Applicant, Penrose Water District and Beaver Park Water, the dates and deadlines set forth herein may be modified to accommodate ongoing negotiations. All three participants must agree to any such modification or change.
- E. Applicant shall ensure that any crossing or placement within a County right-of-way that the pipeline will be at a sufficient depth in accordance with Fremont County regulations and any pertinent codes, to allow the co-existence of other utilities without added expense or hardship to other entities with a right to use County rights-of-way.
- F. Applicant shall obtain written assurance from CDOT that the SDS Project ROW will not impede CDOT's ability to widen Highway 115.
- G. Applicant shall provide adequate storm water design and construction plans for each pump station prior to the issuance of a building permit.
- H. Applicant shall install, at applicant's expense, a USGS-compatible river monitoring gauge at a location acceptable to the Colorado Division of Water Resources immediately below the CSU intake structure and above the Fremont Sanitation District discharge point to become part of the river monitoring system.

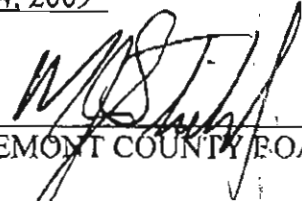
- I. CSU shall require their subcontractors and contractors to post performance and payment bonds to secure adequate and complete contract performance of any portion of the project for which a bid is awarded or accepted.

Mr. Commissioner Lasha seconded the adoption of the foregoing Resolution and upon a vote of the Board as follows:

Mr. Commissioner Stiehl: Aye / Nay / Abstain / Absent
 Mr. Commissioner Norden: Aye / Nay / Abstain / Absent
 Mr. Commissioner Lasha: Aye / Nay / Abstain / Absent

The Resolution was declared to be duly adopted.

DATE: March 24, 2009



 CHAIRMAN, FREMONT COUNTY BOARD OF COUNTY COMMISSIONERS

ATTEST:



 FREMONT COUNTY CLERK AND RECORDER