

**GUIDELINES AND REGULATIONS FOR  
AREAS AND ACTIVITIES OF STATE INTEREST  
COUNTY OF OTERO  
STATE OF COLORADO**

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Also Known As  
1041 REGULATIONS

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## CHAPTER 1

### ADMINISTRATIVE REGULATIONS

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## **Article 1      Introductory and General Provisions**

### **1.101      Title and Citation**

These various sections constituting Chapters 1 through 5 are entitled and may be cited as the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County," the "Guidelines and Regulations," or the "Regulations." These various sections constituting Chapter I of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County" may be cited as the "Administrative Regulations," and may be referred to in this Chapter 1 as "these Regulations."

### **1.102      Purpose and Findings**

- (1) The purpose and intent of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S.
  - (a) The Board of County Commissioners, County of Otero, State of Colorado, finds that:
    - (i) The notice and public hearing requirements of Section 24-65.1- 404, C.R.S. have been followed;
    - (ii) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County;
  - (b) Except as otherwise provided in Chapter 5, these Regulations apply to the entire unincorporated territory of the County of Otero.
  - (c) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the Board of County Commissioners of the County of Otero.

### **1.103      Authority**

The Guidelines and Regulations are authorized by, inter alia, Section 24-65.1-101, et seq., C.R.S.; Section 30-28-101, et seq., C.R.S.; Section 30-28-201, et seq., C.R.S.; Section 29-20-101, et seq., C.R.S.; and Section 24-32-111, C.R.S. These Regulations are necessary for the preservation of the public health, safety and welfare.

### **1.104      Applicability**

These Regulations shall apply to all proceedings concerning identification and designation of any developments in any area of state interest or any activity of

state interest which has been or may hereafter be designated by the Board of County Commissioners of the County of Otero.

1.105 Exemptions

The portions of these Guidelines and Regulations authorized exclusively under Section 24-65.1-101, et seq., C.R.S., shall not apply to any development in an area of state interest or any activity of state interest if, on the effective date of their adoption:

- (1) The specific development or activity is covered by a current building permit issued by the County of Otero;
- (2) The specific development or activity has been approved by the electorate of the County of Otero;
- (3) The specific development or activity is to be on land which has been finally approved for Planned Unit Development or for a use substantially the same as Planned Unit Development;
- (4) The specific development or activity is to be on land which has been zoned in response to an application which specifically contemplated said specific development or activity; or
- (5) The specific development or activity is to be on land with respect to which a development plan for that development or activity has been conditionally or finally approved by the County of Otero.

1.106 Relationship of Regulations to Other County, State and Federal Requirements

- (1) Whenever these Guidelines and Regulations are found to be inconsistent with any other resolution, ordinance, code, regulation, or other enactment of the County of Otero, the enactment imposing the more restrictive standards or requirements shall control.
- (2) In the event these Guidelines and Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, C.R.S., the statutory criteria shall control.
- (3) In the event these Guidelines and Regulations are found to be more stringent than the statutory criteria for administration of matters of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these regulations shall control pursuant to the authority of Section 24- 65.1-402(3), C.R.S.
- (4) These Guidelines and Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of the County of Otero,

including, without limitation, the Otero County Zoning and Subdivision Regulations.

- (5) Permit requirements included in these Guidelines and Regulations shall be in addition to all applicable state and federal water quality laws, rules and regulations, including but not limited to the following:
  - (a) Section 25-8-702, C.R.S., sewage treatment plant site approval;
  - (b) Section 25-8-501, C.R.S., point source pollutant discharge permit;
  - (c) Section 208 (33 U.S.C. Section 1288) area-wide wastewater treatment management planning;
  - (d) Section 303 (33 U.S.C. Section 1313) river basin water quality management planning;
  - (e) Disposal of sewage sludge (33 U.S.C. Section 1345);
  - (f) Section 32-1-201, C.R.S., Special District Control Act;
  - (g) 16 U.S.C. Section 661-666(c) (1970), the Fish and Wildlife Coordination Act;
  - (h) Section 102(c) 42 U.S.C. Section 4321, et seq., the National Environmental Policy Act; and
  - (i) Section 404 of the Federal Clean Water Act.
- (6) Nothing in these Regulations shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the Public Utilities Commission. Any order, rule, or directive issued by any governmental agency pursuant to these Regulations shall not be inconsistent with or in contravention of any decision, order, or finding of the Public Utilities Commission with respect to public convenience and necessity. The Public Utilities Commission and public utilities shall take into consideration and, when feasible, foster compliance with adopted master plans of local governments, regions and the state.
- (7) Nothing in these Regulations shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

#### 1.107 Maps

The following maps are attached hereto and fully incorporated herein by their reference:

**Exhibit D:** Areas of Otero County historically irrigated.

1.108 Duties of the Board of County Commissioners

Unless otherwise specifically provided, it shall be the duty of the Board of County Commissioners of Otero County to perform all functions pertaining to matters of state interest.

1.109 Severability

If any section, clause, provision, or portion of these Guidelines and Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

1.110 Definitions

The words and terms used in the Guidelines and Regulations shall have the meanings set forth below unless the context requires otherwise:

- (1) Board of County Commissioners: the Board of County Commissioners, County of Otero, State of Colorado.
- (2) Designation: that legal procedure specified by Section 24-65.1-401, et seq., C.R.S., carried out by the Board of County Commissioners.
- (3) Development: any construction, activity, or change in activity which changes the basic character or the use of the land on which the construction activity or change occurs.
- (4) Layman's description: a general, nonlegal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted. The term "general description" means "layman's description."
- (5) Legal description: any description from which it is possible to locate accurately on the ground the boundaries of the land being described.
- (6) Matter of state interest: an area of state interest or an activity of state interest or both.
- (7) Permit Authority: the Board of County Commissioners.
- (8) Person: any private individual, partnership, corporation, association, company, or any public or corporate body, including the state and federal government, and includes any political subdivision, agency, instrumentality, or corporation thereof.
- (9) Receipt of Application: the time at which the completed application is accepted by the Permit Authority.

**Article 2      (Reserved)**

**Article 3      Designation of Matter of State Interest**

1.301      Board of County Commissioners to Make Designations

Designations and amendments of designations may be initiated in two ways:

- (1)      The Board of County Commissioners may in its discretion designate, amend or adopt regulations for the administration of any matter of state interest.
- (2)      The Otero County Planning Commission may on its own motion or upon request by the Board of County Commissioners recommend the designation of matters of state interest. The Board of County Commissioners shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

1.302      (Reserved)

1.303      Public Hearing Required

- (1)      The Board of County Commissioners shall hold a public hearing before designating any matter of state interest or before amending or adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

1.304      Notice of Public Hearing, Mailing List, Publication

- (1)      The Board of County Commissioners shall prepare a notice of the designation hearing which shall include:
  - (a)      The time and place of the hearing;
  - (b)      The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
  - (c)      The telephone number where inquiries may be answered;
  - (d)      A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.
- (2)      The Board of County Commissioners shall maintain a mailing list of those persons requesting they be placed on the list and paying to the Clerk an annual fee of ten dollars (\$10.00) to cover the costs of production, handling and mailing of notices of all hearings pursuant to Sections 24-

65.1-404(2)(b) and 24-65.1-501(2)(c), C.R.S. In order to have a name and address retained on the list, the person shall resubmit their name and address and pay said annual fee before January 31 of each year.

- (3) At least thirty (30) days but no more than sixty (60) days before the public hearing, the Board of County Commissioners shall publish the notice in a newspaper of general circulation in the County and shall mail the notice by first class mail to each of the following:
  - (a) State and federal agencies, as deemed appropriate in the discretion of the Board of County Commissioners;
  - (b) Persons on the mailing list (subsequent to the initial adoption of guidelines and regulations);
  - (c) In the discretion of the Board of County Commissioners, members of the news media and any other person considered likely to be affected by the proposed designation; and
  - (d) If any other local governmental jurisdiction would be directly or indirectly affected, the proposed designation similarly may be mailed to such government in the sole discretion of the Board of County Commissioners.

1.305 Matters to be Considered at Designation Hearing

At the public hearing, the Board of County Commissioners shall receive into the public record:

- (1) Testimony and evidence from all persons or organizations desiring to appear and be heard, including County staff;
- (2) Any documents that may be offered; and
- (3) The recommendations of the Otero County Planning Commission, if any.

1.306 Record of Designation Proceeding

- (1) The Board of County Commissioners shall collect and preserve the following record of the public hearing:
  - (a) A copy of the notice of the hearing;
  - (b) The certificate of publication of the notice of the hearing and a listing of all persons to whom the notice was mailed;
  - (c) The names and addresses of persons who presented written or oral statements or offered documentary evidence;

- (d) Any written statements or documents presented in support of or in opposition to the proposed designation of the matter of state interest;
  - (e) A recording or transcript of the hearing;
  - (f) The order of designation of the area or activity of state interest; and
  - (g) A map or maps depicting each area of state interest designated.
- (2) Any person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Board of County Commissioners and shall become part of the record if deemed appropriate at the sole discretion of the Board of County Commissioners.

1.307 Adoption of Designation and Regulations

- (1) At the conclusion of the hearing, or within thirty (30) days thereafter, the Board of County Commissioners may adopt, adopt with modification, or reject the proposed designation or amendment which was the subject of public hearing.
- (2) In making any such designation or amendment, the Board shall take into consideration:
  - (a) All testimony, evidence and documents taken and admitted at the public hearing;
  - (b) The intensity of current and foreseeable development pressures in the County of Otero;
  - (c) The matters and considerations set forth in any applicable guidelines or model regulations issued by other state agencies; and
  - (d) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.
- (3) In the event the Board of County Commissioners finally determines that any matter is a matter of state interest, it shall be the Board's duty, acting by resolution, to designate such matter and adopt regulations for the administration thereof.

- (4) Each designation order<sup>1</sup> adopted by the Board of County Commissioners shall:
- (a) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated;
  - (b) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

1.308 Recording of Notice of Designation or Amendment

A notice of the designation or amendment shall be certified by the Board of County Commissioners to the County Clerk and Recorder for filing in the same manner as any document affecting real property.

1.309 Effect of Designation - Moratorium Until Final Determination

After a matter of state interest is designated pursuant to Section 1.307, no person shall engage in development in such area and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404(4), C.R.S.

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<sup>1</sup> **Exhibit A** is a sample designation order form.

## CHAPTER 2

### PERMIT REGULATIONS

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**Article 1      Permit Authority**

2.101      Title and Citation

These various sections constituting Chapter 2 of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County" may be cited as the "Permit Regulations," and may be referred to in this Chapter 2 as "these Regulations."

2.102      Purpose and Findings

- (1)      The purpose and intent of the Permit Regulations is to facilitate administration of matters of state interest consistent with statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S.
- (2)      The Board of County Commissioners finds that:
  - (a)      The notice and public hearing requirements of Section 24-65.1-404, C.R.S. have been followed;
  - (b)      These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County;
  - (c)      These Regulations apply to the entire unincorporated territory of the County of Otero; and
  - (d)      These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the Board of County Commissioners.

2.103      Permit Authority Established

- (1)      The Otero County Permit Authority is hereby established, the members of which shall be the Board of County Commissioners.
- (2)      The Permit Authority shall exercise all powers and duties granted in this Chapter 2.

2.104      Judicial Review

Any action seeking judicial review of a final decision of the Permit Authority shall be initiated within thirty (30) days after the decision is made, in the District Court in and for the County of Otero, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

## **Article 2      Permit Application**

### **2.201      Permits Required After Designation; Receipt of Application Form**

- (1) Any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest must apply for and obtain a permit from the Permit Authority, in the form attached hereto as **Exhibit B**, and maintained in the office of the County Administrator. In the event a development or activity is proposed as an integral part of a subdivision or Planned Unit Development, it shall be the responsibility of the service provider and/or developer to comply with the requirements of these Regulations.
- (2) An application shall not be accepted unless it is complete. A request for waiver of submission requirements shall not render the application incomplete. If the application is considered incomplete by the Permit Authority, the Permit Authority shall specify what additional information is required. An application need not meet the submission requirements for other than the particular development alternative for which a permit is being sought in order to be considered complete. When a submitted application is considered to be complete by the Permit Authority, the Permit Authority shall note upon the application the date and hour of its receipt.
- (3) When an applicant seeks a permit to engage in development in more than one area of state interest and/or to conduct more than one activity of state interest and/or to engage in development in one area of state interest and to conduct one activity of state interest, a single application may be completed for all such activities or developments and may be reviewed by the Permit Authority in one consolidated hearing.

### **2.202      Application Fee**

- (1) Within ten (10) days following receipt of a completed application for a permit, the Permit Authority shall estimate and set a fee in an amount necessary to cover the costs incurred in the review and action upon the permit application, including: all County staff time to review and process the application at an hourly rate (including fringe benefits) or fee determined to be reasonable at the sole discretion of the Permit Authority, all charges for County consultants, expert witnesses, engineers and attorneys, all other administrative costs and all costs for hearings conducted therefor, and shall notify the applicant in writing of the fee. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Permit Authority certified funds in the amount set. As review of the application progresses, the applicant shall replenish the fee account to ensure that funds are available to continue to meet the costs of County review. Until the fee is paid or replenished as necessary, the application shall not be further processed. The Permit Authority may from

time to time adopt a revised schedule of rates, charges and fees, which upon adoption shall be applicable to all applications filed thereafter.

- (2) As a condition of Permit issuance, the applicant shall also agree to pay attorney fees and costs incurred by the Permit Authority in the event of any litigation challenging the permit, including litigation brought by the applicant.
- (3) The Permit Authority reserves the right to waive all or a portion of the fees and costs imposed by this Section if determined to be reasonably justified by the Permit Authority.

#### 2.203 Waiver of Submission Requirements

- (1) The Permit Authority may waive any part but not all of the submission requirements imposed by the Guidelines and Regulations upon petition of the applicant that full compliance with the submission requirements would be unreasonably burdensome and that the submission requirements so waived would not address or disclose a substantial impact on the County or its residents. When an applicant is applying for permits under separate Chapters of the Guidelines and Regulations, submission requirements, where identical, may be combined. A waiver of submission requirements may be granted by the Permit Authority upon a written determination that the information to be submitted is sufficient for the Permit Authority to arrive at a permit decision in full compliance with the law and the Guidelines and Regulations.
- (2) The petition shall be considered and the decision rendered by the Permit Authority at a public hearing held in substantial compliance with the provisions of Article 3 herein.
- (3) In the event the waiver request is denied, the applicant shall provide the required additional information on or before ten (10) days prior to the date set for hearing of the application itself. If the applicant fails to provide such information, the Permit Authority may in its discretion vacate the public hearing on the application and require complete reapplication, or may continue the hearing in accordance with Section 2.303(1).

#### 2.204 Intergovernmental Agreements

Upon the request of the State of Colorado or a political subdivision of the state, as defined by Section 29-1-202(1), C.R.S., proposing to engage in an activity of state interest, the requirements of the Guidelines and Regulations may be met by the approval of an intergovernmental agreement between the County and the state or political subdivision applicant. The County may, but shall be under no obligation to, approve such an intergovernmental agreement in lieu of a permit application and review as provided by the Guidelines and Regulations. In the event such an agreement is approved by the County, no permit application to

conduct the activity of state interest shall be required, provided that all of the following conditions are met:

- (1) The state or political subdivision applicant and the County must both be authorized by Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201 et seq., 29-20-105 and 29-20-107, C.R.S., to enter into the agreement.
- (2) The purpose and intent of the Guidelines and Regulations must be satisfied by the terms of the agreement.
- (3) A public hearing must be conducted by the Permit Authority in conformance with Section 2.302 [with the exception that the references to "permit application" in Section 2.302(5)(a), (c) and (g) shall be deemed replaced with "proposed intergovernmental agreement"]. Prior to the hearing, the Board of County Commissioners shall approve the form of any proposed intergovernmental agreement, provided, however, that the final approval of the agreement shall take place at the conclusion of or subsequent to the public hearing. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the County.
- (4) Both the Permit Authority and the governing body of the state or political subdivision applicant must approve the agreement in the manner required of each of them by the Colorado Constitution, statutes and any applicable charter, ordinance or resolution.
- (5) Exercise of the provisions of this Section 2.204 by the state or political subdivision applicant will not prevent that entity from electing at any time to proceed under the permit provisions of these Regulations. Additionally, any entity which has previously proceeded under the permit provisions of these Regulations may at any time elect to proceed instead under this Section 2.204.

## **Article 3      Permit Hearing**

### **2.301      Notice of Permit Hearing**

Not later than thirty (30) days after receipt of a completed application for a permit, the Permit Authority shall set the date, time and place for hearing(s) on said application and any required separate hearing on any requested waiver of submission requirements. The notice of the public hearing shall be published once in a newspaper of general circulation in the County of Otero, not less than thirty (30) nor more than sixty (60) days before the date set for hearing and shall also be given to other persons and entities in the same manner as set forth for the notice of a designation hearing in Section 1.304.

Conduct of Permit Hearing

- (1) The Permit Authority shall conduct the public hearing in a manner affording procedural due process to the applicant, supporters of the project and any person who opposes issuance of the permit.
- (2) The Permit Authority shall hear testimony and receive evidence, including:
  - (a) The recommendations of the Otero County Planning Commission, if any;
  - (b) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff; and
  - (c) Any documents that may be offered.
- (3) Although the Colorado Rules of Civil Procedure do not govern the conduct of the hearing, all persons appearing at the hearing, in person or by counsel, shall be afforded the right of cross-examination as well as reasonable opportunity to offer evidence in rebuttal.
- (4) Any person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Permit Authority and shall become part of the record if deemed appropriate at the sole discretion of the Permit Authority.
- (5) The Permit Authority shall collect and preserve the following record of the public hearing:
  - (a) The permit application;
  - (b) A copy of the notice of the hearing, the certificate of publication of the notice of hearing, and a listing of all persons to whom the notice was mailed;
  - (c) Any written statements or documents presented in support of or in opposition to the permit application;
  - (d) The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
  - (e) A recording or transcript of the hearing;
  - (f) Written minutes of the Permit Authority relating to the public hearing;

- (g) The resolution of the Permit Authority granting or denying the permit application; and
  - (h) A copy of the permit, if issued.
- (6) In cases in which the development or activity must also comply with County zoning and/or subdivision regulations, the permit hearing required by these Regulations may be held at the same time as the final hearing required for such plat or plan.

#### 2.303 Action on Permit Application

- (1) If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, it may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.
- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the regulations governing such area or activity. The Permit Authority may attach reasonable conditions to its approval. If the proposed development does not comply with the regulations governing the area or activity, the permit shall be denied.
- (3) The burden of proof shall be upon the applicant to show compliance with the provisions of the Guidelines and Regulations governing the area or activity of state interest involved.
- (4) The Permit Authority shall state, in writing, reasons for its decision on a permit application, and its findings and conclusions.
- (5) The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.

### **Article 4** **Issuance, Revocation or Suspension of Permits**

#### 2.401 Issuance of Permits

- (1) The permit shall be issued on the form adopted by the Board of County Commissioners. An example permit is attached hereto as **Exhibit C**.
- (2) The permit may be issued for an indefinite term, or for a specific period of years.

Financial Security

- (1) Before any permit is issued, the Permit Authority may in its discretion require the applicant to file a guarantee of financial security deemed adequate by the Permit Authority and payable to the County of Otero.
- (2) The purpose of the financial guarantee shall be to assure that the applicant or permittee shall faithfully perform all requirements of the permit or applicable regulations adopted by the Board of County Commissioners.
- (3) The amount of said financial guarantee shall be established by the Permit Authority upon consideration of the following criteria:
  - (a) The estimated cost of returning the site of the permitted development or activity to its original condition or to a condition acceptable to the Permit Authority in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;
  - (b) The estimated cost of completing the permitted development or activity; and
  - (c) The estimated cost of complying with the conditions of the permit.
- (4) Estimated cost shall be based on the applicant's submitted cost estimate plus the Permit Authority's estimate of the additional cost to bring in personnel and equipment to accomplish any unperformed purposes of the financial guarantee. The Permit Authority shall consider the duration of the development or activity and compute a reasonable projection of increases due to inflation. The Permit Authority may require as a condition of the permit that the financial security shall be adjusted upon receipt of bids.
- (5) At least ten percent (10%) of the amount of the financial guarantee shall be in cash deposited with the County Treasurer and shall be placed in an earmarked escrow account mutually agreeable to the County and the applicant.
- (6) The financial guarantee may be released only when:
  - (a) The permit has been surrendered to the Permit Authority before commencement of any physical activity on the site of the permitted development or activity;
  - (b) The development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Permit Authority in accordance with standards

adopted by the Permit Authority for the matter of state interest for which the permit was granted;

- (c) The project has been satisfactorily completed; or
  - (d) All guaranteed permit conditions have been satisfied.
- (7) Any security may be cancelled by a surety only upon receipt of the Permit Authority's written consent which may be granted only when such cancellation will not detract from the purposes of the security.
  - (8) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the applicant or permittee, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Permit Authority shall suspend the permit until proper substitution has been made.
  - (9) If the Permit Authority determines that a financial guarantee should be forfeited because of any violation of the permit, it shall provide written notice to the surety and to the permittee that the financial guarantee will be forfeited unless the permittee makes written demand to the Permit Authority within thirty (30) days after permittee's receipt of notice, requesting a hearing before the Permit Authority. If no demand is made by the permittee within said period, then the Permit Authority shall order the financial guarantee forfeited.
  - (10) The Permit Authority shall hold a hearing within thirty (30) days after the receipt of the demand by the permittee. At the hearing, the permittee may present statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Permit Authority shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.
  - (11) The cash deposit described in subsection (5) above may be used by the Permit Authority in the event of the default or alleged default of the permit holder only for the purposes of recovering on the surety or fulfilling the permit obligations of the permit holder. The Permit Authority may arrange with a lending institution which provides money for the permit holder that said institution may hold in escrow any funds required for said cash deposit. Funds shall be disbursed out of escrow by the institution to the County upon the Permit Authority's demand for the purposes specified in this Section.
  - (12) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the Otero County Attorney is hereby authorized to take such steps as deemed proper to

recover such costs, including, without limitation, perfecting a lien upon any real property in the County owned by the permittee, by certifying such costs to the County Treasurer for collection in the same manner as real property taxes or by civil action.

- (13) Upon request, the Permit Authority may, but shall be under no obligation to, waive all or any portion of the financial security requirements set forth in this Section for applicants which are state agencies or political subdivisions of the state and which are regularly engaged in the provision of services to the extent such services are activities which are regulated hereunder. A precondition to such waiver shall be that the activities are funded from, or secured by, general revenues of the applicant state agency or political subdivision, or revenues from any established special or enterprise fund of the applicant which derives income from the sale of the service contemplated.

#### 2.403 Revocation or Suspension of Permits

- (1) In the event the Permit Authority has reason to believe that the provision of any permit or the terms of any regulation for administration have been violated by the holder of the permit, the Permit Authority may temporarily suspend the permit for a period of thirty (30) days. Before imposing such a temporary suspension, the Permit Authority shall give the permit holder written notice of the specific violation and shall allow the permit holder a period of at least fifteen (15) days to correct the violations. If the permit holder does not concur that there is a violation, he shall, within fifteen (15) days of his receipt of such notice, show cause to the Permit Authority why temporary suspension should not be ordered. A hearing shall be held within said thirty (30) day period pursuant to Section 2.403(2).
- (2) Prior to or subsequent to a temporary suspension, the Permit Authority may permanently revoke or suspend the permit after conducting a public hearing in substantially the same manner and after substantially the same notice as for permit hearings (Sections 2.301 through 2.303), and if it finds:
  - (a) A violation of any provision or condition of approval of the permit or applicable regulation for administration of the matter of state interest concerned; or
  - (b) The applicant has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the permit, or, if such steps have been taken, the applicant has failed to complete the development or activity or any condition of permit approval with reasonable diligence. "Substantial steps" do not require construction activity and may include, among other things, legal or administrative proceedings and activities directly associated with the Applicant's project. An

extension of the time within which substantial steps to initiate the permitted development or activity need be taken may be granted by the Permit Authority upon the request of the applicant and a showing of good cause therefore.

- (c) Upon good cause shown, any revoked or suspended permit may be reinstated, within twelve (12) months after revocation or suspension.

#### 2.404 Annual Review

- (1) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing all past activities conducted by the permittee pursuant to the permit including a satisfactory showing that the permittee has complied with all conditions of the permit and applicable regulations. The permittee need not inform the Permit Authority of activities, such as operational changes, which are not the subject of a permit condition.
- (2) The Permit Authority shall review the report set forth in Section 2.404(1) within thirty (30) days from the date of submittal thereof. If the Permit Authority determines that the permittee is likely to have violated the provisions of the permit and/or applicable regulations, it shall consider the matter at a scheduled public hearing. If the Permit Authority determines at the public hearing that the permittee has violated the provisions of the permit and/or applicable regulations, the Permit Authority may suspend and/or revoke the permit in accordance with Section 2.403.
- (3) Upon notice to the Permit Authority of the fulfillment of all permit conditions, and the Permit Authority's concurrence therein, the Permit Authority shall terminate any annual review requirements.
- (4) The Permit Authority may waive or modify the annual review requirements upon petition of the permittee and a showing of good cause therefore.

### **Article 5 Administration, Enforcement and Penalties**

#### 2.501 Enforcement and Penalties

Any person engaging in a development in a designated area of a state interest or conducting a designated activity of state interest who does not obtain a permit pursuant to the Regulations, who does not comply with permit requirements, or who acts outside the authority of the permit, shall be guilty of a violation of these Regulations and upon conviction in the County Court shall be subject to a fine not to exceed \$100.00 for each day of a continuing violation, and further, may be enjoined by the County from engaging in such development or conducting such

activity and may be subject to such other criminal or civil liability as may be prescribed by law.

2.502      Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the Permit Authority shall make the necessary determination of the boundary. Any person contesting the location of the boundary shall be given an opportunity to present a case on the subject to the Permit Authority.

2.503      Inspection

- (1) The Permit Authority or its authorized representative is hereby empowered and directed to inspect and examine the use, occupation or development of or activity in each and every area or activity subject to these Guidelines and Regulations for the purpose of determining from time to time whether or not any use, occupation, development or activity is in violation of any of the provisions of the Regulations or of any permit issued or required pursuant to these or other applicable regulations.
- (2) If a violation shall be found to exist, the Permit Authority or its authorized representative shall by written order direct that such remedial action be taken forthwith as will result in full compliance with the applicable regulations, provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of such enforcement proceedings as are set forth in these Regulations; and provided further, that compliance with such order shall not necessarily be deemed to be a defense to any alleged violation of the Regulations or other applicable regulations of Otero County or the State of Colorado.

2.504      Nonconforming Uses

- (1) The provisions of the Regulations shall not apply to any use existing on the date the area is designated or subjected to these Regulations which use becomes nonconforming as a result of the adoption of the Regulations, provided that, when such a nonconforming use shall be discontinued for six months or more or a nonconforming structure is damaged or destroyed to the extent of at least fifty (50) percent of the appraised value, any reuse, reconstruction, or replacement of such structure shall be deemed a new use and shall be subject to the provisions of the Regulations.
- (2) A state agency or political subdivision of the state which owns or operates any use existing on the date the activity is designated or subjected to the Regulations, which would otherwise be deemed a new use subject to the

provisions of the Regulations, may request continued treatment as a nonconforming use by demonstrating that the operation of the nonconforming use has not been discontinued for such an extended period of time as would indicate an attempt to (a) abandon the facility or (b) forego any necessary repair or replacement thereof as necessary to make it operable.

## CHAPTER 3

### REGULATIONS FOR EFFICIENT UTILIZATION OF MUNICIPAL AND INDUSTRIAL WATER PROJECTS

- Article 1      General and Introductory Provisions
  - 3.101      Title and Citation
  - 3.102      Purpose and Intent
  - 3.103      Definitions
  - 3.104      Applicability
- Article 2      Designation of Municipal and Industrial Water Projects
  - 3.201      Designation of Municipal and Industrial Water Projects
  - 3.202      Boundaries of Area Covered by Designation
  - 3.203      Reasons for Designation
- Article 3      Permit Applications and Permits
  - 3.301      Application Procedure
  - 3.302      Prohibition of Development of Municipal and Industrial Water Projects
  - 3.303      Submission Requirements
  - 3.304      Action on Permit Application

## **Article 1      General and Introductory Provisions**

### **3.101      Title and Citation**

These various sections constituting Chapter 3 of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County," may be cited as the "Regulations for Efficient Utilization of Municipal and Industrial Water Projects," and may be referred to in this Chapter 3 as "these Regulations."

### **3.102      Purpose and Intent**

The purpose and intent of the Regulations contained in this Chapter 3 are:

- (1) To ensure that municipal and industrial water projects are developed in a manner so as to emphasize the most efficient use of water, including, to the extent permissible under law, the recycling and reuse of water;
- (2) To ensure that urban development, population densities, and site layout and design of stormwater and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas;
- (3) To ensure that municipal and industrial water projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and aquifer recharge areas within the source development area; and
- (4) To ensure that the off-site impacts of municipal and industrial water projects, including, but not limited to soil loss from air or water erosion, airborne dust, noxious weed invasion, and negative effects on surface and groundwater quality and the aquatic and natural habitat of the source development areas, are effectively mitigated.

### **3.103      Definitions**

- (1) "Aquifer recharge area" means any area where surface waters may infiltrate to a water bearing stratum of permeable rock, sand or gravel. This definition also includes wells used for disposal of wastewater or other toxic pollutants.
- (2) "Efficient use of water" means the employment of methods, procedures, techniques, and controls to ensure that the amount of water and the purpose for which water is used will yield the greatest possible benefit to the greatest number of people. Such benefits will consider, but not be limited to, economic, social, aesthetic, environmental, agricultural, and recreational.
- (3) "Municipal and industrial water project" means

- (a) a system and all integrated components thereof through which a municipality(ies) and/or industry derives its water supply from either surface or subsurface sources (exclusive of such systems capable of serving fewer than (3) three households, as defined by the Otero County Zoning Resolution), on a year-round, continuous basis with municipal water, or the equivalent amount of water for industrial or commercial purposes, including a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs; and
  - (b) any of the following activities, if proposed to be taken with respect to any single parcel or tract of land of more than three (3) acres, located within the area described on **Exhibit D**, and which land is irrigated as of the effective date of these Regulations, and to the extent such activities are proposed to be undertaken or are undertaken for the purpose, direct or indirect, of making water supplies available to a municipal or industrial water project, as defined at subparagraph (a) above: (i) permanent cessation of irrigation as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2; (ii) lease, sale, or other disposition, in whole or in part, of the land or the water rights historically used to irrigate the same, including refraining from exercising the water rights to irrigate the land, the effect of which is to cease irrigation for more than three years in any ten-year period; or (iii) development of the land for a use or uses other than irrigated agriculture.
- (4) "Municipality" means and includes a home rule or statutory city, town or city and county or a territorial charter city. "Municipality" also means and includes any special district, quasi-municipal or private corporation or company which provides a water supply to its members, customers, or buyers.
  - (5) "Recycling" means the treatment of wastewater in a manner that will replenish its quality to the standard established by the Colorado Department of Public Health and Environment where permissible by Colorado water law.
  - (6) "Source development area" means that geographic area or region wholly or partially within the unincorporated territory of this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in Section 3.103(3).

### 3.104 Applicability

These Regulations shall apply to the development of municipal and industrial water projects wholly or partially within the unincorporated territory of this County.

**Article 2      Designation of Municipal and Industrial Water Projects**

3.201      Designation of Municipal and Industrial Water Projects

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, hereby orders that efficient use of municipal and industrial water projects be designated a matter of state interest and regulated pursuant to the provisions of these Regulations.

3.202      Boundaries of Area Covered by Designation

Development of municipal and industrial water projects wholly or partially within the unincorporated territory of this County shall be subject to this designation and these Regulations.

3.203      Reasons for Designation

Development of municipal and industrial water projects is hereby designated as a matter of state interest for the reasons stated in Section 3.102.

**Article 3      Permit Applications and Permits**

3.301      Application Procedure

The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions, and the issuance and content of permits to engage in development of a municipal or industrial water project shall comply with the provisions set forth in Chapter 2.

3.302      Prohibition of Development of Municipal and Industrial Water Projects

- (1) No person may engage in development of a municipal or industrial water project wholly or partially within the unincorporated territory of this County without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of development or construction of a municipal or industrial water project without the applicant first having obtained a permit pursuant to these Regulations.

3.303      Submission Requirements

An application for a permit to engage in development of a municipal or industrial water project shall be accompanied by five (5) copies of the following documents and information:

- (1) A completed application form;

- (2) An abstract of the proposal indicating the scope and need for the development;
- (3) Preliminary review and comment on the proposal by the appropriate agency of the Colorado Department of Natural Resources and/or the Colorado Department of Public Health & Environment, as applicable;
- (4) For the purpose of assisting in evaluation of the applicant's selected development alternative only, a listing of alternative site locations and general degree of feasibility of each or, at the option of the applicant, the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA);
- (5) Proponents of proposal:
  - (a) Names, addresses and business of all interests proposing the activity;
  - (b) Name and qualifications of the person(s) responding to the requirements detailed in these Regulations;
- (6) A detailed report on the proposed municipal or industrial water project to include:
  - (a) Location and scope of the proposed project;
  - (b) Current and future needs for such development;
  - (c) Inventory of existing water projects presently serving the municipality or area in question and excess service capacity of each project;
  - (d) Population trends, projections and growth rates (if a municipal project);
  - (e) Primary source of proposed water resources;
- (7) Describe the relationship, if any, of the proposed project to formally adopted regulations and policies of federal, state, regional or county governments, which regulations or policies would govern the use of land or water resources impacted by the project;
- (8) Describe proposed methods of insuring efficient and beneficial use of water resources within the municipality or area to which the water is proposed to be delivered. Such methods should consider metering of all users, examination of rate structure to discourage waste and recycling of water for reuse where permissible by Colorado water law;

- (9) Provide a description and detailed engineering plans and specifications of the proposed construction of structures, buildings, and improvements associated with the project and the financial and environmental impacts thereof on the community or surrounding areas;
- (10) Provide assurance that the proposed municipal or industrial water project is capable of supplying water of a quality acceptable to the Colorado Department of Public Health & Environment;
- (11) Identify and locate on a map of an appropriate scale any of the following features present in the source development area and detail the potential impact of the municipal or industrial water project upon each feature:
  - (a) Marshlands and wetlands,
  - (b) Groundwater recharge areas,
  - (c) Potential natural hazards,
  - (d) Forests and woodlands,
  - (e) Critical wildlife habitat or other wildlife protection areas,
  - (f) Public, outdoor recreation areas,
  - (g) Unique areas of geological, historic and archeological importance,
  - (h) Critical aquatic life habitat, and
  - (i) Agricultural areas.
- (12) Describe the potential adverse effects of the diversions of water upon plant and animal life dependent upon the water resources in question;
- (13) Describe and indicate on an appropriate map surface water bodies (streams, lakes, reservoirs (existing or proposed), etc.) and groundwater aquifers in the source development area and their uses. Describe the effects of the diversion of water for the municipal or industrial water project on the above-described water feature(s) including the effects on present water quality, current and foreseeable uses. Include a detailed statement of the impacts of the proposed project upon water quality standards including, but not limited to antidegradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants;
- (14) Describe the present zoning of the land in the source development area;
- (15) Describe the agricultural productivity capability of the land in the source development area (NRCS classification) and describe the potential effects

of the diversion of water for the municipal or industrial water project on that agricultural productivity capability;

- (16) Increased domestic and/or municipal water treatment costs and/or wastewater treatment costs:

The applicant shall submit a plan to offset increased domestic and/or municipal water treatment and/or wastewater treatment necessary to meet water quality standards and determined to be a direct result of flow modification through changes in the transport of nutrients, total dissolved solids, hardness, minerals or other pollutants due to the operation of any project facilities proposed by the applicant. This may be accomplished either by construction and operation of additional domestic and/or municipal water treatment facilities made necessary by the reduction in flow, or the applicant may elect to pay a fee in lieu of those mitigation measures. This fee will be based upon the additional costs of domestic and/or municipal treatment and/or wastewater treatment (capital, operation and maintenance); and it will be used exclusively for meeting the costs of such additional domestic and/or municipal treatment and/or wastewater treatment;

- (17) Any demographic data needed to fulfill the requirements of these Regulations shall be consistent with those used for the applicable 208 area-wide waste treatment management plan;
- (18) The benefits of the project, both in natural and socioeconomic terms, and the degree to which benefits, both within the County and to the applicant, outweigh the adverse impacts of the project within the County;
- (19) In the event the application is for a municipal or industrial water project within the definition at Section 3.103(3)(b), the requirements of Section 5.303(6)(f) (revegetation plan) and Section 5.303(6)(g) (wildlife habitat plan) are incorporated herein by this reference and must also be met;
- (20) For construction traffic that will use a County road, describe the anticipated types of vehicles, number of each type, anticipated number of trips per day per each type, County roads to be used, and the percentage of the construction traffic that will travel on each road.
- (21) For each alternative site or expansion area for which a permit is being sought by the applicant, the information specified in subsections (1) through (20) of this Section. An application need not meet the identified submission requirements for other than the particular development alternative for which a permit is being sought in order for the application to be considered complete, but the description of alternative sites and expansion areas must be sufficiently detailed so as to adequately inform the Permit Authority.

Action on Permit Application

- (1) In determining whether to approve, approve with conditions, or disapprove a permit application, the Permit Authority shall take into consideration the following criteria:
  - (a) To the extent applicant's service area is located within or partially within the boundaries of the County, whether the need for the proposed water project can be substantiated;
  - (b) Compatibility of the proposed water project with federal, state, regional and County planning policies regarding land use and water resources;
  - (c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of stormwater and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas;
  - (d) Provision has been made to ensure that the proposed water project will not contaminate surface water resources;
  - (e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health & Environment;
  - (f) The proposed diversion of water will not decrease the quality of peripheral or downstream surface and subsurface water resources within the County below that designated by the Colorado Water Quality Control Division as of the date of the adoption of these Regulations;
  - (g) The proposed development and the potential diversion of water will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitats, or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance;
  - (h) The water treatment offset plan required by Section 3.303(16) has been approved by the Permit Authority and required fees associated therewith, if any, have been paid; and

- (i) The construction of structures, buildings, and improvements associated with the proposed development will not significantly impact existing or proposed communities and will not create an undue financial burden on existing or future residents within the proposed development area as concerns construction traffic.

## CHAPTER 4

### REGULATIONS FOR SITE SELECTION AND CONSTRUCTION OF MAJOR NEW DOMESTIC WATER TREATMENT SYSTEMS AND MAJOR EXTENSIONS OF SUCH SYSTEMS

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| Article 2 | Designation of Site Selection and Construction of Major New Domestic Water Treatment Systems     |
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## **Article 1      General and Introductory Provisions**

### **4.101      Title and Citation**

These various sections constituting Chapter 4 of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County" may be cited as the "Regulations for Site Selection and Construction of Major New Domestic Water Treatment Systems and Major Extension of Such Systems," and may be referred to in this Chapter 4 as "these Regulations."

### **4.102      Purpose and Intent**

The purpose and intent of the Regulations contained in this Chapter 4 are:

- (1) To insure that new domestic water treatment systems and major extensions of such systems are constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water treatment systems and major extensions of such systems within this County;
- (2) To insure that site selection and construction of major new domestic water treatment systems and major extensions of such systems are conducted in such a manner as to minimize environmental impacts associated with such development;
- (3) To insure that site selection and construction of major new domestic water treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within this County;
- (4) To insure that urban development, population densities, and site layout and design of water systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas; and
- (5) To insure that the off-site impacts of major new domestic water treatment systems and major extensions of such systems are effectively mitigated.

### **4.103      Definitions**

- (1) "Major new domestic water treatment system" means a system for provision to the public of piped water for human consumption or a system for the provision to the public of piped water which will be used in exchange for water for human consumption, including a water treatment plant, or water supply system, and any system of pipes, structures, and facilities through which water is collected for treatment, if such system is proposed to serve more than three (3) households, as defined by the Otero County Zoning Resolution.

- (2) "Major extension of an existing domestic water treatment system" means (1) the expansion of existing domestic water treatment capacity for storage; or (2) any extension of existing domestic water supply systems, to the extent such expansion or extension is proposed to serve more than three (3) "households," as defined by the Otero County Zoning Resolution.
- (3) "Major new domestic water treatment system and major extensions of each systems" shall include any of the following activities, if proposed to be taken with respect to any single parcel or tract of land of more than three (3) acres, located within the area described in **Exhibit D**, and which land is irrigated as of the effective date of these Regulations, and to the extent such activities are proposed to be undertaken or are undertaken for the purpose, direct or indirect, of making water supplies available to a major new domestic water treatment system or major extension thereof, as defined in this Section: (i) permanent cessation of irrigation as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2, (ii) lease, sale, or other disposition, in whole or in part, of the land or the water rights historically used to irrigate the same, including refraining from exercising the water rights to irrigate the land for such irrigation, the effect of which is to cease irrigation for more than three years in any ten-year period, or (iii) development of the land for a use other than irrigated agriculture.
- (4) "Water supply system" means the system of pipes, structures and facilities through which a water supply is obtained, collected, treated and sold or distributed for human consumption or the system of pipes, structures and facilities through which a water supply is obtained which will be exchanged or traded for water which will be used for human consumption.
- (5) "Water treatment plant" means the facility or facilities within the water supply system which can alter the physical, chemical or bacteriological quality of the water.
- (6) "Source area" means a geographic area or region where moisture falls and drains through natural processes to either streams or lakes or permeates to the groundwater table, analogous to catchment basin or watershed.
- (7) "Distribution system" means a network of pipes and conduits through which water is piped to the public for human consumption or through which water is piped for exchange or trade for water which will be used for human consumption.
- (8) "Proposed development" means a major new domestic water treatment system or a major extension to such system, as defined in this Section and includes any proposed land development directly related to such

system if such development is to be located wholly or partially within this County and if such development specifically generates the need for the system. The term "development area" as used in these Regulations is included within the meaning of "proposed development."

- (9) "Source development area" means that geographic area or region wholly or partially within the unincorporated territory of this County which will be developed or altered in connection with the development of a major new domestic water or sewage treatment system, as those terms are defined in Section 4.103. The source development area may or may not be wholly or partially within the development area.
- (10) "Nonconforming use" means a use in existence at the time of the adoption of these Regulations, which use, were it a new use, would be one for which a permit is required under these Regulations.

4.104 Applicability

These Regulations shall apply to the site selection and construction of all major new domestic water treatment systems and major extensions of such systems wholly or partially within the unincorporated territory of this County.

**Article 2      Designation of Site Selection and Construction of Major New Domestic Water Treatment Systems and Major Extensions of Such Systems**

4.201 Designation of Site Selection and Construction of Major New Domestic Water Treatment Systems and Major Extensions of Such Systems

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, hereby orders that site selection and construction of major new domestic water treatment systems and major extensions of such systems be designated a matter of state interest and regulated pursuant to the provisions of this Chapter.

4.202 Boundaries of Area Covered by Designation

The site selection and construction of any major new domestic water treatment systems and major extensions of such systems wholly or partially within the unincorporated territory of this County shall be subject to this designation and these Regulations.

4.203 Reasons for Designation

Site selection and construction of major new domestic water treatment systems and major extensions of such systems is hereby designated as a matter of state interest for the reasons stated in Section 4.102.

### **Article 3      Permit Applications and Permits**

#### **4.301      Application Procedure**

The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions, and the issuance and content of permits to engage in site selection and development of major new domestic water treatment systems and major extensions of such systems shall comply with the provisions set forth in Chapter 2.

#### **4.302      Prohibition of the Site Selection and Construction of Major New Domestic Water Treatment Plants**

- (1) No person may locate a major new domestic water treatment system wholly or partially within the unincorporated territory of this County without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of selecting a site for or constructing a major new domestic water treatment plant without the applicant first having obtained a permit pursuant to these Regulations.

#### **4.303      Reserved**

#### **4.304      Submission Requirements**

An application for a permit to locate or construct a major new domestic water or sewage treatment system and major extensions of such systems shall be accompanied by five (5) copies of the following documents and information:

- (1) A completed application form;
- (2) An abstract of the proposal indicating the scope and need for the development;
- (3) Preliminary review and comment on the proposal by the appropriate agency of the Colorado Department of Natural Resources and the Colorado Department of Public Health and Environment, as applicable;
- (4) For the purpose of assisting in evaluation of the applicants' elected development alternative only, a listing of alternative potential site locations and general degree of feasibility of each;
- (5) Proponents of proposal:
  - (a) Names, addresses and business of all local or other interests proposing site selection and construction of a major new water or sewage treatment system or major extension thereof.

- (b) Name and qualifications of the person(s) responding to the requirements detailed in these Regulations.
- (6) Scope of proposal:
  - (a) Provide detailed engineering plans and specifications of the proposal, prepared by a registered professional engineer, including proposed system capacity and service area plans mapped at a scale determined by the Permit Authority;
  - (b) Provide a description of all existing or approved proposed domestic water treatment systems within the development area and source development area;
  - (c) Detail the design capacity of each domestic water treatment system and the distribution or collection network in the development area and source development area;
  - (d) Detail the excess capacity of each treatment system and distribution or collection network in the community or development area and source development area;
  - (e) Provide an inventory of total commitments already made for current water services in the development area and source development area;
  - (f) Detail the operational efficiency of each existing system in the development area and source development area, including age, state of repair, and level of treatment;
  - (g) Detail the source and rights for the water supplies for the system, including any permits, decrees or contracts for such rights, or the application submitted for change of water rights, appropriation of water or augmentation plans;
  - (h) Detail existing water utilization including historic yield from rights and use by category such as agricultural, municipal and industrial and supply obligations to other systems; and
  - (i) Provide a description and detailed engineering plans and specifications, prepared by a registered professional engineer, of the proposed construction of structures, buildings and improvements associated with the project and the financial, environmental and social impacts thereof on the community or surrounding areas within the development area and source development area.
- (7) Demonstrate the need for a new water treatment system:

- (a) Provide population trends for the development area and source development area: e.g., present population, population projections, and growth rates;
  - (b) Specify the predominant types of developments to be served by the proposed new water or sewage treatment system;
  - (c) Specify at what percentage of the design capacity the current system is now operating in the development area and source development area;
  - (d) Specify whether or not present facilities can be upgraded to adequately accommodate the ten (10) year projected increased need in treatment and/or hydraulic capacity in the development area and source development area.
- (8) Environmental impact analysis:
- (a) Land Use:
    - (i) Provide a map (at an appropriate scale) detailing existing land uses of the development area, source development area, and the project service area including peripheral lands which may be impacted. The land use map should include, but not necessarily be restricted to, the following categories: residential, commercial, industrial, open space, outdoor recreation, agricultural, forest land and water bodies (surface and subsurface);
    - (ii) All immediately affected public land boundaries should be indicated on the map. Potential impacts of the proposed development upon public lands will be visually illustrated on the map as well as described in textual form;
    - (iii) Specify whether the proposed project conforms to this County's planning policies;
    - (iv) Specify whether the proposed project conforms to regional and state planning policies;
    - (v) Specify whether the proposed project conforms to federal land management policies;
    - (vi) Describe the present use of the land in the development area and source development area;
    - (vii) Detail the present zoning of the land in the development area and source development area;

- (viii) Detail the agricultural productivity capability of the land in the development area and source development area (NRCS classification);
  - (ix) Specify how the proposed development will utilize existing easements or rights-of-way for new associated distribution or collector networks;
  - (x) Describe the probability that the system may be significantly affected by earthquakes, floods, fires, snowslides, avalanches, rockslides, or landslides and any measures taken to reduce the impact of such events upon the system; and
  - (xi) Specify whether the demand for this project is associated with development within or contiguous to existing service areas.
- (b) Water Resources
- (i) Describe and indicate on an appropriate map relevant surface water bodies (streams, lakes and reservoirs) and groundwater aquifers in the development area and source development area and their uses;
  - (ii) On the same, or other appropriate map, indicate any floodplain associated with the proposed development. Documentation of historical flooding activity should be included. Detail potential adverse impacts of associated floodplain in the development area and source development area;
  - (iii) Describe potential effects of the proposed development on eutrophication, wasteload allocations and water quality of rivers, streams, aquifers and/or any existing or proposed reservoirs in this County;
  - (iv) Describe potential effects of the proposed development project on the above-described water features in the development area and source development area, including the effects on present water quality and current uses. Include a detailed statement of impacts of the proposed project upon water quality standards including, but not limited to antidegradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants; and

- (v) Describe the potential adverse effects of the proposed development upon plant and animal life dependent upon the water resources in the development area and source development area.

(c) Air Quality

Detail the impact of the proposed development on ambient air quality of the development area and source development area and their environs.

(d) Significant Environmentally Sensitive Factors

Identify and locate on a map of an appropriate scale each of the following features present in the development area and source development area and its environs and detail the potential impact of the proposed development upon each feature:

- (i) Marshlands and wetlands,
- (ii) Groundwater recharge areas,
- (iii) Potential natural hazards,
- (iv) Forests and woodlands,
- (v) Critical wildlife habitat or other wildlife protection areas,
- (vi) Public, outdoor recreation areas,
- (vii) Unique areas of geological, historical and archaeological importance,
- (viii) Critical aquatic life habitat, and
- (ix) Agricultural areas.

(e) Visual Aesthetics and Nuisance Factors

Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors which may stem from the proposed development in the development area or source development area.

(f) Transportation/Construction Traffic

- (i) Described what impact the proposed development will have upon the need for and supply of public transportation in this County.

- (ii) For construction traffic that will use a County road, describe the anticipated types of vehicles, number of each type, anticipated number of trips per day per each type, County roads to be used, and the percentage of the construction traffic that will travel on each road.
- (9) Financial impact analysis of site selection and construction of major new water treatment systems and major extensions of such systems will include but not be limited to the following:
  - (a) Review and summary of any existing engineering and/or financial feasibility studies, assessed taxable property valuations, property tax collection experience, and all other matters of aid in determining the feasibility of the new facility, including such as related to:
    - (i) Service area and/or boundaries;
    - (ii) Applicable methods of transmitting, storing, treating and delivering water, and collecting, transmitting, treating and discharging sewage (including effluent and/or sludge disposal);
    - (iii) Estimated construction costs and period of construction of each new facility component;
    - (iv) Assessed valuation of the property to be included within the service area and/or boundaries;
    - (v) Revenues and operating expenses of the new facility including but not limited to historical and estimated property taxation, service charges and rates, assessments, connection and tap fees, standby charges and all other revenues of the new facility;
    - (vi) Amount and security of proposed debt and method and estimated cost of debt service;
    - (vii) Details of any substantial contract or agreement for revenues (as in (v) above) or for services to be paid, furnished or used by or with any person, association, corporation and governmental body.
  - (b) Provide a debt retirement schedule based upon anticipated service fees and tax base.

- (c) Identification of the person, association, corporation and governmental body that will benefit by, use and will pay any or all of the revenues (as in (a)(v) above).
- (d) If the new water treatment system exceeds the proposed ten (10) year population growth needs as detailed by the appropriate region's Section 208 planning demographic projections, then detail the excess service capacity and the cost of such excess capacity to the community.
- (e) Increased Domestic and/or Municipal Water Treatment Costs and/or Wastewater Treatment Costs:

The applicant shall submit a plan to offset increased domestic and/or municipal water treatment and/or wastewater treatment necessary to meet water quality standards and determined to be a direct result of flow modification through changes in the transport of nutrients, total dissolved solids, hardness, minerals or other pollutants due to the operation of any project facilities proposed by the applicant. This may be accomplished either by construction and operation of additional domestic and/or municipal water treatment facilities made necessary by the reduction in flow, or the applicant may elect to pay a fee in lieu of those mitigation measures. This fee will be based upon the additional costs of domestic and/or municipal treatment and/or wastewater treatment (capital, operation and maintenance); and it will be used exclusively for meeting the costs of such additional domestic and/or municipal treatment and/or wastewater treatment.

- (10) Any demographic data needed to fulfill the requirements of these Regulations shall be consistent with those used for the local 208 area wide waste treatment management plan.
- (11) In the event the application is for a major new domestic water treatment system or major extension of such system within the definition at Section 4.103(3), the requirements of Section 5.303(6)(f) (revegetation plan) and Section 5.303(6)(g) (wildlife habitat plan) are incorporated herein by this reference and must also be met.
- (12) For each alternative site or expansion area being considered by the applicant, the information specified in subsections (1) through (11) of this Section. An applicant need not meet the identified submission requirements for other than the particular development alternative for which a permit is being sought in order for the application to be considered complete, but the description of alternative sites and expansion areas must be sufficiently detailed so as to adequately inform the Permit Authority.

4.305        Reserved

4.306        Action on Permit Application

- (1)        A permit application shall be approved (with reasonable conditions, if any, in the discretion of the Permit Authority) only if the proposed development complies with all of the following criteria:
  - (a)        New domestic water treatment systems and major extensions of such systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water treatment systems and major extensions of such systems of communities within this County within the development area and source development area;
  - (b)        The proposed development does not conflict with an approved local master plan or other applicable regional, state or federal land use or water plan;
  - (c)        The proposed development does not adversely affect either surface or subsurface water rights of upstream or downstream users;
  - (d)        Adequate water supplies, as determined by the Colorado Department of Health, are available for efficient operational needs;
  - (e)        Existing domestic water treatment systems servicing the area must be at or near operational capacity;
  - (f)        The scope and nature of the proposed development will not compete with existing water services or create duplicative services;
  - (g)        Age of existing water systems, operational efficiency, state of repair or level of treatment is such that replacement is warranted;
  - (h)        Area and community development and population trends demonstrate clearly a need for such development;
  - (i)        Existing facilities cannot be upgraded or expanded to meet waste discharge permit conditions of the Colorado Water Quality Control Commission;
  - (j)        The benefits of the proposed development outweigh the losses of any natural resources or agricultural lands rendered unavailable or less productive as a result of the proposed development;
  - (k)        The proposed development will not decrease the quality of peripheral or downstream surface or subsurface water resources

below that most recently designated by the Colorado Water Quality Control Commission for those waters;

- (l) The proposed development or its associated collector or distribution system or new service areas will not violate federal or state air quality standards;
- (m) The proposed development or its associated collector or distribution system will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archaeological importance;
- (n) The proposed development or its associated collector or distribution system will not significantly degrade existing natural scenic characteristics, create blight, nor cause other nuisance factors such as excessive noise or obnoxious odors;
- (o) The proposed development or its associated collector or distribution system will not create an undue financial burden on existing or future residents within the development area and source development area. The cost of securing an adequate supply of water for existing and future needs of the residents of this County shall be considered in determining whether an "undue financial burden" will result;
- (p) Water treatment offset plans required by Section 4.304(9)(e) have been approved by the Permit Authority and required fees associated therewith, if any, have been paid;
- (q) The construction of structures, buildings and improvements associated with the proposed development will not significantly impact existing or proposed communities within the development area and source development area;
- (r) The development site is not subject to significant risk from earthquakes, floods, fires, snowslides, landslides, avalanches, rockslides or other disasters which could cause a system operational breakdown; and
- (s) The proposed development is capable of providing water meeting the requirements of the Colorado Department of Health and other state and federal water quality requirements.

- (t) The proposed development or its associated collector or distribution system or new service areas will not create an undue financial burden on existing or future residents within the development area and source development area and new service areas as concerns construction traffic.
- (2) The permit shall be denied if the applicant fails to satisfy all the criteria outlined in Section 4.306(1).

## CHAPTER 5

### REGULATIONS FOR DEVELOPMENT IN AREAS CONTAINING OR HAVING A SIGNIFICANT IMPACT UPON NATURAL RESOURCES OF STATEWIDE IMPORTANCE

- Article 1      General and Introductory Provisions
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  - 5.102      Purpose and Intent
  - 5.103      Findings
  - 5.104      Definitions
- Article 2      Designation of Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance
  - 5.201      Designation of Development
  - 5.202      Boundaries of Area Covered by Designation
  - 5.203      Reasons for Designation
- Article 3      Permit Applications and Permits
  - 5.301      Application Procedure
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  - 5.303      Submission Requirements
  - 5.304      Action on Permit Application

**Article 1      General and Introductory Provisions**

5.101      Title and Citation

These various sections constituting Chapter 5 of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County" may be cited as the "Regulations for Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance," and may be referred to in this Chapter 5 as "these Regulations."

5.102      Purpose and Intent

The purpose and intent of the Regulations contained in this Chapter 5 are:

- (1) To administer areas containing or having a significant impact upon natural resources of statewide importance in a manner that will allow man to function in harmony with, rather than be destructive to, these resources;
- (2) To protect areas of Otero County which are essential for wildlife habitat;
- (3) To ensure that development in areas containing natural resources is conducted in a manner which will minimize damage to those resources for future use;
- (4) To ensure that development in areas containing or having a significant impact upon natural resources of statewide importance takes place in a manner which will result in protection of the soil in areas of the County which have been historically irrigated, in order that significant wildlife habitats within the County may be protected and preserved;
- (5) To ensure that development in areas containing or having a significant impact upon natural resources of statewide importance is conducted in such a manner as to minimize environmental impacts associated with such development;
- (6) To ensure that development in areas containing or having a significant impact upon natural resources of statewide importance is planned and executed in a manner so as not to impose an undue economic burden on existing or proposed communities within this County;
- (7) To ensure that the impacts of development in areas containing or having a significant impact upon natural resources of statewide importance, including but not limited to soil loss from air or water erosion, airborne dust, noxious weed invasion, and negative effects on surface and groundwater quality and the aquatic and natural habitat of the source development area, are effectively mitigated.

5.103 Findings

The Board of County Commissioners hereby finds that:

- (1) The areas of Otero County which have been historically irrigated, as identified on **Exhibit D** hereto, are also the most significant for wildlife habitat, lying as they do adjacent to the major waterways, both natural and artificial, throughout the County.
- (2) The area described on **Exhibit D** contains and/or has significant impact upon natural resources of statewide importance, consisting of significant wildlife habitats in which the wildlife species, as identified by the Division of Wildlife of the Colorado Department of Natural Resources, could be endangered.
- (3) Viable topsoil is fundamental to the maintenance of significant wildlife habitat.
- (4) Loss of topsoil results in inability of the land to support native plants upon which all wildlife species depend. Particularly in the areas of Otero County which have been historically irrigated, the presence of topsoil on those areas has enabled wildlife to survive upon grain in harvested and fallow fields.
- (5) Noxious weed invasion aggravates the loss of topsoil by crowding out native plants and further degrading the ability of wildlife species to exist.
- (6) This topsoil is the fundamental basis upon which the economy and life of the County is based. Its productivity is inextricably linked to the economic health of the County and its residents.
- (7) Without adequate and enforceable revegetation plans, loss of topsoil from historically irrigated lands within the County, from air and waterborne erosion, or from noxious weed invasion, is a direct result of the transfer of water rights from the land and subsequent dry-up.
- (8) These Regulations are necessary to require and enforce adequate revegetation plans for lands which are removed from irrigated agricultural production.
- (9) Adequate revegetation plans for such lands are needed to ensure that the significant wildlife habitat values of such lands are preserved and protected.

5.104 Definitions

- (1) "Development" means and includes any of the following, if proposed to be taken with respect to any single parcel or tract of land of more than three

(3) acres, located within the area described in **Exhibit D**, and which land is irrigated as of the effective date of these Regulations: (i) permanent cessation of irrigation as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2; (ii) lease, sale, or other disposition, in whole or in part, of the land or the water rights historically used to irrigate the same, including refraining from exercising the water rights to irrigate the land, the effect of which is to cease irrigation for more than three years in any ten-year period; (iii) development of the land for a use or uses other than irrigated agriculture; or (iv) any sale or transfer of land located within the areas described on **Exhibit D** or of the water rights used to irrigate such lands, when the effect of such sale or transfer is to separate ownership of the land from the water rights.

- (2) "Natural resource of statewide importance" means and includes the areas of Otero County which have historically been irrigated, as shown on **Exhibit D**.
- (3) "Nonconforming use" means a use or development in existence at the time of the adoption of these Regulations, which use, were it a new use or development, would be one for which a permit is required under these Regulations.
- (4) "Noxious weed invasion" means the appearance and establishment of non-native plants in a manner or quantity which threatens to displace or does displace native vegetation, vegetation planted as a part of a revegetation program or effort, or vegetation planted as an agricultural crop or practice. "Noxious weed invasion" shall not include the appearance and establishment of non-native plants when part of an approved revegetation plan.
- (5) "Soil Loss" means the loss of topsoil from historically irrigated lands by air or waterborne erosion, or by noxious weed invasion.
- (6) "Source development area" means that geographic area or region wholly or partially within the unincorporated territory of this County which will be developed, altered or affected in connection with a development as defined herein.
- (7) "Wildlife habitat" means a geographical area containing those elements of food, water, cover, space and general welfare in a combination and in quantities adequate to support a species for at least a portion of the year. A particular area need not be occupied by a particular wildlife species in order to be considered habitat for that species. Wildlife habitat may include those areas which were historically occupied and are still suitable for occupancy, are presently occupied, or are potentially suitable for occupancy but not historical range, i.e., mountain goat habitat in Colorado.

5.105      Applicability

These Regulations apply to all development in areas containing or having a significant impact upon natural resources of statewide importance wholly or partially within the unincorporated territory of this County.

**Article 2      Designation of Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance**

5.201      Designation of Development

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, hereby orders that development in areas containing or having a significant impact upon natural resources of statewide importance be designated a matter of state interest and regulated pursuant to the provisions of this Chapter.

5.202      Boundaries of Area Covered by Designation

Development in areas containing or having a significant impact upon natural resources of statewide importance wholly or partially within the portion of the unincorporated territory of this County shown on the map attached hereto as **Exhibit D** shall be subject to this designation and these Regulations.

5.203      Reasons for Designation

Development in areas containing or having a significant impact upon natural resources of statewide importance is hereby designated as a matter of state interest for the reasons stated in Sections 5.102 and 5.103.

**Article 3      Permit Applications and Permits**

5.301      Application Procedure

The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions, and the issuance and content of permits to engage in development in areas containing or having a significant impact upon natural resources of statewide importance shall comply with the provisions set forth in Chapter 2.

5.302      Prohibition of Development

- (1) No person may undertake development, as defined in Section 5.103, wholly or partially within the area described on **Exhibit D** without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of "development" as defined in Section 5.104 without the applicant first having obtained a permit pursuant to these Regulations.

5.303 Submission Requirements

An application for a permit to conduct development as defined in Section 5.104 shall be accompanied by five (5) copies of the completed application form and the following documents and information:

- (1) An abstract of the proposal indicating the scope and need for the major development;
- (2) Preliminary review and comment on the proposal by the appropriate agency of the Colorado Department of Natural Resources and/or the Colorado Department of Public Health & Environment, as applicable;
- (3) For the purpose of assisting in evaluation of the applicant's selected development alternative only, a listing of alternative development and general degree of feasibility of each or, at the option of the applicant, the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA);
- (4) Proponents of proposal:
  - (a) Names and addresses of all interests proposing the activity.
  - (b) Name and qualifications of the person(s) responding to the requirements detailed in these Regulations.
- (5) Scope of proposal:
  - (a) Describe the source and rights for any water subject to transfer by decree as a part of the development, including a copy of the transfer decree;
  - (b) Describe existing water utilization including historic yield from rights and use by category such as agricultural, municipal and industrial and supply obligations to other systems; and
  - (c) Provide a description and sufficiently detailed engineering plans and specifications, prepared by a registered professional engineer, of the proposed construction of structures, buildings and improvements associated with the project and the financial, environmental and social impacts thereof on the community or surrounding areas within the development area and source development area.
- (6) Environmental impact analysis:
  - (a) Land Use:

- (i) Provide a map (at an appropriate scale) detailing existing land uses of the development area which may be impacted. The land use map should include, but not necessarily be restricted to the following categories: residential, commercial, industrial, open space, outdoor recreation, agricultural, forest land and water bodies (surface and subsurface);
  - (ii) All immediately affected public land boundaries should be indicated on the map. Potential impacts of the proposed development upon public lands will be visually illustrated on the map as well as described in textual form;
  - (iii) Specify whether the proposed development conforms to this County's planning policies, including, without limitation, any Otero County Comprehensive or Master Plan;
  - (iv) Describe the relationship, if any, of the proposed development to formally adopted regulations and policies of federal, state, regional or county governments, which regulations or policies would govern the use of land or water resources impacted by the project;
  - (v) Describe the present use and zoning of the land in the development area;
  - (vi) Describe the agricultural productivity capability of the land in the development area (NRCS classification);
  - (vii) Describe the potential adverse impact of the proposed development on the soil of the source development area, including impact upon soil productivity, potential soil loss from air or water erosion, and degradation from susceptibility to noxious weed invasion.
- (b) Water Resources
- (i) Describe and indicate on an appropriate map relevant surface water bodies (streams, lakes and reservoirs) and groundwater aquifers in the source development area and their uses;
  - (ii) On the same, or other appropriate map, indicate any floodplain associated with the proposed development. Documentation of historical flooding activity should be included;
  - (iii) Describe potential effects of the proposed development on eutrophication, wasteload allocations and water quality of

rivers, streams, aquifers and/or any existing or proposed reservoirs in this County;

- (iv) Describe potential effects of the proposed development on the above-described water features in the source development area, including the effects on present water quality and current uses. Include a detailed statement of impacts of the proposed project upon water quality standards including, but not limited to antidegradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants; and
- (v) Describe the potential adverse effects of the proposed development upon plant and animal life dependent upon the water resources in the development area and source development area.

(c) Air Quality

Detail the impact of the proposed development on ambient air quality of the source development area and its environs. Specifically include description of impacts associated with airborne dust.

(d) Significant Environmentally Sensitive Factors

Identify and locate on a map of an appropriate scale each of the following features present in the source development area and its environs and detail the potential impact of the proposed development upon each feature:

- (i) Marshlands and wetlands,
- (ii) Groundwater recharge areas,
- (iii) Potential natural hazards,
- (iv) Forests and woodlands,
- (v) Critical wildlife habitat or other wildlife protection areas,
- (vi) Public outdoor recreation areas,
- (vii) Critical aquatic life habitat, and
- (viii) Agricultural lands.

(e) Visual Aesthetics and Nuisance Factors

Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors which may stem from the proposed development, including airborne dust and noxious weed invasion.

(f) Revegetation Plan:

All applications must include a detailed revegetation plan for all land areas from which historic irrigation practices will be removed. Describe all revegetation plans or efforts proposed as part of the development, including any such plans required as a condition of any Water Court decree pertaining to the development. Such plan shall include, at a minimum:

- (i) Description of all lands included.
- (ii) Plant and seed material to be used and the method and timing of their application.
- (iii) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended revegetation, for a period no less than two (2) growing seasons, or such longer or shorter period as the Permit Authority shall require.
- (iv) Whether the plan is required as a part of any Water Court transfer decree, and if so, whether the plan has been approved by the Water Court (include a copy of the decree and plan as so approved).
- (v) As a part of the security required by Section 2.402, proposed security to guarantee implementation of the revegetation plan, including the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds, and revising and repeating the revegetation plan in the event the plan fails in whole or in part.
- (vi) If the applicant believes that revegetation is not necessary and that dry land agricultural practices may be undertaken on land which is presently irrigated, the applicant must present evidence from an expert agronomist, local soil conservation district, local NRCS Office or other appropriate source that dry land agricultural practices are reasonably possible and that air quality, significant environmentally sensitive factors, visual aesthetics, nuisance factors and all other appropriate considerations as set forth herein will be satisfied. The Permit Authority

shall make the final decision whether revegetation is necessary under these circumstances.

The Permit Authority may, but is not required to consider a Water Court approved revegetation plan as partial or full satisfaction of the requirements of this Section 5.303(6)(f).

- (g) The Application shall demonstrate how the applicant will meet the applicable habitat needs listed below by the identified wildlife species and will avoid conflict with these needs. Where conflicts are unavoidable, the applicant shall present proposals to minimize the extent and degree of the conflict, including revegetation and/or compensation through replacement or enhancement of habitat on an alternative site.
  - (i) Production Areas. These include areas necessary for prenuptial activities, breeding, young-bearing and rearing, i.e., spawning beds, nursery streams, and protected shoal areas for fish; permanent shallow water for amphibians; strutting, booming and dancing grounds and calling perches, nesting places, and protective young-rearing cover for birds; breeding grounds, calving and fawning areas, den trees, burrows, and young-rearing cover for mammals.
  - (ii) Principal Feeding Areas. These include areas containing the natural foods of a wildlife species of sufficient quantity and quality and readily available to sustain a normal population.
  - (iii) Summer Ranges. Summer ranges relatively free of human disturbance are highly important to the survival of some species, especially those requiring extended periods of time for young-rearing.
  - (iv) Winter Ranges. Winter ranges of sufficient quality and quantity are critical for two reasons: (1) they are frequently so restricted in area that they limit the size of an animal population over its entire range; and (2) these ranges are often in proximity to human populations and human activities so that the species involved are adversely affected, or the species may adversely affect real and personal property.
  - (v) Concentration Areas. Areas where high density of wildlife species at certain times of the year makes them highly susceptible to developments and activities of man. Examples of concentration areas include staging areas for waterfowl, sandhill cranes and deer; roosting areas for a

number of birds; colonies of such colonial species as swallows, herons and beaver; and mass dens of snakes.

- (vi) Shelter Areas. Those physical or natural features in their habitats which provide escapement from their enemies and adverse weather conditions. Included here are such things as rough terrain for many species of wildlife; rocky bottoms and shorelines and aquatic vegetation in and adjacent to water for protection of fish, amphibians, and aquatic oriented species of terrestrial wildlife.
- (vii) Water and Minerals. A permanent water supply in sufficient quantity and quality is necessary to support most wildlife species. In addition some species have special mineral needs. Continuous stream flows and conservation pools in reservoirs are essential to the survival of fish. Stable water levels in lakes and reservoirs are highly desirable for fish, amphibians and many forms of terrestrial wildlife. High quality water, free of pollutants, is essential to the survival of fish, amphibians and many birds, as well as to the food organisms upon which they depend.
- (viii) Movement Corridors. Many species of wildlife have daily and seasonal movement patterns along more or less established corridors. These may be between seasonal ranges; to reach spawning areas; or between nesting, resting, roosting, feeding and watering areas. Concentrations of animals along such corridors increase the likelihood of conflict between wildlife and humans. Many of these corridors offer the only means for wildlife movements, or their uses become so traditional that disruption or interference could be disastrous for the species involved.
- (ix) Buffer Zones. Some species of wildlife are intolerant to disturbance from human activities during portions of the year. In order to protect these species, buffer zones with no, or limited, human related disturbances are necessary during those seasons when these species occupy specific areas.
- (x) Special Habitat Needs. Some wildlife species have very specific habitat needs, without which they cannot survive. Therefore, reduction of such needs beyond certain limits, or a complete destruction of these habitat features could cause a species to be reduced in number or perish. For example, sagebrush is essential to the survival of sage grouse; wild turkeys need roost trees meeting certain

requirements; catfish will only spawn when water temperatures are within certain limits; and black footed ferrets are limited to ranges occupied by prairie dogs.

- (xi) Shoreline Vegetation. Vegetation along stream banks and the shorelines of lakes is extremely important to aquatic wildlife and aquatic related forms of terrestrial wildlife. Such vegetation controls water temperatures, provides food and shelter and protects banks from excessive erosion which damages or destroys wildlife habitats.

- (7) Financial impact analysis, including but not limited to the following:
  - (a) Review and summary of any assessed taxable property valuations, property tax collection experience, and all other matters of aid in determining the impact of the proposed development upon the County.
  - (b) Proposed security to guarantee revegetation.
- (8) The benefits of the project, both in natural and socioeconomic terms, and the degree to which benefits, both within the County and to the applicant, outweigh the adverse impacts of the project within the County.

#### 5.304 Action on Permit Application

- (1) In determining whether to approve, approve with conditions, or disapprove a permit application, the Permit Authority shall take into consideration the following criteria:
  - (a) The proposed development adequately provides for revegetation of lands historically irrigated in a manner which will successfully prevent invasion of noxious weeds and air or waterborne soil loss;
  - (b) Revegetation plans required by Section 5.303(6)(f) have been approved by the Permit Authority and adequate security therefor has been placed with the County;
  - (c) The proposed development will not significantly degrade existing natural scenic characteristics, create blight, nor cause other nuisance factors such as excessive noise, obnoxious odors, airborne dust or noxious weed invasion;
  - (d) The proposed development does not conflict with an approved local master plan or other applicable regional, state or federal land use or water plan;

- (e) Adequate water supplies are available for successful implementation of revegetation plans;
- (f) The proposed development does not adversely affect either surface or subsurface water rights of upstream or downstream users; provided, however, that the exercise of a senior water right in such a manner as to not cause material injury to other water rights in accordance with state statutes, decided case law and decrees of the water court, shall not be considered to create any adverse water rights impact upon such junior water rights;
- (g) The benefits of the proposed development outweigh the losses of any natural resources or agricultural lands rendered unavailable or less productive as a result of the proposed development;
- (h) The proposed development will not decrease the quality of peripheral or downstream surface or subsurface water resources below that designated by the Colorado Water Quality Control Commission as of the date of adoption of these Regulations;
- (i) The proposed development will not violate federal or state air quality standards;
- (j) The proposed development will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archeological importance, or the extent to which the proposed development will replace such habitat or areas in other locations within the County;
- (k) The proposed development will not create an undue financial burden on existing or future residents within the source development area. The cost of securing an adequate supply of water for existing and future needs of the residents of this County shall be considered in determining whether an "undue financial burden" will result.

## CHAPTER 6

### REGULATIONS FOR SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY

- |           |   |
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## **Article 1      General and Introductory Provisions**

### **6.101      Title and Citation**

These various sections constituting Chapter 6 of the "Guidelines and Regulations for Areas and Activities of State Interest of Otero County" may be cited as "Regulations for Site Selection and Construction of Major Facilities of a Public Utility," and may be referred to in this Chapter 6 as "these Regulations."

### **6.102      Purpose and Intent**

The purpose and intent of the Regulations contained in this Chapter 6 are:

- (1) To encourage planned and orderly land use development;
- (2) To provide for the needs of agriculture, forestry, industry, business, residential communities, and recreation in future growth;
- (3) To encourage uses of land and other natural resources which are in accordance with their character and adaptability;
- (4) To conserve soil, water, forest and agricultural resources;
- (5) To protect the beauty of the landscape;
- (6) To promote the efficient and economic use of public resources;
- (7) To regulate the site selection and construction of major facilities of a public utility to prevent significant deterioration or degradation of existing air and water quality in the state; and
- (8) To regulate the site selection and construction of major facilities of a public utility so as to avoid direct conflict with adopted local government, regional and state master plans.

### **6.103      Definitions**

- (1) "Applicant" means any individual, partnership, corporation, association, company, or other public or corporate body, including the federal government or any federal entity, and includes any political subdivision, agency, instrumentality, or corporation of the state.
- (2) "Appurtenant facilities" means any buildings, structures or other property which are clearly incidental to, and customarily found in connection with major facilities of public utilities and are operated and maintained for the benefit or convenience of the occupants, employees, customers or visitors of such major facilities.

- (3) "Central office buildings of telephone utilities" means facilities, including appurtenant facilities, owned and operated by a telephone utility for the primary purpose of officing of telephone utilities employees engaged in administrative, accounting, engineering, training and like activities or public offices maintained for the transaction of business with telephone utilities customers, including the expansion of existing facilities which would increase office floor space by fifty (50) percent or more.
- (4) "Major facilities of a public utility" means:
  - (a) Central office buildings of telephone utilities;
  - (b) Transmission lines, power plants, and substations of electrical utilities; and
  - (c) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.
- (5) "Master plan" means a plan for the physical development of the jurisdiction as defined by Sections 30-28-106 and 30-28-107, C.R.S.
- (6) "Nonconforming use" means a use in existence at the time of the adoption of these Regulations, which use, were it a new use, would be one for which a permit is required under these Regulations.
- (7) "Pipelines" mean any pipeline and appurtenant facilities designed for, or capable of, transporting natural gas or other petroleum derivatives of ten (10) inches diameter or larger **or** any pipeline that utilizes or disturbs more than five (5) acres of land during installation or repair of said pipeline.
- (8) "Power plant" means any electrical energy generating facility which either utilizes more than five (5) acres of land regardless of its generating capacity, or any electrical energy generating facility with a generating capacity of greater than or equal to ten (10) megawatts or more, regardless of how much acreage is utilized, and any facilities appurtenant thereto, or any addition thereto increasing the existing design capacity of the facility by a combined ten (10) megawatts or more.
- (9) "Public utilities" as used in these Regulations means the term as defined by "Section 40-1-103, C.R.S.
- (10) "Site selection" means the process for determining the location of major facilities of a public utility or the expansion of existing major facilities of a public utility.
- (11) "Storage area" means any facility, including appurtenant facilities, designed to store 50 million cubic feet or more of natural gas or 35,000

barrels or more of petroleum derivatives, or any expansion of any existing storage facilities to accommodate 50 million cubic feet or more of natural gas or 35,000 barrels or more of petroleum derivatives. Deep underground storage areas are excluded.

(12) "Substation" means any facility designed to provide switching, voltage transformation, or voltage control required for the transmission of electricity at 230 kilovolts.

(13) "Transmission lines" mean any electric transmission line and appurtenant facilities which emanate from a power plant or substation and terminate at a substation.

6.104 Applicability

These Regulations shall apply to site selection of major facilities of any public utility to be located wholly or partially within the unincorporated territory of this County.

**Article 2** **Designation of Site Selection and Construction of Major Facilities of a Public Utility**

6.201 Designation of Site Selection and Construction of Major Facilities of a Public Utility

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, hereby orders that site selection and construction of major facilities of a public utility be designated a matter of state interest and regulated pursuant to the provisions of this Chapter.

6.202 Boundaries of Area Covered by Designation

The site selection and construction of any major facility of a public utility wholly or partially within the boundaries of this County shall be subject to this designation and these Regulations.

6.203 Reasons for Designation

Site selection and construction of any major facility of a public utility is hereby designated as a matter of state interest for the reasons stated in Section 6.102.

**Article 3      PERMIT PROGRAM FOR SITE SELECTION AND CONSTRUCTION OF A MAJOR FACILITY OF A PUBLIC UTILITY**

6.301      Prohibition on Site Selection and Construction of a Major Facility of a Public Utility Without Permit

- (1)      No person may locate or construct a major facility of a public utility wholly or partially in this County without first obtaining a permit pursuant to these Regulations.
- (2)      No local authority may issue a building permit for purposes of selecting a site for or constructing a major facility of a public utility wholly or partially in this County without the applicant first having obtained a permit pursuant to these Regulations.

6.302      Procedural Requirements

- (1)      The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions and issuance and content of permits for selecting a site and constructing any major facility of a public facility shall comply with the provisions set forth in Chapter 2, the Permit Regulations adopted by this County.
- (2)      Any person seeking to select a site or construct any major facility of a public facility shall apply for a permit from the Permit Authority on the appropriate form prescribed by these Regulations, at Exhibit B, and maintained in the office of the Otero County Administrator.
- (3)      To minimize expenditures of time and money by all concerned, an application for a permit to locate and construct a major facility of a public utility shall be submitted first in a preliminary form so that general feasibility of the application can be assessed. Also, any major problems and issues can be identified and defined to direct the data gathering and assessment that are to accompany the final application.
- (4)      This Section shall not be interpreted to waive the requirements of Section 40-5-101, et seq., C.R.S., that a public utility obtain a certificate of public convenience and necessity.

6.303      Submission Requirements

- (1)      Preliminary application:
  - (a)      At the time of making preliminary application, all applicants shall submit five (5) copies of the following documents and information:
    - (i)      A completed application form;
    - (ii)      Description of proposed facility and site; and

(iii) Description of the present use and zoning.

(A) Location map showing the proposed site and clearly indicating the relationship of the site to the surrounding area within fifty (50) miles from the site if a central office building or power plant is proposed, and within ten (10) miles of the site if another major facility is proposed. For transmission lines and pipelines, provide a map showing all existing transmission lines and pipelines within the County.

(B) Type of facility --specify where applicable:

1. approximate floor space of office building
2. voltage and length transmission line
3. power source and generating capacity
4. function and size of substation
5. diameter and length of pipeline
6. capacity of storage tanks, and type of petroleum derivative to be stored
7. service area
8. resource area (e.g. source of power being generated or transmitted, source of petroleum derivative being transported).

(C) Projected development schedule:

1. Estimate maximum number of employees, number of shifts and employees per shift during the following phases: construction, operation and maintenance.
2. Specify any future phases or extensions of the facility and relationship of the facility (if currently foreseen) to larger programs and plans.
3. Specify timetable for planning (e.g., federal permits, state permits, local zoning, etc.).

4. Estimate beginning and completion of construction and beginning of operation of facility.
5. Describe support facilities (e.g. pollution control parking areas, landscaping, etc.) to be provided.
6. Describe any feasible "non-structural" alternatives to meet the objectives of the proposed site selection and construction.

(D) Hazards and emergency procedures:

1. Describe hazards, if any, of fire, explosion and other dangers to the health, safety and welfare of employees and the general public.
2. Describe hazards, if any, of environmental damage and contamination due to materials used at or activities taking place at the proposed facility.
3. Describe emergency procedures to be used in the event of fire, explosion or other event which may endanger the public health, safety and welfare.
4. Describe any prevalent natural hazards that will affect or be affected by development, and describe mitigating measures to be taken to reduce danger due to such natural hazards.

(b) Review of preliminary application

- (i) Upon acceptance of complete submission requirements by the Permit Authority, the applicant shall be issued a receipt indicating that preliminary application requirements have been met.
- (ii) Within thirty (30) days of issuing receipt of the preliminary application, the Permit Authority shall provide the applicant with a written review concerning the general feasibility of the application. Major problems and concerns will also be outlined in this review.

- (iii) If the applicant, after receiving the written review, decides to proceed with the permit application, he shall notify the Permit Authority in writing within thirty (30) days. The Permit Authority shall then arrange a meeting at a mutually agreeable time and place.
- (iv) The purpose of the meeting is to discuss and clarify, if necessary, the preliminary review, to determine submission requirements for final application, to identify sources of data and information, to coordinate this study with others, and to establish study format, methodology, map scales, work schedules gathering and analyzing data for the final application.

(2) Final application

- (a) At the time of making final application, all applicants shall submit five (5) copies of the following documents and information:
  - (i) Delineation of base area (that area likely to be subject to land use changes as a result of the project).
    - (A) Map showing base area; describe how the determination was made.
    - (B) Map showing all special districts, (school, fire, water sanitation, etc.) affected by the proposal.
  - (ii) Delineation of impact area (that area whose physical and socio-economic environment is likely to be impacted, beneficially and adversely, by the site selection and construction of the proposed facility).
  - (iii) Objectives of the proposed site selection and facility.
    - (A) Describe the relationship of project to local land use policies and comprehensive plans and to policies and plans adopted or under preparation by federal, state and other affected local governmental agencies.
    - (B) Describe the relationship of the project to other existing and planned utility facilities of similar nature, other communication or energy generation and transmission facilities, local government capital improvement programs, and special district expansion programs.

- (iv) Description of need for project
  - (A) Describe briefly why the public convenience and necessity require the facility of the size and nature proposed be constructed on the site proposed.
  - (B) Sources of demographic and economic data and methods of analysis.
  - (C) Market function (i.e. what user needs and patterns will project fulfill).
- (v) Description of support facilities needed
  - (A) Type of water quality control.
    - 1. Describe proposed sewage treatment facilities and nonpoint source controls.
    - 2. Describe pollutant loads (point and non-point sources) expected directly from development. Specify seasonal variations.
  - (B) Public services and facilities.
    - 1. Estimate police and fire protection requirements.
    - 2. Estimate public road maintenance requirements.
    - 3. Estimate educational and health service requirements.
    - 4. Estimate facilities and services required to provide adequate water supply and sewage treatment.
- (vi) Description of employment and economic opportunities.
  - (A) Describe capital investment in facility.
  - (B) Estimate anticipated revenues to local, state and federal governments, special districts.
  - (C) Describe employment opportunities.

1. Types of jobs and number of positions anticipated; employment; wage and salary schedules.
  2. Opportunities for employment of local citizens.
  3. Employment opportunities for low income and minority population in impact area.
- (vii) Description of visual conditions (base area).
- (A) Map area within view of project.
  - (B) Map access and travel routes, public areas, residential areas that will have a view of the project.
- (viii) Description of noise conditions (base area).
- Describe and map possible expected noise levels by immediate and future facility operation.
- (ix) Description of socio-economic environment (impact area).
- (A) Characteristics of the existing population.
    1. Age, income level and distribution, education, social background, family size, etc.
    2. Neighborhood and distinct socio-economic groups.
    3. Migrational trends and seasonal fluctuations.
    4. Anticipated population changes.
  - (B) Current employment.
    1. Principal employers, type, number of employees.
    2. Unemployment and underemployment.
    3. Characteristics of local labor pool.
    4. Manpower training and retraining potential.

- (C) Inventory local governments and special districts providing services in base areas.
  - 1. Map jurisdiction and type of service.
  - 2. Capacity and utilization of services.
  - 3. Operating revenue and expenditures.
  - 4. Tax base.
  - 5. Current level of taxation.
  - 6. Estimate revenue generating capacity and identify potential new sources of revenue.
- (D) Housing.
  - 1. Current housing inventory (including numbers, types, (owner or rental), sales or rental prices, year-round or seasonal, dormitories, mobile homes and locations).
  - 2. Projected housing requirements (including numbers, types (owner or rental), sales or rental prices, year-round or seasonal, dormitories, mobile homes and locations).
- (E) Existing Transportation Network/Construction Traffic.
  - 1. Access to site.
  - 2. Circulation within base area and commuting patterns in impact area.
  - 3. Capacities of arterial streets within impact area.
  - 4. Maintenance provisions and costs.
  - 5. For construction traffic that will use a County road, the anticipated types of vehicles, number of each type, anticipated number of trips per day per each type, County roads to be used, and the percentage of the construction traffic that will travel on each road.

- (F) Description of historical and archaeological resources.
  - 1. Describe historical and archaeological sites by means of completing state inventory forms and submit these to the State Historical Society for evaluation.
  - 2. Describe resources individually and as they relate to the community; include photos wherever possible.
- (x) Description of atmospheric conditions (impact area).
  - (A) Meteorology (based on worst-case winter time conditions).
    - 1. Wind speed and direction.
    - 2. Inversion height.
    - 3. Atmospheric stability.
  - (B) Topography
 

Describe general and outstanding topographic feature in project area (maps and aerial photos should be provided).
  - (C) Background ambient air quality (TSP, SO<sub>2</sub>, HC, CO, NO<sub>x</sub>, O<sub>3</sub>, etc.).
- (b) At the time of final application, applicants seeking a permit for the site selection and construction of transmission lines or substations shall submit, in addition to those requirements set forth in Subsection (a) of this Section, five (5) copies of the following documents and information:
  - (i) Description of geologic and pedologic conditions of base area.
    - (A) Map bedrock and surficial geology.
    - (B) Map and describe areas of:
      - 1. avalanches
      - 2. mud flows and debris fans

3. all types of unstable or potentially unstable slope
  4. special seismic considerations
  5. areas of high radioactivity
  6. ground subsidence
  7. expansive soil and rock
  8. other geologic conditions which are pertinent
- (C) Map extent of 100-year floodplain if present.
- (D) Map topography in adequate detail to determine adequacy of facility design.
- (E) Map and evaluate mineral and energy resources.
- (F) Map and evaluate agricultural resources.
- (ii) Description of biotic conditions (impact area).
- (A) Map plant communities.
1. Characteristics, quantity, productivity of plant types.
  2. Endangered or threatened plant species.
  3. Evidence of past disturbance and current indications of stages in ecological succession.
- (B) Wildlife (Terrestrial)
1. Determine species present, seasonal occurrence, status and relative importance.
  2. Map distribution of species.
  3. Map biological features (migration routes, breeding grounds, etc.).

4. Identify species included on official federal or state list of endangered or threatened species.
5. Identify species that are unique in their Colorado distribution.

(C) Wildlife (Aquatic)

1. Identify species present.
2. Map streams, lakes and reservoirs which provide or have potential for habitat.
3. Map biological features (spawning runs, spawning beds, etc.)
4. Identify any endangered species (federal or state) or any which are unique in their Colorado distribution.

(c) At the time of final application, applicants seeking a permit for the site selection and construction of pipelines or storage areas shall submit, in addition to those requirements set forth in subsection (a) and (b) of this Section, five (5) copies of the following documents and information:

(i) Description of hydrologic conditions - surface (impact area).

(A) Provide map of all surface water.

(B) Describe expected monthly streamflows for typical year, wet year, dry year (include 7 day -10 year low flows where sufficient data exists).

(C) Describe physical stream features (gradient, velocity, depth, etc.).

(D) Provide data on chemical and biological quality, including BOD, dissolved O<sub>2</sub>, free CO<sub>2</sub>, PH, TDS, ph-th alkalinity, MO alkalinity, NH<sub>4</sub>, heavy metals and other toxic or deleterious substances.

(ii) Description of hydrologic conditions -- subsurface (impact area).

(A) Map all aquifers that may be affected by project.

- (B) Provide tables, graphs, map showing permeability, transmissibility, thickness, volume, depth of aquifers.
  - (C) Describe geology of strata overlying aquifers including percolation rates, travel time to groundwater surface.
  - (D) Map of all wells using aquifers including diameter, flow rates.
- (d) At the time of final application, applicants seeking a permit for the site selection and construction of a power plant shall submit, in addition to those requirements set forth in subsections (a), (b) and (c) of this Section, five (5) copies of the following documents and information:
  - (i) Map locating and describing resource areas to be utilized as sources of energy.
  - (ii) Description of water system proposed:
    - (A) Source of supply, volume and rate of flow at full development.
    - (B) Water rights owned or utilized.
    - (C) Proposed points of diversion and changes of points of diversion.
    - (D) Volume of stream flow to remain unused between points of diversion.
    - (E) Dependability of supply (physical and legal).
    - (F) Effects on downstream users.
  - (iii) Description of air pollution control measures.
- (e) At the time of final application, all applicants shall submit an analysis of impacts as follows:
  - (i) Summarize the major natural and socio-economic environmental constraints as they affect the site selection and construction of the facility as proposed.

- (ii) Describe present utilization of land, water, air, biotic, geologic and socio-economic resources within impact area as applicable to submission requirements.
- (iii) Describe alternative uses for these resources.
- (iv) Analyze the effects of the proposed site selection and construction upon the natural and socio-economic environment of the impact area as applicable to submission requirements.
  - (A) Provide analysis of hydrologic, atmospheric, geologic, pedologic, biotic, visual, and noise impacts.
  - (B) Provide surface and subsurface drainage analysis.
  - (C) Provide socio-economic impact analysis.
  - (D) Provide transportation impact analysis.
  - (E) Provide analysis of impacts upon agricultural productivity and agricultural resources.
- (v) Analyze the long-term effects of the proposed site selection and construction upon the physical and socio-economic development of the impact area.
- (vi) Justify the proposed site selection and construction against the present and alternative uses of the resources in the impact area.
- (vii) Describe a program to minimize and mitigate adverse impacts and to maximize the positive impacts of the proposed site selection and construction.
  - (A) Analyze alternatives
    - 1. Alternative locations and routes
    - 2. Alternative types of facilities
    - 3. Use of existing rights-of-way
    - 4. Joint use of rights-of-way with other utilities
    - 5. Upgrading of existing facilities

- (B) Analyze non-structural alternatives as applicable.
    - 1. Conservation of energy use
    - 2. No development
  - (C) Analyze management alternatives (i.e. development scheduling, training programs, facility design, land trades, etc.).
  - (D) Analyze air and water pollution control alternatives.
  - (E) Analyze design alternatives (access, landscaping, architectural controls, etc.).
  - (F) Submit a program to meet "front end" costs of providing necessary services and facilities.
- (3) The requirements of Section 5.303(6)(f) (revegetation plan) of these Guidelines and Regulations are incorporated herein by this reference and must also be met.

6.304 Action on Permit Application

- (1) The Permit Authority shall approve an application for permit for site selection and construction of a major facility of a public utility (with reasonable conditions, if any, in the discretion of the Permit Authority) only if the proposed site selection and construction complies with all of the following criteria:
  - (a) The health, welfare and safety of the citizens of this County will be protected and served;
  - (b) The natural and socio-economic environment of this County will be protected and enhanced;
  - (c) All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way wherever uses are compatible, have been adequately assessed and the proposed action represents the best interests of the people of this County and represents the best utilization of resources in the impact area;
  - (d) A satisfactory program to mitigate and minimize adverse impacts has been presented;

- (e) The nature and location or expansion of the facility complies with all applicable provisions of the master plan of this County, and other applicable regional, metropolitan, state, and national plans;
- (f) The nature and location or expansion of the facility complements the existing and reasonably foreseeable needs of the service area and of the area immediately affected by the facility;
- (g) The nature and location or expansion of the facility does not unduly or unreasonably impact existing community services;
- (h) The nature and location or expansion of the facility will not create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services, as determined by the Permit Authority;
- (i) The facility site or expansion area is not in an area with general meteorological and climatological conditions which would unreasonably interfere with or obstruct normal operations and maintenance;
- (j) The nature and location of the facility or expansion will not adversely affect the water rights of any upstream, downstream, or adjacent communities or other water users;
- (k) Adequate water supplies are available for facility needs;
- (l) The nature and location of the facility or expansion will not unduly interfere with any existing easements for or rights-of-way, for other utilities, canals, mineral claims, or roads;
- (m) The applicant is able to obtain needed easements for drainage, disposal, utilities, access, etc.;
- (n) Adequate electric, gas, telephone, water, sewage, and other utilities exist or shall be developed to service the site;
- (o) The nature and location for expansion of the facility will not interfere with any significant wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark within the impact area;
- (p) The nature and location or expansion of the facility, including expected growth and development related to the operation and provision of service, will not significantly deteriorate air quality in the impact area;

- (q) The geological and topographic features of the site are adequate for all construction, clearing, grading, drainage, vegetation, and other needs of the facility construction or expansion;
  - (r) The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels;
  - (s) The benefits of the proposed developments outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.
  - (t) The proposed development will not create an undue financial burden on existing or future residents within the facility site or expansion area as concerns construction traffic.
- (2) The Permit Authority shall deny the permit if the proposed development does not meet all of the criteria in subsection (1) of this Section.

**EXHIBIT A, PAGE 1**

**DESIGNATION OF AREA  
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on May 18, 2004 the Board of County Commissioners of Otero County designated the following lands as an area of state interest:

All lands historically irrigated within Otero County as indicated on **Exhibit D**, as an area containing or having significant impact upon natural resources of statewide importance.

No one may engage in development on said lands without a permit. Maps or other descriptive materials showing the precise boundary of the area and procedures for obtaining a permit are available at Office of the County Administrator, Otero County Courthouse, 13 West 3rd Street, La Junta, CO 81050.

Date: \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
Chair  
Board of County Commissioners  
Otero County, Colorado

[S E A L]

**EXHIBIT A, PAGE 2**

**DESIGNATION OF ACTIVITY  
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on May 18, 2004, the Board of County Commissioners of Otero County designated as an activity of state interest: efficient utilization of municipal and industrial water projects. Such activities may not be conducted within the unincorporated area of Otero County without a permit. Procedures for obtaining such a permit are available at Office of the County Administrator, Otero County Courthouse, 13 West 3rd Street, La Junta, CO 81050.

Date: \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
Chair  
Board of County Commissioners  
Otero County, Colorado

[S E A L]

**EXHIBIT A, PAGE 3**

**DESIGNATION OF ACTIVITY  
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on May 18, 2004, the Board of County Commissioners of Otero County designated as an activity of state interest: site selection and construction of major new water treatment systems and major extensions of such systems. Such activities may not be conducted within the unincorporated area of Otero County without a permit. Procedures for obtaining such a permit are available at Office of the County Administrator, Otero County Courthouse, 13 West 3rd Street, La Junta, CO 81050.

Date: \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
Chair  
Board of County Commissioners  
Otero County, Colorado

[S E A L]

**EXHIBIT A, PAGE 4**

**DESIGNATION OF ACTIVITY OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on May 18, 2004, the Board of County Commissioners of Otero County designated as an activity of state interest: site selection and construction of major facilities of a public utility. Such activities may not be conducted within the unincorporated area of Otero County without a permit. Procedures for obtaining such a permit are available at Office of the County Administrator, Otero County Courthouse, 13 West 3rd Street, La Junta, CO 81050.

Date:\_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
Chair  
Board of County Commissioners  
Otero County, Colorado

[S E A L]

## EXHIBIT B

### APPLICATION FOR A PERMIT TO CONDUCT A DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST

To: Permit Authority, Otero County

Re: \_\_\_\_\_,  
as a matter of state interest.

From: (Applicant's Name)  
(Address)  
(Telephone)

Date Submitted:

Date Received and Accepted as Complete:

1. Matter of State Interest.

The applicant requests that a permit be issued for each of the items checked below:

A permit to conduct one or more of the following matters of state interest:

- ( ) Efficient Utilization of Municipal and Industrial Water Projects
- ( ) Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance
- ( ) Major New Domestic Water Treatment System or Major Extension of Such Systems
- ( ) Major Facilities of a Public Utility

2. Proposed Activity or Development.

General description of the specific activity or development proposed:

3. General Description.

A general, nonlegal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted:

4. Legal Description.

The legal description, including the acreage, of the tract of land upon which the development or the activity is to be conducted, by metes and bounds or by government survey description: (attach additional sheets if necessary):

5. Owners and Interests.

Set out below the names of those persons holding recorded legal, equitable, contractual and option interests and any other person known to the applicant having an interest in the property described in paragraph 4, above, as well as the nature and extent of those interests for each person, provided that such recorded interests shall be limited to those which are recorded in the Otero County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State (attach additional sheets if necessary):

6. Submission Requirements.

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of Otero County for each of the activities or areas checked in paragraph 1 above, are attached to this application. Those attachments are identified, by letter or number, and described by title below:

7. Design and Performance Standards.

The attached analyses show that each of the design and performance standards set forth in the regulations for each of the activities or areas checked in paragraph 1 above will be met. The individual analyses are identified by reference to the appropriate paragraph or section numbers corresponding to each standard in the Regulations.

8. Additional Information Required.

Attach any additional information required by the Guidelines and Regulations.

9. Duration of Permit.

The Applicant requests a permit for a period of \_\_\_\_\_ years.

10. Application Fee.

The required application fee is submitted herewith.

APPLICANT:

By: \_\_\_\_\_  
(Name)  
(Title)

Note: Within ten (10) days following receipt of a completed application for a permit, the Permit Authority shall determine and set a fee in an amount necessary to cover the costs incurred in the review and approval of the permit application, including all hearings conducted therefor, and shall notify the applicant in writing of said fee and its amount. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Permit Authority certified funds in the amount as set. Until the fee is paid to the Permit Authority, the application for a permit shall not be further processed.

**EXHIBIT C**  
**PERMIT**  
**ISSUED TO CONDUCT A**  
**DESIGNATED ACTIVITY OF STATE INTEREST**  
**OR**  
**TO ENGAGE IN DEVELOPMENT IN A**  
**DESIGNATED AREA OF STATE INTEREST**  
**IN**  
**COUNTY OF OTERO, COLORADO**

Pursuant to Guidelines and Regulations for Areas and Activities of State Interest of Otero County heretofore adopted by the Board of County Commissioners, the County has received an application from \_\_\_\_\_ (hereinafter "Applicant") for a permit to conduct the following matter(s) of state interest:

and has approved that application.

This permit authorizes the Applicant:

1. To:
2. On the following-described tract of land:
3. For the following period:
4. In accordance with the plans and/or specifications approved by the Permit Authority on \_\_\_\_\_, 20\_\_\_\_, as well as the guidelines for administration adopted by the County for:

[insert matter of state interest]

5. On the condition that the Applicant proceeds in conformity with all applicable federal and state statutes and regulations as well as all applicable local land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes.

6. Additional Permit Conditions:

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This permit shall not be effective until the Applicant has filed the proper security with the Permit Authority, pursuant to provisions of the Administrative and Permit Regulations in the amount of (\$\_\_\_\_\_).

This permit is valid for use only by the Applicant and may not be transferred. In the event that the Applicant fails to take substantial steps to initiate the above development or activity within twelve (12) months from the date of this permit or, if such steps are taken, in the event the Applicant fails to complete the development or activity with reasonable diligence, this permit may be revoked by the Permit Authority.

The terms and conditions set forth herein shall be binding upon and run with the land or other interests which are the subject of the Permit, and shall be enforceable against the successors and assigns of the Permittee.

Any time the property which is subject to the Permit, or any interest in it, is transferred by the Permittee to another party, Permittee shall notify the Permit Authority in writing at least twenty (20) days prior to the transfer of the property, and the document of conveyance shall expressly refer to and be subject to this Permit. The failure of Permittee to perform any act required by this paragraph shall not impair the validity of this Permit or limit its enforceability in any way.

Date: \_\_\_\_\_, 20\_\_\_\_

OTERO COUNTY PERMIT AUTHORITY

ATTEST:

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
By: \_\_\_\_\_  
Chair

Board of County Commissioners  
Otero County, Colorado

**EXHIBIT D**

**MAP OF AREA OF OTERO COUNTY  
HISTORICALLY IRRIGATED**

**[ATTACHED]**