

**GUIDELINES AND REGULATIONS FOR
AREAS AND ACTIVITIES OF STATE INTEREST
COUNTY OF BENT
STATE OF COLORADO**

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CHAPTER 1

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Article 1 Introductory and General Provisions

1.101 Title and Citation

The sections constituting Chapters 1 through 6 are cumulatively entitled and may be cited as the "Guidelines and Regulations for Areas and Activities of State Interest of Bent County", and may also be referred to herein as "Guidelines and Regulations", or "Regulations."

1.102 Purpose and Intent

- (1) The general purpose and intent of these Regulations is to establish the framework for identification, designation, and administration of Matters of State Interest in a manner that conserves natural resources, is sensitive to surrounding land uses, and promotes and protects the public health, safety, welfare and the environment of Bent County consistent with Section 24-65.1-101, et seq., C.R.S. and other authority as set forth herein.
- (2) The specific purposes and intent of these Regulations is as follows:
 - (a) To protect the beauty of the landscape and natural scenic characteristics of Bent County, to preserve and protect important archaeological and historic sites, to protect and enhance wildlife habitat, air and water quality and to conserve natural resources;
 - (b) To ensure that Municipal and Industrial Water Projects are developed in a manner so as to emphasize the most Efficient Use of Water, including, to the extent permissible under law, the Recycling and reuse of water;
 - (c) To ensure that Municipal and Industrial Water Projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and Aquifer Recharge Areas within the Project Impact Area;
 - (d) To ensure that the off-site impacts of Municipal and Industrial Water Projects, including, but not limited to Soil Loss from air or water erosion, airborne dust, Noxious Weed Invasion, and negative effects on surface and groundwater quality and the aquatic and natural habitat of the Project Impact Area, are effectively mitigated;
 - (e) To administer areas containing or having a significant impact upon natural resources of statewide importance in a manner that will allow Persons to function in harmony with, rather than be destructive to, these resources;

- (f) To ensure that Development in areas containing natural resources is conducted in a manner which will minimize damage to those resources for future use;
- (g) To ensure that Development in areas containing or having a significant impact upon Natural Resources of Statewide Importance takes place in a manner which will result in protection of the soil in areas of Bent County which have been historically irrigated, in order that significant wildlife habitats within Bent County may be protected and preserved;
- (h) To ensure that Development in areas containing or having a significant impact upon Natural Resources of Statewide Importance is conducted in such a manner as to minimize environmental impacts associated with such Development;
- (i) To ensure that Development in areas containing or having a significant impact upon Natural Resources of Statewide Importance is planned and executed in a manner so as not to impose an undue economic burden on existing or proposed communities within Bent County;
- (j) To ensure that the impacts of Development in areas containing or having a significant impact upon Natural Resources of Statewide Importance, including but not limited to Soil Loss from air or water erosion, airborne dust, Noxious Weed Invasion, and negative effects on surface and groundwater quality and the aquatic and natural habitat of the Project Impact Area, are effectively mitigated;
- (k) To regulate the use of land on the basis of the financial and environmental impact thereof on the community or surrounding areas of the Project Development Area;
- (l) To protect the historical agricultural character and resources within Bent County; and
- (m) To ensure Bent County's citizens that benefits accruing to the County and its citizens from Development are equal to or outweigh the losses of any resources within the County, or the losses of opportunities to develop such resources.
- (n) It is not the intent of these Regulations to regulate or hinder activities or practices traditionally associated with the continuation of agriculture in Bent County.

1.103 Findings

The Board of County Commissioners finds that:

- (1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S. have been followed;
- (2) These Regulations are necessary because of the intensity of current and foreseeable Development pressures on and within Bent County; and
- (3) These Regulation are necessary to fulfill the purposes and intentions specified in Section 1.102 above.

1.104 Authority and Severability

- (1) The Guidelines and Regulations are authorized by, inter alia, Section 24-65.1-101, et seq., C.R.S.; Section 30-28-101, et seq., C.R.S.; Section 30-28-201, et seq., C.R.S.; Section 29-20-101, et seq., C.R.S.; and Section 24-32-111, C.R.S. These Regulations are necessary for the preservation of the public health, safety and welfare.
- (2) If any section, subsection, sentence, clause or phrase of these Regulations is, for any reason, held to be invalid or unconstitutional by a court of law, such decision will not affect the validity of these Regulations as a whole or any part other than the part declared invalid.

1.105 Applicability

- (1) These Regulations shall constitute the guidelines and regulations for administration of Matters of State Interest under C.R.S. § 24-65.1-402.
- (2) Except as otherwise provided herein, these Regulations apply to the entire unincorporated territory of Bent County, whether on public or private land.
- (3) These Regulations shall apply to all proceedings concerning the identification and Designation of areas and activities of state interest, and the control of Development in any area of state interest or the conduct of any activity of state interest that has been or may hereafter be designated by the Board of County Commissioners.
- (4) The portions of these Guidelines and Regulations authorized exclusively under Section 24-65.1-101, et seq., C.R.S., shall not apply to any Development in the Matters of State Interest designated herein that meets any of the conditions set forth in Section 24-65.1-107, C.R.S.

1.106. Designated Matters of State Interest

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and Designation adopted and issued by applicable state agencies, as well as the other relevant factors set forth herein, at a duly noticed public hearing held in accordance with C.R.S. § 24-65.1-401 et seq., does hereby find, declare, and designate the following to be Matters of State Interest and does hereby adopt the accompanying guidelines and regulations requiring permits for these designated Matters of State Interest as further set forth herein:

(1) Areas of State Interest

Areas containing or having a significant impact upon Natural Resources of Statewide Importance, wholly or partially within the unincorporated territory of Bent County shown on the map attached hereto as **Exhibit D**, and incorporated herein by reference. An electronic version of **Exhibit D**, including GIS shapefiles, is available upon request from the Bent County Administrator.

(2) Activities of State Interest

Efficient utilization of Municipal and Industrial Water Projects, wholly or partially within the unincorporated territory of Bent County.

1.107 Relationship of Regulations to Other County, State and Federal Requirements

- (1) Whenever these Guidelines and Regulations are found to be inconsistent with any other resolution, ordinance, code, regulation, or other enactment of Bent County, the enactment imposing the more restrictive standards or requirements shall control.
- (a) In the event these Guidelines and Regulations are found to be less stringent than the statutory criteria for administration of Matters of State Interest set forth in Section 24-65.1-202 and 204, C.R.S., the statutory criteria shall control.
- (b) In the event these Guidelines and Regulations are found to be more stringent than the statutory criteria for administration of Matter of State Interest set forth in Sections 24-65.1-202 and -204, C.R.S., these regulations shall control pursuant to the authority of Section 24- 65.1-402(3), C.R.S.
- (c) These Guidelines and Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of Bent County, including, without limitation, the Bent County Zoning and Subdivision Regulations.

- (2) Review or approval of a Project by a federal or state agency does not obviate, and will not substitute for, the need to obtain a Permit for that Project under these Regulations. However, where in the opinion of the Board of County Commissioners, federal or state review and approval processes adequately address the impacts that these Regulations are designed to address, the Board of County Commissioners may agree to rely on that review and approval. Any Applicant for a Permit under these Regulations that is also subject to the regulations of other state or federal agencies may request that the Bent County application and review process be coordinated with that of the other agency. The County will use best efforts to eliminate redundant application submittal requirements and will use best efforts to coordinate its review of the application with that of other agencies as appropriate. To the extent practicable and appropriate, the County will also use best efforts to coordinate the terms and conditions of any approval with that of other agencies.

1.108 Permit Required

- (1) No Person may undertake or engage in Development in Designated Areas of State Interest or any activities of state interest designated in these Regulations, wholly or partially within the unincorporated areas of the Bent County, without first applying for and obtaining from Bent County either a permit (hereinafter "Permit") or a "Finding of No Significant Impact" pursuant to these Regulations.
- (2) No local authority may issue a building permit for a Project subject to these Regulations without the applicant first having obtained a Permit pursuant to these Regulations.

1.109 Definitions

The following words and terms used in these Guidelines and Regulations shall have the meanings set forth below unless the context requires otherwise:

- (1) "Administrator" means the Bent County Administrator.
- (2) "Applicant" means a Person(s) requesting a Permit pursuant to these Regulations for a Project.
- (3) "Aquifer Recharge Area" means any area where surface waters may infiltrate to a water bearing stratum of permeable rock, sand or gravel.
- (4) "Bent County" or "County" means the County of Bent, State of Colorado.

- (5) "Board of County Commissioners" means the Board of County Commissioners, County of Bent, State of Colorado.
- (6) "Designation" means that legal procedure specified by Section 24-65.1- 401, et seq., C.R.S., carried out by the Board of County Commissioners.
- (7) "Development" means any construction, activity, or change in activity which changes the basic character or the use of the land on which the construction, activity, or change occurs, but excludes any construction, activity, or change exempted from the Permit process by these Regulations.
- (8) "Development in Designated Areas of State Interest" means any Development on a parcel or tract of land of more than ten (10) acres, located within the area depicted on **Exhibit D**, and which land is irrigated as of the Effective Date of these Regulations, which results in any of the following:
 - (a) Permanent cessation of irrigation, except as provided below.
 - (b) Lease, sale, transfer to another place of use, or other disposition, including use of water rights in a substitute water supply plan or plan pursuant to the *Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado*, in whole or in part, of the land or the water rights historically used to irrigate the same, including refraining from exercising the water rights to irrigate the land, the effect of which is to cease irrigation for more than three (3) years in a ten-year period.
 - (c) Lease, sale, transfer to another place of use, or other disposition, including use of water rights in a substitute water supply plan or plan pursuant to the *Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado*, in whole or in part, of the land or the water rights historically used to irrigate the same, including refraining from exercising the water rights to irrigate the land, the effect of which is to enable the use, in any single year, of 1,000 acre-feet or more of consumptive use credits for augmentation, replacement, municipal or industrial purposes. Multiple concurrent individual leases or administrative approvals by a single Person that cumulatively amount to 1,000 acre-feet of more shall apply to the foregoing.
 - (d) Development of the land for a use or uses other than irrigated agriculture.

- (e) Any sale or transfer of land located within the areas described on **Exhibit D** or of the water rights used to irrigate such lands, when the effect of such sale or transfer is to separate ownership of the land from the water rights, except as provided below.
- (f) The removal or disabling of laterals, divide boxes, headgates, or other structures, in a manner which long-term prevents the continued irrigation or revegetation of lands within the area described on **Exhibit D**.

A Development in Designated Areas of State interest does not include the following:

Nonconforming Uses, subject to the provisions of Chapter 6, Article 5, below;

Termination or suspension of a water lease that provides water for agricultural irrigation purposes where the leased water is the subject of a change decree entered by the water court prior to the Effective Date of these Regulations;

A sale or transfer of historically irrigated land or water rights resulting in the separation of ownership of the land from the water rights where the purpose of such sale or transfer is solely for estate or tax planning purposes and that does not result in a permanent dry-up of land;

The dry-up of parcel corners as part of the conversion from flood irrigated land to a center-pivot irrigation system, provided the total area of dry-up does not exceed 22 percent of the historically irrigated acres under the converted parcel, without the approval of the Permit Authority; however, if the overall irrigated parcel is subsequently subject to the definition of a Project, then such corners shall also be included in any permit application for such Project;

The movement of shares of a mutual ditch or reservoir company for use elsewhere within the company's service area that does not result in the cessation of irrigation on a parcel of land more than ten (10) acres permanently or for a period of more than three (3) years in a ten-year period.

Temporary administrative approvals allowing for an alternate use of less than 1,000 acre-feet of consumptive use credits derived through the reduction or cessation of irrigation of lands within the area described on **Exhibit D**, for no more than 2 consecutive years on the same acreage; and

Temporary administrative approvals allowing for an alternate use of 1,000 acre-feet or more of consumptive use credits derived through the reduction or cessation of irrigation of lands within the area described on **Exhibit D**, for no more than 2 consecutive years on the same acreage, for storage in John Martin Reservoir for recreation and wildlife purposes.

- (9) "Effective Date" means the date on which these Regulations, or any applicable amendment, were adopted by resolution of the Board of County Commissioners.
- (10) "Efficient Use of Water" means the employment of methods, procedures, techniques, and controls to ensure that the amount of water and the purpose for which water is used will yield the greatest possible benefits. Such benefits will consider, but not be limited to, economic, social, aesthetic, environmental, agricultural, and recreational.
- (11) "Layman's Description" or "General Description" means a general, non-Legal Description and the popular name, if any, of the tract of land upon which the Project is to be Developed.
- (12) "Legal Description" means any description from which it is possible to locate accurately on the ground the boundaries of the land being described.
- (13) "Industrial Water Project" means a system and all integrated components thereof through which an enterprise or business derives its water supply from either surface or subsurface sources for use by the entity for manufacturing, fabrication, or industrial purposes. This includes a system and all integrated components thereof through which an industry derives water directly or by exchange, trade, or augmentation for water it uses for its own needs, or through Persons who could provide water for use by an industry.
- (14) "Matter of State Interest" means an area of state interest or an activity of state interest or both.
- (15) "Mitigation" means actions or measures to reduce, minimize, eliminate, or outweigh adverse impacts on the categories of standards as described in Chapter 4, Article 1.
- (16) "Municipal Water Project" means a system (exclusive of systems capable of serving up to three (3) single family dwellings) and all integrated components thereof through which a Municipality(ies) derives its water supply from either surface or subsurface sources, for use by the Municipality and its citizens. This includes a system and all integrated components thereof through which

a Municipality derives water directly or by exchange, trade, or augmentation for water it uses for its own needs, or through Persons who could provide water for use by a Municipality.

- (17) "Municipality" means any agency, department, enterprise, or political subdivision of Government, as "Government" is defined by Section 29-1-202(1), C.R.S.
- (18) "Natural Resources of Statewide Importance" means areas of Bent County which have historically been irrigated, as shown on **Exhibit D** (which map is fully incorporated herein) to these Guidelines and Regulations.
- (19) "Net Effect" means the impact of an action after Mitigation and/or Rehabilitation.
- (20) "Nonconforming Use" means use or Development in existence on the Effective Date of these Regulations, which use or Development, were it a new use or Development, would be one for which a Permit is required under these Regulations.
- (21) "Noxious Weed Invasion" means the appearance of one or more plants designated as a noxious weed species by the Colorado Department of Agriculture pursuant to the Colorado Noxious Weed Act, on the Noxious Weed List, as such list is updated by the Department from time to time.
- (22) "Permit Authority" means the Board of County Commissioners, exercising all powers and duties granted in these Guidelines and Regulations.
- (23) "Permit Holder" means the Person(s) implementing a Project pursuant to a Permit issued by the Permit Authority under these Guidelines and Regulations.
- (24) "Person" means any private individual, partnership, corporation, association, company, or any public or corporate body, including the state and federal government, and includes any political subdivision, agency, instrumentality, or corporation thereof.
- (25) "Project" means a specific Development in an Area of State Interest and/or an activity of state interest. If any proposed Project is located partly within and partly without the boundary of an area of state interest as designated in these Regulations, the impacts of the entire Project will be subject to review under these Regulations. All construction, activity, change in activity, or uses which compose or are directly associated with the Project shall be considered to be part of the Project.

- (26) "Project Impact Area" means that geographic area or region wholly or partially within the unincorporated territory of Bent County which will be developed, changed or altered in connection with a Project as defined herein.
- (27) "Receipt of Application" means the date and time at which the completed application is accepted by the Permit Authority.
- (28) "Recycling" means the treatment of wastewater in a manner that will replenish its quality to the standard established by the Colorado Department of Public Health and Environment where permissible by Colorado law.
- (29) "Rehabilitation" means Revegetation of formerly irrigated land, or, if permitted, the implementation of commercially viable and sustainable dry-land agriculture practices on formerly irrigated land.
- (30) "Revegetation" means restoration and ongoing maintenance of formerly irrigated land to a reasonably expected natural state, with self-sustaining native, or other approved species, perennial vegetation.
- (31) "Soil Loss" means the loss of topsoil from historically irrigated lands by air or waterborne erosion, or by Noxious Weed Invasion.

1.110 Interpretation

The following rules of construction of language shall be used in interpreting these Regulations: Words used in the present tense include the future, unless the context clearly indicates the contrary. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. Capitalized terms included without capitalization shall have the same meaning as if capitalized, unless the context clearly indicates the contrary.

Article 2 Designation of Matters of State Interest

1.201 Applicability of Designation Process

The Designation process set forth in this Article 2 applies to the Designation of any Matter of State Interest subsequent to the Effective Date of the most-recent amendment of these Regulations. Any Matters of State Interest previously designated by the Board of County Commissioners prior to the current amended version of these Regulations remain in effect.

1.202 Board of County Commissioners to Make Designations

Designations and amendments of Designations may be initiated in two ways:

- (1) The Board of County Commissioners may in its discretion designate, amend or adopt regulations for the administration of any Matter of State Interest.
- (2) The Bent County Planning and Zoning Board may upon request by the Board of County Commissioners recommend the Designation of Matters of State Interest. The Board of County Commissioners shall decide, in its sole discretion, whether or not to designate any or all of the requested Matters of State Interest.

1.203 Designation Process

(1) Public Hearing by Permit Authority

The Board of County Commissioners shall hold a public hearing before designating any Matter of State Interest or before amending or adopting regulations for the administration thereof. Said hearing shall be held beginning not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing. At its discretion the Board of County Commissioners may recess and continue the hearing to future time(s) and place(s) as may be required.

(2) Notice of Public Hearing, Mailing List, Publication

(a) The Board of County Commissioners shall prepare a notice of the Designation hearing which shall include:

- (a) The time and place of the hearing;
- (b) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
- (c) The telephone number where inquiries may be answered;
- (d) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.

(b) The Board of County Commissioners may maintain a mailing list of those Persons requesting notices of all hearings pursuant to Sections 24-65.1-404(2)(b) and 24-65.1-501(2)(c), C.R.S. In order to have a name and address retained on the list, the Person shall resubmit their name and address before January 31 of each year.

(c) At least thirty (30) days but no more than sixty (60) days before the public hearing, the Board of County Commissioners shall publish the

notice in a newspaper of general circulation in the County and shall mail the notice by first class mail to each of the following:

- (a) State and federal agencies, as deemed appropriate in the discretion of the Board of County Commissioners;
- (b) Persons on the above-described mailing list;
- (c) In the discretion of the Board of County Commissioners, members of the news media and any other Person, including mutual ditch and reservoir companies, considered likely to be affected by the proposed Designation; and
- (d) If any other local governmental jurisdiction would be directly or indirectly affected, the proposed Designation similarly may be mailed to such government in the sole discretion of the Board of County Commissioners.

1.204 Matters to be Considered at Designation Hearing

- (1) At the Designation hearing, the Board of County Commissioners shall receive into the public record:
 - (a) Testimony and evidence from all Persons or organizations desiring to appear and be heard, including County staff;
 - (b) Any documents that may be offered; and
 - (c) The recommendations of the Bent County Planning Commission, if any.
- (2) The Permit Authority may also consider the following factors at the Designation hearing:
 - (a) The intensity of current and foreseeable Development pressures;
 - (b) The reasons why the particular area or activity is of state interest, the adverse impacts that would result from uncontrolled Development of any such area or uncontrolled conduct of such activity, and the advantages of Development of such area or conduct of such activity in a coordinated manner;
 - (c) The boundaries of the proposed area of state interest; and
 - (d) Conformity with other Bent County land use regulations, including any Bent County master plan or duly adopted intergovernmental

agreements pertaining to or affected by the area or activity proposed to be designated.

1.205 Record of Designation Proceeding

- (1) The Board of County Commissioners shall collect and preserve the following record of the public hearing:
 - (a) A copy of the notice of the hearing;
 - (b) The certificate of publication of the notice of the hearing and a listing of all Persons to whom the notice was mailed;
 - (c) The names and addresses of Persons who presented written or oral statements or offered documentary evidence;
 - (d) Any written statements or documents presented in support of or in opposition to the proposed Designation of the Matter of State Interest or amendment or adoption of regulations;
 - (e) A recording or transcript, of the hearing;
 - (f) Written findings and order of designation of the Matter(s) of State Interest;
 - (g) The recorded notice of Designation of the area or activity of state interest and regulations; and
 - (h) A map or maps depicting each area of state interest designated.
- (2) Any Person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Board of County Commissioners and shall become part of the record if deemed appropriate at the sole discretion of the Board of County Commissioners.

1.206 Adoption of Designation and Regulations

At the conclusion of the hearing, or within thirty (30) days thereafter, the Board of County Commissioners will take action by resolution to adopt, adopt with modification, or reject the proposed Designation or amendment or adoption of regulations interpreting and implementing its guidelines for an area or activity of state interest.

- (1) In the event the Board of County Commissioners finally determines that any matter is a Matter of State Interest, it shall be the Board's duty, acting by resolution, to designate such matter and adopt and amend regulations for the administration thereof.
 - (a) Each Designation order¹ adopted by the Board of County Commissioners shall:
 - (a) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated;
 - (b) State reasons why the particular area or activity is of state interest, the adverse impacts that would result from uncontrolled Development of any such area or uncontrolled conduct of such activity, and the advantages of Development of such area or conduct of such activity in a coordinated manner;
- (2) If the Board of County Commissioners rejects the Designation and/or proposed regulations, the Board of County Commissioners may, at its discretion, regulate the matter under any other available land use control authority or it may reject regulation of the matter entirely.

1.207 Recording of Notice of Designation or Amendment

A notice of the Designation or amendment shall be certified by the Board of County Commissioners to the County Clerk and Recorder for filing in the same manner as any document affecting real property.

1.208 Effect of Designation - Moratorium Until Final Determination

After a Matter of State Interest is designated pursuant to Section 1.206, no Person shall engage in Development in such area and no such activity shall be conducted until the Designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404(4), C.R.S.

¹ **Exhibit A** is a sample designation order form.

CHAPTER 2

REVIEW PROCESS FOR PERMITS

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Article 1 General Review Procedures

2.101 Consultants and Referral Agencies

The following provisions apply to all applications for a Permit pursuant to these Regulations:

- (1) Consultant and Referral Agency Review. The Permit Authority may authorize all or a portion of the review of any component or phase of an application to be performed by an outside consultant and/or sent to referral agencies.
- (2) Applicant Responsible for Review Costs. The costs of consultant and/or referral agency review are the responsibility of the Applicant.

2.102 Pre-Application Conference

An application for a Permit shall begin with a pre-application conference between the Applicant and the Administrator.

- (1) Procedure and purpose. The Applicant shall make a request for a pre-application conference through the Administrator's office. At the conference the Administrator will explain the regulatory process and requirements and begin to evaluate the appropriate level of review. The conference is intended to provide an understanding of the applicable review procedures, requirements and standards, including what expert reports may be required, and provide information pertinent to the application and the geographical area affected by the application. Any comments or commitments made by the Administrator during this meeting are only preliminary in nature, not binding on the Permit Authority, and should not be relied upon by Applicant.
 - (a) Scheduling of Pre-Application Conference. The Administrator shall schedule a pre-application conference to be held within twenty-one (21) days of receipt of a request for a pre-application conference.
 - (b) Materials. As soon as practicable or before the pre-application conference, the Applicant shall submit a brief explanation of the proposed Project, including the following materials:
 - (a) The Applicant's name, address and phone number.
 - (b) A map prepared at an easily readable scale showing:
 - (i) Location and boundary of the proposed Project;

- (ii) Relationship of the proposed Project to surrounding topographic and cultural features such as roads, streams and existing structures; and
 - (iii) Proposed building, improvements and infrastructure.
- (c) Written summary of the proposed Project that is sufficient for determining the appropriate level of review.
- (d) Identification of any Person(s) holding a recorded or unrecorded legal, equitable, contractual, option, letter of intent, or future interests that relates to the proposed Project or activity and any other Person(s) known to the Applicant having an existing or prospective interest in the property and related to the proposed Project or activity, including if applicable, water rights. Interests unrelated to the proposed Project, such as, for example, prescriptive easements, need not be identified. Any recorded interests shall be limited to those which are recorded in the Bent County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State.
- (c) Participants. In addition to the Administrator, participants in the pre-application conference may include appropriate County staff and/or consultants to discuss potential issues raised by the proposed Project.
- (d) Summary and Recommendation. Within ten (10) business days of the pre-application conference, the Administrator shall provide the Permit Authority with the materials submitted by the Applicant, together with a summary of the conference and an initial recommendation as to the appropriate applicable level of Permit application review.

2.103 Determination of Level of Permit Review

There are three (3) possible levels of review for a Permit application for a proposed Project. The Permit Authority shall make the initial determination of the appropriate level of review at its next regularly-scheduled meeting that is at least seven (7) days following receipt of the Administrator's summary of the pre-application conference and recommendation.

- (1) Finding of No Significant Impact. Based upon review of the pre-application submittals and the information obtained at the pre-application meeting, the Permit Authority may make a Finding of No Significant Impact and determine

that a Permit is not necessary under these Regulations. The Permit Authority may make a Finding of No Significant Impact if the construction, implementation, and operation of the Project, without Mitigation, in its proposed location will not have any significant adverse impact to the County. The Permit Authority's decision shall take into consideration the extent of information available concerning the proposed Project and the approval standards set forth in Chapter 4, Article I, below. Traditional farming and irrigation practices, including without limitation, cessation of irrigating acreage without permanent dry-up for drought-related fallowing, shall be presumed to not have any significant adverse impact to the County. Enrolling irrigated acreage into the U.S. Department of Agriculture's Conservation Reserve Program may be determined not to have any significant adverse impact to the County, provided adequate conservation practices are included as part of such enrollment that will ensure establishment of long-term, resource-conserving plant species with adequate soil erosion and weed control provisions.

If, subsequent to making a Finding of No Significant Impact, new information indicates the nature and scope of the impacts of the proposed Project are such that a Permit is required, the Permit Authority shall immediately provide written notice of such information to the Applicant. Applicant shall, within fourteen (14) days, provide a written response identifying either that Applicant believes a Permit is still not required and stating the reasons therefore, or, that Applicant intends to file an application for a Permit. If Applicant asserts that a Permit is not required, the Permit Authority shall consider the matter at its next regularly scheduled meeting and make a determination.

- (2) Major and Minor Permit Review. If the Permit Authority does not make a Finding of No Significant Impact, then a Permit is required under these Regulations and the Permit Authority shall determine whether the proposed Project should be subject to the Major Permit Review or Minor Permit Review provisions of this Article.
 - (a) Major Permit Review. The Permit Authority may determine that Major Permit Review is required if:
 - (i) The proposed Project is likely to have a significant adverse impact in two (2) or more categories of standards as described in Chapter 4, Article I of these Regulations; or
 - (ii) The proposed Project is likely to have severe adverse impact in any one (1) category of standards as described in Chapter 4, Article I of these Regulations; or

- (iii) Notwithstanding the above, the Permit Authority, at its discretion, may determine that other circumstances exist which do not warrant a Major Permit Review.
- (b) Minor Permit Review. If the Permit Authority determines that the Project does not require Major Permit Review, then it will be processed as a Minor Permit Review. As part of any determination that a Project shall be processed as a Minor Permit Review, the Permit Authority shall, in accordance with Section 3.101, identify the application submittal requirements from Chapter 3 of these Regulations that shall be applicable to the Project's review, as well as the permit approval standards that shall be applicable from Chapter 4 of these Regulations. Any application submittal requirements and approval standards not expressly identified shall be waived for the Project's Minor Permit Review process.

2.104 Change in Level of Permit Review

At any time prior to a final decision by the Permit Authority on a Permit application, the Permit Authority may decide that new information available since the pre-application conference indicates that the nature and scope of the impacts of the proposed Project are such that a different level of review is required. If a different level of review is required, the Permit Authority shall immediately notify the Applicant and the County Attorney.

2.105 Permit Application Fees and Costs

The Applicant is responsible for all costs of Bent County reviewing and processing the Permit application.

- (a) Fee and Costs Requirement.
 - (i) Any application for a 1041 Permit must be accompanied by the appropriate fees and costs for notice. An estimated range of any potential fees will be disclosed in the Administrator's pre-application conference summary. This estimate is nonbinding.
 - (ii) The County may also require a deposit for payment of additional costs described in subsection (b) below and incurred by Bent County, based upon estimated review costs at the time of application, and in addition to the application fees.
 - (iii) The amount of the deposit may be increased at any time it is determined by the Permit Authority that the current amount is not

sufficient to cover Bent County's actual costs associated with the application.

- (iv) The County may suspend the application review process pending payment of its costs.

(b) Payment of Additional Costs.

Costs for reviewing and processing the Permit application may include but are not limited to the costs of staff, legal, consultant, and referral agency review of the Permit application, the pre-application conference, completeness determination, notices, and all hearings and meetings on the Permit application, and shall be billed to the Applicant by Bent County, and any deposit applied to such costs. All such additional costs must be paid in full prior to final action by the Board of County Commissioners on the Permit application.

2.106 Determination of Completeness.

Within thirty (30) business days of receipt of the application materials, the Permit Authority will determine whether the application is complete based on compliance with the permit application submittal requirements set forth in Chapter 3, Article 1, and the submission of required fees and costs as set forth in Section 2.105.

- (a) Application is Not Complete. If the application is not complete, the Administrator will inform the Applicant of the deficiencies in writing and will take no further action on the application until the deficiencies are remedied. If the Applicant fails to correct the deficiencies within sixty (60) calendar days, the application will be considered withdrawn and returned to the Applicant.
- (b) Application is Complete. If the application is determined complete, the Administrator will stamp it with the date of Receipt of Application.
- (c) Extension of Time for Determination of Completeness. The Permit Authority may authorize an extension of time to complete the review for determination of completeness up to an additional sixty (60) business days. The extension of time for determination of completeness will be based upon the following considerations:
 - (i) Scope of Application. The scope of application is sufficient to require additional time for the Permit Authority to review the application for a determination of completeness.
 - (ii) Staff Workload. The workload of the County's staff and consultants justifies the need for an extension of time.

2.107 Evaluation by Administrator, Staff, Consultants and Referral Agencies.

Taking into consideration any input from referral agencies and consultants, the Administrator will prepare a staff report discussing issues raised by staff and referral agencies, whether the applicable standards in these Regulations have been satisfied, Mitigation requirements, recommended conditions of approval, and additional information pertinent to review of the application. The report shall be provided to the Applicant no less than seven (7) days prior any hearing.

2.108 Notice of Public Hearing. No later than thirty (30) days after Receipt of Application, the notice of a hearing shall be provided as follows:

- (a) Notice by Publication. At least thirty (30) days but no more than sixty (60) days prior to the date of the scheduled public hearing, the Administrator shall have published a notice of public hearing in a newspaper of general circulation in Bent County in the area that the Project is located, and shall also post notice on the County's website. The notice shall include:
 - (i) The time and place of the hearing;
 - (ii) The place at which materials relating to the Project and application may be reviewed;
 - (iii) The telephone number where inquiries may be answered;
 - (iv) A description of the Project in sufficient detail to provide reasonable notice as to property which would be included the Project.
- (b) Notice to Adjacent Property Owners. At least thirty (30) calendar days but no more than sixty (60) calendar days prior to the date of a scheduled public hearing, the Applicant shall send by certified mail, return receipt requested, a written notice of the public hearing to the owners of record of all property adjacent and contiguous to the Project site boundaries, and, if shares of stock in a mutual ditch and/or reservoir company are implicated by the Project, to the relevant company. The notice will include a vicinity map, the property's Legal Description, a short narrative describing the Project, and an announcement of the date, time, and location of the scheduled hearing.
- (c) The Board of County Commissioners may maintain a mailing list of those Persons requesting notices of all hearings pursuant to Sections 24-65.1-404(2)(b) and 24-65.1-501(2)(c), C.R.S. In order to have a name and address retained on the list, the Person shall resubmit their name and address before January 31 of each year. At least thirty (30) calendar days but no more than sixty (60) calendar days prior to the date of a scheduled public hearing, the

Applicant will send by certified mail, return receipt requested, a written notice of the public hearing to the notice list maintained by the Permit Authority.

- (d) The Permit Authority may require the Applicant to provide referral and notice of a scheduled public hearing to the following by first class mail at least thirty (30) days but no more than sixty (60) days before the public hearing:
 - (i) State and federal agencies, as deemed appropriate in the discretion of the Board of County Commissioners;
 - (ii) In the discretion of the Permit Authority, members of the news media and any other Person considered likely to be affected by the proposed Project; and
 - (iii) If any other local governmental jurisdiction would be directly or indirectly affected, the proposed Project similarly may be mailed to such government in the sole discretion of the Permit Authority.

Such notice shall include a request that any written comments from such referral agencies concerning the Project be directed to the Administrator no later than fourteen (14) days prior to the scheduled hearing.

- (e) Proof of Notice. At the public hearing, the Applicant shall provide proof of notification of adjacent property owners, notification of the Persons on the Permit Authority Notice List, and any other referral and notification required by the Permit Authority.

Article 2 Permit Review Process

2.201 Outline of Process.

The Minor and Major Permit Review will both consist of the following procedures:

- (1) Pre-application conference;
- (2) Application;
- (3) Determination of completeness;
- (4) Notice and referral;
- (5) Evaluation and recommendation by the Administrator/staff; and
- (6) Public Hearing and decision by the Permit Authority.

2.202 Review Process.

- (1) Pre-application Conference. A pre-application conference will be held in accordance with the provisions of Section 2.102.
- (2) Application. The application materials are set forth in Chapter 3, Article I of these Regulations. The Permit Authority shall determine which, if any, submittal requirements set forth in Chapter 3, Article 1 may be waived pursuant to Section 3.101, including waiver of any requirements under a Minor Permit Review determination in accordance with Section 2.103(2)(b).
- (3) Determination of Completeness. The Permit Authority will review the application for determination of completeness in accordance with the provisions of Section 2.106.
- (4) Schedule of Public Hearing. Not later than thirty (30) days from the Receipt of Application, the Administrator will schedule the application for public hearing by the Permit Authority and notice shall be provided pursuant to Section 2.108.
- (5) Notices and referrals. Notices and referrals required by Section 2.108 shall be sent by Applicant upon scheduling public hearing. In any case where information becomes known to the Permit Authority that an Applicant has failed to provide notice of a public hearing on an application as required by these Regulations, the Permit Authority may continue, may reschedule, or may vacate the public hearing to allow proper notice to be provided.
- (6) Evaluation by Administrator/Staff Review. Upon Receipt of Application, the Administrator will begin review the application and prepare a staff report pursuant to Section 2.107.
- (7) Review and Action by the Permit Authority. Following proper public notice, the Permit Authority will consider the application at the public hearing. The burden of proof shall be upon the Applicant to show satisfaction of applicable standards and compliance with these Regulations. If the Permit Authority determines at the public hearing that sufficient information has not been provided to it to allow it to determine if the applicable criteria have been met, the Permit Authority may continue the hearing until the specified additional information has been received. The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the presentation of evidence is closed, or the Permit shall be deemed approved. The Permit Authority will approve, approve with conditions, or deny the application based upon compliance with the applicable standards in Chapter 4, Article 1.

- (a) Approval of Application. If the application satisfies all of the applicable standards, the application shall be approved.
- (b) Conditional Approval or Denial of Application. If the application fails to satisfy any one (1) of the applicable standards, the application shall be denied, or the application may be approved with conditions determined necessary for compliance with the applicable standards.

The Permit Authority shall state, in writing, the reasons for its decision on an application, and its findings and conclusions.

Article 3 Conduct of Hearings

2.301 Conduct of Hearings

The Permit Authority shall conduct the public hearing in a manner affording procedural due process to the Applicant, supporters of the Project and any Person who opposes issuance of the Permit. At its discretion the Permit Authority may recess and continue the hearing to future time(s) and place(s) as may be required.

- (1) The Permit Authority shall hear testimony and receive evidence, including:
 - (a) The recommendations of the Bent County Planning Commission, if any;
 - (b) Testimony and evidence from any and all Persons desiring to appear and be heard, including County staff; and
 - (c) Any documents that may be offered.
- (2) Although the Colorado Rules of Civil Procedure do not govern the conduct of the hearing, all Persons appearing at the hearing, in person or by counsel, shall be afforded the right of cross-examination as well as reasonable opportunity to offer evidence in rebuttal.
- (3) Any Person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Permit Authority and shall become part of the record if deemed appropriate at the sole discretion of the Permit Authority.
- (4) The Permit Authority shall collect and preserve the following record of the public hearing:
 - (a) The permit application;

- (b) A copy of the notice of the hearing, the certificate of publication of the notice of hearing, and a listing of all persons to whom the notice was mailed;
 - (c) The report described in Section 2.107;
 - (d) Any written statements or documents presented in support of or in opposition to the permit application;
 - (e) The names and addresses of all Persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
 - (f) A recording or transcript of the hearing;
 - (g) Any written minutes of the Permit Authority relating to the public hearing; and
 - (h) The resolution of the Permit Authority granting or denying the permit application.
- (5) In cases in which the Project must also comply with Bent County zoning and/or subdivision regulations, the Permit hearing required by these Regulations may be held at the same time as the final hearing required for such plat or plan.

Article 4 Issuance of Permits

2.401 Issuance of Permits

- (1) The Permit shall be issued in the form of a resolution duly adopted by the Permit Authority.
- (2) The Permit may be issued for an indefinite term, or for a specific period of years.
- (3) The Permit and its terms and conditions shall be attached to and run with title to any real property, including water rights, that is the subject of the Project, and shall constitute covenants and servitudes on such real property, until such time as the terms and conditions are satisfied, as determined by the Permit Authority, or the Permit expires. A copy of the Permit shall be recorded in the real property records of Bent County, and, if applicable, any stock certificates in a mutual ditch or reservoir company subject to the Permit shall be re-issued identifying the Permit as an encumbrance on the shares. The Permit Authority shall notify the applicable ditch or reservoir company at such time as any such encumbrance on the shares has been released.

2.402 Lapse

Approval of a Permit will lapse after 12 months, unless:

- (1) Applicant or Permit Holder has taken substantial steps to initiate the permitted Project.
- (2) "Substantial steps" do not require construction activity and may include, among other things, legal or administrative proceedings and activities directly associated with the Project.
- (3) The Permit Authority may at its discretion extend the time within which to take substantial steps if the Permit Holder submits a written request prior to expiration of the Permit detailing the need for such extension.

Permits issued under these Regulations shall not be considered to be a site-specific development plan and no statutory vested rights will inure to such Permit.

Article 5 Minor Modification and Permit Amendments

2.501 Minor Modification

Any change in a Project from that approved by the Permit Authority will require either a "minor modification" or a "Permit amendment."

- (1) Submittals. To request a minor modification, the Permit Holder will submit the following information and materials to the Administrator:
 - (a) A copy of the current Permit;
 - (b) As-built drawings of the Project, if applicable;
 - (c) A written description of the proposed changes to the Project together with drawings, plans, and/or reports describing the proposed changes impacts of the changes and the reason for such change; and
 - (d) Additional Mitigation and/or terms and conditions.
- (2) Determination of Whether Change is a Minor Modification or Permit Amendment.

The Permit Authority may request additional information from the Applicant, and shall determine whether a change is a minor modification or a Permit amendment within thirty (30) days following receipt of the request and necessary submittals and additional information, and shall notify the Permit Holder, in writing, of the determination.

(3) Minor Modification.

A proposed change will be considered a “minor modification” if the Permit Authority, in its discretion, determines that the proposed change does not significantly alter the scope, nature, or character of the permitted Project, nor enlarge the extent of any impacts of the permitted Project, nor reduce the effect of any Mitigation provided for by the Permit. Upon finding that the change is a minor modification, the Permit Authority will approve the change to the Permit and a written addendum or amendment shall be attached to the Permit.

(4) Permit Amendment.

Changes other than a minor modification shall require a Permit amendment. A Permit amendment shall be treated as a new application and processed according to Chapter 2 of these Regulations.

Article 6 Judicial Review.

2.601 Judicial Review

Any action seeking judicial review of a final decision of the Permit Authority shall be initiated within thirty (30) days after the decision is made, in the District Court in and for the County of Bent, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

CHAPTER 3

PERMIT APPLICATION SUBMITTAL REQUIREMENTS

Article 1 **Application Submittal Requirements**

- 3.101 Waiver
- 3.102 Application Form
- 3.103 Information Describing the Project
- 3.104 Property Rights, Permits and Other Approvals
- 3.105 Technical and Financial Feasibility
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- 3.117 Water Quantity
- 3.118 Vegetation and Weed Management Plan
- 3.119 Monitoring and Mitigation Plan
- 3.120 Additional Information May be Required

Article 2 **Intergovernmental Agreements.**

Article 1 Application Submittal Requirements

An application for a Permit for Development in Designated Areas of State Interest and/or to conduct an activity of state interest governed by these Regulations, shall be accompanied by five (5) copies of each of the following submission requirements.

3.101 Waiver.

- (1) The Permit Authority may, at its discretion and upon written request of an Applicant, waive one (1) or more of these submittal requirements, including the requirement for a report by a qualified expert, when the information would be unreasonably burdensome and not be relevant to a determination as to whether the Project complies with the applicable standards in Chapter 4.
- (2) The Permit Authority's decision regarding waiver or one or more submission requirements shall be provided to the Applicant in writing and shall include the reasons for the decision.
- (3) If a waiver request is denied, the Applicant must provide the required submittal information before the Permit Authority can determine that the application is complete pursuant to Section 2.106.

3.102 Application Form

Applicant shall obtain and submit a completed application form from the County Administrator's Office. An example application form is attached as **Exhibit B**, which form may be updated from time to time consistent with the provisions of these Regulations

- (1) Authorized Applicant. Completed application forms and accompanying materials shall be submitted to the Administrator by the Applicant or by any agent acting through written authorization of the Applicant.
 - (a) Authorized Agent. If there are multiple Applicants, and the parties wish to designate a point of contact authorized to bind all Applicants, then the application may include identification of any Person(s) designated and authorized to act as an agent on behalf of all of the Applicants for purposes of the application and permitting process under these Regulations. An executed power of attorney must be included with the application if applicable.

- (b) Applicant is Not the Sole Owner. If the Applicant is not the sole owner of the land and/or water rights subject to the application, the Applicant shall submit a letter, signed by all other owners or an association representing all the owners, by which all owners consent to or join in the application. A mutual ditch or reservoir company shall not be considered an Applicant solely because shares in such company are included as part of the proposed Project and/or subject property.
 - (c) The Application shall include a deed or other evidence of the Applicant's title, ownership interest and/or right to use the land and/or water right for which a Permit is requested. The Applicant shall include copies of all contractual agreements, option agreements, letters of intent or any other agreement related to the Development of the Project and affecting the land and/or water rights that are included in the proposed Project.
- (2) Information About Applicant. The application form shall contain the following information describing the Applicant:
- (a) The name(s), address(es), email address(es), fax number(s), organization form(s), and business(es) of all Persons who meet the definition of "Applicant" in Section 1.109(2) for the proposed Project, including a description of the nature and extent of each Applicant's interest in the Project, and other representatives authorized to submit the application.
 - (b) The name(s), address(es), email address(es), fax number(s), organization form(s), and business(es) of all Persons holding a recorded or unrecorded legal, equitable, contractual, option, letter of intent, or future interests that relates to the proposed Project and any other person known to the Applicant having an existing or prospective interest in the property related to the proposed Project, including if applicable, water rights. Any recorded interests shall be limited to those which are recorded in the Bent County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State.
 - (c) The names, addresses, and qualifications, including those areas of expertise and experience with Projects directly related or similar to that proposed in the application package, of individuals who are or will be responsible for constructing and operating the Project, and who provides any reports required by these Regulations.

- (d) The application shall be signed and notarized, verifying under penalty of perjury that all information contained in the application is complete, true and correct.
- (e) An application shall be supplemented during its pendency by disclosure to the Permit Authority of any new or added Person(s) holding any recorded or unrecorded legal, equitable, contractual, option, letter of intent, or future interests in the proposed Project, and the Permit Authority may require that such Person(s) be joined as an Applicant(s).

3.103 Information Describing the Project.

- (1) Project Narrative. A narrative description of the Project and its purpose, including of any activity or change in activity that changes the basic character or use of the subject land, and the location of any proposed structure, facility or infrastructure by reference to its relationship to any physical features, intersections, towns, or other locations, that are generally recognized by the citizens of Bent County.
 - (a) Descriptions of all alternatives to the Project that were considered by the Applicant and reasons why they were rejected, which may include the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA).
 - (b) Justification that the Project represents the alternative that best complies with these Regulations and is the least detrimental practicable alternative.
- (2) Project Need. The need for the Project, including, as applicable, existing/proposed facilities that perform the same or related function, an inventory of existing water supplies presently serving the Municipality or industry, and population projections or growth trends that form the basis of demand projections justifying the Project.
- (3) Preliminary review and comment on the proposal by the appropriate agency of the Colorado Department of Natural Resources and/or the Colorado Department of Public Health & Environment, as applicable;
- (4) Description of the proposed methods of ensuring efficient and beneficial use of water resources within the municipal or industrial area to which the water is proposed to be delivered. Such methods should consider metering of all users, examination of rate structure to discourage waste and Recycling of water for reuse where permissible by Colorado water law.

- (5) Provide assurance that the proposed Municipal or Industrial Water Project is capable of supplying water of a quality acceptable to the Colorado Department of Public Health & Environment.
- (6) Maps.
 - (a) Vicinity Map. Location of the Project shown on USGS quadrangle map. The map shall clearly show the Project site boundaries and Project Impact Area.
 - (b) Site Plan. A detailed map of the Project site at a scale determined by the Administrator. The site plan shall include:
 - (a) North arrow, scale and Legal Description of the site;
 - (b) Area of the site and clearly identified boundary lines and dimensions of the site;
 - (c) Location of the Project site relative to the historically irrigated areas of Bent County shown in **Exhibit D**.
 - (d) Parcels and land use within one mile of the proposed site, identified by zoning, size and use;
 - (e) Locations of public lands, special district boundaries, municipal watershed boundaries, municipal boundaries and boundaries of residential subdivisions within one mile of the property;
 - (f) Easements recorded or historically used, and proposed easements that provide access to or across, or other use of the property, shown by approximate location, dimension, use, and grantee;
 - (g) All existing and proposed structures and appurtenant facilities, shown by location and dimension; and
 - (h) Significant features including:
 - (i) Existing and proposed utility lines;
 - (ii) Natural and artificial drainage ways, ditches, streams, lakes, ponds, and wetlands;
 - (iii) Dams and reservoirs;

- (iv) Floodways and floodplains located in or within 3 miles of the Project site, and approximate flooding limits based on information available through the County;
 - (v) Vegetative cover;
 - (vi) Soil types, geologic features and hazards;
 - (vii) Any on-site or off-site feature that influences the Project;
 - (viii) Proposed areas of disturbance shown by location and dimension; and
 - (ix) Existing and proposed impervious surface areas shown by location and dimension.
- (7) Project Schedules and Phasing. Schedules for designing, permitting, constructing and operating the Project.
 - (8) Conservation techniques. Description of all conservation techniques to be used in the construction and operation of the Project.

3.104 Property Rights, Permits and Other Approvals.

- (1) A list of all other federal, state and local permits and approvals that have been or will be required for the Project, together with any proposal for coordinating these approvals with the County permitting process. Applicant shall provide the County with copies of the permits, approvals and licenses upon issuance.
- (2) Copies of all official federal and state consultation correspondence prepared for the Project; and copies of any draft or final environmental assessments or impact statement required for the Project.
- (3) Copies of all deeds, contracts or other instruments evidencing Applicant's right, title, or other interest, obligation, claim, or share in the proposed Project and/or subject property.
- (4) Description of the water to be used by the Project, including:
 - (a) The amount of water required for the Project;
 - (b) The source of water for the Project;

- (c) The historical use of the water, including decreed uses and historic yield of water rights and whether the water is committed to water supply obligations for other systems or users;
 - (d) The Applicant's right to use the water, including contracts, deeds and share certificates;
 - (e) Copies of all relevant water court decrees, permits and Division of Water Resource approvals;
 - (f) Identification of any additional decrees and/or approvals that will be necessary to use the water for Project purposes;
 - (g) Any application for decrees or Division of Water Resource approvals that are pending;
 - (h) A detailed description of any changes that will be necessary to use the water for the Project;
 - (i) Evidence of a legal right to use existing drains and/or seepage ditches, if any, for the delivery and transport of water in such structures in connection with the proposed Project;
 - (j) Any alternative water sources and supplies available to the Applicant; and
 - (k) Any alternatives to the permanent dry-up of irrigated lands, such as interruptible supply agreements, temporary fallowing, and leasing of water rights.
- (5) Description and documentation of existing or proposed dry-up covenants which have or will encumber both the dry-up lands and severed water rights and run with and bind such property interests and owners thereof to rehabilitate such lands and maintain such Revegetation when completed.

The terms of the covenants shall, at a minimum, require:

- (a) An obligation to complete Rehabilitation within a reasonable time in accordance with the 1041 Permit;
- (b) Access to the land by County representatives and consultants and other regulatory agencies to monitor the Rehabilitation;
- (c) After Revegetation is certified as established, prohibition of any plowing, tilling, or other mechanical means to break the soil, and a

grazing program with compliance procedures and accountability measures fully defined in accordance with the Permit;

- (d) Absent consent of the Permit Authority, an agreement not to claim water credit for the dry-up until Rehabilitation of the land has been certified as established by the County and/or water court;
 - (e) Establishment of the obligation to implement and complete a Revegetation plan in the event dry-land agricultural practices are discontinued; and
 - (f) Prohibiting the removal or alteration of laterals, headgates, or other structures necessary to accomplish irrigation of the land prior to and during the Rehabilitation process.
- (6) Description and documentation of property rights, easements, and rights-of-way agreements, both on-site and off-site that are necessary for or that will be affected by the Project.
- (7) Description of all Mitigation and financial security required by federal, state, and local authorities.

3.105 Technical and Financial Feasibility.

An assessment of the technical and financial feasibility of the Project, evidence of the Applicant's financial capability to pay for all phases of the Project, and the Applicant's right to and expertise in technology required for the Project, including:

- (1) A description and detailed engineering plans and specifications of the proposed construction of structures, buildings, and improvements associated with the Project;
- (2) The estimated construction cost for each phase of the Project;
- (3) Revenues and operating expenses for the Project;
- (4) Description of debt and equity at each phase of Development, debt retirement schedule and sources of funding to retire debt;
- (5) Details of any contract or agreement for revenues or services in connection with the Project;
- (6) Description of the Person(s) who will pay for or use the Project and/or yield or services produced by the Project and those who will benefit from any and all revenues generated by it; and

- (7) Estimated cost of proposed Mitigation measures and Permit conditions, estimated Rehabilitation costs and schedule.

3.106 Land Use.

- (1) Map and description of existing land uses within and adjacent to the Project.
- (2) All immediately affected public land boundaries should be indicated on the map. Potential impacts of the proposed Project upon public lands will be visually illustrated on the map as well as described in textual form.
- (3) Specify whether the proposed Project conforms to the County's planning policies, including, without limitation, the Bent County Comprehensive Plan.
- (4) Describe the relationship, if any, of the proposed Project to formally adopted regulations and policies of federal, state, regional or county governments, which regulations or policies would govern the use of land or water resources impacted by the Project.
- (5) Description of the impacts and Net Effect of the Project on land use patterns.

3.107 Local Water Treatment & Wastewater Treatment Impacts.

- (1) A report by a qualified independent expert evaluating the impacts and Net Effect of the Project to the capability of domestic and/or municipal water treatment costs and/or wastewater treatment costs in Bent County.
- (2) A plan to offset increased domestic and/or municipal water treatment costs and/or wastewater treatment costs necessary to meet water quality standards and determined to be a direct result of flow modification through changes in the transport of nutrients, total dissolved solids, hardness, minerals or other pollutants due to the operation of any Project facilities proposed by the Applicant. This may be accomplished either by construction and operation of additional domestic and/or municipal water treatment facilities made necessary by the reduction in flow, or the Applicant may elect to pay a fee in lieu of those Mitigation measures. This fee will be based upon the additional costs of domestic and/or municipal treatment and/or wastewater treatment (capital, operation and maintenance); and it will be used exclusively for meeting the costs of such additional domestic and/or municipal treatment and/or wastewater treatment.

3.108 Financial Burden on County Residents.

- (1) Description of the existing tax burden and fee structure for government services including, but not limited to, assessed valuation, mill levy, rates for water and wastewater treatment, and costs of water supply.

- (2) Description of impacts and Net Effect of the Project on the County's finances.

3.109 Local Economy.

- (1) Description of the local economy including, but not limited to, revenues generated by the different economic sectors and the value or productivity of different lands.
- (2) Description of impacts and Net Effect of the Project on the local economy and opportunities for economic diversification and/or benefit to the local economy provided by the Project.

3.110 Agricultural Impact Assessment.

- (1) Description of the agricultural productivity capability of the land in the Project Impact area using the National Commodity Crop Index and/or the Capability Class Index (NRCS web base tools) and a report by a qualified independent expert of the potential effects of the diversion of water and/or change of water rights for the Project on that agricultural productivity capability, including impacts on soil productivity, potential soil loss from air or water erosion, and degradation from susceptibility to Noxious Weed Invasion.
- (2) A plan that includes:
 - (a) Minimizing contribution to permanent loss of irrigated agricultural land;
 - (b) Minimizing impacts on agricultural operations, including irrigation water, water delivery systems and irrigation schedules; and
 - (c) Minimizing impacts to livestock operations, grazing permits or leases, or grazing permit holders or lessees.

3.111 Areas of Paleontological, Historic or Archaeological Importance.

- (1) Map and/or description of all sites paleontological, historic, or archaeological interest.
- (2) Documentation of approval from the State Historic Preservation Office regarding any historical resources potentially affected by the Project.
- (3) Description of the impacts and Net Effect of the Project on sites of paleontological, historic, or archaeological interest.

3.112 Visual Quality and other Nuisances.

- (1) Map and/or description of ground cover and vegetation, forest canopies, and streams or other natural features.
- (2) Description of view sheds, scenic vistas, unique landscapes, or land formations.
- (3) Map and/or description of buildings and structure design and materials to be used for the Project.
- (4) Descriptions of the impacts and Net Effect of the Project on visual quality, and other nuisance factors such as excessive noise, obnoxious odors, airborne dust, or animal species infestations.

3.113 Recreation

- (1) Map depicting the location of present and proposed recreational uses including but not limited to, fishery stream segments, access points to recreational resources, hiking and biking trails, hunting, and public lands areas.
- (2) Description of present and potential recreational uses including, but not limited to, the number of recreational visitor days for different recreational uses and the revenue generated by types of recreational uses.
- (3) Description of the impacts and Net Effect of the Project on present and potential recreational opportunities and revenues to the local economy derived from those uses.

3.114 Environmentally Sensitive Areas

- (1) Map showing the following:
 - (a) Marshlands and wetlands;
 - (b) Forests and woodlands;
 - (c) Critical wildlife habitat and wildlife protection areas; and
 - (d) Critical aquatic plant and animal life habitat.
- (2) A report by a qualified independent expert evaluating the Net Effect of the Project on the environmentally sensitive areas in the Project Impact Area, including upon plant and animal life dependent upon the water resources in the Project Impact Area.

3.115 Air Quality

- (1) A report by a qualified independent expert detailing the impact of the proposed Project on ambient air quality within the Project Impact Area under both average and worst case scenarios. Specifically include description of impacts associated with airborne dust.

3.116 Water Quality.

- (1) Map and description of all:
 - (a) Surface water bodies (streams, lakes, reservoirs, ditches, canals – both existing and proposed);
 - (b) Existing drains and/or seepage ditches; and
 - (c) Aquifer Recharge Areas in the Project Impact Area within Bent County.
- (2) Description of provisions of the applicable regional water quality standards that apply to the Project and assessment of whether the Project would comply with those provisions, including:
 - (a) Existing condition of streams and water bodies affected by the Project;
 - (b) Classification of streams and water bodies affected by the Project, including antidegradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants; and
 - (c) Descriptions of the immediate and long-term impact and Net Effects of the Project on the quality of surface and ground water under both average and worst case conditions.

3.117 Water Quantity.

- (1) Map and/or description of streams, diversion structures, ditches, canals, reservoirs, and Aquifer Recharge Areas in the Project Impact Area.
- (2) Descriptions of the impacts and Net Effect of the Project on water quantity for existing uses in Bent County.

3.118 Vegetation and Weed Management Plan.

- (1) A report by a qualified independent expert evaluating the species, character and density of existing vegetation on the site and summary of potential impacts to vegetation as a result of the Project, and

- (2) A plan, prepared by a qualified independent expert, that includes/provides for:
 - (a) Removal of existing vegetation no more than thirty (30) days prior to commencement of initial site grading;
 - (b) Revegetation of areas that have been filled, covered or graded as soon as practicable;
 - (c) Use of site-specific native seed mix, with the exception of any landscaped areas and use of mulching to support vegetation growth; and
 - (d) Topsoil from disturbed areas stripped and stockpiled on-site for redistribution over the completed final grade; stockpiling that conforms to best management practices and ensures that soil organisms in stockpiled soil remain viable until completion of the redistribution process.
- (3) A plan, prepared by a qualified independent expert, that address all State and County-listed noxious weeds found on site and includes:
 - (a) Inventory and map showing the locations of State and County-listed noxious weeds; and
 - (b) Ongoing weed control at all locations disturbed by the Project and along access roads during construction and operational phases.

3.119 Monitoring and Mitigation Plan.

- (1) Description of all Mitigation that is proposed to avoid, minimize, or compensate for adverse impacts of the Project and to maximize positive impacts of the Project.
 - (a) Describe how and when Mitigation will be implemented and financed.
 - (b) Describe impacts that are unavoidable that cannot be mitigated.
 - (c) Description of methodology used to measure impacts of the Project and effectiveness of proposed Mitigation measures.
 - (d) Description, location, and intervals of proposed monitoring to ensure that Mitigation will be effective.

- (2) For Projects that involve the permanent removal of land from irrigation, a Rehabilitation plan, prepared by an independent qualified expert, for all land areas from which historic irrigation will cease, including the following:
- (a) Description of all lands included;
 - (b) Description of plant and seed material to be used and the method, amounts and timing of their application;
 - (c) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended Revegetation, and that such water is available until successful establishment of Revegetation is completed, or such other period as the Permit Authority shall require;
 - (d) Whether the plan is required as a part of any Water Court decree, or Division of Water Resources Rule 14 plan or Substitute Water Supply Plan, and if so whether the plan has been approved by the Water Court, or the Division of Water Resources (include a copy of the decree and plan as so approved); the Permit Authority may, but is not required to consider a Water Court approved Revegetation plan as partial or full satisfaction of the requirements of this Section 3.119(2)(d);
 - (e) Description of the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds and maintaining weed control throughout the applicable Revegetation establishment period, and revising and repeating the Revegetation plan in the event the plan fails in whole or in part; and, as part of the security required by Chapter 5, proposed security to guarantee successful implementation and completion of such Revegetation shall include bonding, based on a minimum presumptive cost of \$750.00 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority;
 - (f) Description of a continuing monitoring and maintenance plan for implementation following the certification of establishment on the revegetated lands; such description shall include the estimated costs to be incurred in monitoring by the County and the Applicant/Permit Holder as well as the expected costs in maintenance of the revegetation on these fields; and, to the extent a grazing plan is to be implemented, a description of the parameters for utilizing a grazing plan and the compliance procedures must be described;

- (g) A presumption applies that dry-land agricultural practices on formerly irrigated acreage in Bent County is not viable due to regional climatic conditions. If the Applicant believes that Revegetation is not necessary and that dry-land agricultural practices can be successfully undertaken on the land which is presently irrigated, the Applicant must present clear and convincing evidence from an expert agronomist, local soil conservation district, local NRCS Office or other appropriate source that dry-land agricultural practices on the subject parcel(s) are reasonably possible, commercially viable and sustainable, and that air quality, significant environmentally sensitive factors, visual aesthetics, nuisance factors and all other appropriate considerations as set forth herein will be satisfied. Applicant must also provide covenants establishing the obligation to implement and complete a Revegetation plan in the event dry-land agricultural practices are unsuccessful or discontinued within a time period to be established by the Permit Authority, in addition to security adequate to implement and complete a Revegetation plan; the Permit Authority shall make the final decision whether Revegetation is necessary under these circumstances; and
- (h) Description of the methods and costs to control and prevent animal species infestations, including without limitation, prairie dogs.

3.120 Additional Information May be Required.

The Permit Authority may request that the Applicant supply additional information related to the Project if the Permit Authority will not be able to make a determination on any aspect of the approval.

Article 2 Intergovernmental Agreements

3.201 Intergovernmental Agreements

Upon the request of the state or federal Government, as defined by Section 29-1-202(1), C.R.S., including any political subdivision of the state, as defined by Section 29-1-202(2), C.R.S., proposing to engage in a Matter of State Interest, the requirements of the Guidelines and Regulations may be met by the approval of an intergovernmental agreement between the County and the Government Applicant. The County may, but shall be under no obligation to, approve such an intergovernmental agreement in lieu of a permit application and review as provided by the Guidelines and Regulations. In the event such an agreement is approved by the County, no permit application to conduct the Project shall be required, provided that all of the following conditions are met:

- (1) The Government Applicant and the County must both be authorized, by Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201 et seq., 29-20-105 and 29- 20-107, C.R.S., or by other applicable law, to enter into the agreement.
- (2) The purpose and intent of the Guidelines and Regulations must be satisfied by the terms of the agreement.
- (3) A public hearing must be conducted by the Permit Authority in conformance with Chapter 2, Article 3. Prior to the hearing, the Board of County Commissioners shall approve the form of any proposed intergovernmental agreement, provided, however, that the final approval of the agreement shall take place at the conclusion of or subsequent to the public hearing. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the Applicant and to the County.
- (4) Both the Permit Authority and the governing body of the Government Applicant must approve the agreement in the manner required of each of them by applicable law.
- (5) Exercise of the provisions of this Section by the Government Applicant will not prevent that entity from electing at any time to proceed under the permit provisions of these Regulations. Additionally, any entity which has previously proceeded under the permit provisions of these Regulations may at any time elect to proceed instead under this Section.

CHAPTER 4

PERMIT APPROVAL STANDARDS

Article 1 Approval Standards Permits

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- 4.103 Project Alternatives and Need
- 4.104 Necessary Property Rights, Permits and Approvals
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Article 1 Approval Standards for Permits

The following standards and guidelines will apply to Permit applications for Projects that are subject to review under these Regulations:

4.101 General Approval Requirements

A Permit application for a Project may not be approved unless the Applicant satisfactorily demonstrates that the proposal, including all Mitigation measures proposed by the Applicant, complies with all of the applicable criteria set forth in these Regulations. If the proposal does not comply with all of the applicable criteria, the Permit shall be denied, unless the Permit Authority determines that reasonable conditions can be imposed on the Permit which will enable the Permit to comply with the criteria.

4.102 [Reserved]

4.103 Project Alternatives and Need

- (1) The Project represents the alternative that best complies with these Regulations and is the least detrimental practicable alternative.
- (2) The Project is needed within the County and/or the area to be served by the Project resources.

4.104 Necessary Property Rights, Permits and Approvals

The Applicant can and will obtain all necessary property rights, permits, and approvals for the Project prior to any site disturbance or change in activity on the land. The Permit Authority may, at its discretion, defer making a final decision on the Application until outstanding property rights, permits, and approvals are obtained.

4.105 Technical and Financial Feasibility

The Applicant has the necessary expertise and financial capability to develop and operate the Project consistent with all requirements and conditions of a Permit, and the Project is technically and financially feasible. This determination may include, but is not limited to, the following considerations:

- (1) Amount of debt associated with the proposed Project;
- (2) Debt retirement schedule and sources of funding to retire the debt;
- (3) Estimated construction costs and construction schedule;

- (4) Estimated costs for approvals by water court, or other regulatory authorities;
- (5) Estimated annual operation, maintenance and monitoring costs; and
- (6) Estimated Mitigation costs.

4.106 Land Use Compatibility

The Project will be compatible with surrounding land uses, and the Project does not conflict with an approved local master plan or other regional, state or federal land use plan.

4.107 Effects on Local Water Treatment and Wastewater Treatment Systems

The Project will not have a significant adverse effect on the capacity of local water treatment and wastewater treatment systems and their ability to continue to meet water quality standards, or the cost to such systems. This determination may include, but is not limited to, the following considerations:

- (1) Changes in the costs to local water treatment or wastewater treatment systems;
- (2) Effects on local wastewater system discharge permits;
- (3) Effects on local water treatment capacity; and
- (4) Effects on local wastewater treatment capacity.

4.108 Financial Burden on the County

The Project will not create an undue financial burden on existing or future residents of the County. This determination may include, but is not limited to, the following considerations:

- (1) Changes in assessed valuation.
- (2) Tax revenues and fees to local governments that will be generated by the proposed Project.
- (3) Changes in tax revenues and/or bonded indebtedness repayment revenues caused by agricultural lands being removed from production.
- (4) Changes in the total property tax revenues generated by the subject property.

- (5) Future costs of securing an adequate supply of water for existing and future needs of the residents of the County.

4.109 Effects on the Local Economy

The Project will not significantly degrade any sector of the local economy. This determination may include, but is not limited to, the following considerations:

- (1) Changes to projected revenues generated from each economic sector;
- (2) Changes in the value or productivity of any lands; and
- (3) Changes in opportunities for economic diversification.

4.110 Effects on Agriculture

The Project shall not cause significant adverse effects to or otherwise limit the viability of existing agricultural operations. This determination may include, but is not limited to, the following considerations:

- (1) The extent to which the Project contributes to the permanent loss of agricultural land;
- (2) The impacts on agricultural operations, including irrigation water, water delivery systems and irrigation schedules; and
- (3) The impacts to livestock operations, including grazing permits or leases.

4.111 Effects on Areas of Paleontological, Historic or Archaeological Importance

The Project will not significantly degrade areas of paleontological, historic, or archaeological importance.

4.112 Effects on Visual Quality and other Nuisances

The Project will not significantly degrade visual quality result in other nuisance factors such as excessive noise, obnoxious odors, airborne dust, or animal species infestations. The determination of the visual effects on the Project may include, but is not limited to:

- (1) Visual changes to ground cover, vegetation and other natural features;
- (2) Interference with view shed and scenic vistas;
- (3) Changes in appearance of forest canopies; and

- (4) Compatibility of building and structure design and materials with surrounding land uses.

4.113 Effects on Recreation

The Project will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience. This determination may include, but is not limited to, the following considerations:

- (1) Changes to existing and projected visitor days to natural attractions in Bent County;
- (2) Changes in quality and quantity of fisheries;
- (3) Changes in access to recreational resources;
- (4) Changes to the quality and/or quantity of hiking trails;
- (5) Changes to hunting access or quality; and
- (6) Changes to the local economy derived from recreational uses.

4.114 Impacts to Environmentally Sensitive Areas

The Project will not have a significant impact on environmentally sensitive areas. This determination may include, but is not limited to, the following considerations:

- (1) Changes in the structure and function of wetlands;
- (2) Changes in the filtering and pollutant uptake capacities of wetlands;
- (3) Changes to the extent of wetlands;
- (4) Changes in species diversity;
- (5) Changes that result in loss of oxygen for aquatic life;
- (6) Changes in species composition or density;
- (7) Changes to habitat and critical habitat, including mating grounds, nesting grounds, summer or winter range, migration routes;
- (8) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and water temperature;

- (9) Changes to the structure and function of vegetation, including species composition, diversity, biomass and productivity; and
- (10) Changes in advancement or succession of desirable and less desirable species, including noxious weeds and invasive animal species.

4.115 Impacts to Air Quality

The Project will not significantly degrade air quality, nor violate federal or state air quality standards. The determination of impacts of the Project on air quality may include, but is not limited to, the following:

- (1) Changes to seasonal ambient air quality;
- (2) Changes in visibility; and
- (3) Increased airborne dust.

4.116 Impacts to Water Quality

The Project will not significantly degrade water quality, nor violate federal or state water quality standards. The determination of impacts to water quality of the Project may include, but is not limited to, the following:

- (1) Changes to existing water quality, including changes in whether water bodies meet narrative and numeric water quality standards.
- (2) Changes in point and nonpoint source pollution loads;
- (3) Increase in erosion;
- (4) Changes in sediment loading to water bodies;
- (5) Changes in channel stability;
- (6) Changes in the eutrophication rates in lakes and reservoirs;
- (7) Changes in aquifer recharge rates and groundwater levels;
- (8) Changes in the capacity and function of wells within the Project Impact Area;
- (9) Changes in the quality of well water within the Project Impact Area; and
- (10) Changes in the burdens on existing seepage ditches and/or drains utilized, either directly or indirectly, as part of the Project, including increases in flow (timing, rate, and/or volume) and sediment.

4.117 Water Quantity Impacts

The Project will not significantly degrade the quantity of water available to water users in Bent County or adversely affect existing water rights, and will not conflict with an any applicable regional, state or federal water plan. The determination of impacts of the Project to water availability may include, but is not limited to, the following:

- (1) Permanent changes in the amount of water available for diversion and use in Bent County.
- (2) Changes in the ability of ditch and reservoir systems to carry and deliver water to other water users.
- (3) Changes in ground water elevations.
- (4) The proposed Project will not increase burdens on the owner(s) of seepage ditches and/or drains utilized, directly or indirectly, as a part of the Project, nor on the owner(s) of lands on which such structures are located, due to conditions including, but not limited to, increases in flow (timing, rate, and/or volume), sediment, or changes to ground water elevations.
- (5) The exercise of a water right in accordance with state statutes, decided case law and decrees of the Water Court shall not be considered to adversely affect existing water rights.

4.118 Sufficiency of Vegetation and Weed Management Plan

The Project Impact Area will be Rehabilitated and maintained in conformance with an approved Rehabilitation plan, including, as applicable, as set forth in Section 4.117(2), and shall not result in Noxious Weed Invasion or other invasive species. Absent clear and convincing evidence, a Rehabilitation plan shall provide for adequate security to ensure compliance based on a minimum presumptive cost of \$750 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority.

4.119 Sufficiency of Monitoring and Mitigation Plans

- (1) All required monitoring and Mitigation plans will be completed in conformance with the approved plans.
- (2) For Projects that involve the permanent removal of land from irrigation, the proposed Project shall adequately provide for Rehabilitation of lands historically irrigated in a manner which will successfully prevent invasion of

noxious weeds, control nuisance weeds, and prevent air or waterborne soil loss, including:

- (a) Any Rehabilitation plan shall provide for: (i) controlling on the parcel noxious weeds from the "B" and "C" species lists of the Colorado Noxious Weeds List, (ii) eradicating from the parcel any noxious weeds from the "A" species list, and (iii) a compliance plan which is properly implemented, funded and maintained to prevent future noxious weed invasions and the eradication of any species identified on the Colorado Noxious Weeds List. No appearance of plants on the "A" species list shall be allowed on a parcel being considered for or following the successful completion of Rehabilitation requirements.
- (b) Absent clear and convincing evidence to the contrary, it shall be presumed that dry-land farming of a historically irrigated parcel in Bent County is not commercially viable and sustainable, does not provide adequate protection from soil erosion and weed infestations, and does not adequately provide for Rehabilitation of said parcel in a manner that will successfully prevent Noxious Weed Invasion and air or waterborne soil loss.
- (c) If approved, any Rehabilitation plan that includes dry-land farming must provide for appropriate stubble management conforming to Best Management Practices (BMP), as further defined within the terms and conditions of the Permit, maximizing the retention of available moisture and minimizing evaporation from the fields. BMPs shall also include conditions that prevent wind erosion of the soils. At a minimum, the crop residue and stubble shall be left on the field following harvest through the next rotation's planting with stubble height of no less than 5" maintained following harvesting. Nuisance weeds, annual weeds which are not listed on the noxious weed lists, shall be managed to: 1) prevent the proliferation of weed infestations, 2) prevent growth which could lead to blowing weeds upon neighboring property, 3) prevent the production of seed by the plants, and when mowing, 4) mow weeds to a height of no less than 5".
- (d) Absent clear and convincing evidence, a Rehabilitation plan shall provide for adequate security to ensure compliance based on a minimum presumptive cost of \$750 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority.

- (e) A covenant running with title to both the formerly irrigated land and the water rights removed from such land, and providing for access to the property for the implementation and completion of Rehabilitation, and the use of such water rights to accomplish Revegetation, shall be required as part of such adequate security.
- (f) Laterals, headgates, or other structures necessary to accomplish irrigation of the land shall be maintained as operable during the rehabilitation process, and no removal or alteration of laterals, headgates, or other structures necessary to accomplish irrigation of the land shall be authorized, absent security adequate to restore such facilities.
- (g) Absent clear and convincing evidence to the contrary, it shall be presumed that irrigation will be a necessary component of any plan to adequately establish Revegetation of historically irrigated lands until successful establishment of Revegetation is completed.

4.120 Benefits Versus Loss of Resources

The benefits accruing to the County and its citizens from the Project are equal to or outweigh the losses of any resources within the County, or the losses of opportunities to develop such resources. The continuation of use within Bent County of water rights historically used for irrigation within Bent County shall be considered as a benefit to the County.

4.121 Compliance with Required Plans and Reports

The Project will comply with all plans and reports required in Chapter 3 of these Regulations.

4.122 Enforceability

Adequate remedies exist to ensure compliance with all Permit terms and conditions, including, without limitation, provisions for penalties for violations, at the discretion of the Permit Authority. For Projects involving multiple parcels, non-compliance on each parcel may be considered as a separate violation for purposes of assessing penalties.

CHAPTER 5

FINANCIAL GUARANTEE

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Article 1 Financial Guarantee May Be Required

5.101 Before any Permit is approved and issued under these Regulations, the Permit Authority may, in its discretion, require the Applicant to file a guarantee of financial security deemed adequate by the Permit Authority and payable to Bent County. The purpose of the financial guarantee is to assure the following:

- (1) That the Applicant or Permit Holder shall faithfully perform all requirements of the Permit and applicable Regulations adopted by the Board of County Commissioners.
- (2) That the Project is completed and, as applicable, that the Project Impact Area is fully and properly Mitigated and Rehabilitated.
- (3) That the Permit Holder performs all Mitigation requirements and satisfies all Permit conditions in connection with the construction, implementation, operation and termination of the Project.
- (4) That impacts to public facilities and services necessitated by the construction, implementation, operation and termination of the Project are borne by the Permit Holder.
- (5) That shortfalls to County revenues which are directly caused by any suspension, curtailment or abandonment of the Project, or enforcement of the Permit, are offset.

Article 2 Amount of Financial Guarantee

5.201 In determining the amount of any required financial guarantee, the Permit Authority shall consider the following factors:

- (1) The estimated cost of completing the permitted Project;
- (2) The estimated cost of returning the Project Impact Area to its original condition or to a condition acceptable to the Permit Authority in accordance with standards adopted by the Permit Authority for the Matter of State Interest for which the Permit is being granted;
- (3) The estimated cost of performing all Mitigation requirements and Permit conditions in connection with the construction, implementation, operation and termination of the permitted Project.

5.202 The estimated cost shall be based on the Applicant's submitted cost estimates plus the Permit Authority's estimate of the additional cost to bring in personnel, materials, and equipment to accomplish any unperformed purposes of the financial guarantee. The Permit Authority shall consider the duration of the Project and

compute a reasonable projection of increases due to inflation. The Permit Authority may require as a condition of the Permit that the financial security shall be adjusted upon receipt of bids to perform the requirements of the Permit and these Regulations. Revisions to the estimate may be required based on information available to the Permit Authority, including during any annual review of the Permit.

Article 3 Form of Financial Guarantee

- 5.301 Form Acceptable. The financial guarantee may be in any form acceptable to the Permit Authority, including without limitation: cash, federally-insured certificates of deposit, irrevocable letters of credit issued by a bank acceptable to the Permit Authority.
- 5.302 Term of Financial Guarantee. Any such guarantee must be for a term sufficient to cover duration of Permit requirements, including Mitigation, and provide for adequate notice to the Permit Authority to ensure renewal or draw by County before termination of the guarantee.
- 5.303 Cash Deposited. At its discretion, the Permit Authority may require that at least ten percent (10%) of the amount of the financial guarantee shall be in cash deposited with the County Treasurer and shall be placed in an earmarked escrow account mutually agreeable to the County and the Applicant.

Article 4 Release of Financial Guarantee

The financial guarantee may be released only when:

- 5.401 Surrender. The Permit has been surrendered to the Permit Authority before commencement of any physical activity on the site of the permitted Project or any other actions to change the basic character or use of the Project Impact Area.
- 5.402 Project Abandonment. The permitted Project has been abandoned and the Project Impact Area has been returned to its original condition or to a condition acceptable

to the Permit Authority in accordance with standards adopted by the Permit Authority for the Matter of State Interest for which the permit was granted.

5.403 Satisfactory Completion. The Project has been satisfactorily completed, including all Mitigation.

5.404 Completion of Phase. A phase or phases of the Project have been satisfactorily completed allowing for partial release of the financial guarantee consistent with the Project phasing and as determined appropriate by the Permit Authority.

5.405 Satisfied Conditions. All guaranteed permit conditions have been satisfied.

Article 5 Cancellation of the Financial Guarantee

5.501 Any security may be cancelled by a surety only upon receipt of the Permit Authority's written consent, which may be granted only when such cancellation will not detract from the purposes of the security.

5.502 If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the Applicant or Permit Holder, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the Applicant or Permit Holder to make substitution of surety within the time allowed, the Permit Authority may suspend the Permit until proper substitution has been made.

Article 6 Forfeiture of Financial Guarantee

5.601 Written Notice. If the Permit Authority determines that a financial guarantee should be forfeited, in whole or in part, because of any violation of the Permit, it shall provide written notice to the surety and to the Permit Holder that the financial guarantee will be forfeited and the reasons therefor, unless the Permit Holder makes written demand to the Permit Authority within thirty (30) days after Permit Holder's receipt of notice, requesting a hearing before the Permit Authority. If no demand is made by the Permit Holder within said period, then the Permit Authority shall order the financial guarantee forfeited.

5.602 Public Hearing. The Permit Authority shall hold a hearing within thirty (30) days after the receipt of the demand by the Permit Holder. At the hearing, the Permit Holder may present statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Permit Authority shall

either withdraw the notice of violation or enter an order forfeiting the financial guarantee, in whole or in part.

- 5.603 Disbursement. The cash deposit described above may be used by the Permit Authority in the event of the default or alleged default of the Permit Holder only for the purposes of recovering on the surety or fulfilling the permit obligations of the Permit Holder. The Permit Authority may arrange with a lending institution which provides money for the Permit Holder that said institution may hold in escrow any funds required for said cash deposit. Funds shall be disbursed out of escrow by the institution to the County upon the Permit Authority's demand for the purposes specified in this Chapter 5.
- 5.604 Inadequate Revenue. If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the Bent County Attorney is hereby authorized to take such steps as deemed proper to recover such costs, including, without limitation, perfecting a lien upon any real property, including water rights and water rights represented by stock certificates, owned by the Permit Holder, by certifying such costs to the County Treasurer for collection in the same manner as real property taxes or by civil action.
- 5.605 Waiver for Governmental Entities. Upon request, the Permit Authority may, but shall be under no obligation to, waive all or any portion of the financial security requirements set forth in this Chapter 5 for Applicants which are state agencies or political subdivisions of the state and which are regularly engaged in the provision of services to the extent such services are activities which are regulated hereunder. A precondition to such waiver shall be that the activities are funded lawfully from, or secured by, general revenues of the Applicant state agency or political subdivision, or revenues from any established special or enterprise fund of the Applicant which derives income from the sale of the service contemplated.

CHAPTER 6

ADMINISTRATION

Article 1 Enforcement and Penalties

6.101 Enjoinment

6.102 Material Changes in the Construction or Operation

Article 2 1041 Permit Suspension or Revocation

6.201 Notice of Potential Violation

6.202 Temporary Suspension

6.203 Revocation

Article 3 Transfer of 1041 Permits

Article 4 Inspection

6.401 Inspection

6.402 Annual Review

Article 5 Nonconforming Uses

6.501 Nonconforming Uses

Article 1 Enforcement and Penalties

6.101 Enjoinment. Any Person engaging in Development in Designated Areas of State Interest or conducting a designated activity of state interest who does not obtain a Permit pursuant to these Regulations, or who does not comply with Permit requirements, may be enjoined by the County from engaging in such Development or activity, and may be subject to such other criminal or civil liability as may be prescribed by law.

6.102 Material Changes in the Project. If the Permit Authority determines at any time that there are material changes in the Project from that approved by the County, the Permit may be immediately suspended, and a hearing will be held to determine whether new conditions are necessary to ensure Mitigation and compliance with the approval standards or if the Permit should be revoked.

Article 2 Permit Suspension or Revocation

6.201 Notice of Potential Violation. If the Permit Authority has reason to believe that the construction or conduct of a Project is in violation of the terms or conditions of the Permit or these Regulations, the Permit Authority may send a letter notifying the Permit Holder of the potential violation and giving the Permit Holder fifteen (15) days to correct the violation or otherwise respond to the notice of potential violation; and/or

6.202 Temporary Suspension. The Permit Authority may temporarily suspend the Permit for a period of thirty (30) days for any violation of the Permit or these Regulations. The Permit Holder will be given written notice of the violation and will have a minimum of fifteen (15) days to correct the violation. If the violation is not corrected, the Permit will be temporarily suspended for thirty (30) days; and/or

6.203 Revocation. The Permit Authority may revoke a Permit granted pursuant to these Regulations, which may include forfeit of a financial guarantee and other appropriate sanctions, after conducting a public hearing in substantially the same manner and after substantially the same notice as for Permit application hearing in Section 2.108, and finds:

- (1) A violation of any provision or condition of approval of the Permit or applicable Regulation for administration of the Matter of State Interest concerned; or
- (2) That the Project as constructed, implemented, or operated has impacts not disclosed in the application.

The Permit Authority shall have authority to seek an injunction or other appropriate relief in the appropriate court if the Permit Holder fails to correct any violation or to comply with any sanction imposed by the Permit Authority at the hearing.

Upon good cause shown, any revoked or suspended permit may be reinstated, within twelve (12) months after revocation or suspension. The Permit Authority may impose additional conditions at the time of reinstatement if necessary to ensure that the Project will comply with these Regulations.

Article 3 Transfer of 1041 Permits

6.301 Transfer of 1041 Permits. A 1041 Permit may be transferred in whole or in part only with the written consent of the Permit Authority. Consent will be in the sole discretion of the Permit Authority. The Permit Authority shall ensure, prior to approving any transfer, that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the Permit, and these Regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

Article 4 Inspection and Review

6.401 Inspection. The County is authorized to inspect any activities, lands, Project Impact Area, buildings, or improvements to determine if such are in compliance with these Regulations. Any official performing such inspection shall abide by all laws of search and seizure as set forth by federal and state statutory and constitutional provisions.

6.402 Annual Review.

(1) Unless a different time period is expressly set forth in the Permit, within thirty (30) days prior to each annual anniversary date of the Permit the Permit Holder shall submit a report detailing all past activities conducted by the Permit Holder pursuant to the Permit including a satisfactory showing that the Permit Holder has complied with all conditions of the Permit and applicable Regulations. The Permit Holder need not inform the Permit Authority of activities, such as operational changes, which are not the subject of a Permit condition or these Regulations.

(2) The Permit Authority shall review the annual report within thirty (30) days from the date of submittal thereof. The County's costs, including staff time and charges for consultant's and attorney's time, for such review shall be reimbursed by the Permit Holder. If the Permit Authority determines that the Permit Holder is likely to have violated the provisions of the Permit and/or applicable Regulations, it shall provide notice of the violation to the Permit

Holder pursuant to Sections 6.201 and/or temporarily suspend or revoke the permit pursuant to Sections 6.202 or 6.203.

- (3) Upon notice to the Permit Authority of the fulfillment of all Permit conditions, and the Permit Authority's concurrence therein, the Permit Authority shall terminate any annual review requirements.
- (4) The Permit Authority may waive or modify the annual review requirements upon petition of the Permit Holder and a showing of good cause therefore.

Article 5 Nonconforming Uses

6.501 Nonconforming Uses. The provisions of these Regulations shall not apply to any use or activity existing on the date the area is designated or subjected to these Regulations which use or activity becomes nonconforming as a result of the adoption of the Regulations, provided that, (1) when such a nonconforming use or activity shall be discontinued for six months or more or a nonconforming structure is damaged or destroyed to the extent of at least fifty (50) percent of the appraised value, any reuse, reconstruction, or replacement of such structure shall be deemed a new use and shall be subject to the provisions of the Regulations, or (2) when such nonconforming use or activity is enlarged, expanded, altered or extended, such nonconforming use terminates immediately and shall be subject to the provisions of the Regulations.

Exhibit A, page 1

**DESIGNATION OF AREA
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. the Board of County Commissioners of Bent County designated the following lands as an area of state interest:

Areas continuing or having a significant impact upon Natural Resources of Statewide Importance as shown on Exhibit "D" to the "Guidelines and Regulations for Areas and Activities of State Interest, County of Bent, State of Colorado," adopted April 21, 2003.

No one may engage in Development on said lands without a permit. Maps or other descriptive materials showing the precise boundary of the area and procedures for obtaining a permit are available at Office of the County Administrator, Bent County Courthouse, 725 Bent Avenue, Las Animas, CO 81054.

Date: _____.

ATTEST:

Clerk to the Board

Chair
Board of County Commissioners
Bent County, Colorado

[S E A L]

Exhibit A, page 2

**DESIGNATION OF ACTIVITY
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S., the Board of County Commissioners of Bent County designated as an activity of state interest: the following: efficient utilization of Municipal and Industrial Water Projects. Such activities may not be conducted within the unincorporated area of Bent County without a permit. Procedures for obtaining such a permit are available at Office of the County Administrator, Bent County Courthouse 725 Bent Avenue, Las Animas, CO 81054.

Date:_____.

ATTEST:

Clerk to the Board

Chair
Board of County Commissioners
Bent County, Colorado

[S E A L]

Exhibit B

**APPLICATION FOR A PERMIT TO CONDUCT A
DESIGNATED ACTIVITY OF STATE INTEREST
OR TO ENGAGE IN DEVELOPMENT IN A
DESIGNATED AREA OF STATE INTEREST**

To: Permit Authority, Bent County

Re: _____, as a
Matter of State Interest.

From: (Applicant's Name)
(Address)
(Telephone)
(Email Address)

Date Submitted:

Date Received and Accepted as Complete:

1. Matter of State Interest.

The Applicant requests that a permit be issued for each of the items checked below:

A permit to conduct one or more of the following Matters of State Interest:

- () Efficient Utilization of Municipal and Industrial Water Projects
- () Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance

2. Proposed Activity or Development; Statement of Purpose.

General description of the specific activity or Development proposed, and concise statement of purpose of the activity or Development:

3. General Description.

A general, Layman Description and the popular name, if any, of the tract of land upon which the activity or Development is to be conducted, and the name and general description of the water rights involved in the Development.

4. Legal Description.

The Legal Description, including the acreage, of the tract of land upon which the Development or the activity is to be conducted, by metes and bounds or by government survey description: (attach additional sheets if necessary). Additionally, a Legal Description of the water rights involved in the Development, including the names and quantities of applicable ditches, reservoirs or other structures, and court decrees, permits, and stock certificate numbers as applicable.

5. Owners and Interests.

Set out below the names of those Persons holding any legal, equitable, contractual, option, letter of intent, or future interests and any other Person known to the Applicant having an existing or prospective interest in the property and water rights described in paragraph 4, above, as well as the nature and extent of those interests for each Person, provided that any recorded interests shall be limited to those which are recorded in the Bent County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State (attach additional sheets if necessary):

6. Submission Requirements.

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of Bent County ("Guidelines and Regulations") for each of the activities or areas checked in paragraph 1 above, are attached to this application. Those attachments are identified, by letter or number, and described by title below:

7. Design and Performance Standards.

The attached analyses show that each of the design and performance standards set forth in the Regulations for each of the activities or areas checked in paragraph 1 above, will be met. The individual analyses are identified by reference to the appropriate paragraph or section numbers corresponding to each standard in the Regulations.

8. Additional Information Required.

Attach any additional information required by the Guidelines and Regulations.

9. Duration of Permit.

The Applicant requests a permit for a period of _____ years.

10. Application Fee.

The required application fee is submitted in accordance with the fee estimate of the Permit Authority.

11. Verification.

The making of false statements herein constitutes perjury. I have read the statements herein, know the contents thereof, and state that they are true and correct to my knowledge.

APPLICANT:

By: _____
(Name)
(Title)

Note:

Within ten (10) days following receipt of an application for a permit, the Permit Authority shall determine and set a fee in an amount necessary to cover the costs incurred in the review and action upon the permit application, including all County staff time to review and process the application, all charges for County consultants, expert witnesses, engineers and attorneys, all other administrative costs and all costs for hearings conducted therefor, and shall notify the Applicant in writing of the fee. Not later than ten (10) days following receipt of such notice, the Applicant shall present to the Permit Authority certified funds in the amount set. As review of the application progresses, the Applicant shall replenish the fee account to ensure that funds are available to continue to meet the costs of the County's review and action upon the permit application. Until the fee is paid to the Permit Authority or replenished as necessary, the application shall not be further processed.

As a condition of the permit application and any permit issuance, the Applicant shall also agree to pay all charges for County consultants, expert witnesses, engineers and attorneys, and all other administrative costs, including for County staff time, incurred by the Permit Authority in administering and enforcing the permit, and in the event of any litigation challenging the permit, its denial, or any enforcement, including litigation brought by the Applicant, to the extent any claims brought by the Applicant do not prevail.

Exhibit C

RESOLUTION NO. _____

A RESOLUTION GRANTING [APPLICANT(S)] A CONDITIONAL PERMIT HEREIN TO ENGAGE IN AN ACTIVITY OF STATE INTEREST AND TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST

The Bent County Board of County Commissioners has held public hearings on the permit referenced above (the “1041 Permit”), and having considered the testimony and the documentary evidence submitted, does hereby find and conclude as follows:

1. The Bent County Board of County Commissioners (“Board” or “Permit Authority”) has adopted regulations for areas and activities of state and local interest pursuant to §§ 24-65.1-101, et seq., C.R.S. (“HB 1041”), §§ 29-20-101, et seq., C.R.S. (“HB 1034”), and other applicable land use and regulatory powers of Bent County. These regulations are titled “Guidelines and Regulations for Areas and Activities of State Interest of Bent County,” and were adopted by Resolution No. 2003-7, as amended (“Bent County 1041 Regulations” or “1041 Regulations”).

[Add additional findings as applicable]

NOW, THEREFORE, BE IT RESOLVED that the Bent County Board of County Commissioners hereby approves a 1041 Permit for the Development within Bent County, Colorado on the basis and terms of the findings set forth above in this Resolution, and further based upon the Record made in this matter, and subject to the following terms, conditions and commitments:

1. **Commitments of Applicants.** The commitments of record of the Applicant(s) shall be met, including, without limitation, _____.

[Add additional terms and conditions as applicable].

1041 Regulations Incorporated. The 1041 Permit shall be subject to all applicable provisions of the Bent County 1041 Regulations, including, without limitation, as set forth in Articles ____.

Compliance with Regulatory Requirements. Applicants shall comply with all state, local and federal regulatory requirements, permits, decrees and other approvals applicable to the Development. Applicant shall provide copies of any such approvals, permits, and decrees to Bent County. If any such approval, permit, or decree results in a material change to the 1041 Permit, then Bent County shall determine whether a 1041 Permit amendment or suspension is required. In the event of conflict between such other requirements, permits, decrees and other approvals and the 1041 Permit, the stricter standard shall be applicable.

Other Bent County Regulations. The 1041 Permit does not constitute an exemption from Bent County’s zoning, building, health or other applicable regulations and codes.

Date: _____, 20__

BENT COUNTY PERMIT AUTHORITY

ATTEST:

Clerk to the Board

By: _____
Chair

Board of County Commissioners
Bent County, Colorado

Exhibit D

**MAP OF AREA OF BENT COUNTY
HISTORICALLY IRRIGATED**

[ATTACHED]