

ORDINANCE NO. 214

AN ORDINANCE ESTABLISHING A WATER SUPPLY PROTECTION DISTRICT FOR THE TOWN OF EMPIRE, ESTABLISHING A PERMIT SYSTEM TO REGULATE CERTAIN ACTIVITIES WHICH CREATE A FORESEEABLE RISK OF DAMAGE OR INJURY TO THE TOWN'S WATER SUPPLY, AND PROVIDING A PENALTY FOR VIOLATION.

WHEREAS, the Town of Empire relies upon groundwater for a portion of its domestic water supply, and

WHEREAS, groundwater supplies across the country are being contaminated by various pollutants from industrial and other sources, and

WHEREAS, groundwater pollutants often migrate considerable distances before detection in domestic groundwater supplies; and

WHEREAS, the Colorado General Assembly has conferred upon municipalities the ability to regulate and protect their water supplies within the territory five miles above their water source and to enact all ordinances and regulations necessary to carry out said authority;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF EMPIRE, COLORADO:

Section 1. Intent of Water Supply Protection District. The purpose for which this Water Supply Protection District is established is the full exercise of the powers of the Town of Empire in maintaining and protecting the Town's waterworks from injury and water supply from pollution or from activities that will create a hazard to health and water quality or a danger of pollution to the water supply of the Town. This Water Supply Protection District is created under the authority granted in Section 31-15-707(1)(b), Colorado Revised Statutes, as amended, and other Colorado statutes. Further, this Water Supply Protection District and the following regulations are created for the purpose of protecting the Town's water and waterworks only, and not for the purpose of regulating land use activities. The regulation of land use activities within the Water Supply Protection District shall be and remain the responsibility of the respective county or municipality having jurisdiction over the area in question, and nothing herein shall restrict or supersede the respective jurisdiction's land use authority. The Town's authority herein shall be for the purpose of reviewing and restricting any activity within the Water Supply Protection District which creates a foreseeable risk of damage or injury to the Town's water supply. The Town's review authority within the Water Supply Protection District shall therefore be concurrent to the authority of any other governmental entity to review and/or require permits for the same activity as the Town may regulate.

Section 2. Jurisdiction and Map. The jurisdiction of the Water Supply Protection District shall extend over the territory occupied by the Town of Empire and all water sources tributary thereto for five miles above the well field supplying the Town's waterworks. The Water Supply Protection District Map accompanies this Ordinance and, with all notations, references and other information shown thereon, is incorporated herein as part of this Ordinance. The official Water Supply Protection District Map is located in the Office of the town Clerk.

Section 3. Definitions. Whenever the following words or phrases are used in this Ordinance, they shall have the following meanings:

- a. "Best management practice" means the most effective means of preventing or reducing harmful effects of certain activities to a level compatible with Town standards.
- b. "Foreseeable risk" means the reasonable anticipation that harm or injury may result from acts or omissions.
- c. "Person" means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association or any other legal entity.
- d. "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological and radiological integrity of water.
- e. "Sewage disposal system" means a septic tank or other facility designed and constructed for the purpose of receiving and disposing of sewage.
- f. "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 striking the area will accumulate or run off the surface to a greater extent than prior to the hardening or covering of said 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 the placement of structures upon the ground.
- g. "Waterworks" means any and all components of the Town's water system including, but not limited to, all wells, pumps, filtration facilities, transmission and distribution lines, and storage facilities supplying water to residents of the Town, regardless of ownership of said facilities.
- h. "Alluvium" is clay, silt, sand or gravel, or similar unconsolidated detrital material deposited during comparatively recent geologic time by a stream or other body of running water as a sorted or semi-sorted sediment in the bed of the stream or on its flood plain or delta, or as a cone or fan at the base of a mountain slope.

- i. "Saturated Zone" is a subsurface zone in which all of the interstices are filled with water under pressure greater than that of the atmosphere. This zone is separated from the zone of aeration by the water table.
- j. "Unconfined Ground Water" is ground water that has a free water table; i.e., water not confined under pressure beneath relatively impermeable rocks.

Section 4. Prohibited Activity and Notice of Other Activity.

- a. It shall be unlawful for any person to engage in any of the following activities within the Water Supply Protection District, which activities the Board of Trustees finds pose a potential threat of pollution to the Town's water supply, unless such person shall, prior to undertaking such activity, obtain a permit for such activity under the provisions of this Ordinance.
  - 1. Constructing a sewage disposal system.
  - 2. Excavation, grading, filling or surfacing.
  - 3. Drilling operations.
  - 4. Surface and subsurface mining or milling operations.
  - 5. Spraying or using herbicides and/or insecticides.
  - 6. The application of fertilizers.
  - 7. Using, handling, storing or transmitting toxic or hazardous substances, including, but not limited to radioactive materials.
  - 8. Using, handling, storing or transmitting flammable or explosive materials except for domestic purposes or within vehicular fuel storage tanks.
  - 9. Any solid or liquid waste disposal.
  - 10. Livestock feed yards.
- b. It shall be unlawful for any person to cause injury or damage to the Town waterworks.
- c. In the event that any activity not set forth above, is being conducted in such a manner that the Board of Trustees finds that a foreseeable risk of pollution to the Town's water supply exists from such activity, the person responsible for such

activity shall be notified by the Town of such finding and the Town may require that such activity cease and desist until such person obtains a permit for such activity under the provisions of this Ordinance.

Section 5. Permit and Hearing Procedure.

- a. Standard for Issuance of Permit/Burden of Proof. The applicant for any Water Supply Protection Permit shall have the burden of proving that the proposed activity, including best management practice, if any, does not present or create a foreseeable risk of pollution to the ground water within the Water Supply Protection District. The Board of Trustees shall grant a Water Supply Protection District Permit when it finds that the applicant's burden of proof has been met, and shall deny such permit when the burden of proof has not been met.
- b. Application and Fees. An applicant for a Water Supply Protection District Permit shall submit the following to the Town.
  1. A completed application form as prescribed by the Town. If the applicant is not the owner of the subject property, the owner shall also sign such application and the applicant shall set forth its interest in the proposed activity. An application will not be deemed to be complete until all information required by the Town has been submitted to the Town.
  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 for which a permit may be required hereunder.
  3. Two sets of plans and specifications which shall contain the following information:
    - a) A vicinity sketch or other data indicating the site location and legal description for the subject property.
    - b) Boundary lines of the property for which the application 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.

- e) An accurate soils, geologic and natural hazards report and map. The information provided shall include soil types and geologic formations affecting tributary and non-tributary water sources.
  - f) Elevations, dimensions, location, extent and the slopes of all proposed excavating, grading, filling or surfacing shown by contours and/or other means.
  - g) Details of all drainage devices in connection with the proposed activity.
  - h) A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.
  - i) Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.
4. Identification of any activity that may present or create a foreseeable risk of pollution to the water supply of the Town of Empire along with a specific description of the measures, including best management practices, that will be employed by the 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) Revegetation 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 geologic analysis of the site and adjacent areas and its impact on the proposed activity.
  - e) An operation and maintenance analysis of the proposed activity.
  - f) Water use analysis, including legal basis, source, quality, amount of consumptive use, impact on ground water and discharge characteristics.

6. Each applicant shall submit a Water Supply Protection District Permit application fee to the Town at the time of filing such application. The applicant shall be assessed a fee sufficient to cover the costs of publication, hearing, processing, administration, inspection and enforcement of such requested permit. The minimum fee hereunder shall be \$300.00. In the event the fee charged by the Town at the time of application is determined to be insufficient to cover the Town's costs, the Town shall have the right to charge the additional fee prior to the issuance or denial of any permit. No Water Supply Protection District Permit shall be issued until all such assessed fees have been paid.

c. Review, Analysis and Risks.

1. Within thirty (30) days following receipt of a completed application and following a site inspection, if necessary as determined by the Town, the Town staff 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 pollution to the water supply of the Town, along with an analysis of the measures, including best management practices, if any, that are proposed by the applicant to obviate such risks and submit such analysis to the Board of Trustees. If the permit application is of sufficient complexity as to require retaining the services of appropriate engineers, the cost of such service shall be added to the permit fee.
2. In undertaking the analysis of any proposed activity, the following factors, among any others that may be deemed relevant, shall be considered:
  - a) Nature and extent of the proposed activity.
  - b) Proximity to existing water courses.
  - c) Drainage patterns and control measures.
  - d) Soil criteria.
  - e) Geologic factors.
  - f) Point source effluent emissions into water or groundwater.
  - g) Ambient and non-point source effluent emissions into water or groundwater.

- h) Vehicular and motorized activity.
3. The Town staff may classify in writing an application as “minor impact” based upon that analysis set forth above if proposed activity clearly does not present or create a foreseeable risk of pollution to the water supply of the Town. Within thirty (30) days after any such minor impact classification, the Board of Trustees shall conduct the hearing required hereunder and render a decision regarding the issuance or denial of a Water Supply Protection District Permit to such applicant. The failure of the Board of Trustees to render such decision within the time limits herein set forth shall be deemed and considered affirmative action on the issuance of the requested permit for any application as “minor impact”.
4. The Town staff may classify in writing an application as “no impact” in the following fashion. A potential applicant for a Water Supply Protection District Permit may apply for a “no impact” finding relative to the proposed activity. The application shall be accompanied by such information, in writing, as the Town staff needs to determine whether a “no impact” finding is warranted. Such information may be less than is required under Section 5 above, and required permit fees may be waived. Upon such application, the Town staff shall determine whether the proposed activity is of a type or location that no negative impact on the Town’s water sources is reasonably foreseeable. If such a “no impact” finding is made, the Town staff shall immediately issue a Water Supply Protection District Permit for the proposed activity. After issuance of said permit, the Town staff 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 Town staff does not make a “no impact” determination, that decision may be appealed to the Board of Trustees at its next regularly scheduled meeting. At said meeting the Board may, based upon the same standards as set forth above, grant a “no impact” permit for the proposed activity, or uphold the Town staff’s determination.
- d. Hearing. Upon receipt of the analysis from the Town staff, the Board of Trustees shall conduct a public hearing to review the application and analysis and shall render a decision regarding the issuance or denial of a Water Supply Protection District Permit to such applicant within three (3) months unless the activity requires approval of permit from any agency of the County, State or Federal Government and which approval or permit procedure exceeds the time requirements of this Ordinance, then, and in that event, the Town shall have an additional sixty (60) days following the final decision of such County, State or Federal government approval or permit procedure to conduct the public hearing

required hereunder and render a decision regarding the issuance or denial of a Water Supply Protection District 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.

- e. Permit Conditions. The Board of Trustees in issuing any Water Supply Protection District Permit may prescribe any conditions it may deem necessary to effect the intent of this Water Supply Protection District. The Board of Trustees may require any applicant to post surety bond or cash in an amount sufficient to ensure compliance with the Water Supply Protection District Permit, including, but not limited to, the cost of maintenance, operation, Revegetation, reclamation, and other requirements of proposed activities. 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 Water Supply Protection District Permit.
- f. Duration of Permit. If any proposed activity for which a Water Supply Protection District Permit is issued is not commenced within nine (9) 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 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 Empire.
- 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.

Section 6. Enforcement.

- a. Right of Entry. Whenever necessary to make an inspection to enforce any provision of this Ordinance, an authorized representative of the Town may go upon any land at any reasonable time to inspect the same or to perform any duty imposed hereunder, provided that he identify himself and, if such land be unoccupied, that he shall make a reasonable effort to locate the applicant or other persons having control of such land to notify them of such entry.
- b. Stop Work Order. Whenever any work or activity is being done contrary to the provisions of this Ordinance, or in violation of the terms of any Water Supply Protection District 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 any 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.

Section 7. Regulations. The Board of Trustees may issue regulations providing guidelines and criteria to carry out the purposes of this Ordinance.

Section 8. Activity in Progress. The lawful use of any buildings, structures or land existing at the time of the enactment of this Ordinance may be continued even though it does not conform to the requirements of this Ordinance. 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 Ordinance.

Section 9. Violation and Penalty.

- a. Violations. Violations of the provisions of this Chapter shall be a misdemeanor and punishable by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment. Each day that such violation continues to exist shall be considered a separate offense.
- b. Actions. Any activity or use which is continued, operated or maintained contrary to any provision of this Ordinance is unlawful. The Town of Empire may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation in which event the Town shall be entitled to recover court costs and attorney's fees.
- c. Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

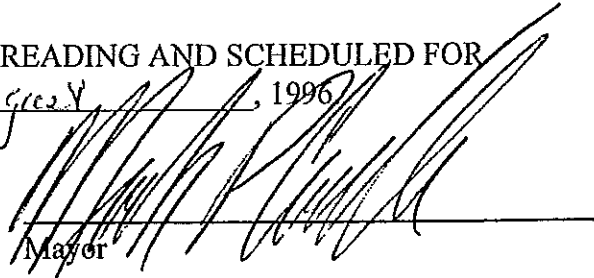
Section 10. Appeal. Any person desiring to appeal any decision or determination by the Board of Trustees hereunder must file such appeal within thirty (30) days following such decision or determination with a Court of competent jurisdiction.

Section 11. Validity. The provisions of this ordinance are hereby declared to be severable and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein. It is further declared that if any section, provision or part of this ordinance or the application thereof to any person or circumstances, if held invalid, the remainder of this ordinance and the application thereof to other persons or circumstances shall not be affected thereby.

Section 12. Necessity. In the opinion of the Board of Trustees of the Town of Empire, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of the property in the Town of Empire.

Section 13. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies available for inspection by the public during regular business hours.

INTRODUCED, APPROVED ON FIRST READING AND SCHEDULED FOR PUBLIC HEARING THIS 7<sup>th</sup> DAY OF October, 1996

  
\_\_\_\_\_  
Mayor

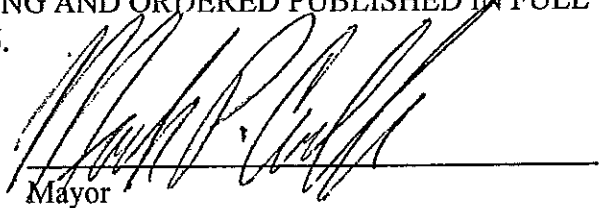
ATTEST:

Julia Holmes  
\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

Marilyn Leonard  
\_\_\_\_\_  
Town Attorney

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL THIS 4<sup>th</sup> DAY OF September, 1996.

  
\_\_\_\_\_  
Mayor

ATTEST:

Julia Holmes  
\_\_\_\_\_  
Town Clerk

