

RESOLUTION 2018-1
(Rescinding Resolution 2017-1, on conditions)

The Board of Directors of the Morrison Creek Metropolitan Water and Sanitation District (the “District”) hereby states, finds, and resolves as follows:

Recitals

A. Routt County, by its Board of Commissioners (the “County”), and the District are the parties to a County-District Agreement dated September 21, 1982, and recorded in the Official Records of the Routt County Clerk and Recorder at Book 572, Pages 222 and following, as amended by the First and Second Amendments thereto.

B. The said Agreement establishes the terms and conditions under which owners of certain lots within the boundary area of the District platted in the early 1970's (the “Woodmoor Subdivisions”) are able to obtain a building permit for a single family dwelling building to be served by a “Sealed Sanitary System,” as defined in the County-District Agreement, rather than by a system providing central sewage collection and secondary sewage treatment.

C. The said County-District Agreement has been amended twice by the District and the County, the first such Amendment being recorded in the Records of Routt County at Reception No. 597729, and the second such Amendment being recorded in the Records of Routt County at Reception No. 724146, Routt County records. Such original 1982 Agreement, as twice amended as aforesaid, is herein referred to as the “Agreement” or the “County-District Agreement.”

D. The County-District Agreement also establishes a procedure by which such owners of such certain lots within Woodmoor Subdivisions may apply for a residential exempt well permit from the State Engineer of the State of Colorado (the “SEO”), through the office of the General Manager of the District, and such exempt well permit shall be applied for and issued in the name of the District, though all costs for completion of such application and for construction and operation of such well are to be borne by such lot owners, and all procedures, contracting, construction, maintenance, operation, and repair of such exempt wells are the sole responsibility of such applying lot owners.

E. The County-District Agreement also specifies that the District does not represent or warrant that the SEO will issue the exempt well permit. Until August 17, 2017, the SEO on the advice of the Division Engineer for Water Division No. 6 (the “DEO”), has almost always issued such exempt residential well permits within the Woodmoor Subdivisions.

F. Prior to August 17, 2017, the DEO advised the District that the SEO intended on a going forward basis to deny exempt well permit applications within a number of platted subdivisions within the boundary of the District pursuant to provisions of CRS Section 37-92-602, including all of the Woodmoor Subdivisions.

G. As a result of the information from the DEO, the District Board of Directors unanimously adopted, at its Board meeting on August 17, 2017, Resolution 2017-1 (“Resolution 2017-1”), by which the District declared an immediate moratorium on the vault program and exempt well permit program of the District under the County-District Agreement, and directed that the General Manager of the District shall not execute any Land Owner Agreements tendered to the District pursuant to the County-District Agreement until adoption of a further resolution by the Board of Directors of the District specified otherwise. The General Manager advised Routt County of such Resolution 2017-1.

H. On or about February 1, 2018, the SEO executed and delivered to Routt County a guidance and opinion letter, with attachments (in all, the “SEO Exempt Well Advice Letter”), by which the SEO determined the policy and method by which the State Engineer’s office and the DEO will process and issue/deny exempt well permit applications which affect all of the subdivisions within the boundary of the District, including the Woodmoor Subdivisions.

I. The Board of the District expects that, pursuant to the SEO Exempt Well Advice Letter, applications for new exempt well permits for Lots within the Woodmoor Subdivisions in the District subject to the County-District Agreement may be issued in the future, at the discretion of the SEO, upon applications from the District made pursuant to the County-District Agreement and in accordance with the Land Owner Agreements from Lot owners.

J. Therefore, the District Board of Directors has determined that, on a going forward basis, the District will continue to implement the County-District Agreement and continue to sign and execute Land Owner Agreements pursuant to such County-District Agreement, upon certain conditions and prerequisites provided hereinbelow.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS AND FINDINGS OF THE BOARD OF DIRECTORS OF THE DISTRICT, THE BOARD DOES HEREBY RESOLVE AS FOLLOWS:


1. The moratorium placed on the vault program and exempt well permit program of the District under the County-District Agreement as set forth in Resolution 2017-1 of the Board of Directors, adopted August 17, 2017, is rescinded.
2. On a going forward basis, the District will continue to implement the County-District Agreement and continue to sign and execute Land Owner Agreements pursuant to such County-District Agreement, PROVIDED AND ON THE CONDITION that such implementation and execution of Land Owner Agreements by the District shall NOT occur with respect to any Lot and Owner until and unless such Lot Owner has first signed and delivered to the District Manager, and complied with, the “MORRISON CREEK METROPOLITAN WATER AND SANITATION DISTRICT POLICY REGARDING IMPLEMENTATION OF VAULT PROGRAM AND LOT OWNER CONSENT AND AGREEMENT ” (the “Exempt Well Process Policy”), which is attached as an Exhibit to this Resolution, AND the SEO has issued an exempt well permit for

the Lot and the Lot Owner has approved and accepted such permit by executing and delivering to the District Manager an Owner Well Permit Acceptance as defined in the Exempt Well Process Policy.

ADOPTED at the continuation of the Regular Meeting of the Board of Directors of the District this 26th day of February, 2018.

MORRISON CREEK METROPOLITAN WATER AND
SANITATION DISTRICT

By



Chairman of the Board

ATTEST:



Steve Colby, District Manager

Exhibit "A"

MORRISON CREEK METROPOLITAN WATER AND SANITATION DISTRICT
POLICY REGARDING IMPLEMENTATION OF VAULT PROGRAM
AND
LOT OWNER CONSENT AND AGREEMENT

This Morrison Creek Metropolitan Water and Sanitation District Policy Regarding Implementation of Vault Program and Lot Owner Consent and Agreement (the "Policy and Agreement"), is between the owner or owners who sign this document at the end of this Policy and Agreement, whose address is set forth at the end of this Policy and Agreement (hereinafter collectively called "Owner," whether one or more), and the Morrison Creek Metropolitan Water and Sanitation District (hereinafter called the "District").

Recitals

A. Owner is the owner of the following described lot or lots at Stagecoach in Routt County, Colorado, which was platted of record prior to 1975:

Lot _____, _____ at Stagecoach (such lot being hereinafter called the "Lot" and such subdivision being hereinafter called the "Subdivision")

B. Owner acknowledges that there is no central distribution water trunk line or central collection sewage disposal trunk line serving the Lot in the Subdivision. While others may install trunk lines, there is no possibility that the District will construct any such lines, at its expense, within the Subdivision in the foreseeable future.

C. Owner desires to construct a single-family dwelling on the Lot. The Owner would not be permitted under existing Routt County resolutions to construct a dwelling on the Lot in the absence of a certain Intergovernmental Agreement between Routt County and the District recorded in Book 572, beginning at Page 222, Routt County records, and the recorded First and Second Amendments thereto (in all, the "Vault IGA"), which Vault IGA established the "Vault Program" of the District and requires that each lot owner at Stagecoach similarly situated to Owner shall execute a separate Lot Owner Agreement (the "LOA") and comply with certain submissions and terms of such LOA before obtaining a building permit from Routt County.

D. The LOA provides in Section 1(a) as follows:

"Every water well permit of any kind for a water well on or adjacent to the Lot, if obtained, shall be obtained not by Owner but by the District from the office of the State Engineer in the name of the District, but at the expense of the Owner. The Owner is responsible for obtaining the well permit application form, completing the same, and delivering the permit application to the District Manager, who shall file the application with the State Engineer's Office. The District does not represent or warrant that the State Engineer will issue the well permit. The Owner will promptly provide such additional information, if any that the State Engineer's Office requests in connection with review of

such permit application. The District Manager shall promptly notify the Owner of the action taken by the State Engineer on such application. Any exempt well permit on or adjacent to the Lot, if issued, will be limited to in-house use only.” Such Section 1(a) is herein referred to as the “Exempt Well Application Requirement.”

E. Section 2 of the LOA contains prerequisites regarding the installation of a Sewage Vault on the Owner’s Lot under the Vault Program (the “Vault Prerequisites”).

F. Notwithstanding the first sentence of Section 6 of the LOA, it is now the policy of the District that the Vault Impact Fee and including an Administrative Fee of \$500 must be paid to the District upon the execution and delivery of the LOA by the Owner, which will be prior to the execution of such LOA by the District, and such payment by the Owner is not contingent upon the District signing the LOA.

G. The District finds it necessary and appropriate to set forth a policy regarding the procedures to be followed in the application process for compliance with the LOA, and to describe the timing when the District will consider approving and executing the LOA.

H. The execution of this document by the Owner constitutes the declaration and commitment of such Owner that the Owner understands this Policy and Agreement and consents and agrees to its terms and provisions.

NOW, THEREFORE, THE DISTRICT AND THE OWNER DO HEREBY ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. Owner will sign and deliver to the District Manager each of the following, and neither the District nor the District Manager has any obligation to act until all of the following are delivered to the District Manager:
 - a. This Policy and Agreement, completed as to address, phone number, and email address, and signed by the Owner. The signing and consent to this Policy and Agreement by the District is NOT a commitment of the District to sign the LOA.
 - b. Two duplicate LOAs, each signed and notarized by the Owner only. Neither LOA form will be signed or recorded by the District except as and when provided hereinbelow.
 - c. All of the documents pursuant to Section 1 of the LOA to constitute a complete and full Exempt Well Application Requirement in the name of the District for an exempt well permit for the Lot (the “Exempt Well Permit Application”), including any fully signed and approved water augmentation contract between the Owner and the Upper Yampa Water Conservancy District as may be required by policy of the State Engineer or Division Engineer as a prerequisite to issuance of an exempt well permit for the Lot. The District has no obligation to negotiate, sign, participate in, approve, consent to, or pay for any such augmentation water contract.

- d. A valid check payable to the District for all fees and costs associated with the Exempt Well Permit Application for an exempt well permit for the Lot (the “Well Check”). The Well Check will be immediately deposited by the District in its general account, and performance by the District is conditioned upon such Well Check being valid and honored by the Bank.
 - e. Copies of all documents required to be signed by the Owner and delivered to Routt County under Section 2 of the LOA and to comply with the Vault Prerequisites prior to the issuance of a building permit by Routt County for a residence on the Lot.
 - f. A valid check payable to the District for the then-current Vault Impact Fee of the District plus the \$500 Administration Fee (the “Admin Fee”) of the District (in total, the “Impact Fee Check”). The Impact Fee Check will be immediately negotiated by the District and deposited by the District into any of its general accounts, and performance by the District is conditioned upon such Impact Fee Check being valid and honored by the Bank.
2. The District Manager will, after delivery of all items described in Section 1 above, and the Bank clearing of the Well Check and the Impact Fee Check, deliver the Exempt Well Permit Application and the applicable exempt well processing fee from District funds, not exceeding the Well Check, to the State Engineer or Division Engineer for processing. Owner will fully comply with the provisions of Section 1 of the LOA whether or not the District has signed the LOA. If the State Engineer or Division Engineer require more information or documents or money, the District Manager will notify the Owner of such requirements and the Owner shall promptly supply all such items to the District Manager, who shall have no responsibility to proceed or act further on such Application until such items have been supplied by the Owner so that the District Manager can provide required additional documentation and money to the State Engineer or District Engineer.
 3. If and when the State Engineer has issued an exempt well permit to the District for an exempt well on the Lot, the District Manager will mail to such Owner a copy of the issued well permit and a notice that it has been issued (the “Well Permit Issuance Notice”). The District will have no obligation to take any further action until and unless the Owner gives written notice to the District Manager that the Owner received the Well Permit Issuance Notice and the Owner approves the issued well permit and accepts and agrees to abide by the issued well permit and all terms and provisions of any water augmentation contract for the proposed exempt well and the applicable provisions of the LOA (“Owner Well Permit Acceptance”). The Owner will sign and deliver such written Owner Well Permit Acceptance to the District within 30 days after the District has mailed the Well Permit Issuance Notice to the Owner. If the Owner fails for any reason to deliver such Owner Well Permit Acceptance to the District Manager within such 30 days, or if the Owner delivers any communication to the District which refuses or rejects or objects to such issued well permit, or unilaterally conditions such acceptance, then the Owner shall conclusively be presumed to have rejected and refused such exempt well Permit (the “Owner Refusal”) and the District may take the action described in Section 5 below.

4. Only after the State Engineer has issued the exempt well permit for the Lot and the Owner has given the written Owner Well Permit Acceptance to the District Manager, then the District will proceed to sign both originals of the LOA and deliver one original LOA to the Owner and record the other original LOA in the office of the Routt County Clerk and Recorder, to be retained by the District after return from the Clerk and Recorder, and thereafter the District and Owner shall comply with the terms and provisions of the LOA and this instrument shall become terminated. The District will not sign either LOA or be bound to any of its provisions or have any obligation, direct or implied, to the Owner regarding an exempt well for the Lot or approval of a Vault until after the provisions of the preceding sentence are satisfied.

5. If the State Engineer has not issued an exempt well permit to the District for an exempt well on the Lot by the end of 6 months after the District Manager has complied with the first sentence of Section 2 above, or in the event of an Owner Refusal, then the District Manager may unilaterally withdraw or surrender back to the State Engineer the exempt well permit application or the exempt well permit if it has been issued, declare the submittal by the Owner as terminated and void, and return the two unsigned LOAs to the Owner, and the District will then have only such obligation as provided in the remainder of this Section 5. The District Manager will then submit to such Owner with the return of such two unsigned LOAs a form prepared by the District for the Owner to acknowledge in writing such termination and the withdrawal or surrender of the exempt well permit application or issued permit, and for the refund to the Owner of the paid Impact Fee Check (without interest) less the Admin Fee and \$250 in attorney's fees by the District's attorney for services in such termination (the "Termination Acknowledgement"). Upon receipt by the District Manager of such Termination Acknowledgement from the Owner within 15 calendar days after the form of such Acknowledgment was sent by the District Manager to such Owner, the District Manager shall thereafter refund to the Owner the paid Impact Fee Check, less the Admin Fee and the said \$250, both of which are to be retained and owned by the District, after which neither party has any obligation to the other under the IGA or the LOA or the Vault Program or this instrument. The funds deposited by the Well Check and used to reimburse the District for its exempt well permit application, and any additional money provided by the Owner under Section 2 above, will not be refunded. If the Owner fails for any reason to sign and return to the District the Termination Acknowledgment within 15 calendar days after such Acknowledgment was sent to the Owner by the District Manager, then all of the Vault Impact Fee paid by the Owner will conclusively be deemed forfeited by the Owner and shall be retained by the District and the District shall not have any further obligation or liability to the Owner under this instrument or the Vault Program or the LOA or the Vault IGA or by law.

The Owner has executed this instrument on the date set forth below, which execution is not revocable. The District Manager, on behalf of the District, has executed this instrument on the date set forth below, and this instrument shall not be binding upon the District until and unless signed by both the Owner and the District Manager.

OWNER:

Date: _____

(Signature)

Date: _____

(Signature)

Address

Telephone Number

Email Address

MORRISON CREEK METROPOLITAN
WATER AND SANITATION DISTRICT

Date: _____

By: _____

Title: _____