

CITY COUNCIL COMMUNICATION



MEETING DATE: February 9, 2010 **ITEM NUMBER:** 9B
TYPE OF ITEM: Consent Agenda R-2010-01
PRESENTED BY: Dale Rademacher, Director of Public Works & Natural Resources, 303-651-8355
Cal Youngberg, PWRN Environmental Services Manager, 303-651-8399
Ken Huson, Water Resources Administrator, 303-651-8340
Wes Lowrie, Water Resources Technician, 303-651-8814

SUBJECT/AGENDA TITLE: Resolution Authorizing an Application with Northern Colorado Water Conservancy District to Contract for the Beneficial Use of Colorado-Big Thompson Project Water

EXECUTIVE SUMMARY:
Attached is a Resolution authorizing the City of Longmont to apply for a contract for an allocation of the right to use Colorado-Big Thompson (CBT) Project water. The contract will allow the City to convert 40 units of the C-BT project currently held as temporary permits. The contract will be executed between the City of Longmont and Northern Colorado Water Conservancy District (Northern).

This action by City Council is required annually in order for Longmont to make beneficial use of those units of Colorado Big Thompson Project water which have been transferred into its ownership during the previous year. These 40 units were acquired through the water rights exchange agreement approved by Council on April 14, 2009 under Resolution R-2009-33.

COUNCIL OPTIONS:

1. Approve Resolution
2. Not approve Resolution
3. Revise Resolution and Adopt

RECOMMENDED OPTIONS: Option 1 - Approve Resolution

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:
Annual assessments for Longmont's units of CBT water are paid through its Assessments fund. This fund (300-310-47102-244) is currently budgeted for in the 2010 budget. Assessment costs associated with these 40 units will be \$2,004.80 with total 2010 CBT assessments at \$202,987.95.

BACKGROUND AND ISSUE ANALYSIS:

To transfer C-BT water to the City of Longmont, the previous owner completed an application to transfer the allotment with a temporary use permit. This permit is then signed by the City Manager and the temporary transfer of the CBT to Longmont would be approved by the Board of Directors



of Northern. The current policy of Northern requires conversion of temporary use permits on an annual basis. As a result, all current Temporary Use Permits must be converted to Annually Renewable Perpetual Water Contracts.

Through application of the Raw Water Requirement Policy, Longmont normally receives additional units of Colorado Big Thompson Project water by means of land annexations, subdivision platting and land acquisitions. Longmont can also receive additional units of Colorado Big Thompson Project water through water rights exchanges or water rights purchases. The 40 units of C-BT for which the described change is sought were acquired between January 1, 2009 and December 31, 2009. City Council annually makes this conversion from temporary use permits to annually renewable contracts. Longmont presently holds a total of 12,710 units of CBT of which 9,726 units are under Class B Allotment Contracts, 2,944 units are under Annually Renewable Perpetual Water Contracts, and 40 units are under Temporary Use Permits. Of the 12,710 units currently held by Longmont, 162 units have been acquired in conjunction with Open Space Land Acquisitions, and are reserved for that purpose.

Northern also charges Temporary Use Permits the annual operational and maintenance assessment at the end of the year after use. In the case of permanent allotment contracts, Northern collects assessments at the start of the water year. As a result, in the first year of Annually Renewable Contracts, assessments will occur on those units of CBT being converted from Temporary Use Permits. Longmont has budgeted funding for this assessment in the water operating fund of the 2010 Budget. The attached Resolution allows for the conversion of 40 units of Colorado Big Thompson Project water presently held under Temporary Use Permits to Annually Renewable Perpetual Contracts.

Water Board reviewed this matter during its Monday January 25, 2010 meeting and voted unanimously to recommend approval of the attached Resolution authorizing an application with Northern Colorado Water Conservancy District to contract for the beneficial use of Colorado-Big Thompson Project water.

ATTACHMENTS:
Proposed Resolution

1 RESOLUTION R-2010- 01

2 A RESOLUTION OF THE LONGMONT CITY COUNCIL AUTHORIZING AN
3 APPLICATION WITH NORTHERN COLORADO WATER CONSERVANCY DISTRICT TO
4 CONTRACT FOR THE BENEFICIAL USE OF COLORADO-BIG THOMPSON PROJECT
5 WATER AND PRESCRIBING THE TERMS OF THE APPLICATION
6

7 WHEREAS, the City of Longmont has acquired units of Colorado-Big Thompson Project
8 water through land annexation, outside water tap applications and purchase; and

9 WHEREAS, previously the Northern Colorado Water Conservancy District has allowed
10 the City to use the Colorado-Big Thompson Project Water by temporary use permits; and

11 WHEREAS, the Northern Colorado Water Conservancy District now requires that the
12 City apply for a contract to use the water; and

13 WHEREAS, it is necessary that the City Council of the City of Longmont (hereinafter
14 called "Applicant"), in order to obtain the perpetual right to use Colorado-Big Thompson Project
15 water on an annually renewable basis under C.R.S. Section 37-45-131 within the boundaries of
16 the Northern Colorado Water Conservancy District, by contract for the beneficial use of water
17 from Northern Colorado Water Conservancy District, by resolution authorize and direct the
18 Mayor to apply to the Board of Directors of said District for such water contract.

19 NOW, THEREFORE, THE COUNCIL OF THE CITY OF LONGMONT, COLORADO,
20 RESOLVES:

21 Section 1

22 The City of Longmont has determined to apply for a contract providing for the beneficial
23 use of forty (40) acre-feet of water from Northern Colorado Water Conservancy District within
24 the boundaries of the Northern Colorado Water Conservancy District.

1 Section 2

2 The Mayor is hereby authorized and directed to apply to the Board of Directors of said
3 Northern Colorado Water Conservancy District for a contract providing to the Applicant the
4 beneficial use of water upon terms prescribed by said Board in the manner and form as in this
5 section provided, to-wit:

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

12 Applicant, City of Longmont, a Colorado municipal corporation, as governing body of a
13 water activity enterprise, hereby applies to Northern Colorado Water Conservancy District, a
14 political subdivision of the State of Colorado, organized and existing by virtue of Title 37,
15 Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-
16 Big Thompson Project water under the following terms and conditions:

17 1. The quantity of water herein requested by Applicant for annual application to
18 beneficial use is 40 acre-feet to be used so long as the Applicant fully complies with all of the
19 terms, conditions, and obligations hereinafter set forth.

20 2. It is understood and agreed by the Applicant that any water provided for use under
21 this contract by the Board of Directors of Northern Water shall be primarily for domestic,
22 irrigation, or industrial use within or through facilities or upon lands owned or served by said
23 Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit

1 from the use of water (whether water service is provided by direct delivery, by exchange, or
2 otherwise) shall be situated within the boundaries of Northern Water.

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

12 4. Applicant agrees to pay annually in advance for the amount of water herein
13 provided for use under this contract by the Board of Directors of Northern Water at a price per
14 acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment
15 shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that
16 the initial payment is due hereunder. Said notice will advise the Applicant, among other things,
17 of the water year to which the initial payment shall apply and the price per acre-foot which is
18 applicable to that year. Annual payments for each water year thereafter shall be made in advance
19 by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the
20 rate per acre-foot established by the Board for municipal water use in that water year. For the
21 purpose of this water contract, the water year is defined to be from November 1 to October 31 of
22 the following year.

1 If an annual payment as herein provided is not made by due date, written notice thereof,
2 by certified mail, will be given by Northern Water to the Applicant at the following address:

3 1100 S. Sherman Street, Longmont, Colorado 80501.

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

11 5. This right of use shall be perpetual on an annually renewable basis. If the annual
12 payment is made as provided in this application, the right of use shall be automatically renewed
13 another water year without any further notice of Northern Water; if the annual payment is not
14 timely made, as provided above, the right of use shall terminate.

15 6. Applicant agrees that the water allocation shall be beneficially used for the
16 purposes and in the manner specified herein, and that this right of use is made for the exclusive
17 benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said
18 Applicant without prior specific approval of the Board of Directors of Northern Water.

19 7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of
20 Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they
21 now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between
22 Northern Water and the United States and all amendments thereof and supplements thereto.

23 8. Applicant agrees, as a condition of this contract, to enter into an "Operating
24 Agreement" with Northern Water if and when the Board of Northern Water finds and determines

1 that such an agreement is required by reason of additional or special services requested by the
2 Applicant and provided by Northern Water. Said agreement may contain, but not be limited to,
3 provision for water delivery at times or by means not provided within the terms of standard
4 contracts of Northern Water; additional annual monetary consideration for extension of Northern
5 Water delivery services and for additional administration, operation and maintenance costs; or
6 for other costs to Northern Water which may arise through provision of services to the Applicant.

7 9. Acquisition of this annually renewable perpetual right of use water contract for
8 the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial
9 use of water thereunder by the Applicant necessary; the continued acquisition and use of this
10 water supply is essential for the well-being of the community and for the preservation of the
11 public peace, health, and safety; and the adequate protection of the health of the inhabitants of
12 the community.

13 10. The governing body of Applicant has duly approved this Application in
14 accordance with all legally required procedures.

15 Section 3

16 In the opinion of the City Council of the City of Longmont acquisition of this annually
17 renewable perpetual right of use water contract for the Colorado-Big Thompson Project water
18 from Northern Water and the right to the beneficial use of water thereunder by the City is
19 necessary; the continued acquisition and use of this water supply is essential for the well-being
20 of the community and for the preservation of the public peace, health, and safety, and the
21 adequate protection of the health of the inhabitants of the community.

22 Section 4

23 The Council repeals all resolutions or parts of resolutions in conflict with this resolution,
24 but only to the extent of such inconsistency.

1 Passed and adopted this _____ day of _____, 2010.

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MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

File: 8185