

RESOLUTION NO. 10-03

A RESOLUTION APPROVING A TEMPORARY WATER CONVEYANCE CONTRACT AMONG THE TOWN OF BERTHOUD, COLORADO, ACTING BY AND THROUGH ITS WATER UTILITY ENTERPRISE, THE UNITED STATES DEPARTMENT OF INTERIOR'S BUREAU OF RECLAMATION, (hereafter Bureau of Reclamation), AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT,

WHEREAS, by Decree in Case No. 84 CW 421 of the District Court Water Division 1 dated October 6, 1993, the Town of Berthoud obtained a change of use and change of point of diversion into facilities of the Colorado-Big Thompson Project; and

WHEREAS, the Board of Trustees of the Town of Berthoud finds and determines that it is in the best interest of the citizens of the Town to enter into a temporary water conveyance contract with the Bureau of Reclamation and the Northern Colorado Water Conservancy District for the transmission through and temporary storage of water in the facilities of the Colorado-Big Thompson Project; and,

WHEREAS, Section 29-1-201, et seq., C.R.S., authorizes the Town Board, by resolution, to enter in contracts or agreements with other governmental units,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO THAT:

The Mayor and Town Clerk are hereby authorized to execute, on behalf of the Town of Berthoud, acting by and through its Water Utility Enterprise, the temporary water conveyance contract among the Town, the Bureau of Reclamation, and the Northern Colorado Water Conservancy District for the conveyance and temporary storage of water through the facilities of the Colorado-Big Thompson Project during the year 2003, which agreement is incorporated herein by this reference.


This resolution was passed by a vote of 6 in favor and 0 opposed at the special meeting of the Board of Trustees on the 8th day of May, 2003.

TOWN OF BERTHOUD



Milan Karspeck – Mayor

ATTEST:


Mary K. Cowdin – Town Clerk

**UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF RECLAMATION
GREAT PLAINS REGION**

TEMPORARY WATER CONVEYANCE CONTRACT No. 03XX6C0095 Date:

PROJECT: Colorado-Big Thompson Project
 Eastern Colorado Area Office
 Colorado

THIS CONTRACT, authorized pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, including the Act of August 4, 1939 (53 Stat. 1187), and particularly the Reclamation States Emergency Drought Relief Act of 1991 (Act of March 5, 1992; 106 Stat. 53) (Drought Act) as amended, all collectively referred to as the Federal Reclamation laws, is among the BUREAU OF RECLAMATION, hereinafter referred to as RECLAMATION, the NORTHERN COLORADO WATER CONSERVANCY DISTRICT, hereinafter referred to as the DISTRICT, and the TOWN OF BERTHOUD, hereinafter referred to as BERTHOUD.

CONTRACTOR: Town of Berthoud
 328 Massachusetts Avenue
 Berthoud, CO 80513

EXPLANATORY RECITALS

a. Whereas, Berthoud by letter dated February 12, 2003, to the District has requested conveyance of nonproject water through the facilities of the Colorado-Big Thompson Project (CBT Project) to mitigate the effects of the drought on its normal delivery through the Handy Ditch.

b. Whereas, section 102 of the Drought Act provides that the Secretary of the Interior may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project or nonproject water, for use both within and outside an authorized project area.

c. Whereas, the Governor of Colorado has requested temporary drought assistance pursuant to the Drought Act for the State of Colorado by letter to the Secretary of the Interior dated January 22, 2003.

d. Whereas, by letter dated March 12, 2003, the Secretary of the Interior has affirmatively responded to the Governor's request.

e. Whereas, by Memorandum dated February 26, 2003, the Area Manager of the Eastern Colorado Area Office of the Bureau of Reclamation has been delegated authority to enter into temporary water-related contracts for the use of Reclamation facilities under the Drought Act.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. PURPOSE

To contract for the temporary conveyance of nonproject water for Berthoud through the facilities of the CBT Project for municipal and domestic purposes to mitigate losses and damages resulting from drought conditions. The execution of this contract shall not cause harm to the CBT Project or to the CBT Project beneficiaries.

2. TERM

a. This contract becomes effective on the date indicated above and will continue in force through December 31, 2003, or upon a determination by the Secretary of the Interior that water supply conditions no longer warrant that the contract remains in effect, whichever is earlier.

b. If the contract is terminated under Article 2.a. upon a determination by the Secretary of the Interior that water supply conditions no longer warrant that the contract remains in effect, Berthoud shall have 90 days from the date of such determination, or until December 31, 2003, whichever is earlier, to cease conveyance and make other arrangements for conveyance of its water.

c. It is expressly agreed and understood that the furnishing of water conveyance service herein is temporary for the term of this contract and shall not be considered as binding Reclamation nor the District to furnish water conveyance service to Berthoud after the end of said period.

3. WATER CONVEYANCE SERVICE TO BE MADE AVAILABLE

a. Subject to the availability of excess capacity in the CBT Project system as determined by the Reclamation in consultation with the District, nonproject water conveyance service shall be made available through the CBT Project facilities to deliver nonproject water at the Delivery Point as defined in Article 5.a. Reclamation and the District shall convey nonproject water up to the rate of flow of unused conveyance capacity available as determined by the Reclamation in consultation with the District, but not to exceed 7.14 cubic feet per second at any time. The total water conveyed shall not exceed 1,736 acre-feet during the term of this contract. All nonproject

water conveyed by virtue of this contract shall be native water from the east slope of the continental divide as identified in Berthoud's water right transfer decree Case No. 84CW421 of the District Court, Water Division 1, dated October 6, 1993, and shall be subject to limitations as discussed in Article 7 below. Berthoud shall be solely responsible for making whatever arrangements under Colorado water law with the Division 1 Engineer's Office of the State of Colorado Division of Water Resources as are necessary for making water available for conveyance pursuant to this contract. Reclamation and the District will not convey water without prior approval of the Division Engineer, Water Division 1, State of Colorado, Division of Water Resources.

- b. The District, which operates and maintains certain facilities of the CBT Project, agrees to cooperate with Reclamation and Berthoud in the conveyance of Berthoud's water.
- c. CBT Project water delivered to Berthoud pursuant to water allotment contracts between Berthoud and the District and its rules and regulations is not subject to the terms and conditions of this contract.
- d. The water conveyed under this contract is limited to water used for emergency drought relief.
- e. Berthoud shall not sell, sublease, donate, loan or in any other manner transfer the use of the conveyance service contracted for herein to any other entity or individual

4. PAYMENT FOR WATER CONVEYANCE SERVICE

- a. The rate for water conveyance service made available pursuant to this contract shall be \$39.54 per acre-foot.
- b. Payment of \$68,641.44 shall constitute the advance payment under this contract for 1,736 acre-feet of conveyance service and must accompany the signed contract. Additionally, Berthoud shall pay any power interference charges as set forth in section 4.c. and d. below before expiration of the term of this Contract. The conveyance service charge is composed of:
 - (1) An operation and maintenance component (O&M) of \$3.02 per acre-foot; and
 - (2) A construction component of \$29.82 per acre-foot. The payment of capital costs attributable to the use of the CBT Project facilities shall be covered into the Reclamation Fund and be placed to the credit of the CBT Project; and
 - (3) A pumping cost component of \$6.70 per acre-foot.
- c. If the rate of water skimmed at Olympus Dam is reduced in order to convey Berthoud's nonproject water pursuant to this Contract, a power interference charge of \$34.79 per acre-foot

will be charged. Any amount due for power interference shall be paid before expiration of the term of this Contract.

d. In the event that the Dille Tunnel is at full capacity and Reclamation has to reduce its skim water that would pass through the Big Thompson Power Plant in order to convey Berthoud's water, which would not pass through the Big Thompson Power Plant, there will be a power interference charge of \$3.11 per acre-foot for the amount of skim water replaced by Berthoud's water.

e. Any increased power generation will be the sole benefit of Reclamation.

f. The District and Reclamation do not agree regarding the crediting to the Reclamation Fund of the payment by Berthoud for the construction cost of the facilities, set at \$29.82 per acre-foot conveyed, as provided for in paragraph 4.b.(2) above. In order to allow this contract to be executed by all parties and implemented at the earliest possible date, the District agrees to having the Construction Component Payment credited to Reclamation in accordance with the Drought Act. However, all parties agree that the signing of this Contract does not in any way waive or prejudice the District's right or ability to seek and obtain a federal administrative, legislative or judicial determination of this issue. Finally, Reclamation agrees that, in the event that a final administrative or judicial decision, or Act of Congress, determines or directs that the Construction Component Payment should be credited in a manner different than that provided in Article 4.b.(2) above, this Contract shall provide for crediting of the Construction Component Payment in accordance with such determination.

5. DELIVERY, MEASUREMENT, AND ACCOUNTING FOR WATER

a. "Delivery Point" shall mean the Southern Water Supply Pipeline Turnout from the St. Vrain Supply Canal. All nonproject water delivered to Berthoud from CBT Project facilities will be measured by the District using equipment installed at the Delivery Point on the Southern Water Supply Project and reported by the District to Reclamation on a daily basis. Reclamation and the District will maintain a daily accounting of the amount of water diverted and delivered to Berthoud.

b. Deliveries of nonproject water to Berthoud shall be made by Reclamation and the District at the Delivery Point. Berthoud nonproject water shall be delivered at the Delivery Point upon diversion at Olympus Tunnel (the Power Conduit at Lake Estes) or by diversion and exchange through Dille Tunnel, subject to the available excess conveyance capacity as determined by Reclamation in consultation with the District. Tracking or accounting for Berthoud's nonproject water conveyed through each facility of the CBT Project shall not be required, except as may be required by Articles 4.c. and d., so long as an accounting, in terms of acre-feet/per day diverted and acre-feet/per day delivered (minus losses discussed in e. below) is maintained at all times.

c. Berthoud will notify Reclamation prior to 3:00 p.m. of the amount of water that Berthoud needs to be diverted the following day. Berthoud will also submit a written schedule of anticipated monthly demands for conveyance of nonproject water to enable Reclamation and the District to efficiently meet Berthoud's need. If requested by Reclamation or the District, Berthoud shall revise the schedule as necessary to reflect changes in conveyance capacity, based on current water conditions and actual use.

d. In accordance with Article 3.a., upon Berthoud's request, and after payment as provided in Article 4 above, Reclamation and the District will deliver to Berthoud the scheduled nonproject water conveyed through facilities of the CBT Project subject to limitations described in Article 7. The District will notify Reclamation and Berthoud if delivery capacity is unavailable. Reclamation or the District will notify Berthoud if the quantity of nonproject water conveyance service requested is unavailable.

e. Reclamation, in consultation with the District, shall adjust the amount of water delivered to Berthoud's Delivery Point to account for losses such as evaporation and water conveyance losses. Such losses are hereby agreed to be 10% of introduced nonproject water to be conveyed. Charges under Article 4 of this contract shall not be reduced because of such losses.

f. Reclamation will maintain daily records concerning (1) when the rate of water skimmed at Olympus Dam is reduced in order to convey Berthoud's nonproject water pursuant to this Contract and (2) the amount of Berthoud's water that could not be skimmed. These amounts shall be used to determine the power interference charge set forth in Article 4.c.

g. When the Dille Tunnel is being operated at full capacity with skim water, or skim and project water, and Berthoud's water is diverted through Dille Tunnel, Reclamation shall maintain a daily record of the amount of skim water that is displaced by Berthoud's water. These amounts shall be used to determine the power interference charge set forth in Article 4.d. Project water diversions shall not be displaced by diversion of Berthoud water.

6. LIABILITY

Neither Reclamation nor the District shall not be responsible beyond the Delivery Point for control, carriage, transportation losses, handling, use, disposal, or distribution of water conveyed pursuant to this contract, and Berthoud shall hold Reclamation and the District harmless on account of damage, or claim for damage of any nature whatsoever arising out of or connected with the control, handling, use, disposal, or distribution of such water beyond the Delivery Point.

7. LIMITATIONS ON THIS CONTRACT

a. This contract shall not affect any contractual commitments under any long-term contract concerning the CBT Project and shall not cause harm to the CBT Project or to the CBT Project beneficiaries.

b. Excess capacity for short-term conveyance contracts entered into under the authority of the Drought Act will be shared in the same proportion that the total acre-feet of conveyance contracted for under each such contract bears to the total acre-feet of conveyance contracted for under all such contracts.

8. ENVIRONMENTAL COMPLIANCE

The National Environmental Policy Act (NEPA) compliance for temporary water conveyance pursuant to this contract with Berthoud was evaluated and documented by Categorical Exclusion Checklist (CEC) No. ECAO 03-17. Berthoud shall implement the environmental commitments discussed under items numbered 17 and 22 in CEC No. ECAO 03-17. The environmental commitments are described in Exhibit A, attached, and are made a part of this contract. If at any time during the term of this contract, Berthoud fails to implement the environmental commitments, Reclamation may immediately cease delivery of nonproject water through CBT Project facilities until the commitments are implemented to the satisfaction of Reclamation.

9. STANDARD PROVISIONS

Standard contract provisions are specified in Exhibit B.

The Parties have executed this contract the day and year written above and agree to the terms, provisions, and standard provisions expressed or referenced herein.

TOWN OF BERTHOUD
CONTRACTOR

By: Milan Karspeck

Title: Mayor

BUREAU OF RECLAMATION
CONTRACTING OFFICER

By: _____

Title: _____

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF)
) ss.
COUNTY OF)

On May 8, 2003, before me, Mary Cowdin
_____ appeared Milan Karspeck,

the person(s) whose name(s) (is) (are) subscribed to the within instrument
and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the
day and year in this acknowledgment first above written.

(SEAL)

Mary Cowdin
Notary Public

My Commission Expires: 9-11-2005

ACKNOWLEDGEMENT

STATE OF)
) ss.
COUNTY OF)

On _____, 2003, before me, _____

_____ appeared _____,

the person(s) whose name(s) (is) (are) subscribed to the within instrument
and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the
day and year in this acknowledgment first above written.

(SEAL)

Notary Public

My Commission Expires:

ACKNOWLEDGEMENT

STATE OF)
) ss.
COUNTY OF)

On _____, 2003, before me, _____

_____ appeared _____,

the person(s) whose name(s) (is) (are) subscribed to the within instrument
and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the
day and year in this acknowledgment first above written.

(SEAL)

Notary Public

My Commission Expires:

EXHIBIT A

CONTRACT NO. 03XX6C0095

ENVIRONMENTAL COMMITMENTS

1. The site specific National Environmental Policy Act (NEPA) compliance for water conveyance pursuant to this contract was evaluated and documented by Categorical Exclusion Checklist (CEC) No. ECAO 03-17. This CEC is for the temporary conveyance of 1,736 acre-feet of nonproject water at a maximum rate of 7.14 cubic feet per second through the facilities of the Colorado-Big Thompson Project, Colorado under the authority of the Reclamation States Emergency Drought Relief Act of 1991.
2. By entering into this temporary conveyance contract with Reclamation for the use and distribution of United States' waters, the Town of Berthoud agrees to comply with all sections of the Clean Water Act. Additionally, water must be transported, stored and released in accordance with Colorado water law.
3. Reclamation has initiated emergency Section 7 consultation with the Fish and Wildlife Service on the depletions that will result from the proposed contract. However, it will not be necessary to develop an RPA for the proposed contract since there is an existing agreement among the states of Nebraska, Colorado, Wyoming, and the Department of the Interior that mitigates the adverse effects of depletions to the Platte River until a permanent program is agreed to and implemented among the states and Interior. The interim program involves payment of a fee to the National Fish and Wildlife Foundation. The fee is used for the acquisition of habitat and water to preserve critical habitat elements which are important to the above listed species. The fee program is a standard method of dealing with Platte River depletions. The fee fully mitigates the effects of the depletions on the four listed species so there are no adverse effects. The Town of Berthoud agrees to pay the fee determined by the U.S. Fish and Wildlife Service for this contract when consultation is completed.
4. The Bureau of Reclamation retains jurisdiction should there be a need to reinitiate consultation under section 7 of the Endangered Species Act during the term of the contract. Reinitiation would be necessary if any of the conditions listed in 50 CFR, Part 402.16 are met during the term of the contract.

EXHIBIT B

CONTRACT NO. 03XX6C0095

STANDARD PROVISIONS

CHARGES FOR DELINQUENT PAYMENTS

1. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest; and finally to the overdue payment.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

2. The expenditure or advance of any money or the performance of any obligation of the Bureau of Reclamation (Reclamation) under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

3. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

4. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

5. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that Reclamation may require. Reports shall be furnished to Reclamation in such form and on such date or dates as Reclamation may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

RULES, REGULATIONS, AND DETERMINATIONS

6. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(b) Reclamation shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the District and the Contractor.

PROTECTION OF WATER AND AIR QUALITY

7. (a) Project facilities used to make available and deliver water to the Contractor

shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by Reclamation and the District: Provided, That Reclamation or the District does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water to the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(c) This article shall not affect or alter any legal obligations of the Secretary or the District to provide drainage or other discharge services.

EQUAL EMPLOYMENT OPPORTUNITY

8. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Reclamation setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Reclamation, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

9. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local government entity, Title III if the entity is a non-government entity, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the

Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Contractor shall be investigated by the Reclamation's Office of Civil Rights.

MEDIUM FOR TRANSMITTING PAYMENTS

10. (a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the contract, the Contractor shall furnish Reclamation with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

CONTRACT DRAFTING CONSIDERATIONS

11. Articles 1 through 8 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

(1) C.E.C. No. ECAO 03-17
(2) Contract No. 03XX6C
(3) Cost Auth. No. _____

**Eastern Colorado Area Office
Categorical Exclusion Checklist (CEC)**

(4) PROJECT: Colorado-Big Thompson Project

(5) DATE: April 28, 2003

ACTIVITY TITLE: Temporary C-BT Conveyance Contract with the Northern Colorado Water Conservancy District and the Town of Berthoud

(6) NATURE OF ACTION: Reclamation proposes to contract with the Town of Berthoud (Berthoud) and the Northern Colorado Water Conservancy District (District) for the temporary conveyance of non-project water through the facilities of the Colorado-Big Thompson Project. The term of the contract will be one year or as long as relief under the Reclamation States Drought Relief Act of 1991 is available in Colorado. The proposed contract will allow Berthoud to take delivery of their Big Thompson River water rights through Colorado Big-Thompson Project facilities in accordance with a Memorandum dated February 26, 2003 from the Regional Director, delegating the Area Manager of Eastern Colorado Area Office (ECAO) authority to enter into temporary water related contracts for the use of Reclamation facilities under the Reclamation States Emergency Drought Relief Act of 1991. The scope of this CE addresses the effects a temporary, conveyance contract for non-project water up to 2,240 af at the maximum rate of 7.14 cfs and a pipeline to deliver the water to Berthoud's existing storage reservoir.

Berthoud owns two senior water rights on the Big Thompson River which it seeks to divert through the C-BT System. The first water right is decreed for 3.0 cfs with an adjudication date of June 29, 1916. It is decreed as the number one water right on the Big Thompson River. Berthoud also owns a water right for 4.14 cfs which holds the next priority on the Big Thompson River. The Town obtained a decree in Case No. 84CW421 in District Court, Water Division 1, Colorado to add C-BT facilities as an additional point of diversion for their Big Thompson River water rights. Under the water right decree, Berthoud may divert a maximum of 7.14 cfs for 159 days per year from April 27 to October 31. During this period Berthoud may divert no more than 2,240 acre-feet as shown on Attachment A. To prevent injury to other water users, the Water Court decree requires Berthoud to provide 30 acre feet per year to replace reduced return flows to the Big Thompson River.

Normally, Berthoud diverts Big Thompson River water into the Handy Ditch which carries Berthoud water to a pipeline that then carries Berthoud water to Berthoud Reservoir. Stored water is then used by Berthoud throughout the year. In 2002, because of drought conditions, the water delivery season through the Handy Ditch System was reduced from 159 days to approximately 70 days. As of April 25, 2003, because of poor water supplies, Handy Ditch was unclear whether or not the ditch would be operated in 2003. A decision on whether or not to operate the ditch will be made in the second week of May. If the Handy Ditch is not operated, Berthoud has no means of delivering raw water to its storage reservoir and treatment plant and would be forced to curtail service to town residents until an alternative means of delivery is developed.

Under the proposed contract Berthoud water may be diverted into the Colorado-Big Thompson Project system at Lake Estes or diverted and exchanged into the Colorado-Big Thompson Project system at the Dille Tunnel. If diverted at Lake Estes, it will flow through Colorado-Big Thompson Project facilities to Flatiron Reservoir where it will be pumped to Carter Lake. From Carter Lake, Berthoud's Big Thompson River water will be released to the St. Vrain Supply Canal and diverted into the Northern Colorado Water Conservancy District's Southern Water Supply pipeline. If diverted and exchanged at the Dille Tunnel, Berthoud's water is still released to the St. Vrain Supply Canal and diverted into the Southern Water Supply pipeline. Depletions to the Platte River system and effects of the proposed contract are the same whether Berthoud's water is diverted at Lake Estes or the Dille Tunnel. At the point shown on Plate 1, Attachment B, Berthoud water is taken out of the Southern Water Supply pipeline and put into a pipeline to Berthoud Reservoir.

The alternate point of diversion will result in a diminutive reduction to flows to the Big Thompson River from Lakes Estes to the Handy Ditch from April to October of 2003. This is because during this period Reclamation normally diverts all flows in excess of the minimum instream flow for the purposes of generating power. This water is then returned to the Big Thompson River west of Loveland. Therefore, the proposed contract will not have a significant effect on water quantity or quality in the aforementioned reach of the Big Thompson River. By contracting with Berthoud to use C-BT facilities, pursuant to their

court decree, Berthoud is assured water delivery to their reservoir and treatment plant whether or not the Handy Ditch operates.

The water conveyed is non-project water used in accordance with existing Colorado water law. The contract will be an if-and-when contract which will provide conveyance when Colorado-Big Thompson Project facilities are not being fully utilized to convey Colorado-Big Thompson Project water.

(7) **EXCLUSION CATEGORY:** 516 DM 6, Appendix 9.4 D.4: Approval, execution, and implementation of water service contracts for minor amount of long-term water use or temporary or interim water use when the action does not lead to long-term changes and where the impacts are expected to be localized.

EVALUATION OF CRITERIA FOR CATEGORICAL EXCLUSION

- (8) This action or group of actions would have a significant effect on the quality of the human environment. No X Uncertain ___ Yes ___
- (9) This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources. No X Uncertain ___ Yes ___

EVALUATION OF EXCEPTIONS TO ACTIONS WITHIN CATEGORICAL EXCLUSION

- (10) This action would have significant adverse effects on public health or safety. No X Uncertain ___ Yes ___
- (11) This action would affect unique geographical features such as: wetlands, wild or scenic rivers, rivers on the nationwide inventory, refuges, flood plains, or prime and unique farmlands. No X Uncertain ___ Yes ___
- (12) The action will have highly controversial environmental effects. No X Uncertain ___ Yes ___
- (13) The action will have highly uncertain environmental effects or involve unique or unknown environmental risk. No X Uncertain ___ Yes ___
- (14) This action will establish a precedent for future actions. No X Uncertain ___ Yes ___
- (15) This action is related to other actions with individually insignificant, but cumulatively significant effects. No X Uncertain ___ Yes ___
- (16) This action will affect properties listed or eligible for listing in the National Register of Historic Places.
(To be completed only by Area Archeologist): RAB 4/28/03
No potential to cause effect (initial)
- (17) This action will adversely affect a species listed or proposed to be listed as endangered or threatened. No X Uncertain ___ Yes ___
- (18) This action threatens to violate Federal, State, local, or tribal law or requirements imposed for protection of the environment. No X Uncertain ___ Yes ___
- (19) This action will affect Indian Trust Assets (ITA) No X Uncertain ___ Yes ___
- (20) NEPA ACTION RECOMMENDED: CEC XX EA _____ EIS _____

(21) NATURE OF ACTION (CONTINUED):

#9 The execution of the proposed contract will not cause harm to the C-BT project or to C-BT beneficiaries.

#14. Conveyance of non-project water in Colorado-Big Thompson facilities does not result in any long-term commitment to conveyance since only space not used by project water is available. It is reasonably foreseeable that Berthoud will request a long-term contract for conveyance in the future. Such a request would not fit under the scope of this document and would require additional NEPA compliance.

#16 Water will be conveyed via existing project facilities. Berthoud constructed a pipeline as shown on Plate 1 of the attached biological evaluation. Approximately 40% of the pipeline was constructed in the mid 1990's when County Road 8 was reconstructed. The pipeline was placed under the road. The remainder of the pipeline was constructed in 2002-2003 across an area currently being developed for housing purposes.

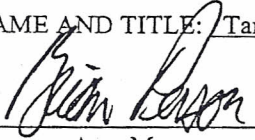
#17 A Biological Evaluation (Attachment B) has been prepared by the Eastern Colorado Area Office. Based on the evaluation, Reclamation has determined that, as a result of depletions to the Platte River system that must be considered as interrelated and/or interdependent to the contract, there may be an adverse effect on the whooping crane, least tern, piping plover, and pallid sturgeon. Reclamation has initiated emergency Section 7 consultation with the FWS on the depletions that will result from the proposed contract. However, it will not be necessary to develop an RPA for the proposed contract since there is an existing agreement among the states of Nebraska, Colorado, Wyoming, and the Department of the Interior that mitigates the adverse effects of depletions to the Platte River until a permanent program is agreed to and implemented among the states and Interior. The interim program involves payment of a fee to the National Fish and Wildlife Foundation. The fee is used for the acquisition of habitat and water to preserve critical habitat elements which are important to the above listed species. The fee program is a standard method of dealing with Platte River depletions. The fee fully mitigates the effects of the depletions on the four listed species so there are no adverse effects.

(22) ENVIRONMENTAL AND TRUST ASSET COMMITMENTS, EXPLANATION AND/OR REMARKS:

1. By entering into a water repayment contract with Reclamation, for the use and distribution of United States waters, the contractor agrees to comply with all sections of the Clean Water Act. Additionally, water must be transported, stored, and released in accordance with Colorado water law.
2. The Bureau of Reclamation retains jurisdiction should there be a need to reinstate section 7 consultation during the term of the proposed contract. Reinitiation would be necessary if any of the conditions listed in 50 CFR, Part 402.16 are met during the term of the contract.

(23) PREPARER'S NAME AND TITLE: Tara Moberg, Natural Resource Specialist

(24) APPROVED: _____


Area Manager

DATE: April 28, 2003

Attachment A**Volumetric Monthly Limits on the Town of Berthoud's Diversions
at a Rate of 7.14 cfs, until Diversions Have Totaled 2,270 AF**

MONTH	MAXIMUM MONTHLY DIVERSION (AF)
April	57
May	439
June	425
July	439
August	439
September	425
October	439

Note: Maximum allowable diversion is less than the sum of maximum Monthly diversions.

MAXIMUM ALLOWABLE
ANNUAL DIVERSION(AF): 2270

30 acre-feet to Big Thompson River 30

Maximum allowable diversion to storage 2240

Attachment B- Biological Evaluation

Endangered Species Evaluation

**Use of Colorado-Big Thompson Facilities to Convey
Non-Project water for the Town of Berthoud**

Prepared for:

U.S. Fish and Wildlife Service

By

**U.S. Bureau of Reclamation
Eastern Colorado Area Office**

April 2003

INTRODUCTION

The City of Berthoud has requested a one year conveyance contract in order to take delivery of its Big Thompson River water rights through Colorado-Big Thompson Project (C-BT) facilities. The contract would be issued pursuant the Reclamation States Emergency Drought Relief Act of 1991.

Background

The Town of Berthoud relies primarily on Big-Thompson River water rights and C-BT units to provide water to its citizens. Historically, Berthoud diverted water from the Big Thompson River through the Handy Ditch, to a turnout on the Handy Ditch that delivered water to Berthoud Reservoir. Due to the drought in 2002, water delivery through the Handy Ditch system was reduced significantly and it is undecided whether or not Handy Ditch will operate in 2003.

Berthoud owns two senior water rights on the Big Thompson River which it seeks to divert through the C-BT system. The first water right is decreed for 3.0 cfs with an adjudication date of June 29, 1916. It is decreed as the number one water right on the Big Thompson River. Berthoud also owns a water right for 4.14 cfs which holds the next priority on the Big Thompson River. The Town obtained a decree in Case No. 84CW421 in District Court, Water Division 1, Colorado to use Colorado-Big Thompson Project facilities as an alternate point of diversion for its Big Thompson River water rights. Water can be diverted under Berthoud's water rights for 159 days per year, during the time period of April 27 to October 31. During the term of the proposed contract, Berthoud will divert an estimated 2,240 acre feet of water from the Big Thompson River to Berthoud Reservoir through Colorado-Big Thompson Project facilities. Berthoud Reservoir is an existing reservoir. Operation of Berthoud Reservoir will not change as a result of the proposed contract. From Berthoud Reservoir the water is used as needed during the year. Monthly estimated diversions from the Big Thompson River are as follows:

Table 1: Berthoud estimated diversions to storage and monthly usage in acre-feet.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Estimated monthly diversion to storage	0	0	0	54	369	355	369	369	355	369	0	0	2240
% of Annual Use	4.7%	4.4%	4.9%	6.2%	9.8%	12.6%	15.7%	14.0%	10.7%	7.1%	5.1%	4.8%	100%
Usage	105	99	110	139	220	282	352	314	240	159	114	108	2240

In anticipation of a contract with Reclamation to take delivery of water from Colorado-Big Thompson Project facilities Berthoud constructed a pipeline from the Northern Colorado Water Conservancy District's Southern Water Supply Pipeline to their existing diversion point on the Handy Ditch. (Plate 1) This pipeline was partially constructed in 1998 with the remainder constructed in 2002-2003. Approximately 40% of the pipeline is buried underneath County Road 8 and the remainder crosses historical winter wheat fields which are being developed into rural housing. Without the proposed contract, Berthoud's only means of delivering their water to Berthoud Reservoir was through the Handy Ditch under an agreement that was originally negotiated in 1908. The Southern Water Supply Pipeline was completed in 1995. After municipal use, Berthoud's point of return flow is the Little Thompson River a tributary of the Big Thompson and South Platte Rivers. Historically a small amount of water which was reserved for use by the Handy Ditch Company under its old carriage agreement returned to the Big Thompson River after irrigation. In order to limit Berthoud to their historic use and prevent injury to other water users,

the Water Court decree requires Berthoud to provide 30 acre feet per year to replace reduced return flows to the Big Thompson River according to the following schedule:

Table 2: Berthoud return flows to the Big Thompson River

Replacement To	Replacement Obligation (Acre Feet/Month)					
	May	June	July	August	September	October
Home Supply	3	4	4	4	4	3
Big Thompson	1	1	2	2	1	1

PROPOSED ACTION

Reclamation proposes to enter into a one year conveyance contract with the Town of Berthoud to convey Berthoud's Big Thompson River water rights through Colorado-Big Thompson Project facilities. The contract would be pursuant to the Reclamation States Emergency Drought Relief Act of 1991. To take delivery of its water through Colorado-Big Thompson Project facilities, Berthoud must have first constructed a pipeline connecting the Southern Water Supply System pipeline to Berthoud's existing turnout on the Handy Ditch. This pipeline is considered an interrelated action to the proposed contract.

Conveyance capacity for non-project water is available on an if-and-when basis, meaning Colorado-Big Thompson Project operations are not altered to make conveyance space available.

THREATENED AND ENDANGERED SPECIES

The assessment of the effects on threatened, endangered, and candidate species focuses on two action areas, 1) on-site in the area affected by the transfer of diversions and possible exchanges within the Big-Thompson basin and 2) the Platte River system in Nebraska. The assessment is discussed in the following section.

On-Site Effects on Threatened, Endangered, and Candidate Species

Reclamation evaluated the effects of Berthoud's requested conveyance contract and pipeline on the following listed species. This list of species was derived from the Fish and Wildlife Service web site and discussions with the Fish and Wildlife Service about the proposed project on March 14, 2003.

Table 3. Potential on-site threatened, endangered, and candidate species, Larimer County Colorado

Common Name	Scientific Name	Status
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Listed Threatened
Eskimo curlew	<i>Numenius borealis</i>	Listed Endangered
Mexican spotted owl	<i>Strix occidentalis lucida</i>	Listed Threatened
Mountain plover	<i>Charadrius montanus</i>	Proposed Threatened
Black-footed ferret	<i>Mustela nigripes</i>	Listed Endangered
Black-tailed prairie dog	<i>Cynomys ludovicianus</i>	Candidate for listing
Canada Lynx	<i>Lynx Canadensis</i>	Listed Threatened
Preble's meadow jumping mouse	<i>Zapus hudsonius preblei</i>	Listed Threatened
Greenback cutthroat trout	<i>Oncorhynchus clarki stomias</i>	Listed Threatened
Boreal toad	<i>Bufo boreas boreas</i>	Candidate for listing
Colorado Butterfly Plant	<i>Gaura neomexicana ssp. Coloradensis</i>	Listed Threatened
Ute ladies'-tresses	<i>Spiranthes diluvialis</i>	Listed Threatened

Bald eagle—Bald eagles are primarily winter residents in Colorado. They typically roost in large trees near bodies of water or prairie dog towns where prey is abundant. Any depletions to the Big Thompson River below Olympus Dam, that occur as a result of Berthoud's temporary storage and conveyance contract would occur during the time period of April 27th to October 31, 2003.

Reclamation has determined that the neither the direct or indirect effects of the proposed action will affect bald eagles.

Eskimo curlew—The Eskimo curlew is an accidental spring migrant in Colorado (Andrews and Righter 1992). Spring migrating curlews prefer feeding in wet meadows and unplowed prairie grasslands. There is no such habitat that will be affected directly or indirectly by the proposed action. Reclamation has determined that Eskimo curlews will not be affected by the proposed action.

Mexican Spotted Owl—The Mexican spotted owl prefers steep canyons with dense old growth forest of ponderosa pine, Douglas-fir or pinon/juniper canyons. No canyon or dense forest habitat will be either directly or indirectly affected by the proposed action. Reclamation has determined that the Mexican spotted owl will not be affected by the proposed project.

Mountain plover - Mountain plovers almost exclusively prefer expansive flats of shortgrass prairie. These shortgrass habitats frequently are found in areas intensely grazed by livestock or in prairie dog towns. Areas with tall grasses, shrubs and hills that block this small birds view are avoided. They have been recorded in eastern Larimer County, but are unlikely to be found in the the area affected by the pipeline because of a lack of suitable habitat. . Reclamation has determined that the mountain plover will not be affected by the proposed project.

Black-footed ferret—Black-footed ferrets are found in grassland prairies with large populations of prairie dogs. There are no prairie dog towns in the vicinity of the proposed project that are large enough to support a black-footed ferret. Reclamation has determined that the proposed action will not affect the black-footed ferret.

Black-tailed prairie dog – The Black tailed prairie dog is a candidate for listing throughout its range. Areas adjacent to the pipeline contain black tailed prairie dog populations. However, the pipeline traverses areas that have been previously disturbed for construction of roads and houses and contain no black tailed prairie dog populations. Reclamation has determined that the proposed action will not affect the black-tailed prairie dog.

Preble's meadow jumping mouse—Preferred habitat includes shrubby riparian areas and moist meadows. There are no moist meadows or shrubby riparian areas that will be affected by the proposed project. Reclamation has determined that the proposed project will not affect the Preble's meadow jumping mouse.

Canada lynx – Lynx are typically found in older, mature forests with downed trees and windfalls which provide cover for denning sites, escape, and protection from severe weather. Lynx feed primarily on snowshoe hare, which live in dense thickets of younger trees and shrubs. In the Rocky Mountains, lynx live in the spruce/fir forests of the high mountains. This type of habitat does not exist in the project area. Reclamation has determined that the proposed project will not affect the Canada lynx.

Greenback Cutthroat Trout— Greenback cutthroat trout prefer cold, clear, gravely headwater streams and mountain lakes which provide an abundant food supply of insects. No such habitats will be affected by the proposed project. Within the Big Thompson watershed, the only known greenback cutthroat trout populations are in Rocky Mountain National Park. Reclamation has determined that the proposed project will not affect the greenback cutthroat trout.

Boreal Toad—The only alpine species of toad in Colorado, and has been reported in montane habitats throughout the state at elevations between 7,000 and 12,000 feet. Distribution is restricted to areas with suitable breeding habitat in spruce-fir forests and alpine meadows. The highest elevation of the proposed project is elevation 5,400 feet msl. Reclamation has determined that the proposed project will not affect boreal toads.

Colorado Butterfly Plant—This species prefers moist meadows in the transition zone between wet stream bottoms and flood plain areas. No such habitat will be affected by the proposed project. Reclamation has determine that the proposed project will not affect the Colorado butterfly plant.

Ute Ladies'-tresses—This orchid grows in seasonally moist soils near perennial streams and nearby floodplains, lakes and springs. The proposed project does not affect perennial streams or habitat suitable for the Ute ladies'-tress. Reclamation has determined that the proposed project will not affect the Ute ladies'-tress orchid.

Effects on Platte River System Threatened and Endangered Species

Projects that result in water depletions to the Platte River system (PRS) may jeopardize the continued existence of several threatened and endangered species in Nebraska (Table 4) or result in the destruction or adverse modification of critical habitat.

Table 4: Threatened and endangered species in the Platte River system in Nebraska

Common Name	Scientific Name	Status
Whooping Crane	<i>Grus Americana</i>	Federal endangered
Interior least tern	<i>Sterna antillarum</i>	Federal endangered
Piping plover	<i>Charadrius melodus</i>	Federal threatened
Pallid sturgeon	<i>Scaphirhynchus albus</i>	Federal endangered
Eskimo curlew	<i>Numenius borealis</i>	Federal endangered
American buying beetle	<i>Nicrophorus americanus</i>	Federal endangered
Western prairie fringe orchid	<i>Platanthera praeolaria</i>	Federal threatened

Whooping crane — The primary migration corridor for the whooping crane is a narrow band from extreme northeastern Montana south through North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. Spring sightings are more common along the central Platte River than any other habitat area. In recognition of its importance to the whooping crane, a 3-mile wide, 56-mile long reach from Lexington to Denman, Nebraska is designated as critical habitat (50 CFR 17.95).

During the spring migration, wet meadows along the Platte River provide whooping cranes the opportunity to obtain essential food for survival and reproduction. However, substantial reductions in wet meadows have occurred during the past century (Currier et al. 1985, Sidle et al.

1989). Groundwater levels, which maintain wet meadows, are hydrologically linked with river stage.

Depletions associated with the proposed action contribute to the incremental and cumulative loss of water in the system which supports wet meadows, wide channel habitats, and aquatic habitat within the channel, and thus, the loss of whooping crane roosting and foraging habitat along the central Platte River. Migrating cranes are less likely to use degraded habitat and would likely be required to seek alternative or less suitable habitats. The depletions associated with the proposed action may further contribute, incrementally and in a proportional measure, to the adverse impacts which now jeopardize the crane's survival. Reclamation has determined that depletions associated with the proposed action may adversely affect the whooping crane.

Least tern and Piping plover— Along the Platte River from North Platte, Nebraska to the confluence with the Missouri River, the least tern and the piping plover nest on sandy substrate on riverine sandbars and at sand and gravel pits. Open, wet, sandy areas provide feeding habitat for terns and plovers.

Channelization, irrigation, and the construction of reservoirs and pools have contributed to the elimination of much of the tern and plover sandbar nesting habitat. Continuing water depletions reduce the width and/or depth of water surrounding nest sites and may increase predation and human disturbance. The depletions associated with the proposed action would likely contribute to further, incremental, vegetation encroachment and forestation of open alluvial riverine nesting habitat (Johnson 1994) and, therefore, contribute, incrementally and in a proportional measure, to adverse environmental conditions which currently jeopardize the survival of both terns and plovers. Reclamation has determined that depletions associated with the proposed action may adversely affect the least tern and piping plover.

Pallid sturgeon The pallid sturgeon prefers large river habitats with strong currents over sandy or graveled bottoms. The sturgeon's range is principally confined to the Missouri and lower Mississippi Rivers including the lower reaches of the Platte River. Continued, and possibly enhanced use of the Platte River and that segment of the Missouri River affected by the Platte River is critical to the survival and recovery of the sturgeon. Reclamation has determined that depletions associated with the proposed action may adversely affect the pallid sturgeon.

Eskimo curlew — The curlew has historically ranged from breeding grounds in the arctic tundra through migration routes in the mid-western and north Atlantic states to wintering grounds in South America. Habitat includes shorelines of reservoirs, lakes, and rain ponds (Andrews and Righter 1992). The species is reported to be associated with native grassland habitats of the central Platte River Valley, and wet meadows provide feeding habitat (Platte River Management Joint Study 1993). Because curlew observations in the Platte River valley are extremely rare (one sighting in Nebraska in over 60 years) and information on their habits is limited, the continuing role of Platte River habitats, and the degree of the potential adverse impacts of flow depletions on this species are difficult to gauge. Reclamation has determined that the proposed action will not affect the Eskimo curlew.

American burying beetle — The American burying beetle is the largest carrion beetle found in North America. The historical range of the beetles includes 35 states in the eastern and central United States. Nebraska is at the western fringe of the beetle's range. Because of the broad

geographic range of the beetle, it is unlikely that vegetation and soil types were historically limiting factors (U.S. Forest Service 1995). Historical records for the beetle in Nebraska indicate the species occurred along watercourses where riparian deciduous or scrub forests, interspersed with grassland, were the predominant habitat (Jameson and Ratcliffe 1989). Though the species has been found to occur in low areas near wetlands, it is not known that this species necessarily relies on wetlands. Reclamation has determined that the proposed action will not affect the beetle.

Western prairie fringed orchid — The orchid can be found in relatively intact native plant ecosystems in mesic to wet-mesic tallgrass and sandhill prairies and sedge meadows along the floodplain of the Platte River in central Nebraska. The only known population is on Mormon Island Crane Meadows, in Hall County, Nebraska. The major threat to the orchid is the destruction of habitat for cropland. Habitat alterations due to land use practices such as burning, grazing, mowing, and filling of wetlands also adversely affect the species. Reclamation has determined that the proposed project will not affect the western prairie fringed orchid.

Cooperative Agreement

In order to allow water use and development activities in Colorado, Nebraska, and Wyoming to continue, the Governors of these three states along with the Secretary of the Interior signed a Cooperative Agreement on July 1, 1997. The purpose of the Cooperative Agreement is to implement over a three year period certain activities relating to four target species listed as threatened or endangered (whooping crane, interior least tern, piping plover, and pallid sturgeon) and their associated habitats. These activities include (Cooperative Agreement 1997):

- A. implementation of research, analysis, and other measures that will benefit the target species and their associated habitats;
- B. implementation of efforts to acquire, restore, and manage land or interests in land so as to provide and improve associated habitats for the targeted species;
- C. development and implementation of certain water management, conservation, and supply measures; and
- D. development of a Platte River basin-wide recovery program, the intent of which is to (1) secure benefits for the target species and their associated habitats to assist in their conservation and recovery, (2) serve as the reasonable and prudent alternative to offset the effects of existing and new water related activities in the Platte River Basin that, in the absence of such a program, would finally be found by the Service to be likely to jeopardize the continued existence of the target species or adversely modify designated critical habitat; (3) mitigate new water related activities in a state in a manner that will not increase the mitigation responsibilities of the other signatory states.

Future Platte River Recovery Program

Following the term of the Cooperative Agreement (including any extensions), a basin-wide recovery program is expected to be established that would serve as the reasonable and prudent alternative to offset the effects of existing and new water related activities in the Platte River Basin. Assuming that a Recovery Program is established, the future depletions associated with the proposed action will be mitigated in accordance with the Recovery Program. Since the proposed action is a one year contract, the Recovery Program will not be available as a reasonable and prudent alternative.

Depletions to Big Thompson River and Platte River System

Berthoud diverts Big Thompson River water into storage during the period from April to October each year. This water is then used by Berthoud throughout the year as shown on Table 5. Under the proposed contract Berthoud water may be diverted into the Colorado-Big Thompson Project system at Lake Estes or diverted and exchanged into the Colorado-Big Thompson Project system at the Dille Tunnel. If diverted at Lake Estes, it will flow through Colorado-Big Thompson Project facilities to Flatiron Reservoir where it will be pumped to Carter Lake. From Carter Lake, Berthoud's Big Thompson River water will be released to the St. Vrain Supply Canal and diverted into the Northern Colorado Water Conservancy District's Southern Water Supply pipeline. If diverted and exchanged at the Dille Tunnel, Berthoud's water is still released to the St. Vrain Supply Canal and diverted into the Southern Water Supply pipeline. Depletions to the Platte River system are the same whether Berthoud's water is diverted at Lake Estes or the Dille Tunnel. At the point shown on Plate 1, Berthoud water is taken out of the Southern Water Supply pipeline and put into a pipeline to Berthoud Reservoir.

Average return percentages for the Town of Berthoud are based on information received by Reclamation from Berthoud. These return flow estimates are consistent with the Loveland Section 7 consultation completed in September 1999.

Table 5: Estimated diversions, return flow and depletions/accretions to the Little Thompson River associated with the Town of Berthoud conveyance contract.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Estimated monthly diversion to storage	0	0	0	54	369	355	369	369	355	369	0	0	2240
% of Annual Use	4.7%	4.4%	4.9%	6.2%	9.8%	12.6%	15.7%	14.0%	10.7%	7.1%	5.1%	4.8%	100%
Usage	105	99	110	139	220	282	352	314	240	159	114	108	2240
% returned to Little Thompson River/South Platte System	95.0%	95.0%	91.1%	75.3%	54.0%	45.8%	40.2%	42.9%	51.0%	68.4%	88.6%	95.0%	
Acre-feet returned to South Platte system	100.0	93.6	100.0	104.6	118.5	129.3	141.4	134.5	122.2	108.8	101.2	102.1	1356
Depletions/Accretions to South Platte system	100	94	100	51	-250	-226	-228	-234	-233	-260	101	102	-884
Depletions to South Platte system subject to Section 7 consultation					-250	-226	-228	-234	-233	-260			-1431

Based on the above table, it is estimated that approximately 1,431 acre-feet of water will be depleted from the South Platte River system during the term of the proposed one year Drought Act contract.

Reclamation has determined that this depletion may adversely affect the whooping crane, least tern, piping plover, and pallid sturgeon. We have determined that the proposed action will not affect the other species discussed in this evaluation.

From: Robert Burton
To: rburton; Tully, William
Date: 4/28/03 10:42AM
Subject: Berthoud Pipeline CEC

After reading the CEC, I have determined that the proposed contract to allow Town of Berthoud temporary conveyance of Big Thompson water will have "no potential to cause effects", as defined in Section 800.3 of the NHPA regulations. The proposed contract will not result in any ground disturbance and changed flow levels in the river are not such that they will cause any acceleration of erosion. The connection and pipeline to Berthoud are already existing. Therefore, even if historic properties were present, there would be no effect on them.

Please file a copy of this with the CEC.

Robert J. Burton
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