

SUBJECT: APPROVAL OF RESOLUTION NO. 5, SERIES 2024 – A
RESOLUTION APPROVING TWO APPLICATIONS TO THE
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR THE CONVERSION OF A TEMPORARY USE PERMIT TO
AN ANNUALLY RENEWABLE PERPETUAL WATER
CONTRACT FOR THE RIGHT TO USE COLORADO-BIG
THOMPSON PROJECT WATER

DATE: FEBRUARY 6, 2024

PRESENTED BY: KURT KOWAR, P.E., PUBLIC WORKS DIRECTOR

SUMMARY:

Staff recommends approval of the attached resolution to convert the water rights of 40 CBT Units that were acquired in 2023 from Northern Water's Temporary Use Permit program to an annually renewable perpetual water contract.

The use of these 40 units within the City's water supply will be unchanged. This action is an administrative process required as Northern Water is no longer supporting the temporary use permit program. This process was also planned to be initiated by Louisville within the next couple years and has no measurable impact beyond accelerating the timing of the eventual conversion. These 40 units will be added and consider identical to the City's other 2,080 units.

FISCAL IMPACT:

A \$500 transfer fee is required and will be funded from the water ditch assessment account (501462-531000). Annual assessments for 2024 will be calculated on the revised amount of unit ownership.

PROGRAM/SUB-PROGRAM IMPACT:

The main objective for the Water Utility Sub-Program is to consistently provide safe and great tasting water, routinely testing quality for compliance with State and Federal Standards. The proactive management of the City's water rights is critical to this objective.

RECOMMENDATION:

Staff recommends approval of Resolution No. 5, Series 2024 to authorize the transfers of 40 CBT units from Northern's temporary use permit to an annually renewable perpetual water contract. The Resolution would further authorize the Mayor, City Manager, Public Work Director, Deputy Director of Utilities and City Clerk to sign and execute the Agreements and certain other documents on behalf of the City.

SUBJECT: RESOLUTION NO. 5, SERIES 2024

DATE: FEBRUARY 6, 2024

PAGE 2 OF 2

ATTACHMENTS:

1. Resolution No. 5, Series 2024
2. Application for Cancellation of Temporary Use Permit
3. Application for Annual Renewable Perpetual Water Contract for Right to Use Colorado-Big Thompson Project

STRATEGIC PLAN IMPACT:

☐	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☐	 Vibrant Economic Climate	☐	 Quality Programs & Amenities
☐	 Engaged Community	☐	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

**RESOLUTION NO. 5
SERIES 2024**

**A RESOLUTION APPROVING TWO APPLICATIONS TO THE NORTHERN
COLORADO WATER CONSERVANCY DISTRICT FOR THE CONVERSION OF A
TEMPORARY USE PERMIT TO AN ANNUALLY RENEWABLE PERPETUAL WATER
CONTRACT FOR THE RIGHT TO USE COLORADO-BIG THOMPSON PROJECT
WATER**

WHEREAS, the City of Louisville (the “City”) currently holds a Temporary Use Permit through the Northern Colorado Water Conservancy District (“Northern Water”) granting the City the right to the acquisition and beneficial use of 40-acre-foot units of Colorado-Big Thompson Project water (“CBT Units”) originally purchased by the City from Eldon and Martha Bower Family 1992 Revocable Trust for integration into the City’s water supply; and

WHEREAS, on January 10, 2003, the Board of Directors of Northern Water approved a policy, pursuant to C.R.S. Section 37-45-131, that replaced its Temporary Use Permit program with a contract approach, and has requested that the City convert its current Temporary Use Permit to an annually renewable perpetual water contract; and

WHEREAS, the conversion of the City’s Temporary Use Permit to an annually renewable perpetual water contract would allow the City to continue to acquire and use the CBT Units the City has been using under the Temporary Use Permit, without any substantive change to the City’s water rights; and

WHEREAS, to effect the conversion, Northern Water requires the City’s payment of a \$500 transfer fee and submission of two applications (the “Applications”) for entrance into the annually renewable perpetual water contract, and cancellation of the City’s Temporary Use Permit; and

WHEREAS, submission of the Applications would require the City 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 City and provided by Northern Water; and

WHEREAS, CBT Units are highly desirable for their easy integration with the City water supply system; and

WHEREAS, the City Council desires to approve the Applications and authorize their execution and submission, along with the transfer fee, to Northern Water, such that the City may secure the City’s continued right to acquire and use the CBT Units previously authorized under the City’s Temporary Use Permit; and

WHEREAS, the City Council further desires to authorize the Mayor and certain City staff to do all things necessary on behalf of the City, and to execute and deliver the

“Operating Agreement” and any other necessary documents, to effect the City’s continued right to use the CBT Units.

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

1. The proposed Applications for (1) Cancellation of Temporary Use Permit, and (2) Annually Renewable Perpetual Water Contract for Right to Use Colorado-Big Thompson Project Water under C.R.S. 37-45-131 (the “Applications”), are hereby approved in essentially the same form as the copies of such Applications accompanying this Resolution.

2. The City Manager is authorized to execute and submit the Applications to the Northern Colorado Water Conservancy District.

3. The Mayor, City Manager, Public Works Director, Deputy Director of Utilities, and other appropriate City Staff are further authorized to do all things necessary on behalf of the City, and the City Manager is authorized to execute and deliver the “Operating Agreement” and any other necessary documents, to effect the City’s continued right to use the 40-acre-foot units previously authorized under the City’s Temporary Use Permit.

PASSED AND ADOPTED this 6th day of February, 2024.

Christopher M. Leh, Mayor

ATTEST:

Meredyth Muth, City Clerk

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

The City of Louisville hereby applies for the cancellation of the following Temporary Use Permit:

<u>Permit Dated</u>	<u>Acre-Feet</u>
August 10, 2023	40
Total Quantity to be Released	40

Dated at Louisville, Colorado this _____ day of _____, 20____.

CITY OF LOUISVILLE

By_____

ATTEST:

(SEAL)

ORDER ON APPLICATION

Application having been made by the City of Louisville for the cancellation of the above Temporary Use Permit, 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 Permit be canceled.

Dated the _____ day of _____, 20____.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

President

ATTEST:

Secretary

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 Louisville, 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 **40 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 municipal, 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-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: 749 Main Street, Louisville, Colorado 80027

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 is 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 _____ day of _____, A.D., 20__.

CITY OF LOUISVILLE

By _____

ATTEST:

(SEAL)

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 **40 acre-feet** of water is hereby made to the City of Louisville, 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., 20____.

ATTEST: _____
Secretary