

**REGULATIONS FOR
AREAS AND ACTIVITIES OF STATE INTEREST
CHEYENNE COUNTY, COLORADO**

ADOPTED: June 28, 2019

CONTENTS

Chapter 1:	Administrative Regulations
Chapter 2:	Permit Regulations
Chapter 3:	Regulations for Efficient Utilization of Municipal and Industrial Water Projects
Chapter 4:	Regulations for Development of Historically Irrigated Croplands
Chapter 5:	Regulations for Site Selection and Construction of Major Facilities of a Public Utility
APPENDICES:	
Exhibit A:	Designation Forms for Area and Activity of State Interest
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
Exhibit C:	Permit Issued to Conduct a Designated Activity of State Interest or to Engage in Development in a Designated Area of State Interest
Exhibit D:	Map of Area of Cheyenne County Historically Irrigated

CHAPTER 1

ADMINISTRATIVE REGULATIONS

Article 1	Introductory and General Provisions
1.101	Title and Citation
1.102	Purpose and Findings
1.103	Authority
1.104	Applicability
1.105	Exemptions
1.106	Relationship of Regulations to other County, State and Federal Requirements
1.107	Maps
1.108	Duties of the Board of County Commissioners
1.109	Severability
1.110	Definitions

Article 2	Designation of Matter of State Interest
1.201	Board of County Commissioners to Make Designations
1.202	Public Hearing Required
1.203	Matters to be Considered at Designation Hearing
1.204	Record of Designation Proceeding
1.205	Adoption of Designation and Regulations
1.206	Recording of Notice of Designation
1.207	Effect of Designation - Moratorium until Final Determination

Article 3	Judicial Review
1.301	Judicial Review

Article 1 **Introductory and General Provisions**

1.101 Title and Citation

These regulations are entitled, and may be cited as, the "Guidelines and Regulations for Areas and Activities of State Interest of Cheyenne County," the "Guidelines and Regulations," or the "Regulations."

1.102 Purpose and Findings

- (1) The specific purposes and intent of these Regulations are to:
 - a) Encourage planned and orderly, efficient, economical land use development;
 - b) Provide for the needs of agriculture, industry, business, residential communities, and recreation in future growth;
 - c) Encourage uses of land and natural resources suitable to their character and adaptability;
 - d) Conserve soil, water and other natural resources and habitat;

- e) Protect the beauty of the landscape;
 - f) Protect the economy of Cheyenne County;
 - g) Promote efficient and economical use of public resources;
 - h) Regulate projects that would otherwise cause excessive noise, water, and/or air pollution, or which would otherwise degrade or threaten the existing environmental quality within the County;
 - i) Require that municipal and industrial water projects emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water and without adversely impacting existing land uses, the County's agricultural economy and natural habitats;
 - j) Ensure that major facilities of public utilities are located to avoid direct conflict with adopted County land use plans, and otherwise serve the stated purposes of these regulations;
 - k) Provide that development is compatible with, and not destructive to, the historical, natural, and archaeological value of resources within Cheyenne County;
 - l) Ensure that development in natural hazard areas minimizes significant hazards to public health or safety or to property or the environment;
 - m) Ensure that development involving all areas and activities designated hereunder is consistent with these regulations, the County Land Use Master Plan, and any duly adopted intergovernmental agreements or comprehensive development plans between the County and another governmental entity; and
 - n) Protect the public health, safety, welfare and the environment.
- (2) These Regulations are intended to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et. seq C.R.S.

1.103 Authority

- (1) These Guidelines and Regulations are authorized by, inter alia, C.R.S. 24-65.1-101, et seq., 30-28-101, et seq., 30-28-201, et seq., 29-20-101, et seq., and 24-32-111. C.R.S. These Regulations are necessary for the preservation of the public health, safety and welfare.
- (2) The Board of County Commissioners of Cheyenne County, Colorado, hereby finds that the notice and public hearing requirements of C.R.S. 24-65.1- 404 have been followed and these Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County;

1.104 Applicability

- (1) Except as otherwise expressly provided herein, these Regulations apply to the entire unincorporated territory of the County of Cheyenne.
- (2) These Regulations shall apply to all proceedings concerning identification and designation of any developments in any area of state interest or any activity of state interest which has been

or may hereafter be designated by the Board of County Commissioners of the County of Cheyenne.

1.105 Exemptions

The portions of these Regulations authorized exclusively under Section 24-65.1-101, et seq., C.R.S., shall not apply to any development in an area of state interest or any activity of state interest if, on the effective date of their adoption:

- (1) The specific development or activity is covered by a current building permit issued by the County of Cheyenne;
- (2) The specific development or activity has been approved by the electorate of the County of Cheyenne;
- (3) The specific development or activity is to be on land which has been finally approved for Planned Unit Development or for a use substantially the same as a finally approved Planned Unit Development;
- (4) The specific development or activity is to be on land which has been zoned in response to an application which specifically contemplated said specific development or activity;
or
- (5) The specific development or activity is to be on land with respect to which a development plan for the specific development or activity proposed already has been conditionally or finally approved by the County of Cheyenne.

1.106 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 the County of Cheyenne, the enactment imposing the more restrictive standards or requirements shall control.
- (2) 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, C.R.S., the statutory criteria shall control.
- (3) In the event these Guidelines and Regulations are found to be more stringent than the statutory criteria for administration of matters of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these regulations shall control pursuant to Section 24-65.1-402(3), C.R.S.
- (4) These Guidelines and Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of the County of Cheyenne, including, without limitation, the Cheyenne County Comprehensive Plan, Zoning and Land Use Regulations of 2008, as amended.
- (5) Permit requirements included in these Guidelines and Regulations shall be in addition to all applicable state and federal water quality laws, rules and regulations.
- (6) Nothing in these Regulations shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the Public Utilities Commission.

- (7) Nothing in these Regulations shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

1.107 Maps

The following maps are attached hereto and fully incorporated herein by their reference:

Exhibit D: Areas of Cheyenne County historically irrigated.

1.108 Duties of the Board of County Commissioners

Unless otherwise specifically provided, it shall be the duty of the Board of County Commissioners of Cheyenne County to perform all functions pertaining to matters of state interest including designation of such areas and activities except where these regulations expressly delegate authority to another County official.

1.109 Severability

If any section, clause, provision, or portion of these Guidelines and Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

1.110 Definitions

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

- (1) “Board” or “Board of County Commissioners”: the Board of County Commissioners. County of Cheyenne State of Colorado.
- (2) “Designation”: that legal procedure specified by Section 24-65.1-401, et seq., C.R.S., carried out by the Board of County Commissioners.
- (3) “Development”: any construction, activity, or change in activity which disturbs, or changes the basic character or the use of, the land.
- (4) “Matter of state interest”: an area of state interest or an activity of state interest or both.
- (5) “Person”: any private individual, partnership, corporation, association, company, or any public or corporate body, including the state and federal government, including any political subdivision, agency, instrumentality, or corporation thereof.
- (6) “Receipt of Application”: the time at which the completed application is accepted by the Board.

Article 2 **Designation of Matter of State Interest**

1.201 Board of County Commissioners to Make Designations

The Board of County Commissioners shall have the sole authority to designate areas or activities of state interest under these Regulations. Designations and amendments of designations may be initiated in two ways:

- (1) The Board of County Commissioners may, in its sole and absolute discretion, designate, and adopt regulations for the administration of, any matter of state interest.
- (2) The Cheyenne County Planning & Zoning Board may, on its own motion or upon request by the Board of County Commissioners, recommend to the Board of County Commissioners the designation of matters of state interest. The Board of County Commissioners shall decide, in its sole and absolute discretion, whether or not to designate any or all of the requested matters of state interest.

1.202 Public Hearing Required

The Board of County Commissioners shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

- (1) The Board of County Commissioners shall prepare a notice of the designation hearing which shall include:
 - (a) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property or activities which would be subject to the designation;
 - (b) The time and place of the hearing;
 - (c) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
 - (d) The telephone number where inquiries may be answered;
- (2) The Board of County Commissioners shall maintain a mailing list of those persons who request that they be placed on the list and pay to the County Clerk an annual fee of ten dollars (\$10.00) to cover the costs of production, handling and mailing of notices of all hearings pursuant to these Regulations. In order to have a name and address retained on the list, the person shall resubmit their name and address and pay said annual fee before January 31 of each year.
- (3) 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 mailing list (subsequent to the initial adoption of guidelines and regulations);
 - (c) In the discretion of the Board of County Commissioners, members of the news media and any other person 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.

1.203 Matters to be Considered at Designation Hearing

At the public hearing, the Board of County Commissioners shall receive into the public record:

- (1) Testimony and evidence from all persons or organizations desiring to appear and be heard, including County staff;
- (2) Any documents that may be offered; and
- (3) The recommendations of the Cheyenne County Planning & Zoning Board, if any.

1.204 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;
 - (e) Any recording or transcript of the hearing;
 - (f) The order of designation of the area or activity of state interest: and
 - (g) 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 if transcribed, shall be furnished free of charge to the Board of County Commissioners and shall become part of the record.

1.205 Adoption of Designation and Regulations

- (1) Within thirty (30) days after the conclusion of the hearing, the Board of County Commissioners may adopt, adopt with modification, or reject the proposed designation which was the subject of public hearing.
- (2) In making any such designation, the Board shall take into consideration:
 - (a) All testimony, evidence and documents taken and admitted at the public hearing;

- (b) The intensity of current and foreseeable development pressures in the County of Cheyenne;
 - (c) The matters and considerations set forth in any applicable guidelines or model regulations issued by other state agencies; and
 - (d) Reasons why the particular area or activity is of state interest, the dangers 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.
- (3) 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 regulations for the administration thereof.
- (4) Each designation order adopted by the Board of County Commissioners shall:
- (a) Specify the boundaries of any designated area of state interest; and
 - (b) State reasons why the particular area or activity is of state interest, the dangers 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.

1.207 Recording of Notice of Designation

A notice of the designation 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. Exhibit A attached hereto is a sample designation form.

1.208 Effect of Designation - Moratorium Until Final Determination

After a matter of state interest is designated pursuant to these Regulations, 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 C.R.S. 24-65.1-404(4).

Article 3 **Judicial Review**

1.301 Judicial Review

Any action seeking judicial review of any final decision of the Board under these Regulations, including the issuance of, or refusal to issue, any permit hereunder, shall be initiated within thirty (30) days after the decision is made, in the District Court in and for the County of Cheyenne, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

CHAPTER 2

PERMITTING PROCESS

Article 1 Permit Application

- 2.101 Permits Required After Designation; Receipt of Application Form
- 2.102 Application Fee
- 2.103 Waiver of Submission Requirements
- 2.104 Intergovernmental Agreements

Article 2 Permit Hearing

- 2.201 Preliminary and Final Permit Hearings
- 2.202 Conduct of Permit Hearing
- 2.203 Final Action on Permit Application

Article 3 Issuance, Revocation or Suspension of Permits

- 2.301 Issuance of Permits
- 2.302 Financial Security
- 2.303 Revocation or Suspension of Permits
- 2.304 Annual Review

Article 4 Administration, Enforcement and Penalties

- 2.401 Enforcement and Penalties
- 2.402 Mapping Disputes
- 2.403 Inspection
- 2.404 Nonconforming Uses

Article 1 Permit Required; Application

2.101 Permits Required After Designation; Receipt of Application Form

- (1) Any person desiring to engage in development in a designated area of state interest or to conduct a designated activity of state interest must apply for and obtain a permit from the Board, in the form attached hereto as **Exhibit B**, and maintained in the office of the County Administrator. In the event a development or activity is proposed as an integral part of a subdivision or Planned Unit Development, it shall be the responsibility of the service provider and/or developer to comply with the requirements of these Regulations.
- (2) An application shall not be accepted unless it is complete and contains all information required by these Regulations. An application shall be deemed to be complete only when it provides all information required by these Regulations and the Cheyenne County Zoning and Land Use Code. The Cheyenne County Land Use Administrator is hereby granted full responsibility for determining, on behalf of the Board, whether an application is complete. Such determination shall not require evaluation of the merits of any proposal; it shall involve only a determination whether or not the required submissions have been tendered. An applicant may request a waiver of specific submission requirements by delivering to the County Land Use Administrator for consideration by the Board, in its absolute discretion, a written request which describes the requirement(s) for which waiver is sought together with a detailed explanation of the reasons for

requesting waiver. No application shall be deemed complete until any request for waiver has been acted upon by the Board. If an application is considered incomplete by the County Land Use Administrator on behalf of the Board, the Land Use Administrator shall specify, in writing, what additional information is required in order to render the application complete. An application need not meet the submission requirements for other than the particular development alternative for which a permit is being sought in order to be considered complete. When a submitted application is considered to be complete by the Land Use Administrator on behalf of the Board, the Land Use Administrator shall note upon the application the date and hour of receipt of the complete application.

- (3) When an applicant seeks a permit to engage in development in more than one area of state interest and/or to conduct more than one activity of state interest and/or to engage in development in one area of state interest and to conduct one activity of state interest, a single application may be completed for all such activities or developments and may be reviewed by the Board in one consolidated hearing.

2.102 Application Deposit

- (1) Within a reasonable time period not to exceed ten (10) days following receipt of a completed application for a permit, the Land Use Administrator, acting on behalf of the Board, shall estimate and set the amount of the deposit which the applicant shall be required to submit to cover the cost of processing of the application. Such deposit shall be in an amount sufficient to cover all costs likely to be incurred by the County in connection with the review and action upon the permit application, including by way of illustration only: all County staff time (direct and indirect costs) to review and process the application at such rate as the Board may establish as representative of the true cost of County staff time (which rate shall be deemed to be \$60 per hour until modified by the Board), all charges for County consultants, expert witnesses, engineers and attorneys, all other administrative costs and all costs for hearings conducted therefore. In order to ensure that the taxpayers of Cheyenne County are not compelled to bear any financial burden associated with a project proposed under these regulations, the required deposit shall in any event be no less than Twenty Five Thousand Dollars (\$25,000). Upon determining the amount of the deposit, the Land Use Administrator shall notify the applicant in writing of the required deposit. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Board certified funds in the amount specified as the deposit amount to be held by the County as a deposit against which charges and expenses incurred in connection with processing the application shall be withdrawn. As review of the application progresses, the applicant shall replenish the fee account in such amounts as the Land Use Administrator, acting on behalf of the Board, shall reasonably designate so as to ensure that funds are available to continue to meet all costs of County review. Until the fee is paid or replenished as necessary, the application shall not be further processed and no time limits established by these regulations or state law shall run. The Board may from time to time revise these deposit requirements, which upon adoption shall be applicable to all applications filed thereafter. The intent of this provision is that the applicant - and not the taxpayers of Cheyenne County - shall bear all costs associated with any application.
- (2) In connection with the review of any permit application, the County shall have the right to retain the services of any outside agency or legal, scientific, economic, technical, or other consultant(s) to review and advise the County with regard to any aspect of the application.

- (3) As a condition of Permit issuance, the applicant shall also agree in writing to pay attorney fees and costs incurred by or on behalf of the Board in the event of any litigation challenging the permit, including litigation brought by the applicant.

2.103 Waiver of Submission Requirements

- (1) The Board may, at its sole discretion, waive any individual part, but not all, of the submission requirements imposed by these Regulations upon proof by the applicant by clear and convincing evidence that, while potentially applicable or relevant to the development applicant proposes, full compliance with the submission requirements would be unnecessary, cumulative or unreasonably burdensome, that the submission requirements so waived would not address or disclose any substantial impact on the County or its residents, and that the information otherwise submitted by the applicant is sufficient for the Board to make a permit decision in compliance with the requirements of these Regulations. The Board shall not be required to hold a hearing on any request for a waiver under these Regulations. When an applicant is applying for permits under separate Chapters of these Regulations, submission requirements, where identical, may be combined.
- (2) If the Board elects, at its own discretion, to hold a hearing on any request for waiver of submission requirements, such hearing shall be conducted in conformity with the requirements for a hearing on a permit application.
- (3) In the event a waiver request is denied, the applicant shall provide the required additional information before the application shall be deemed to be complete. If the applicant fails to provide such information within thirty (30) days of being advised of the denial of its request for waiver, the Board, in its discretion, may require complete reapplication, or may continue the hearing in accordance with these Regulations.

2.104 Intergovernmental Agreements

Upon the request of the State of Colorado or a political subdivision of the state, as defined by C.R.S. 29-1-202(1), proposing to engage in an activity of state interest or proposing development within an area of state interest, the requirements of these Regulations may be met by the approval of an intergovernmental agreement between the County and the state or political subdivision 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 herein. In the event such an agreement is approved by the County, no permit application to conduct the activity of state interest shall be required, provided that all of the following conditions are met:

- (1) The state or political subdivision 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. to enter into the agreement.
- (2) The purpose and intent of these Regulations must be satisfied by the terms of the agreement.
- (3) A public hearing must be conducted by the Board in conformance with these Regulations [with the exception that the references to "permit application" in Section 2.302(5)(a), (c) and (g) shall be deemed replaced with "proposed intergovernmental agreement". 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 only after the conclusion of 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 Board and the governing body of the state or political subdivision applicant must approve the agreement in the manner required of each of them by the Colorado Constitution, statutes and any applicable charter, ordinance or resolution.
- (5) Exercise of the provisions of this Section by the state or political subdivision 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.

Article 2 **Permit Hearings**

2.201 **Preliminary and Final Permit Hearings**

- (1) No more than fourteen (14) days after receipt of a completed application for a permit (which shall include submission of any required deposit), the Board shall set, and publish notice of, the date, time and place for a Preliminary hearing on the application before the Cheyenne County Board of Adjustment (“the Board of Adjustment”).
- (2) The Board of Adjustment shall review the permit application and conduct the Preliminary hearing and, based upon all information reviewed, make its recommendation to the Board of County Commissioners to approve, approve with conditions, or deny the permit application. Such recommendation shall be in writing and shall be transmitted to the Board of County Commissioners within seven (7) days after the Preliminary Hearing. If the Board of Adjustment recommends denial of the permit, its recommendation shall specify its reasons for making that recommendation.
- (3) No more than seven (7) days after receipt of the recommendation of the Board of Adjustment on any permit application, the Board shall set, and publish notice of, the date, time and place for a Final hearing on the application before the Cheyenne County Board of County Commissioners.
- (4) Applicant shall ensure that notice of all public hearings on any permit application is published at least once in a newspaper of general circulation in the County of Cheyenne, not less than seven (7) nor more than fourteen (14) days before the date set for hearing and is also given to other persons and entities in the same manner as set forth for the notice of a designation hearing in Chapter 1 of these Regulations. In addition, the Applicant shall mail notice of any hearing to all persons holding any interest in real property, including severed mineral interests, located within the proposed project and within Five Hundred (500) feet of the exterior boundaries of all proposed project sites. All notices must be sent by certified mail, return receipt requested, or by a nationally recognized overnight courier with proof of receipt to the last known address of real property owners and mineral right holders. At or before any hearing, Applicant shall certify to the County that notice has been given as required by these Regulations. At a minimum, the notice must contain the following:
 - (a) The time and place of the initial public hearing;
 - (b) The nature of the hearing and a brief description of Applicant’s proposed project;

(c) The location and legal description by section, township, and range of all property that is the subject of the hearing;

(d) The name, address and contact information of Applicant; and

(e) A statement that Cheyenne County is considering an application for issuance of a land use permit relating to the proposed use.

The Applicant shall prepare and provide to the County a list containing the name and address of all real property owners (including holders of severed mineral interests) to whom notices were sent.

- (5) At least five (5) business days prior to any scheduled initial public hearing described below, Applicant shall certify to the County in writing that notices were provided in accordance with the above requirements. In the event Applicant fails to timely provide County such certification of notice, the hearing shall be continued one time to a date and time specified by County, with Applicant's input, in order to permit Applicant to complete notice and provide certification as required by this provision. Applicant shall provide written notice of the date, time and place to which the hearing has been rescheduled to all persons entitled to notice hereunder via regular U.S. Mail and shall publish notice of same in the same manner as the original publication of the notice of initial hearing. If Applicant fails to provide certification of notice within the extended notice period specified in the foregoing sentence, Applicant and County shall reschedule the initial public hearing to a mutually satisfactory date, time and place and Applicant shall be required to issue and serve new notices to all property owners entitled to such notice in the same manner as its original notices.

2.202 Conduct of all Permit Hearings

- (1) Subject to the hearing board's right to adopt rules or procedures as needed in order to ensure that the hearing proceeds in a timely and orderly fashion, the hearing board shall afford anyone having relevant information an opportunity to be heard with regard to the Application and shall receive and consider any documentary or other information relating to the Application. The applicant shall proceed first, followed by any persons or entities who have submitted written comments opposing the application and finally by public comment. The hearing board shall have discretion as to the amount of time afforded to anyone wishing to provide oral testimony at the hearing and any other matters relating to the conduct of the hearing.
- (2) The hearing board shall hear testimony and receive evidence, including:
- (a) The recommendations, if any, of the Cheyenne County Board of Adjustment (applicable only to final hearing before the Board of County Commissioners);
 - (b) Testimony and evidence from any and all persons or organizations desiring to appear and be heard including County or other governmental staff; and
 - (c) Any documents that may be offered.
- (3) Although the Colorado Court 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 reasonable opportunity consistent with the objective of affording all an opportunity to be

heard in an orderly and mannerly fashion, as determined by the hearing board in its absolute discretion, for questioning of testimony or documents provided by others as well as reasonable opportunity to offer evidence in rebuttal. The Chairman of the hearing board presiding at the hearing shall determine how to permit such questioning and shall have discretion to permit cross examination or some alternate means of directing questions to witnesses.

- (4) 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 and shall become part of the record.
- (5) The hearing board shall collect and preserve all information received in connection with any hearing including:
 - (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) Any written statements or documents presented in support of or in opposition to the permit application;
 - (d) The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
 - (e) Any recording or transcript of the hearing;
 - (f) Written minutes of the hearing board relating to the public hearing;
 - (g) The recommendation of the Board of Adjustment (with regard to a preliminary hearing on the application) or the resolution of the Board of County Commissioner on final hearing granting or denying the permit application; and
 - (h) A copy of the permit, if issued.
- (6) In cases in which the development or activity must also comply with 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.

2.203 Final Action on Permit Application

- (1) If the Board of County Commissioners finds that there is not sufficient information concerning any aspect of the proposed development or activity which the Board, in its absolute discretion, deems to be material, the Board may deny the application or it may continue the hearing until the additional information has been received. No such continuance may exceed sixty (60) days unless agreed to by the applicant.
- (2) The Board of County Commissioners shall approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest only if the Board determines by clear and convincing evidence that the proposed development or activity complies with all relevant provisions of the regulations governing such area or activity and is accord with the County Master Plan. The Board may attach

reasonable conditions to its approval. If the proposed development does not comply with the regulations governing the area or activity, the permit shall be denied.

- (3) The burden of proof shall be upon the applicant to show compliance with the provision of these Regulations governing the area or activity of state interest involved by clear and convincing evidence.
- (4) The Board shall state, in writing, the reasons for any decision to deny a permit application.
- (5) The Board shall reach a decision on a permit application within sixty (60) days after the completion of the permit hearing, or the permit shall be deemed denied.

Article 3 **Issuance, Revocation or Suspension of Permits**

2.301 **Issuance of Permits**

- (1) All permits shall be issued on the form adopted by the Board, an example of which is attached hereto as Exhibit C.
- (2) The permit may be issued for an indefinite term, or for a specific period of years, but in any event shall specifically state its duration as approved by the Board.
- (3) The issuance of a permit shall authorize only activities consistent with the plans and submittals on which it was based. Any material change to any structure or installation, including any change to the type, number, location or specifications of any structure or installation, as originally shown on the site plan or in other materials submitted in connection with the application shall require County approval of either an amendment to the permit or issuance of a new permit.

2.302 **Financial Security**

- (1) Before any permit is issued, the Board, in its reasonable discretion, shall require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the County of Cheyenne. The purpose of the financial guarantee shall be to assure that the applicant or permittee shall faithfully perform all requirements of the permit and applicable regulations adopted by the Board of County Commissioners.
- (2) The amount of said financial guarantee shall be established by the Board upon consideration of the following criteria:
 - (a) The estimated cost of returning the site of the permitted development or activity to its original condition or to a condition acceptable to the Board in accordance with standards herein in the event the project is not completed;
 - (b) The estimated cost of completing the permitted development or activity;
 - (c) The estimated cost of complying with all conditions of the permit; and
 - (d) The estimated costs of remedying any failure by the applicant to fully comply with these regulations.

- (4) Estimated cost shall be based on the applicant's submitted cost estimate together with the Board's estimate of the additional cost to bring in personnel and equipment or otherwise accomplish any unperformed purposes of the financial guarantee and any other information which the Board deems relevant. The Board shall consider the duration of the development or activity and compute a reasonable projection of increases due to inflation. The Board may require as a condition of the permit that the financial security shall be adjusted upon receipt of bids.
- (5) 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.
- (6) The financial guarantee may be released only when:
 - (a) The permit has been surrendered to the Board before commencement of any physical activity on the site of the permitted development or activity;
 - (b) The development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Board in accordance with standards adopted by the Board for the matter of state interest for which the permit was granted;
 - (c) The project has been satisfactorily completed and all conditions or obligations required by any permit have been satisfied; or
 - (d) All guaranteed permit conditions have been satisfied.
- (7) Any security may be cancelled by a surety only upon receipt of the Board's written consent which may be granted only when the Board finds by clear and convincing evidence that such cancellation will not detract from the purposes of the security and will not result in any cost to the people of Cheyenne County.
- (8) 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 permittee, 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 permittee to make substitution of surety within the time allowed, the Board shall suspend the permit until proper substitution has been made.
- (9) If the Board determines that a financial guarantee should be forfeited because of any violation of the permit, it shall provide written notice to the surety and to the permittee that the financial guarantee will be forfeited unless the permittee makes written demand to the Board within thirty (30) days after permittee's receipt of notice requesting a hearing before the Board. If no demand is made by the permittee within said period, then the Board shall order the financial guarantee forfeited.
- (10) If the permittee demands a hearing, the Board shall hold a hearing within thirty (30) days after the receipt of the demand by the permittee. At the hearing, the permittee may present statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Board shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.
- (11) The cash deposit described in subsection (5) above may be used by the Board 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 Board 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 Board's demand for the purposes specified in this Section.

- (12) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the Cheyenne 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 in the County owned by the permittee, by certifying such costs to the County Treasurer for collection in the same manner as real property taxes or by civil action.
- (13) Upon request, the Board may, but shall be under no obligation to, waive all or any portion of the financial security requirements set forth in this Section 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 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.

2.303 Impact Fee

Issuance of any permit under these Regulations shall be conditioned on payment to the County of an impact fee sufficient to cover the estimated cost of all present and future impacts of the project, both direct and indirect, on the County and all other local governmental entities including but not limited to impacts on infrastructure, facilities and equipment and on the need for, and ability to deliver, services. The amount of such impact fee shall be determined by agreement between the applicant and the County based upon all information available, including any impact studies prepared by or for either the applicant or the County. In the absence of agreement on the amount of the impact fee, the impact fee shall be 0.89% of the total estimated project cost.

2.304 Revocation or Suspension of Permits

- (1) In the event the Board has reason to believe that the provision of any permit or the terms of any regulation for administration thereof have been violated by the holder of the permit, the Board may temporarily suspend the permit for a period of thirty (30) days. Except in cases of emergency where there is, in the exercise of the Board's reasonable discretion, a credible threat of immediate harm to public health or safety, before imposing such a temporary suspension, the Board shall give the permit holder written notice of the specific violation and shall allow the permit holder a period of at least fifteen (15) days to correct the violations. If the permit holder does not concur that there is a violation, it shall, within fifteen (15) days of receipt of such notice, show cause to the Board why temporary suspension should not be ordered and a hearing on suspension shall be held within said thirty (30) days after such notice to show cause.
- (2) Notwithstanding any temporary suspension, the Board may permanently revoke or suspend the permit after conducting a public hearing in substantially the same manner and after substantially the same notice as for permit hearings if it finds:
 - (a) 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

- (b) The applicant has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the permit, or, if such steps have been taken, the applicant has failed to complete the development or activity or any condition of permit approval with reasonable diligence. "Substantial steps" do not require construction activity and may include, among other things, legal or administrative proceedings and activities directly associated with the Applicant's project. An extension of the time within which substantial steps to initiate the permitted development or activity need be taken may be granted by the Board upon the request of the applicant and a showing of good cause therefore.
- (c) Upon good cause shown by clear and convincing evidence, any revoked or suspended permit may be reinstated provided that any such reinstatement occurs not more than twelve (12) months after revocation or suspension.

2.305 Annual Review

- (1) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report to the County Land Use Administrator detailing all past activities conducted by the permittee pursuant to the permit including a satisfactory showing that the permittee has complied with all conditions of the permit and applicable regulations. The permittee need not inform the Board of activities which are not the subject of a permit condition.
- (2) The Board shall review the applicant's annual report within thirty (30) days from the date of submittal thereof. If the Board determines that the permittee is likely to have violated the provisions of the permit and/or applicable regulations, it shall consider the matter at a scheduled public hearing. If the Board determines at the public hearing that the permittee has violated the provisions of the permit and/or applicable regulations, the Board may suspend and/or revoke the permit.
- (3) Upon notice to the Board of the fulfillment of all permit conditions, and the Board's concurrence therein, the Board shall terminate any annual review requirements.
- (4) The Board may waive or modify the annual review requirements upon petition of the permittee and a showing of good cause therefore.

Article 4 Administration, Enforcement and Penalties

2.401 Enforcement and Penalties

Any person engaging in a development in a designated area of a state interest or conducting a designated activity of state interest who does not obtain a permit pursuant to the Regulations, who does not comply with permit requirements, or who acts outside the authority of the permit, shall be guilty of a violation of these Regulations and upon conviction therefore shall be subject to fines and civil penalties not to exceed the maximum amount permitted by law for each day such violation continues (it being the intent of these Regulations that performing any work relating to an area or activity of state interest without a permit as required herein shall be considered a continuing violation, each day being a separate and distinct violation) and further, may be enjoined by the County from engaging in such development or conducting such activity and may be subject to such other criminal or civil liability as may be prescribed by law.

2.402 Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any designated area of state interest and where there appears to be a conflict between a mapped boundary and actual field conditions, the Board shall make the necessary determination of the boundary. Any person contesting the location of the boundary shall be given an opportunity to present a case on the subject to the Board.

2.403 Inspection

- (1) The Board or its authorized representative is hereby empowered and directed to inspect and examine the use, occupation or development of, or activity in, each and every area or activity subject to these Regulations for the purpose of determining from time to time whether or not any use, occupation, development or activity is in violation of any of the provisions of the Regulations or of any permit issued or required pursuant to these or other applicable regulations.
- (2) If a violation shall be found to exist, the Board or its authorized representative shall by written order direct that such remedial action be taken forthwith as will result in full compliance with the applicable regulations provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of any enforcement proceedings as are set forth in these Regulations; and provided further, that compliance with such order shall not necessarily be deemed to be a defense to any alleged violation of the Regulations or other applicable regulations of Cheyenne County or the State of Colorado.

CHAPTER 3

REGULATIONS FOR EFFICIENT UTILIZATION OF MUNICIPAL AND INDUSTRIAL WATER PROJECTS

Article 1 General and Introductory Provisions

- 3.101 Title and Citation
- 3.102 Purpose and Intent
- 3.103 Definitions

Article 2 Designation of Municipal and Industrial Water Projects

- 3.201 Designation of Municipal and Industrial Water Projects

Article 3 Permit Applications and Permits

- 3.301 Prohibition of Development of Municipal and Industrial Water Projects
- 3.302 Submission Requirements
- 3.303 Action on Permit Application

Article 1 General and Introductory Provisions

- 3.101 Title and Citation

This Chapter may be cited as the "Regulations for Efficient Utilization of Municipal and Industrial Water Projects."

- 3.102 Purpose and Intent

The purpose and intent of the Regulations contained in this Chapter are:

- (1) 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 and to prevent any such projects from jeopardizing the physical, environmental, or economic well-being of Cheyenne County;
- (2) To ensure that urban development, population densities, and site layout and design of stormwater and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas and minimize adverse impacts on agriculture;
- (3) 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 source development area;
- (4) To promote and protect the economic viability of the County; and
- (5) 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, loss of irrigated agricultural lands, loss of native or other wildlife habitat and negative effects on surface and groundwater quality and the natural habitat of the source development areas, are effectively mitigated.

3.103 Definitions

- (1) "Aquifer recharge area" means any area where surface waters may infiltrate to a water bearing stratum of permeable rock, sand or gravel. This definition also includes wells used for disposal of wastewater or other toxic pollutants.
- (2) "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 benefit to the greatest number of people. Such benefits will consider, but not be limited to, economic, social, aesthetic, environmental, agricultural, and recreational.
- (3) "Municipal and industrial water project" means:
 - (a) a system and all integrated components thereof through which a municipality(ies) and/or industry derives its water supply from either surface or subsurface sources on a year-round, continuous basis with municipal water, or the equivalent amount of water for industrial or commercial purposes, including a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs; and
 - (b) any of the following activities, if proposed to be taken with respect to any single parcel or tract of land of more than three (3) acres, located within the area described on **Exhibit D**, and which land is irrigated as of the effective date of these Regulations and to the extent such activities are proposed to be undertaken or are undertaken for the purpose, direct or indirect, of making water supplies available to a municipal or industrial water project. as defined at subparagraph (a) above: (i) permanent cessation of irrigation as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2; (ii) lease, sale, or other disposition, 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 three (3) consecutive years or more; or (iii) development of the land for a use or uses other than irrigated agriculture.

- (4) "Municipality" means and includes a home rule or statutory city, town or city and county or a territorial charter city. "Municipality" also means and includes any special district, quasi-municipal or private corporation or company which provides a water supply to its members, customers, or buyers.
- (5) "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 water law.
- (6) "Source development area" means that geographic area or region wholly or partially within the unincorporated territory of this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in Section 3.103(3).

Article 2 Designation of Municipal and Industrial Water Projects as Activities of State Interest

3.201 Designation of Municipal and Industrial Water Projects as Activities of State Interest

Having considered the intensity of current and foreseeable development pressures and the potential impact of municipal and industrial water projects on irrigated agriculture on which the economy and well-being of the County and its residents depends, the Board of County Commissioners hereby declares and orders that efficient use of municipal and industrial water projects which are located wholly or partially within the unincorporated territory of the County be and hereby is designated an activity of state interest and regulated pursuant to the provisions of these Regulations.

Such designation is based upon the Board's conclusion, based upon all information provided at the hearing on the adoption of these regulations that unregulated development of municipal or industrial water projects would:

- (1) harm the physical, environmental, or economic well-being of Cheyenne County and its residents;
- (2) threaten pollution of rivers, streams, reservoirs, ponds and aquifer recharge areas and have adverse impacts on agriculture including but not limited to reduced crop productivity;
- (3) be harmful to the County's agricultural economy and lifestyle;
- (4) adversely impact the County, its residents, and the environment including, by causing soil loss from air or water erosion, airborne dust, noxious weed invasion, loss of irrigated agricultural lands, loss of native or other wildlife habitat and increased risk of wildfire if such impacts are not identified before development and effectively mitigated.
- (5) be inconsistent with the County Master Plan which requires evaluation of all development and mitigation of adverse impacts thereof;
- (6) encourage uses of the land and natural resources in ways unsuited to their character;
- (7) damage the beauty of Cheyenne County's rural landscape;

- (8) be inconsistent with the County's goal of promoting efficient and economic use of all public resources;
- (9) degrade environmental quality within the County;
- (10) be incompatible with, and destructive of, historical, natural and archeological resources within the County; and
- (11) pose a risk of harm to public health and safety and to private property.

Article 3 **Permit Applications**

3.301 **Prohibition of Development of Municipal and Industrial Water Projects**

- (1) No person may engage in development of a municipal or industrial water project wholly or partially within the unincorporated territory of this County without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of development or construction of a municipal or industrial water project without the applicant first having obtained a permit pursuant to these Regulations.

3.302 **Submission Requirements**

An application for a permit to engage in development of a municipal or industrial water project shall be accompanied by five (5) copies of the following documents and information with regard to each alternative site or expansion area for which a permit is being sought by the applicant. An application need not meet the identified submission requirements for other than the particular development alternative for which a permit is being sought in order for the application to be considered complete, but the description of alternative sites and expansion areas must be sufficiently detailed so as to adequately inform the Board:

- (1) Completed application form;
- (2) Abstract of the proposal indicating the scope and need for the development and describing with particularity the ways in which the proposal will affect the use of land or water in Cheyenne County;
- (3) Preliminary review and comment on the proposal by all appropriate federal, state and local agencies, including but not limited to the Colorado Department of Natural Resources and/or the Colorado Department of Public Health & Environment, as applicable;
- (4) For the purpose of assisting in evaluation of the applicant's selected development alternative only, a listing of alternatives to the proposed project including alternate site locations and other means of achieving the same end results together with the general degree of feasibility of each or, at the option of the applicant, the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA);
- (5) List of all proponents of proposal together with the names, addresses and business interests of all interests proposing the activity as well as the name, contact information and qualifications of the person responding to the requirements detailed in these Regulations;

- (6) Detailed report on the proposed municipal or industrial water project to include:
 - (a) Location and scope of the proposed project;
 - (b) Current and future needs for such development;
 - (c) Inventory of existing water projects presently serving the municipality or area in question and excess service capacity of each project;
 - (d) Population trends, projections and growth rates (if a municipal project):
 - (e) Primary source of proposed water resources;
- (7) 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;
- (8) Describe proposed methods of insuring efficient and beneficial use of water resources within the municipality or 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;
- (9) Provide a description and detailed engineering plans and specifications of the proposed construction of structures, buildings, and improvements associated with the project and the financial and environmental impacts thereof on the community or surrounding areas;
- (10) 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;
- (11) Identify and locate on a map of an appropriate scale any of the following features present in the source development area and detail the potential impact of the municipal or industrial water project upon each feature:
 - (a) Marshlands and wetlands.
 - (b) Groundwater recharge areas,
 - (c) Potential natural hazards,
 - (d) Forests, woodlands and prairies,
 - (e) Critical wildlife habitat or other wildlife protection areas,
 - (f) Public, outdoor recreation areas,
 - (g) Unique areas of geological, historic and archeological importance,
 - (h) Critical aquatic life habitat, and
 - (i) Agricultural areas specifically including but not limited to irrigated crop land.

- (12) Describe the potential adverse effects of the diversions of water upon plant and animal life and on agriculture dependent upon the water resources in question;
- (13) Describe and indicate on an appropriate map surface water bodies (streams, lakes, reservoirs (existing or proposed). etc.) and groundwater aquifers in the source development area and their uses. Describe the effects of the diversion of water for the municipal or industrial water project on the above-described water feature(s) including the effects on present water quality, current and foreseeable uses. Include a detailed statement of the impacts of the proposed project upon water quality standards including, but not limited to anti-degradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants;
- (14) Describe the present zoning of the land in the source development area;
- (15) Describe the agricultural productivity capability of the land in the source development area (NRCS classification) and describe the potential effects of the diversion of water for the municipal or industrial water project on that agricultural productivity capability of any affected lands;
- (16) Explain any increase in domestic and/or municipal water treatment costs and/or wastewater treatment costs which may be associated with the proposed project. The applicant shall submit a plan to offset increased domestic and/or municipal water treatment and/or wastewater treatment 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;
- (17) Any demographic data needed to fulfill the requirements of these Regulations shall be consistent with those used for the applicable 208 area-wide waste treatment management plan;
- (18) The benefits of the project, both in natural and socioeconomic terms, and the degree to which benefits, both within the County and to the applicant, outweigh the adverse impacts of the project within the County;
- (19) In the event the application is for a municipal or industrial water project as defined in Section 3.103(3)(b), the application shall also provide all information required by Chapter Four, Regulation for Development of Areas that Historically have been Irrigated, Section 4.303.

3.303

Action on Permit Application

- (1) In determining whether to approve, approve with conditions, or disapprove a permit application, the Board shall take into consideration the following criteria:

- (a) To the extent applicant's service area is located wholly or partially within the boundaries of the County, whether the need for the proposed water project has been substantiated;
- (b) Compatibility of the proposed water project with federal, state, regional and County planning policies regarding land use and water resources;
- (c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of stormwater and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas;
- (d) Provision has been made to ensure that the proposed water project will not contaminate surface and subsurface water resources;
- (e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health & Environment;
- (f) The proposed diversion of water will not decrease the quality of peripheral or downstream surface and subsurface water resources within the County below that designated by the Colorado Water Quality Control Division as of the date of the adoption of these Regulations or below existing water quality if such exceeds Water Quality Control Division standards;
- (g) The proposed development and the potential diversion of water will not significantly deteriorate agricultural productivity, aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitats, or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance;
- (h) The water treatment offset plan required by these Regulations has been approved by the Board and required fees associated therewith, if any, have been paid;
- (i) The proposed development will not create an undue financial burden on existing or future residents within the source development area. The cost of securing an adequate supply of water for existing and future needs of the residents of this County shall be considered in determining whether an "undue financial burden" will result;
- (j) The construction of structures, buildings, and improvements associated with the proposed development will not significantly impact existing or proposed communities; and
- (k) The proposed development will not contribute to any increased risk of wildfire or decrease the ability to combat wildfire or that any such risk will be satisfactorily mitigated.

CHAPTER 4

REGULATIONS FOR DEVELOPMENT OF AREAS THAT HISTORICALLY HAVE BEEN IRRIGATED

Article 1	General and Introductory Provisions
4.101	Title and Citation
4.102	Purpose and Intent
4.103	Definitions
Article 2	Designation of Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance
4.201	Designation
Article 3	Permit Applications and Permits
4.301	Application Procedure
4.302	Prohibition of Development
4.303	Submission Requirements
4.304	Action on Permit Application

Article 1 General and Introductory Provisions

4.101 Title and Citation

This Chapter may be cited as the "Regulations for Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance."

4.102 Purpose and Intent

The purpose and intent of the Regulations contained in this Chapter are:

- (1) To administer areas containing or having a significant impact upon natural resources of statewide importance in a manner that will allow man to function in harmony with, rather than be destructive to, these resources;
- (2) To protect areas of Cheyenne County which are essential for wildlife habitat;
- (3) To ensure that development in areas containing natural resources is conducted in a manner which will minimize damage to those resources for future use;
- (4) 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 the County which have been historically irrigated, in order that significant wildlife habitats within the County may be protected and preserved;
- (5) 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;
- (6) 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 the impact of the development on wildfire hazards and on the ability to fight wildfires;

- (7) 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 this County;
- (8) To promote and protect the economic viability of the County;
- (9) 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 source development area are effectively mitigated.

4.103 Definitions

- (1) "Development" means and includes any of the following, if proposed to be taken with respect to any single parcel or tract of land of more than three (3) acres, located within the area described in **Exhibit D**, and which land is irrigated as of the effective date of these Regulations: (i) permanent cessation of irrigation as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2; (ii) lease, sale, or other disposition, 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 a period of three (3) consecutive years or more; (iii) development of the land for a use or uses other than irrigated agriculture; or (iv) 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.
- (2) "Natural resource of statewide importance" means and includes the areas of Cheyenne County which have historically been irrigated, as shown on **Exhibit D**.
- (3) "Nonconforming use" means a use or development in existence at the time of the adoption of these Regulations, which use, were it a new use or development, would be one for which a permit is required under these Regulations.
- (4) "Noxious weed invasion" means the appearance and establishment of nonnative plants in a manner or quantity which threatens to displace or does displace native vegetation, vegetation planted as a part of a re-vegetation program or effort, or vegetation planted as an agricultural crop or practice. "Noxious weed invasion" shall not include the appearance and establishment of nonnative plants when part of an approved re-vegetation plan.
- (5) "Soil Loss" means the loss of topsoil from historically irrigated lands by air or waterborne erosion, or by noxious weed invasion.
- (6) "Source development area" means that geographic area or region wholly or partially within the unincorporated territory of this County which will be developed, altered or affected in connection with a development as defined herein.
- (7) "Wildlife habitat" means a geographical area containing those elements of food, water, cover, space and general welfare in a combination and in quantities adequate to support a species for at least a portion of the year. A particular area need not be occupied by a particular wildlife species in order to be considered habitat for that species. Wildlife habitat may include those areas which were historically occupied and are still suitable for

occupancy, are presently occupied, or are potentially suitable for occupancy but not historical range, i.e., mountain goat habitat in Colorado.

Article 2 Designation of Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance

4.201 Designation of Historically Irrigated Areas as Areas of State Interest

Having considered the intensity of current and foreseeable development pressures and the potential impact of development on land which historically has been used for irrigated agriculture on which the economy and well-being of the County and its residents depends, the Board of County Commissioners hereby declares and orders that land and which historically has been irrigated which is located within the unincorporated territory of the County, as shown on Exhibit D hereto, be and hereby is designated an area of state interest and regulated pursuant to the provisions of these Regulations.

Such designation is based upon the Board's conclusion, based upon all information provided at the hearing on the adoption of these regulations that unregulated development of lands which historically have been utilized for irrigated agriculture, threatens the health, safety and wellbeing of the County and its residents in that:

- (1) Irrigated crop lands are the most significant for wildlife habitat, lying as they do adjacent to the major waterways, both natural and artificial, throughout the County.
- (2) Irrigated crop lands contain and/or have significant impact upon natural resources of statewide importance, consisting of significant wildlife habitats in which the wildlife species, as identified by the Division of Wildlife of the Colorado Department of Natural Resources, could be endangered.
- (3) Irrigated crop lands are less likely to be involved in wildfires than are dry land parcel which are not irrigated and therefore such areas represent both an essential tool in limiting the spread of wildfires and a valuable resource for fighting wildfires.
- (4) Irrigated crop lands contain topsoil which is fundamental to the maintenance of significant wildlife habitat and agricultural productivity and thus essential to the wellbeing of Cheyenne County and its residents and thus must be protected.
- (5) Loss of topsoil results in inability of the land to support economically viable agricultural activity as well as native plants upon which all wildlife species depend. Particularly in the areas of Cheyenne County which have been historically irrigated, the presence of topsoil on those areas has enabled wildlife to survive upon grain in harvested and fallow fields.
- (6) Noxious weed invasion aggravates the loss of topsoil by crowding out native plants and further degrading the ability of wildlife species to exist.
- (7) This topsoil is the fundamental basis upon which the economy and life of the County is based. Its productivity is inextricably linked to the economic health of the County and its residents.
- (8) Without adequate and enforceable re-vegetation and fire mitigation plans, loss of topsoil from historically irrigated lands within the County due to air and waterborne erosion, or

from noxious weed invasion, is a direct result of the transfer of water rights from the land and subsequent dry-up of historically irrigated crop lands.

- (9) These Regulations are necessary to require and enforce adequate revegetation, fire mitigation and other plans for lands which are removed from irrigated agricultural production.
- (10) Adequate re-vegetation and fire mitigation plans for such lands are needed to ensure that the significant wildlife habitat values of such lands are preserved and protected.
- (11) Unregulated removal of land from irrigated crop production may cause increased pollution of rivers, streams, reservoirs, ponds and aquifer recharge areas and have adverse impacts on agriculture including but not limited to reduced crop productivity;
- (12) Unregulated removal of land from irrigated crop production would be harmful to the County's agricultural economy and lifestyle;
- (13) Unregulated removal of land from irrigated crop production would be inconsistent with the County Master Plan which requires evaluation of all development and mitigation of adverse impacts thereof;
- (14) Unregulated removal of land from irrigated crop production would be damage the beauty of Cheyenne County's rural landscape;
- (15) Unregulated removal of land from irrigated crop production would be inconsistent with the County's goal of promoting efficient and economic use of all public resources; and
- (16) Unregulated removal of land from irrigated crop production would pose a risk of harm to public health and safety and to private property.

Article 3 **Permit Applications**

4.301 Application Procedure

The procedures concerning permit applications, notice and conduct of permit hearings, review of Board decisions, and the issuance and content of permits to engage in development in areas containing or having a significant impact upon natural resources of statewide importance shall comply with the provisions set forth in Chapter 2.

4.302 Prohibition of Development

- (1) No person may undertake development, as defined herein, wholly or partially within the area described on **Exhibit D** without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of "development" as defined herein without the applicant first having obtained a permit pursuant to these Regulations.

4.303 Submission Requirements

An application for a permit to conduct development as defined herein shall be accompanied by five (5) copies of the completed application form and the following documents and information:

- (1) An abstract of the proposal indicating the scope and need for the development and explaining why it must occur within or affect land in Cheyenne County which historically has been irrigated for agricultural production;
- (2) 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;
- (3) For the purpose of assisting in evaluation of the applicant's selected development alternative only, a listing of alternatives to the proposed project including alternate site locations and other means of achieving the same end results together with the general degree of feasibility of each or, at the option of the applicant, the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA);
- (4) List of all proponents of proposal together with the names, addresses and business interests of all interests proposing the activity as well as the name, contact information and qualifications of the person responding to the requirements detailed in these Regulations.
- (5) Scope of proposal:
 - (a) Describe the source and rights for any water subject to transfer by decree as a part of the development, including a copy of all transfer decrees:
 - (b) Describe existing water utilization including historic yield from rights and use by category such as agricultural, municipal and industrial and supply obligations to other systems; and
 - (c) Provide a description and sufficiently detailed engineering plans and specifications, prepared by a registered professional engineer, of the proposed construction of structures, buildings and improvements associated with the project and the financial, environmental and social impacts thereof on the community or surrounding areas within the development area and source development area.
- (6) Environmental impact analysis:
 - (a) Land Use:
 - (i) Provide a map (at an appropriate scale) detailing existing land uses of the development area which may be impacted. The land use map should include, but not necessarily be restricted to the following categories: residential, commercial industrial open space, outdoor recreation, agricultural, wooded land and water bodies (surface and subsurface). All immediately affected public land boundaries should be indicated on the map;
 - (ii) Show all potential impacts of the proposed development upon public lands on the map as well and describe all such impacts in textual form;

- (iii) Specify whether the proposed development conforms to this County's planning policies, including, without limitation, any Cheyenne County Comprehensive or Master Plan;
- (iv) Describe the relationship, if any, of the proposed development 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;
- (v) Describe the present use and zoning of the land in the development area;
- (vi) Describe the agricultural productivity capability of the land in the development area (NRCS classification);
- (vii) Describe the potential adverse impact of the proposed development on the soil of the source development area including impact upon soil productivity, potential soil loss from air or water erosion, and degradation from susceptibility to noxious weed invasion.

(b) Water Resources

- (i) Describe and indicate on an appropriate map relevant surface water bodies (streams, lakes and reservoirs) and groundwater aquifers in the source development area and their uses;
- (ii) On the same, or other appropriate map, indicate any floodplain associated with the proposed development and document any historical flooding activity which has occurred;
- (iii) Describe potential effects of the proposed development on eutrophication, wasteload allocations and water quality of rivers, streams, aquifers and/or any existing or proposed reservoirs in this County;
- (iv) Describe potential effects of the proposed development on the above described water features in the source development area including the effects on present water quality and current uses. Include a detailed statement of impacts of the proposed project upon water quality standards including, but not limited to antidegradation standards, and all applicable basic or numeric standards for physical, biological, organic, inorganic, and metals pollutants; and
- (v) Describe the potential adverse effects of the proposed development upon plant and animal life dependent upon the water resources in the development area and source development area.

(b) Air Quality

Detail the impact of the proposed development on ambient air quality of the source development area and its environs. Specifically include description of impacts associated with airborne dust.

(c) Significant Environmentally Sensitive Factors

Identify and locate on a map of an appropriate scale each of the following features present in the source development area and its environs and detail the potential impact of the proposed development upon each feature:

- i. Marshlands and wetlands,
- ii. Groundwater recharge areas,
- iii. Potential natural hazards,
- iv. Forests, woodlands and prairies,
- v. Critical wildlife habitat or other wildlife protection areas,
- vi. Public outdoor recreation areas,
- vii. Critical aquatic life habitat, and
- viii. Agricultural lands.

(d) Visual Aesthetics and Nuisance Factors

Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors which may stem from the proposed development, including airborne dust and noxious weed invasion.

(e) Re-vegetation Plan:

All applications must include a detailed re-vegetation plan for all land areas from which historic irrigation practices will be removed. Describe all re-vegetation plans or efforts proposed as part of the development, including any such plans required as a condition of any Water Court decree pertaining to the development. Such plan shall include, at a minimum:

- (i) Description of all lands included;
- (ii) Plant and seed material to be used and the method and timing of their application;
- (iii) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended re-vegetation, for a period no less than two (2) growing seasons, or such longer or shorter period as the Board shall require;
- (iv) Whether the plan is required as a part of any Water Court transfer decree, and if so, whether the plan has been approved by the Water Court (include a copy of the decree and plan as so approved).
- (v) As a part of the security required by these Regulations, the amount of the proposed security which applicant proposes to post with the County to guarantee implementation of the re-vegetation plan, including the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds, and revising

and repeating the re-vegetation plan in the event the plan fails in whole or in part;

(vi) If the applicant believes that re-vegetation is not necessary and that dry land agricultural practices may be undertaken on land which is presently irrigated. the applicant must present evidence from an expert agronomist, local soil conservation district, local NRCS Office or other appropriate source that dry land agricultural practices are reasonably possible and that air quality, significant environmentally sensitive factors, visual aesthetics, nuisance factors and all other appropriate considerations as set forth herein will be satisfied.

(vii) The Board shall make the final decision whether revegetation is necessary under these circumstances.

(viii) The Board may, but is not required to consider a Water Court approved re-vegetation plan as partial or full satisfaction of the requirements of this Section.

(f) The application shall explain in detail what, if any, impacts the removal of water from the County may have on wildfires or wildfire suppression and shall propose specific mitigation strategies to minimize any adverse impacts relating to wildfires and wildfire suppression;

(g) The application shall demonstrate how the applicant will meet the applicable habitat needs listed below by the identified wildlife species and will avoid conflict with these needs. Where conflicts are unavoidable, the applicant shall present proposals to minimize the extent and degree of the conflict, including re-vegetation and/or compensation through replacement or enhancement of habitat on an alternative site.

- (i) Production Areas. These include areas necessary for pre-nuptial activities, breeding, young-bearing and rearing, i.e., spawning beds, nursery streams, and protected shoal areas for fish: permanent shallow water for amphibians: strutting, booming and dancing grounds and calling perches, nesting places, and protective young-rearing cover for birds: breeding grounds, calving and fawning areas, den trees, burrows, and young-rearing cover for mammals.
- (ii) Principal Feeding Areas. These include areas containing the natural foods of a wildlife species of sufficient quantity and quality and readily available to sustain a normal population.
- (iii) Summer Ranges. Summer ranges relatively free of human disturbance are highly important to the survival of some species, especially those requiring extended periods of time for young-rearing.
- (iv) Winter Ranges. Winter ranges of sufficient quality and quantity are critical for two reasons: (1) they are frequently so restricted in area that they limit the size of an animal population over its entire range; and (2) these ranges are often in proximity to human populations and human activities so that the species involved are adversely affected, or the species may adversely affect real and personal property.

- (v) Concentration Areas. Areas where high density of wildlife species at certain times of the year makes them highly susceptible to developments and activities of man. Examples of concentration areas include staging areas for waterfowl, sandhill cranes and deer; roosting areas for a number of birds; colonies of such colonial species as swallows, herons and beaver; and mass dens of snakes.
- (vi) Shelter Areas. Those physical or natural features in their habitats which provide escapement from their enemies and adverse weather conditions. Included here are such things as rough terrain for many species of wildlife; rocky bottoms and shorelines and aquatic vegetation in and adjacent to water for protection of fish, amphibians, and aquatic oriented species of terrestrial wildlife.
- (vii) Water and Minerals. A permanent water supply in sufficient quantity and quality is necessary to support most wildlife species. In addition some species have special mineral needs. Continuous stream flows and conservation pools in reservoirs are essential to the survival of fish. Stable water levels in lakes and reservoirs are highly desirable for fish, amphibians and many forms of terrestrial wildlife. High quality water, free of pollutants, is essential to the survival of fish, amphibians and many birds, as well as to the food organisms upon which they depend.
- (viii) Movement Corridors. Many species of wildlife have daily and seasonal movement patterns along more or less established corridors. These may be between seasonal ranges; to reach spawning areas; or between nesting, resting, roosting, feeding and watering areas. Concentrations of animals along such corridors increase the likelihood of conflict between wildlife and humans. Many of these corridors offer the only means for wildlife movements, or their uses become so traditional that disruption or interference could be disastrous for the species involved.
- (ix) Buffer Zones. Some species of wildlife are intolerant to disturbance from human activities during portions of the year. In order to protect these species, buffer zones with no or limited, human related disturbances are necessary during those seasons when these species occupy specific areas.
- (x) Special Habitat Needs. Some wildlife species have very specific habitat needs, without which they cannot survive. Therefore, reduction of such needs beyond certain limits, or a complete destruction of these habitat features could cause a species to be reduced in number or perish. For example, sagebrush is essential to the survival of sage grouse; wild turkeys need roost trees meeting certain requirements; catfish will only spawn when water temperatures are within certain limits;
- (xi) Shoreline Vegetation. Vegetation along stream banks and the shorelines of lakes is extremely important to aquatic wildlife and aquatic related forms of terrestrial wildlife. Such vegetation controls water temperatures, provides food and shelter and protects banks from excessive erosion which damages or destroys wildlife habitats.

(7) Financial impact analysis including but not limited to the following:

- (a) Review and summary of any assessed taxable property valuations, property tax collection experience, and all other matters of aid in determining the impact of the proposed development upon the County.
- (b) Proposed security to guarantee re-vegetation.
- (8) Benefit analysis both in natural and socioeconomic terms, and the degree to which benefits, both within the County and to the applicant, outweigh the adverse impacts of the project within the County.

4.304 Action on Permit Application

- (1) In determining whether to approve, approve with conditions, or disapprove a permit application, the Board shall take into consideration the following criteria:
 - (a) The proposed development adequately provides for re-vegetation of lands historically irrigated in a manner which will successfully prevent invasion of noxious weeds and air or waterborne soil loss;
 - (b) Re-vegetation and fire mitigation plans required hereby have been approved by the Board and adequate security therefore has been placed with the County;
 - (c) The proposed development will not significantly degrade existing natural scenic characteristics or agricultural productivity, create blight, nor cause other nuisance factors such as excessive noise, obnoxious odors, airborne dust or noxious weed invasion;
 - (d) The proposed development does not conflict with an approved local master plan or other applicable regional, state or federal land use or water plan;
 - (e) Adequate water supplies are available for successful implementation of revegetation plans;
 - (f) The proposed development does not adversely affect either surface or subsurface water rights of upstream or downstream users; provided, however, that the exercise of a senior water right in such a manner as to not cause material injury to other water rights in accordance with state statutes, decided case law and decrees of the water court, shall not be considered to create any adverse water rights impact upon such junior water rights;
 - (g) The benefits of the proposed development outweigh the losses of any natural resources or agricultural lands rendered unavailable or less productive as a result of the proposed development;
 - (h) The proposed development will not decrease the quality of peripheral or downstream surface or subsurface water resources below that designated by the Colorado Water Quality Control Commission as of the date of adoption of these Regulations or below existing water quality if such exceeds Water Quality Control Division standards;
 - (i) The proposed development will not violate federal or state air quality standards;

- (j) The proposed development will not significantly deteriorate aquatic habitats, marshlands and wetlands, agricultural productivity, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archeological importance, or the extent to which the proposed development will replace such habitat or areas in other locations within the County;

- (k) The proposed development will not create an undue financial burden on existing or future residents within the source development area. The cost of securing an adequate supply of water for existing and future needs of the residents of this County shall be considered in determining whether an "undue financial burden" will result.

- (l) The proposed development will not contribute to any increased risk of wildfire nor will it decrease the ability to combat wildfire or that any such risk will be satisfactorily mitigated.

CHAPTER 5

**REGULATIONS FOR SITE SELECTION AND CONSTRUCTION
OF MAJOR FACILITIES OF A PUBLIC UTILITY**

Article 1	General and Introductory provisions
5.101	Title and Citation
5.102	Purpose and Intent
5.103	Definitions
Article 2	Designation of Site Selection and Construction of Major Facilities of a Public Utility
5.201	Designation of Site Selection and Construction of Major Facilities of a Public Utility
Article 3	Permit Program for Site Selection and Construction of a Major Facility of a Public Utility
5.301	Prohibition on Site Selection and Construction of a Major Facility of a Public Utility Without Permit
5.302	Procedural Requirements
5.303	Submission Requirements
5.304	Action on Permit Application
5.305	Development Standards for Major Facilities of a Public Utility
Article 1	<u>General and Introductory Provisions</u>
5.101	<u>Title and Citation</u>
	This Chapter may be cited as "Regulations for Site Selection and Construction of Major Facilities of a Public Utility."
5.102	<u>Purpose and Intent</u>

The purpose and intent of the Regulations contained in this Chapter are:

- (1) To encourage planned and orderly land use development;
- (2) To provide for the needs of agriculture, forestry, industry, business, residential communities, and recreation in future growth;
- (3) To encourage uses of land and other natural resources which are in accordance with their character and adaptability;
- (4) To conserve soil, water, forest and agricultural resources;
- (5) To protect the beauty of the landscape;
- (6) To promote the efficient and economic use of public resources;
- (7) To promote and protect the economic viability of the County;
- (8) To prevent deterioration or degradation of existing air and water quality in the County and to minimize environmental impacts associated with development;
- (9) To avoid direct conflict with adopted local government, regional and state master plans.
- (10) To minimize damage to natural resources and preserve the same for future use;
- (11) To ensure the protection of the soil in areas of the County which have been historically irrigated in order that significant wildlife habitats within the County may be protected and preserved:
- (12) To avoid undue economic burden on existing or proposed communities and the residents of Cheyenne County;
- (13) To minimize the danger of wildfires or other hazard associated with any utility development; and
- (14) To prevent environmental harms including but not limited to soil loss from air or water erosion, airborne dust, noxious weed invasion, and to ensure that all negative effects on surface and groundwater quality and the aquatic and natural habitat of the source development area are effectively mitigated.

5.103 Definitions

- (1) "Applicant" means any individual, partnership, corporation, association, company, or other public or corporate body, including the federal government or any federal entity, and includes any political subdivision, agency, instrumentality, or corporation of the state.
- (2) "Appurtenant facilities" means any buildings, structures or other property which are clearly incidental to, and customarily found in connection with major facilities of public utilities and are operated and maintained for the benefit or convenience of the occupants, employees, customers or visitors of such major facilities.
- (3) "Central office buildings of telephone utilities" means facilities, including appurtenant facilities, owned and operated by a telephone utility for the primary purpose of providing

offices for telephone utilities employees engaged in administrative, accounting, engineering, training and like activities or public offices maintained for the transaction of business with telephone utilities customers, including the expansion of existing facilities which would increase office floor space by fifty (50) percent or five thousand (5,000) square feet or more.

- (4) "Hub height" is the distance from the ground immediately adjacent to a wind turbine measured to the center of the turbine hub.
- (5) "Major facilities of a public utility" means:
 - (a) Central office buildings of telephone utilities;
 - (b) Transmission lines, power plants, and substations of electrical utilities; and
 - (c) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.
- (6) "Master plan" means a plan for the physical development of the jurisdiction as defined by C.R.S. 30-28-106 and 30-28-107.
- (7) "Nonconforming use" means a use in existence at the time of the adoption of these Regulations, which use, were it a new use, would be one for which a permit is required under these Regulations.
- (8) "Pipelines" mean any pipeline and appurtenant facilities designed for, or capable of, transporting natural gas or other petroleum derivatives other than a low pressure local supply line.
- (9) "Power plant" means: (a) any electrical generating facility regardless of power source or generating capacity, including but not limited to wind, solar, or geothermal generating facilities, which utilizes more than five (5) acres of land; (b) any electrical generating facility which has a generating capacity of ten (10) megawatts or more regardless of how much acreage is utilized; and (c) any addition to, or modification of, any existing electrical generating facility which addition or modification has the effect of increasing the existing design capacity of the facility by a combined ten (10) megawatts or more; and (d) any facilities appurtenant to any of the foregoing specifically including but not limited to meteorological towers utilized for the measurement of meteorological data in connection with any generating facility.
- (10) "Public utilities" as used in these Regulations means the term as defined by C.R.S. 401-103.
- (11) "Site selection" means the process for determining the location of major facilities of a public utility or the expansion of existing major facilities of a public utility.
- (12) "Storage area" means any facility, including appurtenant facilities, designed to store 50 million cubic feet or more of natural gas or 35,000 barrels or more of petroleum derivatives, or any expansion of any existing storage facilities to accommodate 50 million cubic feet or more of natural gas or 35,000 barrels or more of petroleum derivatives. Deep underground storage areas are excluded.
- (13) "Substation" means any facility designed to provide switching, voltage transformation, or voltage control required for the transmission of electricity at 230 kilovolts.

- (14) "System height" refers to the height from the ground to the highest-most point on any improvement or facility constructed in connection with any major facility of a public utility
- (15) "Transmission lines" mean any electric transmission line and appurtenant facilities which emanate from a power plant or substation and terminate at a substation.
- (16) "Wind turbine" includes any system for the conversion of wind energy to electricity and includes any base, tower, blades, and transformers.

Article 2 Designation of Site Selection and Construction of Major Facilities of a Public Utility

5.201 Designation of Site Selection and Construction of Major Facilities of a Public Utility as an Activity of State Interest

Having considered the intensity of current and foreseeable development pressures and the potential impact of development of major facilities of a public utility upon Cheyenne County, the Board of County Commissioners hereby declares and orders that the development of major facilities of a public utility wholly or partially within the unincorporated territory of the County be and hereby is designated an activity of state interest and regulated pursuant to the provisions of these Regulations.

Such designation is based upon the Board's conclusion, based upon all information provided at the hearing on the adoption of these regulations that unregulated development of major facilities of a public utility would:

- (1) Adversely affect agricultural production and the economic vitality of the County and its residents;
- (2) Adversely affect natural resources including the ability to extract oil, gas and other valuable minerals;
- (3) Adversely affect wildlife habitats in which the wildlife species, as identified by the Division of Wildlife of the Colorado Department of Natural Resources, could be endangered.
- (4) Cause, or increase the scope and severity of, wildfires or impair the ability to fight wildfires;
- (5) Increase pollution of rivers, streams, reservoirs, ponds and aquifer recharge areas;
- (6) Be inconsistent with the County Master Plan which requires evaluation of all development and mitigation of adverse impacts thereof;
- (7) Damage the beauty of Cheyenne County's rural landscape;
- (8) Be inconsistent with the County's goal of promoting efficient and economic use of all public resources;
- (9) Be harmful to the physical, environmental, or economic well-being of Cheyenne County and its residents;
- (10) Be harmful to the County's agricultural economy and lifestyle;

- (11) Adversely impact the County, its residents, and the environment including, by causing soil loss from air or water erosion, airborne dust, noxious weed invasion, loss of irrigated agricultural lands, loss of native or other wildlife habitat and increased risk of wildfire if such impacts are not identified before development and effectively mitigated.
- (12) Encourage uses of the land and natural resources in ways unsuited to their character;
- (13) Degrade environmental quality within the County;
- (14) Be incompatible with, and destructive of, historical, natural and archeological resources within the County; and
- (15) Pose a risk of harm to public health and safety and to private property.

Article 3 Permit Applications

5.301 Prohibition on Site Selection and Construction of a Major Facility of a Public Utility Without Permit

- (1) No person may locate or construct a major facility of a public utility wholly or partially in this County without first obtaining a permit pursuant to these Regulations.
- (2) No local authority may issue a building permit for purposes of selecting a site for or constructing a major facility of a public utility wholly or partially in this County without the applicant first having obtained a permit pursuant to these Regulations.

5.302 Procedural Requirements

- (1) The procedures concerning permit applications, notice and conduct of permit hearings, review of Board decisions and issuance and content of permits for selecting a site and constructing any major facility of a public facility shall comply with the provisions set forth in Chapter 2, the Permit Regulations adopted by this County.

5.303 Submission Requirements

An application for a permit to engage in development of a major facility of a public utility shall be accompanied by five (5) copies of the following documents and information:

- (1) A detailed site plan, prepared at a reasonable scale as determined by the County, the completeness and accuracy of which is attested to by the certificate of a professional surveyor licensed in the State of Colorado, which, at a minimum, sets forth in reasonable detail the following information regarding the proposed development:
 - (a) Date of preparation, revision box, written and graphic scale, and true north arrow;
 - (b) Project area boundary and approximate size of the site where the proposed facility will be located, in areas or square feet;
 - (c) Location of each element associated with the proposed facility showing the project's boundary and all structures, improvements, facilities, roads and driveways, construction and supply yards, proposed to be constructed or used in the construction, operation or maintenance of the proposed project;

- (d) The proposed location of all utility interconnections;
- (e) The names and property boundaries of the owners of real property within the project boundary and parcels within five hundred (500) feet of project boundaries together with any easements of record;
- (f) All land uses, including the location of any irrigation facilities, within project boundary;
- (g) The location of all existing improvements, structures and facilities located within five hundred (500) of the project boundaries including, but not limited to, public roads, railroad tracks, dwelling units, outbuildings, microwave communication links, utility lines and facilities, air strips and transmission lines within the project boundary as well as those within one mile of the project boundary;
- (h) Existing topography and outstanding topographic feature in the project area;
- (i) The setback areas for existing public roads, railroad tracks, uninhabited structures, dwellings units, and above-ground electrical or communications lines within the project boundary;
- (j) All access and other routes, specifically including but not limited to County Roads, which Applicant proposes to use during construction, operation and maintenance of the proposed facility specifying the existing and proposed road surface material for each such route;
- (k) All potentially relevant information relating to the geology of the project area including delineation of any mud flows, depth of water table, debris fans, unstable or potentially unstable soils or slopes, any special seismic considerations, areas of high radioactivity, ground subsidence, expansive soil and rock, floodway and floodplains, or other geologic conditions which are pertinent;
- (l) All distinct wildlife habitats within the project boundaries or likely to be affected by the construction, operation or maintenance of the project specifically including but not limited to identification of any endangered species or their habitat, wildlife migration routes or other information relevant to the effect of the project on wildlife;
- (m) All surface water and water courses; and
- (n) If the project required drilling into the soil to a depth likely to encounter water, all aquifers that may be affected by project shall be mapped together with any wells which utilize water which may be affected by the project (showing depths and flow rates for each well shown). In addition to showing the aquifer on a map, if the project may affect an aquifer or water source which is currently in use, Applicant shall provide a detailed report regarding all aspects of the aquifer and the potential impacts of the project on subsurface water.

(2) Details of the ownership of land which will be affected by proposed project including:

- (a) A list of the names and addresses of all owners having any interest in real property (surface or severed mineral interest) within the proposed development, including the acreage and legal description of the property owned by such persons;
- (b) Copies of all of the recorded memoranda of leases or easements executed between Applicant and the owners of all real property included within the boundaries of the proposed development or evidence of Applicant's fee simple ownership of such property;
- (c) Certification by Applicant that Applicant has secured an equitable or legal interest to use all properties located within the project boundary. Upon request, Applicant must provide proof of Applicants legal or equitable interest.

- (3) A detailed description of all elements to be used in connection with its construction, operation or maintenance of the facility (such as number, location, size, purpose, function and design of towers, turbines, solar arrays, wells, substations, compressor stations, pipelines, transmission lines, construction roads, lay down yards, storage or production yards or facilities, batch plants, or the like), whether temporary or permanent, together with the following information:
- (a) Projected development and construction schedule;
 - (b) A description of the relationship of project to local land use policies and comprehensive plans and to policies and plans adopted or under preparation by federal, state and other affected local governmental agencies;
 - (c) A description of the relationship of the project to other existing and planned utility facilities of similar nature, other communication or energy generation and transmission facilities, local government capital improvement programs, and special district expansion programs;
 - (d) A description of the reasons why the public convenience and necessity require the facility of the size and nature proposed be constructed on the site proposed;
 - (e) Detailed plans showing all existing and proposed grading for the facility site(s);
 - (f) A drainage and erosion control plan demonstrating adequate practices and specific plans which will be utilized to prevent erosion and run-off during construction;
 - (g) A geotechnical study performed by a professional engineer licensed in the State of Colorado which includes, at a minimum, the following information for each site on which any improvements will be constructed in connection with the facility:
 - (i) Soils and geologic characteristics of the site based upon onsite sampling and testing;
 - (ii) Foundation and systems design criteria for all proposed structures;
 - (iii) Slope stability analysis;
 - (iv) Grading criteria for ground preparation, cuts and fills, and soil compaction;
 - (h) An analysis of, and detailed plan for handling, the sewerage requirements of the proposed facility including all proposed sewage treatment facilities. If the proposed facility includes any structures which will be regularly occupied or used by personnel in connection with the construction, operation or maintenance of operation of the facility, permanent sanitation facilities adequate to meet the projected need at each such location (connection to public sewer, septic or other permanent waste disposal system which complies with all applicable regulations for individual sewage disposal systems) will be required. Applicant shall obtain all required permits and authorizations and pay all fees associated with the use of such systems. In all other instances, Applicant may demonstrate compliance with the requirements of this section by use of temporary sanitation facilities provided they are properly maintained so as to provide safe and adequate sanitation for all persons working on the facility;
 - (i) An analysis of, and detailed plan for handling, the water requirements of the proposed facility including demonstrating the provision of potable water supplies sufficient to serve all workers who will be working on the facility during construction, operation or maintenance including demonstration that Applicant has a legal right to obtain all needed water. If the proposed facility includes any structures which will be regularly occupied or used by personnel in connection

with either the construction, operation or maintenance of the facility, or which might be a source of wildfire, a permanent water supply adequate to meet the projected need at each such location (connection to public water system, well or other means of ensuring adequate water supplies) will be required. Applicant shall obtain all required permits and authorizations and pay all fees associated with the use of any such systems. In all other instances, Applicant may demonstrate compliance with the requirements of this section by use of temporary water supplies provided Applicant demonstrates their adequacy to meet anticipated needs for safe and adequate drinking water for all persons working on the facility;

- (j) An analysis of, and detailed plan for handling, all stormwater or other water discharges from the facility;
- (k) A description of all employment opportunities likely to be associated with the construction, operation and maintenance of the facility describing the types of jobs, number of positions anticipated, wage and salary schedules, opportunities for employment of local residents, and employment opportunities for low income and minority population in impact area. Applicant shall also provide its best estimate of the number of employees to be retained in connection with construction, operation and maintenance of the facility and number of shifts and number of employees per shift during the construction, operation and maintenance of the project;
- (l) An description of, and assessment of the potential effects of the proposed project on, all County and other public services and capital facilities. This analysis shall require consideration of all public services and facilities which may be directly or indirectly required in connection with the facility or which those employed by the facility may utilize including, but not limited to, police and fire protection, ambulance, emergency medical, hospital, medical health, mental health, social services, recreation, road maintenance, education, together with an inventory of current capacity of all such public services and an analysis of the needs of each public service provider to meet any anticipated demand resulting from the construction, operation or maintenance of the project. Such inventory of existing services shall include all relevant information including identifying the entity providing the service, its jurisdiction, types and levels of service currently provided, existing equipment, capacity and utilization, current operating revenues, expenditures and manpower, existing tax base and level of taxation;
- (m) A detailed description of all traffic and loads anticipated in connection with the construction, operation and maintenance of the facility including roads to be used, number of trips, types of vehicle, vehicle weights (total, axle and wheel), sizes (length, width, height), and any other information which may be helpful in evaluating the potential impact of the use on the County roads, together with a pre-construction baseline survey of all County roads which Applicant proposes to use during construction to document their pre-construction condition. Such survey shall include both photographic and video documentation of existing road conditions together with detailed engineering reports on all bridges, culverts and other areas of potential concern regarding all County roads proposed to be used in connection with the construction of the facility. In addition, Applicant shall submit a mitigation plan detailing all measures which Applicant proposes to implement for improvement or repair of County roads, dust control on County roads; traffic closures or restriction, congestion, and all other potential impacts of the construction, operation or maintenance of the facility may have on County Roads or the public which uses those roads. Such mitigation plan shall also provide for the maintenance of adequate emergency access for fire, police and ambulances throughout the construction, operation and maintenance of the facility.

- (n) An analysis of likely housing needs associated with the construction, operation and maintenance of the project together with an inventory of the community's current capacity to supply such housing and a plan for addressing any shortfall of housing stock identified;
 - (o) A report identifying any historical and archaeological sites, artifacts or resources which may be affected by the project (as identified by Applicant after consultation with the Colorado State Historical Society and any local historical society) together with a plan for minimizing impacts of the project on all identified sites, artifacts and resources. In addition, in the event any historical or archeological sites, artifacts or resources are identified during construction, operation or maintenance of the project, such sites, artifacts or resources shall be documented and preserved;
 - (p) A description of atmospheric conditions within the project area which may be impacted by the project including meteorological data, wind speed and direction, inversion height, and existing ambient air quality (TSP, S02, HC, CO, NOx, O3, etc.);
 - (q) Any plans for future phases or extensions of the facility and the relationship of the facility (if currently foreseen) to larger programs and plans;
 - (r) Applicant's timetable for planning, approval, constructing, testing and operating the project (e.g., federal permits, state permits and authorizations, local zoning, etc.);
 - (s) A description of all support facilities (e.g. pollution control, parking areas, landscaping, etc.) to be provided;
 - (t) Applicant's best estimate of its anticipated capital investment in facility and of the cost of each distinct element or phase of the project;
 - (u) An estimate of anticipated probable revenues to county and municipal governments and special districts arising from the construction, operation and maintenance of the project;
 - (v) A description of all alternatives which might eliminate or reduce the need for the proposed project or any distinct element proposed to be including in the project such as alternative locations and routes, alternative types of facilities, use of existing rights-of-way or joint use of rights-of-way and facilities with other utilities, upgrading of existing facilities, or conservation;
 - (w) Evidence of liability insurance issued by one or more carriers licensed to do business in the State of Colorado in amounts sufficient to cover any loss or damage to persons and structures during construction, operation or maintenance of the facility.
 - (x) Certification of Applicant's intent to enter into interconnection, crossing or other applicable agreement(s) with any applicable utilities which may be required in order for the project to be effective; and
 - (y) Certification that Applicant has notified the owners and operators of any wireless communication link which is located within two miles of any proposed facilities.
- (4) A detailed description and analysis of all environmental impacts which the proposed development may have together with detailed plans to mitigate and minimize all such impacts including:
- (a) A description of baseline environmental conditions and of all impacts that the proposed use may cause specifically including but not limited to visual and noise impacts, dust, erosion,

sedimentation and flooding. This shall require Applicant to provide measured levels of existing ambient noise as well as provide detailed information relating to the noise and all visual impacts associated with the project and may require that Applicant provide accurate depictions of all elements of the proposed facility overlain on existing vistas;

(b) A description of all potential hazards associated with the proposed project and of all and emergency procedures and plans to mitigate each identified hazard including but not limited to hazards from:

- (i) fire, explosion, wind or weather, and other dangers to the health, safety and welfare of employees and the general public;
- (ii) environmental damage and contamination due to materials used at or activities taking place at the proposed facility;
- (iii) electromagnetic or other fields or radiation emanating from any facilities associated with the project; and
- (iv) prevalent natural hazards that will affect or be affected by development.

(c) A description of how Applicant will mitigate impacts all impacts of the project and documentation that applicable standards will be satisfied.

(5) Applicant shall provide a plan containing at least the following information regarding the decommissioning of its proposed development which decommissioning plan shall become a part of any permit issued for development of the proposed facility:

- (a) A description of all triggering events for decommissioning the proposed facility or any portion thereof;
- (b) A plan for the removal of all structures, debris and cabling including those below the soil surface to a depth of at least forty-eight (48) inches, or greater if provided in landowner agreements;
- (c) A plan for reclaiming and restoring all soils and vegetation of any affected areas within the boundaries of the proposed development;
- (d) A plan for repairing all impacts on County roads relating to decommissioning and the removal of improvements from the project;
- (e) An estimate of the cost of decommissioning and reclaiming all lands affected by the development; and
- (f) A description of the form of Financial Assurance for decommissioning which Applicant proposes to provide to ensure proper decommissioning in accordance with these regulations.

5.304

Action on Permit Application

- (1) The Board shall approve an application for a permit for site selection and construction of a major facility of a public utility (with reasonable conditions, if any, in the discretion of the Board) only if the Board finds that the proposed site selection and the construction, operation and maintenance of the project as permitted will comply with all of the following criteria:
 - (a) The proposed development complies with all applicable standards specified by these Regulations;
 - (b) The health, welfare and safety of the citizens of this County will be protected and served;

- (c) The natural and socio-economic environment of this County will be protected and enhanced;
- (d) All reasonable alternatives to the proposed action, including use of existing utility rights-of-way, have been adequately assessed and the proposed action represents the alternative with the least unmitigated adverse impact on the County and its residents, infrastructure and public services, and represents the best utilization of resources in the impact area;
- (e) A satisfactory program to mitigate and minimize adverse impacts has been presented;
- (f) The proposed development is consistent with the provisions of the County Master Plan;
- (g) The nature and location or expansion of the facility complements the existing and reasonably foreseeable needs of the service area and of the area immediately affected by the facility;
- (h) The nature and location or expansion of the facility does not unduly or unreasonably impact existing community services;
- (i) The nature and location or expansion of the facility will not create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services, as determined by the Board;
- (j) The facility site or expansion area is not in an area with general meteorological and climatological conditions which would unreasonably interfere with or obstruct normal operations and maintenance:
- (k) The nature and location of the facility or expansion will not adversely affect the water rights of any upstream, downstream, or adjacent communities or other water users:
- (l) The nature and location of the facility or expansion will not unduly interfere with any existing easements for or rights-of-way for other utilities, canals, mineral claims, or roads:
- (m) The applicant has obtained all rights and easements needed to permit it to complete the development as proposed;
- (n) Adequate electric, gas, telephone, water, sewage, and other utilities exist or shall be developed to service the site;
- (o) The nature and location for expansion of the facility will not interfere with any significant wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark within the impact area;
- (p) The nature and location or expansion of the facility, including expected growth and development related to the operation and provision of service. will not significantly deteriorate air quality in the impact area;

- (q) The geological and topographic features of the site are adequate for all construction, clearing, grading, drainage, vegetation, and other needs of the facility construction or expansion;
 - (r) The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels;
 - (s) The benefits of the proposed developments outweigh the losses of any natural resources or reduction of productivity of agricultural lands or other unmitigated adverse impacts associated with the proposed development.
- (2) The Board shall deny the permit if the proposed development does not meet all of the criteria in subsection (1) of this Section.
 - (3) Any permit approved and issued by the Board shall govern all aspects of the construction, operation and maintenance of the permitted facility for the life of the facility and shall contractually obligate the Applicant and its successors or assigns to comply with each and every requirement of these Regulations and to construct, operate and maintain the permitted facility in conformity with all representations, plans, specifications, and assurances given by Applicant in any materials submitted to County in connection with the approval of the permit application unless variation therefrom has been approved in writing by the County.
 - (4) Any permit approved by the Board shall, as a condition of such approval, require Applicant to enter into a Road Maintenance Agreement with the County governing the permittee's use of any County roads during construction, operation and maintenance of all facilities for the life of the project and describing the permittee's obligations with regard to the upgrading, maintenance and repair of County roads used in connection with the project.

5.305 Development Standards for Major Utility Facilities

Major facilities of a utility shall be required to comply with the following specific development standards:

- (1) No such facility shall cause significant degradation of the quality of surface or ground water resources.
- (2) Construction, maintenance and operation of any such facility shall not significantly increase existing glare, dust, or noise at surrounding properties or on any public rights of way. To minimize the potential for glare, all such facilities shall be a neutral color such as matte white or matte gray and shall be constructed of non-reflective material.
- (3) All such facilities shall operate within permissible noise levels for commercial uses as specified in C.R.S. 25-12-103.
- (4) Fugitive dust and particulate emissions shall be controlled on the site.
- (5) Waste materials shall be handled, stored, and disposed of in a manner that controls fugitive dust, fugitive particulate conditions, blowing debris and other potential nuisance conditions.
- (6) All facilities shall comply with FAA minimum lighting requirements at the lowest intensity allowed. Any array of flashing or pulsed obstruction lighting shall be synchronized to flash

simultaneously. No accessory lighting is permitted, except for lighting that is necessary for safety and security purposes.

- (7) Erosion and sedimentation control measures that ensure that disturbed areas and soil stockpiles are stabilized during construction shall be implemented. Disturbed areas shall be revegetated as soon as reasonably possible and in accordance with landowner agreements.
- (8) Run-off shall be managed in accordance with all applicable regulations. If applicable, Applicant shall obtain a Construction Stormwater Discharge Permit from the Colorado Department of Public Health and the Environment, Water Quality Control Division.
- (9) Such facilities shall not have a significant adverse impact on agricultural lands and agricultural operations above the standard provided in the landowner lease agreements.
- (10) All sites utilized in connection with any such facility shall be developed in a manner that preserves, as much as possible, the natural features of the site, avoids areas of environmental sensitivity, and minimizes adverse visual impacts.
- (11) Unless otherwise required by applicable federal or state regulations, the following minimum setbacks shall apply and shall be measured as the distance between a point on the object from which setback is required which lies closest to the proposed development and the nearest point of any project improvement or structure.

Minimum safety setbacks:

Setback from above-ground public electric power lines or communications lines	1. 1 times system height, with a minimum setback of 250 feet
Setback from public road or highway or railroad ¹	1. 1 times system height, with a minimum setback of 250 feet
Setback from public road or highway with ADT ³ of 7,000 or more ²	1. 1 times system height, with a minimum setback of 250 feet
Setback from inhabited structures, including: residence, school, hospital, church, public library, or other building open to the public.	2 times system height, with a minimum setback of 1,500 feet
Setback from all other property lines, unless appropriate easements are secured from adjacent property owners or other acceptable mitigation is approved by the Board.	1.1 times system height

Notes:

1. Measured from the outer boundary of the public utility right-of- way or easement [or from existing power line or telephone line].

2. Measured from the outer boundary of the public road/highway right-of-way or railroad right-of-way.

3. Average daily trips, based on traffic field measurements [determined by CDOT or County].

- (12) All such facilities shall be setback a minimum 1/4 mile from any highway designated to be a scenic highway or roadway by the Cheyenne County Zoning Ordinance or by the State. A scenic resource protection setback requirement may be reduced if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.
- (13) All such facilities which include wind turbine or transmission towers shall have a minimum clearance between the lowest point of any turbine blade tip or conductor and the ground of sixty (60) feet.
- (14) Fencing, or other barriers acceptable to the County, shall be installed around all substations or other similar facilities to prevent unauthorized access.
- (15) Any guy wires shall be distinctly marked and shall be located so as to minimize the risk of collision by low flying aircraft.
- (16) Any climbing apparatus that is not secured behind a lockable gate or door shall be a minimum of fifteen (15) feet from ground level.
- (17) Signs warning of any electrical, explosion or other hazards associated with any such facility shall be posted at each distinct location utilized by the facility (such as the base of each wind turbine or transmission line tower or at the entrance to any electrical substation or pump station).
- (18) All such facilities shall have and maintain adequate fire control and prevention measures.
- (19) Unless geologic conditions or other technical or engineering considerations prevent underground installation, electrical collection system wiring and powerlines for any such facility shall be installed underground except where collector system wiring is brought together from the project substation to the point of electrical interconnection. Overhead transmission lines are permissible from any substation to the point of electrical interconnection with the regional electrical transmission grid.
- (20) Unless no other reasonable alternative exists, no installations shall be permitted within any County road right-of-way. If an installation must be installed in a County road right-of-way, all such installations shall be underground and shall comply with the applicable permit and design requirements of Cheyenne County Road and Bridge. As soon as reasonably possible, any disturbed portion of any County road right-of-way shall be restored as nearly as possible to the condition which existed immediately prior to installation. Any installation which crosses a County road right-of-way shall be as close as possible to perpendicular to the roadway. As-built drawings of all installations in any County road right-of-way shall be provided to Cheyenne County Road and Bridge once the installation has been completed. All underground installations located within County road rights of way shall be signed to give notice, visible on site, of the presence of such installations. If any industry or governmental standard applies to such signage, the signage shall comply with such standards.

- (21) Transmission from any electrical substation to the point of electrical interconnection shall comply with the National Electric Code as well as all applicable State and Federal regulations. Interconnection shall conform to the requirements of the electric utility company, and applicable State and Federal electrical regulations.
- (22) Applicant shall minimize or mitigate the emission of magnetic and other radiation from all facilities as well as any interference with electromagnetic communications caused by the any such facility including radio, telephone or television signals.
- (23) All structural systems associated with any such facilities (including foundations) shall be designed or reviewed by a registered structural engineer licensed in Colorado to confirm their safety and compliance with all applicable standards and regulations.
- (24) All electrical systems associated with any such facilities shall be designed or reviewed by a registered electrical engineer licensed in Colorado to confirm their safety and compliance with all applicable standards and regulations.
- (25) No installations associated with any such facility (including wind turbine or transmission towers) shall be used for displaying any advertising provided however that this shall not prohibit signage identifying the manufacturer or operator of the facility.
- (26) Design of all buildings, related structures and installations associated with the project shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and existing environment.

EXHIBIT A, PAGE 1

**DESIGNATION OF AREA
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on _____ 20____ the Board of County Commissioners of Cheyenne County designated the following lands as an area of state interest:

All lands historically irrigated within Cheyenne County as indicated on **Exhibit D**, as an area containing or having significant impact upon natural resources of statewide importance.

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 Land Use Administrator, Cheyenne County Courthouse, Cheyenne Wells, Colorado.

Date: _____

ATTEST:

Clerk to the Board

Chair
Board of County Commissioners
Cheyenne 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. on _____ 20____, the Board of County Commissioners of Cheyenne County designated as an activity of state interest: efficient utilization of municipal and industrial water projects.

Such activities may not be conducted within the unincorporated area of Cheyenne County without a permit. Procedures for obtaining such a permit are available at Office of the County Land Use Administrator, Cheyenne County Courthouse, Cheyenne Wells, Colorado.

Date: _____

ATTEST:

Clerk to the Board

Chair
Board of County Commissioners
Cheyenne County, Colorado

[S E A L]

EXHIBIT A, PAGE 3

**DESIGNATION OF ACTIVITY
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S. on _____ 20____, the Board of County Commissioners of Cheyenne County designated as an activity of state interest: site selection and construction of major facilities of a public utility.

Such activities may not be conducted within the unincorporated area of Cheyenne County without a permit. Procedures for obtaining such a permit are available at Office of the County Land Use Administrator, Cheyenne County Courthouse, Cheyenne Wells, Colorado.

Date: _____

ATTEST:

Clerk to the Board

[S E A L]

Chair
Board of County Commissioners
Cheyenne County, Colorado

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**

To: The Board of County Commissioners of Cheyenne County, Colorado

Re: _____ as a matter of state interest.

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

Date Submitted:

Date Received and Accepted as Complete:

1. Matter of State Interest.

1) The applicant requests that a permit be issued for each of the items checked below:

2) A permit to conduct one or more of the following matters of state interest:

- a. Efficient Utilization of Municipal and Industrial Water Projects
- b. Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance.
- c. Major Facilities of a Public Utility

2. Proposed Activity or Development.

General description of the specific activity or development proposed:

3. General Description.

A general, non-legal description and the popular name, if any of the tract of land upon which the activity or development is to be conducted:

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):

5. Owners and Interests.

Set out below the names of those persons holding recorded legal, equitable, contractual and option interests and any other person known to the applicant having an interest in the property described in paragraph 4, above. as well as the nature and extent of those interests for each person, provided that such recorded interests shall be limited to those which are recorded in the Cheyenne 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 Cheyenne County 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 herewith.

APPLICANT:

By: _____
(Name)(Title)

Note: Following receipt of a completed application for a permit, the Board shall determine and set a fee in an amount, no less than but not limited to the amount necessary to cover the costs incurred in the review and approval of the permit application, including all hearings conducted therefore, and shall notify the applicant in writing of said fee and its amount. Until the fee is paid to the Board as provided in the Regulations, the application for a permit shall not be further processed.

EXHIBIT C
PERMIT
ISSUED TO CONDUCT A
DESIGNATED ACTIVITY OF STATE INTEREST
OR
TO ENGAGE IN DEVELOPMENT IN A
DESIGNATED AREA OF STATE INTEREST
IN
COUNTY OF CHEYENNE, COLORADO

Pursuant to Guidelines and Regulations for Areas and Activities of State Interest of Cheyenne County heretofore adopted by the Board of County Commissioners, the County has received an application from _____ (hereinafter "Applicant") for a permit to conduct the following matter(s) of state interest; and has approved that application.

This permit authorizes the Applicant:

1. To:
2. On the following-described tract of land:
3. For the following period:
4. In accordance with the plans and/or specifications approved by the Board on _____ 20____, as well as the guidelines for administration adopted by the County for:

_____ [insert matter of state interest]
5. On the condition that the Applicant proceeds in conformity with all applicable federal and state statutes and regulations as well as all applicable local land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes.
6. Additional Permit Conditions:

This permit shall not be effective until the Applicant has filed the proper security with the Board, pursuant to provisions of the Administrative and Permit Regulations in the amount of (\$ _____).

This permit is valid for use only by the Applicant and may not be transferred. In the event that the Applicant fails to take substantial steps to initiate the above development or activity within twelve (12) months from the date of this permit or, if such steps are taken, in the event the Applicant fails to complete the development or activity with reasonable diligence, this permit may be revoked by the Board.

Date: _____ 20____

CHEYENNE COUNTY BOARD

ATTEST:

Clerk to the Board

[S E A L]

By: _____

Chair
Board of County Commissioners
Cheyenne County, Colorado

EXHIBIT D

MAP OF AREA OF CHEYENNE COUNTY HISTORICALLY IRRIGATED

(ATTACHED)