

TOWN OF MINTURN, COLORADO

RESOLUTION NO. 17 – SERIES 2009

A RESOLUTION APPROVING A SPECIAL USE PERMIT FOR  
STRUCTURES LOCATED ON UNITED STATES FOREST  
SERVICE (USFS) LAND.

WHEREAS, the Town of Minturn owns multiple water system facilities that are located upon United States Forest Service (USFS) property, including a 100,000 gallon water storage tank, an associated water line, a municipal well and associated structures, the Minturn water diversion structure on Cross Creek, and an access road to the diversion dam; and

WHEREAS, the USFS had previously issued several permits allowing for such facilities under Permit numbers HOL102501 issued in 1989, HOL102502 issued in 1967, and HOL102503 issued in 1995; and

WHEREAS, the Town desires to consolidate these previously issued permits into one permit for ease of administration and tracking; and

WHEREAS, the Town's water attorney has reviewed this permit, found no significant issues, and recommends execution of the permit.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

1. The Town Council of the Town of Minturn hereby approves the U.S. Department of Agriculture, Forest Service, Special Use Permit HOL 367, and authorizes the Mayor to sign execute the permit on behalf of the Town.

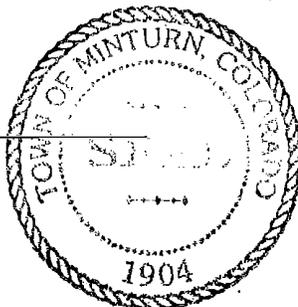
RESOLVED this 5<sup>th</sup> day of August, 2009.

TOWN OF MINTURN

By:   
Mayor

ATTEST:

  
Town Clerk





United States  
Department of  
Agriculture

Forest  
Service

White River  
National  
Forest

Supervisor's Office  
900 Grand Avenue  
P.O. Box 948  
Glenwood Spgs., CO 81602-0948  
(970) 945-2521  
TTY (970) 945-3255  
FAX (970) 945-3266

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File Code: 2720-2-2  
Date: September 11, 2009

Town of Minturn  
PO Box 309  
Minturn, CO 81645

Dear Sir/Madam:

Enclosed is a fully executed Special Use Permit for operating and maintaining a 100,000 gallon water storage tank, buried pipeline, a well, a road, and a concrete diversion dam and intake unit on Cross Creek. This permit replaces three permits previously issued to the Town of Minturn: HOL102501 issued in 1989, HOL102502 issued in 1967, and HOL102503 issued in 1995. Those three permits can now be closed.

Your fee for 2009 has already been paid. You will receive a bill for your 2010 fee in late November, which will be due January 1, 2010.

If you have any questions, please call Bill Johnson at (970) 328-5869.

Sincerely,

  
SCOTT G. FITZWILLIAMS  
Forest Supervisor

Enclosure

cc: Bill Johnson, Jonathan L Freeman, Brian A Lloyd

AP/ap



Authorization ID: HOL367  
Contact ID: MINTURN\_TOWN  
Expiration Date: 12/31/2039  
Use Code: 915, 935, 914, 643

FS-2700-4 (03/06)  
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
Forest Service  
SPECIAL USE PERMIT  
AUTHORITY:**

**ORGANIC ADMINISTRATION ACT June 4, 1897, FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED  
October 21, 1976**

TOWN OF MINTURN of P.O. BOX 309, MINTURN, CO 81645 (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the White River National Forest.

This permit covers 3.73 acres, and is described as: SW1/4NW1/4 Sec. 36, T. 5 S., R. 81 W.; Sec. 2, T. 6 S., R. 81 W., 6TH PRINCIPAL MERIDIAN, as shown on the location map attached to and made a part of this permit, and is issued for the purpose of:

- 1) Operating and maintaining a 100,000 gallon steel water storage tank with an 8" diameter waterline for domestic use.
- 2) Operating and maintaining a municipal well approximately 70 feet deep consisting of the following improvements:
  - a) A well casing and above ground well head,
  - b) A buried pipeline connecting the well with the water main (approximately 50' x 10')
  - c) An aerial electric line from existing service pole (approximately 200' x 20')
- 3) Operating and maintaining a water supply system consisting of:
  - a) A concrete diversion dam and intake unit on Cross Creek,
  - b) A 12" pipeline (2,958' x 50'),
  - c) An access road along the pipeline to the dam, and
  - b) A section of pipeline across the Minturn Ranger Station site adjacent and parallel to the south side of Highway 24

The above described or defined area shall be referred to herein as the "permit area".

**TERMS AND CONDITIONS**

**I. AUTHORITY AND GENERAL TERMS OF THE PERMIT**

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

## II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on **12/31/2039**. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 365 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits laws, or regulations.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by N/A and shall be completed by N/A. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

## III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the

authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form SF-299 Application for Transportation and Utility Systems and Facilities of Federal Lands, or Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

#### **IV. LIABILITY**

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

C. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States.

D. In the event of any breach of the conditions of this authorization by the holder, the authorized officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

E. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

F. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

## V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

## VI. FEES

A. Termination for Nonpayment. This permit shall automatically terminate without the necessity of prior notice when land use rental fees are 90 calendar days from the due date in arrears.

B. The holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization. The initial payment is set at \$ 239.16 for the remainder of the calendar year. Subsequent payments shall be determined by the use of an annual fee schedule. The Forest Service may adjust the amount of payment annually by an appropriate indexing factor to reflect more nearly the fair market value of the use. At certain intervals the Forest Service shall review the fee and adjust the fee as necessary to assure that it is commensurate with the fair market value of the authorized rights and privileges, as determined by appraisal or other sound business management principles.

C. Payment Due Date. The payment due date shall be the close of business on January 1 of each calendar year payment is due. Payments in the form of a check, draft, or money order are payable to USDA, Forest Service. Payments shall be credited on the date received by the designated Forest Service collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

D. Late Payment Interest, Administrative Costs and Penalties Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the

current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*

## VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. Nondiscrimination in Employment and Services (R2-B-108). During the performance of this permit, the holder agrees that:

1. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, sex (in educational activities), national origin, age or disability, by curtailing or by refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally and that the holder and employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments, and the Age Discrimination Act of 1975.

2. The holder shall include and require compliance with the above nondiscrimination provisions in any third party agreement made with respect to the operations under this permit.

3. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

In addition to the above non-discrimination policy, the holder agrees to insure that its program and activities are open to the general public on an equal basis and without regard to any non-merit factor.

E. Water Depletions in the Upper Colorado River Basin (R2-D-104). The holder recognizes that the obligation for providing a reasonable and prudent alternative which allows the Forest Service to issue the special use authorization has been assumed by the co-signers of a cooperative agreement to implement the Recovery Implementation Program For Endangered Fish Species In the Upper Colorado River Basin. In the event the co-signers of the cooperative agreement are unable to meet their responsibilities under the Plan, the individual responsibility of the holder to provide reasonable and prudent measures continues. The Forest Service is obligated to re-evaluate the authorization if consultation is reinitiated.

F. Augmentation Plans for Existing Water Rights (R2-D-108). In the event that the authorized facilities/activities result in an out-of-priority diversion that requires augmentation, the Forest Service authorized officer must approve the augmentation plan in writing prior to the applicant submitting the plan for final decree by the court.

G. Water Rights, Boulder Canyon Act (R2-X-102). This authorization is issued subject to the Boulder Canyon Project Act of December 21, 1928 (45 Stat., 1064).

H. Water Rights (R2-X-103). This authorization confers no right to the use of water by the Holder; such rights must be obtained under State law.

I. Improvement Relocation (X33). This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

J. Disputes (X96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

K. Superseded Authorization (X18). This authorization supersedes three special-use authorizations designated:

HOL1025-01 Town of Minturn 02/10/1989; HOL 1025-02 The Town of Minturn 12/20/1967; and HOL1025-03  
Town of Minturn 11/07/1995.

This permit is accepted subject to the conditions set out above.

HOLDER NAME: TOWN OF MINTURN

U.S. DEPARTMENT OF AGRICULTURE  
Forest Service

By: *George Brodin*  
(Holder Signature)

By: *Scott G. Fitzwilliams*  
(Authorized Officer Signature)

By: *George A Brodin*  
(Name and Title) *Mayor Pro Tem*

Title: *SCOTT G. FITZWILLIAMS*, Forest Supervisor  
(Name and Title)

Date: *August 5, 2009*

Date: *Sept 11, 2009*

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

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