

**CHAPTER IX  
WATERSHED DESIGNATION,  
PROTECTION,  
AND REGULATION**

**ARTICLE 9-1      WATERSHED DESIGNATION**

**RESCINDED  
MAY 08, 2003**

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**WATERSHED DESIGNATION**

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## **CHAPTER 9**

### **WATERSHED DESIGNATION, PROTECTION AND REGULATION**

#### **9-1-1 INTENT OF TOWN WATERSHED DESIGNATION**

There is established by the Town of Hotchkiss, Colorado a Watershed Designation ("Watershed") pursuant to C.R.S. 31-15-707(1) (b). The Watershed is that area in which the Town shall exercise its powers to maintain and protect the Town's waterworks from injury and the Town's water supply from pollution. This Watershed is created under the authority granted in C.R.S. §31-15-707 (1) (b), as amended.

The Watershed and these regulations are created only for the purpose of protecting the Town's waterworks and water supply, and not for the purpose of regulating land use activities, which activities shall continue to be regulated by the County of Delta, State of Colorado, and federal government, and any other authority with jurisdiction over land use activities within the Watershed. The Town shall implement and enforce these regulations for the purpose of reviewing and permitting any activity within the Watershed which creates a foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply. The Town's review authority within the Watershed shall be exercised concurrently with the authority of Delta County or any other government entity to review and/or permit the same activity as the Town may regulate; provided however, in the event no review, approval or permit requirement exists, the Town's review authority shall occur prior to the commencement of any activity covered herein.

#### **9-1-2 JURISDICTION AND MAP**

The jurisdiction of the Watershed shall extend over the territory owned or occupied or controlled by easement by the Town waterworks and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the waterworks, and over Leroux Creek, the stream or source from which water is taken, and all water sources and drainage areas tributary thereto, for five (5) miles above such points from which water is diverted for use by the Town. The Watershed Map, with all notations, references and other information shown thereon, is incorporated herein as part of this Chapter. The official Watershed Map is located and can be reviewed in the office of the Town Clerk, and copies thereof are available on request at a cost of \$15.00 per copy.

#### **9-1-3 DEFINITIONS**

Whenever the following words or phrases are used in this Chapter 9, they shall have the following meaning:

**A. "Best Management Practices"** (BMPs) means schedule(s) of activities, prohibitions of practices, maintenance procedures, management procedures, and other management and activity practices to prevent or reduce potential or actual injury to the Town of Hotchkiss waterworks or pollution of the Town of Hotchkiss Water supply. BMPs also include treatment requirements, operating procedures and other practices to control runoff, erosion, drainage, sediment accumulation and similar events.

**B. "EMERGENCY"** means a situation created by an unforeseen event or events with immediate adverse consequences or conditions.

**C. "Excavate" or "Excavating"** means the artificial movement of earth leaving any cut bank over three (3) feet in vertical height or a movement of material in excess of two hundred fifty (250) cubic yards.

**D. "Fill" or "Filling"** means the artificial movement of earth leaving a fill earth bank over two (2) feet in vertical height or filled earth over two (2) feet deep, or artificial addition of earth above a line sloping up at a grade of one (1) vertical to two (2) horizontal from the ground.

**E. "Foreseeable risk"** means the reasonable anticipation that harm or injury may result from acts or omissions.

**F. "Grade" or "Grading"** means the artificial movement of over two hundred fifty (250) cubic yards of material; or movement of any earth or material affecting or creating a drainage channel; or pioneering of roads by the artificial movement of soils, trees or shrubbery creating a roadway or driveway in excess of two hundred fifty (250) feet in length; or the use of vehicles or keeping of any animals upon any land that would lead to a movement of one hundred (100) cubic yards of material within one (1) year of the commencement of such use or which use, if continued, would result in the movement of any earth or material affecting or creating a drainage channel.

**G. "Person"** means any individual, corporation, governmental or governmental subdivision or agency, limited liability company, business trust, estate, trust, partnership, association or any other legal entity.

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

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

**J. "Sewage disposal system"** means an "individual sewage disposal system" as defined in C.R.S. X25-10-103(10), as amended.

**K. "Surface" or "Surfacing"** means any action resulting in the hardening or covering of the pre-existing ground in an area greater than 100 square feet such that rain or other water striking the area will accumulate or run off the surface to a greater extent than prior to the hardening or covering of the pre-existing ground. Surfacing includes, but is not limited to, such things as compacting the surface of the earth, placing gravel, concrete or like substances on the surface of the earth, or placing of structures upon the ground.

**L. "Tributary"** means any watercourse, stream, creek, springs or drainage area which provides a source of supply to the Town's potable water diversion point on Leroux Creek, all water sources, drainage areas thereof, and any tributary thereof, from, above and/or affecting Leroux Creek or related thereto.

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

#### **9-1-4 PROHIBITED ACTIVITIES AND PERMITTED ACTIVITIES REQUIRING NOTICE**

A. It is unlawful for any person to cast, place, dump or deposit in any part of the Town waterworks any substance or material which may injure or obstruct the same or tend to contaminate or pollute the water or obstruct the flow of water through the Town's water facilities. For a distance of five (5) miles upstream from points where the water supply is diverted, no person shall: (a) throw cast, put or deposit any pollutant or contaminant into or in close proximity to Leroux Creek, or any of the related tributaries or drainage areas; (b) store or retain any offensive or unwholesome substance on any premises in such position that the substance or drainage therefrom may be carried by natural causes into Leroux Creek, or any of the related tributaries or drainage areas; or (c) permit to flow into Leroux Creek, or any of the related tributaries or drainage areas from any place or premises, any foul or contaminating fluid.

B. It shall be unlawful for any person to cause injury or damage to the Town waterworks.

C. In addition to the general prohibitions contained within the Town of Hotchkiss Municipal Code, it shall be unlawful for any person to engage in any of the following activities within the Town's Watershed, which activities the Board of Trustees finds pose a potential or threat of injury to the Town's waterworks or pollution to the Town's water supply, unless such person shall, prior to commencement of such activity, receive a permit for such activity under the provisions of this Chapter:

1. Excavation, grading, filling, blasting or surfacing, including rebuilding.
2. Removal of vegetation.
3. Timber harvesting involving one (1) or more acres but excluding the removal of dead or diseased trees for firewood or for noncommercial domestic purposes.
4. Drilling operations.
5. Alteration of water drainage courses.
6. Surface and subsurface mining operations.
7. The out-of-doors spraying or using of herbicides or pesticides unless performed by licensed applicators in compliance with applicable laws, but excepting noncommercial applications for domestic household or gardening purposes.
8. Using, handling, storing or transmitting toxic or hazardous substances, including, but not limited to, radioactive materials, except for noncommercial domestic household purposes as permitted by law.
9. Using, handling, storing, or transmitting flammable or explosive materials, except for domestic purposes, agricultural purposes or within vehicular fuel storage tanks.

D. Construction or installation of a sewage disposal system must have a permit pursuant to 9-1-4C., above, unless the Town has been notified and has participated in the process of another appropriate government agency that has issued a permit for same.

E. The following activities are permitted, without fee, within the District:

1. Activities performed by or on behalf of the U.S. Forest Service or Bureau of Land Management.
2. Farming activities normal and common within the agricultural community of Delta County, Colorado.
3. Stock grazing,
4. Road maintenance and improvement by governmental entities.
5. Maintenance by or on behalf of Leroux Creek Water Users' Association upon their reservoirs, provided same is approved and permitted by the Bureau of Land Management or U.S. Forest Service.

6. Application of herbicides or pesticides, by a licensed applicator, for or on behalf of Leroux Creek Water Users' Association near their reservoirs, provided same is approved and permitted by the Bureau of Land Management or U.S. Forest Service.

F. In the event that any activity not listed in subsection 9-1-4C., above, is being conducted in such a manner that the Board of Trustees finds that there exists a foreseeable risk of injury to the Town's waterworks or pollution to the Town's water supply, the person responsible for such activity shall be notified by the Town of such finding and the Town may require that the activity cease and desist until a permit is obtained for the activity under the provisions of this Chapter.

### **9-1-5 PERMIT AND HEARING PROCEDURE**

**A. Application and Fees.** An applicant for Watershed use permit shall submit the following to the Town Clerk no later than ninety (90) days prior to commencement of a proposed activity:

1. A completed application form as prescribed by the Town. The application shall be completed by the owner of the property on which the proposed activity will occur, or its authorized representative, the latter of whom shall provide evidence satisfactory to the Town of his or her authority to act with respect to the property and who shall also provide a statement setting forth his or her interest in the proposed activity.
2. A full and complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the applicant with respect to the subject property.
3. Two sets of plans and specifications which shall contain the following information:
  - a. A vicinity sketch map or other data indicating the site location and legal description of the subject property.
  - b. Boundary lines of the property for which the permit is sought, if applicable.
- C. Location of any buildings or structures within fifty (50) feet of the proposed activity.

- d. Accurate contours establishing the topography of the existing ground at a minimum of five feet (5') contour intervals for areas with a grade of less than 10%, and at a minimum of twenty feet (20') contour intervals for areas with a grade greater than 10%.
  - e. Elevations, dimensions, location, extent and the slopes of all proposed excavating, grading, filling or surfacing shown by contours and/or other means.
  - f. Details of all drainage devices in connection with the proposed activity.
  - g. A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.
  - h. Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.
  - i. A vicinity map at a scale of not less than 1"-2,000' depicting the location of streets, highways, watercourses, and natural drainage courses of streams within one-half (1/2) mile of the proposed activity site.
  - J. The location of the one hundred-year flood plain of any drainage on or adjacent to the site of the proposed activity.
4. A document identifying any activity that may present or create a foreseeable risk of injury to the Town's waterworks or pollution to the Town's water supply, along with a specific description of the measures, including best management practices, that will be employed by applicant to obviate such risks.
  5. Any and all additional information that may be specifically requested by the Town, including, but not limited to, the following:
    - a. A map showing the drainage pattern and estimated runoff of the area of the proposed activity.
    - b. Re-vegetation and reclamation plans and specifications.
    - c. A soils analysis, including the nature, distribution and strength of existing soils, and recommendations for earth moving procedures and other design criteria.



- d. A hydrologic geologic analysis of the site and adjacent areas.
  - e. An operational and maintenance analysis of the proposed activity.
  - f. Water use analysis for the proposed activity, including source, quality, amount of consumptive use, impact on groundwater and discharge characteristics.
6. An application will not be deemed to be complete until all information required by the Town has been submitted. The Public Works Director or his/her designee shall have the authority to waive one or more submittal requirements if compliance with the requirement(s) waived is not necessary for proper evaluation of a permit application.
  7. The applicant shall submit the Town a Watershed use permit application fee of \$250.00 at the time of filing an application. The fee set forth in this subsection shall be considered a minimum for each application. To the extent any application results in the Town paying for outside professional services, including but not limited to engineering, legal, consulting, publication and copying fees associated with the review of the application, the applicant shall pay all such out-of-pocket expenses incurred by the town. All fees and costs shall be due and payable at the time a statement is presented to the applicant by the Town of Hotchkiss. No Watershed use permit shall be issued until all fees have been paid.
  8. In the event an emergency situation occurs, the responsible party shall contact the Public Works Director or his/her designee with all information available concerning the emergency and the actions taken, planned to be taken or for discussion to determine the appropriate activity for resolving the emergency situation. Promptly following the response to the emergency situation, the responsible party shall file an application containing all relevant information, with applicable fee, with the Town Clerk.

## **B. Review, Analysis and Classification.**

1. Within sixty (60) days following receipt of a completed application and site inspection, if necessary as

determined by the Town, the Public Works Director or his/her designee shall review the application and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of injury to the Town's waterworks or pollution to the Town's water supply, and including a discussion of the measures, including best management practices, if any, that are proposed by the applicant to obviate such risks.

2. In undertaking the analysis of any proposed activity, the Public Works Director or his/her designee shall consider the following factors, and any others that may be relevant:
  - a. Nature and extent of the proposed activity.
  - b. Proximity of the activity to existing water courses, Town water supplies and Town waterworks.
  - c. Drainage patterns and control measures.
  - d. Soil criteria and erosion potential.
  - e. Slope steepness and stability.
  - f. Effects of denudation.
  - g- Geologic hazards, including, but not limited to, avalanche paths, flood plains, high water tables, fault zones and similar factors.
  - h. Ambient and nonpoint source discharges into water.
  - i. Fire hazard.
3. The Public Works Director or his/her designee may classify in writing an application as "Minor Impact" if the Public Works Director or his/her designee finds, based upon the Public Works Director or his/her designee's analysis, that the proposed activity does not present or create a clear or foreseeable risk of significant injury to the Town's waterworks or pollution to the Town water supply. If the Public Works Director or his/her designee designates an application as Minor Impact, the Public Works Director or his/her designee shall forward the application, analysis and "Minor Impact" finding to the Board of Trustees and the Board of Trustees shall conduct the hearing required under 9-1-5c, at a regularly scheduled meeting within thirty (30) days of the Public Works Director or his/her designee's

determination. The Board of Trustees shall render a decision regarding the issuance or denial of a District permit to such applicant within the time limits contained in 9-1-5c. The failure of the Board of Trustees to render such decision within the time limits herein set forth shall be deemed affirmative action on the issuance of the requested permit for any application classified as "Minor Impact".

4. If, upon receipt of an application and review thereof in accordance with the criteria set forth in 9-1-5b, the Public Works Director or his/her designee determines that the proposed activity is of a type or location that will have no negative impact on the Town's waterworks or water supply, the Public Works Director or his/her designee may classify the application as "No Impact". If such a "No Impact" finding is made, the Public Works Director or his/her designee shall immediately issue a District permit for the proposed activity. After issuance of said permit, the Public Works Director or his/her designee shall report same to the Board of Trustees at its next regular or special meeting, and shall also keep a record of such "No Impact" permits for the purpose of assessing the cumulative impact of "No Impact" activities. If the Public Works Director or his/her designee does not make a "No Impact" determination, that decision may be appealed to and considered by the Board of Trustees at that meeting at which the application is otherwise reviewed. At said meeting the Board of Trustees may, based upon the same standards as set forth above, grant a "No Impact" permit for the proposed activity.
5. If, upon receipt of an application and review thereof in accordance with the criteria set forth in 9-1-5b, the Public Works Director or his/her designee finds that the proposed activity poses a foreseeable and significant risk of injury to the Town's waterworks or pollution of the Town's water supply, the Public Works Director or his/her designee shall forward the application, analysis, and finding to the Board of Trustees, together with a recommendation that the Board of Trustees deny the permit or issue the permit with conditions. The Board of Trustees shall then review the application and recommendation as provided in 9-1-5c.

**C. Hearing.** Upon receipt of an application, analysis, and finding from the Public Works Director or his/her designee, the Board of Trustees shall conduct a public hearing to review the application and shall render a decision regarding the issuance or denial of waterworks use permit to such applicant within sixty (60) days of receipt of the Public Works Director or his/her designee's

analysis. However, if the activity requires approval or a permit from any agency of the county, state or federal government, and the approval time lines for the county, state or federal action exceed that required in this section, the Town shall have until thirty (30) days following the issuance of the county, state or federal permit or approval to render a decision regarding the issuance or denial of a Watershed use permit to such applicant. the Board of Trustees may require additional information from any applicant, in which event the public hearing and decision may be delayed or continued until receipt of such additional information.

**D. Standards for Issuance of Permit.** A Watershed use permit shall be issued when the Board of Trustees finds that the applicant has sustained the burden of proof that the proposed activity, including best management practices, if any, does not present or create a foreseeable risk of injury to the Town's waterworks or pollution to the Town's water supply, or injury or pollution or any water sources tributary thereto for five (5) miles above any point from which water is diverted for use by the Town. A Watershed use permit shall be denied when the Board of Trustees finds that the applicant has not sustained such burden of proof.

**E. Permit Conditions.** The Board of Trustees, in issuing any Watershed use permit, may prescribe any conditions it may deem necessary to effect the intent of this Chapter, including a water augmentation plan acceptable to the Board of Trustees. The Board of Trustees may require any applicant to post a surety bond or cash, based upon the Board of Trustees' analysis of the impact of the proposed activity, in an amount sufficient to ensure compliance with the Watershed use permit, including, but not limited to, the cost of maintenance, operation, re-vegetation, reclamation, and other requirements intended to further the intent of this Chapter. The Board of Trustees may release to the applicant portions of any such bond or cash, from time to time, when no longer necessary to ensure compliance with the Watershed use permit.

**F. Duration of Permit.** If any proposed activity for which a Watershed use permit is issued is not commenced within twelve (12) months from the date of issuance of such permit, the permit shall expire and become void.

**G. Notice of Hearing.** Notice of any public hearing required hereunder shall be given at least ten (10) days in advance of the public hearing by publication in the official newspaper of the Town of Hotchkiss, and by notice to the applicant by registered mail.

**H. Joint Review Process.** Any permit required hereunder can be reviewed and issued pursuant to a joint review process with any other government entity or agency charged with the review and approval of the same activity or activities.

## **9-1-6 ENFORCEMENT**

**A. Right of Entry.** When it is necessary to make an inspection to enforce the provision of this Article or the terms and conditions or any permit, or where reasonable grounds exist to believe that a condition, activity or facility on any premises presents a threat of pollution or injury to any of the Town's water sources, supplies or waterworks, the Public Works Director, or his or her designee, may enter onto such premises at reasonable times to inspect and/or perform such investigation and duties as called for under this Article; provided that if the premises be occupied, proper identification be shown to the person(s) on the premises and notification of entry made. If the premises are unoccupied, reasonable efforts shall be made to locate and/or provide notice to the owner or operator of the land or facility in question of the desired access.

**B. Stop Work Order.** Whenever any work or activity is being done contrary to the provisions of this Chapter, or in violation of the terms of any Watershed use permit issued hereunder, the Town or its authorized representatives may order the work stopped by notice in writing served on the applicant or any person engaged in or causing such activity to be done, and such person shall cease such activity until authorized by the Town to proceed. The Town shall reserve the right to revoke or suspend any permit issued hereunder if work is not done in accordance therewith.

## **9-1-7 OTHER REMEDIES**

In addition to any other remedies provided by this Chapter, the Town of Hotchkiss Municipal Code, state or federal law, the Town attorney, on behalf of the Town, may commence an action in a court of competent jurisdiction for a temporary restraining order or preliminary or permanent injunctive relief restraining any violation of this Chapter.

## **9-1-8 ACTIVITY IN PROGRESS**

The lawful continuance of any activity in progress at the time of the enactment of this Chapter may be continued even though it does not conform to the requirements of this Chapter. For purpose of this Section, an "activity in progress" is a building, construction, land use or other activity which has been finally permitted by all other governmental agencies having jurisdiction thereover, and which has been physically commenced. ordinary repairs and maintenance of any existing building, structure or land shall be allowed. Any change, expansion, alteration or enlargement of such existing lawful use shall be subject to all requirements of this Chapter.

## **9-1-9 VIOLATION AND PENALTY**

**A. Offense.** Any person who violates any of the provisions of this Chapter shall be fined in an amount not to exceed \$1,000.00 for each offense. Any person who willfully and wantonly violates any provisions of this Chapter shall be fined not to exceed \$1,000.00 for each offense and/or by imprisonment not exceeding one (1) year, or by both. Each day a violation occurs shall be deemed a separate offense.

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

## **9-1-10 APPEAL**

Any person desiring to appeal any decision or determination by the Board of Trustees hereunder must file such appeal within thirty (30) days following such decision or determination with the District Court of the County of Delta, State of Colorado.

## **9-1-11 DISTRICT MAP**

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