

08302016 A0006

MEMORANDUM OF UNDERSTANDING
Northern Integrated Supply Project

This Memorandum of Understanding is made and entered into effective August 30 2016, by and between the Larimer County Board of County Commissioners ("Larimer County") and the Northern Colorado Water Conservancy District, acting by and through its Northern Integrated Supply Project Water Activity Enterprise, a water activity enterprise of the State of Colorado ("Northern Water").

RECITALS

WHEREAS, Larimer County and Northern Water (referred to collectively as the "Parties") are political subdivisions of the State of Colorado and are authorized to cooperate and enter into this Memorandum of Understanding pursuant to C.R.S. 29-1-203, 30-11-101 and 37-45-118 and Colo. Const. Art. XIV, Sec. 18(2)(a).

WHEREAS, Northern Water has applied to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 permit to build the proposed Northern Integrated Supply Project ("NISP"). NISP is a regional water supply project designed to serve a portion of the water needs of 15 towns and water districts within the boundaries of Northern Colorado Water Conservancy District. NISP is currently undergoing NEPA compliance and federal and state permitting reviews.

WHEREAS, components of the NISP Project, including the proposed Glade Reservoir and appurtenant water facilities, will be located in Larimer County.

WHEREAS, Larimer County has adopted regulations defining areas and activities of state interest in Larimer County, codified at Section 14 of the Larimer County Land Use Code, for which a 1041 permit is required unless specifically exempted. Among the matters of state interest so designated are the site selection and construction of domestic water transmission lines and certain new water storage reservoirs and their appurtenant uses, structures and facilities. Sections 14.4.J and 14.4.K.

WHEREAS, upon the request of a political subdivision of the state proposing to engage in an area or activity of state interest, the requirements for submission and approval of a 1041 permit application may be met by the approval of an intergovernmental agreement ("IGA") between Larimer County and the applicant that meets the requirements of Section 14.8 of the Land Use Code. An entity that has an approved IGA with Larimer County addressing the project in question is specifically exempt from the 1041 regulatory provisions. Section 14.5.B.4.

WHEREAS, the Parties desire to explore whether development of an IGA may be mutually beneficial in lieu of engaging in the 1041 permit process for NISP.

WHEREAS, Section 14.8.A.5 of the Land Use Code provides that the County and the applicant shall execute a Memorandum of Understanding prior to engaging in the process of forming an IGA, the purpose of which is to:

- A. Acknowledge the intent of the parties to begin joint discussions which may result in the approval of an IGA;
- B. Establish the timeframe for those discussions and any significant milestones agreed upon; and
- C. Establish the timeframe for review, public input and public hearing before the County Commissioners.

NOW THEREFORE, in consideration of the premises and mutual promises and covenants set forth herein, the Parties agree as follows:

1. The Parties hereby acknowledge their mutual intent to begin joint discussions which may result in the approval of an IGA in lieu of the requirement for a 1041 permit from Larimer County.
2. The timeframe for these discussions and other milestones are as follows:
 - A. Within 60 days following the date of this MOU, the parties shall discuss and seek to confirm and/or reach consensus about:
 - i. The process for development of an IGA.
 - ii. The need for additional studies, baseline information, and determination of limits of review.
 - iii. Sources of relevant information.
 - iv. The need for consultants.
 - B. Within 120 days following the date of this MOU, the first draft of an IGA will be completed.
 - C. Within 60 days following completion of the first draft of an IGA acceptable to staff of each party, a proposed final draft IGA shall be submitted to the Larimer County Community Development Department, together with any other required application materials.
 - D. Within 14 days following submittal of the proposed final draft IGA and other application materials, the Larimer County Community Development Department shall review such submittals and make a determination as to completeness.
 - E. Within 21 days after a determination that the submittals are complete, the Community Development Department shall send the proposed final draft IGA and other application materials to the referral agencies for comment; this is typically a 21-day comment period.

- F. Within 30 days after the close of the referral agency comment period, the parties will discuss changes to the proposed final draft IGA that may be necessary or appropriate based on referral agency comments.
- G. Within 30 days following the proposed final draft IGA (as may be revised pursuant to subsection (f)), the IGA will be reviewed and considered at a joint work session of the Larimer County Planning Commission and Board of County Commissioners.
- H. Within 45 days following the joint work session, the proposed final draft IGA will be considered by the Planning Commission at a public hearing.
- I. Within 45 days following the Planning Commission public hearing, the proposed final draft IGA will be considered and acted on by the Board of County Commissioners at a public hearing.
- J. Northern Water will consider and formally act upon the IGA within 45 days following its approval by the Board of County Commissioners.

The foregoing schedule and milestones may be modified by the Parties as their interests may dictate.

- 3. Upon completion of a mutually acceptable proposed IGA that satisfies the purpose and intent of Section 14 of the Larimer County Land Use Code, the County Commissioners shall approve the form of the proposed IGA subject to final approval of the IGA at the conclusion of or subsequent to public hearing thereon pursuant to Section 14.8.A.3.
- 4. Both the Board of County Commissioners of Larimer County and the governing body of Northern Water must approve the IGA in the manner required of each of them by applicable law.
- 5. Efforts to develop an IGA pursuant to this Memorandum of Understanding do not commit Larimer County to approve an IGA in lieu of a 1041 permit for NISP, nor shall such efforts prevent Northern Water from electing at any time to proceed under the 1041 permit application and review provisions.
- 6. Miscellaneous Provisions:
 - A. Amendments. This Memorandum of Understanding contains the entire agreement between the Parties relating to the subject matter hereof and may not be altered or amended except by written amendment approved and signed by the Parties.
 - B. Not Assignable. This Memorandum of Understanding may not be assigned by any Party without the express written consent of the other Party.
 - C. Severability. If any portion of this Memorandum of Understanding is held by a court in a final, non-appealable decision to be per se invalid or unenforceable as to either of

the Parties, the entire Memorandum of Understanding shall be terminated, it being the understanding and intent of the Parties that every portion of the Memorandum of Understanding is essential to and not severable from the remainder.

D. Termination. Any Party may terminate its participation in this Memorandum of Understanding upon provision of 30 days written notice to the other Party. This Memorandum of Understanding will automatically terminate upon any final approval by the Parties of an IGA in lieu of a 1041 permit for NISP.

E. Notices. All notices that may be required or given pursuant to this Memorandum of Understanding shall be deemed to have been fully given when made in writing and deposited in the United States first class mail, postage prepaid, and addressed as follows:

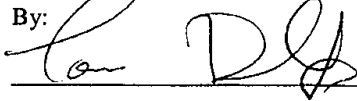
Larimer County: Linda Hoffmann
County Manager, Larimer County
P.O. Box 1190
Fort Collins CO 80522-1190

Northern Water: Eric Wilkinson
General Manager
Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, CO 80513

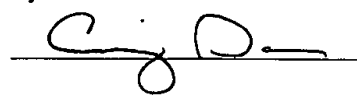
F. Authority to Enter into Memorandum of Understanding. The signatories to this Memorandum of Understanding affirm and warrant that they are authorized to enter into and execute this Memorandum of Understanding and that all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize its execution have been made.

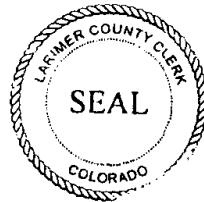
This Memorandum of Understanding was made and entered into effective on the date first set forth above.

LARIMER COUNTY, by and through
its Board of County Commissioners

By: 

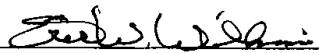
ATTEST

By: 



NORTHERN COLORADO WATER
CONSERVANCY DISTRICT, acting by and
through its NORTHERN INTEGRATED SUPPLY PROJECT WATER
ACTIVITY ENTERPRISE, A WATER ACTIVITY ENTERPRISE OF
THE STATE OF COLORADO

By:


Name ERIC W. WILKINSON
Title GENERAL MANAGER

ATTEST

By: 