

ORDINANCE NO. 2008-4
(Series of 2008)

AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF RICO, COLORADO, ESTABLISHING A WATERSHED PROTECTION DISTRICT AND REGULATIONS WITH REGARD THERETO.

WHEREAS, the Board of Trustees finds that new land use development and expansion of existing development occurring either on or below the land surface within the watershed from which the Town derives its municipal water supplies may threaten the integrity and safety of the sources, quality, quantity, delivery and treatment of the Town's waterworks and water supply; and

WHEREAS, Section 31-15-707(1)(b), C.R.S., authorizes municipalities to extend their municipal power jurisdiction beyond their territorial boundaries, up to 5 miles above the point from which water is taken to maintain and protect municipal waterworks and sources of water supply from injury and pollution; and

WHEREAS, it is the intent of the Board of Trustees to utilize, extend and enforce the Town's jurisdiction and legal authority to the maximum extent allowed by law in order to maintain and protect the integrity, quality and safety of the Town's municipal waterworks and water supply;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO, that the following ordinance be adopted:

WATERSHED PROTECTION DISTRICT

Sec. 1. Purpose.

There is established by the Town a Watershed Protection District ("District"). The District is that area in which the Town shall exercise its powers to maintain and protect the Town's waterworks and water supply from injury and the Town's water supply from pollution or from activities that may create a hazard to health or water quality. This District is created under the authority granted in Section 31-15-707(1)(b), C.R.S., and Article XX of the State Constitution. The Town's authority shall be for the purpose of restricting any activity within the District that creates a reasonably foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply and/or the lands from, under, across or through which the water flows or is gathered. The District and these regulations are created only for the purpose of protecting the Town's waterworks and water supply to the fullest extent allowed by law.

Sec. 2. Implementation.

The Town shall implement and enforce these regulations for the purpose of reviewing and permitting any activity within the District which creates a foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply. This Ordinance is not intended, nor shall it be implemented, to establish reclamation or performance standards that conflict with those established by applicable federal, state or County law, including but not limited to the Colorado Mined Land Reclamation Act, the Oil and Gas Conservation Act, the Colorado Water Quality Control Act and the Clean Water Act, or by regulation of any duly authorized agency, including but not limited to the Mined Land Reclamation Board, pursuant to applicable law.

Sec. 3. Jurisdiction and map.

The jurisdiction of the District shall extend over the territory occupied by the Town waterworks and all ditches, reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over all water sources, including groundwater, and surface and subsurface drainage areas tributary thereto, for 5 miles above each point from which water is diverted for use by the Town. The District Map, with all notations, references and other information shown thereon, is incorporated herein as part of this Ordinance and is controlling as to the boundaries of the District. Amendments to the District Map shall be made pursuant to Section 19 of this Ordinance. The official District Map is located and can be reviewed in the office of the Town Clerk. Copies are available on request at a cost deemed necessary and reasonable by the Town Clerk.

Sec. 4. Applicability.

These regulations shall apply to any activity entirely or partially on or under public and private land within the Watershed Protection District.

Sec. 5. Definitions.

Whenever the following words or phrases are used in this Ordinance, they shall have the following meaning:

Activity means any excavating, filling, grading, surfacing, handling or use of liquid or solid materials, construction, alteration of vegetation or structures, or other activity that changes the basic character or increases the density of use of land or water.

Best management practices ("BMPs") means the most effective means, taking into consideration a cost-benefit analysis, of preventing, reducing or mitigating harmful effects of certain

activities to a level compatible with Town standards, and designed to prevent or reduce potential or actual injury to the Town's waterworks or pollution of the Town's water supply.

County means Dolores County.

District means the Watershed Protection District established by this Ordinance.

Excavate or *excavating* means the artificial movement of earth leaving any cut bank over 3 feet in vertical height or a movement of material in excess of 50 cubic yards.

Fill or *filling* means the artificial movement of earth leaving a fill earth bank over 2 feet in vertical height or filled earth over 2 feet deep, or artificial addition of earth above a line sloping up at a grade of 1 vertical foot to 5 horizontal feet from the ground.

Foreseeable risk means the reasonable anticipation that harm or injury may result from an act or omission.

Grade or *grading* means the artificial movement of over 50 cubic yards of materials; movement of any earth or material that changes the natural flow of water, or affects or creates a drainage channel; development or improvement of roads by the artificial movement of soils, trees or shrubbery creating a roadway or driveway in excess of one hundred 150 feet in length; or the use of vehicles or keeping any animals upon any land that would lead to a movement of 100 cubic yards of materials within one year of the commencement of such use or which use, if continued, would result in the movement of any earth or material affecting or creating a drainage channel.

Person shall include corporate entities, associations recognized under state law and government entities, including the Town of Rico.

Pollution means man-made, man-induced or artificial alteration of the physical, chemical, biological and/or radiological integrity of water.

Remove vegetation means to artificially cut, chemically kill or in any other manner remove any tree greater than 15 feet in height, any shrubs or trees covering an area of more than 100 square feet, or any grasses covering an area of more than 1,000 square feet.

Subsurface or *below the surface* means the soil, overburden, bedrock and other geologic formations that lie beneath the surface of the District delineated on the District map.

Surface or *surfacing* means any action resulting in the hardening or covering of the preexisting ground in an area greater than 100 square feet such that rain, snow or other water falling in or on the area will accumulate or run off the surface to a greater extent than prior to the hardening

or covering of the preexisting ground. *Surfacing* includes, but is not limited to, such things as compacting the surface of the earth, placing asphalt, gravel, clay, concrete or like substances on the surface of the earth, or placing of structures upon the ground.

Waterworks means any and all man-made or designed components of the Town's water system, including but not limited to all transmission, storage, treatment and filtration facilities; and all wells, springs, reservoirs, streams, ditches, pipes, drains and diversion structures used in and necessary for the construction, maintenance, operation and repair of the Town's water system, including all lands occupied by such components.

Sec. 6. Prohibited activities.

(a) It shall be unlawful for any person to discharge, cast, place, dump or deposit in any part of the Town waterworks any substance or material which may injure or obstruct the same or tend to contaminate or pollute the water or to obstruct the flow of water through the Town's water facilities.

(b) It shall be unlawful for any person to cause injury or damage to the Town's waterworks, including construction within the Town's waterworks not specifically authorized by the Town.

(c) It shall be unlawful for any person to divert water from any part of the Town's waterworks, except as specifically authorized by the Town.

(d) It shall be unlawful for any person to perform maintenance of vehicles or mobile machinery within 100 feet of any part of any source of water to the Town's waterworks and any diversion point, well, manhole or any other opening to or open portion of the Town's waterworks, except in emergency situations where the vehicle or machinery cannot be safely towed or moved away from the water source or Town's waterworks.

(e) It shall be unlawful for any person to engage in any activity within the District that poses a reasonably foreseeable risk of material injury to the Town's waterworks or pollution of the Town's water supply unless such activity is (1) exempted under Section 8 or (2) allowed under a District permit issued pursuant to this Ordinance.

Sec. 7. Activities described.

(a) The Board of Trustees hereby finds that the following activities may pose a reasonably foreseeable risk of material injury to the waterworks or pollution of the Town's water supply, within the meaning of Section 6(e) and thereby require the submittal of a permit application to the Town to be considered pursuant to the requirements of this Ordinance:

- (1) Construction, installation, expansion or removal of an individual sewage disposal system, as defined in Section 25-10-103(10), C.R.S., or of a sewage treatment works, as defined in Section 25-10-103(20), C.R.S.
- (2) Excavation, grading, filling or surfacing, except non-commercial gardening or landscaping around an individual household.
- (3) Removal of vegetation, excluding non-commercial noxious weed control on areas of less than 2 acres.
- (4) Timber harvesting, excluding the removal of dead or diseased trees for firewood or for non-commercial domestic purposes.
- (5) Drilling operations.
- (6) Surface and subsurface mining operations.
- (7) Spraying or using fertilizers, herbicides or pesticides, excluding non-commercial applications for domestic household or gardening purposes.
- (8) Using, handling, storing or transmitting toxic or hazardous substances in excess of a Reportable Quantity as defined in 40 C.F.R. 302.4, 302.5, including but not limited to radioactive materials.
- (9) Using, handling, storing or transporting flammable or explosive materials, except for non-commercial domestic purposes as permitted by law or within vehicular fuel storage tanks.
- (10) Storage of pesticides, fertilizers, petroleum products, hazardous substances, hazardous wastes, toxic substances, sand and salt for road de-icing or other substances with the potential to degrade water quality within 500 horizontal feet of any part of the Town's waterworks, excluding the use and storage in consumable quantities of everyday consumer products in the ordinary course of consumer conduct; provided that such products are consumed, stored and disposed of in accordance with all manufacturers' use, storage and disposal guidelines and in accordance with all applicable County, state and federal laws.
- (11) Land application of primary, secondary, treated or untreated sewage, sewage sludge, biosolids, septage, mixed liquor, screenings, grit or any byproduct of sewage or sludge.

(12) Increasing or decreasing any rate of stream flow or natural or existing drainage pattern or course, except in the lawful exercise of decreed, absolute water rights; increasing sediment deposition in any stream; causing or increasing erosion on any slope or stream bank; or disturbing any wetland within the District.

(13) Dewatering as part of construction, mining, or other surface or subsurface activities.

(14) Underground injection of water or any pollutant.

(b) In the event that any activity not listed in Subsection (a) above is being conducted in such a manner that the Board of Trustees finds that there exists a foreseeable risk of material injury to the Town's waterworks or pollution to the Town's water supply, the person responsible for such activity shall be notified by the Town of such finding and the Town may require that the activity cease and desist until a permit is obtained for the activity under the provisions of this Ordinance.

Sec. 8. Exemptions.

(a) The following activities shall be exempt from the requirements to obtain a District permit under this Ordinance:

(1) Activities that are required by federal or state administrative order or court order pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(2) Activities performed as part of a voluntary clean-up plan approved by the Colorado Department of Health and Environment (CDPHE) under Section 25-16-306, C.R.S.

(3) Activities that are required by federal or state administrative order or court order or by a remedial decision, as defined in Section 25-15-101(13.5), C.R.S., for an environmental remediation project, as defined in Section 25-15-101(4.5), C.R.S.

(4) Transportation of materials through the District over federal or state highways as regulated and expressly permitted by federal and state law or regulation.

(5) Road maintenance and improvement by governmental entities.

(b) In order to be eligible for an exemption under this Section 8, the person or entity undertaking the activity shall provide written notice to the Town Manager of the location of such activity, a description of the activity, a discussion of the potential impacts to the Town's waterworks or water supply resulting from such activity, the time such activity will take place and a copy of the administrative or court order or decision requiring or expressly permitting activities under Subsection (a)(1)-(4) of this Section 8.

Sec. 9. Nonconforming activities.

(a) Any activity requiring a District permit under Sections 6 and 7 of this Ordinance that was legally established prior to the effective date of these regulations, and ordinary repairs and maintenance in the course of that activity, shall be allowed to continue without a permit as a legal Nonconforming Activity in conformance with the requirements of this Section 9 of this Ordinance.

(b) A legal Nonconforming Activity may be modified only in a manner that decreases or does not expand the Nonconforming Activity. Impermissible expansions include but are not limited to:

- (1) Relocation of the activity.
- (2) Increased density of the activity.
- (3) Increased area affected by the activity.
- (4) Increased use of materials otherwise requiring a District permit.
- (5) Any change resulting in a substantial increase in adverse impact to water quality.

(c) In the event that a legal Nonconforming Activity is abandoned or discontinued for a period of one year or more, the activity shall lose its status as a legal Nonconforming Activity and shall not recommence without a District permit in compliance with this Ordinance.

(d) A legal Nonconforming Activity that is damaged or destroyed as a result of any natural hazard or other activity not accomplished by or for the owner may be restored if the following conditions are met:

- (1) All required County, state and federal permits or approvals are acquired.

(2) The Nonconforming Activity is not expanded as a result of the restoration.

(3) The Nonconforming Activity is restored within one year of the date of the damage or destruction. The Board of Trustees may extend this deadline upon a finding that the owner has, in good faith, made diligent efforts to restore the Nonconforming Activity and that compliance with the deadline will result in substantial hardship.

Sec. 10. Application and fees.

An applicant for a District permit shall submit the following to the Town Clerk no later than 120 days prior to commencement of a proposed activity:

(a) A completed application in the form prescribed by the Town. If the applicant is not the owner of the subject property, the owner shall also sign such application form, and the applicant shall set forth its interest in the proposed activity. The application form must be accompanied by the information specified in Subsections (b), (c), (d) and (e).

(b) A complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the applicant with respect to the subject property.

(c) Two sets of plans and specifications which shall contain the following information:

(1) A vicinity sketch or other data including the site location and legal description of the subject property.

(2) Boundary lines of the property for which the permit is sought, if applicable.

(3) Location of any buildings, structures or roads within 50 feet of the proposed activity.

(4) Accurate contours establishing the topography of the existing ground at and around the property for which the permit is sought.

(5) Elevations, dimensions, location, extent and the slopes of all proposed excavating, grading, filling or surfacing shown by contours and/or other means.

(6) Details of all drainage devices in connection with the proposed activity.

(7) A statement of the amount and location of any fill or matter proposed to be deposited in areas other than that shown on the plans.

(8) Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.

(9) A vicinity map, at a scale of not less than 1" = 2,000' depicting the location of streets, highways, watercourses and natural drainage courses of streams within one-half mile of the proposed activity site.

(10) A list of all federal, state or County permits or approval required or obtained for implementation of the development activity, including pending permits or approvals. Copies of any such permits or approvals shall be provided to the Town as they are obtained.

(d) Identification of any activity that may present or create a foreseeable risk of material injury to the Town's waterworks or pollution of the Town's water supply, along with a specific description of the measures, including best management practices, that will be employed by the applicant to mitigate such risks.

(e) Any and all additional information that may be specifically requested by the Town, including, but not limited to, the following:

(1) A map showing the drainage pattern and estimated runoff of the area of the proposed activity.

(2) Revegetation and reclamation plans and specifications.

(3) A soils analysis, including the nature, distribution and strength of existing soils, and recommendations for earth-moving procedures and other design criteria.

(4) A geologic or geo-hazards analysis of the site and adjacent areas.

(5) An operational and maintenance analysis and proposed plan for operation and maintenance of the proposed activity.

(6) Water use analysis for the proposed activity, including source, quality, amount of consumptive use, impact on groundwater and discharge characteristics.

(f) To the extent practicable, the Town intends to avoid duplicative application requirements and processes. The applicant may submit any County, state or federal permit application materials to the Town that will satisfy the District permit application requirements under these regulations.

(g) At the time of filing of the application, the applicant shall submit to the Town a District permit application fee of \$250.00. The application will not be deemed complete until all information required by the Town has been submitted and the \$250.00 permit application fee has been paid to the Town. The Town shall issue a Notice of Completeness to the applicant as soon as the application is deemed complete. However, issuance of a Notice of Completeness shall not preclude the Town from requiring additional information or supplementation of the application in the course of the Town's review of the permit application. The \$250.00 fee shall be considered a minimum fee for each application. To the extent any application results in the Town retaining outside professional services, including but not limited to engineering, legal, consulting, publication and copying services associated with the review of the application, the applicant shall pay all expenses incurred by the Town. At the Town's discretion and to the extent allowed by law, the applicant shall reimburse the Town for its actual costs of substantial commitment of Town staff time in reviewing extraordinary or complex applications. The Town may require a deposit or other security from the applicant prior to initiating review of the application, against which fees and expenses shall be credited. Unless a deposit has been required, all fees and expenses shall be due and payable at a time a statement is presented to the applicant by the Town. The Town may impose interest at a reasonable rate to the extent allowed by law on all balances not paid within 30 days of the date of the statement. No District permit shall be issued until all fees and expenses have been paid.

Sec. 11. Review, analysis and classification.

(a) Within 60 days following issuance of the Notice of Completeness, the Town Manager shall review the application, perform a site inspection if determined necessary and prepare a written analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of injury to the Town's waterworks or pollution to the Town's water supply, and including a discussion of the measures, including best management practices, if any, that are proposed by the applicant to mitigate such risks. The Town Manager may retain the Town's water quality consultant to undertake the review in this Subsection (a).

(b) In undertaking the analysis of any proposed activity, the water quality consultant and/or the Town Manager shall apply the following standards and consider the following factors, as well as any others that may be relevant:

(1) The proposed activity shall not pose a reasonably foreseeable risk of injury to or pollution of the Town's water supply. The following factors will be considered, without limitation, in determining the impact of the proposed activity:

- i. Nature and extent of the proposed activity.
- ii. Proximity of the proposed activity to existing water courses, Town water supplies and Town waterworks.
- iii. Federal and state water quality standards, and the potential impact of the proposed activity and cumulative impact with other activities on compliance with such standards.

(2) The proposed activity shall not be subject to a reasonably foreseeable risk from natural hazards that are reasonably foreseeable to result in the activity materially injuring the Town's waterworks or polluting the Town's water supply, which include but are not limited to:

- i. Faults and fissures.
- ii. Steep and/or potentially unstable slopes, including landslides and rockslides.
- iii. Expansive or evaporative soils and risk of subsidence.
- iv. Wildfire hazard areas.
- v. Floodplains.
- vi. Mudflows.
- vii. Debris fans.
- viii. Avalanche areas.
- ix. Soil criteria and erosion potential.

(3) All non-point sources of pollutants caused by or associated with the proposed activity shall not result in any measurable increase in non-point source pollution loads to the Town's water supply.

(4) The proposed activity shall not materially degrade surface water quality of the Town's water supply. The following factors will be considered, without limitation, in determining the impact of the proposed activity:

- i. Changes to existing surface water quality and composition, including, without limitation, chemical, physical and biological conditions thereof such as patterns of water circulation, temperature, extent and persistence of suspended particulates, changes in clarity, odor, color, or taste of water, changes in concentrations of heavy metals, or changes in the concentrations of nutrients, including phosphorus and nitrates.
- ii. Increase in erosion or sedimentation.
- iii. Changes in concentration of sediment or other pollutants.
- iv. Changes in stream channel or shoreline stability.
- v. Changes in surface runoff flows.
- vi. Changes in trophic status or in eutrophication rates in lakes and reservoirs.
- vii. Changes in the capacity or functioning of waterbodies.
- viii. Changes in flushing flows or the amount of water available to dilute sources of pollutants.
- ix. Changes to groundwater recharge or discharge patterns within the District.
- x. Water quality parameters established by the Colorado Water Quality Control Commission, and how such parameters may be affected by the proposed activity.

(5) The proposed activity shall not materially degrade wetlands and riparian areas where such degradation poses a reasonably foreseeable risk of material injury to the Town's waterworks or pollution of the Town's water supply. The following factors will be considered, without limitation, in determining the impact of the proposed activity:

- i. Proximity of the activity to wetland and riparian areas.

- ii. Changes in the structure and function of wetlands and riparian areas.
- iii. Changes to the filtering and pollutant uptake and storage capacities of wetlands and riparian areas.
- iv. Changes to aerial extent of wetlands and riparian areas.
- v. Changes to characteristics and diversity of wetlands' species.
- vi. Transition from wetland to upland species.
- vii. Changes in function and extent of floodplains.
- viii. Changes to wetlands that are hydrologically connected to wetlands, surface water and groundwater to be affected by the proposed activity.
- ix. Drainage patterns and control measures.

(6) The proposed activity shall not materially degrade groundwater quantity and quality within the District where such degradation poses a reasonably foreseeable risk of material injury to the Town's waterworks or pollution of the Town's water supply. The following factors will be considered, without limitation, in determining the impact of the proposed activity:

- i. Groundwater geology and hydrology, including available data from well logs or other data on the groundwater table and other groundwater aquifer characteristics in the vicinity of the proposed activity.
- ii. The existence of a hydrologic connection between the subsurface activity and the aquifer on which the Town's water supply relies.
- iii. Changes in aquifer discharge and recharge rates, groundwater levels and aquifer capacity, including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

- iv. Changes in capacity and function of wells within the Town's water supply.
- v. Changes in quality and quantity of groundwater within the District.
- vi. Changes in flow patterns of groundwater.

(7) The proposed activity shall not have a material adverse effect on designated flood hazard areas where such effect poses a reasonably foreseeable risk of material injury to the Town's waterworks or pollution of the Town's water supply. The following factors will be considered, without limitation, in determining the impact of the proposed activity:

- i. Creation of obstructions from the proposed activity during times of flooding and vulnerability of the proposed activity to flooding.
- ii. Use of flood protection devices or flood-proofing methods.
- iii. Nature or intensity of the proposed activity.
- iv. Increases in impervious surface area caused by the proposed activity.
- v. Increases in surface runoff flow rate and amount caused by the proposed activity.
- vi. Increases in flood water flow rate and amount caused by the proposed activity.
- vii. Proximity and nature of adjacent or nearby land uses.
- viii. Impacts to downstream properties or communities.
- ix. Impacts on shallow wells, waste disposal sites, water supply systems and sewage disposal or septic systems.

(8) The proposed activity shall not impede flow or create ponding in natural watercourses on which the Town's water supply relies.

(9) The proposed activity shall include reasonable measures to prevent spilled fuels, lubricants or other hazardous materials and release of such materials into the Town's waterworks and water sources, including inventory management or leak detection systems.

(c) In undertaking the analysis of any proposed activity, the Town Manager and/or water consultant may send a copy of the application to and seek comments from any local, state or federal agency that may have expertise or an interest in impacts that may be associated with the proposed activity. Any such comments must be received within the review period of the application.

(d) If, upon receipt of an application and review thereof in accordance with the criteria set forth in Subsection (b) of this Section, the water quality consultant and/or the Town Manager determines that the proposed activity is of a type or location that will have no negative impact on the Town's waterworks or water supply, the Town Manager may classify the application as "No Impact." If such a "No Impact" determination is made, the Town Manager shall report same to the Board of Trustees at its next regular or special meeting with a written report containing specific factual findings regarding each of the applicable factors set forth in Subsection (b) of this Section and describing the basis for the "No Impact" determination. The Board shall either ratify the Town Manager's determination of "No Impact" or set the permit application for hearing in accordance with Section 12. If the Board ratifies the finding of "No Impact," then upon issuance of any required County, state or federal permits, the Town Manager shall immediately issue a District permit for the proposed activity and may incorporate any appropriate terms or conditions from County, state or federal permits in the District permit. If the Board of Trustees sets a permit application for hearing instead of ratifying the Town Manager's determination of "No Impact," the Board of Trustees may, based upon the facts presented at the hearing, grant a District permit for the proposed activity, incorporating any appropriate terms or conditions from County, state or federal permits, or proceed with full review of the application as otherwise provided by this Ordinance.

(e) The following activities shall be presumed to have no impact, which presumption may be rebutted by site-specific information showing that the activity poses a reasonably foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply:

(1) Individual sewage disposal systems for single households that have been approved and constructed in accordance with County and state regulations.

(2) Subsurface activity, including drilling or boring, that occurs at such a depth below the diversion point, surface water source or lowest point of a groundwater well of the Town that the activity, including any impacts on the surface associated with the activity, could have no material impact on the quantity or quality of the Town's water supply.

(f) The Town Manager shall keep a record of District permits issued based on "No Impact" determinations for the purpose of assessing the cumulative impact of "No Impact" activities. The Town Manager or the Board of Trustees may decide that a "No Impact" determination cannot be made for one or more requested permits based upon the cumulative impacts of the proposed activities and activities that were the subject of previous "No Impact" determinations.

(g) If, upon receipt of an application and review thereof in accordance with the criteria set forth in Subsection (b) above, the water quality consultant and/or the Town Manager finds that the proposed activity poses a foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply, the water quality consultant and/or the Town Manager shall recommend that the Board of Trustees deny the permit or issue the permit with conditions to protect the Town's waterworks and water supplies. Such a recommendation shall include specific factual findings to support the recommendation, addressing the applicable standards and factors described in Section 11(b). The Town Manager shall forward the application, analysis, finding and recommendation to the Board of Trustees within 60 days of the Notice of Completeness. The Board of Trustees shall then review the application and recommendation as provided in Section 12 of this Ordinance.

Sec. 12. Hearing.

Upon receipt of an application, analysis and recommendation from the Town Manager, except for a determination of "No Impact" under Section 11(d), the Board of Trustees shall conduct a public hearing to review the application and analysis and shall render a decision regarding the issuance or denial of a District permit to such applicant within 45 days of receipt of the Town Manager's analysis. However, if the activity requires approval or permit(s) from any agency of the County, state or federal government, and the approval timelines for the County, state or federal action exceed that required in this Ordinance, the Board of Trustees shall conduct the public hearing and render a decision within 45 days following the issuance of all County, state and federal permits or approvals. The Board of Trustees may require additional information from any applicant, in which event the public hearing and decision may be delayed or continued until receipt of such additional information.

Sec. 13. Issuance of permit.

(a) A District permit shall be issued when the Board of Trustees finds, after conducting a public hearing, that the applicant has sustained the burden of proof that the proposed activity, including best management practices, if any, does not present or create a foreseeable risk of material injury to the Town's waterworks or pollution to the Town's water supply or any water sources tributary thereto for 5 miles above any point from which water is diverted for use by the

Town. A District permit shall be denied when the Board of Trustees finds that the applicant has not sustained such burden of proof.

(b) The Board of Trustees, in issuing any District permit, may prescribe any conditions it may deem necessary to effect the intent of this Ordinance, including a term for the permit duration. As allowed by law and except where such bond or other security is prohibited by superceding state or federal law, the Board of Trustees may require any applicant to post a surety bond or other security in an amount up to 125% of the estimated amount sufficient to ensure compliance with the District permit, including but not limited to the cost of maintenance, operation, revegetation, reclamation and any other requirements intended to further the intent of this Ordinance. The Board of Trustees may release to the applicant portions of any such bond or security from time to time when no longer necessary to ensure compliance with the District permit. The Board shall set the term of the permit to be at least the length of term of any County, state or federal permit or other authorization necessary to the activity.

(c) If any proposed activity for which a District permit is issued is not commenced within 12 months from the date of issuance of such permit, the permit shall expire and become void, except that the Board of Trustees may extend the permit for an additional 12 months upon a showing of good cause.

(d) When a conflict exists between a District permit requirement and a requirement of a permit issued by another governmental entity, the most stringent requirement shall apply unless otherwise directed by law.

Sec. 14. Notice of hearing.

Notice of any public hearing required hereunder shall be given at least 10 days in advance of the public hearing by posting at the Town Hall and at the Rico Post Office and by notice to the applicant sent by certified mail at least 30 days in advance.

Sec. 15. Right of entry.

Whenever necessary to make an inspection to enforce a provision of this Ordinance or the terms and conditions of any permit, an authorized representative of the Town may enter upon any land at any reasonable time to inspect the same or to perform any duty imposed under this Ordinance, provided that he or she shall identify himself or herself and, if such land is unoccupied, that he or she shall make a reasonable effort to locate the applicant or other person having control of such land to notify him or her of such entry.

Sec. 16. Stop work order.

(a) Whenever any work or activity is being done contrary to the provisions of this Ordinance or in violation of the terms of any District permit issued hereunder, the Town Manager may order the work or activity be stopped by written notice sent by certified mail or personally delivered to the applicant or any person engaged in or causing such activity to be done. The order must describe all violations of this Ordinance or a valid District permit and provide notice of the date of the Board of Trustees' review of the violations pursuant to Subsection (b). Any such person shall cease such activity until authorized by the Board of Trustees to proceed.

(b) Any stop work order issued by the Town Manager under Subsection (a) may be appealed to the Board of Trustees at its next general meeting. If the Board of Trustees finds that the activity was contrary to this Ordinance or in violation of a District permit, the stop work order shall be affirmed and the person engaged in such activity required to conform the activity to this Ordinance and/or any District permit to the Board of Trustees' satisfaction prior to resuming such activity. If the Board of Trustees finds that such activity was not contrary to this Ordinance and/or a District permit, or that appropriate corrective measures have been taken, the stop work order shall be repealed and the activity shall be authorized to proceed.

(c) The Town shall reserve the right to revoke or suspend any permit issued hereunder if work is not done in accordance with the terms and conditions of the permit.

Sec. 17. Other remedies.

In addition to any other remedies provided by this Ordinance, this Code or state or federal law, the Town Attorney, on behalf of the Town, may commence an action in a court of competent jurisdiction for a temporary restraining order or preliminary or permanent injunctive relief restraining any violation of this Ordinance or to enforce a stop work order issued pursuant to Section 16.

Sec. 18. Appeal.

Any person desiring to appeal any decision or determination by the Board of Trustees hereunder must file such appeal with the District Court of Dolores County within 30 days following such decision or determination, pursuant to Colorado Rule of Civil Procedure 106 or as otherwise permitted by law.

Sec. 19. District Map.

The District Map shall be amended in the event that any change in the Town's waterworks or diversion points for its water supply materially alters the geographical extent of the Town's jurisdiction under this Ordinance.

Sec. 20. Violation and penalty.

(a) Violations of this Ordinance shall be punishable by a fine of not less than \$40.00 nor more than \$1,000.00 or a term of imprisonment not to exceed one year, or both such fine and imprisonment. A separate offense shall be deemed committed for each day, or portion of a day, that a violation of this Ordinance occurs or continues unabated.

(b) The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. Nothing herein shall be construed to be a waiver of any civil remedies available to the Town.

Sec. 21. Severability.

If any section, sentence, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this Ordinance, or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

INTRODUCED ON FIRST READING, ADOPTED AND ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the Town of Rico by the Board of Trustees on the 17th day of September, 2008, and set for a second reading and public hearing on the 15th day of October, 2008.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the Board of Trustees on the 19th day of November, 2008.

(Second Reading was also conducted on October 15, 2008)

TOWN OF RICO


Barbara Betts, Mayor

ATTEST:


Linda Yellowman, Town Clerk

DOLORES RIVER WATERSHED PROTECTION AREA

Watershed Protection Area

Rico Municipal Water Supply Wells

Prepared for the
Town of Rico

July 2008

U.S.G.S. 7.5 Min Quads, Rico and Hermosa Peak, COLO.

Harris Water Engineering, Inc.
954 E. 2nd Ave., Ste. #202
Durango, CO 81301
970-259-5322

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Prepared for the
Town of Rico
July 2008