

**LAKE DURANGO WATER AUTHORITY
RULES AND REGULATIONS
RESOLUTION NO. 2009-**

THIS RESOLUTION is adopted pursuant to the statutes of the State of Colorado and for the purpose of establishing rules, regulations and fees pertaining to the services provided by the Lake Durango Water Authority (the "Authority").

WHEREAS, the Lake Durango Water Authority (the "Authority"), is a governmental entity and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State, including particularly §29-1-204.2, C.R.S.; and

WHEREAS, the Authority was formed pursuant to statute and by contract dated as of December 18, 2007, and amended as of July 14, 2009 (the "Establishing Contract"), between Durango West Metropolitan District No. 1, Durango West Metropolitan District No. 2, and La Plata County, Colorado (collectively, the "Contracting Parties"); and

WHEREAS, the Authority has heretofore determined and undertaken to acquire and develop certain water rights, properties and facilities for the diversion, storage, treatment, transmission, distribution, and provision of water in the Lake Durango service area (the "Water System"); and

WHEREAS, the Authority is governed by its Board of Directors (the "Board") who have been duly appointed and qualified; and

WHEREAS, the Board has determined that a comprehensive resolution governing the operations and functions of the Authority is desirable; and

WHEREAS, the Board of Directors of the Authority has further determined that a fair, just and reasonable rate structure for water service is desirable; and

WHEREAS, the Board of Directors has the authority under Colorado statutes and the Establishing Contract to adopt rules and regulations governing the Water System and assess penalties and charges for violations of such rules.

NOW, THEREFORE, BE IT RESOLVED THAT THE FOLLOWING LAKE DURANGO WATER AUTHORITY RULES AND REGULATIONS BE ADOPTED:

Section 1. DEFINITIONS:

Unless the context specifically indicates otherwise, the meaning of terms used in this Resolution shall be as follows:

1.1 AVAILABILITY FEE: A fee charged to properties and property owners with committed taps that have not or cannot begin receiving water service, also known as a stand-by fee.

1.2 BOARD or BOARD OF DIRECTORS: The governing body of the Authority.

1.3 AUTHORITY: The Lake Durango Water Authority, acting through the authority of the Board of Directors and its authorized representatives.

1.4 COMMITTED TAP: The right to connect to the Water System without paying additional tap fees, service commitment fees, plant investment fees or similar capital contributions or charges. Owners of committed taps may be required to pay connections charges for the cost of the cost of excavation, tap on the main line, meter pit, meter, curb valve and all reasonable costs incurred by the Authority in connecting a committed tap to the Water System.

1.5 OFFICIAL NOTICE: Notice which shall be in writing issued by authority of the Board, directed to the owner (or owner's agent) of the property as shown on the records of the Authority, mailed to the address shown on the records of the Authority by certified mail, return receipt requested, and such notice shall be deemed to have been given as of the date of mailing.

1.6 PERSON: Any individual, firm, company, association, society, corporation, group or trust or other entity.

1.7 SERVICE COMMITMENT FEE (SCF): The fee required to be paid to the Authority as a proportionate share of the capital cost of the Water System, sometimes called a tap fee. The fee shall not include the cost of excavation, tap on the main line, meter pit, meter and curb valve.

1.8 PUBLIC WATER MAIN: A water line which is owned and maintained by the Authority and located within a dedicated easement.

1.9 SHALL, MAY: Shall is mandatory; May is permissive.

1.10 USER FEES: A monthly service fee paid to the Authority for a proportionate share of the operation and maintenance expenses of the Authority's Water System.

1.11 WATER SERVICE CONNECTION: The extension from the Water System to the building or premises receiving water service, which shall be the sole responsibility of the owner of the property served and shall include the tap on the main line, meter pit, meter, curb valve and service line.

1.12 WATER SYSTEM: All facilities for producing, pumping, storing, collecting, treating and distributing water within the Authority, including Public Water Mains.

Section 2. OWNERSHIP AND OPERATION OF AUTHORITY FACILITIES:

2.1 General Statement of Policy. The Authority was created for the purpose of providing water service to property in the Lake Durango service area of La Plata County. In order to achieve that goal, the Authority assumes responsibility for the operation and maintenance of the Water System in accordance with this Resolution. However, the Authority assumes no liability or responsibility for temporary interruption of services due to circumstances beyond the Authority's control.

2.2 Liability. The Authority shall not be liable for any claims for damages arising from pressure fluctuations of the Water System, or breakage of lines or injuries to persons or property arising out of the maintenance or operation of the water works, or from interruption of service, unless such damages are the result of the grossly negligent or willful acts of the Authority, its employees and agents. Although the Authority may inspect newly installed water service lines, it assumes no responsibility for the negligent design, installation, or operation of water service lines. The Authority does not waive any defenses or immunity from claims arising under the Governmental Immunity Act of the State of Colorado.

2.3 Ownership: All Public Water Mains shall become and are the property of the Authority. Authority ownership shall be valid and complete without any conveyance required. The connection of a Public Water Main to the Water System shall automatically transfer ownership to the Authority, regardless of the party who constructed or paid for the installation. All Water Service Lines, whether presently existing or connected in the future, shall become and are the property of the owner who receives service from such lines.

2.4 Agents of the Authority. Any duly authorized representative of the Authority, including its manager, engineer, attorney, or other employees or subcontractors, is authorized to enforce the provisions of this Resolution and, to the extent necessary, to enter upon public and private property for the purpose of inspection, observation, sampling, testing and meter reading.

Section 3. CONNECTION PERMITS AND REQUIREMENTS:

3.1 Unauthorized Connection. No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public water main or appurtenance thereof without first obtaining a written permit from the Authority.

3.2 Application for Service: Any person desiring water service shall make application on a permit application furnished by the Authority. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Authority. The permit application will be reviewed by the Board or Authority representatives for a determination of the requirements for service including payment of SCFs and connection charges. The applicant will be informed if service has been approved and will be required to pay all required fees prior to connection. By filing an application with the Authority or accepting service, the owner of the property agrees to be bound by these Rules and Regulations and

specifically authorizes Authority to enter the Owner's property for the purpose of enforcing these Rules and Regulations.

3.3 Owner's Responsibilities for Water Service Connection. All costs and expenses incident to the installation, connection and maintenance of the Water Service Connection shall be borne by the owner. The owner shall indemnify the Authority from any loss or damage that may directly or indirectly be occasioned by the installation, operation or maintenance of the Water Service Connection.

3.4 Safety and Restoration Required. All excavation for Water Service Connections shall be adequately guarded with barricades and lights so as to protect the public from hazard. Gravel roads, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Authority and the other governmental entities, if any, having jurisdiction over same.

3.5 Extension of Water Mains. Any owner who requires extension of a Public Water Main for service, shall be required to extend the Public Water Main of the Authority in accordance with Section 6.

3.6 Wells. Any well on property served by the Authority shall have no cross connection with the Water System. The Authority shall adopt and enforce a Cross Connection Control Program in compliance with the Colorado Primary Drinking Water Regulations.

Section 4. WATER USE

4.1 Installation of Water Meters. All Water Service Connection shall have water meters appropriately installed at a point between the Authority's water main and the first point where water is actually used, including lawn sprinklers and other irrigation systems. The water meter shall be of a type and size approved by the Authority and shall be installed and located in accordance with Authority specifications. A remote read out (if applicable) shall be provided at a location convenient to the Authority for purposes of reading and testing meters. After installation, a meter shall not be moved or encroached upon by landscaping, fences or other structures. Any encroachment upon the meter by the property owner shall be corrected at the owner's expense.

4.2 Water Meter Repairs. If the Authority determines that a water meter or a remote read out is not functioning properly, it may inspect the meter, remote read out or other facilities in the water service line to determine that water is being properly measured and may order such repairs as are necessary to correct the problem. All costs and expenses incident to such repairs shall be the responsibility of the Authority unless it is determined that the repair is required due to the acts of the owner, in which case the owner shall pay the costs of repair.

4.3 Water Service Connection Maintenance; Leaks. Maintenance of the Water Service Connection, except the meter, shall be the sole responsibility of the owner. Any damaged or

leaking Water Service Connection shall be promptly repaired by the owner. The Authority reserves the right to discontinue water service if such repairs are not promptly made. The owner shall be responsible for the cost of all water lost as a result of any service leak.

4.4 Water Restrictions. The Authority reserves the right to establish restrictions on the use of water and fines for the violation of such restrictions whenever the Board of Directors determines that such restrictions are necessary to adequately maintain an appropriate supply of water, including stored reserves, for household use and emergency situations. The Board of Directors may adopt such restrictions and establish fines for violations at any regular or special meeting called in accordance with law. After such restrictions and fines are adopted, the Board of directors shall give notice to all water customers of the restrictions and fines either by mailing a special notice or by including such a notice with the Authority periodic billing. After notice has been sent as provided herein, the restrictions and fines shall be enforceable pursuant to this resolution.

Section 5. INSPECTION; ENFORCEMENT

5.1 Inspection Permitted. The Authority or its representatives shall have the authority at any time to inspect any portion of the Water System and Water Service Connection.

5.2 Interference with Water System. The Authority shall have the power to enforce all provisions of this Resolution. In addition, the Authority shall have the power to prevent any interference or obstruction of the Water System. This shall include, but not be limited to, malicious mischief, illegal connections, trespass on the water treatment site and any other similar acts.

5.3 Enforcement. The Authority shall have the power to enforce all provisions of this Resolution by action for damages, or injunction, or by criminal prosecution in any court of competent jurisdiction. The Authority shall also have the right, after reasonable notice, to enter the property of any person and make necessary repairs, connections, or disconnections of service lines and related facilities, at the expense of the owner. Unpaid monies due to the Authority are the personal liability of the owners of such property until paid. In all enforcement and collection matters, the owner or person responsible shall pay all costs incurred by the Authority, including reasonable attorney fees.

Section 6. WATER MAIN EXTENSION

6.1 Approval Required. No water main shall be connected to the existing facilities of the Authority without written approval from the Board. All water mains shall be constructed in accordance with Authority specifications then in effect.

6.2 Costs of Extensions. Except when the Authority determines that an extension would be in the best interest of the Authority, all public water extensions shall be constructed at the sole

expense of the developer, owner or person requesting such extension. In addition to the actual construction costs, the owner, developer or person requesting the extension shall pay all expenses incurred by the Authority in connection with the extension including all Authority engineering fees for the design review, inspection and testing of the extension, all legal expenses incurred by the Authority in preparing, reviewing, approving and enforcing the extension agreement and any other expenses incurred by the Authority in connection with the extension.

6.3 Required Submittal. For approval of any extension the following documents and information must be submitted for review:

- (a) A copy of the proposed or final plat for any subdivision;
- (b) Drawings and specifications for all water lines, storage facilities, pumps and related equipment prepared and certified by a registered engineer;
- (c) Construction and performance bond equal to 110% of the construction cost of the proposed extension; and
- (d) Easements, deeds, title reports and other evidence to demonstrate that sufficient easements for the extension exist; and
- (e) Any other information deemed necessary for complete review by the Authority.

After approval of the proposed extension, the Authority will enter into an agreement authorizing the extension in accordance with this resolution.

6.4 Acceptance of Extensions. After construction and prior to acceptance for maintenance of any extension and prior to permitting any connection of service lines to the extension, the following must be submitted and approved by the Board:

- (a) As-built drawings and profile maps of the water extension stamped or certified by a registered engineer.
- (b) Drawings and specifications for lift stations, storage facilities or pumps, if any.
- (c) Deeds for all new easements and bills of sale or other documents of conveyance for all lines and other facilities.

6.5 Compensation for Oversized Facilities. No person extending a public water main shall be entitled to any reimbursement or other compensation from adjoining land owners who connect to the extension, except when the Authority requires over sizing of the facilities in order to serve future development. In those cases where over sizing is required, the Authority will enter into a recovery agreement allowing the person financing the extension to recover a portion of the additional costs resulting from the over sizing of the facility.

Section 7. WATER TAPS.

7.1 Residential Taps. One ¾” residential water tap shall be required for each single family home, mobile home, condominium unit, apartment or dwelling unit. The Authority reserves the right to adopt policies and establish fees for commercial connections to the Water System.

7.2 Service Commitment Fees. It shall be required of all persons using (or desiring to use as explained below) the Water System that a proportionate share of the capital cost of the Water System be paid known as the Service Commitment Fee (SCF or tap fee). Prior to connection to the Water System, the Service Commitment Fee shall be paid in full. The Authority reserves the right to periodically establish the rate for SCFs.

7.3 Transferability. Water taps shall be purchased for a specific property and specific land use and shall not be transferred to another property without approval of the Board. No water tap shall be transferred after meter installation is scheduled. Water taps shall be automatically transferred to successive owners of the same property.

7.4 Expanded or Changed Use. If any owner, at any time, expands the use on the owners’ property beyond that stated in the Application and Permit for which the owner has paid the Authority **or** if any owner expands the use beyond that which is in existence on the effective date of this Resolution (i.e. change guest house which is not used on a regular basis to full time residence), such owner shall apply, pay for and obtain a further Permit for such additional water taps and pay any additional SCF required for the expanded use. Such further SCF payment shall be at the rate in effect as of the date of application or date of actual use, whichever is higher, shall be due as of the date of first use and shall bear interest from date of first use until paid at 12% per annum.

7.5 Relinquishment of Water Tap. Whenever any person desires to permanently abandon a water tap, such person shall execute and submit to the Authority a relinquishment form. The form will specify the address and legal description of the property, the number of water taps being relinquished and shall contain an acknowledgment by the owner that relinquishment constitutes a full and complete surrender of all rights and privileges for the relinquished water taps. Upon acceptance of relinquishment by the Authority, the water tap shall be relinquished and no further user charges for the relinquished water tap shall be assessed. Any expanded water use on the property in the future shall require a new application and payment of all SCFs, permit fees and related expenses.

7.6 Committed Taps. Owners of Committed Taps, as shown on the tap commitment list of the Lake Durango Water System on the effective date of this Resolution shall have the right to connect to the Water System without paying additional tap fees, service commitment fees, plant investment fees or similar capital contributions or charges. Owners of committed taps may be required to pay connections charges for the cost of the cost of excavation, tap on the main line,

meter pit, meter, curb valve and all reasonable costs incurred by the Authority in connecting a committed tap to the Water System.

7.7 Acquisition Surcharge. All committed taps shall pay an acquisition surcharge in an amount established and periodically adjusted by the Board. The acquisition surcharge shall be used to pay the cost of acquisition of the Water System from the Lake Durango Water Company, Inc., including interest on loans or bonds issued for the acquisition.

Section 8. SERVICE CHARGES.

8.1 Service Charges. Each water tap connected to the Water System shall be assessed the fees and tolls established by the Board. The amount of such service charges may be changed periodically by resolution of the Board. Service charges shall be billed beginning on the date the Water Service Connection is completed and approved by the Authority.

8.2 Expanded Use. From and after the date any owner expands the water use on property already served by a water connection (see Subsection 7.4), the owner shall pay to the Authority the service charges for the expanded use, with interest at 12% per annum, from the date of first use established under Subsection 7.4.

8.3 Collection. Any payment due to the Authority shall be the personal responsibility of all owners of the property served. Delinquent charges may be collected by civil suit against the owners. All costs of collection of outstanding charges, including a reasonable attorney's fee, shall be added to the account. Failure to pay service charges within 90 days will be grounds for revocation of the privilege to utilize the Water System and all SCFs paid will be subject to forfeiture.

8.4 Discontinuance of Service. In addition to the penalties and interest provided herein, the Authority may discontinue service to any water user for delinquencies in excess of ninety (90) days, a violation of these Rules and Regulations including a failure to follow restrictions on water use as provided in Section 4.4 of this resolution or any other cause which is deemed appropriate for disconnection of service. Prior to any discontinuance of service, Official Notice and personal service, either by delivery to the owner of the property or posting in a conspicuous place on the premises, shall be given advising the owner of the property of such proposed discontinuance and providing a 72 hour period from the date of such notice for remedying the situation or requesting a hearing as provided in Subsection 8.7.

8.7 Procedures. Any person who is or may be affected by any rate, penalty, fine, restriction, disconnection notice or other action of the Authority taken pursuant to this resolution shall be entitled to a hearing before the Board of Directors. Written notice requesting a hearing shall be delivered to the Authority or the authorized representative of the Authority within ten (10) days of the date of the protested action except for discontinuation of service when such notice shall be delivered within 72 hours as provided in Subsection 8.6. The hearing shall be held at the next regular meeting unless the Board schedules a special meeting for the hearing. At the hearing the aggrieved person may present testimony and evidence concerning the action and the Board may

consider other testimony and evidence from Authority personnel and employees and any other pertinent witnesses. A determination on the grievance shall be made by the Board of Directors as soon as possible following the conclusion of the hearing. A determination of the Board of Directors shall be final. From the time a written request for a hearing is delivered until a final determination is made, all collection procedures, discontinuation of service procedures and other enforcement actions being taken by the Authority which are the subject of the hearing shall be suspended provided, however, that regular service charges, acquisition surcharges, penalties and interest on the delinquency shall continue to accrue during the period of suspension.

8.8 Additional Fees. The Authority reserves the right to establish additional fees and charges for the Water System. The amount of such fees may be changed periodically by the Board.

Section 9. NECESSITY, EFFECTIVE DATE AND SEVERABILITY

9.1 Necessity. The Board of Directors finds that this Resolution is necessary for the preservation of the public health and safety and therefore orders that the provisions of this Resolution shall take effect immediately upon adoption.

9.2 Severability. In the event that any provision of this Resolution is declared invalid by a Court of competent jurisdiction, such finding shall have no effect upon the validity and enforceability of the remaining provisions of this Resolution.

ADOPTED this ____ day of _____, 2009.

LAKE DURANGO WATER AUTHORITY

By: _____
President

ATTEST:

Secretary