COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

March 26, 2018

Doug Benevento
Regional Administrator for EPA's Mountains & Plains (Region 8)
1595 Wynkoop Street
Denver, Colorado 80203

Susan Bodine, Assistant Administrator
Patrick Traylor, Deputy Assistant Administrator
EPA Office of Enforcement and Compliance Assurance
2201A Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: *United States, et al. v. City of Colorado Springs* (1:16-cv-02745-RPM) (D. Colo)

Dear Doug, Susan, and Patrick:

On behalf of the State of Colorado, the Lower Arkansas Valley Water Conservancy District, and Pueblo County, Colorado, I am writing to underscore to you the importance of our collective case against the City of Colorado Springs, *United States, et al. v. City of Colorado Springs* (1:16-cv-02745-RPM) (D. Colo) and to encourage you to re-commit to working in partnership with the State of Colorado and affected downstream communities on this matter.

By way of background, *United States, et al. v. City of Colorado Springs* is an enforcement case in the federal district court of Colorado against the City of Colorado Springs for violations of the City's municipal separate storm sewer system discharge ("MS4") permit, and thus the Clean Water Act and the Colorado Water Quality Control Act. The State of Colorado is a co-plaintiff with the Environmental Protection Agency (EPA) in this case and, per Section 309(e) of the Clean Water Act, a necessary party. Pueblo County, Colorado and the Lower Arkansas Valley Water Conservancy District are plaintiff-intervenors in this matter and directly affected by the City's violations. Pueblo County has over 150,000 residents and is directly downstream on Fountain Creek from the City of Colorado Springs. The Lower Arkansas Valley Water Conservancy District includes local government representatives and farmers from Pueblo, Otero, Crowley, Bent, and Prowers Counties, each downstream from the City of Colorado Springs.

The litigation of *United States, et al. v. City of Colorado Springs* is of great importance to the State of Colorado, Pueblo County, the Lower Arkansas Valley

Water Conservancy District and the other downstream communities and farmers who have borne the brunt of the City of Colorado Springs' years of noncompliance. The City of Colorado Springs' violations of its MS4 permit, the Clean Water Act, and the Colorado Water Quality Control Act are longstanding, ongoing, and significant. These violations include:

1. Continuing failure to require installation of permanent stormwater controls for several large areas of new development and redevelopment, resulting in significant ongoing untreated runoff. The City's failures to require controls include:
    a. Granting of blanket "waivers" from stormwater controls to large developments of single family homes; and
    b. "Grandfathering" in new developments using more lenient and outdated standards for pollution control requirements.
2. Continued failure to accept responsibility for ensuring the operation and maintenance of all permanent water quality controls required by the City's MS4 Permit, meaning that many have fallen into disrepair and are no longer protecting water quality.
3. Systemic failure to implement required controls to reduce runoff and pollution from new development and redevelopment. Based on a sampling of recently approved site plans, the City is likely failing to meet this requirement for nearly all development projects. This failure is particularly significant because these required practices are often the most effective at reducing overall loads of particularly harmful pollutants like dissolved metals and pathogens (e.g. *E. coli*).
4. Continuing failure to require design, installation, and maintenance of pollution controls at active construction sites. The City is still not conducting inspections correctly or following up to correct deficiencies when identified.

The result of the City's longstanding and continued failures is an ongoing discharge of pollutants into Fountain Creek, Monument Creek, and other waters within the Arkansas River watershed, including extraordinarily high levels of sediment. This stormwater pollution worsens existing *E. coli* problems on Fountain Creek (thus posing a threat to public health), damages the structural integrity of these waterways, and impairs Fountain Creek's ability to sustain aquatic life. The excessive levels of sediment damage downstream infrastructure and communities like Pueblo County, worsen flood damage, and accumulate in farmers' headgates, impairing farmers' ability to irrigate and obtain water to which they are legally entitled under Colorado law.

Remedying this ongoing damage and ending the City's ongoing noncompliance with water quality laws is of paramount importance to the State of Colorado, Pueblo County, and the Lower Arkansas Valley Water Conservancy District. To do this,

the City of Colorado Springs must go back and address the serious and widespread water quality problems created in the past by missing and inadequate post-construction stormwater controls. The City must also correct its continuing program problems, including the construction program's serious flaws.

Over the last two years, the State of Colorado, Pueblo County, and the Lower Arkansas Valley Water Conservancy District have worked alongside the EPA in this enforcement litigation and invested considerable resources, time, and effort in this case. We are full partners in this work and are deeply invested in its success. Unfortunately, we are now seriously concerned about whether the EPA continues to share our commitment to working together to protect Fountain Creek, Monument Creek, public health, aquatic life, and downstream communities by requiring that the City come into compliance with its MS4 permit and remedy the significant environmental damage the City has caused.

The EPA issued guidance for its enforcement program in January 2018 stating that "The U.S. Environmental Protection Agency's FY20 18-2022 Strategic Plan establishes both cooperative federalism (Goal 2) and compliance with the law (Objective 3. 1) as fundamental priorities for the agency. In particular, Objective 2.1 states that the EPA will: Improve environmental protection through shared governance and enhanced collaboration with State, tribal, local, and federal partners using the full range of compliance assurance tools." Susan Parker Bodine, *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (Jan. 22, 2018).[1] But here EPA has chosen to disregard this guidance and ignore its state partner. We encourage the EPA to change course and, once again, respect the importance of this litigation to the State of Colorado, Pueblo County, and the Lower Arkansas Valley Water Conservancy District and work in partnership with us in order to protect and restore Fountain Creek and its tributaries, protect our public health, and benefit our communities.

Sincerely,

Martha Rudolph

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[1] https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf

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