

WEST DIVIDE WATER CONSERVANCY DISTRICT
WATER ALLOTMENT CONTRACT

Name of Applicant: _____

Quantity of Water in Acre Feet: _____

Applicant, hereby applies to the West Divide Water Conservancy District, a political subdivision of the State of Colorado, organized pursuant to and existing by virtue of C.R.S. 1973, Section 37-45-101, et seq., (hereinafter referred to as the "District") for an allotment contract to beneficially and perpetually use water or water rights owned, leased, or hereafter acquired by the District. By execution of this Contract and the attached Application, Applicant hereby agrees to the following terms and conditions:

1. Water Rights: Applicant shall own water rights at the point of diversion herein lawfully entitling Applicant to divert water, which will be supplemented and augmented by water leased herein. If Applicant intends to divert through a well, it must be understood by Applicant that no right to divert exists until a valid well permit is obtained from the Colorado Division of Water Resources.

2. Quantity: Water applied for by the Applicant in the amount set forth above shall be diverted at Applicant's point of diversion from the District's direct flow water rights, and when water is unavailable for diversion pursuant to administration by the Colorado State Engineer during periods when said direct flow water right is not in priority, the District shall release for the use of Applicant up to said quantity in acre feet per year of storage water owned or controlled by the District. It is understood that any quantity allotted from direct flow, storage or otherwise, to the Applicant by the District will be limited by the priority of the District's decrees and by the physical and legal availability of water from District's sources. Any quantity allotted will only be provided so long as water is available and the Applicant fully complies with all of the terms and conditions of this Contract. The District and the Applicant recognize that some of the District's decrees may be in the name of the Colorado River Water Conservation District, and the ability of the District to allot direct flow right to the Applicant may be dependent on the consent of the Colorado River Water Conservation District. If at any time the Applicant determines it requires less water than the amount herein provided, Applicant may so notify the District in writing, and the amount of water allotted under this Contract shall be reduced permanently in accordance with such notice. Rates shall be adjusted accordingly in following water years only.

3. Beneficial Use and Location of Beneficial Use: Any and all water allotted Applicant by the District shall be used for the following beneficial use or uses: industrial, municipal, domestic and related uses, or commercial (except for commercial use from Alsbury Reservoir and except to the extent that Ruedi Reservoir water may not be available for commercial as that term is defined on Page 5 of Contract No. 2-07-70-WO547 between the United States and the West Divide Water Conservancy District). Applicant's beneficial use of any and all water allotted shall be within or through facilities or upon land owned, leased, operated, or under Applicant's control.

4. Decrees and Delivery: Exchange releases made by the District out of storage from Ruedi Reservoir, Green Mountain Reservoir, Alsbury Reservoir, or other works or facilities of the District, or from other sources available to the District, shall be delivered to the Applicant at the outlet works of said storage facilities or at the decreed point of diversion for said other sources, and release or delivery of water at such outlet or points shall constitute performance of the District's total obligation. Delivery of water by the District from Ruedi Reservoir or Green

Mountain Reservoir shall be subject to the District's lease contracts with the United States Bureau of Reclamation. Releases from other facilities available to District shall be subject to the contracts, laws, rules, and regulations governing releases therefrom. Furthermore, the District hereby expressly reserves the right to store water and to make exchange releases from structures that may be built or controlled by the District in the future, so long as the water service to the Applicant pursuant to this agreement, is not impaired by said action. Any quantity of the Applicant's allocation not delivered to or used by Applicant by the end of each water year (October 1), shall revert to the water supplies of the District. Such reversion shall not entitle Applicant to any refund of payment made for such water.

Water service provided by the District shall be limited to the amount of water available in priority at the original point of diversion of the District's applicable water right, and neither the District, nor those entitled to utilize the District's decrees, may call on any greater amount at new or alternate points of diversion. The District shall request the Colorado Division of Water Resources to estimate any conveyance losses between the original point and any alternate point, and such estimate shall be deducted from this amount in each case.

Water service provided by the District for properties located within the Bluestone and Silt Water Conservancy Districts is provided pursuant to Agreements with said Districts. The Intergovernmental Agreement between the District and the Silt Water Conservancy District, dated January 25, 2001, is recorded as Reception No. 575691, Garfield County Clerk and Recorder's Office. The Intergovernmental Memorandum of Understanding between the District and the Bluestone Water Conservancy District, dated April 26, 2001, is recorded as Reception No. 584840, Garfield County Clerk and Recorder's Office.

5. Alternate Point of Diversion and Plan of Augmentation: Decrees for alternate points of diversion of the District's water rights or storage water may be required in order for Applicant to use the water service contemplated hereunder. Obtaining such decree is the exclusive responsibility of Applicant. The District reserves the right to review and approve any conditions which may be attached to judicial approval of said alternate point of diversion as contemplated or necessary to serve Applicant's facilities or lands. Applicant acknowledges and agrees that it shall be solely responsible for the procedures and legal engineering costs necessary for any changes in water rights contemplated herein, and further agrees to indemnify the District from any costs or losses related thereto. Applicant is solely responsible for providing works and facilities necessary to obtain/divert the waters at said alternate point of diversion and deliver them to Applicant's intended beneficial use. Irrespective of the amount of water actually transferred to the Applicant's point of diversion, the Applicant shall make annual payments to the District based upon the amount of water allotted under this Contract.

In the event the Applicant intends to apply for an alternate point of diversion and to develop an augmentation plan and institute legal proceedings for the approval of such augmentation plan to allow the Applicant to utilize the water allotted to Applicant hereunder, the Applicant shall give the District written notice of such intent. In the event the Applicant develops and adjudicates its own augmentation plan to utilize the water allotted hereunder, Applicant shall not be obligated to pay any amount under Paragraph 19 below. In any event, the District shall have the right to approve or disapprove the Applicant's augmentation plan and the Applicant shall provide the District copies of such plan and of all pleadings and other papers filed with the water court in the adjudication thereof.

6. Contract Payment: Non-refundable, one time administrative charge, in the amount determined by the Board of Directors of the District from time to time, shall be submitted with the application for consideration by the District.

Annual payment for the water service described herein shall be determined by the Board of Directors of the District. The initial annual payment shall be made in full, within thirty (30) days after the date of notice to the Applicant that the initial payment is due. Said notice will advise the Applicant, among other things, of the water delivery year to which the initial payment shall apply and the price which is applicable to that year.

Annual payments for each year thereafter shall be due and payable by the Applicant on or before each January 1. If an annual payment is not made by the due date a flat \$50 late fee will be assessed. Final written notice prior to cancellation will be sent certified mail, return receipt requested, to the Applicant at such address as may be designated by the Applicant in writing or set forth in this Contract or Application. Water use for any part of a water year shall require payment for the entire water year. Nothing herein shall be construed so as to prevent the District from adjusting the annual rate in its sole discretion for future years only.

If payment is not made within fifteen (15) days after the date of said written notice, Applicant shall at District's sole option have no further right, title or interest under this Contract without further notice, and delivery may be immediately curtailed. The allotment of water, as herein made, may be transferred, leased, or otherwise disposed of at the discretion of the Board of Directors of the District.

Upon cancellation of this water allotment Contract with the District, the District shall notify the Division of Water Resources offices in Denver and Glenwood Springs. The Division of Water Resources may then order cessation of all water use.

7. Additional Fees and Costs: Applicant agrees to defray any expenses incurred by the District in connection with the allotment of water rights hereunder, including, but not limited to, reimbursement of legal and engineering costs incurred in connection with any water rights and adjudication necessary to allow Applicant's use of such allotted water rights.

8. Assignment: This Contract shall not inure to the benefit of the heirs, successors or assigns of Applicant, without the prior written consent of the District's Board of Directors. Any assignment of Applicant's rights under this Contract shall be subject to, and must comply with, such requirements as the District may hereafter adopt regarding assignment of Contract rights and the assumption of Contract obligations by assignees and successors. Nothing herein shall prevent successors to a portion of Applicant's property from applying to the District for individual and separate allotment Contracts. No assignment shall be recognized by the District except upon completion and filing of proper forms for assignment and change of ownership.

In the event the water allotted pursuant to this Contract is to be used for the benefit of land which is now or will subsequently be subdivided or held in separate ownership, the Applicant may only assign the Applicant's rights hereunder to: 1) No more than three separate owners all of whom shall be party to a well sharing agreement satisfactory to the District; or 2) A homeowners association, water district, water and sanitation district or other special district properly organized and existing under the laws of the State of Colorado, and then, only if such parties, association or special district establishes to the satisfaction of the District that it has the ability and authority to perform the Applicant's obligations under this Contract. In no event shall the owner of a portion, but less than all, of the Applicant's property to be served under this Contract have any rights hereunder, except as such rights may exist pursuant to a well sharing agreement or through a homeowners association or special district as provided above.

Upon the sale of the real property to which this Contract pertains, Applicant shall make buyer aware of this Contract and proper forms for assignment and change of ownership must be completed.

9. Other Rules: Applicant shall be bound by the provisions of the Water Conservancy Act of Colorado; by the rules and regulations of the Board of Directors of the District; and all amendments thereof and supplements thereto and by all other applicable law.
10. Operation and Maintenance Agreement: Applicant shall enter into an "Operation and Maintenance Agreement" with the District under terms and conditions determined by the board of Directors of the District, if and when, the Board of said District determines in its sole discretion that such an agreement is required. Said agreement may contain, but shall not be limited to, provisions for 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 services made available to the Applicant.
11. Change of Use: The District reserves the exclusive right to review, re-approve or disapprove any proposed change in use of the water allotted hereunder. Any use other than that set forth herein or any lease or sale of the water or water rights allotted hereunder without the prior written approval of the District shall be deemed to be a material breach of this Contract.
12. Use and Place of Use: Applicant agrees to use the water in the manner and on the property described in the documents submitted to the District at the time this Contract is executed, or in any operation and maintenance agreement provided by Applicant. Any use other than as set forth thereon or any lease or sale of the water or water rights herein, other than as permitted in paragraph 8 above, shall be deemed to be a material breach of this agreement.
13. Title: It is understood and agreed that nothing herein shall be interpreted to give the Applicant any equitable or legal fee title interest in or to any water or water rights referred to herein.
14. Conservation: Applicant shall use commonly accepted conservation practices with respect to the water and water rights herein, and hereby agrees to be bound by any conservation plan adopted hereafter by the District for use of District owned or controlled water or water rights.
15. Restrictions: Applicant shall restrict actual diversions to not exceed the contract amount for ordinary household purposes, the watering of domestic livestock, fire protection, and the irrigation of lawn and garden as specified in the Application.
- Applicant shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources.
- Watering of livestock shall be restricted to Applicant's domestic animals not to be used for commercial purposes unless Applicant obtains approval from the Colorado Division of Water Resources for commercial use/livestock watering, provided that in no event shall actual diversions exceed the amount of water provided by this Contract.
- Violation of this paragraph 15 shall be deemed to be a material breach of this Contract.
16. Well Permit: If Applicant intends to divert through a well, then Applicant must provide to District a copy of Applicant's valid well permit before District is obligated to deliver any water hereunder.
17. Measuring Device or Meter: Applicant agrees to provide, at its own expense, a measuring device deemed acceptable by the District's Engineer after consultation, or a totalizing flow meter with remote readout to continuously and accurately measure at all times all

water diverted pursuant to the terms of Applicant's water right and the terms of this Contract. Applicant agrees to provide accurate readings from such device or meter to District upon District's request. Applicant acknowledges that failure to comply with this paragraph could result in legal action to terminate Applicant's diversion of water by the State of Colorado Division of Water Resources. By signing this Contract, Applicant hereby specifically allows District, through its authorized agent, to enter upon Applicant's property during ordinary business hours for the purposes of determining Applicant's actual use of water.

18. Representations: By executing this Contract, Applicant agrees that it is not relying on any legal or engineering advice that Applicant may believe has been received from the District. Applicant further acknowledges that it has obtained all necessary legal and engineering advice from Applicant's own sources other than the District. Applicant further acknowledges that the District makes no guarantees, warranties, or assurances whatsoever about the quantity or quality of water available pursuant to this Contract. Should the District be unable to provide the water contracted for herein, no damages may be assessed against the District, nor may Applicant obtain a refund from the District.

19. Costs of Water Court Filing and Augmentation Plan: Should the District, in its own discretion, choose to include Applicant's Contract herein in a water court filing for alternate point of diversion or plan of augmentation, then Applicant hereby agrees to pay to the District, when assessed, an additional fee representing the District's actual and reasonable costs and fees for Applicant's share of the proceedings. Applicant shall be assessed a pro-rata share of the total cost incurred by the District in preparing, filing and pursuing to decree the water court case. The pro-rata share shall be calculated by dividing such total cost by the number of contractees included in the filing. To the extent that the District is caused additional costs because of objection filed specifically due to the inclusion of Applicant's Contract in the filing, such additional costs may be charged specifically to Applicant and not shared on a pro-rata basis by all contractees.

20. Binding Agreement: This agreement shall not be complete nor binding upon the District unless attached hereto is the form entitled "Application to Lease Water From West Divide Water Conservancy District" fully completed by Applicant and approved by the District's engineer. Said attachments shall by this reference thereto be incorporated into the terms of this agreement. All correspondence from the District to Applicant referring to or relating to this agreement is by this reference incorporated into this agreement as further terms and conditions of this agreement.

21. Warning: IT IS THE SOLE RESPONSIBILITY OF THE APPLICANT TO OBTAIN A VALID WELL PERMIT OR OTHER WATER RIGHT IN ORDER TO DIVERT WATER, INCLUDING THE WATER ACQUIRED UNDER THIS CONTRACT. IT IS THE CONTINUING DUTY OF THE APPLICANT TO MAINTAIN THE VALIDITY OF THE WELL PERMIT OR WATER RIGHT INCLUDING FILING FOR EXTENSIONS OF PERMITS, FILING WELL COMPLETION REPORTS, FILING STATEMENTS OF BENEFICIAL USE, OR OTHERWISE LAWFULLY APPLYING THE WATER TO BENEFICIAL USE ON A REGULAR BASIS WITHOUT WASTE.

22. AREA B. CONTRACTS: IF APPLICANT'S WELL OR OTHER WATER RIGHT THAT IS THE SUBJECT OF THIS CONTRACT IS LOCATED OUTSIDE "AREA A" AS DESIGNATED BY THE DISTRICT, THEN THIS PARAGRAPH APPLIES: THE AUGMENTATION WATER PROVIDED BY THE DISTRICT UNDER THIS CONTRACT MAY ONLY PROTECT APPLICANT'S WATER RIGHT FROM A CALL ON THE COLORADO RIVER AND MAY NOT PROTECT APPLICANT FROM A CALL FROM ANY OTHER

