

RESOLUTION NO. 2010-02-04

**A RESOLUTION TO APPLY AND CONTRACT FOR BENEFICIAL USE OF WATER
ON BEHALF OF THE CITY OF FORT MORGAN, A MUNICIPAL CORPORATION,
AND PRESCRIBING THE TERMS FOR APPLICATION
FOR AN ALLOCATION OF THE RIGHT TO USE COLORADO-BIG THOMPSON
PROJECT WATER TO SAID CITY OF FORT MORGAN 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 City Council of the City of Fort Morgan, a Colorado municipal corporation (hereinafter called "Applicant"), in order to obtain the perpetual right to use Colorado-Big Thompson Project water on an annually renewable basis under C.R.S. 37-45-131 within the boundaries of the Northern Colorado Water Conservancy District, by contract for the beneficial use of water from Northern Colorado Water Conservancy District, shall by resolution authorize and direct the Mayor and the City Clerk to apply to the Board of Directors of said District for such water contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

Section 1: That the City of Fort Morgan has determined to apply for a contract providing for the beneficial use of Sixty-Three (63) acre-feet of water from Northern Colorado Water Conservancy District within the boundaries of the Northern Colorado Water Conservancy District.

Section 2: That the Mayor and the City 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 providing to the Applicant the beneficial use of water upon terms prescribed by said Board in the manner and form as in this section provided, to-wit:

**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, City of Fort Morgan, the governing body of a Colorado municipal corporation acting in its governmental capacity or as governing body of a water activity enterprise (circle capacity in which governing body is acting), hereby applies to Northern Colorado Water Conservancy District ("Northern Water"), a political subdivision of the State of

Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, 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 Sixty-Three (63) 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 said District to the Applicant at the following address: P. O. Box 100, Fort Morgan, CO 80701.

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 action 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; 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 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 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.

Section 3: In the opinion of the City Council of the City of Fort Morgan acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Colorado Water Conservancy District and the right to the beneficial use of water thereunder by said City of Fort Morgan 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 resolution 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.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 16th day of February, 2010, the vote upon roll call being as follows:

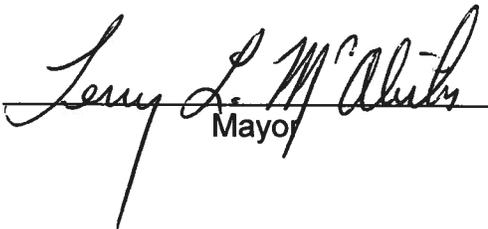
Ayes: Mayor McAlister, Councilmembers; Bryan, Deal, Forstedt, Nation, Powers and Shaver

Nays: None.

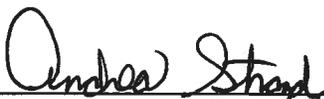
Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: 
Mayor

ATTEST:


Andrea Strand, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

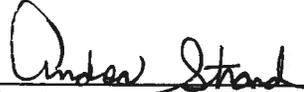
ss.

CERTIFICATE

I, Andrea Strand, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of

the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 16th day of February, 2010.



Andrea Strand, City Clerk

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 Sixty-Three (63) acre-feet of water is hereby made to the City of Fort Morgan, 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., 2010.

ATTEST:

Secretary

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

The City of Fort Morgan hereby applies for the cancellation of the following Temporary Use Permits:

Permits Dated	Acre-Feet
September 11, 2009	40
September 11, 2009	9
September 11, 2009	<u>14</u>
Total Quantity to be Released	63

Dated at Fort Morgan, Colorado this 16th day of February, 2010.

CITY OF FORT MORGAN

By: _____

Larry L. McQuibb

ATTEST:

Andrew Strand

(SEAL)

ORDER ON APPLICATION

Application having been made by the City of Fort Morgan for the cancellation of the above Temporary Use Permits, and Hearing have been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be cancelled.

Dated this _____ day of _____, 2010.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

President

ATTEST:

Secretary