

ARTICLE 4

Watershed Protection District

Sec. 13-4-10. Creation; authority.

Pursuant to the authority granted to the Town by Section 31-15-707(1)(b), C.R.S., and Section 29-20-101, et seq., C.R.S., the Town of Alma Watershed Protection District, hereinafter referred to as "the District," is hereby created. (Ord. 1988-1 §1; Ord. 2011-18 §1)

Sec. 13-4-20. Purpose and intent.

The District is established to exercise fully the powers of the Town in maintaining and protecting the source of water for use by the inhabitants of the Town from injury and pollution or from activities that may create a hazard to health or water quality or a danger of pollution to the water supply of the Town. (Ord. 1988-1 §2; Ord. 2011-18 §1)

Sec. 13-4-30. Jurisdiction and map.

The jurisdiction of the District shall extend over the territory occupied by the Town's waterworks and water sources, and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over Buckskin Creek and all water tributary thereto for five (5) miles above the points from which water is diverted for use by the Town. The Watershed Protection District map kept in the office of the Town Clerk is intended for general reference only. Determination of whether specific activity is within boundaries may require an engineer or surveyor. For purposes of determining the five-mile limit, three (3) points shall be used:

- (1) The site of the activity;
- (2) The point on Buckskin Creek directly down the fall line from the site of the activity; i.e., the point on Buckskin Creek at which surface water discharged from the activity would enter Buckskin Creek; and
- (3) The Town's intake.

The site of activity shall be determined to be within five (5) miles, if the sum of the distances measured in a straight line from point (1) to point (2) and from point (2) to point (3) is less than five (5) miles. The Town may at any time cause an official map of all or part of the boundaries of the District to be made by an engineer or surveyor, and thereafter the most recent map so designated shall be conclusive as to the boundaries of the District in all proceedings before the Town. (Ord. 1988-1 §3; Ord. 2011-18 §1)

Sec. 13-4-40. Definitions.

Whenever the following words or phrases are used in this Article, they shall have the following meanings:

Best management practice means the most effective means of preventing or reducing harmful effects of certain activities to a level compatible with Town and/or County standards.

Excavating means the digging out and removal of earth and other materials leaving any cut bank more than three (3) feet in vertical height and includes movement of material in excess of ten (10) cubic yards.

Filling means the raising of the level of earth leaving a fill earth bank more than two (2) feet in vertical height or filled earth more than two (2) feet deep or artificial addition of earth above a line sloping up at a grade of one (1) vertical to five (5) horizontal from the ground.

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

Grading means the leveling off to a horizontal or sloping surface involving the movement of more than five (5) cubic yards of materials; movement of any earth or material affecting or creating a drainage channel; or pioneering of roads, meaning the movement of trees and shrubbery creating a roadway or driveway more than twenty-five (25) feet in length.

Person means any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

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

Removing vegetation means the artificial cutting, chemical killing or any other manner of removing any tree greater than thirty (30) feet in height, any shrubs or trees covering an area of more than one hundred (100) square feet or any grasses covering an area of more than one thousand (1,000) square feet.

Sewage disposal system means a septic tank or other facility designed and constructed for the purpose of receiving and disposing of sewage.

Surfacing means any action resulting in the hardening or covering of the preexisting ground in an area greater than five hundred (500) 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 preexisting 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.

Waterworks means any and all man-made or designed components of the Town's water system, including but not limited to all transmission, storage and filtration facilities and all reservoirs, streams, trenches, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the Town's water system. (Ord. 1988-1 §4; Ord. 2011-18 §1)

Sec. 13-4-50. Prohibited activity; permitted activity; notice of other activity.

(a) It shall be unlawful for any person to engage in any of the following activities within the District, which activities the Board of Trustees finds pose a potential threat of injury to the Town's waterworks or 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 Article:

- (1) Constructing a sewage disposal system.

- (2) Excavating, grading, filling or surfacing.
- (3) Removing vegetation.
- (4) Timber harvesting, excluding the removal of dead trees for firewood or domestic purposes.
- (5) Drilling operations.
- (6) Altering water drainage courses.
- (7) Surface and subsurface mining operations.
- (8) Spraying or using herbicides.
- (9) Using, handling, storing or transmitting toxic or hazardous substances, including but not limited to radioactive materials.
- (10) Using, handling, storing or transmitting flammable or explosive materials except for domestic purposes or within vehicular fuel storage tanks.

(b) It shall be unlawful for any person to cause injury or damage to the Town waterworks, or otherwise to violate or fail or refuse to comply with any provision of this Article.

(c) Activities within the District which are allowed hereunder but which require written notice to the Town at least fifteen (15) days prior to undertaking such activity are:

- (1) Stock grazing.
- (2) Road maintenance and improvement by governmental entities.
- (3) Activities undertaken by the United States Forest Service or Bureau of Land Management on land owned by it if such activities would require either notice or application if undertaken by any other person. The Town shall not require, but may suggest, a best management practice for such activities. The Town may negotiate an intergovernmental agreement or enter into a memorandum of understanding with the United States Forest Service or the Bureau of Land Management regarding protection of the District, and any such agreement shall become a part of this Article upon becoming effective.

Written notice shall include the name and address of the person undertaking the activity, a description of the proposed activity, its location and such additional information as the Town may require before or after receiving the initial notice. The purpose of this notice requirement is to allow the Town an opportunity to protect the waters of the District by suggesting a best management practice for such activity prior to its undertaking.

(d) In the event that any activity not set forth in Subsection (a) 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 Article. (Ord. 1988-1 §5; Ord. 2011-18 §1)

Sec. 13-4-60. Permit and hearing procedure.

(a) Application and fees. An applicant for a Watershed Protection District Activity Permit ("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 his or her 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 (2) 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 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.

e. Elevations, dimensions, locations, 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.

(4) Identification of any activity that may present or create a foreseeable risk of pollution to the Town's water supply along with a specific description of the measures, including best management practices, that will be employed by the applicant to obviate or mitigate 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 the impact of the proposed activity.

e. An operational and maintenance analysis of the proposed activity.

f. Water use analysis, including legal basis, source, quality, amount of consumptive use, impact on groundwater and discharge characteristics.

(6) The applicant shall submit a 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 as set forth in the Annual Fee Resolution adopted by the Board of Trustees. 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 and collect an additional fee prior to deciding upon the issuance or denial of any permit. No permit shall be issued until all such assessed fees have been paid.

(b) Review, analysis and risks.

(1) Analysis. Within thirty (30) days following receipt of a completed application, the Water Superintendent, or such other person as the Board of Trustees may designate, shall review the application, inspect the site, if reasonably necessary and weather conditions permit, and prepare and submit to the Board of Trustees a written 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 and evaluation of the measures, including best management practices, if any, that are proposed by or available to the applicant to obviate or mitigate such risks. The Water Superintendent may require the applicant to provide such additional information in furtherance of his or her analysis as he or she may deem reasonably necessary.

(2) Factors considered. In undertaking the analysis of any proposed activity, the following factors, among any others that the Water Superintendent may deem relevant, shall be considered:

a. Nature and extent of the proposed activity.

b. Proximity to existing watercourses.

c. Drainage patterns and control measures.

d. Soil characteristics.

e. Slope steepness and stability.

f. Extent and effects of denudation.

g. Geologic hazards, including but not limited to avalanche paths, floodplains, high water tables, fault zones and similar factors.

h. Point-source effluent and emissions into water or air.

- i. Ambient and non-point-source discharge or emissions into, or effect upon, water or air.
- j. Vehicular and other motorized activity.
- k. Fire hazard.

(3) Minor impact; consent calendar. The Water Superintendent may classify in writing an application as a minor impact based upon the analysis set forth above if the proposed activity clearly does not present or create a foreseeable risk of pollution to the water supply of the Town. Within twenty (20) days after any such minor impact classification, or at the next regular meeting of the Board of Trustees if none is held within twenty (20) days, the Water Superintendent shall present to the Board of Trustees a consent calendar of applications classified as minor impact. Upon such presentation, the Board of Trustees shall approve the issuance of a permit to each application on the consent calendar, except that if any Trustee requests a hearing to review any application, then that application shall be stricken from the consent calendar, its classification as minor impact shall be withdrawn, and it shall be set for public hearing as otherwise provided herein. The failure of the Board of Trustees to render such decision within the time limits set forth herein shall be deemed and considered affirmative action in favor of the issuance of the requested permit for any application classified as minor impact.

(4) Hearing. Upon receipt of the analysis from the Water Superintendent, 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 Watershed District permit to such applicant within six (6) months, unless the activity requires approval of the permit from any agency of the County, State or federal government, and which approval or permit procedure exceeds the time requirements of this Article. In such case, the Town shall have an additional ninety (90) days following the final decision of such county, state or federal government approval or permit procedure to conduct the public hearing hereunder and render a decision regarding the issuance or denial of a 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.

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

(6) Permit conditions. The Board of Trustees, when issuing any permit, may prescribe any conditions it may deem reasonably necessary to effect the purpose and intent of this Article. Except when contrary to state or federal law, the Board of Trustees may require any applicant to post a surety bond or cash in an amount sufficient to ensure compliance with the permit, including but not limited to the cost of mitigation, best management practices, 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 permit.

(7) Duration of permit. If any proposed activity for which a 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. The Board of Trustees may provide in any permit that it shall expire for all purposes upon a date certain or a certain time after commencement of the proposed activity. In no event shall any permit be valid after December 31 of the first full calendar year it is in effect; provided, however, that, within ninety (90) days prior to the expiration of the permit, the applicant may submit to the Town a sworn statement that the proposed activity, the mitigation (if any) and the foreseeable risk of pollution from the activity have been and will continue to be substantially the same as set forth and considered in the original application and its approval. Upon receipt of such statement, the Board of Trustees may, in its sole discretion, renew the permit for an additional calendar year without requiring further application, information, review or hearing.

(8) Notice of hearing. Notice of any public hearing hereunder shall be published once at least ten (10) days prior to the public hearing in a newspaper of general circulation in the Town.

(9) Additional information; extension of time. The Water Superintendent or the Board of Trustees may require the applicant to provide any additional information which reasonably may assist them in fulfilling their duties pursuant to this Article. Any applicable time limitation within which either is required to act shall be tolled from the time the request for such additional information is made until the applicant provides the information. (Ord. 1988-1 §6; Ord. 2011-18 §1)

Sec. 13-4-70. Enforcement.

(a) Right of entry. Whenever necessary to make an inspection to enforce any provision of this Article, 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 or she shall identify himself or herself and, if such land is unoccupied, that he or she shall make a reasonable effort to locate the applicant or other person having control of such land to notify him or her of such entry. Filing an application for a permit hereunder shall be deemed express consent to any such entry.

(b) Cease and desist order. In addition to any other action or penalty provided herein, whenever any activity is being conducted in violation of the provisions of this Article or in violation of the terms of any permit issued hereunder, the Town may order the activity stopped by written notice to cease and desist served upon the applicant or any person engaged in or causing or permitting such activity to be done, and any such person shall cease such activity until authorized in writing by the Town to proceed. The Town reserves the right summarily to revoke or suspend any permit issued hereunder if the activity is not conducted in accordance therewith. A copy of any such cease and desist order shall be filed with the Town Clerk as soon as practicable after service, whereupon the Town Clerk shall place the matter on the agenda of the next regular meeting of the Board of Trustees for such review as the Board of Trustees may deem appropriate. At or before the time for such review, the person conducting the activity or the owner or lessee of the real property upon which the activity is being conducted may request a hearing thereon immediately upon the review or at a later date, and the Board of Trustees shall grant the request, except that the Board of Trustees may schedule an immediate hearing to take place at its next regular meeting for the purpose of providing notice to interested parties or obtaining their presence at the hearing. (Ord. 1988-1 §7; Ord. 2011-18 §1)

Sec. 13-4-80. Regulations.

The Board of Trustees may, by resolution, issue regulations providing guidelines and criteria to carry out the purposes of this Article. (Ord. 1988-1 §8; Ord. 2011-18 §1)

Sec. 13-4-90. Activity in progress.

The lawful use of any building, structure or land existing at the time of the enactment of the ordinance codified herein may be continued even though it does not conform to the requirements of this Article. 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 Article. (Ord. 1988-1 §9; Ord. 2011-18 §1)

Sec. 13-4-100. Violation and penalty.

(a) Offense. Any person who violates any of the provisions of this Article shall be punished by a fine not to exceed three hundred dollars (\$300.00) for each offense. Any person who willfully and wantonly violates any provisions of this Article shall be punished by a fine not to exceed three hundred dollars (\$300.00) for each offense or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment. Each day a violation continues shall be deemed a separate offense.

(b) Actions. Any activity or use which is continued, operated or maintained contrary to any provision of this Article is unlawful. The Town 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 attorneys' 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. (Ord. 1988-1 §10; Ord. 2011-18 §1)