

Water Resources Engineering Division

EPA and State Enforcement Action Against Colorado Springs

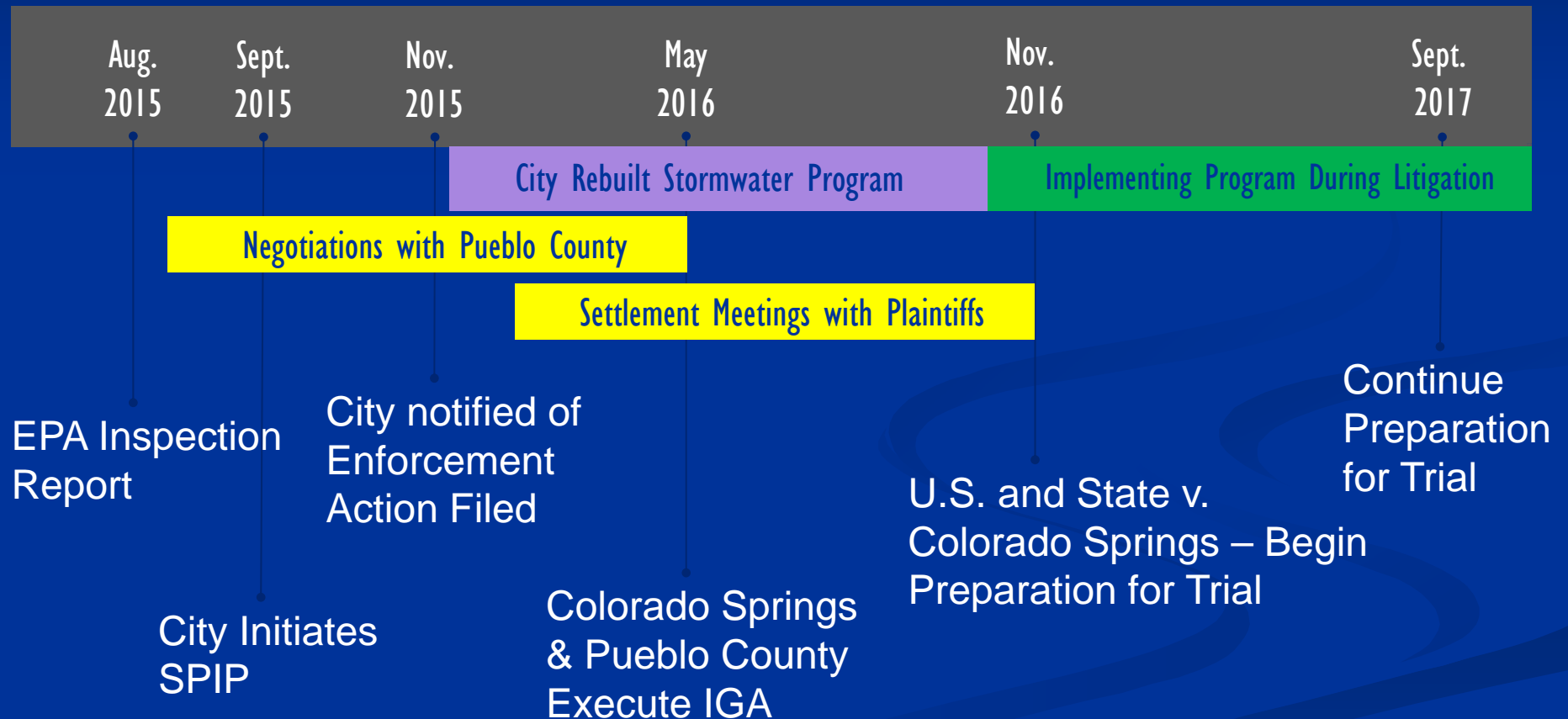
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Introduction

- Who are we?
- What is happening in the City of Colorado Springs?
- What are we going to talk to you about today?

Timeline



Plaintiffs

- United States (EPA) (Represented by the U.S. Department of Justice)
- State of Colorado (CDPHE) (Represented by the Colorado Attorney General's Office)
- Pueblo County
- The Lower Arkansas Valley Water Conservancy District (LAVWCD)
 - Pueblo, Otero, Crowley, Bent and Prowers Counties

Plaintiffs' Claims in Amended Complaint

- Financing and staffing of the City's MS4 Program
- Prudent line method on Cottonwood Creek
- Water quality control structures in State waters
- Residential waivers (no water quality BMP required for certain residential developments)
- Inadequate design, approval, and installation of private, post-development BMPs (Ensure Program)

Plaintiffs' Claims (continued)

- City oversight and maintenance of public BMPs
- Construction Program related claims (plan review and approval, inspections, and enforcement)

The Process

- Many settlement meetings — this was and is a wholly confidential process
 - Presentations and discussions with large teams of internal staff, experts and counsel
 - Very large expenditures of time and resources (internal and external) by all parties
 - Drain on time of management and elected officials
 - Good faith shown by all — but no agreement
- Formal responses to federal Section 308 and State statutory demands for information
 - Responses are mandatory, not voluntary
 - Pages of subdivided questions, demands for documents, and requests for clarification
 - Significant research; interviews with staff members; hundreds of documents gathered and submitted
 - Drafting responses is a highly intensive staff effort with internal and external legal team

The Process (continued)

- Defense of the case — major efforts required for the preparation of documents, exhibits, presentations, completing research, etc.
 - Outside scientific and technical experts and engineering consulting firms
 - Several millions of dollars invested already
- Observations and lessons — so far
 - Lost capacity for day-to-day operations of stormwater activities
 - Constant distractions in currently program/permit activities
 - Difficult to agree on program components (in the litigation)
 - Difficult to agree on dates related to program components (in the litigation)
 - Difficult to agree on potential remedy components and requirements; difficult to attach costs (in the litigation)
 - Very, very, very expensive for outside assistance – and still counting (legal team, experts, engineering consultants)

Program Improvements Are Key to the City

- Assured program funding through the City of Colorado Springs/Pueblo County IGA
- Spending assurance includes: MS4 permit program; Capital Projects, and Drainage Operations and Maintenance.
 - \$460 million over 20 year – legal commitment
 - 69 specific capital projects
 - 2 categorical projects (Represents several hundred projects)
 - \$16.5 million/year minimum annual expenditure
 - Average of approximately \$23 million/year over 20 year period

Program Improvements Are Key to the City (continued)

- Current staff of 66 FTEs
 - 25 full time positions within:
 - Water Quality Program (MS4 Compliance)
 - Stormwater Projects Program (capital projects team and stormwater projects delivery team)
 - Development and Erosion Control/Development Review Program
 - 41 full time positions within Drainage Operations & Maintenance Team

Where we are today

- Litigation is ongoing
- Formal, major enforcement lawsuit in federal district court in Denver
- Senior District Judge Richard P. Matsch
- Again, this case is about an enforcement action – did the City violate its MS4 permit?
- To be tried in segments – the first three sites likely will be tried in early to mid-2018

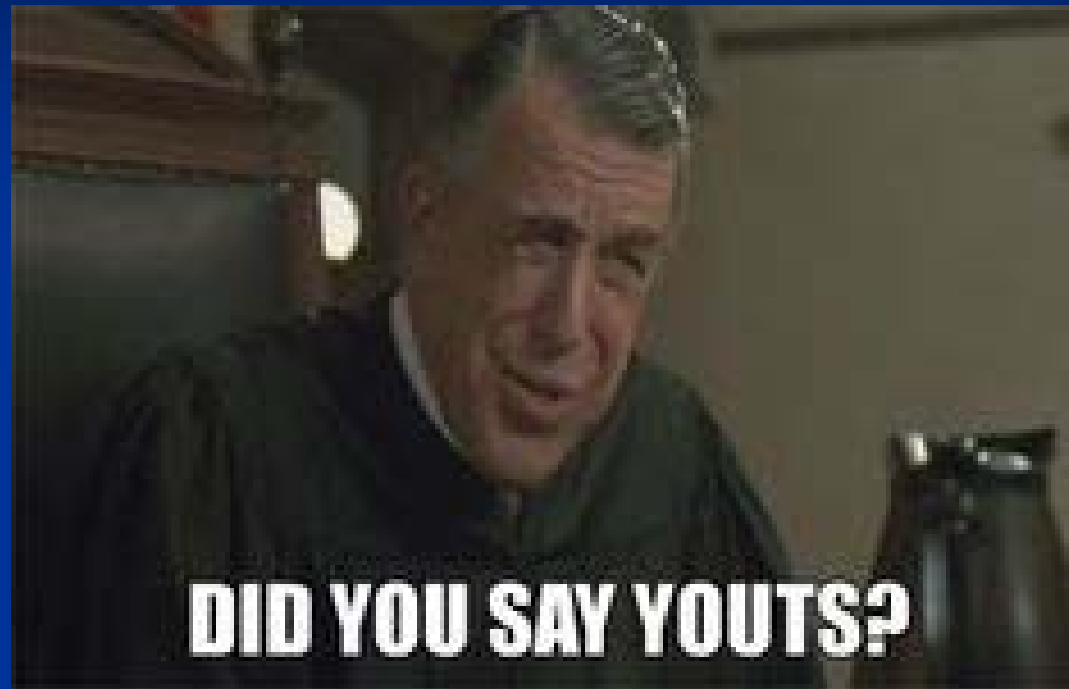
Where we are today

- In the litigation
 - The activities of current and past staff are a main focus — their work product is a second important focus
 - Millions of pages of documents to handle (hard copy and digital); electronic copies collected from network drives by outside electronic discovery company (highly expensive)
 - Hundreds of boxes of files
 - 1.4 Million Documents, several terabytes of information
 - Resulting in 24,000 discoverable documents
 - Large amounts of staff time and effort to collect data, contact employees, etc.
 - Distractions from day to day program efforts
 - This is only the beginning

Where we are today

- Current Program communication with the State is difficult
 - No direct contact; no informal discussions; all MS4 permit program communications through legal teams only
 - Creates difficulties for running the current program and creates gaps in resources
 - Increased State site inspections

Thank You



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