

RESOLUTION NO. 2012-35

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, AMENDING CHAPTER 94 OF THE LA PLATA COUNTY CODE TO INCLUDE ARTICLE IV AND ARTICLE V REGARDING THE 06CW99 AND 06CW127 WATER RIGHTS

WHEREAS, pursuant to C.R.S. §§ 30-11-101(b) and (c), the Board of County Commissioners of La Plata County, Colorado (the "Board") is empowered to purchase and hold real property and to sell, convey, exchange, or lease such real property when deemed by the Board to be in the best interests of La Plata County (the "County") and its inhabitants;

WHEREAS, Colorado counties possess those powers enumerated by the Colorado Constitution and Colorado Revised Statutes and such further incidental implied powers as are reasonably necessary to carry out the express powers;

WHEREAS, pursuant to these authorities, the Board filed for and received conditional water rights from the Animas River watershed in Division 7 Water Court case *In re La Plata County*, 06CW99 (filed Dec. 20, 2006), and the Board received conditional water rights that it co-owns with Southwestern Water Conservation District pursuant to Division 7 Water Court case *In re La Plata County and Southwestern Water Conservation District*, 06CW127 (filed Dec. 29, 2006);

WHEREAS, the Board adopted Resolution No. 2009-43 creating the Water Policy Task Force to, in part, offer advice and recommendations to the Board and County staff regarding certain policies that would transfer increments of the aforementioned conditional water rights to qualifying members of the public;

WHEREAS, on June 28, 2011, the Water Policy Task Force presented five "policy bulletins" to the Board, and the Board directed County staff to develop code amendments implementing the five recommend policies.

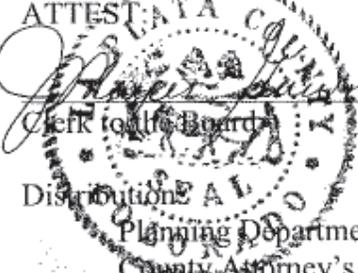
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO:

1. That Chapter 94 of the La Plata County Code shall be, and is hereby, amended to include Article IV and V as set forth in the attached Exhibit A.
2. This Resolution shall take effect on October 1, 2012.

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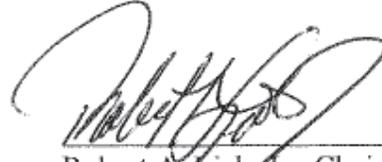
DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO,
this 28th day of August, 2012.

LA PLATA COUNTY, COLORADO
ATTEST



Sharon Burdick
Clerk for the Board
Distribution A
Planning Department
County Attorney's Office

BOARD OF COUNTY COMMISSIONERS



Robert A. Lieb, Jr., Chair



Wallace "Wally" White, Vice-Chair

ABSENT

Kellie C. Hotter, Commissioner

EXHIBIT A

ARTICLE IV. TRANSFERS OF 06CW99 WATER RIGHTS INCREMENTS

Sec. 94-38. Authority; Purpose of this Article. This Article is authorized by C.R.S. §§ 30-11-101(b) and (c). The purpose of this Article is to facilitate transferring increments of the conditional La Plata County Water Right No. 1, La Plata County Water Right No. 2, and La Plata County Water Right No. 3 decreed to La Plata County by Division 7 water court case *In re La Plata County*, 06CW99 (filed Dec. 20, 2006) in a manner that is consistent with the aforementioned court decree, the La Plata County Code, and state law. Transferring increments to Water Users shall not constitute a “sale” as that term is used in Article II of this Chapter and shall be specifically excluded from the procedures outlined in Article II of this Chapter. The process for obtaining an increment does not confer on a water user a water right, a land use permit, a building permit, approval of a site specific development plan, or a vested property right pursuant to state statutes or common law.

Sec. 94-39. Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section. Words used in the present tense shall also include the past or future tense; words used in the singular shall also include the plural; the masculine shall also include the feminine.

06CW99 Court Decree means the court decree issued by Division 7 water court case *In re La Plata County*, 06CW99 (filed Dec. 20, 2006) or any subsequent decrees pertaining to La Plata County Water Right No. 1, La Plata County Water Right No. 2, or La Plata County Water Right No. 3.

Absolute Water Right means a Water Right that has been granted permanent status by a water court because water has been fully Diverted and applied to a beneficial use. As opposed to an Absolute Water Right, a conditional water right simply preserves a Water User’s ability to diligently pursue the perfection of an Absolute Water Right.

Administrative Processing Fee means an amount set forth in Appendix A of the County Code that must be paid when a Water User submits an Application for an Increment.

Acre Feet (af) means a volumetric measurement of water used for quantifying water usage, and equaling 325,851 gallons of water or approximately the amount of water that will cover an acre of land at a depth of one foot.

Agricultural Irrigation Increment means an amount of water sized to provide sufficient water to irrigate one acre of pasture grasses.

Application means, depending on the context, either the application form or, collectively, the application form, any supporting documentation, and the Administrative Processing Fee.

Board of County Commissioners means the Board of County Commissioners of La Plata County.

Building Permit means a permit issued by the County Building Department pursuant to Chapter 18 of the County Code.

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Business Days means days when County offices are open to the public for business.

County means La Plata County in the State of Colorado.

County Code means the La Plata County Code.

Cubic Feet Per Second (cfs) means a flow-rate measurement of water taken as a direct Diversion from the stream. Water flowing at one cfs will deliver approximately 449 gallons per minute or 1.9835 af per day.

Depletion means the amount of water lost to a river system when water is Diverted from the river system (opposite of Return Flow).

Depletion Point means generally the lowest point within the Animas River, Junction Creek, or Lightner Creek Watersheds where Return Flows shall return to the applicable river systems and upstream of which Diversions shall occur. For the Animas River Watershed, the Depletion Point is specifically located as follows: 2540 feet east of the West line and 50 feet south of the North line of Section 16, Township 35 North, Range 9 West of the NMPM, in La Plata County. For the Junction Creek Watershed, the Depletion Point is specifically located as follows: 2515 feet east of the West line and 1360 feet south of the North line of Section 20, Township 35 North, Range 9 West of the NMPM, in La Plata County. For the Lightner Creek Watershed, the Depletion Point is specifically located as follows: 1050 feet east of the West line and 200 feet south of the North line of Section 25, Township 35 North, Range 10 West of the NMPM, in La Plata County.

Ditch Company means a mutual ditch company, a carrier ditch company, and the like, whether or not incorporated and whether or not a for-profit enterprise, in the business of transporting water to individual Water Users.

Director means the Director of the County Planning Department or his/her designated agent.

Diversion or Divert means, depending on the context, the location where water is removed, the structure which removes the water, or the act of removing water from its natural course or location by means of a control structure, ditch, canal, flume, reservoir, bypass, pipeline, conduit, infiltration gallery, ground water well, pump, or other structure or device.

Domestic Animal Increment means an amount of water sized to provide a large domestic animal fifteen (15) gallons per day.

Exempt Well means a well that is exempt from administration under the priority system as determined by the Colorado Division of Water Resources pursuant to Colorado law.

Increment means a specific portion of the conditional water rights awarded to the County by the 06CW99 Court Decree and transferred to individual Water Users.

Land Use Permit means a permit issued by the County Planning Department pursuant to Subpart B of the County Code.

Limited Commercial Increment means an amount of water sized to provide 700 gallons per day assuming the use of a septic system that results in 15% Depletion to the river system, although the use of septic system is not required.

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Limited Commercial Lawn & Garden Increment means an amount of water sized to provide sufficient water to irrigate 2,000 ft² of lawn.

Residential Increment means an amount of water sized to provide 350 gallons per day assuming the use of a septic system that results in 15% Depletion to the river system, although the use of septic system is not required.

Residential Lawn & Garden Increment means an amount of water sized to provide sufficient water to irrigate 2,000 ft² of lawn.

Return Flow means the water that returns to a river system; the amount water that is not used up by the Diversion and use of that water.

Water Fee means an amount set forth in Appendix A of the County Code that must be paid prior to the Director executing a Water Use Agreement.

Water Hauling means the transport of water by a motor vehicle from the point of Diversion to the place of use.

Water Right means a right to use, in accordance with its priority, a portion of the waters of the State of Colorado by reason of the appropriation of the same.

Watershed means a geographical area from which water drains and contributes to a given point in a river system.

Water Use Agreement means a contractual agreement executed by the County and individual Water Users outlining the conditions and terms by which Water Users may use Increments.

Water Use Report means a biennial report submitted by Water Users to the County on a prescribed form documenting what actions were taken to diligently pursue the perfection of a Water User's Increment.

Water User means, depending on the context, a person applying for an Increment, a person using an Increment, the owner of record according to the County Assessor's records for the parcel where an Increment is used or to be used, or the heir, personal or legal representative, or successor in interest to any of the above.

Water Service Providers means any private water companies, governmental entities or quasi-governmental entities, or the like, whether or not incorporated and whether or not a for-profit enterprise, in the business of providing water service to individual Water Users.

Sec. 94-40. Water Use Agreement or Deed Required. No person shall use an Increment without first obtaining a duly executed Water Use Agreement or deed pursuant to this Article.

Sec. 94-41. Use of Increments; Amount of water per Increment; Partial Increments.

(a) *Use of Increments.* A Water User shall only use an Increment as specified in the Water Use Agreement or deed based on the following:

(1) *Residential Increment.* A Residential Increment shall be used for a single residential dwelling unit's in-house use.

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- (2) *Residential Lawn & Garden Increment.* A Residential Lawn & Garden Increment shall be used for any outside irrigation purpose appurtenant to a legal residential dwelling unit (vegetable garden, lawn, landscaping, etc.).
 - (3) *Limited Commercial Increment.* A Limited Commercial Increment shall be used for a single small commercial enterprise's inside restroom and sanitary purposes only (for example, small commercial enterprises include, but are not limited to, convenience stores, gas stations, small offices, bed and breakfasts, etc.).
 - (4) *Limited Commercial Lawn & Garden Increment.* A Limited Commercial Lawn & Garden Increment shall be used for any outside irrigation purpose appurtenant to a legal commercial use permitted by a current commercial Class II land use permit (garden, lawn, landscaping, etc.).
 - (5) *Agricultural Irrigation Increment.* An Agricultural Irrigation Increment shall be used for agricultural irrigation of any crop.
 - (6) *Domestic Animal Increment.* A Domestic Animal Increment shall be used for animal husbandry.
 - (7) *Emergency Use.* All Increments, in an emergency, may be used for firefighting purposes as ancillary use.
- (b) *Amount of water per Increment.* A Water User shall not use more water on an annual basis or cause instantaneous depletions to exceed what is specified in an applicable Water Use Agreement. Increments shall be sized as follows:

Type of Increment	Total Annual Depletions	Maximum Instantaneous Depletions
Residential	0.0588 af	0.0000812 cfs
Residential Lawn & Garden		
Animas River watershed	0.0963 af	0.00034 cfs
Junction & Lightner Creek watersheds	0.099 af	0.000346 cfs
Limited Commercial	0.1176 af	0.000163 cfs
Limited Commercial Lawn & Garden		
Animas River watershed	0.0963 af	0.00034 cfs
Junction & Lightner Creek watersheds	0.099 af	0.000346 cfs
Agricultural Irrigation	1.689 af	0.0069 cfs
Domestic Animal	0.0168 af	0.000023 cfs

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(c) *Partial Increments.* Only full Increments shall be transferred to Water Users, except for the following:

- (1) *Limited Commercial Increments.* Limited Commercial Increments may be transferred fractionally as 1/7th of a full increment (i.e., 1/7th or total annual depletions and maximum instantaneous depletions of 0.0168 af and 0.000023 cfs, respectively; 2/7th or total annual depletions and maximum instantaneous depletions of 0.0336 af and 0.000046 cfs, respectively, etc.).
- (2) *Limited Commercial Lawn & Garden Increments.* Limited Commercial Lawn & Garden Increments may be transferred fractionally as 1/10th of a full increment (i.e., 1/10th or total annual depletions and maximum instantaneous depletions of 0.00963/0.0099 af and 0.000034/0.0000346 cfs, respectively; 1/5th or total annual depletions and maximum instantaneous depletions of 0.0196/0.0198 af and 0.000068/0.000069 cfs, respectively, etc.).
- (3) *Agricultural Irrigation Increments.* Agricultural Irrigation Increments may be transferred fractionally as 1/20th of a full increment (i.e., 1/20th or total annual depletions and maximum instantaneous depletions of 0.08445 af and 0.000345 cfs, respectively; 1/10th or total annual depletions and maximum instantaneous depletions of 0.1689 af and 0.00069 cfs, respectively, etc.).

Sec. 94-42. Agricultural Irrigation Reserves. The County shall reserve 4.49 cfs of depletion from the Animas River, 0.66 cfs of depletion from Lightner Creek, and 0.38 cfs of depletion from Junction Creek to be transferred as Agricultural Irrigation Increments. After transferring all of the water not reserved for Agricultural Irrigation Increments within a watershed, i.e. 1.51 cfs of depletion from the Animas River, 1.34 cfs of depletion from Lightner Creek, or 0.62 cfs of depletion from Junction Creek, the County shall cease transferring Residential, Residential Lawn & Garden, Limited Commercial, Limited Commercial Lawn & Garden, and Domestic Animal Increments within that watershed unless and until the Board of County Commissioners approves by resolution re-allocating any remaining Agricultural Irrigation Reserves.

Sec. 94-43. Applications.

(a) *Application Form and Minimum Information.* A Water User shall submit an Application on forms provided by the County. The Application shall include the Administrative Processing Fee pursuant to Sec. 94-46(a) and supporting documents determined by the Director to be necessary to demonstrate compliance with this Article. At a minimum, the Application shall include the following:

- (1) *Description of the Applicant.* Name, address, phone number, and email address of the Water User. If the Water User is represented by an agent, the Application shall also include a notarized designation of agent or power of attorney.

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- (2) *Description of the intended uses.* A general description of the intended use of the Increments, and physical addresses and parcel numbers where the Increments will be used. Applications for Agricultural Irrigation Increments shall specifically state the number of acres that will be dedicated exclusively to crop production. Applications for Domestic Animal Increments shall specifically describe the animal husbandry activities that will occur.
 - (3) *Description of conveyance method.* General description of how the Increments will be conveyed and put to use, and location for each Diversion stated in the UTM format (UTM Zone must be 12 or 13; units must be meters; datum must be NAD83; and units must be set to true North).
 - (4) *Easements.* If the Water User is not the property owner of record as determined by the County Assessor's records for all parcels where surface Diversions, groundwater wells, or any other conveyance or storage structures are located, copies of any existing documents demonstrating legal access (easements, court orders, carriage agreements, etc.).
 - (5) *Maps.* Sufficiently sized and scaled maps showing existing or proposed:
 - a. Parcel and lot lines.
 - b. Easements.
 - c. Structures.
 - d. Acreage intended to be dedicated exclusively to crop production.
 - e. Surface Diversions, groundwater wells, and any other conveyance or storage structures.
 - (6) *Water Rights.* List of all names, structure identification numbers, and applicable water court case numbers for all conditional and Absolute Water Rights that are or may be used on the parcels where the Increments will be used.
 - (7) *Well Permits.* Copies of well permits applied for or approved by the Colorado Division of Water Resources for all groundwater wells.
 - (8) *Land Use and Building Permits.* Permit or project numbers for any Land Use and Building Permits for development or structures associated with the intended use of the Increments.
- (b) *Incomplete Applications.* Within twenty (20) business days of receiving an Application, the Director shall notify the Water User in writing if the Application is incomplete or otherwise fails to provide information necessary to determine compliance with this Article.

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- (c) *Decisions on Applications.* Within twenty (20) business days of receiving a complete Application, the Director shall notify the Water User in writing if the Application is approved, conditionally approved, denied, or if the Water User must apply to the Board of County Commissioners for a Special Exception.
- (1) *Approval.* The Director shall approve Applications that satisfy the requirements of this Article.
- (2) *Conditional Approval.* The Director may approve Applications with conditions determined by the Director as necessary to ensure compliance with this Article.
- (3) *Denial.* The Director may deny Applications that do not satisfy the requirements of this Article.
- (4) *Special Exception.* If the Director determines that an Application will only satisfy the requirements of this Article if the Board of County Commissioners approves a special exception as is contemplated in Sec. 94-45(a)(3), Sec. 94-45(a)(3)(a), and Sec. 94-45(a)(4), the Director shall send notice that the Water User may apply to the Board of County Commissioners for a special exception pursuant to Sec. 94-50(a).
- (d) *Inactive Applications.* A Water User shall diligently pursue an Application or the Director may deem the Application automatically withdrawn after following the procedures outlined in Sec. 82-86(b) of the County Code.

Sec. 94-44. Amendments. Amendments to approved or conditionally approved Applications and Water Use Agreements shall only be allowed if the amendment does not change the number or type of Increments, the Diversion location, or the location where the Increments is used. Any amendments changing the number or type of Increments, the Diversion location, or the location where the Increments are used shall require a new Application.

Sec. 94-45. Application Criteria.

- (a) *Use of Increments.* Increments shall correspond to actual uses either existing on a parcel or proposed. If a parcel contains multiple and/or differing uses, then the parcel may qualify for multiple and/or differing Increments. The Director shall approve Applications based on the following:
- (1) *Residential Increment.* Only one full Residential Increment shall be allowed per legal residential dwelling unit. If an Application is for more than one Residential Increment on a single parcel, the Water User may be required to provide Land Use Permit or project numbers to demonstrate that the proposed or existing additional dwelling units or the proposed subdivision complies with the Subpart B of the County Code.
- (2) *Residential Lawn & Garden Increment.* Only one full Residential Lawn & Garden Increment shall be allowed per Residential Increment or legal residential dwelling unit. If an Application is for more than one Residential Lawn & Garden Increment on a single

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parcel, the Water User may be required to provide a Land Use Permit or project numbers to demonstrate that the proposed or existing additional dwelling units, or the proposed subdivision complies with the Subpart B of the County Code.

- (3) *Limited Commercial Increment.* Up to one Limited Commercial Increment shall be allowed per current commercial Class II Land Use Permit except that, pursuant to Sec. 94-50(a), the Board of County Commissioners may approve a special exception allowing for multiple Limited Commercial Increments per current Class II Land Use Permit.
- a. *Home Businesses.* Limited Commercial Increments shall not be allowed for Class I home businesses or home businesses conducted without a Land Use Permit pursuant to Sec. 82-5 of the County Code, except that, pursuant to Sec. 94-50(a), the Board of County Commissioners may approve a special exception allowing for up to one Limited Commercial Increment per home business.
- (4) *Limited Commercial Lawn & Garden Increment.* Up to one Limited Commercial Lawn & Garden Increment shall be allowed per Limited Commercial Increment or current commercial Class II Land Use Permit except that, pursuant to Sec. 94-50(a), the Board of County Commissioners may approve a special exception allowing for multiple Limited Commercial Lawn & Garden Increments per Limited Commercial Increment or current commercial Class II Land Use Permit.
- (5) *Agricultural Irrigation Increment.* Up to one Agricultural Irrigation Increment shall be allowed per one acre dedicated exclusively to crop production.
- (6) *Domestic Animal Increment.* Only one full Domestic Animal Increment shall be allowed per three acres except that the qualifying acreage does not need to be dedicated to animal husbandry.
- (b) *Land Use, Building, and Well Permits.* Obtaining a Land Use, Building, or Well Permit shall not be required as a prerequisite to a Water User applying for an Increment. However, if development or a structure associated with the use of an Increment requires either a new or amended Land Use, Building, or Well Permit, the Director may conditionally approve the Application subject to the Water User obtaining the new or amended Land Use, Building, or Well Permit and the Water User shall obtain the new or amended Land Use, Building, or Well Permit prior to the Director executing the Water Use Agreement.
- (c) *Denied Applications.* Applications shall be denied if the Director determines any of the following:
- (1) The Application is not consistent with the County Code or policies, state law, or the 06CW99 Court Decree.

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- (2) The Application will result in the Return Flow being downstream of the Depletion Point for the Watershed from which the Increment is intended to be diverted.
- (3) The Application is for an Increment that will be used outside of the Watershed from which the Increment is intended to be diverted.
- (4) The Application relies on Water Hauling.
- (5) The Application is for a use that would qualify for an Exempt Well.
- (6) The Application is for a Residential or Limited Commercial Increment that will be used within the service area of a water service provider unless that water service provider states in writing that it cannot or will not provide water service.
- (7) The Application is for an Increment that the Director reasonably determines will violate the anti-speculation doctrine pursuant to applicable case law and/or C.R.S. § 37-92-103(3), or the can and will doctrine pursuant to applicable case law and/or C.R.S. § 37-92-305(9)(b).

Sec. 94-46. Fees.

- (a) *Administrative Processing Fee.* The Administrative Processing Fee shall be an amount as set forth in Appendix A to the County Code. The Administrative Processing Fee shall be submitted as part of an Application and will not be refunded for any reason including the voluntarily withdrawal of the Application by the Applicant or automatic withdrawal pursuant to Sec. 94-43(b).
- (b) *Water Fee.* The Water Fee shall be an amount as set forth in Appendix A to the La Plata County Code. The Water Fee shall be submitted prior to the Director executing the Water Use Agreement and will not be refunded if the Water Use Agreement expires or is terminated for any reason.

Sec. 94-47. Water Use Agreements. Transferring Increments to Water Users shall be conditioned on the Water User executing a Water Use Agreement in a form prescribed by the County and approved by the County Attorney. The Director shall be authorized to sign Water Use Agreements on behalf of the County. At a minimum, the Water Use Agreement shall contain provisions addressing the following:

- (a) *Increment Type and Use.* The type of Increment and how Increments shall be used.
- (b) *Water Amount.* The allowable total annual depletions and maximum instantaneous depletions for each Increment.
- (c) *Water User to Apply for Absolute Water Right Decree.* The Water User shall apply for and obtain court decrees making all Increments Absolute Water Rights within five (5) years of the date both the County and the Water User execute the Water Use Agreement, except that

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the Board of County Commissioners may, in its sole discretion, amend the Water Use Agreement and extend the five (5) year term upon petition by the Water User.

- (d) *Contact Information Change.* The Water User shall notify the County if for any reason there is a change in the Water User's name, address, phone number, or email address.
- (e) *Diligence Reports.* The Water User shall report to the Director what actions were taken to diligently pursue the use of the full amount of the Water User's Increment. Such reports will be on a form provided by the Director in October of every even number year. Failure to submit such reports to the Director within twenty (20) business days shall be grounds for the County to terminate the Water Use Agreement pursuant to Sec. 94-52(a).
- (f) *The County to Apply for Diligence Filing.* The County shall apply to the appropriate water court for findings of reasonable diligence as required by the 06CW99 Court Decree.
- (g) *Consent to Enter.* The Water User shall consent to County officials, personnel, agents, and consultants entering during normal business hours any property owned or leased by the Water User for purposes of inspecting and documenting the actual use of Increments and any Diversions or conveyance structures associated with the use of the Increments. Or, if the Water User is not the owner or lessor of the property or is otherwise not authorized to consent to County officials, personnel, agents, and consultants entering the property, the Water User shall be responsible for securing authorization from the property owner for County officials, personnel, agents, and consultants, to enter the property during normal business hours. If entry is ever denied by the Water User or the property owner, the Water User shall consent to the County terminating the Water Use Agreement pursuant to Sec. 94-52(a) or exercising its Right of Entry pursuant to Sec. 94-52(b).
- (h) *Measuring Devices.* The Water User shall install and maintain measuring devices or other structures and shall maintain records of diversion as may be required by state water administration officials.
- (i) *Abide by 06CW99 Court Decree and Application Criteria; Survival.* The Water User's use of Increments shall be specifically conditioned upon the Water User abiding by the Water Use Agreement, this Article, and the 06CW99 Court Decree, and these conditions shall be binding on the Water User's heirs, personal and legal representatives and successors in interest, as well as survive the Water Use Agreement's expiration due to the Water User obtaining a deed for the Increments.

Sec. 94-48. Deeds.

- (a) *Issuing Deeds.* After a Water User submits a written request for a deed and provides to the Director a copy of a water court decree making an Increment an Absolute Water Right, the County shall convey by quitclaim deed that Increment to the Water User. The Director shall be authorized to sign such deeds on behalf of the County, but such deeds shall be

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satisfactory in form and content to the County Attorney. The Director shall sign and issue the deeds in the same order that the written requests are received.

- (b) *Abandonment.* Deeds issued pursuant to Sec. 94-48(a) above shall specifically provide that it is the intent of both the County and the Water User to create a conditional fee interest in the Water User and a right of entry in the County, meaning that a deeded Increment is conveyed to the Water User upon the condition that the Board of County Commissioners does not reasonably determine by resolution that the Increment is at risk of being abandoned. If such a resolution is adopted, the deed shall specify that the Water User consents to the County filing an action to quiet title and retake the Increment. Any Increment appearing on any abandonment list prepared by a division engineer pursuant to C.R.S. §§ 37-92-401 and 402 shall create a rebuttable presumption that the Increment is at risk of being abandoned.

Sec. 94-49. Waiting List. After the County transfers all of the available water within a particular watershed, a waiting list shall be created so that Increments that revert back to the County may be transferred to new Water Users based on the priority established by the waiting list.

Sec. 94-50. Board of County Commissioners Review.

- (a) *Special Exceptions.* If notified by the Director pursuant to Sec. 94-43(c)(4), a Water User may request that the Board of County Commissioners approve a special exception as specifically contemplated in Sec. 94-45(a)(3), Sec. 94-45(a)(3)(a), and Sec. 94-45(a)(4) of this Article. Special exception requests shall be in writing and shall state with specificity the grounds for the special exception. The Director shall not charge an additional fee for a special exception request as long as the Water User already paid the Administrative Processing Fee as part of the initial Application for an Increment. The Board of County Commissioners shall review the special exception request within forty (40) business days of the request being filled with the Director. The Director shall file a report with the Board of County Commissioners recommending approval, conditional approval, or denial of the special exception request, and shall provide a copy of the report to the Water User. The Board of County Commissioners may approve, conditionally approve, or deny the special exception request. Factors the Board of County Commissioners may consider include, but are not limited to the following:
- (1) The intended benefit to the Water User, the County, and the community as a whole.
 - (2) Any proposed water conservation equipment or techniques designed to reduce the total amount of water needed.
 - (3) Competing uses for the water.
 - (4) The public's best interest.

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(b) *Appeals.* A Water User alleging that there is an error in any order, requirement, decision or refusal made by the Director based on or made in the enforcement of this Article may appeal to the Board of County Commissioners. Such appeals shall be in writing, shall state with specificity the grounds of the appeal, and shall be filed with the Director within twenty (20) business days of the decision, order, requirement, or refusal being appealed. The Board of County Commissioners shall review the Director's decision, order, requirement, or refusal within forty (40) business days of the appeal being filled with the Director. The Director shall file a report with the Board of County Commissioners recommending approval or denial of the appeal, and shall provide a copy of the report to the Water User. The Board of County Commissioners may amend the Director's decision, order, requirement, or refusal based on the same information and/or materials relied on by the Director and the same applicable provisions from this Article.

Sec. 94-51. Water Service Providers, Ditch Companies, and Non-Profits. The Board of County Commissioners may execute contractual agreements transferring Increments to Water Service Providers and Ditch Companies. Such contractual agreements may specifically deviate from this Article so long as the Board of County Commissioners determine that the provisions of the 06CW99 Court Decree are not violated and the public's best interest is served.

Sec. 94-52. Termination; Right of Entry.

- (a) *Water Use Agreements.* In the event a default under the terms of a Water Use Agreement is believed to exist, the County shall give written notice thereof via certified mail to the Water User setting a date for a hearing before the Board of County Commissioners to determine the existence of the default. The hearing shall be no less than ten (10) business days after sending notice to the Water User. Within twenty (20) business days after such hearing, the Board of County Commissioners shall determine whether or not a default exists, and, if so, shall specify a reasonable time within which the Water User shall be required to satisfactorily cure the default. If the Water User fails to satisfactorily cure the default within the time specified by the Board of County Commissioners, the County shall terminate the Water Use Agreement.
- (b) *Deeds.* In the event that a deeded Increment is believed to be at risk of being abandoned, the County shall give written notice thereof via certified mail to the Water User setting a date for a hearing before the Board of County Commissioners. The hearing shall be no less than ten (10) business days after sending notice to the Water User. Within twenty (20) business days after such hearing, the Board of County Commissioners may reasonably determine by resolution if the deeded Increment is at risk of being abandoned. If such a resolution is adopted, the County shall immediately file an action to quiet title and retake the portion of an Increment pursuant to the deed's stated conditions. Any Increment appearing on any abandonment list prepared by a division engineering pursuant to C.R.S. §§ 37-92-401 and 402 shall create a rebuttable presumption that the Increment is at risk of being abandoned.

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Sec. 94-53. Annual Reports.

- (a) *Reports to the Board of County Commissioners.* No later than December 31 of each year, the Director shall provide an annual accounting to the Board of County Commissioners of the following:
- (1) The number Applications for Increments filed within the year.
 - (2) The number of Water Use Agreements signed within the year.
 - (3) The number of deeds signed within the year.
 - (4) A summary of the most recent Diligence Reports received by the Director.
 - (5) For each watershed, the total annual depletions and maximum instantaneous depletions for all of the Water Use Agreements and deeds signed within the year.
 - (6) For each watershed, the total annual depletions and maximum instantaneous depletions for all of the Water Use Agreements and deeds signed to date.
 - (7) For each watershed, the total amount of water remaining and the total amount of water remaining as part of the Agricultural Irrigation Reserves.
- (b) *Reports to the Division Engineer.* No later than February 15 of each year, the Director shall provide to the Division Engineer a report satisfying the 06CW99 Court Decree's requirements.

ARTICLE V. TRANSFERS OF 06CW127 WATER RIGHT INCREMENTS

Sec. 94-54. Authority; Director Authorized to Sign; Reports.

- (a) *Authority.* This Article is authorized by C.R.S. §§ 30-11-101(b) and (c). Transferring increments of the conditional Animas Service Area Water Right decreed to La Plata County and Southwestern Water Conservation District by Division 7 water court case *In re La Plata County and Southwestern Water Conservation District*, 06CW127 (filed Dec. 29, 2006) shall not constitute a "sale" as that term is used in Article II of this Chapter and shall be specifically excluded from the procedures outlined in Article II of this Chapter. The process for obtaining an increment does not confer a water right, a land use permit, a building permit, approval of a site specific development plan, or a vested property right pursuant to state statutes or common law.
- (b) *Director Authorized to Sign.* The Director of the La Plata County Planning Department shall be authorized to sign notices of intent and deeds on behalf of La Plata County.
- (c) *Reports to the Board of County Commissioners.* No later than December 31 of each year, the Director shall provide an annual accounting to the Board of County Commissioners of the following:

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- (1) The number notices of intent filed within the year.
- (2) The number of deeds signed within the year.
- (3) The total depletions for each time period for all of the notices of intent and deeds signed within the year.
- (4) The total depletions for each time period for all of the notices of intent and deeds signed to date.
- (5) The total amount of water remaining for each time period.