

INACTIVE ALLOTMENT CONTRACT ACCOUNT RULE

Purpose

The Inactive Allotment Contract Account Rule provides the means by which an existing Class D Allottee can dispose of its allotment contract when it no longer owns the land to which the Class D Allotment Contract is attached. It also provides a means to dispose of Class B and Class C Allotment Contracts when the beneficial use or need of those contracts has ceased to exist or been terminated voluntarily or involuntarily. Finally, it provides a means to dispose of an Allotment Contract when a holder of a security interest in a Class B, Class C, or Class D Allotment Contract has succeeded to the interest of the allottee and has no permissible beneficial use or need of that contract

Background

The Northern Colorado Water Conservancy District (Northern Water) has, since 1938, issued Class D Allotment Contracts for the irrigation beneficial use of water yielded from the Colorado-Big Thompson (C-BT) Project. As pre-requisites for the issuance of a Class D Allotment Contract, the potential allottee must demonstrate: 1) that it is the owner of the land to which the Class D Allotment Contract is to be attached; 2) a history of irrigation of the parcel of land to which the Class D Allotment Contract is to be attached; 3) a need for the supplemental water supply provided by the Class D Allotment Contract; and 4) an ability to deliver the C-BT Project water for beneficial use to the parcel to which the Class D Allotment Contract is to be attached. Under C.R.S. § 37-45-125, the allotment contract is issued to a petitioning owner of lands for use on such lands.

As land ownership changes within the boundaries of Northern Water and the value of both land and allotment contracts (acre-foot units) for C-BT Project water increase, real estate transactions, particularly those associated with land parcels to which C-BT Project Class D Allotment Contracts have been attached, are becoming more complex. In most cases, land and water transactions involve significant amounts of money. Tax considerations, financial planning, estate planning and administration, and monetary return from the land and water assets become pertinent considerations as these transactions are planned. Further complicating these transactions is the ever-present requirement by Northern Water that all transactions involving C-BT Project Class D Allotment Contracts be accomplished in full compliance with the allotment contract, the Water Conservancy Act, and the rules, regulations, policies, and procedures of Northern Water.

It has become apparent to Northern Water that there are instances where the land is conveyed separately from the attached Class D Allotment Contract. These actions, or variations of them, have resulted in the beneficial ownership interest in Class D Allotment Contracts being held by an entity or entities that do not own the land to which the Class D Allotment Contracts are attached. This has been facilitated by “storage” or “parking” agreements whereby the owner of the land parcel, referred to hereafter as the “parcel owner,” who is also the owner of the allotment contract as shown on Northern Water’s records, hereafter referred to as the “allottee of record,”

grants control and beneficial ownership of the allotment contract to another entity, referred to hereafter as the “unauthorized allottee.” Through the typical storage or parking agreement, the allottee of record agrees to act as directed by the unauthorized allottee in seeking any transfers or actions taken by Northern Water related to the Class D Allotment Contract that is the subject of the storage or parking agreement. Storage or parking agreements have been entered into without the knowledge and approval of the Northern Water Board of Directors, and are in direct conflict with the allotment contract, the Water Conservancy Act, and the rules, regulations, policies and procedures of Northern Water. All such agreements, whether written or oral, are referred to as storage or parking agreements.

The following Inactive Allotment Contract Account Rule is intended to address those instances where an existing Class D Allottee wishes to sell the parcel to which the allotment contract is attached, but does not presently have an opportunity to transfer the real interest in the Class D Allotment Contract to a qualified allottee in accordance with legal requirements.

Northern Water has also issued Class B and Class C Allotment Contracts to municipal entities, water districts, and private corporations for beneficial use of water within the areas served, or for the purposes of, the allottee. This rule is also intended to address those instances when an existing Class B or Class C allottee wishes to dispose of its allotment contract because the beneficial use or need of that contract has ceased to exist or been terminated either voluntarily or involuntarily. Finally, this rule is intended to address those instances when a holder of a security interest in a Class B, Class C, or Class D Allotment Contract has succeeded to the interest of the allottee and has no permissible beneficial use or need of that contract.

Eligibility and Application for Inactive Allotment Contract

A Class D Allottee that is in the process of selling the parcel of land to which the Class D Allotment Contract is attached, a Class B or Class C Allottee that no longer has a beneficial use or need for its allotment contract, and a holder of a security interest in Class B, Class C, or Class D Allotment Contract that has succeeded to the interest of the allottee and has no permissible beneficial use or need of that contract, is eligible to transfer its Allotment Contract to an Inactive Allotment Contract which will be held in an Inactive Allotment Contract Account. The Inactive Allotment Contract will be held in the Inactive Allotment Contract Account by Northern Water in the name of the Allottee. While in the Inactive Allotment Contract Account, the Inactive Allotment Contract will be administered in accordance with this Rule.

An Allotment Contract will be transferred to an Inactive Allotment Contract upon the submittal of a completed application by the Allottee of record on forms provided by Northern Water. The transfer will be made and the Inactive Allotment Contract will be placed in the Inactive Allotment Contract Account without requiring Board action only if the application is for the transfer of a Class D Contract and the application is received from the Class D Allottee of record prior to or within 5 calendar days after the transfer of ownership of the parcel of land to which the Class D Allotment Contract is or was attached. A letter certifying, and documents verifying, that the Class D Allottee is the current owner of the parcel of land to which the Class D Allotment Contract is attached, or was the owner of the parcel until sold within the allowed 5 calendar-day period, must accompany the transfer application in this situation.

If an application to transfer a Class B or Class C Allotment Contract to an Inactive Allotment Contract is received, or an application to transfer a Class D Allotment Contract to an Inactive Allotment Contract is received by Northern Water **after** the 5 calendar-day period following the change of ownership of the parcel of land to which the Class D Allotment Contract was attached, Board approval, which is discretionary, **will be required** to transfer the Allotment Contract to an Inactive Allotment Contract. At the time such application is considered, the Board will determine the existence of a storage or parking agreement. If the Board determines that a storage or parking agreement exists, the application and the associated Allotment Contract shall be treated under Northern Water's "Storage or Parking Agreement Rule."

Certification of Quota and Water Delivery

If delivery of the water yielded to the Inactive Allotment Contract has been certified by Northern Water to the associated Allotment Contract Account Entity prior to transferring the Allotment Contract to the Inactive Allotment Contract, that water shall remain certified for delivery to the Account Entity.

If delivery of water yielded to the Inactive Allotment Contract has not been certified, or a supplemental quota is declared by the Board of Directors after the Inactive Allotment Contract is placed into the Inactive Allotment Contract Account, the water that would have been certified to the Inactive Allotment Contract Allottee will be available to the Inactive Allotment Contract Allottee, but that water can only be utilized when and if the Inactive Allotment Contract Allottee transfers that water out of the Inactive Allotment Contract Account through the Northern Water rental market by the use of a CD-4 Transfer Card. Rental or transfer of the water certified to the Inactive Allotment Contract shall be the responsibility of the Inactive Allotment Contract Allottee, with the proceeds from the rental or transfer going to the Inactive Allotment Contract Allottee in accordance with the agreement between the Inactive Allotment Contract Allottee and the beneficiary of the rental and transfer transaction.

Carryover Program Participation

Inactive Allotment Contracts in the Inactive Allotment Contract Account are not eligible to participate in the Northern Water Carryover Program or the Carryover Capacity Transfer Program.

Payment of Assessments

Upon the transfer of a Class D Allotment Contract to an Inactive Allotment Contract, the accompanying tax lien upon the land to which the Class D Allotment Contract was attached shall be released. The Inactive Allotment Contract allottee shall be responsible for payment of all assessments on the Inactive Allotment Contract in a timely manner. If such assessments are not paid, the Inactive Allotment Contract shall be subject to Northern Water's rules, policies and procedures regarding non-payment of assessments.

Time Limitation

An Inactive Allotment Contract shall be held in the Inactive Allotment Contract Account until: 1) the acre-foot units associated with the Inactive Allotment Contract are transferred out of the Inactive Allotment Contract Account based on transfer application(s) received from the Inactive Allotment Contract Allottee seeking such transfers and such transfers are approved by the Board of Northern Water in accordance with the rules, regulations, policies, and procedures of Northern Water; OR 2) twelve (12) months after the date on which the Inactive Allotment Contract is placed into the Inactive Allotment Contract Account; whichever occurs first.

It shall be the responsibility of the Allottee to seek the transfer of the acre-foot units associated with the Inactive Allotment Contract and to follow Northern Water procedures in effectuating those transfers. The transfer of the acre-foot units associated with the Inactive Allotment Contract may be accomplished via multiple transfer applications. Northern Water shall not have any responsibility to seek, and will not assure, the transfer of the acre-foot units associated with the Inactive Allotment Contract.

If an Inactive Allotment Contract remains in the Inactive Allotment Contract Account longer than twelve (12) months, those units will be forfeited as provided immediately below.

Forfeiture of Inactive Allotment Contract in Inactive Allotment Contract Account Longer than 12 Months

If an Inactive Allotment Contract remains in the Inactive Allotment Contract Account for 305 days, a Notice of Exceedance of the one-year maximum time for the Inactive Allotment Contract Account within the next 60 days will be mailed by regular mail and certified mail, return receipt requested, to the Inactive Allotment Contract Allottee. Such Notice shall include the Inactive Allotment Contract Account Rule and a Notice that the Inactive Allotment Contract may be forfeited as provided in this Rule. If an Inactive Allotment Contract remains in the Inactive Allotment Contract Account for 335 days, a second Notice of Exceedance of the one-year maximum time for the Inactive Allotment Contract Account within the next 30 days will be mailed by regular mail and certified mail, return receipt requested, to the Inactive Allotment Contract Allottee. Such Notice shall include the Inactive Allotment Contract Account Rule and a Notice that the Inactive Allotment Contract may be forfeited as provided in this Rule.

An Inactive Allotment Contract remaining in the Inactive Allotment Contract Account longer than twelve (12) months will be forfeited to Northern Water and sold through a bid process conducted by Northern Water. Proceeds from the sale, reduced by the costs or expenses incurred by Northern Water in conducting the sale, will be paid to the Inactive Allotment Contract Allottee. The Inactive Allotment Contract Allottee will be precluded from participating in or influencing the bid process.

A sealed bidding process, which is described in the Northern Water Storage and Parking Agreement Procedures, shall be conducted to sell the forfeited Inactive Allotment Contract.

Involuntary Transfers

If an Allotment Contract is the subject of an involuntary process such as, but not limited to, probate, a court divorce proceeding, foreclosure of a security interest, or an order of the Bankruptcy Court that may cause a separation of the ownership of the allotment contract and, in the case of a Class D Allotment Contract, the ownership of the land to which the allotment contract is attached, then, upon notification to Northern Water, the Allotment Contract shall be transferred to an Inactive Allotment Contract and placed into the Inactive Allotment Contract Account. In accordance with the Inactive Allotment Contract Account Rule and procedures, the Board, in its sole discretion, may extend the twelve (12) month time limitation for the Inactive Allotment Contract to be held in the Inactive Allotment Contract Account.

Time Extensions

In accordance with the Inactive Allotment Contract Account Rule Procedures, the Board, in its sole discretion and for good cause shown, may extend the twelve (12) month time limitation for the Inactive Allotment Contract to be held in the Inactive Allotment Contract Account for such time as the Board determines.

Fee

There shall be a reasonable cost-based administrative fee charged to process each application to transfer Allotment Contracts into or out of the Inactive Allotment Contract Account.