

ORDINANCE NO. 2004-_____
TOWN OF OPHIR
SOURCE WATER PROTECTION

WHEREAS, the Town of Ophir, Colorado, hereinafter referred to as “the Town”, by virtue of the authority granted in Section 31-15-707(1)(b), Colorado Revised Statutes, as amended, “To construct or authorize the construction of such water works without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance and operation of the source and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred...” has been granted by the State of Colorado the power to enact ordinances and regulations for the purposes of maintaining and protecting the Town’s water; and

WHEREAS, the Town’s municipal water sources are supplied through an underground spring on the north hillside above the Town, and from a diversion point in Waterfall Canyon, and no other source of water supply exists for the citizens of the Town; and

WHEREAS, the Town’s Sourcewater Areas were delineated in 1998 by the Environmental Protection Agency (“EPA”) following cooperative efforts involving the Town, San Miguel County and the EPA; and

WHEREAS, water drainage and seepage from land use activities within said Sourcewater Areas affect the quality and quantity of water supply for use by the Town; and

WHEREAS, the General Assembly of the Town finds that protection of an adequate water supply of the highest quality is essential to the public health, safety and welfare of the Town; and

WHEREAS, the General Assembly of the Town finds that certain activities within the Town’s Sourcewater Area pose a danger to that water supply which could adversely affect the health, safety and welfare of the citizens of the Town; and

WHEREAS, the General Assembly desires to exercise all rights, powers and authority under law to provide the Town’s citizen with a water supply of the highest and purest quality.

NOW THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO, AS FOLLOWS:

SECTION 1: CREATION OF A SOURCE WATER PROTECTION AREA.

Pursuant to the authority granted in Section 31-15-707(1)(b), Colorado Revised Statutes, as amended, the Town hereby creates a Sourcewater Protection Area hereinafter referred to as “the Area”.

SECTION 2: PURPOSE AND INTENT OF THE AREA

The Area 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 or pollution and from activities that may create a hazard to health or water quality or a danger of pollution to the water supply of the Town.

SECTION 3: JURISDICTION AND MAP

The Town adopts as boundaries for the Area those areas delineated on the maps created by the EPA in December of 1998, which maps are on file with the Town Clerk of Ophir and at the San Miguel County Planning Department. Said maps are intended for general reference only. Further, the jurisdiction shall extend beyond said delineated area to include all of the stream or source from which the water is taken for use by the Town for five (5) miles. The Town may at any time update the maps referenced herein or cause an official map of all or a part of the boundaries of the Area to be prepared, and thereafter the most recent map shall be conclusive as to the boundaries of the Area.

SECTION 4: REGULATED ACTIVITIES

A. It shall be unlawful for any person or agency to engage in any of the following activities within the Area, unless such person shall, prior to undertaking such activity, obtain permission from the Town as set forth in Section 5 below:

1. Sewage Disposal. Construction or installation of a sewage disposal system, which relies on absorption.
2. Excavating. For purposes of this Ordinance, “excavating” means the digging out or removal of earth and/or other materials leaving any cutbank more than three (3) feet in vertical height or movement of more than ten (10) cubic yards of material.
3. Grading. For purposes of this Ordinance, “grading” means the leveling off of a horizontal or sloping surface involving movement of more than five (5) cubic yards of materials, or affecting or creating a drainage channel.
4. Filling. For purposes of this ordinance, “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 the line sloping up at a grade of one (1) vertical to five (5) horizontal from the ground.
5. Surfacing. For purposes of this ordinance, “surfacing” means any action resulting in the hardening or covering of the pre-existing ground in an area greater than five hundred (500) square feet such that rain striking the area will accumulate or runoff 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.
6. Removal of more than 100 square feet of live vegetation.
7. Timber harvesting, excluding the removal of dead trees for non-commercial firewood.
8. Drilling operations.
9. Commercial recreation activities.
10. Altering water drainage courses or ground water infiltration.
11. Surface and subsurface mining operations.
12. Spraying or using herbicides or insecticides.

13. Using, handling, releasing or storing toxic, hazardous, flammable or explosive materials and substances.
14. Residential or commercial construction within 1,000 feet of any water drainage.
15. Occupation of any temporary structure, including but not limited to tents, trailers or similar encampments.
16. Trespass, interference or alteration of Town water works improvements.
17. Livestock grazing, herding or corralling.

B. Allowed Activities With Notification: Activities within the Area which are allowed under this Ordinance but which require written notification to the Town prior to undertaking such activity are:

1. Road maintenance by governmental entities.
2. U.S. Forest Service shall provide notification to the Town of management activities on National forest lands that may have an impact on the Town's waterworks and/or water supplies. Notification will be in the form of environmental assessments or project work plans prepared by or available to the Forest Service. This will provide the Town with the opportunity to review Forest Service water quality considerations, including best management practices and make recommendations prior to its undertaking.

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.

C. It shall be unlawful for any person to violate this ordinance, fail or refuse to comply with any provision of this ordinance, or cause injury or damage to the Town's public water supply or waterworks. The penalty for violation of this ordinance shall be fines up to \$1,000.00 and/or imprisonment up to 1 year.

D. In the event that any activity not set forth in subsection 4.A. above is being conducted in such a manner that the Town finds that a foreseeable risk of pollution to the Area, the person or agency responsible shall be notified by the Town of such finding and the Town may require that such activity cease and desist.

SECTION 5: PERMIT APPLICATION PROCEDURE; REFERRAL; PUBLIC COMMENT

A. Application and Fees. An applicant for an Area Permit (a "Permit") shall submit, at least twelve (12) days prior to a scheduled meeting of the General Assembly, an application to the Town Clerk at P. O. Box 683, Ophir, Colorado 81425. The application materials shall include the following information:

1. Name, address, telephone number and fax number of the applicant and any representative authorized to act on behalf of the applicant.
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. Plans and specifications which 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 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 with time frame.
 - 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 ground water and discharge characteristics.
6. Any 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 two hundred dollars (\$200.00).

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 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. Referral by General Assembly, Public Comment. The Permit application materials shall be introduced at the next scheduled General Assembly meeting for public comment and referral to the Town Manager for analysis and public hearing or minor impact consent.

C. Analysis; Minor Impact Consent; Public Hearing.

1. Analysis. Within thirty (30) days following referral of a Permit application by the General Assembly, the Planning Commission or such other person as the General Assembly may designate, shall review the application materials, inspect the site if reasonably necessary and weather conditions permit, and analyze the proposed activity, including factors that may present or create a foreseeable risk of pollution to the water supply of the Town, and evaluate the measures, including best management practices, if any, that are proposed by or available to the applicant to obviate or mitigate such risks. The Town Manager may require the applicant to provide such additional information in furtherance of his analysis as he may deem reasonable necessary.
2. Factors Considered. In undertaking the analysis of any proposed activity, the following factors, among any others that the Planning Commission may deem 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 characteristics.
 - e) Slope steepness and stability.
 - f) Extent and effects of denudation.
 - g) Geologic hazards, including, but not limited to, avalanche paths, flood plains, 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 Planning Commission may classify in writing a Permit application as 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.
4. Notice of Hearing. Notice of a Public Hearing by the Town Manager shall be published in an official newspaper of record in San Miguel County at least fifteen (15) days prior to

the date of the hearing and posted at the entrance to Town Hall at least twenty-four (24) hours prior to the hearing.

5. Public Hearing Review by Planning Commission. Within sixty (60) days of referral from the General Assembly, the Planning Commission shall conduct a public hearing to review the Permit application and shall render a recommendation regarding the issuance or denial of a Permit to such applicant within six (6) months of referral from the General Assembly 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, in which case, the Planning Commission 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 recommendation regarding the issuance or denial of a Permit to such applicant.
6. Public Hearing Decision by General Assembly. Within sixty (60) days of a recommendation from the Planning Commission, the General Assembly shall conduct a public hearing to review the Permit application and shall render a decision regarding the issuance or denial of a Permit to such applicant within three (3) months of referral from the General Assembly 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, in which case, the General Assembly 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.
7. Standards for Issuance of Permit. A Permit shall be issued when the General Assembly 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 to the Area. A Permit shall be denied when the General Assembly finds that the applicant has not sustained such burden of proof.
8. Permit Conditions. The General Assembly, when issuing any Permit, may prescribe any conditions he may deem reasonably necessary to effect the purpose and intent of this ordinance. Except when contrary to state or federal law, the Town Manager 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 General Assembly 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.
9. 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 General Assembly 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, has 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 General Assembly may, in its sole discretion, renew the Permit for an additional calendar year without requiring further application, information, review or hearing.

10. Additional Information; Extension of Time. The General Assembly may require the applicant to provide any additional information which reasonably may assist them in fulfilling their duties pursuant to this ordinance. 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.

11. Appeals. The decision of the General Assembly is final and may be appealed to District Court.

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. 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 ordinance, or in violation of the terms of any Permit issued hereunder, the Town or its authorized representatives 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 Clerk shall place the matter on the agenda of the next regular meeting of the General Assembly for such review as the General Assembly 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 day, and the General Assembly shall grant the request, except that the General Assembly 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.

SECTION 7. REGULATIONS.

The General Assembly may by resolution issue regulations providing guidelines and criteria to carry out the purposes of this ordinance.

SECTION 8. ACTIVITY IN PROGRESS.

The lawful use of any building, structure 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. Offense. Any person who violates any of the provisions of this ordinance shall be fined in an amount not to exceed \$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 ordinance is unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation in which even 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.

SECTION 10. SEVERABILITY.

If any portion of this ordinance, or the application thereof, is for any reason held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town recognizes it may not have jurisdiction to apply parts of this ordinance to certain persons or agencies conducting certain activities on certain lands within the Area, whether because of federal or state law or otherwise, and it is the intent of the General Assembly that in those circumstances this ordinance shall be interpreted as if containing an express exception for those persons, agencies or activities beyond the jurisdiction of the Town, but only to the extent absolutely necessary, and that otherwise this ordinance shall apply to the fullest lawful extent. Similarly, if the Town issues a Permit which contains one or more conditions determined by a court of competent jurisdiction to be beyond the jurisdiction of the Town to impose, the Permit shall thereupon be deemed to be revoked or suspended pending review by the General Assembly to determine if it should be reinstated without the invalid condition, reinstated with additional or different conditions, or be denied.

SECTION 11. PUBLICATION. This Ordinance shall be published in accordance with Ophir's Home Rule Charter.

INTRODUCED, READ, APPROVED AND ADOPTED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR on the _____ day of _____, 2004.

READ AND APPROVED ON SECOND AND FINALLY READ BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR on the _____ day of _____, 2004.

By: **Monica Carey, Mayor**

Attest: **Randy Barnes, Town Clerk**
[Town Seal]

Approved as to Form: **Eric James Heil, Esq.**
Town Attorney