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ORDINANCE NO. 583

AN ORDINANCE TO APPLY AND CONTRACT FOR BENEFICIAL USE OF WATER ON BEHALF OF THE TOWN OF BERTHOUD, A MUNICIPAL CORPORATION, AND PRESCRIBING THE TERMS FOR APPLICATION FOR AN ALLOTMENT OF WATER TO SAID TOWN OF BERTHOUD BY NORTHERN COLORADO WATER CONSERVANCY DISTRICT

WHEREAS, under the Water Conservancy Act of Colorado, Title 37, Article 45, Colorado Revised Statutes of 1973, it is necessary that the Town Council of the Town of Berthoud, a Colorado municipal corporation (hereinafter called "Applicant"), in order to obtain an allotment contract for the beneficial use of water from Northern Colorado Water Conservancy District, shall by ordinance authorize and direct the Mayor and Town Clerk to apply to the Board of Directors of said District for such water allotment contract.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BERTHOUD, COLORADO:

Section 1: That the Town of Berthoud elects to apply for an allotment contract providing for the beneficial use of Seventy-Five (75) acre-feet of water from Northern Colorado Water Conservancy District.

Section 2: That the Mayor and Town Clerk be and are hereby authorized and directed to apply to the Board of Directors of said Northern Colorado Water Conservancy District for a contract allotting to the Applicant the beneficial use of water upon terms prescribed by said Board in the manner and form as this section provided, to-wit:

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR
WATER ALLOTMENT CONTRACT

Applicant, Town of Berthoud, a Colorado municipal corporation, hereby applies to Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, for an allotment contract of beneficial use of water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is Seventy-Five (75) acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.

2. It is understood and agreed by the Applicant that any water allotted by the Board of Directors of said District shall be for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the allotment (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Colorado Water Conservancy District.

3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ($1/310,000$) of the quantity of water annually declared by the Board of Directors of the District to be available for delivery from the water supplies of the District. Applicant agrees that such water shall be delivered from the works of the District at such existing District delivery point or points as may be specified by the Applicant and that the water delivery obligation of the District shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of the District.

4. Applicant agrees to pay annually for the amount of water herein allotted by the Board of Directors of said District at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from the District that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water delivery year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each year thereafter shall be made by the Applicant on or before each October 1 at the rate per acre-foot established by the Board for municipal water allotments in that year.

If an annual payment, as herein provided, is not made by due date, written notice thereof, by certified mail, will be given by said District to the Applicant at the following address: P. O. Box 116, Berthoud, Colorado 80513.

If payment is not made within thirty (30) days after the date of said written notice, Applicant shall have no further right, title, or interest under this contract; and the allotment of water, as herein made, shall be disposed of at the discretion of the Board of Directors of said District.

5. As security to the District, the Applicant agrees that the foregoing covenant of annual payments will be fully met by annual budget and appropriation of funds from such sources of revenues as may be legally available to said Applicant.

6. Applicant agrees that the water allotment shall be beneficially used for the purposes and in the manner specified herein, and that this agreement is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of said District.

7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; by the Rules and Regulations of the Board of Directors of said District; and by the Repayment Contract of July 5, 1938, between said District and the United States and all amendments thereof and supplements thereto.

8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with said District if and when the Board of said District finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by the District. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard allotment contracts of the District; additional annual monetary consideration for extension of District delivery services and for additional administration, operation and maintenance costs; or for other costs to the District which may arise through provision of services to the Applicant.

Section 3: In the opinion of the Town Council of the Town of Berthoud, acquisition of a water allotment contract from Northern Colorado Water Conservancy District and the right to the beneficial use of water thereunder by said Town of Berthoud is necessary; that the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and that the adequate protection of the health of the inhabitants of the community requires an immediate increase in Applicant's water supply. It is, therefore, declared that an emergency exists; that this ordinance shall take effect as an emergency measure and that it shall be published in the manner and shall take effect as provided by the statutes of the State of Colorado or charter of the Applicant.

Passed and adopted, signed, and approved this 26 day of November A.D., 1985.

TOWN OF BERTHOUD

By Ernest B. Nelson

ATTEST:

Orabelle Patterson

(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in the water allotment and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for Seventy-Five (75) acre-feet of water is hereby made to the Town of Berthoud, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

By _____
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _____ day of _____ A.D., 19____.

ATTEST: _____
Secretary