

HENRY COUNTY WATER AUTHORITY

RESOLUTION NO. 2019-02

ORDINANCE TO PROVIDE FOR THE PROTECTION AND LIMITED ACCESS BY PERMIT TO THE BUFFER AREAS ADJOINING THE FOLLOWING NAMED RESERVOIRS: THE S. H. GARDNER RESERVOIR, THE LOWER TOWALIGA/STRICKLAND RESERVOIR, THE UPPER TOWALIGA/COLE RESERVOIR, THE LONG BRANCH/ROWLAND RESERVOIR, AND THE TUSSAHAW RESERVOIR; TO PROVIDE FOR ENFORCABILITY, PENALTIES, AND APPEALS; AND FOR OTHER PURPOSES.

WHEREAS, the Henry County Water Authority (hereinafter called the "Authority") has constructed and has in operation the Indian Creek/S. H. Gardner Reservoir, the Lower Towaliga/Strickland Reservoir, the Upper Towaliga/Cole Reservoir, the Tussahaw Reservoir, and the Long Branch/Rowland Reservoir; and

WHEREAS, the Authority owns property that is located adjacent to the full pool elevation of said Reservoirs that are hereinafter referred to as "Buffer Areas"; and

WHEREAS, the Buffer Areas are designed to protect the Reservoirs and the water quality of said Reservoirs; and

WHEREAS, the Buffer Areas are in the Water Quality Critical Area, as defined in the Watershed Protection Ordinance 2004-64; and

WHEREAS, from time to time property owners whose property is contiguous to the Buffer Areas have requested permission to clear underbrush and to trim trees in order that the adjoining property owner may have a view of the Reservoirs; and

WHEREAS, from time to time adjoining property owners have requested access to said Reservoirs through the Buffer Areas; and

WHEREAS, the intent of this ordinance is to follow guidelines established as part of the Authority's Watershed Protection Ordinance 2004-64 and the Georgia Department of Natural Resources Rules for Environmental Planning Criteria for Water Supply Watersheds; and

WHEREAS, the Authority has determined that it is important to establish rules and regulations concerning the use of said Buffer Areas; and

WHEREAS, previously the Authority adopted Resolution 98-61 and Resolution 2006-44 governing the activities authorized and prohibited within the Buffer Areas and this Ordinance is intended to repeal and replace said Resolutions; and

WHEREAS, the Authority, in the exercise of its sound judgement and discretion, after giving thorough thought to all the implications involved, and keeping in mind the public interest and welfare of the citizens of Butts, Spalding and Henry Counties, has determined it to be in the best interest of said citizens that rules and regulations concerning the use of, the Buffer Areas and access to the Reservoir by Adjoining Property Owners be established.

NOW, THEREFORE, upon motion being duly made and seconded, the following Ordinance provisions are adopted, BE IT ORDAINED as follows:

Section 1. Purpose.

The purpose of this ordinance is to provide for the protection and limited access by buffer permit to the buffer areas as defined in Section 2 of this ordinance. This ordinance provides for a buffer permit and associated process which allows by privilege, not right, for adjoining property owners, as defined in Section 2 of this ordinance, access and use of the buffer area under certain conditions. This ordinance may be referred to as the "Reservoir Buffer Protection and Access Ordinance."

Section 2. Definitions.

2.1. "Adjoining property owner" means any person that owns real property contiguous to the buffer areas of the reservoirs.

2.2. "Appellant" means the adjoining property owner who files a written statement setting forth his or her reasons for appealing a denial of a buffer permit by the Reservoir Manager or the revocation of a valid buffer permit by the Reservoir Manager.

2.3. "Authority" means the Henry County Water Authority.

2.4. "Buffer area" means the real property owned by the Authority that is located adjacent to the full pool elevation of all reservoirs owned by the Authority.

2.5. "Buffer permit" means the permit issued by the Reservoir Manager with the privileges authorized in such permit and the reservoir buffer ordinance.

2.6. "Family" means those persons related to the permittee by blood-line or marriage; provided, however, the permittee's family members names must be on file with the Reservoir Manager.

2.7. "Guests" means those persons invited by the permittee or his or her family to access the buffer area and must be accompanied by the permittee or his or her family when in the buffer area.

2.8. "Permittee" means an adjoining property owner who has been issued a buffer permit pursuant to and in accordance with the reservoir buffer ordinance by the Reservoir Manager.

2.9. "Plan" means a diagram or drawing submitted with the application for a buffer permit showing the portion or portions of the buffer area that will be affected and includes a detailed description of the planned work if any to be done within the buffer area and the schedule for the work to be performed and completed referred to as the "planned work."

2.10. "Reservoirs" mean all drinking water reservoirs owned by the Authority, including but not limited to, the Indian Creek/S.H. Gardner Reservoir, Lower Towaliga/Strickland Reservoir, Upper Towaliga/Cole Reservoir, Long Branch/Rowland Reservoir, and Tussahaw Reservoir.

2.11. "Reservoir buffer ordinance" means the Reservoir Buffer Protection and Access Ordinance.

2.12. "Reservoir Manager" means the person employed by the authority to manage the reservoirs or the manager's designee.

2.13. "Watershed protection ordinance" means Sections 3.04.01 through 3.04.13 of the Henry County, Georgia Code of Ordinances, as amended, pertinent sections of the Butts County, Georgia Code of Ordinances, as amended, Sections 2101 through 2110 Spalding County, Georgia Code of Ordinances as amended, and the watershed protection ordinance of the Authority, as amended. If any provision between such ordinances and this ordinance are in conflict, the more restrictive shall apply.

Section 3. Buffer Permits.

3.1. Buffer Permit Required.

(a) Any access to the buffer area or reservoirs by anyone other than the agents, employees or representatives of the Authority is expressly prohibited unless pursuant to state law, an administrative or court order, or through the issuance of a buffer permit. A permittee may access and use, as provided in the reservoir buffer ordinance, the buffer area. A permittee may extend the privileges of the buffer permit to his or her family and guests as defined in Section 2 of this reservoir buffer ordinance.

(b) The Reservoir Manager may set a fee schedule for administration of the permitting process authorized by this reservoir buffer ordinance; provided however, that the maximum total charge for a buffer permit, review of a buffer permit

application and administration of the permitting process or renewal of a buffer permit shall not exceed \$100.00 per application.

(c) Buffer permits are valid for a maximum period of twelve months and terminate automatically upon the expiration of said period or the period specified in the buffer permit, whichever is shorter in duration. Permittees may renew their buffer permits with the Reservoir Manager, which shall not be unreasonably withheld, unless the renewing permittee has violated the terms of his or her buffer permit or this reservoir buffer ordinance.

(d) Adjoining property owners which are corporations and which apply for a buffer permit shall specify in its application the individuals, not to exceed five natural persons, who will be authorized to enjoy the benefits of a buffer permit.

(e) Permits for the access or use of the buffer area previously issued and on file with the Reservoir Manager as of the effective date of the reservoir buffer ordinance shall remain in effect until the expiration date provided in such permit, for a period of twelve months from the effective date of this reservoir ordinance, or until such time that such permit is revoked by the Reservoir Manager, whichever occurs first.

3.2. *Buffer Permit Privileges.*

(a) Permittees will be required to adhere to the privileges and prohibitions stated in the buffer permit and the applicable ordinances, rules and regulations of the authority and Henry County, Georgia. Buffer permits are non-transferable and may be used only by the permittee. For the period of time the buffer permit remains

valid and in effect, the issuance of a buffer permit grants to the Reservoir Manager a license to cross over the permittee's property adjoining the buffer area.

(b) Applying for and receiving a buffer permit, permittees and the family and guests of permittees, acknowledges that they are mere licensees whose right to remain in the buffer area or on the property of the Henry County Water Authority is terminable at will and without notice. The undersigned agrees to vacate the buffer area or reservoir at such time as the Reservoir Manager so determines.

(c) No adjoining property owner or permittee shall build any type of structure or conduct any type of activity in the buffer areas that is not authorized by the buffer permit or that would interfere with the Authority's ownership, operation and maintenance of a reservoir or buffer area. Issuance of the buffer permit does not grant the permittee any right to fish or otherwise access water; any such activity is expressly prohibited except as expressly set forth in the reservoir buffer ordinance. The permittee and his or her family is allowed to fish from the buffer area provided that he or she and those family members fishing have a valid reservoir use permit issued by the Authority. Entering or accessing the water by any means from the buffer area is expressly prohibited and is grounds for revocation of a buffer permit and/or a person's reservoir use permit issued by the Authority.

(d) Where a buffer permit has been issued for the use of the buffer area to the permittee, no other person except for agents, employees, and representatives of the Authority will be allowed to use or cross over the buffer area. This provision shall

not apply to any portion of a reservoir where the Authority has designated an area as a path for public use.

3.3 *Waiver, Release and Indemnification of the Authority.*

(a) By applying for and accepting a buffer permit, the permittee and the family and guests of the permittee agree to follow this reservoir buffer ordinance. Application for and receipt of a buffer permit shall constitute a full and unconditional waiver of the permittee's and the family and guests of the permittee's (hereinafter "Releasers") rights to bring any legal or administrative action whatsoever against the Authority, its officers, directors, agents, management, employees, ratepayers, bondholders and contractors of the Authority (hereinafter referred to as "Releasees"). Application for and receipt of a buffer permit shall constitute the Releasers' full and unconditional release of any and all liability for bodily injury, including but not limited to death, or emotional harm to the Releasers, as well as any and all liability for damage to property.

(b) By receipt of a permit, the Releasers release, waive, discharge, covenant not to sue and agree to hold harmless the Releasees from any and all claims or liability for personal injury, including but not limited to death, or property damage the Releasers may suffer directly or indirectly arising out of or relating in any respect to accessing or using the buffer area or the reservoirs. This waiver and release of all claims, demands, action, and liability shall include, without limitations, any injury, including death, damage or loss to person or property which may be (a) caused by

any act or failure to act by Releasees even if said injury, damage or loss results from the negligence of any and all of the above identified Releasees or (b) sustained by the Releasors in the buffer area or reservoirs.

(d) By receipt of a permit, the Releasors agree to indemnify and hold harmless Releasees from all lawsuits, losses, damages, claims and expenses including attorney's fees and costs arising from or relating with respect to the Releasees' access and use of the buffer area or reservoirs. This provision will apply regardless of whether or not the lawsuit, losses, damages, claims, expenses, attorney's fees and/or costs arises out of the negligence of any of the Releasees.

3.4. *Buffer Permitting Process.*

(a) To obtain a buffer permit, the adjoining property owner shall complete and file with the Reservoir Manager an application for a buffer permit. The application shall be prepared by the Reservoir Manager consistent with the reservoir buffer ordinance and include a waiver and release of liability form signed by the person to whom the buffer permit will be issued as well as any identified family members, guests or corporate members.

(b) If the applicant intends to undertake activities other than merely accessing the buffer or fishing from the buffer, the applicant shall submit with the application a plan showing the portion or portions of the buffer area that will be affected and a description of the work to be done within the buffer area. The Reservoir Manager will review the application and plan. The Reservoir Manager shall not approve the

plan if, in the sole discretion of the Reservoir Manager, it is not in compliance with the reservoir buffer ordinance, the watershed protection ordinance, any state or federal permit pertaining to the Authority or will adversely impact the quality of the reservoir water. No adjoining property owner shall build any type of structure or conduct any type of activity in the buffer areas that is not authorized by the Reservoir Manager in accordance with the approved plan; provided, however, no such structure or activity shall interfere with the authority's ownership, operation and maintenance of a reservoir or buffer area.

(c) If the plan is approved, and prior to commencement of the plan, the adjoining property owner shall provide the Reservoir Manager with notice of when planned work will commence. At any time, the Reservoir Manager may inspect the planned work. If the Reservoir Manager determines that the planned work is not in compliance with the plan, the Reservoir Manager shall issue a cease and desist letter to the adjoining property owner and the adjoining property owner shall cease any and all activity in the buffer area. The Reservoir Manager may also issue a letter of remediation which shall consist of a directive to the adjoining property owner to remediate any and all damage done to the buffer area and the timeframe for completion of the remediation. In addition to such directives, and not a limitation on such power, the Reservoir Manager is authorized to require that the adjoining property owner immediately install and implement erosion control measures as directed by the Reservoir Manager. The adjoining property owner's failure to comply with

such directives shall constitute a violation of the reservoir buffer ordinance and shall result in denial of a buffer permit.

(d) When denial of an application or plan is warranted, the Reservoir Manager shall issue a letter of denial setting forth the basis for denial.

(e) An owner of adjoining property shall not qualify for a new buffer permit for a period of twenty-four (24) months from the date of buffer permit revocation or conviction of, or entering into a plea of guilt or nolo contendere to, a violation of the reservoir buffer ordinance or rules and regulations of the authority adopted pursuant to the reservoir ordinance.

3.5. Directives of Cessation or Remediation and Buffer Permit Revocation.

(a) At all times the Reservoir Manager is authorized to inspect the buffer area. In the sole discretion of the Reservoir Manager, any activity not in compliance with the buffer permit, reservoir buffer ordinance, watershed protection ordinance, any state or federal permit issues to the Authority or which will adversely impact the quality of the reservoir water shall be prohibited and basis for action under this subsection.

(b) If the Reservoir Manager determines that any activity of a permittee is in violation of the buffer permit, reservoir buffer ordinance, watershed protection ordinance, any state or federal permit issued to the Authority or which will adversely impact the quality of the reservoir water, the Reservoir Manager shall issue a cease and desist letter to the permittee, and the adjoining property owner shall immediately cease or cause to be halted any and all such activity in the buffer area.

The Reservoir Manager may also issue letters of remediation which shall consist of a directive to the permittee to remediate any and all damage done to buffer area and the timeframe for completion of the remediation. In addition to such directives, and not a limitation on such power, the Reservoir Manager is authorized to require that the permittee immediately install and implement erosion control measures as directed by the Reservoir Manager. The adjoining property owner's failure to comply with such letters shall constitute a violation of the reservoir buffer ordinance and shall result in revocation of the buffer permit.

(c) Any person violating the ordinances, rules and regulations of the Authority, the terms and conditions of the buffer permit, any state or federal permit issued to the Authority, ordinances of the applicable county, or laws of the State of Georgia may have the buffer permit revoked. The Reservoir Manager or his designees shall have the right to revoke any buffer permit by giving written notice thereof. Revocation shall be effective immediately and former permittees and adjoining property owners shall be prohibited from entering on, under, through or over the buffer area or otherwise affect or impact the buffer area.

Section 4. Appeals.

4.1. If a person is denied a buffer permit by the reservoir manger or if an adjoining property owner who was issued a valid buffer permit believes that the buffer permit has been improperly revoked by the reservoir manger, such person shall appeal such decision by filing a written statement setting forth the reasons for the appeal with the General Manager

of the Authority within fifteen (15) calendar days after the issuance of the denial or revocation decision. Within ninety (90) calendar days from the filing of such appeal, the General Manager will review the appeal and issue a written decision. (Only the adjoining property owner, not those who may be included in the definition of permittee, shall have the right of appeal.)

4.2. If the appellant or the Reservoir Manager is not satisfied with the decision of the General Manager, such person shall appeal such decision by filing a written statement setting forth the reasons for the appeal with the Secretary of the Authority within fifteen (15) calendar days after the issuance of the General Manager's decision. Within ninety (90) calendar days from the filing of such appeal, the Board of the Authority will review the appeal and issue a written decision. (Only the adjoining property owner, not those who may be included in the definition of permittee, shall have the right of appeal.)

Section 5. Penalties.

5.1. *Penalties.* A person or persons convicted of, or entering into a plea of guilt or nolo contendere to, a violation of the reservoir buffer ordinance or rules and regulations of the authority adopted pursuant to the reservoir ordinance shall be punished in magistrate court by a fine of not less than TWO HUNDRED DOLLARS (\$200.00) but not to exceed ONE THOUSAND DOLLARS (\$1,000.00) per violation, per day and shall be required to reimburse the Authority any expenses incurred by the Authority in repairing, correcting, or restoring any damage done by such person to the buffer area or the Authority's property located within the buffer area.

Section 6. Miscellaneous Provisions.

6.1. Severability.

(a) It is hereby declared to be the intention of the Board of the Henry County Water Authority that all sections, paragraphs, sentences, clauses and phrases of the reservoir buffer ordinance are and were, upon their enactment, believed by the board fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Board of the Authority that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this reservoir buffer ordinance is severable from every other section, paragraph, sentence, clause or phrase of this ordinance. It is hereby further declared to be the intention of the board of the authority that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this reservoir buffer ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this ordinance.

(c) In the event that any section, paragraph, sentence, clause or phrase of this reservoir buffer ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of the Authority that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance and that, to the greatest extent allowed by law, all

remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

6.2. *Repeal of Conflicting Provisions.*

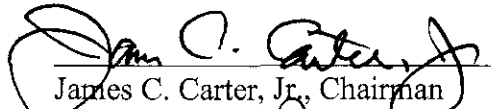
Except as otherwise provided herein, all ordinances or parts of ordinances and resolutions, specifically Resolutions 98-61 and 2006-44, in conflict with this reservoir buffer ordinance are hereby repealed.

6.3. *Effective Date.*


This reservoir buffer ordinance shall become effective immediately upon its adoption by the chairman and the Board of the Henry County Water Authority.

SO ORDAINED, this 11th day of April, 2019.

By:


James C. Carter, Jr., Chairman

Attest:


Kimberly Turner Osborne, Clerk

SEAL