

**RESOLUTION NO. 1-14
TOWN OF BERTHOUD, COLORADO**

A RESOLUTION TO APPLY FOR AN ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR THE RIGHT TO USE COLORADO BIG THOMPSON PROJECT WATER AND FOR CANCELLATION OF TEMPORARY USE PERMITS

WHEREAS, the Town of Berthoud relies upon water from the Colorado Big Thompson ("CBT") Project to provide water within the Town; and

WHEREAS, the Northern Colorado Water Conservancy District operates pursuant to a procedure under which municipalities are granted Temporary Use Permits when CBT Units are acquired. At the beginning of each calendar year, municipalities are required to convert those Temporary Use Permits to Annually Renewable Perpetual Water Contracts by applying to cancel the Temporary Use Permits and entering into a Perpetual Contract; and

WHEREAS, this procedure is required for a total of 62 CBT Units acquired during 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, AS FOLLOWS:

Section 1. The Board of Trustees for the Town of Berthoud ("Board") hereby authorizes the Mayor and Town Clerk to execute an Application to the Northern Colorado Water Conservancy District for an Annually Renewable Perpetual Water Contract for the Right to Use Colorado Big Thompson Project Water under C.R.S. § 37-45-131, which contract shall be entered into in the name of the Town of Berthoud acting by and through its Town of Berthoud Water Activity Enterprise.

Section 2. The Board hereby authorizes the Mayor and Town Clerk to execute an Application to the Northern Colorado Water Conservancy District for cancellation of Temporary Use Permits for 62 acre feet.

Section 3. The Board hereby authorizes the Mayor and Town Clerk to also execute any other necessary documentation prescribed by the Northern Colorado Water Conservancy District to complete the transactions described herein.

PASSED, ADOPTED AND APPROVED this 14th day of January 2014 by the Board of Trustees of the Town of Berthoud, Colorado.

TOWN OF BERTHOUD

By: _____

David Gregg, Mayor

Attest:

Mary K. Cowdin
Mary K. Cowdin, Town Clerk

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. 37-45-131

Applicant, Town of Berthoud, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 62 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 provided for use under this contract by the Board of Directors of Northern Water shall be primarily 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 use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
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 Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water 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 Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water 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 Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: P.O. Box 1229, Berthoud, Colorado 80513.


Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use 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 Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water 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 Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. 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 contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant necessary; 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 the adequate protection of the health of the inhabitants of the community.
10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this 14th day of January, A.D., 2014.

TOWN OF BERTHOUD

By 

ATTEST:

Mary K Cowdin
(SEAL)

**APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR CANCELLATION OF TEMPORARY USE PERMITS**

The Town of Berthoud hereby applies for the cancellation of the following Temporary Use Permits:

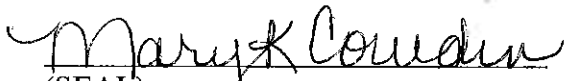
<u>Permits Dated</u>	<u>Acre-Feet</u>
March 8, 2013	44
April 12, 2013	18
Total Quantity to be Released	62

Dated at Berthoud, Colorado this 14th day of January, 2014.

TOWN OF BERTHOUD

By 

ATTEST:


(SEAL)

ORDER ON APPLICATION

Application having been made by the Town of Berthoud for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the _____ day of _____, 20____.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

President

ATTEST:

Secretary

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 62 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., _____.

ATTEST: _____
Secretary



December 16, 2013

Ms. Faith Smith
Deputy Town Clerk
Town of Berthoud
P.O. Box 1229
Berthoud, Colorado 80513

Dear Faith:

On January 10, 2003, the Board of Directors of the Northern Colorado Water Conservancy District (Northern Water) approved a policy regarding the conversion of Temporary Use Permits. This policy no longer allows the renewal of the Temporary Use Permits. Therefore, all current Temporary Use Permits must be converted to the permanent Section 131 Contract by March 1, 2014, which is also the date of expiration of the Town of Berthoud's Temporary Use Permits.

Enclosed are the applications needed to convert the Town of Berthoud's 62 acre-foot units of Colorado-Big Thompson Project water from the Temporary Use Permits to the Section 131 Annually Renewable Water Contract. The Section 131 Contract is essentially a continuously renewed 1-year contract. Section 131 Contracts do not require that the municipality approve the contract by ordinance, but instead by whatever means the municipality believes is legally necessary to make the contract binding on the municipality (typically determined by the municipal attorney). Northern Water will accept either an ordinance or a resolution, depending on the municipal attorney's opinion as to which action is required to make the contract binding on the municipality.

The executed applications must be in our office no later than March 1, 2014. If you have any questions, or need assistance in completing the applications, please feel free to give me a call at (970) 622-2217.

Sincerely,

Sherri Rasmussen
Allotment Contract Specialist

sr
Enclosures
cc: Paul Zilis – Vranesh & Raisch, LLP