

MEMORANDUM

DATE: May 2, 2019
TO: Board of County Commissioners
FROM: Courtney Roseberry, Natural Resource Planner
Re: Water regulation amendments

1. Introduction

The Planning Department and the County Attorney's Office is presenting proposed amendments to § 82-186 of the Land Use Code as the culmination of a multi-year effort to adequately address our community's needs for adequate and safe drinking water and the County's legal obligation to ensure the same. A work session with the Board of County Commissioners has been scheduled for May 14 to discuss the draft as it will be the Board's first opportunity to see how the work performed through this multi-year effort is translated to articulated standards. Staff seeks input from the Board about the form and content of the standards. After receiving this input, the amendments will be advanced to the Planning Commission for consideration and adoption and then to the Board.

2. Purpose and Description

The purpose of the proposed code revisions to LPLUC §82-186 are; 1) reorganize §82-186 to provide a more logical progression through the code section; 2) define previously undefined terms; 3) resolve existing ambiguities in requirements; and 4) implement the recommendations of the Water Advisory Commission (WAC) and Water Policy Priorities adopted by the Board of County Commissioners in 2017 (adopted water priorities).

3. Summary of Reorganization

Many of the proposed edits to LPLUC §82-186 simply entail reorganizing the section to enhance its clarity and readability. Thus, the edits propose breaking lengthy provisions into multiple subsections, and reordering provisions so that they progress more intuitively, providing the information in the order the reader expects, as follows:

- I. Purpose, Authority, and Applicability — this subsection sets forth the policy underpinning the water regulations, the legal authority for their promulgation, and specific exceptions to their applicability.
- II. Water Demand Criteria — this subsection sets forth the standards and criteria that shall inform an applicant's calculation of a project's estimated water demand.
- III. Criteria for Verification of Legal Water Supply — this subsection prescribes the requirements an applicant must meet to establish an adequate legal ("paper") water supply.

- IV. Criteria for Verification of Physical Water Supply — this subsection prescribes requirements for establishing an adequate physical (“wet”) water supply.
- V. Water Quality Standards — this subsection promulgates water quality standards for all new development subject to the County’s water regulations.
- VI. Transfer of Title Water Quality Testing — this is a new subsection requiring water quality testing upon certain real property transfers.
- VII. Cistern and Hauled Water Supply — this subsection states the circumstances under which the County may allow development relying on hauled water which substantively remains unchanged from current regulations.
- VIII. County Water Rights — this subsection calls out the County’s existing decreed water rights that may be transferred to third parties (otherwise known as the 99/127 water rights).
- IX. Standards and Specifications for Water Delivery Systems — this subsection is reserved for the adoption of pipe standards, currently being created, for commercial and municipal water providers operating in the County’s unincorporated territories.

4. History and Outcomes of the Water Advisory Commission (WAC)

While most of the County’s Boards and Commissions are long-term, continuous committees, on occasion the Board creates short term task forces or committees to address very discrete issues and once their duties are fulfilled, the task force or committee is dissolved. Three times in the past, the Board of County Commissioners has formed short term committees to address water related issues. In each instance the composition of the task force or committee varied depending upon the expertise required to address the assigned tasks. In 2003, the Board of County Commissioners created a 15-member Water Advisory Commission (the “2003 WAC”), whose primary purpose was to consider the availability of water to serve unmet domestic, agricultural and industrial water needs in the County (and what barriers existed in meeting those needs). Based on the Commission’s work, in 2007, a comprehensive amendment (focused primarily on water wells) to Section 82-186 of the La Plata County Code was completed. This land use regulation requires every project and subdivision subject to County approval to prove that an adequate quantity and quality of water will be supplied to the project.

In 2009, the Board of County Commissioners formed the Water Policy Task Force (the “WPTF”) and tasked it to create policies related to water rights (the “06CW99” and “06CW127” water rights) decreed to the County. Since the decrees did not specify how the water rights were to be administered, the WPTF vetted Policy Bulletins drafted by County staff to provide administrative details. As a result of the task

force's efforts, five (5) simplified policy bulletins were created, which were codified in Chapter 94 of the La Plata County Code.

In 2013, under the direction of the Board of County Commissioners, staff held a series of three (3) work sessions on the status of La Plata County's water rights and needs (both from an organizational perspective and a community-wide perspective). As a result of those work sessions, staff outlined a series of recommendations about how the County could collaborate with local water experts to undertake a comprehensive assessment of community water resources in unincorporated La Plata County. Part of those recommendations included the re-formation of the WAC.

The Board of County Commissioners approved staff's five (5) recommended policy questions, formed the 2013 WAC and tasked the following:

1. Should La Plata County be concerned about our local water resources because of: (a) lack of water supplies, (b) lack of water infrastructure, or (c) inefficiencies in the current systems?
2. Should La Plata County operate "water docks?" If so, where should those water docks be located?
3. If La Plata County purchases Animas – La Plata Project water, how should that purchased water be used?
4. Concerning "proof of water" for central water systems, should the La Plata County Code be minimally amended to conform with state statutes or be amended to require more than the minimums established by state statutes?
5. Will a County-wide ground water hydrological study (a) tell the community anything we do not already know, and (b) be the best use of La Plata County's limited fiscal resources?

The individuals appointed to the 2013 WAC were:

- A. Buck Skillen – Trout Unlimited, Animas River Task Force, Animas Watershed Partnership
- B. Robert Ludwig – manager of Edgemont Ranch water system (small water system representative)
- C. Robert Genualdi – State of Colorado, Division of Water Resources
- D. Ron Saba – Town of Bayfield Public Works Director (large water system representative)
- E. Graham Stanke – (Environmental specialist/chemical engineer/environmental engineer)
- F. Bret Sherman – civil engineer
- G. Corey Sue Hutchinson – aquatic restoration biologist
- H. Lee Campbell – agriculturist, USDA, La Plata Soil Conservation District, Mined Land Reclamation board
- I. Tom Brossia – Lake Durango, ALP Water Conservation District, SW Riparian & Wetland Focus Group, Ducks Unlimited

In addition to the expertise offered by those on the WAC, the WAC invited speakers and held public sessions with many additional experts including: Ed Tolen (LaPlata Archuleta Water District), Bruce Whitehead (Southwestern Water Conservation District), Roy Horvath (La Plata West Water Authority), the Southern Ute Indian Tribe, Steve Harris (Harris Water Engineering), Charlie Smith (Lake Durango) and others. Based on its research and discussions, after approximately 18 months of work, the WAC prepared and submitted policy bulletins, representing its final recommendations on the questions posed to the Board in June 2015. The recommendations of the WAC are summarized below:

WAC Policy Bulletin #	WAC Recommendation
1	Adoption of construction standards for new and modified domestic water systems <ul style="list-style-type: none"> • Standards for backfill, restraints, pipes, and tracer wire, among others
1	Creation of PIDs, special districts and financial incentives to support water infrastructure
1	Consideration of adoption of 1041 powers to address agricultural dry-up <ul style="list-style-type: none"> • Regulate projects where water permanently removed from irrigated land
1, 2	Review sewer and septic issues <ul style="list-style-type: none"> • Consider regulations
1	Conservation measures, community outreach and reporting from water systems
2	Amendments to LUC regulations on “proof of water” for projects requiring Administrative and Class I review <p>Paper water –Commercial projects should be subject to same requirements as residential</p> <p>Wet water – 8-hour pump test required for applicants proposing new well or use of existing well with increased demand</p> <p>Water quality – Projects relying on wells required, at minimum, to perform one-time test for basic contaminants</p> <ul style="list-style-type: none"> • nitrates, nitrites, total coliform <p>O&M – System maintenance plan required / no requirement for legal entity</p>
2	Amendments to LUC regulations on “proof of water” for projects requiring Class II and Subdivision review <p>Paper water – If “wet water” requirements are not met, require applicant to obtain additional water rights</p> <ul style="list-style-type: none"> • Commercial and industrial projects need to meet same requirements as residential projects, absent exceptional circumstance for variance <p>Wet water – Safe yield analysis for all projects not served by third-party suppliers with current safe yield analysis on file</p> <p>Water Quality – Projects relying on wells required, at minimum, to perform one-time test for basic contaminants</p> <ul style="list-style-type: none"> • nitrates, nitrites, total coliform <p>Periodic water quality testing recommended – once every 12 months or upon sale (if periodic testing not required)</p>

	<p>Applicant with potential for CDPHE regulation, required to meet preliminary standards for future compliance</p> <p>O&M – All new and existing systems planning major repairs or expansion comply with construction standards (pipe and design standards)</p> <p>O&M plan, with designated responsible party/licensed operator</p> <p>Conservation – Subdivision applicants required to prepare conservation plan</p>
2	<p>Consideration of regulations for domestic water systems</p> <ul style="list-style-type: none"> • effect on adjacent communities / well users • effect on storm water / sanitation systems • taps to be served • plans for O&M, including financial analysis
3	Discourage applicants from hauling water during approval stage of obtaining land use permits
4	<p>Acquire water in each basin for emergency water supply</p> <ul style="list-style-type: none"> • After implementing water conservation measures to curb demand
5	Collection and input of available data into County GIS system

5. Board Adopted Water Priorities

Based in part on the WAC's work, in the summer of 2017, the Board held a work session with staff to discuss establishing water priorities for the County. Various subject matter experts were invited to attend the work session and provided input on the proposed priorities that were adopted by the Board in October 2017. In adopting its priorities, the Board recognized that water is a limited resource and its proper use is a vital issue affecting La Plata County and each one of its citizens. La Plata County relies on water not only for municipal and industrial uses, but also depends on it to support robust agricultural, recreational and resource development industries and to protect precious environmental resources.

Each of the priorities adopted are of equal importance to the County and no one priority has more import than any other. The adopted priorities are as follows:

1. Develop and maintain water infrastructure throughout unincorporated La Plata County
2. Develop, secure and maintain water rights necessary to meet County needs
3. Encourage water sensitive land use planning
4. Educate about the importance of adjudicated water rights
5. Foster intergovernmental cooperation on water quality and quantity issues
6. Protect water quality
7. Support conservation efforts and ecosystem/environmental preservation
8. Support forest health and wildfire mitigation efforts
9. Support agriculture
10. Support the local economy
11. Oppose trans-mountain and trans-basin diversions of water

The priorities were established so they could be relied upon and referred to:

1. When the Board is asked to provide comment to various agencies;
2. When the Board desires to advocate for certain water-related initiatives; and
3. For policy guidance in drafting the new proposed land use code.

6. Implementation of the WAC Bulletins

The attached chart (Attachment A) identifies existing provisions that are proposed to be amended and/or relocated according to the proposed structure set forth above in Section 3. Where applicable, the chart includes the applicable WAC Policy recommendation.

5. Implementation of Board Adopted Water Priorities (Attachment B)

Throughout the code revisions, four main Board Adopted Water Priorities have also been implemented. These four priorities are more specifically outlined below. The attached chart identifies references to the Water Priorities along with any technical justifications for revisions to the code section (i.e. thresholds, gallons per day, etc.). (See Attachment A)

Priority #1 - Develop and maintain water infrastructure throughout unincorporated La Plata County

General Statement: Infrastructure plays a crucial role in water quality, water quantity, supply management, efficiency and conservation. Presently, in many areas La Plata County lacks the water infrastructure necessary to ensure that residents have access to adequate, reliable drinking water. (WAC, 2015 findings). As such, the County must promote and foster new and expanded potable water distribution systems to address the lack of domestic water infrastructure and reliable water sources and provide nonmonetary support to those entities that currently maintain existing domestic water infrastructure

Priority #3 - Encourage water sensitive land use planning

General Statement: While conservation must be part of all future land use planning, so must water demand management that looks at available water supplies. Supply factors and demand management must be part of integrated land use and water planning.

Priority #6 - Protect water quality

General Statement: Water quality and quantity are inextricably connected. (State Water Plan (4-18)). Stormwater and wastewater management, infrastructure and cross-contamination issues are vitally linked to providing safe-drinking water to residents and ensuring adequate supplies for agricultural, recreational and environmental needs. Further, other contaminants, such as acid mine drainage, need be addressed to protect La Plata County's waters.

Priority #7 - Support conservation efforts and ecosystem/environmental preservation

General Statement: The necessity for water development in the County must be balanced against the desire and need to protect and conserve ecological, economical, recreational, agricultural, riparian and other resources in La Plata County. Tools to conserve and protect the County and cultural, geographical, historical and scenic resources, watersheds and wildlife must be developed together with water management and land use policies.