

WEST DIVIDE WATER CONSERVANCY DISTRICT

DIRECT HAULER
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 is a water hauler and shall be allowed to divert water rights owned, leased, or hereafter acquired by the District within the approved service areas. The District provides no guarantee of access to points of diversion.

2. Quantity: Water applied for by the Applicant in the amount set forth above shall be diverted by Applicant within the approved areas 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.

If at any time the Applicant determines it requires **more** water than the amount herein provided, Applicant may seek an amendment of this Contract. The amendment fee will be waived. Amendments will be approved in the sole discretion of the District, and the District makes no guarantees of future water availability. Rates shall be adjusted accordingly in the year the amendment was requested.

If at any time the Applicant's actual use of water exceeds the amount herein provided, Applicant's Contract shall be automatically amended by the District to provide for such additional water and Applicant shall pay the District for the increased amount. If the District amends the Contract pursuant to this provision, Applicant shall be responsible for an amendment fee. Amendments hereunder will be approved in the sole discretion of the District, and the District makes no guarantees of future water availability. Rates shall be adjusted accordingly for the year the amendment takes effect.

3. 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.

4. Decrees and Delivery: Exchange releases made by the District out of storage from Ruedi Reservoir, Green Mountain Reservoir, Wolford 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. Delivery of water by the District from Wolford Mountain Reservoir shall be subject to the District's lease contracts with the Colorado River Water Conservation District. 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 (December 31) 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. Contract Payment: A non-refundable administrative charge, in the amount determined by the Board of Directors of the District, shall be submitted with the application.

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 \$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. 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.

6. 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.

7. 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. No assignment shall be recognized by the District except upon completion and filing of proper forms for assignment.

8. 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.

9. 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.

10. Change of Use: 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.

11. Use and Place of Use: Applicant agrees to use the water in the manner 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 above, shall be deemed to be a material breach of this agreement.

12. 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.

13. 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.

14. Restrictions: Applicant shall restrict actual diversions to not exceed the contract amount as specified in the Application. Applicant shall also comply with all restrictions and limitations set forth by the Colorado Division of Water Resources specifically related to direct water haulers, if any.

15. Measuring, Records, Accounting and Reporting: Applicant, at its own expense, agrees to measure and maintain accurate records of all water diverted pursuant to the terms of this Contract. Applicant agrees to provide accurate readings to District using a District approved accounting form. Applicant shall provide such accounting to the District at least monthly, or more often if requested by the District. Applicant acknowledges that failure to comply with this paragraph could result in action to terminate Applicant's diversion of water by the State of Colorado Division of Water Resources or the District.

My commission expires: _____

Notary Public

ORDER

After a hearing by the Board of Directors of the West Divide Water Conservancy District on the Application, it is hereby ORDERED that said Application be granted and this Contract shall be and is accepted by the District.

WEST DIVIDE WATER CONSERVANCY DISTRICT

By _____
President

ATTEST:

Secretary

Date

This Contract includes and is subject to the terms and conditions of the following documents which must accompany this Contract:

1. Map showing approved locations of points of diversion (use map provided).
2. Application and Data Form fully completed and signed.

The printed portions of this form, except differentiated additions or deletions, have been approved and adopted by the West Divide Water Conservancy District. Form: WDWCD 2010 DH CONTRACT.