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Michael J. Ryan, Regional Director
Great Plains Region
Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107-6900

Re: Colorado Springs' Southern Delivery System – Request to prepare Supplement
Environmental Impact Statement

Dear Mr. Ryan:

In 2008, the Bureau of Reclamation (“Reclamation”) prepared an environmental impact statement for Colorado Springs’ Southern Delivery System (“SDS”), *Southern Delivery System Final Environmental Impact Statement* (“FEIS”), U.S. Department of Interior, Bureau of Reclamation, Great Plains Region, Eastern Colorado Area office (Dec. 2008). Reclamation subsequently issued a record of decision (“ROD”) approving the execution of up-to-40-year contracts for Colorado Springs’ use of the Fryngpan-Arkansas (“Fry Ark”) Project for storage, conveyance, and exchange in conjunction with SDS. *Record of Decision for the Southern Delivery System Final Environmental Impact Statement*, [ROD Ref. No. GP-2009-01], U.S. Department of Interior, Bureau of Reclamation, Great Plains Region, Eastern Colorado Area office (Mar. 2009). Reclamation then entered into a contract for Colorado Springs use of excess capacity in Fry Ark Project facilities to store and exchange SDS Water for Colorado Springs subsequent use. *Contract between the United States of America and the City of Colorado Springs for the use of Excess Capacity in the Facilities of the Fryngpan-Arkansas Project*, Contract No. 11XX6C0002 (2011).

The FEIS assumed as part of the baseline that Colorado Springs had implemented its Stormwater Enterprise, which would generate revenues to maintain and improve the City’s treatment of stormwater throughout the term of the contract. *See, e.g.*, FEIS, at 91, 150, 152, 311, 333, 359, 360, B-271, B-277, B-323, C-80. Specifically, Reclamation described the City of Colorado Springs Stormwater Enterprise as a reasonably foreseeable action. *Id.*, 152. The FEIS also noted that the Stormwater Enterprise had “identified 24 high priority capital projects to be implemented through 2011.” *Id.*, at 152. These projects included steam channel improvements, storm sewer repair, detention ponds, and other projects designed to protect the public from flood damage. *Id.* Reclamation concluded that “[c]ontinued implementation of these actions by the Stormwater Enterprise is anticipated to reduce the water quality and water quantity effects of

historical and future development within the city limits of Colorado Springs on surface waters in the Fountain Creek Basin.” *Id.*, at 153.

The purpose of SDS is “to serve most or all future water needs through 2046 of the City of Colorado Springs.” *Id.*, at 1. The City also has a “need to develop additional water storage, delivery, and treatment capacity to provide system redundancy,” which benefits historical development. *Id.*, at 4. Thus, SDS will serve both historical and future development within the city limits of Colorado Springs. The Stormwater Enterprise is accordingly a significant baseline assumption with regard to the potential environmental impact of SDS because Reclamation concluded it would reduce the water quality and water quantity effects of historical and future development within Colorado Springs in the Fountain Creek Basin.

Colorado Springs City Council, however, repealed the Stormwater Enterprise in 2009 shortly after Reclamation issued the FEIS and the ROD, but more than a year before Reclamation entered into contract negotiations with Colorado Springs for SDS. Repeal of the Stormwater Enterprise prevented completion of the “24 high priority capital projects to be implemented through 2011” identified in the FEIS, at 152. Moreover, repeal of the Stormwater Enterprise reduced revenues available for future stormwater maintenance and improvements to reduce the water quality and water quantity effects of historical and future development within Colorado Springs in the Fountain Creek Basin by approximately \$15 million per year, or over \$570 million over the term of the contract (without growth or inflation). The significance of the repeal and change in baseline conditions is evident in the current \$498 million backlog in stormwater capital improvement projects, including \$86 million in “High Priority” projects. *Stormwater Management in Colorado Springs: 23 July 2012* [PowerPoint presentation to City Council], at 28 (July 23, 2012). *See also Regional Stormwater Management, July 23, 2012, so what can we do about it?* [PowerPoint presentation to City Council], at 16 (July 23, 2012).

Reclamation’s assumption in the FEIS that Colorado Springs Stormwater Enterprise would remain in place for the term of the contract to reduce the water quality and water quantity effects of historical and future development within Colorado Springs in the Fountain Creek Basin has proven to be untrue. Indeed, the City repealed the Stormwater Enterprise more than a year before Reclamation entered into contract negotiations for SDS, and nearly two years before Reclamation entered into a contract for SDS.

Reclamation has a continuing duty to analyze significant changes in conditions that affect the environment and that call into question the original decision. 40 C.F.R. § 1502.9(c)(1)(ii); *see also Piedmont Environmental Council v. U.S. Dept. of Transportation*, 159 F.Supp.2d 260, 264 (W.D. Va. 2001). Courts recognize that this duty applies even after the final decision has been made. *See, e.g., Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 565-66 (9th Cir. 2000); *New Mexico v. BLM*, 565 F.3d 683, 705 n.24 (10th Cir. 2009). Under CEQ regulations, Reclamation must prepare a supplemental environmental impact statement (“SEIS”) whenever “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

The Lower Arkansas Valley Water Conservancy District ("Lower Ark District") encompasses the lower portion of the Fountain Creek Basin, as well as the Arkansas River downstream from the confluence to the Kansas Stateline. Voters established the District pursuant to state law to conserve water resources for their greatest beneficial use. Stormwater and water quality, of course, may adversely affect water resources and the beneficial use of water. The Lower Ark District accordingly requests that Reclamation prepare a SEIS to address the repeal of the Colorado Springs Stormwater Enterprise, which will not reduce the water quality and water quantity effects of historical and future development within Colorado Springs in the Fountain Creek Basin as Reclamation concluded in the FEIS, even though the ROD has issued and construction of SDS has progressed. *See Idaho Sporting Congress*. The City's repeal of the Stormwater Enterprise is a significant change in circumstances, and Reclamation should prepare an SEIS.

Sincerely,



Peter D. Nichols, Special Counsel
Lower Arkansas Valley Water Conservancy District

cc: Anne Castle, Assistant Secretary for Water and Science
Mike Connor, Commissioner of Reclamation
Mike Collins, Eastern Colorado Area Manager