

STORAGE AND PARKING AGREEMENT RULE

Purpose

This Storage and Parking Agreement Rule defines storage and parking agreements, provides an express prohibition of parking and storage agreements for Class D Allotment Contracts, and defines a process for allottees involved in such agreements to come into compliance with the terms of the allotment contract, the Water Conservancy Act, and Northern Colorado Water Conservancy District (Northern Water) rules, regulations, policies, and procedures.

Background

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 to petitioning owners of lands on which the water can be beneficially used. 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 land and allotment contracts (acre-foot units) for C-BT Project water increases, 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 and policies of Northern Water. All such agreements, whether written or oral, are referred to as storage or parking agreements.

Prohibition of Storage or Parking Agreements

Storage or parking agreements relating to Class D Allotment Contracts are prohibited regardless of whether they were created before or after the date of adoption of this Rule. Storage or parking agreements have the effect of separating the ownership of a Class D Allotment Contract from the ownership of the land parcel to which they are attached. This separation violates the allotment contract, which is granted to a specific allottee for irrigation of specific lands owned by that allottee, and circumvents the statutory authority of the Board of Directors of Northern Water to allocate and reallocate the use of C-BT Project water under C.R.S. § 37-45-134. The Board of Directors of Northern Water shall make the determination, if a dispute arises, as to whether an agreement constitutes a storage or parking agreement.

Grace Period

There shall be no grace period for any storage or parking agreements that are entered into on or after August 9, 2008. The grace period for the dissolution of storage or parking agreements that exist as of August 8, 2008, shall extend from August 8, 2008, until February 13, 2009.

Dissolution of Existing Parking or Storage Agreements during the Grace Period

Entities involved in storage or parking agreements that exist as of August 8, 2008, can implement the following courses of action to dissolve such agreements during the grace period.

1. Submit completed transfer application(s) to Northern Water seeking the transfer of the acre-foot units included in the storage or parking agreements to other qualified potential allottees.
2. Submit a completed transfer application seeking to transfer the subject Class D Allotment Contract to an Inactive Allotment Contract to be held in the Inactive Contract Account.

The Board of Directors of Northern Water shall act on such transfer application(s) submitted during the grace period as though the Class D Allotment Contract and associated acre-foot units were not included in a storage or parking agreement. If acre-foot units are transferred to an Inactive Allotment Contract, those units shall be administered in accordance with the Inactive Contract Account Rule.

Disposition of Acre-foot Units within Storage or Parking Agreements that are not Dissolved, or Eligible for Dissolution, During the Grace Period

With regard to storage or parking agreements entered into on or after August 9, 2008, and storage or parking agreements not dissolved during the grace period, upon Northern Water learning that acre-foot units are involved in a storage or parking agreement(s), those acre-foot units shall be forfeited to Northern Water pursuant to C.R.S. § 37-45-134 and pursuant to the procedures of this Rule for violation of the allotment contract, the Water Conservancy Act, this Rule, and other rules, regulations, policies and procedures of Northern Water.

Water shall not be certified by Northern Water for delivery for those acre-foot units forfeited to Northern Water in accordance with this Rule. If water has been certified for delivery prior to the acre-foot units being forfeited, that water will remain certified for delivery and will be delivered to the Account Entity on demand.

If it is determined by Northern Water that a Class D Allotment Contract unit is involved in a storage or parking agreement a Notice of Violation of this Rule shall be mailed by regular mail and certified mail, return receipt requested, to the allottee of record. Such notice shall include the Storage and Parking Agreement Rule and a notice that the units may be forfeited as provided in this Rule. Such notice shall be provided to the allottee of record forty-five (45) days prior to the Board meeting on which agenda the Board determination of a violation and forfeiture appears in accordance with this Rule. Thirty (30) days prior to the Board Meeting on which agenda the Board determination of a violation and forfeiture appears, a second notice of the Board meeting and agenda item shall be mailed to the allottee of record. Such notice shall also include a copy of this Storage and Parking Agreement Rule. The allottee of record shall have a right to address the Board concerning the Class D Allotment Contract and any purported storage or parking agreement.

The units associated with a Class D Allotment Contract forfeited to Northern Water under this Rule shall be sold through a sealed bidding process conducted by Northern Water. The availability of these units for sale shall be posted on the Northern Water website for a period of no less than 30 days, and shall be advertised as a public notice in one paper of general circulation in each of the counties of Boulder, Larimer, and Weld in accordance with the requirements of C.R.S. § 37-45-103(9). Sealed bids shall be submitted in accordance with Northern Water's Storage and Parking Agreement Procedures.

Bids submitted without full pre-payment and such supplemental information, or with supplemental information that indicates a bidder is not qualified to be the recipient of the subject acre-foot units, will be rejected.

Submitted, qualified bids will be opened on the specified date at the specified time in public. Transfer of the acre-foot units to the successful bidder(s) shall be contingent on final Board approval, which is discretionary.

Northern Water shall calculate and document all incurred expenses associated with the disposal of the acre-foot units through the bid process.

The allottee of record shall be entitled to receive the lesser of \$9,500 per acre-foot unit, which is the approximate value of C-BT Project acre-foot units at the time the Rule was adopted, and the actual amount paid per acre-foot unit in the bidding process. If the amount paid per acre-foot unit in the bidding process is less than \$9,500 per acre-foot unit, then the allottee of record shall receive only the lesser amount. Documented expenses incurred by Northern Water for the bidding process shall be deducted from the amount due the allottee of record. This money shall be made in a single payment to the allottee of record within 30 days following the date on which all remaining forfeited acre-foot units have been sold and transfer of the forfeited acre-foot units has been completed through the sealed bid and transfer process.

Any difference between the net proceeds from the sealed bid process and the payment to the allottee of record shall be credited to the Northern Water C-BT Project Improvement Reserve Fund.

Fee

There shall be a reasonable cost-based administrative fee charged for each application for any transfer proceeding related to the dissolution of a storage or parking agreement.