

ORDINANCE NO. 1018

AN ORDINANCE AMENDING THE RAW WATER DEDICATION REQUIREMENTS OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO.

WHEREAS the Board of Trustees has reviewed the Town's current raw water requirements and has determined that the recent installation of the pipeline from Carter Lake to the Town provides a means to deliver Units of the Colorado Big Thompson system directly to the Town and has significantly reduced the Town's carriage losses; and,

WHEREAS the Board of Trustees has reviewed the actual water usage of treated water at the individual residences within the Town; and,

WHEREAS the Board of Trustees has also reviewed the raw water dedication requirements of other municipalities and water districts within the north front range area and has determined that the typical usage of treated water within a residence does not vary significantly based upon the size of the residence, but that the usage of treated water for irrigation does vary dramatically as the size of the lot increases.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO THAT THE FOLLOWING RAW WATER REQUIREMENTS SHALL BE:

Sections 2, 3, 4 and 5 of the Town of Berthoud Development Code, Title 30, Section 30-10-103, entitled Raw Water Contribution Requirements, are hereby amended and Section 6 is hereby added to read as follows:

Section 2. Dedication of Raw Water to the Town of Berthoud

A. It is not the intent of this Ordinance to allow the recalculation of water dedications for existing subdivisions or to increase the raw water requirements for subdivisions for which a final plat has already been approved as of the effective date of this Ordinance. A Developer or a person with an undeveloped pre-approved subdivision which has already established its raw water obligation within its development agreements may request the Town to renegotiate its raw water obligations. The requirements herein shall apply to all development, unless otherwise agreed to by a Developer or a person and the Town and set forth in the applicable annexation or development agreements.

B. A "Developer" shall be defined for purposes of this Ordinance as someone who develops a subdivision, P.U.D., or comparable development

of fifty (50) lots or more. Any person or entity who develops a subdivision, P.U.D., or comparable development with less than fifty (50) lots shall be referred to herein as a "person."

C. Prior to issuance of a building permit, a Developer shall provide the required raw water dedication for said building permit. A Developer may dedicate additional water prior to the issuance of building permits which shall be credited by the Town toward future permits within the development. At the time of final plat, a Developer shall also dedicate all water necessary for irrigation of parks, open space, golf courses, playing fields, and similar areas.

D. The Town shall require the conveyance of Units of the Colorado Big Thompson Project (CBT Units) under fixed quota allotment contracts, shares in the Handy Ditch Company, other raw water sources pursuant to paragraphs F and G below, or a combination thereof for water dedication requirements. This water dedication requirement shall be satisfied for each dwelling unit within a subdivision based upon the following schedule, and such other raw water as is necessary to provide for the anticipated requirements of parks and open space, commercial or industrial uses within the development.

Lot Size (square feet)	Acre Feet	CBT Units
5,000 or less	0.47	0.67
5,001 - 7,000	0.56	0.80
7,001 - 9000	0.64	0.92
9,001 - 11000	0.73	1.04
11,001 - 13000	0.81	1.16
13,001 - 15000	0.90	1.29
15,001 - 17,000	0.98	1.40

Lot sizes shall be rounded to the nearest increment in the table above to determine water dedication requirements. Water dedication for lot sizes in excess of 17,000 square feet shall be analyzed by the Town on a case by case basis.

E. The Town may allow cash-in-lieu of water dedication at its sole discretion. The fee shall be based upon all costs of acquisition of CBT Units, including the administrative costs and average cost of CBT Units in the previous three (3) months' sales of CBT Units, the terms of which sales are available to the Town. The dedication of Handy Ditch shares shall also require the payment of \$500 per dwelling unit to pay the fees for converting the water from agricultural usage to domestic usage

(conversion fee) in cases where Handy Ditch shares are dedicated for domestic usage.

F. The amount of water for which a Developer will receive credit relative to the shares in the Handy Ditch Company (Handy) will be based upon six and two-tenths (6 2/10) acre feet per share if the historic use of the specific shares to be dedicated supports said yield in the Town's sole discretion. Other sources of raw water may be acceptable to the Town in its sole discretion provided they can be delivered in suitable amounts and times for the desired purposes under priorities that will provide a reliable source of water. However, water sources other than CBT Units may only comprise 50% or less of water required for potable uses. In the event that the property cannot be served by water processed at the Town's water treatment plant, then the only raw water acceptable to the Town to comply with the required raw water dedication will be water rights in the amounts acceptable to the water provider or water which can be delivered to the property for raw water irrigation purposes.

- (1) A dwelling unit is defined in the current edition of the applicable Building Code as adopted by the Town. Thus, it would be presumed a duplex would have a raw water compensation requirement of two times a single family residence.
- (2) Dwelling units on lots in excess of 17,000 square feet, commercial development, industrial development, parks, open space, apartment complexes, condominiums and townhouses which do not have in excess of 1,000 square feet of residential floor area, as prorated to each dwelling unit, and other uses shall be evaluated on a case by case basis to determine the amount of water to be dedicated or the amounts of cash-in-lieu of water dedications. The fee for cash-in-lieu of dedication of water rights shall be based upon all costs of acquisition of CBT Units including administrative costs and the average cost of CBT Units in the previous three (3) months' sales of CBT Units, the terms of which are available to the Town. The raw water dedication shall be based on actual usage including all system losses when available and predicted usage including all system losses when it is not. The Town may elect to provide its own analysis, if, in its judgment, the Town has sufficient information and experience with other similar developments to adequately evaluate the probable water demands and consumption for the property. The Town may also require

the Developer or person developing the property to provide a water demand analysis for the property, including water demands and consumption per each use category (e.g., multi-family residential, commercial, office, industrial, parks or others) and irrigation demands and consumptive use. All calculations, whether performed by the Town, a Developer, or a person developing the property shall include all system losses experienced by the Town in delivering, treating, and storing a given water source. In such case, the Town shall make the final determination as to water dedication requirements.

- (3) Upon determination of the amount of raw water usage as required by this section, the requirement shall be rounded to the nearest one-tenth (1/10) acre foot. Dedication of CBT Units for a development shall be rounded to the nearest full CBT Unit. Dedication of Handy Ditch shares for a development shall be rounded to the nearest one-tenth (1/10) of a share.

G. The amount and suitability of a given raw water source necessary to provide firm yield water shall be determined by the Town in its sole discretion. Conveyance of any water to the Town must be made in a manner that warrants free and clear title to the water. The Town shall also require documentation evidencing free and clear title to the water. The Developer or person developing the property shall also execute or cause to be executed a dry-up covenant or covenants acceptable to the Town in cases where such covenants are deemed necessary by the Town and pay such fees as are required to make the water available for use by the Town.

Section 3 is hereby amended to read as follows:

A. Those properties currently receiving water treated through the Town's water treatment system shall be exempt from water dedication and water dedication fees except to the extent that the usage of the property changes; for example a residence to a restaurant at which point the Town may reevaluate the usage and require additional raw water to be transferred to the Town.

B. The Board of Trustees recognizes that the acquisition of partial shares of Handy Ditch Company stock and Units of Colorado Big Thompson is difficult. For persons who are not defined as Developers and whose property can be provided water service or treated water

through the Town's treatment plant, the Town will accept cash in lieu of dedication of water rights. Such payments shall be made at the same times as specified in Section 2.C. hereof for water dedications. The amount of such payments shall be based upon all costs of acquisition of CBT Units, including administrative costs and the average cost of CBT Units in the previous three (3) months' sales of CBT Units, the terms of which are available to the Town.

Section 4 is hereby repealed in full.

Section 5 is hereby amended to read as follows:

Section 5. Non-potable Irrigation Systems.

A. The Board of Trustees has determined that it is in the best interest of the Town of Berthoud to attempt to preserve the native and historic water rights on properties, which are subdivided within the Town. In order to do so, the Town encourages the use of non-potable irrigation systems utilizing such historic water rights where economically and administratively in the best interests of the Town.

B. Developers or persons developing the property who wish to utilize non-potable irrigation systems shall pay for an analysis by the Town which shall include: (1) an analysis by a qualified engineer with supporting data as to the quantity and quality of the water which will be delivered through the non-potable irrigation system; (2) the proposed manner of delivery, including duration and volume; (3) the reliability of the system; (4) the plan for system maintenance and the entity to be responsible for such maintenance; (5) the proposed manner in which the non-potable water irrigation system will be connected to the Town's treated water system so that treated water can be used for irrigation when the supply of the non-potable water is unavailable or insufficient including, but not limited to, backflow devices; (6) a calculation of the volume of water which the non-potable system will be able to provide on a monthly basis in lieu of the usage of treated water for irrigation purposes and the proposed appropriate credit against raw water dedications or fees in lieu of raw water dedications; and (7) certification by an attorney who specializes in water law that the use of the non-potable water as it is presented will be in full compliance with the adjudicated usage of the decreed water rights.

C. The Town shall review the information set forth in Section 5.B. to determine the amount of credit that it will recognize toward the water

dedication requirements required above. The Developer or person developing the property shall pay for all costs of the Town's review.

D. Upon approval, the Developer or person developing the property shall install a meter acceptable to the Town to measure the use of non-potable water when the non-potable system is installed. Use of non-potable water shall be reviewed and the Town reserves the right to require additional water dedication if the non-potable system does not deliver the amount of water for which the Developer or person was given a credit. The Developer or person shall be responsible for any such additional water dedication for a period of five (5) years after the non-potable system is placed into use for the entire development.

6. Effective Date for Raw Water Dedication Requirements and Fees.

Currently, the fee for raw water dedication is not segregated into a raw water fee and a corresponding system investment fee for the capital components of raw water delivery and raw water storage. It is therefore necessary and appropriate that, prior to the termination of the Town's current raw water dedication fee and the inception of the fees and requirements set forth herein, that the system investment fees for the capital components involving raw water delivery and raw water storage are implemented. The water dedication requirements and cash in lieu of water dedications set forth in this ordinance shall take effect and be in force concurrently with the effective date of said system investment fees. At such time, all ordinances or portions thereof, which are in conflict with this ordinance shall be deemed repealed.

At its meeting on November 8, 2005, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 29th day of November, 2005. After public hearing, the Ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 29th day of November, 2005. This Ordinance shall take effect thirty (30) days after publication.

TOWN OF BERTHOUD

Milan Karspeck
Milan Karspeck - Mayor

ATTEST:

Mary K. Cowdin

Mary K. Cowdin - Town Clerk

Published: 2-2-06