



# PUEBLO COUNTY

C O L O R A D O

Planning and Development Department

August 23, 2022

Mr. James C. McGrady, District Manager  
Triview Metropolitan District  
16055 Old Forest Point STE 302  
Monument, Colorado 80132

Re: PUEBLO BOARD OF COUNTY COMMISSIONERS  
House Bill No. 1041 2022-002 Triview Metropolitan District

Gentlemen:

Please be advised that the Pueblo Board of County Commissioners, at its public hearing held on August 23, 2022, voted to approve House Bill No. 1041 2022-002 (see attached BOCC Resolution No. P&D 22-030).

If you should have any questions, please do not hesitate to contact me via phone at (719) 583-6100 or email at [howardca@pueblocounty.us](mailto:howardca@pueblocounty.us).

Sincerely,

Carmen Howard, Director  
[howardca@pueblocounty.us](mailto:howardca@pueblocounty.us)

LRS

c: Caitlin S. Quander, Brownstein Hyatt Farber Schreck, LLP, Representative  
Cynthia Mitchell, County Attorney  
Marci Day, Assistant County Attorney  
Gary Raso, Special Counsel  
Thomas Korver, Special Counsel

\*sent via e-mail only

Attachment: BOCC Resolution No. P&D 22-030

**RESOLUTION NO. P&D22-030**

**THE BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY COLORADO**

**A RESOLUTION APPROVING 1041 PERMIT NO. 2022-002  
WITH TERMS AND CONDITIONS FOR USE OF A MUNICIPAL WATER  
PROJECT BY THE TRIVIEW METROPOLITAN DISTRICT  
WITHIN PUEBLO COUNTY, COLORADO**

WHEREAS, the Board of County Commissioners has held public hearings on the Permit referenced above and having considered the testimony and the documentary evidence submitted does hereby find and conclude as is hereinafter set forth:

1. The Pueblo County Board of County Commissioners has adopted regulations for areas and activities of State and local interest pursuant to §§ 24-65.1-101, et seq., C.R.S. (2018) ("HB 1041"), §§ 29-20-101, et seq., C.R.S. (2018) ("HB 1034"), and other applicable land use and regulatory powers of Pueblo County. These regulations, entitled "Pueblo County Regulations for Area and Activities of State and Local Interest", are set forth in Title 17, Land Use, Division II. of the Pueblo County Code ("Areas and Activities Regulations"). Chapter 17.148 contains the general administrative provisions applicable to all designated areas and activities regulated in the County, and subsequent chapters address each specific area or activity which has been designated by the County for regulation.

2. Chapter 17.172, "Regulations for Efficient Utilization of Municipal and Industrial Water Projects", contains procedures and criteria for development of municipal and industrial water projects.

3. On April 21, 2009, Pueblo County granted Pueblo County 1041 Permit No. 2008-002 ("SDS 1041 Permit") for the water project known as the Southern Delivery System ("SDS" or the "SDS Project"). SDS is a storage and pipeline delivery system intended to bring water from Pueblo Reservoir to the four Participants in the SDS Project, including the City of Colorado Springs, the City of Fountain, the Security Water District, and Pueblo West Metropolitan District. Colorado Springs Utilities ("Utilities"), an enterprise owned and operated by the City of Colorado Springs, is the SDS Project manager for the construction and operation of SDS. The SDS 1041 Permit contains commitments, terms, and conditions for its issuance and for the construction, operation, maintenance, and environmental mitigation of SDS "for the life of the SDS Project."

4. SDS includes the following features in Pueblo County, which features are described with particularity in Finding No. 7 of the SDS 1041 Permit incorporated by reference herein: (a) Long-Term Storage in Pueblo Reservoir; (b) Modification of the Pueblo Reservoir Outlet Works for Pipeline Intake; (c) Pueblo West Turnout; (d) Juniper Pump Station; and (e) a 66-inch diameter raw water pipeline with a maximum capacity of 78 million gallons per day from the Juniper Pump Station extending approximately 20 miles to the El Paso County line (the "SDS

## **RESOLUTION NO. P&D 22-030 (CONT.)**

Pipeline”). Finding No. 7 also describes features of SDS in El Paso County and certain other SDS Project activities and details.

5. An Application dated February 7, 2022 has been submitted to Pueblo County by the Triview Metropolitan District (the “Triview District” or “Applicant”) for approval of a permit to conduct certain activities under Chapters 17.164 and 17.172, Pueblo County Code within Pueblo County. The Triview District is located north of the City of Colorado Springs and is bisected by Interstate I-25. The Triview District is within the Upper Monument Creek watershed, a tributary of Fountain Creek that flows downstream through Pueblo County to its confluence with the Arkansas River. The Triview District provides water, wastewater, and stormwater services to a 2,590-acre service area within the Town of Monument, Colorado. The primary land use within the Triview District is residential. The Triview District currently serves 1,528 single-family residential homes and 267 multi-family residential units, as well as 70 commercial accounts and 44 irrigation accounts. At full build-out, the Triview District is expected to have approximately 3,032 single-family homes and approximately 756 multi-family, rental, townhome and condominium units. Applicant’s current water supply relies in large part on deep wells that pump nontributary groundwater from the Denver Basin aquifer.

6. “Applicant’s Project”, as proposed and as is more particularly set forth in the Application for this Permit, is to serve existing development by replacing non-tributary well water with imported renewable surface water. Under the first phase of Applicant’s Project, which is the subject of the present Application, water will be delivered directly to the Triview District through the Southern Delivery System (“SDS”) Pipeline located in Pueblo County. Specifically, Applicant will store water in Pueblo Reservoir (up to 999 acre-feet (“AF”) of water when excess storage space is available to Triview) via a long-term storage contract with the Bureau of Reclamation (“BOR”), Contract No. 229E650017. Water available under the BOR contract will be discharged by the Pueblo Dam North Outlet Works, and delivered through the SDS Project to the Triview District via a contract with the City of Colorado Springs. Under the second phase of Applicant’s Project, which will be the subject of a subsequent 1041 application, water will be delivered to Pueblo Reservoir by appropriative rights of exchange on both the mainstem of the Arkansas River and on Fountain Creek. The second phase of Applicant’s Project may also involve storage of water in Pueblo Reservoir and delivery through the Pueblo Reservoir North Outlet Works and the SDS Pipeline.

7. On April 22, 2022, the Pueblo County Planning and Development Director mailed a letter to various public agencies and other interested entities requesting comments on the Application.

8. A May 25, 2022 comment letter was received from the City of Pueblo requesting that conditions protecting the Arkansas River Flow Management Program and the City of Pueblo’s Recreational In-Channel Diversion (“RICD”) water rights. Terms and conditions recommended to be included in Permit No. 2022-002 in response to the City of Pueblo comments are described in “Support of Pueblo Flow Management Program”, “Implementation of Arkansas River Low Flow Program”, and “Pueblo Recreational In-Channel Diversion” below. Additional

## RESOLUTION NO. P&D 22-030 (CONT.)

letters were received from the Pueblo West Metropolitan District which had no comment, and from the Colorado Geological Survey which did not object to the approval of the Application.

9. On July 7, 2022, the Pueblo County Planning and Development Director determined that the Application was complete.

10. On July 31, 2022, the Pueblo Board of County Commissioners published notice under §17.148.260, Pueblo County Code, that it would hold a public hearing beginning on August 23, 2022, at 9:00 a.m., in the Commissioners' Chambers of the Pueblo County Courthouse, 215 West 10<sup>th</sup> Street, Pueblo, Colorado, to review and consider action regarding the Application.

11. On August 17, 2022, the Pueblo County staff issued its written recommendations on the Application.

12. A hearing was held on August 23, 2022, at which time Applicant and County staff made their presentations. The Pueblo County staff recommended terms and conditions if a permit were to be approved by the Board.

13. The Applicant submitted numerous documents in support of its Application. Applicant incorporated and relied upon analyses included in an Environmental Assessment prepared by the Bureau of Reclamation under the National Environmental Policy Act ("NEPA"). Specifically, Applicant provided (a) Environmental Assessment No. EC-2021-070, dated October 2021, and entitled "Triview Metropolitan District Long-Term Excess Capacity Contract, Fryingpan - Arkansas Project," which Environmental Assessment contained environmental commitments and mitigation measures for Applicant's Project, and the conditions of any excess capacity storage and conveyance contract between Applicant and the Bureau of Reclamation involving Pueblo Reservoir or SDS. On December 29, 2021, Applicant entered into Contract No. 229E650017 with the Bureau of Reclamation "For the Use of Excess Capacity in the Facilities of the Fryingpan-Arkansas Project", which contract also contained environmental commitments and mitigation measures to be undertaken by the Applicant. The Environmental Assessment and other documents submitted by Applicant and considered by Pueblo County are made a part of the record of these proceedings.

14. Pueblo County engaged Wright Water Engineers ("WWE") to study the effect of the Triview District and Applicant's Project on the Fountain Creek watershed. WWE had previously studied the effect of a similar project by the Donala Water and Sanitation District, also located in the Fountain Creek watershed north of Colorado Springs and immediately south of the Triview District. WWE prepared a report entitled "Donala's Impact on Fountain Creek" dated April 2018. In the report on Donala, WWE concluded that changes to Fountain Creek associated with either existing or future development at the Donala District are significant compared to the undeveloped natural conditions, and the changes are directly attributed to water imported to the site, whether from the non-renewable wells or from renewable water transported to the District via the SDS, and to increased stormwater runoff from impervious surfaces. WWE also

## RESOLUTION NO. P&D 22-030 (CONT.)

concluded that the impacts by Donala on Fountain Creek would not occur in the future without importation to the District of a renewable supply of water once the non-renewal groundwater resources are exhausted or otherwise not utilized by Donala. The WWE report served as the basis for staff's conclusion that with appropriate conditions and mitigation measures, the Donala Project met the approval criteria set forth in the County's 1041 Regulations.

15. WWE has performed a preliminary examination of the topography and physical characteristics of the Triview District, and found it to be generally similar to the Donala District. Accordingly, it is determined that, for the present Application, the impacts for the first phase of Applicant's Project will be substantially similar to the impacts from the project undertaken by the Donala District as those impacts were determined by WWE, and the majority of mitigation terms included in Pueblo County 1041 Permit No. 2019-001 issued to the Donala District are appropriate for use in 1041 Permit No. 2022-002 for the Triview District. A supplemental analysis will be appropriate for the second phase of Applicant's Project to recommend any additional mitigation terms applicable to Applicant's Project. The supplemental analysis will also be necessary pursuant to meet the 1041 Regulations requirement that "If a project is to be phased over time or is composed of distinguishable elements, the impacts of all phases or elements of the development must be considered together when reviewing the project hereunder and determining if it satisfies these Regulations." Subsection 17.172.040(O).

16. The Applicant has demonstrated a need for the first phase of Applicant's Project to provide renewable water for municipal uses within the current boundaries of the Triview District at projected build-out.

17. The first phase of Applicant's Project as described in the Application will decrease flows in the Arkansas River between Pueblo Reservoir and the Fountain Creek confluence under some hydrologic conditions. Without mitigation, reduced flows could further impair water quality, endanger aquatic life and the riparian environment, and adversely impact recreation, boating, and angling. Applicant has agreed to comply with the target flows established in the Pueblo Flow Management Program ("PFMP") by ceasing exchanges when exchanges by other participants in the PFMP are required to cease.

18. At some times and under certain hydrologic conditions, the first phase of Applicant's Project will change lake levels and surface acreage in Pueblo Reservoir with potential effects on recreation, boating, and angling.

19. The first phase of Applicant's Project could increase flows and volumes and pollutant loads in Fountain Creek. Without mitigation, increased flows, other water from Applicant's Project and other impacts associated with the Triview District would aggravate problems of erosion, sedimentation, flooding, and water quality degradation.

## RESOLUTION NO. P&D 22-030 (CONT.)

20. With mitigation pursuant to the terms and conditions of this Permit, the Board finds that the benefits of the first phase of Applicant's Project outweigh the losses of resources and environmental and socioeconomic impacts to the County and its residents.

21. Subject to Applicant's compliance with the terms and conditions of the Permit and its satisfaction of its commitments herein described, the first phase of Applicant's Project complies with the criteria set forth in Sections 17.164.030 (A) through (O), and 17.172.130 (B)(1) through (29).

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Pueblo County Commissioners does hereby approve a permit for operation and use of the first phase of Applicant's Project within Pueblo County, Colorado, on the basis and terms of the findings set forth above in this Resolution, and further based upon the Record made In this matter including specifically, but not limited to, the documentary and other evidence submitted by the Applicant and Pueblo County staff and consultants, and Applicant's commitments of record, and subject to the following general terms, conditions and commitments:

**Commitments of Applicant.** The following terms and conditions contain the specific commitments of the Applicant and shall be met as herein described.

**Term of Permit.** This Permit is valid indefinitely for the life of the first phase of Applicant's Project, provided Applicant is in compliance with this Permit.

**Transfer of Permit.** This Permit may be transferred in whole or part to another party only with the written consent of the Board of Pueblo County Commissioners. A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and conditions contained in the Permit.

**Compliance with other Regulatory Requirements.** Applicant shall obtain all local, State and federal permits required for Applicant's Project, and shall comply with all local, State and federal regulatory requirements and permits, any environmental commitments and mitigation measures included in the Bureau of Reclamation October 2021 Environmental Assessment for Applicant's Project, and the conditions of any excess capacity storage and conveyance contract or temporary excess capacity storage contract between Applicant and the Bureau of Reclamation involving Pueblo Reservoir or the SDS Project. This Permit shall not constitute an exemption from Pueblo County zoning, building, health or other applicable regulations and codes (except as provided in Section 17.140.010(F) of the Pueblo County Code regarding special use permits).

**1041 Regulations Incorporated.** This Permit shall be subject to all applicable provisions of the Pueblo County 1041 Regulations, including, without limitation, the provisions set forth in Pueblo County Code Title 17, Chapters 17.148, 17.164, and 17.172.

**Permit Amendment.** Any material change in the portion of Applicant's Project subject to the Application from that approved herein, or with the Applicant's performance of the terms and

## RESOLUTION NO. P&D 22-030 (CONT.)

conditions approved herein, shall require a Permit amendment. For these purposes, a material change shall be any change in the portion of Applicant's Project subject to the Application which significantly changes the nature of impacts addressed by the Permit. The Applicant shall notify Pueblo County of any material change in the portion of Applicant's Project subject to the Application and the County will determine whether an amendment or new permit is required. The Applicant shall also notify Pueblo County if any permits or approvals required for the portion of Applicant's Project subject to the Application result in a material change in the Project or are inconsistent with the terms and conditions of this Permit, and Pueblo County shall determine whether a Permit amendment or a new permit is required.

**Delivery Contracts.** Applicant must obtain the necessary contract(s) and approval(s) from the owner(s) of the SDS pipeline necessary for the delivery of water through the SDS Pipeline for domestic, industrial and/or municipal use by Applicant, which contract(s) and any revisions or amendments thereto shall be provided to Pueblo County, and which contract(s) shall include the following as conditions to be imposed on Applicant as required by Condition No. 5.2 of the SDS 1041 Permit:

- A. A clear acknowledgment of support for the Fountain Creek Watershed Flood Control and Greenway District ("Fountain Creek District"), together with a commitment to participate in the financing of said district;
- B. A clear and irrevocable commitment not to serve property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River;
- C. If Applicant obtains the legal authority to regulate stormwater within its district boundaries, the adoption and maintenance of a financing mechanism similar to the Colorado Springs Stormwater Enterprise capable of financing, constructing and maintaining stormwater detention and retention facilities intended to insure that the storm flows of the Fountain Creek Basin do not increase above existing conditions, along with the adoption and maintenance of regulations and ordinances requiring stormwater detention, retention and management no less strict than those in place in the City of Colorado Springs;
- D. An agreement to accept and comply with the PFMP and the Pueblo Recreational In-channel Diversion Decree both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the river;
- E. Pro rata participation in any water quality monitoring or studies undertaken pursuant to Condition 5.2.E of the SDS Permit; and
- F. Support of any studies of a flood control dam or dams on Fountain Creek.

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 SDS 1041 Permit satisfying any additional terms and conditions which might then be imposed.

**RESOLUTION NO. P&D 22-030 (CONT.)**

**Reservation of Permit Authority.** Applicant 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 Applicant 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 Applicant to assert any defenses to the exercise of the County's authority that may then exist.

**Monetary Mitigation for Fountain Creek Impacts.** Applicant shall undertake the following in order to mitigate the impacts of Applicant's Project to Fountain Creek in Pueblo County:

- A. Applicant shall pay to Pueblo County, two-hundred eighty-five thousand dollars (\$285,000) within thirty (30) days of the effective date of this Permit, which amounts shall be placed in a segregated account maintained by Pueblo County and which amount and any accrued interest thereon shall be used by Pueblo County to assist in funding one or more new projects in the Fountain Creek watershed, which project(s) must 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.
- B. Applicant shall pay eleven thousand five-hundred dollars (\$11,500) to the Fountain Creek District within ninety (90) days of the date of this Permit, and shall make an additional eleven thousand five-hundred dollar (\$11,500) payment to the Fountain Creek District on January 15<sup>th</sup> of each year thereafter, which annual payments shall be increased by three percent (3%) over the previous year payment. Pueblo County acknowledges that Applicant's annual payments to the Fountain Creek District also satisfies Applicant's minimum contractual obligations under Condition No. 5.2(A) of the SDS Permit described above. Applicant's obligation to make annual payments under this paragraph shall cease upon Pueblo County's finding, upon Applicant's request, that a mill levy or other independent funding mechanism has been established for the financing of the Fountain Creek District under which Applicant and/or the citizens within its District are subject to fees or taxes that equal or exceed Applicant's annual payment to the District.
- C. Applicant shall contribute at minimum a *pro rata* 0.3% share to any regional water quality monitoring conducted in the Fountain Creek watershed conducted or financed by either the Fountain Creek District or one of more of the SDS Participants, and shall make such contributions to the entity conducting such regional monitoring.
- D. Applicant shall contribute at minimum a *pro rata* 0.3% share to the cost of any studies of a flood control dam or dams on Fountain Creek conducted or financed by the Fountain Creek District.
- E. The monetary mitigation described in this section compensates Pueblo County for potential impacts to Fountain Creek for use of Triview's 999 acre-foot of storage and deliveries via the SDS Pipeline, as such mitigation is contemplated in Pueblo County Code 17.172.120(H). If Applicant acquires additional water supplies for delivery through the SDS Pipeline, the Applicant shall notify Pueblo County of such acquisition of proposed deliveries, and Pueblo



## **RESOLUTION NO. P&D 22-030 (CONT.)**

County shall determine whether a new permit or amendment of this Permit is required to review the impacts in Pueblo County (e.g. dry-up of irrigated acreage, or location of new facilities).

**Support of Pueblo Flow Management Program.** Applicant shall operate any new or changed water rights, or exchanges of water rights, to be utilized in connection with the portion of Applicant's Project subject to the Application and the facilities which are the subject of the Application, in compliance with the PFMP. Applicant shall cooperate in maintaining the target flows in the Arkansas River through Pueblo below Pueblo Reservoir by foregoing and ceasing exchanges through this applicable stream segment when participants in the PFMP are foregoing and ceasing exchanges, and shall comply with Applicant's commitments specified in paragraph D of "Delivery Contracts" above.

**Implementation of Arkansas River Low Flow Program.** Applicant shall not divert or otherwise exchange against reservoir releases made by the Board of Water Works of Pueblo or Colorado Springs Utilities for the Arkansas River Low Flow Program, as described in the SDS 1041 Permit.

**Pueblo Recreational In-Channel Diversion.** The District will operate any new or changed water rights, or exchanges of water rights, to be utilized in connection with the project and facilities which are the subject of the Application, in compliance with the City of Pueblo's RICD water rights, originally decreed in Water Court Case No. 01CW160, and as if the City of Pueblo's RICD water right is in effect 24 hours per day.

**Lake Level Management at Pueblo Reservoir.** Applicant commits to Pueblo County as a part of the 1041 process that it will voluntarily participate, when and if the Southeastern Colorado Water Conservancy District, the Bureau of Reclamation, and any other affected party agree to participate, in developing a reservoir management plan for Pueblo Reservoir designed to protect reservoir levels and recreational opportunities on Pueblo Reservoir to the extent feasible given the potential for future changes in hydrology and water demands by SDS Project beneficiaries.

**Stormwater Management.** Applicant's April 22, 2020 Amended and Restated Service Plan authorizes the creation of a stormwater enterprise and, thus, Applicant has the legal authority to regulate stormwater and finance a stormwater enterprise within its district boundaries. Within six (6) months after the date the permit is signed by the Board, Applicant shall provide Pueblo County with documentation of the adoption and maintenance of a financing mechanism similar to the Colorado Springs Stormwater Enterprise, as well as proof of the adoption and maintenance of regulations and ordinances requiring stormwater detention, retention and management no less strict than those in place in the City of Colorado Springs.

**Conservation and Reuse.** Applicant shall implement water conservation and reuse within its boundaries to the extent practicable and economically feasible.

**Compliance Monitoring and Reporting.** Applicant shall submit an annual report to Pueblo County summarizing Applicant's activities related to Applicant's Project, the Permit, and addressing compliance with the terms and conditions of the Permit.

**RESOLUTION NO. P&D 22-030 (CONT.)**

**Noncompliance.** Noncompliance with the terms and conditions set forth herein shall be subject to the provisions governing revocation or suspension of a permit set forth in section 17.148.320(A) of the Pueblo County Code.

**Approval by Applicant.** Applicant’s governing board must take formal action to recognize the commitments herein prior to Pueblo County’s final issuance of this Permit.

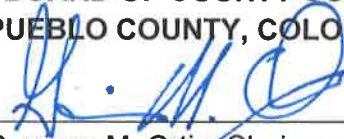
**Disputes.** If any future disagreements arise concerning the interpretation or compliance with the provisions of this Permit, the Applicant and Pueblo County shall be free to pursue all available judicial or other remedies under this Permit or applicable federal, state or local regulations. The venue for any judicial proceedings shall be the District Court of Pueblo County.

**Integrated Terms and Conditions.** In issuing this Permit, the Board of County Commissioners has determined that the benefits accruing to the County and its citizens from the Applicant’s Project (subject to the terms and conditions set forth herein) outweigh the unavoidable impacts and losses of resources within the County. Consequently, if any term or condition herein is deemed invalid and unenforceable, this Permit shall be rescinded or suspended unless the Board of County Commissioners, in its discretion, approves a Permit amendment.

**No Precedent.** The specific terms and conditions of this Permit are unique to the circumstances of the present Application and the Project and, except as specified in **Monetary Mitigation for Fountain Creeks Impacts**, Condition E above with respect to the Triview District, are not binding precedent as to terms and conditions of permits for future applications submitted to Pueblo County pursuant to the County’s then-effective 1041 Regulations.

**PASSED AND ADOPTED** this 23rd day of August, 2022, in Pueblo County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY, COLORADO:**

By:   
Garrison M. Ortiz, Chairman

**ATTEST:**  
By:   
Gilbert Ortiz, County Clerk