

ORDINANCE NO. 02-06

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT AND IMPOSITION OF TEMPORARY ZONING REGULATIONS REGULATING AND RESTRICTING THE APPROVAL OF SUBDIVISION PLATS AND BUILDING PERMITS IN UNINCORPORATED DAGGETT COUNTY WITHOUT A WATER SUPPLY CONCURRENCY ASSESSMENT PROGRAM AND ESTABLISHING A WATER CONSERVATION PROGRAM FOR A PERIOD OF SIX (6) MONTHS, OR UNTIL THE ADOPTION OF AMENDMENTS TO THE APPLICABLE COUNTY ZONING ORDINANCE, WHICHEVER OCCURS FIRST.

WHEREAS, Daggett County (the "County") places a very high value on the water resources serving residents and property owners within the County; and

WHEREAS, The County also recognizes that the viability and safety of the County as a whole, both now and in the future, are directly dependant on the protection of one of the most precious commodities, its water resources; and

WHEREAS, homes, condominiums, apartments, subdivisions, hotels, churches, office buildings, commercial developments, and the like, that are connected to a public or private water supply system received Daggett County approvals based on initial source capacity ratings and performance of their respective sources as per the Utah State Division of Drinking Water (DDW) rules and regulations; and

WHEREAS, the scope of Daggett County developments, including both current and future phases, are reviewed and processed as per the initial or current water source capacity rating criteria; and

WHEREAS, the State of Utah DDW does not have the resources or funds to continually monitor the future performance or long term output of rated water sources, nor do they require such; and

WHEREAS, Daggett County does not currently monitor long term water source capacities; and

WHEREAS, Daggett County may adopt water supply regulations more strict than those of the DDW if the public health, safety, and welfare warrants such; and

WHEREAS, the County public health, safety, and welfare is in jeopardy if the current or future performance of a water supply source begins to deteriorate in a quantity or quality manner; and

WHEREAS, the growth outlook and infrastructure demand pressures for Daggett County continues to increase at alarming rates; and

WHEREAS, this current spring water season and runoff period is one of the driest seasons on record; and

WHEREAS, existing property owners and users of water in areas jeopardized by water quantity and quality issues approach the County regularly regarding their concerns and safety; and

WHEREAS, the operation or quality of many public and private water systems may be directly or indirectly affected by the operation of other adjacent water systems; and

WHEREAS, Daggett County currently requires all water supply infrastructure and development to be timed and constructed concurrently with new growth or water demands and desires to extend this concurrency doctrine to systems with source capacity deficiencies that need improvements; and

WHEREAS, periodic and continual testing, reevaluation, and monitoring of existing water wells and other sources will provide valuable planning information to the County and help alleviate potential water crisis's and future liability in Daggett County; and

WHEREAS, development of a comprehensive water conservation program can directly enhance the profitability and viability of a water source concurrency program, protect from drought periods, and enhance the County stream water quality; and

WHEREAS, the Board of County Commissioners is authorized pursuant to Utah Code Annotated (UCA) 17-27-404, as amended, to adopt an ordinance establishing temporary zoning regulations for any part or all of the area within the County to be effective for a period not to exceed six (6) months; and

WHEREAS, the Board of County Commissioners finds that there is compelling, countervailing and public interest to properly regulate development in areas that are, or may be adversely impacted by water source capacity;

NOW, THEREFORE, the County Legislative Body of Daggett County, State of Utah, ordains as follows:

Section 1 - Title. This Ordinance shall be known as the Temporary Zoning Regulation Ordinance of Unincorporated Daggett County for Water Supply Concurrency Assessments ("Concurrency Ordinance").

Section 2 - Applicability. The scope of this Ordinance applies to all unincorporated areas of Daggett County serviced by any public and private water systems, including special service districts of the County, whether wholesale or retail water customers, including areas served by municipalities outside of their corporate boundaries. Private or Public as used in this Ordinance means profit and non-profit systems, including all mutual water systems or public systems of any nature and any amount of connections. This Ordinance applies to all sources of surface and groundwater, including wells, springs, or tunnels.

Section 3 - Findings. The Board of County Commissioners hereby makes the following findings:

- (1) The existing State of Utah (DDW) regulations are inadequate when addressing the long-term effects of pumping vulnerable or sensitive aquifer systems.
- (2) There is continuing growth throughout the County which has created an immediate need to adopt a strict water supply concurrency assessment program.
- (3) Because growth has outstripped certain water source and system abilities to concurrently maintain an equal or greater source and system capacity service, areas of the County are currently experiencing or facing water shortages, moratoriums, and quality problems.
- (4) The study and re-evaluation of the capacity and sustainability of water sources needs to be reestablished in certain areas, thus forming better criteria for the safe planning, design, and development of homes, subdivisions, and other projects.
- (5) The health, safety, and welfare of current and future residents of the County are jeopardized without careful water source concurrency assessments and testing at critical and regular intervals and that this constitutes a compelling, countervailing public interest under UCA 17-27-404 (1)(a)(i), Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah 1980), and the Reserved Legislative Powers Section of all Development Agreements and Consent Agreements entered into by Daggett County.
- (6) The adoption of this temporary zoning regulation will promote the health, safety, and welfare of the entire County.
- (7) A conservation program will enhance the concurrency program by reducing water waste, create an unused or reserved virtual reservoir of water, protect aquifers from over production, minimize urban run-off and associated pollutants, decrease fertilized and irrigated land, promote water saving landscape designs, and provide an insurance policy against drought periods.
- (8) Due to the current water problems in Daggett County and to include the expectation that this is one of the driest seasons on record the Board of County Commissioners declares this to be an emergency.

Section 4 - Temporary Regulations.

- (1) Definitions. The following defined terms are used throughout this Ordinance:
 - (a) Source Capacity. Source capacity as used in this Ordinance means the water quantity requirements capable of meeting peak daily flow (in gpm

and gpd) and average yearly flow (in acre-feet per year) requirements for a community water system, factoring indoor and outdoor irrigation demands. The calculations will be broken into zones, or sub-districts for accounting purposes within the system where multiple sources serve multiple or distinct service areas. This definition applies to all groundwater sources (including wells, springs, or tunnels), as well as surface water sources. For purposes of this Ordinance the definition also extends to system capacity, or the capacity of the pipelines, pumping and treating facilities, storage tanks and other related facilities to deliver the required source capacity to the end customer service connection or meter.

- (b) Equivalent Residential Connection of (ERC). A term commonly used to evaluate service connections to consumers other than the typical residential domicile. Public and private water system management is expected to review metered drinking water volumes delivered to non-residential connections that these represent. All source capacity data (including residential connections) are ultimately reduced to the ERC common unit for equal treatment and comparative statistics. This information is finally utilized in evaluation of the systems source, storage, and delivery capabilities.
 - (c) Average Yearly Demand. The amount of water delivered to consumers by a public water system during a typical year expressed in acre-feet.
 - (d) Peak Day Demand. The amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gallons per day (gpd). Water systems are sized to deliver safely the peak day demand and flow. This peak day will likely occur during a particularly hot spell in the summer.
 - (e) State Division of Drinking Water or DDW. The State of Utah Department of Environmental Quality, Division of Drinking Water. All water calculations must meet the minimum standards set forth in the current DDW rules and regulations and this Ordinance. The State DDW rules do allow for modifications to the requirement for outside use of water in areas that can be proven, with County documentation (such as restrictive covenants) that outside watering is prohibited.
- (2) Restrictions on all Plat Applications and Approvals. No new applications for any Plat Approval of any type, including Specially Planned Areas (SPA's), whether initial or future phases of the same, as defined in the Daggett County Zoning Ordinance or applicable development agreement, shall be accepted, considered or acted upon by the Daggett County Planning Commission or the Board of County Commissioners without the relevant water supplier first presenting to planning staff four (4) copies of a Water Supply Concurrency Assessment Study and

Program (as may be updated from time to time), performed by a qualified Hydro geologist and/or Groundwater Engineering Consultant, following the basic criteria established in this Ordinance and concurred therewith by the County's staff, consultant(s) and/or contractor(s).

- (3) Restrictions on all Building Permits and Water Letters. No new building permits will be issued without a water concurrency and availability letter presented to the County and issued from the public or private drinking water system providing service to the lot or building on a new revised standard form provided by the County. If the relevant water system has not completed an approved concurrency assessment as per paragraph (2) above and this Ordinance, then a building permit shall not be issued to the applicant. The supplier, immediately upon issuance must send a copy of the sequentially numbered water letter to the County. The applicant's letter will be matched to the reserved pre-issued copy when presented to the County for a building permit. All issued letters must be accounted for and copies filed with the County - even canceled letters. This water letter may include, among other items the following information:

- a. A water letter sequential numbering reference,
- b. A property/lot description and current ownership information,
- c. The current water system name, type, or classification,
- d. The water system zone or sub-district served by this project if applicable,
- e. Approval status by the State DDW (including corrective actions),
- f. A certification of State DDW regulations compliance and that the available source capacity is in fact deliverable to the end user,
- g. Reference to the most recent concurrency study completed,
- h. Beginning balance of the water system zone and/or sub-district source capacity and the current ERC's and demands serviced thereby (current users and previous issued water letter commitments),
- i. State DDW approved system source capacity additions (improvements) or depletions (deductions) since the last concurrency study or water letter (including documentation if needed),
- j. Currently applied for project source demands and ERC's,

- k. Ending balance of source capacity remaining after project approval (this figure must be carried over to the next sequential water letter beginning balance), and
- l. County Health Department review with approval/certification.

(4) Water Supply Concurrency Assessment Criteria and Scope. This assessment involves a complete re-evaluation and re-rating of system source capacities serving the public. All costs associated with this program will be born by each water system as may be passed to new development. The scope of work and assessment criteria may be enlarged or expanded as needed on a case by case basis, and as recommended to the County by it's staff and consultant(s). The purpose of the study is to provide to the County criteria that will be used to update the carrying or design capacity of a development or area relative to new source safe and sustainable yield rating figures. In no case shall a capacity enlargement from the current State of Utah DDW rating be granted without the State DDW granting the revised or proposed enlargement first. Detailed program protocol, formats, and guidelines for the study may be provided by the County, however the basic concurrency study will contain at a minimum the following elements:

- a. Application and Fee. A completed application to begin the concurrency process shall be filed with the County. The application shall include a deposit of five hundred (\$500.00) dollars per source to cover County inspection and review costs. If the fee exceeds the deposit amount, the applicant will be liable for the actual inspection and review costs. Each future amendment or source re-test to the study will require a new application and fee.
- b. Basic Source Data and System Protection Inventory. The initial study or program data shall include the following:
 - i. A detailed and comprehensive initial inventory of the water system capacity, including current and projected build out defined and converted into equivalent residential connections (ERC's), peak day demands in gpd, peak day flow in gpm, average annual demands in acre-feet per year, with all calculations showing indoor and outdoor irrigation uses. All calculations will use State of Utah DDW criteria.
 - ii. Current water source data for each water source, including water right numbers or purchase contracts, source description of location, types of sources, approved points of use and diversion, current State capacity ratings, drilling logs, and aquifer location in reference to groundwater compartments that may be identified by the Utah Geological Survey.
 - iii. An inventory of all reserved outstanding water availability letter commitments showing lot descriptions, quantities reserved, etc.

- iv. All irrigated land, calculated in acres currently being served per system zone or sub-district as well as future committed source irrigation demands.
- v. Historical water usage figures for each source, zone, and sub-district and the entire system combined, including acre-feet used per year, average and peak day gpm of each source as well as average and peak day gpm and gpd of the system as a whole. Seasonal trends shall be shown as well.
- vi. Well current and historical draw down figures as well as historical pump or delivery volumes, run times or duty cycle calculations. Seasonal trends shall be shown as well.
- vii. Peak day system pressures at the sources and at key locations throughout the distribution system. Include pertinent data from any water system models if available.
- viii. Storage system(s) capacity and design, showing all fire, additional emergency, and equalization storage components, including zones or sub-district areas serviced by each reservoir.
- ix. Any rating standards that the system has adopted that are more strict than State DDW regulations (in this case, these will control ratings).
- x. Source treatment methods and information if applicable.
- xi. Current analytical tests, including biological, chemical (inorganic and organic), radiological, and source age dating (if available).
- xii. Important correspondence from the State DDW and Division of Water Rights (State Engineer), including compliance notifications, warnings, actions, and any exemption or variances issued or applied for.
- xiii. Self-assessment and health department sanitary surveys if available.
- xiv. Source protection plans, preliminary evaluation reports, and other relevant source capacity studies.
- xv. Future source and system capital improvement plans and capacities including status and timing.
- xvi. The most recent consumer confidence report if applicable.

- xvii. A qualification statement of the author(s).
 - xviii. Other information as the County staff and consultant(s) may request.
- c. Source Assessment and Capacity Testing. Core to the success of the study is the physical water source tests. These tests require planning and scheduling to correspond to seasonal demands and recharge patterns to achieve the best relevant or usable data as directed by the County consultant. All tests need to be coordinated with the County in advance to assure inspection and verification. The County will develop a detailed testing protocol or regimen. The tests include:
- i. Well Step-Drawdown Testing. This testing is used to select pumping and flow rates for constant rate tests, evaluate the efficiency of the well, and provide a base line data for the well to evaluate potential future changes in well efficiency.
 - ii. Constant-Discharge Drawdown and Recovery Testing. Based on the results of the step test, this test is used to provide a long-term pumping rate for each well. Other well and sources in the area may require monitoring during these tests to indicate possible connections.
- d. Yearly Periodic Testing and Monitoring. The concurrency program is designed to be more than a single study; it will be dynamic and updated on regular schedules. This program will insure that the water source can be tested easily in the future on an annual basis and on demand by the water system personnel. A standardized record keeping system will be developed for future periodic monitoring and records will be made available upon State or County request. Tests may involve flow metering, static well level measurements and well shut-in pressure tests, well draw down tests, flow rates, and total production volumes, etc. This data will be used to plot long term well performance trends and used to update the concurrency assessments. A special water quality program may be initiated for future monitoring on a regular basis for items such as specific conductance, TDS, turbidity, major cations/anions, MPA, and tritium age dating. These parameters may signal the need for a future re-evaluation or indicate aquifer deterioration, damage or surface water influence.
- e. Remote Monitoring. Some water sources that may be evaluated as sensitive or vulnerable may need continual monitoring by the water system telemetry (with data supplied to the County) and/or a future County telemetry program connection. The monitored parameters could include constant pressures, well drawdown values and pumping rates. Springs,

tunnels, and other sources would involve total source flow rates and diversion rates. Some simple water quality parameters may also be monitored, such as turbidity and conductivity.

- f. Current and Future Commitments. The analysis shall specify all current and future water letter or other development (non-letter) source capacity commitments or contracts summarized each year from present to five (5) years future from the date of the analysis. A water system capital improvement plan should also be included, demonstrating the ability to service the future commitments safely and concurrently. The final source capacity determinations must account for or factor all commitments within this five (5) year window.
 - g. Source Capacity Review. This analysis will utilize the base and collected testing data above to develop a new capacity rating for the source(s) and system(s). This new figure will be used by the County to determine if sufficient water capacity is available and if infrastructure improvements are warranted before development approvals and building permit issuance. All current development and building permit approvals must be based on existing infrastructure and water source capacity available at the time of application or water letter issuance. No development approvals or building permits will be issued if the infrastructure and water source capacity is not in place and operating as per State DDW or County approvals at the time of application or water letter issuance.
 - h. Source Management Policy. A new source management policy statement for each evaluated system and zone or sub-district will be developed to help system managers and operators utilize the newly evaluated source(s) in a more safe, reliable, and efficient manner. This plan may specify better usage patterns and operational characteristics including regular, seasonal, or scheduled offloading of some sources to prevent over utilization or damage within a specific aquifer system or groundwater compartment. The plan will be designed as a preventative tool to local management, with the hopes of extending the safe use, yield, quality, and value of the newly evaluated water sources.
- (5) Preliminary Water Supply Concurrency Analysis. It is recognized that a realistic water source concurrency plan must include some seasonal tests and demonstrate source capacity trends over a whole year. The initial plan may be submitted using historic and initial base testing data if the County concurs with this approach. The initial plan would be developed as a preliminary water supply concurrency assessment and updated as future data becomes available. In order to utilize this option, a strict schedule of project tasks with a completion date must be pre-approved by the County. If the preliminary calculated available capacity is too

marginal, this option may not be available.

- (6) **Re-Evaluation.** Any source or system evaluated in this program may be re-evaluated at regular intervals, or as needed if conditions or unexpected trends warrant. All aquifers or groundwater compartments are unpredictable and regular updating of the concurrency study or data may be necessary. The County will review the study each year. In no case shall any concurrency study remain in effect for more than five (5) years without a complete re-evaluation and re-testing regimen if water letters are still being issued. The re-evaluation or update involves the source of re-testing regimen for all sources. Other factors that may trigger a re-evaluation, amendment, or update of the most recent concurrency study are:
- a. County request, based on reported service problems,
 - b. Planned or unplanned source capacity reductions,
 - c. Long-term drought conditions or trends,
 - d. Water quality degradation or age dating fluctuations,
 - e. When the balance of unused or reserved source capacity as determined by the most recent source capacity review study equals fifteen (15) percent or less (drought reserve and average to peak day errors) of the total system source capacity.
 - f. If the initial or updated study(s) demonstrates an unused or reserved source capacity of fifteen (15) percent or less, then the study will be updated on a yearly basis.
 - g. When a new source is added to the system (all sources retested for possible groundwater connections).
- (7) **State Approvals.** The State DDW and the State Engineer's Office may be supplied with a copy of the Concurrency Assessment Program for review and may be asked to comment or concur with the final findings of the study. County review and acceptance may be withheld until State approval is granted.
- (8) **Results and Utilization.** The results of the Source Concurrency Assessment Study will be used to develop a new source capacity rating system for the system as well as a new safe development capacity for the effected system service area(s). The Source capacity rating of each water system would be compared with the current demands and applied for number of connections to determine if sufficient water is safely, reliably and legally available. If a deficit condition in source to user capacity exists as determined by the assessment, all building permits or plat

applications will be placed on hold until the water system source(s) and any related inadequate delivery system component is brought up to acceptable State and County standards. Use restrictions and conservation measures may be required on existing users until the necessary improvements are completed.

- (9) **Standards.** The concurrency study and all amendments thereto shall comply with this Ordinance and other County standards as may be developed or amended from time to time. Information pertinent to developing a usable and conclusive study shall be added to the basic standards listed herein if requested by the County.
- (10) **Disputes.** The County consultant must concur with the concurrency analysis format, methods, procedures, and findings. If there is a dispute regarding any part of the study, the County will submit the data, methods, analysis, and findings for an independent, third party, peer review to assist the County in reaching an objective opinion of the source capacity review program.
- (11) **Conservation Plan.** To enhance the viability of this concurrency program and to protect the stream water quality of the County, all water systems that are required to perform the assessment as per this Ordinance, shall present to the County an approved comprehensive water conservation plan within one (1) year from the adoption of this Ordinance. The plan and program shall be concurred by the County including the Health Department and forwarded to the State for review or approval. The plan may be developed jointly with the County systems to improve effectiveness and save resources. The plan, at a minimum shall study or include an educational element, landscaping restrictions or conservation designs, a rate structure that severely penalizes water abusers and rewards conservers, impact fee and base rates allocated or calculated on irrigated acreage and gpm peak demands, and shall study possible wastewater re-use. Further, all new developments seeking plat approval or development agreements from the County shall show conformance to the adopted and implemented conservation plans before approval(s). If this plan is not submitted within the required time period, the total available source capacity of the relevant system and related, zones or sub-districts shall be reduced by fifteen(15) percent (drought reserve), thus reducing reserved or future capacity availability and allocations.
- (12) **Small Systems Requirements.** Public or private water systems with less than fifteen (15) connections may have certain elements or requirements of this testing and assessment program waived or reduced, including any fees contained herein by the County on a case by case basis.

Section 5 - Term of Ordinance. This ordinance shall remain in effect from the earlier of
(1) Six months from its effective date following adoption by the Board of County Commissioners;
or (2) the date of adoption of the permanent Code amendments to the Daggett County Zoning Ordinance.

Section 6 - Severability. It is the intent of the Daggett County Commissioners that all sections and provisions of this Ordinance have an independent existence, and should any section or provision be declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of the Daggett County Commission that any section or provision so declared shall be severable from and shall not affect the validity of the remainder of this Ordinance.

Section 7 - Conflict. All ordinances or parts of ordinances which are inconsistent with this Ordinance are hereby repealed to the extent of that inconsistency.

Section 8 - Effective Date. It is the opinion of the Daggett County Commission that this constitutes an emergency condition and it is necessary for the immediate preservation of the peace, health, safety, and welfare of Daggett County and it's inhabitants that this Ordinance take effect immediately upon publication.

APPROVED, ADOPTED AND PASSED and ordered published by the Daggett County Board of Commissioners, this 19th day of July, 2002.

BOARD OF COUNTY COMMISSIONERS
DAGGETT COUNTY, STATE OF UTAH

By Chad L Reed (Acting)
Chairman

Commissioner Briggs Voted : Absent

Commissioner Walters Voted : Aye

Commissioner Reed Voted : Aye

ATTEST :

Shirley McKee
COUNTY CLERK
DAGGETT COUNTY, UTAH

APPROVED AS TO FORM:

Annis R. Radd
County Attorney