

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 22

DATE: February 3, 2004

STAFF: Dennis Bode

SUBJECT

First Reading of Ordinance No. 021, 2004, Authorizing the Mayor and the City Clerk to Apply and Contract for Beneficial Use of Water on Behalf of the City of Fort Collins, and Prescribing the Terms for Application for an Allocation of the Right to Use Colorado-Big Thompson Project Water to the City by Northern Colorado Water Conservancy District.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

EXECUTIVE SUMMARY

This ordinance is needed to apply for and obtain the perpetual right to use 150 acre-foot units of Colorado-Big Thompson Project water held by the City. These units are currently held under temporary use permits with the Northern Colorado Water Conservancy District.

BACKGROUND

The City owns 18,855 acre-foot units of Colorado-Big Thompson water which are held under permanent contracts or temporary use permits with the Northern Colorado Water Conservancy District. The Northern Colorado Water Conservancy District requires that all Colorado-Big Thompson units held under temporary use permits on December 31 of any year be converted to use under permanent contracts. As of the end of the year, the City had 150 units of Colorado-Big Thompson water held under temporary use permits that must now be converted to what is referred to as a permanent Section 131 contract. This conversion is accomplished by adopting an ordinance conforming to the standard form of ordinance provided by Northern Colorado Water Conservancy District, and approved as to form by the City Attorney's Office. Adoption by City Council will authorize the Mayor and City Clerk to apply for the permanent contract.

The temporary use permits for the 150 units will be cancelled through a standard Northern Colorado Water Conservancy District application to be approved by the City Manager. The transfer of these Colorado-Big Thompson units to permanent contracts will have no effect on the City's ownership and use of the water or the cost of assessments on these units, but will convert these shares into perpetual rights.

ORDINANCE NO. 021, 2004
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR AND THE CITY CLERK TO APPLY
AND CONTRACT FOR BENEFICIAL USE OF WATER ON BEHALF
OF THE CITY OF FORT COLLINS, AND PRESCRIBING THE TERMS
FOR APPLICATION FOR AN ALLOCATION OF THE RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER TO THE CITY
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 Collins, 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 ordinance authorize and direct the Mayor and City Clerk to apply to the Board of Directors of said District for such water contract.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, as follows:

Section 1. That the City of Fort Collins has determined to apply for a contract providing for the beneficial use of One Hundred Fifty (150) 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 City Clerk 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 attached hereto as Exhibit "A" and incorporated herein by this reference.

Introduced, considered favorably on first reading, and ordered published this 3rd day of February, A.D. 2004, and to be presented for final passage on the 17th day of February, A.D. 2004.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 17th day of February, A.D. 2004.

Mayor

ATTEST:

City 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, City of Fort Collins, the governing body of a Colorado municipal corporation acting in its governmental capacity, 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 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 One Hundred Fifty (150) 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 said District 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 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 in advance for the amount of water herein provided for use under this contract 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 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 580, Fort Collins, Colorado 80522.

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 said District in accordance with the applicable provisions of C.R.S. Sections 37-45-132 and 7-42-104. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above the District'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 the District; 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 said District.

7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; by Section 37-45-131; by the Rules and Regulations and policies 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 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.

9. The terms of this application and contract shall be construed in accordance with the laws of the State of Colorado, and are subject to the legal constraints imposed upon the Applicant and the District by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and by their respective governing statutes, charters, ordinances, rules and regulations. Notwithstanding any other provision of this contract to the contrary, in no event shall either the Applicant or the District exercise any power or take any action which shall be prohibited by

applicable law. Whenever possible, each provision of this contract shall be interpreted in such a manner so as to be effective and valid under applicable law.

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 One Hundred Fifty (150) acre-feet of water is hereby made to the City of Fort Collins, 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. 2004.

ATTEST:
Acting Secretary