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## MEMORANDUM

TO: Mayor Rose and Salida City Council

FROM: Karp Neu Hanlon, P.C.

DATE: July 15, 2010

RE: Watershed Protection District Ordinance

The Watershed Protection Ordinance is set for Second Reading on July 20, 2010 at City Council's Regular Meeting. Included in the Packet is a slightly revised Ordinance which is in "redline" form. The two revisions to the Ordinance are a clarification in the first "Whereas" clause and the addition of exemption language for residential domestic wells serving less than three (3) residences.

At this time, it is staff's recommendation that City Council take public comment on the Ordinance at the July 20, 2010 Meeting and then continue the matter to the August Meeting to allow time to incorporate changes which may be suggested at the Public Hearing on July 20, 2010.

**ORDINANCE NO. 06**  
**(Series of 2010)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
ADOPTING A NEW ARTICLE VII, "WATERSHED PROTECTION," TO CHAPTER 13 OF  
THE SALIDA MUNICIPAL CODE.**

WHEREAS, the City of Salida operates its water and sewer facilities using water rights derived in part from and collected by the City at ~~various intakes on the South Arkansas River~~ and

~~Deleted: a surface~~

~~Deleted: title~~

WHEREAS, pursuant to C.R.S. §31-15-707(1)(b), the Salida City Council has the authority enact an ordinance to carry out its power to maintain and protect its watershed and waterworks from injury and water pollution, and for purposes of this authority, the City's jurisdiction extends over the territory occupied by its waterworks and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken; and

WHEREAS, in accordance with this grant, the Salida City Council wishes to exercise its statutory authority to create a watershed protection district within and without its boundaries and to adopt regulations pertaining to activities in that defined area as set forth herein; and

WHEREAS, the City Council adopts the following regulations in order to promote the health, welfare and safety of the inhabitants of the City of Salida by maintaining and protecting the City's watershed and waterworks from damage, harm or injury, and to prevent pollution of the City's water supply without creating an undue hardship on activities that promote the protection of the City's watershed and waterworks.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO:

Section 1. The aforementioned recitals are hereby fully incorporated herein.

Section 2. A new Article VII, "Watershed Protection," to Chapter 13 of the Salida Municipal Code is hereby adopted to read as follows.

**CHAPTER 13**  
**MUNICIPAL UTILITIES**

**Article VII**  
**Watershed Protection**

**13-7-10. Purpose.**

The purpose of this Article is to promote the health, welfare and safety of the inhabitants of the City of Salida by maintaining and protecting the City's watershed and waterworks from damage, harm or injury, and preventing pollution of the City's water supply, without creating an undue hardship on activities that promote the protection of the City's watershed and waterworks.

**13-7-20. Definitions**

(a) As used in this Article, the following terms shall have the following meanings:

*Best Management Practice* means an effective means of preventing or reducing harmful effects of land use activities, and include recommended methods, structures and practices designed to prevent or reduce pollution of the air, land and/or water from these activities. Best Management Practices may be found in various publications, manuals and documents of the Colorado Department of Public Health and Environment, Colorado Department of Transportation, and other sources that may be acceptable to the City of Salida.

*Director* means the City Administrator or his/her designee or representative.

*Diversion or divert* means removing water from its natural course or location, or controlling water in its natural course or location by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or any other structure or device.

*Exigent circumstances* means any situation where there is imminent danger of loss of life, harm by injury or damage to or destruction of property, or any other dangerous or harmful situation regarding the public health, safety and well being.

*Mining or mineral resource extraction*

- (1) *Mineral* means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, metallic compound, or compound, or chemical, an energy source or a raw material for manufacturing or construction material, but does not include surface or subsurface water.
- (2) *Mining and extraction* mean any removal or development of a mineral from its natural occurrence on affected land or from a water course and includes, but is not limited to, drilling, blasting, scaling, crushing, tunneling, excavating, dredging, panning, or sluicing, and includes any tailings piles, tailing ponds, waste dumps or concentration, milling, evaporation or other on-site processing activities or any buildings, structures or machinery used in such operation. "Mining" and "extraction"

do not include hand panning or the use of battery powered concentrate wheels or mini-sluices.

*Permit* means any permit issued pursuant to this Article.

*Permittee* means a person issued a permit.

*Person* means and shall include a firm, company, organization, partnership, entity, agency, corporation, association, or other organization acting as a group or unit as well as an individual. It shall also include an executor, administrator, trustee, receiver, or other representative appointed according to law. Whenever the word "person" is used in any section of this chapter prescribing a penalty or fine, as to firms, associations, and other organizations, the word shall include the partners, members, or agents who are responsible for any violation of such section hereof, and as to corporations, shall include the officers, agents, or members thereof who are responsible for any violation of this chapter. "Person" includes the singular and the plural.

*Pollutant* means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemicals, chemical waste, biological nutrient, biological material, temperature changes, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt or any industrial, municipal or agricultural waste.

*Pollution* means the people-made, people-induced or natural alteration of the physical, chemical, biological, or radiological integrity of water.

*Watercourse* means any and all rivers, streams, creeks, intermittent washes, gullies, tributaries, reservoirs, lakes, ponds, wetlands or other types of natural or people-made water bodies, including structures or devices to channel water to, or control or retain water within the watercourse, and further includes all groundwater tributary thereto.

*Waterworks* means all components of the City's water supply system, including but not limited to all equipment, diversion structures, dams, canals, ditches, flumes, pipelines, conduits, reservoirs, drains, wells, pumps, buildings, structures, roads, watercourses and other facilities necessary for the construction, maintenance and operation of the water supply system.

*Wetland* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands includes by illustration swamps, marshes, bogs and similar areas.

**13-7-30. Jurisdiction.**

Pursuant to Section 31-15-707(1)(b) C.R.S., the City's jurisdiction under this Article shall extend over the territory occupied by the City's waterworks and over the stream or source from which the water is taken for a distance of five (5) miles upstream from and/or above the point(s) at which water is diverted or impounded by the City.

**13-7-40. Map.**

The City shall prepare, maintain, and update a map known as the "Waterworks Permit Map" designating the area(s) subject to the City's jurisdiction pursuant to this Chapter. The Waterworks Permit Map is incorporated herein by reference and shall be available for inspection at City Hall.

**13-7-50. Interpretation and construction.**

Nothing in this Article shall infringe upon the authority of any other municipality, county, or other governmental entity to regulate land use or activities within their respective jurisdictions on lands outside the corporate limits of the City of Salida that are also within the City's jurisdiction pursuant to this Article. Notwithstanding, any lawful regulations, permits or approvals issued by any state or federal agency, municipality, county, or any other governmental entity concerning land use or activities on land that is also within the City's jurisdiction described in this Article shall not, in any way, infringe upon, limit, or supersede the terms and conditions of any permit validly issued pursuant to the provisions of this Article and the authority hereunder to regulate such activities and land use.

**13-7-60. Regulated activities**

The City has determined that the activities set forth below may harm the City's waterworks or pollute the City's water supply. Subject to the exceptions provided for in Section 13-7-70 below, it shall be unlawful for any person to engage in any of the specified activities within the area of the City's jurisdiction as defined in this Article without first obtaining a permit from the City authorizing such activity:

- (1) Excavation, dredging, filling, grading, or compaction of any topsoil, sand, rock, dirt, or other material over an area in excess of 0.5 acre. The area disturbed by the construction and maintenance of a driveway to a single family residence shall not be included in the calculation of the 0.5 acre threshold under this section;
- (2) Any surface or subsurface mining or mineral resource extraction, including any and all oil and/or natural gas extraction or mining;
- (3) Use of any restricted use pesticide (RUP), herbicide, fungicide, rodenticide,

insecticide or any other chemical for eradication or control of any plants or animals that is within one hundred (100) feet of any watercourse;

- (4) Removal of any vegetation or trees by any method over an area in excess of 0.5 acre;
- (5) Construction, maintenance and/or operation of any sewage treatment disposal system with an average design capacity greater than 2,000 gallons per day; provided that any sewage disposal system with an average design capacity less than 2,000 gallons per day is also subject to regulation under this Article if it is not installed, operated and maintained in compliance with all applicable laws, rules, regulations, permits, and Best Management Practices or is located within one hundred (100) feet of any watercourse;
- (6) Any of the activities prohibited in this section regardless of the amount of acreage affected if such activities are located in or within one hundred (100) feet of any water course, and/or if such activity is associated with the construction of any water diversion, storage or conveyance structure, including but not limited to such structures as diversion headworks, dams, canals, ditches, flumes, pipelines, conduits, reservoirs, drains, wells, ~~excluding domestic wells serving less than three (3) residences~~, and pumps, and further including any equipment, buildings, structures, roads, and other facilities necessary for the construction, maintenance and operation of the structures.
- (7) Alteration, improvements or modifications of any watercourse;
- (8) Dumping, depositing or discharging any pollutant into any watercourse, or dumping, depositing or storing any pollutant on land within 100 feet of any watercourse;
- (9) Construction, maintenance and/or operation of a surface or subsurface tank that stores chemicals, chemical waste, biological nutrient or material, radioactive material, petroleum product, or any industrial, municipal or agricultural waste, excepting residential propane tanks and septic systems not covered under subsection (5) above;
- (10) Construction of any impervious surface greater than 25,000 square feet that could direct any contamination or pollutant toward a watercourse or City waterworks;
- (11) Construction and operation of a feedlot unrelated to current farming and ranching operations;
- (12) Any other activity that will cause material injury, damage or harm to the City's water works or pollution of the City's water supply as reasonably determined by the City

based upon the written recommendation of a licensed engineer or qualified professional which specifies the cause and extent of such injury, damage, harm or pollution.

Any limitation on acreage imposed by this section includes the cumulative amount of acreage encompassed by any and all proposed activities by any person on any contiguous or noncontiguous parcels of land that are part of the same plan, project or development.

**13-7-70. Activities which require no permit.**

This Article shall not apply to and no permit shall be required for the following activities:

- (1) Any activity that is a lawful use of any land or structure, where such use and such structure existed prior to the time this Article was adopted by the City. Any change or enlargement of any pre-existing use of land, or changes to any pre-existing structure, made after adoption of this Article, including any modification, alteration or expansion, except ordinary maintenance, as determined by the City, is subject to the provisions of this Article. For purposes of clarification, any portion of any activity that has obtained approval from any state or federal agency, municipality, county or any other governmental entity, but that has not yet commenced, is not a pre-existing activity or use.
- (2) The following activities are allowed within the area of the City's jurisdiction as defined in this Article, provided that there is adherence to Best Management Practices:
  - (a) Road maintenance by governmental entities.
  - (b) Construction or maintenance of farm or ranch roads, irrigation ditches or ponds, where such roads or ponds are constructed and maintained to assure that flow and circulation patterns and chemical and biological characteristics of all surface and groundwater resources are not impaired, and that any adverse effect on the aquatic environment will be otherwise minimized;
  - (c) Normal farming, silviculture, and ranching activities such as plowing, haying, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, upland soil and water conservation practices, or livestock grazing;
  - (d) Normal maintenance of ponds, bridges, riprap, and drainage and irrigation ditches and related structures, including ditch burning;

- (e) Noxious weed or insect control;
- (f) Removal of dead, insect infected or diseased trees;
- (g) Construction of a livestock water tank as defined in C.R.S. §35-49-105 (2006);
- (h) Construction or maintenance of wetlands;
- (i) Modifications to any watercourse for fisheries improvements or riparian habitat creation and/or restoration permitted by the Army Corps of Engineers;
- (j) Emergency riparian work, provided that any permanent work shall be regulated if otherwise regulated by this ordinance; and
- (k) Wildland fire mitigation and emergency firefighting activities.

**13-7-80. Permit application.**

Any person proposing to undertake a regulated activity as set forth in Section 13-7-60 hereof shall file an application for a watershed permit with the office of the director on a form provided by the City Clerk. The application shall contain the following information:

- (1) Name, address, and verified signature of the applicant;
- (2) Name and address of the owner of the property on which the activity is proposed;
- (3) Verified consent of the owner of the property if different than that of the applicant;
- (4) The address and/or legal description of the property on which the activity is proposed;
- (5) A full and complete description of the proposed activity, including but not limited to, the acreage of the property, the acreage affected by the proposed activity, the proposed amount of diversion and/or storage, and any activity that may result in a discharge, spill or release of any pollutant into the City's waterworks or water supply;
- (6) A map explicitly depicting the location of the property and the proposed activity;
- (7) Identification and description of all water use anticipated to be necessary for the proposed activity, including but not limited to all water rights owned or to be used by the applicant, amount of consumptive use, location and timing of any expected return flows resulting from diversions, and the amount and type of discharge;

- (8) Identification and description of any impact that the activity may reasonable have on the City's waterworks and on the quality of the City's water supply;
- (9) Identification and description of all measures that shall be taken to prevent injury, damage or harm to the City's waterworks and pollution of the City's water supply, including compliance with all applicable Best Management Practices; and
- (10) Any other information required by the director to properly evaluate the application, as reasonably determined by the director.

**13-7-90. Permit fee.**

Each application for a permit shall be accompanied by payment in full or a fee, as established by resolution of City Council, and as may be adjusted from time to time.

**13-7-100. Permit duration.**

A permit issued pursuant to this Article shall be valid for two years from the date of issuance.

**13-7-110. Permit suspension or revocation; temporary suspension.**

A permit may be suspended or revoked at any time for a violation of any compliance order issued by the director or for a violation of any of the terms or conditions of the permit or the provisions of this Article, subject to notice to the permit holder and a hearing by the City Council. If exigent circumstances exist that require immediate suspension, as determined by the director, the director may immediately suspend a permit for a period not to exceed fourteen (14) days. In the case of such a summary suspension by the director, the permittee, upon written request, shall be entitled to a hearing before City Council as soon as is reasonable possible.

**13-7-120. Permit transfer.**

Permits issued hereunder are to a specific user for a specific activity. No permit shall be transferred or assigned to any other person, different premises or a new, different or changed operation. Any such change shall require a new permit application.

**13-7-130. Permit review; burden; issuance or denial.**

(a) Within thirty (30) days following the filing of a completed application, which shall not be considered complete until all necessary information required by this Article is provided, the Director shall review the application and classify the proposed activity according to its impact on either the City's waterworks and/or the quality of the City's water supply. In evaluating each

application, the Director may consider, but is not limited to, the following factors:

- (1) Nature and type of the proposed activity;
- (2) Proximity of the proposed activity to a watercourse and whether it is located within a floodway;
- (3) Nature and type of the soils, rock or other material;
- (4) Nature and type of vegetation;
- (5) Scope and stability of the land;
- (6) Any increase of effect in or on the fire hazard;
- (7) Nature, type and amount of effluents or pollutants reasonably anticipated from the proposed activity discharged either into a watercourse or underground;
- (8) Nature, type and amount of each regularly processed new material;
- (9) Nature, type and amount of each regularly produced product;
- (10) Nature and type of any and all erosion control measures;
- (11) Any anticipated impact on the waterworks or water quality of the City's water supply resulting in any way from the activity, including but not limited to direct discharges, nonpoint or indirect discharges, reduction in flows within a watercourse, or the concentration of any pollutant.
- (12) Amount and type of mechanized or motorized vehicles associated with the activity;
- (13) Any water rights obtained, needed, necessary or related to the proposed activity;
- (14) Any permits or other governmental or private approval required to proceed with the proposed activity or already obtained where such permits or approvals are based on standards at least as stringent; and
- (15) Economic impact in relation to the risks and benefits to watershed protection; and
- (16) Cumulative effect of the proposed activity with other activities.

(b) The burden shall be upon the applicant to demonstrate, by a preponderance of the evidence and in compliance with the provisions of this Article, that the activity will not harm,

damage or injure the City's waterworks or pollute the City's water supply.

(c) If the Director determines that the proposed activity will not have any harmful impact on the City's waterworks or water supply, then the Director shall recommend to City Council or its designee that a permit be issued, and whether any conditions should apply. If the Director determines that the applicant has not met its burden with respect to the impact on either the City's waterworks and/or the City's water supply, then the Director shall identify such negative impact(s) and shall state the reasons for recommending denial of a permit. City Council or its designee shall consider such recommendation and may issue the permit, with or without conditions, upon a determination that the requirements of this Article have been satisfied, or may deny the permit application.

(d) Any person whose permit application is denied, or who is not satisfied with any conditions of approval, shall be entitled to a hearing as provided in this Article.

**13-7-140. Permit terms and conditions.**

The City Council may prescribe any terms and conditions in the issuance of any permit in accordance with any provisions of this Article and as the City Council deem necessary to prevent harm, damage or injury to the City's waterworks and/or the pollution of the City's water supply, including compliance with all applicable Best Management Practices. The City Council may also make any permit conditional upon the applicant obtaining any and all necessary permits and other governmental or private approvals or obtaining financial security for performances or requirements of the permit. This Article allows the City to limit discharge of water pollutants to prevent nuisances and prevent damage, harm or injury to the City's waterworks or pollution of the City's water supply. It does not allow the City to authorize a discharge of pollutants into State waters, which is the jurisdiction of the Water Quality Control Commission.

**13-7-150. Performance bond.**

The City Council may require as a condition of any permit issued hereunder that the permittee obtain a performance bond in an amount necessary to ensure completion of all measures required to prevent both injury to the City's waterworks and the pollution of the City's water supply. The City Council may also require as a part of the performance bond an additional amount necessary to clean up or mitigate the effects of any spill, release or discharge by the permittee. This section shall not apply to or have any effect upon the provisions of Section 34-32-109(6) C.R.S.

**13-7-160. Containment facilities; reporting requirements.**

Each permittee shall provide and maintain at its expense any facilities necessary to prevent and contain any spill, release or discharge of any pollutant that may cause damage, harm or injury to the City's waterworks or pollution to the City's water supply. Any such spill, release or discharge shall be reported immediately to the Director and to all other persons or entities that may be affected

thereby. The permittee shall inform the Director as to the location, the nature and type of the pollutant, concentration, volume, and any measures taken to contain or remediate the spill, release or discharge and to assure that such discharge does not occur again. Within five (5) days of such discharge the permittee shall submit a written report to the Director explaining the spill, release or discharge including a description of measures which have and shall be taken to prevent recurrence.

**13-7-170. Site inspections.**

Whenever necessary to assure compliance with any terms or conditions of the permit or the provisions of this Article, the Director has the right to enter the property to make an inspection. Refusal by the permittee to allow such right of entry to inspect the property shall constitute sufficient grounds to suspend or revoke the permit by the Director. Upon such refusal, or if exigent circumstances are present that require immediate entry, the Director may obtain a search warrant from a court of competent jurisdiction, including the municipal court of the City, entitling the Director to enter and inspect the property. Upon obtaining a search warrant, or if exigent circumstances exist, the Director may use such reasonable force as is necessary to enter and inspect the property.

**13-7-180. Hearings by the City Council on applications.**

(a) Any applicant whose application for a permit is denied, or who is otherwise aggrieved by any conditions of approval may, within fourteen (14) days of the City Council's action on the permit, file with the City clerk a written request for a public hearing before City Council on the application.

(b) The City Council shall schedule a hearing and publish notice of a hearing at least fourteen (14) days prior to the date set for hearing. At such hearing, the applicant (and/or the applicant's attorney, consultants, and representatives) and the Director (and/or City attorney, special counsel, consultants and representatives) may make a presentation and/or present information and evidence. All interested parties may also testify or present information and evidence. The applicant shall have the burden of establishing by a preponderance of the evidence that the proposed activity will not injure, harm or damage the City's waterworks or pollute the City's water supply. The City Council shall, within thirty (30) days of the close of the hearing issue a decision on the permit, including findings related to such decision. The council's decision shall be the final action by the City.

**13-7-190. Hearings.**

Testimony, evidence and information presented at all hearings held pursuant to this Article shall be open to the public and quasi-judicial in form, under oath and recorded.

**13-7-200. Compliance order.**

Whenever the Director determines that any permittee has violated or is violating any terms or conditions of a permit or the provisions of this Article, the Director may issue an order requiring the permittee to comply within a specified period of time. Any violation of the compliance order by the permittee shall be cause for the suspension or revocation of the permit. Whenever the Director determines that a person is proceeding with a prohibited activity under Section 13-7-60 hereof without permit, the Director may issue an order requiring the person to cease and desist such activity until such a time as a permit is obtained pursuant to this Article.

**13-7-210. Legal action.**

If any person violates any provision of this Article, in addition to utilization of the enforcement and penalty powers of the City, the City may commence an action for appropriate legal or equitable relief in a court of competent jurisdiction, including the municipal court. In addition to the penalties provided herein, the City shall be entitled to reasonable expert fees and attorneys' fees and costs of litigation.

**13-7-220. Judicial review of City Council's decision.**

An applicant or permittee may appeal any final decision of City Council to the municipal court in accordance with applicable judicial appeals procedure.

INTRODUCED ON FIRST READING, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the 6<sup>th</sup> day of July, 2010 and set for second reading and public hearing on the 20<sup>th</sup> day of July, 2010.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the 20<sup>th</sup> day of July, 2010.

CITY OF SALIDA, COLORADO

\_\_\_\_\_  
Charles Rose, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_

City of Salida, Colorado  
Ordinance No. 06, Series of 2010  
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Janella Martinez, City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the \_\_\_ day of \_\_\_\_\_, 2010, and BY TITLE ONLY, after final adoption on the \_\_\_ day of \_\_\_\_\_, 2010, Deleted, and

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Janella Martinez, City Clerk