

RESOLUTION NO. 39-2012
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MONTROSE
STATE OF COLORADO

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF MONTROSE ESTABLISHING A WATER SERVICE POLICY AND
PROCEDURE TO MAKE WATER AVAILABLE FOR BENEFICIAL USE IN THE
SAN MIGUEL RIVER BASIN AND PARADOX VALLEY IN THE WEST END OF
MONTROSE COUNTY**

WHEREAS, Montrose County has examined the need for additional water supplies in the west end of the County, including but not limited to the portions of the San Miguel River basin and Paradox Valley located in the County, over the next fifty (50) years;

WHEREAS, the appropriation of minimum streamflows by the Colorado Water Conservation Board, as claimed in pending Case No. 11CW129, has threatened the future availability of water to citizens of Montrose County and required the County to appropriate water with a 2010 priority date to meet the foreseeable water needs in the west end of the County;

WHEREAS, Montrose County has determined that it, its current and future residents, and public water supply entities within the County, have a need for additional physical and legal water supplies for domestic, irrigation, industrial, and municipal use, and for the purposes of augmentation and exchange, enhancement or maintenance of water quality, recreation, piscatorial, and all other beneficial uses, together with the right of reuse, successive use, and disposition to extinction, and has diligently pursued the appropriation and adjudication of conditional water rights for such uses; and

WHEREAS, the construction of new storage facilities in the San Miguel River basin will enable Montrose County to provide a more reliable supply of water to existing and future residents of the west end of the County; and

WHEREAS, Montrose County has identified and studied potential new reservoir sites on Maverick Draw, Tuttle Draw, Big Bucktail Creek, and Saltado Creek, as well as an expansion of the existing Nucla Town Reservoir, together with the location of structures used to fill each reservoir for storage of new conditional water rights that Montrose County has appropriated for the beneficial uses described above, and other water rights in which the County has an interest to be stored in such reservoirs by means of exchange; and

WHEREAS, Montrose County has identified a need for additional direct-flow diversions to meet future water demands within the County, either directly or by means of exchange, at the location of the Nucla Pump Site, Paradox Valley Pipeline, and Highline Canal (CC Ditch); and

WHEREAS, Montrose County has determined that conditional appropriative rights of exchange would enable the County to efficiently use the foregoing water supplies by exchange to accomplish the foregoing beneficial uses throughout the basin of the San Miguel River and its tributaries and the Paradox Valley in Montrose County, and has appropriated the same; and

WHEREAS, Montrose County has filed applications in the District Court for Water Division No. 4 in Case Nos. 10CW164 (jointly with the Towns of Nucla and Naturita), 10CW165, 10CW166, 10CW167, and 10CW169 (the "Consolidated Cases") to confirm its appropriation of the foregoing conditional water rights and rights of exchange; and

WHEREAS, Montrose County has determined that the foregoing actions will supplement and enhance the County's water rights and water supplies, and the population of Montrose County will benefit from the associated increased water supply, water storage capacity, and water supply security arising therefrom, either directly or by augmentation and exchange, all for the above listed uses; and

WHEREAS, following the adjudication of conditional water rights in the Consolidated Cases in a form acceptable to Montrose County, the County intends to develop and adjudicate a plan for augmentation that will enable the use of the County's water supplies by means of augmentation; and

WHEREAS, Montrose County and the Towns of Nucla and Naturita and the Mustang Water Authority have executed an Intergovernmental Agreement providing for the appropriation and adjudication of certain water rights and use of facilities by the parties; and

WHEREAS, Montrose County and the Norwood Water Commission have executed an Intergovernmental Agreement providing for the cooperative development and use of certain water supplies and facilities by the parties; and

WHEREAS, Montrose County has entered into agreements with Energy Fuels Resources Corporation, Tri-State Generation and Transmission Association, Inc. and Western Fuels-Colorado, a Limited Liability Company to, *inter alia*, make water available to such parties on terms stated in those agreements; and

WHEREAS, Montrose County has, *inter alia*, the power to "operate and maintain water facilities . . . for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the county . . ." C.R.S. § 30-20-402(1)(b) (2011); the power to "enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities . . ." *Id.* § 402(1)(e); and the power to "prescribe, revise, and collect in advance or otherwise from any consumer or

any owner or occupant of any real property connected therewith or receiving service therefrom rates, fees, tolls, and charges, or any combination thereof, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from, such water facilities” *Id.* § 402(1)(f).

WHEREAS, Montrose County has determined that it will make available supplies of raw water, either directly or by augmentation and exchange, to persons and entities in the portions of the San Miguel River basin and Paradox Valley located in the County in accordance with the policies and procedures specified in this Resolution; and

WHEREAS, the Board of County Commissioners has considered the foregoing;
and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONTROSE COUNTY, COLORADO THAT IN ACCORDANCE WITH ITS STATUTORY POWERS TO DEVELOP AND OPERATE WATER FACILITIES AND ASSOCIATED WATER RIGHTS, MONTROSE COUNTY HEREBY ESTABLISHES THE FOLLOWING POLICIES AND PROCEDURES BY WHICH WATER WILL BE MADE AVAILABLE TO PUBLIC AND PRIVATE CONSUMERS AND USERS WITHIN THE TERRITORIAL BOUNDARIES OF THE COUNTY:

1. Use of Existing Facilities. Following the adjudication of conditional water rights in the Consolidated Cases in a form acceptable to Montrose County, the County will make available, in accordance with this Resolution and existing and future agreements with public and private consumers and users of water in the west end of the County, water that can be diverted through existing facilities and beneficially used in accordance with the decrees to be entered in the Consolidated Cases.
2. Use of Future Facilities. Following the adjudication of conditional water rights in the Consolidated Cases in a form acceptable to Montrose County and the completion of construction of one or more storage reservoirs and other facilities by the County, the County will make available, in accordance with this Resolution and existing and future agreements with public and private consumers and users of water in the west end of the County, water that can be stored in and diverted and distributed through such future facilities and beneficially used in accordance with the decrees to be entered in the Consolidated Cases.
3. Form of Agreement. Agreements to supply water to public or private consumers and users of water may be perpetual or limited to a term of years, as may be determined by subsequent resolution of the Board of County Commissioners or negotiations with individual water users to meet their needs for water. Failure on the part of the holder of a signed water supply agreement to comply with the terms and conditions of the agreement will result in the County’s termination of the agreement. The County may notify all interested parties of the termination, including, but not limited to, the State Division of Water Resources, and may record a notice of such termination in the Office of the Montrose County Clerk and Recorder.

4. **Amount of Water to be Made Available.** The amount of water to be made available to public or private consumers and users of water shall not exceed the firm yield of the County's facilities and water rights, as determined by the County. The County may establish priorities for use of water based on the public or private nature of the use and the category of beneficial use of the water. In all cases, the amount of water made available to an individual user, whether public or private, shall not exceed the reasonable water requirements of that user and shall reflect water conservation policies and requirements adopted by the County or other appropriate governmental authority.
5. **Rates, Fees, and Charges.** The cost of water to be made available to public or private consumers and users of water shall be determined by the County based on its total costs of providing such water supplies, including without limitation construction, OM&R, engineering, legal, administrative, and financing costs. Such costs may include, without limitation, water service rates, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies. The County may agree, subject to legal and constitutional limitations, that a water user may participate in the cost of construction and operation of one or more facilities as an element of an agreement for water service. The County may establish different categories of rates, fees, and charges for public and private water users and for domestic, irrigation, industrial, and municipal use, and may establish cost structures designed, in part, to discourage excessive irrigation and other highly consumptive uses. The County may establish a basis for recovery of its costs for recreation, piscatorial, and environmental uses of water by public or private entities. The County may also establish separate categories of rates, fees, and charges for different locations of use within the County, taking into consideration the relative costs of construction and operation of facilities necessary to provide service in such locations.
6. **Application Procedure.** Applicants desiring to enter into an agreement for a water supply from Montrose County shall submit a written application in a form to be developed by the County. Such application shall document, according to established administrative procedures, that the applicants meet the following conditions and are therefore "Qualified Applicants." The County may enter into a water supply agreement with a Qualified Applicant if all of the following criteria are met:
 - A. Applicant owns or occupies identified property, is a public water service provider, or is otherwise able to beneficially use water, in Montrose County at a location where the requested water supply may be used in accordance with decrees entered in the Consolidated Cases.
 - B. The quantity of water requested is (a) commensurate with the proposed and allowable use of water, and (b) available under the decrees in the Consolidated Cases for the specific beneficial use that is proposed. For purposes of implementing these provisions, the County may establish a County-wide accounting system to determine if water is available on a case-by-case basis and administer water service agreements.

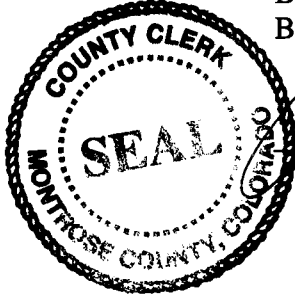
- C. The proposed water uses are consistent with the County's existing land use approvals and zoning for the identified property.
 - D. In the case of a water supply obtained from a well, for which augmentation water is requested, an existing or future well on the identified property is out of compliance with an exempt well permit or otherwise is ineligible for an exempt well permit from the State Division of Water Resources because no exemption is available; and Applicant meets the legal requirements to qualify for a valid well permit from the State Division of Water Resources under the terms of one or more plans for augmentation administered by the County.
 - E. All agreements for any water to be supplied by Montrose County shall expressly reserve to the County its authority to review and disapprove, approve, or approve with condition any land use application on its merits under the then existing County zoning, subdivision or other land use code; and no such water agreement with any land use applicant shall be interpreted as any limitation on the Montrose County Board of County Commissioner's authority to review any land use application relating to the use of the water to be supplied or otherwise associated with the land use applicant's property.
7. Agreements. The Board of County Commissioners authorizes the County Manager to sign water supply agreements for Qualified Applicants in the form to be approved by the Board.
 8. Assignment. Water supply agreements may be assigned to a subsequent owner of the property on which the use of contracted water is approved upon prior written notice to the County.
 9. Governmental Authority. Nothing in this Resolution shall be interpreted or applied in a manner that limits in any way the existing or future governmental powers of the County.
 10. Non-Appropriation. As required by Article X, Section 20 of the Colorado Constitution, all financial obligations of the County not to be performed during the current fiscal year are contingent upon annual appropriation of sufficient funds by the County's governing body.

BE IT FURTHER RESOLVED that the Montrose County staff, its consultants and counsel are authorized to take such actions as are necessary to implement this Resolution, and their actions are approved and ratified hereby.

ADOPTED THIS 2nd DAY OF July, 2012.

COUNTY OF MONTROSE
STATE OF COLORADO

By and Through its
BOARD OF COUNTY COMMISSIONERS



David L. White

ATTEST:

Sandra Nelson
Deputy Clerk