

TITLE 13

CITY OF RIFLE MUNICIPAL CODE

ARTICLE II

Watershed District

*Division 1
General Provisions*

Sec. 13-2-10. Intent.

There is established by the City a Watershed District ("District"). The District is that area in which the City shall exercise its powers to maintain and protect the City's waterworks from injury and the City's water supply from pollution. This District is created under the authority granted in Section 31-15-707(1)(b), C.R.S., and Article XX of the State Constitution. The District and these regulations are created only for the purpose of protecting the City'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, the federal government and any other authority with jurisdiction over land use activities within the District. The City shall implement and enforce these regulations for the purpose of reviewing and permitting any activity within the District which creates a foreseeable risk of injury to the City's waterworks or pollution of the City's water supply. The City's review authority within the District shall be exercised concurrently with the authority of the County or any other government entity to review and/or permit the same activity as the City may regulate; provided however, that in the event no review, approval or permit requirement exists, the City's review authority shall occur prior to the commencement of any activity covered by this Chapter. (Prior code 10.05.010)

Sec. 13-2-20. Jurisdiction and map.

The jurisdiction of the District shall extend over the territory occupied by the City waterworks and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over Beaver Creek, the Colorado River and all water sources and drainage areas tributary thereto for five (5) miles above the points from which water is diverted for use by the City. The District Map, with all notations, references and other information shown thereon, is incorporated herein as part of this Article. The official District Map is located and can be reviewed in the office of the City Clerk, and copies thereof are available on request at a cost as set forth in Appendix A to this Code. (Prior code 10.05.020; Ord. 4 §1, 2005)

Sec. 13-2-30. Definitions.

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

Best management practices ("BMPs") means schedules 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 City waterworks or pollution of the City water supply. *BMPs* also include treatment requirements, operating procedures and other practices to control runoff, erosion, drainage, sediment accumulation and similar events.

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.

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 foot to two (2) horizontal feet from the ground.

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

Grade or grading means the artificial movement of over two hundred fifty (250) cubic yards of material; movement of any earth or material affecting or creating a drainage channel; 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.

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

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 one hundred (100) square feet, or any grasses covering an area of more than one thousand (1,000) square feet.

Sewage disposal system means an *individual sewage disposal system* as defined in Section 25-10-103(8), C.R.S.

Surface or surfacing means any action resulting in the hardening or covering of the preexisting ground in an area greater than one hundred (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 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 placing of structures upon the ground.

Tributary means any watercourse, stream, creek, spring or drainage area which provides a source of supply to the City's potable water diversion points on Beaver Creek and the Colorado River.

Waterworks means any and all man-made or designed components of the City'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 City's water system. (Prior code 10.05.030; Ord. 4 §1, 2005)

Sec. 13-2-40. Prohibited activities; permitted activities requiring notice.

(a) It is unlawful for any person to cast, place, dump or deposit in any part of the City 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 City's water facilities. For a distance of five (5) miles upstream from the points where the water supply is diverted, no person shall:

(1) Throw, cast, put or deposit any pollutant or contaminant into or in close proximity to Beaver Creek, the Colorado River, or any of their tributaries or drainage areas;

(2) 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 Beaver Creek, the Colorado River or any of their tributaries or drainage areas; or

(3) Permit to flow into Beaver Creek, the Colorado River or any of their 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 City waterworks.

(c) In addition to the general prohibitions of Sections 13-1-820, 13-1-830 of this Chapter and Subsections (a) and (b) above, it shall be unlawful for any person to engage in any of the following activities within the Watershed District, which activities the City Council finds pose a potential or threat of injury to the waterworks or pollution to the City's water supply, unless such person shall, prior to commencement of such activity, receive a permit for such activity under the provisions of this Article:

(1) Construction or installation of a sewage disposal system.

(2) Excavation, grading, filling or surfacing.

(3) Removal of vegetation.

(4) Timber harvesting.

(5) Drilling operations.

(6) Alteration of 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 transporting flammable or explosive materials, except for domestic purposes or within vehicular fuel storage tanks.

(11) Land application of primary, secondary, treated or untreated sewage, sewage sludge, biosolids, septage, mixed liquor, screenings, grit or any byproduct of sewage or sludge.

(d) The following activities are permitted within the District, provided that written notification of such activity is provided to the City ten (10) days prior to commencement of such activity:

(1) Stock grazing.

(2) Road maintenance and improvement by governmental entities.

The written notice required under this Subsection shall include the name and address of the person undertaking the activity, a legal and common description of the location of the proposed activity, a description of the proposed activity, a discussion of the potential impacts upon the City's waterworks or water supply, and such other information as the City may require. The purpose of this notice requirement is to allow the City an opportunity to protect the waters of the District by suggesting a best management practice for such

activity prior to its commencement.

(e) In the event that any activity not listed in Subsection (c) above is being conducted in such a manner that the City Council finds that there exists a foreseeable risk of injury to the City's waterworks or pollution to the City's water supply, the person responsible for such activity shall be notified by the City of such finding and the City may require that the activity cease and desist until a permit is obtained for the activity under the provisions of this Article. (Prior code 10.05.040; Ord. 9 §2, 2003; Ord. 4 §1, 2005)

Division 2
Permit and Hearing Procedures

Sec. 13-2-110. Application and fees.

An applicant for a District permit shall submit the following to the City Clerk no later than ninety (90) days prior to commencement of a proposed activity:

(1) The applicant shall provide a completed application form as prescribed by the City. The application shall be completed by the owner of the property on which the proposed activity will occur, or his or her authorized representative, the latter of whom shall provide evidence satisfactory to the City 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) The application shall contain 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) The application shall be accompanied by two (2) 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-foot contour intervals for areas with a grade of less than ten percent (10%), and at a minimum of twenty-foot contour intervals for areas with a grade greater than ten percent (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 (½) mile of the proposed activity site.

j. The location of the one-hundred-year floodplain of any drainage on or adjacent to the site of the proposed activity.

(4) The applicant shall provide a document identifying any activity that may present or create a foreseeable risk of injury to the City's waterworks or pollution to the City's water supply, along with a specific description of the measures, including best management practices, that will be employed by the applicant to obviate such risks.

(5) The applicant shall provide any and all additional information that may be specifically requested by the City, 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 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 City has been submitted. The Public Works Director shall have the authority to waive one (1) or more submittal requirements if compliance with the requirements waived is not necessary for proper evaluation of a permit application.

(7) At the time of filing of the application, the applicant shall submit to the City a district permit application fee as set forth in Appendix A to this Code. The fee shall be considered a minimum for each application. To the extent any application results in the City 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 City. All fees and costs shall be due and payable at the time a statement is presented to the applicant by the City. No watershed district permit shall be issued until all fees have been paid. (Prior code 10.05.050; Ord. 4 §1, 2005)

Sec. 13-2-120. Review, analysis and classification.

(a) Within sixty (60) days following receipt of a completed application and site inspection, if necessary as determined by the City, the Public Works Director 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 City's waterworks or pollution to the City'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.

(b) In undertaking the analysis of any proposed activity, the Public Works Director shall consider the following factors and any others that may be relevant:

- (1) Nature and extent of the proposed activity.
- (2) Proximity of the activity to existing water courses, City water supplies and City waterworks.
- (3) Drainage patterns and control measures.
- (4) Soil criteria and erosion potential.
- (5) Slope steepness and stability.
- (6) Effects of denudation.
- (7) Geologic hazards, including but not limited to avalanche paths, floodplains, high water tables, fault zones and similar factors.
- (8) Ambient and nonpoint source discharges into water.
- (9) Fire hazard.

(c) The Public Works Director may classify in writing an application as "Minor Impact" if the Public Works Director finds, based upon his or her analysis, that the proposed activity does not present or create a clear or foreseeable risk of significant injury to the City's waterworks or pollution to the City water supply. If the Public Works Director has designated an application as "Minor Impact," the Public Works Director shall forward the application, analysis and "Minor Impact" finding to the City Council. The City Council shall conduct the hearing required under Section 13-2-130 below at a regularly scheduled meeting within thirty (30) days of the Public Works Director's determination. The City Council shall render a decision regarding the issuance or denial of a District permit to such applicant within the time limits contained in Section 13-2-130 below. The failure of the City Council 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."

(d) If, upon receipt of an application and review thereof in accordance with the criteria set forth in Subsection (b) above, the Public Works Director determines that the proposed activity is of a type or location that will have no negative impact on the City's waterworks or water supply, the Public Works Director may classify the application as "No Impact." If such a "No Impact" finding is made, the Public Works Director shall immediately issue a District permit for the proposed activity. After issuance of said permit, the Public Works Director shall report same to the City Council 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 does not make a "No Impact" determination, that decision may be appealed to and considered the City Council at that meeting at which the application is otherwise reviewed. At said meeting, the City Council may, based upon the same standards as set forth above, grant a "No Impact" permit for the proposed activity.

(e) If, upon receipt of an application and review thereof in accordance with the criteria set forth in Subsection (b) above, the Public Works Director finds that the proposed activity poses a foreseeable and significant risk of injury to the City's waterworks or pollution of the City's water supply, the Public Works Director shall forward the application, analysis and finding to the City Council, together with a recommendation that the City Council deny the permit or issue the permit with conditions. The City Council

shall then review the application and recommendation as provided in Section 13-2-130 below. (Prior code 10.05.050; Ord. 29 §52, 2004)

Sec. 13-2-130. Hearing.

Upon receipt of an application, analysis and finding from the Public Works Director, the City Council shall conduct a public hearing to review the application and shall render a decision regarding the issuance or denial of a District permit to such applicant within sixty (60) days of receipt of the Public Works Director's analysis. However, if the activity requires approval or a permit from any agency of the County, State or federal government, and the approval timelines for the County, State or federal action exceed that required in this Division, the City 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 District permit to such applicant. The City Council 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. (Prior code 10.05.050; Ord. 4 §1, 2005)

Sec. 13-2-140. Issuance of permit.

(a) A District permit shall be issued when the City Council 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 City's waterworks or pollution to the City's water supply, or injury or pollution of any water sources tributary thereto for five (5) miles above any point from which water is diverted for use by the City. A District permit shall be denied when the City Council finds that the applicant has not sustained such burden of proof.

(b) The City Council, in issuing any District permit, may prescribe any conditions it may deem necessary to effect the intent of this Article. The City Council may require any applicant to post a surety bond or cash in an amount sufficient to ensure compliance with the District permit, including but not limited to the cost of maintenance, operation, re-vegetation, reclamation and other requirements intended to further the intent of this Article. The City Council 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 District permit.

(c) If any proposed activity for which a District 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. (Prior code 10.05.050; Ord. 4 §1, 2005)

Sec. 13-2-150. 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 City, and by notice to the applicant sent by certified mail. (Prior code 10.05.050; Ord. 4 §1, 2005)

Sec. 13-2-160. 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. (Prior code 10.05.050; Ord. 4 §1, 2005)

*Division 3
Enforcement*

Sec. 13-2-210. Right of entry.

Whenever necessary to make an inspection to enforce a provision of this Article, an authorized representative of the City 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. (Prior code 10.05.060)

Sec. 13-2-220. Stop work order.

Whenever any work or activity is being done contrary to the provisions of this Article or in violation of the terms of any District permit issued hereunder, the City 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. Any such person shall cease such activity until authorized by the City to proceed. The City shall reserve the right to revoke or suspend any permit issued hereunder if work is not done in accordance therewith. (Prior code 10.05.060; Ord. 4 §1, 2005)

Sec. 13-2-230. Other remedies.

In addition to any other remedies provided by this Article, this Code or state or federal law, the City Attorney, on behalf of the City, may commence an action in a court of competent jurisdiction for a temporary restraining or preliminary or permanent injunctive relief restraining and violation of this Article. (Prior code 10.05.070)

Sec. 13-2-240. Appeal.

Any person desiring to appeal any decision or determination by the City Council hereunder must file such appeal within thirty (30) days following such decision or determination with the District Court of the County. (Prior code 10.05.100)

Sec. 13-2-250. District Map.

The District Map shall be amended in the event any change in the City's waterworks or diversion points for its water supply materially alter the geographical extent of the City's jurisdiction under this Article. (Prior code 10.05.110)

Sec. 13-2-260. Violation and penalty.

(a) Any person who violates any of the provisions of this Article shall be fined in accordance with the provisions of Section 1-4-20 of this Code.

(b) 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 to be a waiver of any civil remedies available to the City. (Prior code 10.05.090; Ord. 4 §1, 2005)