

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda J. Bassi, Chief
Kaylea White
Stream and Lake Protection Section

DATE: May 10, 2010

SUBJECT: **Agenda Item No. 20, May 18-19, 2010 Board Meeting**
Stream and Lake Protection Section
Proposed Water Right Acquisition on the Alamosa River

Bill Ritter, Jr.
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Introduction

The Alamosa Riverkeepers ("ARK") has offered the CWCB an opportunity to acquire 2.5 cfs of water from the Gabino Gallegos Ditch, Priority 11 water right on the Alamosa River near the town of Capulin in Conejos County in Water Division 3. Additionally, the Terrace Irrigation Company has offered 2,000 acre-feet of storage space in Terrace Reservoir to allow the acquired Gabino Gallegos water right to be stored and released for instream flow ("ISF") use by the Board to increase stream flows during the late summer through early winter. The Board first considered this acquisition at its January 2010 meeting. Additional background information was provided in staff's January 2010 meeting memo to the Board for Agenda Item 13. This is the second meeting of the Board's two-meeting process for acquisitions. This acquisition is intended to preserve and improve the natural environment of the Alamosa River by providing additional water when needed to establish more sustainable stream flows in the Alamosa River.

Under this proposal, ARK will donate the Gabino Gallegos water right to the CWCB. The CWCB will ultimately change the point of diversion for the water right to Terrace Reservoir, and change the use from irrigation to storage and release for ISF use from the outlet of Terrace Reservoir downstream to County Road 10, a distance of approximately 16 miles. However to keep options open until Terrace Reservoir is capable of storing this water, ARK could offer to lease the water back for irrigation, or CWCB may bypass the water at the headgate for ISF use under a substitute water supply plan once CWCB has filed a water court application, or once CWCB had obtained a final water court decree to do so. A map showing the stream reaches where the acquired water will be used is attached to this memo.

This proposed acquisition is the first step in the much larger Alamosa River Instream Flow Project ("ISF Project") to restore flows and replace natural resources damaged by mining operations at the Summitville Mine in the upper Alamosa River watershed. Additional water acquisitions are anticipated to reach the goal of 2,000 acre-feet of water stored for ISF use.

Staff Recommendation

Pursuant to Rule 6b, staff recommends that the Board:

1. Conclude that the proposed acquisition by donation of 2.5 cfs of the Gabino Gallegos Ditch water right is appropriate to preserve and improve the natural environment of the Alamosa River to a reasonable degree.
2. Determine that the acquired Gabino Gallegos Ditch water right would be best utilized by storing in Terrace Reservoir up to 427 acre feet of water historically diverted by the Gabino Gallegos Ditch water right, and releasing such water to the Alamosa River during the late summer, fall, and early winter to preserve and improve the natural environment by establishing more sustainable surface stream flows in the river segment between Terrace Reservoir and County Road 10.
3. Authorize the Director to approve an agreement allowing the ARK to retain an interest in the water so that ARK may lease back the acquired water right for irrigation use in order to protect the HCU while the reservoir spillway is reconstructed.
4. Determine that until the reservoir spillway is reconstructed the CWCB should maintain an option to utilize the water right by bypassing the water at the headgate for instream flow use downstream of the headgate on the Alamosa River.
5. Approve the Donation and Acquisition Agreement with Valle Del Sol Community Center/Alamosa Riverkeepers.
6. Accept the donation of 2.5 cfs of the Gabino Gallegos Ditch from Valle Del Sol Community Center/Alamosa Riverkeepers.
7. Approve the Storage Agreement with Terrace Irrigation Company and Valle Del Sol Community Center/Alamosa Riverkeepers.
8. Authorize the Director to execute the Donation and Acquisition Agreement and the Storage Agreement.
9. Direct staff to work with the Attorney General's Office to file the necessary change of water right application with the Water Court.

Alamosa River Instream Flow Project

The ISF Project was identified in the Alamosa River Watershed Restoration Master Plan and Environmental Assessment completed in 2005 ("Master Plan"). This project is part of the larger effort to restore and replace damaged resources in the Alamosa River watershed. The ISF Project includes:

- (1) increasing the Terrace Reservoir spillway capacity to remove a storage restriction;
- (2) acquiring senior irrigation water rights on the Alamosa River from willing sellers;
- (3) transferring the irrigation water rights to CWCB for storage in Terrace Reservoir; and,
- (4) operating Terrace Reservoir to store and release the acquired water for ISF use by the CWCB in the Alamosa River between Terrace Reservoir and County Road 10.

Once operational, the ISF Project is expected to improve the magnitude and duration of surface flows in the river, thereby improving environmental, water resource and recreation values while restoring and replacing resources damaged by operations at the Summitville Mine.

The ISF Project is a two-phased, community-based effort spearheaded by the ARK and Terrace Irrigation Company. Phase I, currently underway, includes purchasing senior irrigation water rights, transferring the water rights to the CWCB, changing the use in water court to ISF use by CWCB, and designing the spillway improvements to Terrace Reservoir. Phase II, which is not yet funded, involves reconstructing the Terrace Reservoir spillway, storing the acquired water rights in the reservoir, and releasing the water rights to restore flows in the Alamosa River during the late summer, fall, and early winter months.

The Board's Water Acquisition Procedures

Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth the Board's procedures for acquiring water for ISF use. ISF Rule 6 requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal took place at the CWCB's regular January 2010 Board meeting, which initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. ISF Rule 6m.(4) provides that any person may request the Board to hold a hearing on the proposed acquisition within twenty days of the Board's initial consideration. No such request was filed and the time for filing such request has expired. Staff will request the Board to take final action on the proposal at this May 2010 Board meeting.

ISF Rule 6e requires the Board to evaluate the appropriateness of the acquisition and determine how to best utilize the acquired water to preserve and/or improve the natural environment. The Rules list several factors the Board may consider in its evaluation of the acquisition, which factors are addressed in this memo.

Pursuant to statute, Staff requested recommendations from the Colorado Division of Wildlife ("CDOW"), the Division of Parks and Outdoor Recreation, the U.S. Department of Agriculture and the U.S. Department of Interior. The BLM, one of the federal trustees for the Alamosa River Natural Resources Damage Assessment settlement at the Summitville Mine site, provided comments in support of the proposed water acquisition. (See attached letter). The CDOW also provided comments in support of this proposed acquisition. Pursuant to ISF Rule 6m (1) Staff also provided notice of the proposed acquisition to all persons included on the appropriate ISF Subscription Mailing Lists and to the State Engineer's Substitute Supply Plan Notification List. Staff received several comment letters in support of this proposed acquisition, which are also attached.

1. Water Right Proposed for Acquisition

The water right proposed for this acquisition is 2.5 cfs of the Gabino Gallegos Ditch, Priority 11, which diverts from the Alamosa River, downstream from Terrace Reservoir, near the town of Capulin in Conejos County. Priority 11 of the Gabino Gallegos Ditch was decreed for irrigation and domestic purposes by the Conejos County District Court on July 11, 1888, in the amount of 16 cfs absolute, with an appropriation date of April 15, 1870 The proposed Acquisition Agreement is attached as **Exhibit A**.

The Gabino Gallegos Ditch diverts from the east side of the Alamosa River approximately 8 miles downstream from Terrace Reservoir. The Ditch flows in an easterly direction to irrigate approximately 1,000 acres of alfalfa, pasture grass, small grains and vegetables. In Case No. 82CW097, 1 cfs of the Gabino Gallegos Ditch was transferred to storage in Terrace Reservoir to augment depletions from a development called the Jasper Development.

In addition to the Gabino Gallegos water right, this proposal also contemplates acquisition of up to 2,000 acre feet of storage space in Terrace Reservoir. The Terrace Irrigation Company has agreed to donate the storage space to store the Gabino Gallegos right and subsequent acquired water rights for ISF use, subject to completion of spillway improvements and obtaining removal of the storage restriction. Reconstruction of the spillway is scheduled for Phase II of the ISF Project, and is anticipated to go to bid this fall. The proposed Storage Agreement is attached as **Exhibit B**.

2. Proposed Method of Acquisition

The Valle Del Sol Community Center, a Colorado non-profit corporation acting on behalf of ARK has entered into a Purchase Agreement with the owner of the subject water right (“the Seller”). The Seller has executed a Dry-Up Covenant for the lands historically irrigated by the subject water right. The Valle Del Sol / ARK intend to donate the purchased water right to CWCB. The transaction will close in escrow pending CWCB’s approval. If CWCB elects not to accept the water right, the Deed and Dry-up Covenant will be returned to the Seller, and all escrow money will be released. If the CWCB accepts the proposal, the Deed and Dry-Up Covenant will be released to the buyer and donated to the CWCB for ISF use.

CWCB’s use of Terrace Reservoir to release water for ISF purposes is contingent upon reconstruction of the spillway, lifting of the storage restriction and the Water Court entering a decree allowing a change of the Gabino Gallegos water right to ISF use by the Board. To ensure continued use of the water right, ARK has arranged to allow the sellers to continue using the donated water right for irrigation until the Board is able to store the water in Terrace Reservoir. The sellers will keep all water assessments paid up to date and will use the water right for irrigation to the fullest extent that water is legally and physically available.

3. Reaches of Stream Proposed for Use of the Acquired Right

The reach of stream proposed for use of the acquired Gabino Gallegos water right extends from the outlet of Terrace Reservoir, downstream approximately 16 miles, to the bridge at County Road 10, which includes the restored section of stream channel between Gunbarrel Road and County Road 10. The Alamosa River is currently dry most years downstream from Gunbarrel Road during late summer until spring runoff.

4. Natural Flow Regime

The Alamosa River watershed is approximately 148 square miles, and ranges in elevation from over 13,000 feet to about 7,600 feet. The headwaters are located near the Continental Divide, and the river terminates at ditch headgates just east of Highway 285. Stream flow in the Alamosa River is derived primarily from snow melt and local precipitation, with peak flows occurring in June. Surface water in the Alamosa River rarely reaches the Rio Grande, located approximately 10 miles to the east. Terrace Reservoir is the only mainstem storage facility on the River.

In the segment of the Alamosa River downstream from Terrace Reservoir, the river is confined by steep valley walls. Peak flow typically occurs in June, and drops off quickly in July and August of most years. Table 1 reflects mean monthly streamflow recorded at the State gage located ½ mile downstream from Terrace Reservoir.

**Table 1 – Mean Monthly Flow (cfs), Alamosa River
downstream from Terrace Reservoir,
State Gage ALABELCO, 1980 – 2008**

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
MAX	141	29	22	29	12	49	195	583	872	415	178	96
AVG	49	12	5	6	5	8	88	381	418	174	92	57
MIN	14	1	1	1	2	2	36	108	53	36	7	9

Approximately 2-3 miles downstream from the reservoir, the valley widens, and irrigation diversions pull water from the River. Senior decreed water rights in the reach of the River between Terrace Reservoir and the Town of Capulin total nearly 90 cfs, and significantly reduce stream flows. The following table from the Master Plan describes the last water right priority expected to be filled in a given month based upon average stream flow at the gage downstream from Terrace Reservoir. The Gabino Gallegos right is priority number 11.

Priority Numbers Expected to be Fulfilled in a Given Month		
Month	Average Flow at Below Terrace Reservoir Gage (cfs)	Last Priority Number Fulfilled by Average Flow
April	97	14
May	363	45
June	418	58
July	185	27
August	103	15
September	51	9
Source: CWRD, 2004		

The Capulin Ditch, located downstream from the Gabino Gallegos diversion, is decreed as Priority 10, and can call up to 31.37 cfs past the Gabino Gallegos headgate. By mid-summer, the Capulin Ditch diverts the remaining flow of the Alamosa River.

5. Existing Instream Flow Water Rights

The CWCB does not currently hold ISF water rights on the Alamosa River downstream from Terrace Reservoir. There is an ISF water right located upstream of the reservoir between Treasure Creek/Cascade Creek and the confluence of Wightman Fork (3-82W209), but that water right will not be affected by this proposal.

6. Existing Natural Environment

The Alamosa River is classified as a large river (between 60-90 feet wide) and habitat surveys indicate the stream environment of the Alamosa River could support a self-sustaining fishery in the future, if current water quality and wintertime water quantity continue to improve. In the past, the Alamosa River in this area did support a healthy fishery. Local residents have reported that prior to 1990, the river near Capulin was a popular place for weekend picnics and recreational fishing.

The CDOW has conducted surveys on the Alamosa River and found the fishery has been severely impacted by metals and acids draining from the Summitville Mine site, and extremely low wintertime stream flows. Although the natural environment was severely damaged, recent reports by the CDPHE indicate that aquatic life is returning in the lower watershed, and construction of a new, higher capacity treatment plant this year is expected to achieve the water quality standards and aquatic life goals established for the Alamosa River (CDPHE, March 2009).

In addition to the remediation efforts at the mine, stream channel restoration projects have been completed for 2.5 miles of the River in the reach between Gunbarrel Road and County Road 10. Restoration projects are planned for an additional 2.5 miles of stream in the same area. These restoration projects are designed to improve aquatic habitat and riparian areas along the river, with the expectation that once instream flows are stabilized, the River will be able to support a fishery.

7. Proposed Use of the Water Right

This proposal contemplates storage in Terrace Reservoir of up to 427 acre-feet of water. This amount represents the average annual diversions attributable to 2.5 cfs of the Gabino Gallegos Ditch, Priority 11 water right. Storage will begin in April, when the Gabino Gallegos right comes into priority. Water will be released from Terrace Reservoir to the Alamosa River during late summer/ fall/ early winter to maintain flows in the River downstream to County Road 10 (the restoration reach). The amount of water released for ISF use would include the amount historically diverted by the ditch as well as the historical consumptive use amount. The Master Plan has identified a target flow of 10 cfs for the proposed ISF reach based upon interviews with water administration officials and their experience with water deliveries from Terrace Reservoir. This initial target flow is expected to maintain flows through a longer reach of the Alamosa River than historically available. Staff is working with the CDOW to establish what amounts are needed to preserve and improve the natural environment to a reasonable degree.

ISF releases from Terrace Reservoir would be used to preserve and improve the natural environment by providing surface stream flows that eventually will naturally percolate down into the stream bed and accrue to the alluvial aquifer. It is expected that the ISF releases will establish more sustainable stream flows in the Alamosa River, replenish the alluvial aquifer and extend surface flows further downstream to County Road 10.

However, until the Terrace Reservoir spillway is reconstructed to provide the storage space for this acquired water, CWCB has reserved options to protect the water right and to place it to beneficial use. (1) ARK will retain an interest in the water so that ARK may lease back the acquired water right for irrigation use in order to protect the HCU while the reservoir spillway is reconstructed, and (2) CWCB will maintain an option to utilize the water right by bypassing the water at the headgate for instream flow use downstream of the headgate on the Alamosa River.

8. Proposed Season of Use

Storage in Terrace Reservoir will begin in April, and continue as long as the Gabino-Gallegos right is in priority. Releases of stored water will be constrained by weather and icing issues, but will generally occur July through December. The Acquisition Agreement and the Storage Agreement both provide for an annual planning meeting to discuss release rates and schedules.

If the water is leased back to irrigation, the water will be used during the irrigation season when it is in priority. If the water is bypassed at the headgate to be used for instream flow below the headgate it will be bypassed during the irrigation season as needed for instream flow when it is in priority.

9. Stacking Evaluation

Since the CWCB does not currently hold ISF water rights for the Alamosa River downstream from Terrace Reservoir, there is no need for a stacking evaluation to be completed as part of this proposed water acquisition. However, at such time when ARK purchases additional water rights for donation to CWCB, staff will conduct a stacking evaluation to determine how those additional rights will be combined with the existing Gabino Gallegos right to preserve and improve the natural environment in the Alamosa River downstream from Terrace Reservoir.

10. Historical Use and Historical Return Flows

Ken Knox of URS has evaluated the historical use and historical return flows of the Gabino Gallegos Ditch water right. The URS report includes an analysis of the historical use and historical return flows associated with the 2.5 cfs of the Gabino Gallegos, Priority 11 water right. The subject water right has been used to flood irrigate 180 acres of alfalfa and small grains. Diversions typically begin in April and occasionally extend into November. Records indicate the Gabino Gallegos ditch is usually in priority and able to divert during the early spring months. However, Alamosa River stream flows decline quickly after spring runoff, and despite the relatively senior priority, the Gabino Gallegos ditch is only able to maintain diversions into the summer months during wet and average years. The URS report indicates average annual diversions for the 2.5 cfs of the Gabino Gallegos right amount to approximately 427 acre-feet. The historical consumptive use attributable to the right is 130 acre-feet.

The URS report also evaluated return flows from the use of the 2.5 cfs Gabino Gallegos right, and found no evidence of excess surface water runoff from the irrigated fields. The report indicates that the land in this area of the valley is quite flat, and URS concluded that any irrigation water not consumed by the crop percolates through the soil and accrues to the unconfined aquifer, not to the surface water. Therefore, maintenance of surface return flows should not be required by this change case because there were no surface return flows historically. The location and amount of groundwater return flows will be maintained by using the entire diversion amount for ISF, allowing the historic return flow amounts to percolate near the same location as historically occurred. The timing of the groundwater return flows may change slightly from a historic practice of spring to mid-summer irrigation to a changed practice of late summer to early fall ISFs. The slight change in timing should not cause any injury to wells because the changed timing of recharge to the groundwater will be absorbed by the groundwater in storage, which will dissipate the seasonal change in timing. It is possible that the historical groundwater return flows may have reached the Rio Grande, but groundwater return flows that may have eventually accrued to the Rio Grande would likely take many years to decades after application to the irrigated field(s) to reach the river due to the minimal hydraulic gradient, distance and permeability through the geologic materials. The changed use to instream flow will provide return flows to the groundwater in the same vicinity and will eventually accrue to the Rio Grande in a similar manner to the former irrigation practice many years to decades after application to ISF. It is highly unlikely that the slight change in seasonal return flow timing will change the timing of return flow accrual to the Rio Grande River.

11. Location of Other Water Rights

There are four large irrigation diversions located between Terrace Reservoir and the Gabino

Gallegos Ditch. These four structures divert approximately 43.25 cfs of senior water rights from the Alamosa River, and include the Terrace Main Canal, Alamosa Creek Canal, Valdez Ditch and the El Viego Ditch. The senior Capulin Ditch is located approximately 2.5 miles downstream from the Gabino Gallegos Ditch, and is decreed for 31.37 cfs. Based on information contained in the Master Plan, it appears the Gabino Gallegos Priority 11 would be satisfied through August in most average flow years. However, discussions with Luis Heredia, the District 21 Water commissioner, indicate the Gabino Gallegos right is often called out of priority by the Capulin Ditch in mid-July.

12. Material Injury to Existing Rights

There will be no material injury to existing rights. This proposed acquisition will require a change in point of diversion and change in use for 2.5 cfs of the Gabino Gallegos water right to be stored in Terrace Reservoir. There are several water rights located on the reach of river between Terrace Reservoir and the Gabino Gallegos headgate, including the Terrace Main Canal, J H Valdez, Alamosa Creek Canal, Valdez Ditch and the El Viego Ditch, all of which would be entitled to protection from injury related to any change of the Gabino Gallegos water right. The proposed Terrace Reservoir Storage Agreement contains a provision limiting diversion of the Gabino Gallegos water right into storage to times when the right is in priority and there is physical water available at the historical headgate (without regard to any ISF releases).

Water users located downstream from the Gabino Gallegos Ditch also would be entitled to protection from injury related to any change of the Gabino Gallegos water right. The URS Report evaluated return flows from the historically irrigated lands and concluded that the irrigated lands are extremely flat, and “there is no apparent evidence the return flows migrate back to the stream and contribute toward fulfilling downstream water rights during periods of time in which they are in priority and could apply water to a beneficial use.” In addition, the ISF flow releases will naturally percolate into the stream channel and recharge the unconfined aquifer. These flows will extend further downstream than would have resulted from the original irrigation practice, and water once consumed by the crop will also supplement stream flows and increase the total amount of water added to groundwater.

13. Effect on Interstate Compact Issues

Water rights in Water Division 3 are subject to the water delivery obligations of the 1938 Rio Grande Compact. However, in a 1983 decision, the Colorado Supreme Court determined that the compact negotiators did not include the Alamosa River since “practically no water from [La Jara Creek or Alamosa Creek] reaches the Rio Grande except during periods of flooding.” *Alamosa-La Jara Water Users Protection Association v. Gould*, 674 P.2d 914, 925-26 (Colo. 1983). The Division 3 Engineer has confirmed that the Gabino Gallegos Ditch is not subject to the requirements of the Rio Grande Compact.

Additionally, this proposal will return the consumptive use water which was historically lost to the stream system. For these reasons, staff believes the proposed acquisition will not impair the State’s ability to meet its compact delivery obligations.

14. Effect on Maximum Utilization of Waters of the State

The 2.5 cfs of the Gabino Gallegos water right was historically used to irrigate alfalfa and small grains. The changed water right will be directly put to beneficial use as an ISF to preserve and improve the natural environment to a reasonable degree. This proposal is also an integral first component of the Instream Flow Project, which will provide increased water level in the

aquifers, thus contributing to maintaining a more sustainable aquifer condition and eventually an associated base flow in the river to support a healthy fishery.

15. Availability for Downstream Use

The Alamosa River is a losing stream in the reach downstream from Terrace Reservoir. Most of the surface flow is either diverted for irrigation use or lost through the stream bed to groundwater. Although the proposed acquisition is expected to increase stream flows through a longer reach of stream, the additional stream flows provided by this water acquisition will also percolate into the stream bed of the Alamosa River and accrue to the unconfined aquifer. For that reason, there will be no surface water available for subsequent, downstream use.

16. Administrability

CWCB staff has discussed administration of this proposal with Craig Cotten, the Division Engineer, and the District 21 Water Commissioner. Although there are several large diversion structures within the proposed ISF reach, water officials believe the ISF releases from Terrace Reservoir will be administrable. To facilitate administration, there is a State-operated satellite gage located on the Alamosa River approximately 0.5 mile downstream from Terrace Reservoir.

17. Potential Benefits of This Proposed Acquisition

This proposed acquisition is just the first step of the much larger ISF Project to restore flows to the Alamosa River. Additional water acquisitions are anticipated in order to bring the ISF storage up to 2,000 acre-feet. The potential benefits of the proposed ISF Project are described in great detail in the Master Plan and Environmental Assessment, and include:

- Releases of stored water will restore the highly altered hydrologic regime of the Alamosa River which impairs natural functions and values;
- The Project is designed to improve the natural environment that was injured by release of hazardous substances from the Summitville Mine site;
- Existing riparian habitat along the lower Alamosa River will be enhanced and new habitat created due to introduction of more sustained and dependable stream flows and increased ground water levels;
- Improving stream flow characteristics in the lower Alamosa River will improve biological resources, with the goal of eventually recovering a sustainable fishery;
- Increasing the duration of stream flows in the lower Alamosa River should increase alluvial groundwater levels adjacent to the stream;
- Additional public benefits include maximizing the storage capacity in Terrace Reservoir, providing fishing, skating, and other recreational activities, healthier grass meadows and domestic well levels; and
- Preservation and improvement of riparian areas, stream restoration, and instream flow would benefit waterfowl, sparrows, warblers, raptors, beaver and other species known to inhabit the riparian zone.

Additionally, the CDOW determined that this water right acquisition “will potentially increase the amount of time the Alamosa River carries sufficient flows to maintain a fishery and it will also extend the reach of wetted stream channel downstream” and will “increase the quality of the instream habitats currently associated with this segment of the Alamosa River.”

18. Cost to Complete Transaction

This water right acquisition was contemplated in Phase I of the ISF Project, which was funded in part by a grant from the Summitville Natural Resource Damage (NRD) account. CWCB has

previously provided matching funds to the ARK in the amount of \$100,000 from the Severance Tax Operational Account.

Phase II of the ISF Project, which includes rehabilitation of the Terrace Reservoir spillway, has not yet been funded. Additional funds from the NRD account are available, but will also require matching funds.

Potential CWCB costs could include analysis of the water right acquisition proposal, as well as costs associated with preparing, filing, and prosecuting a change of water right application for the acquired water right. CWCB may also incur costs associated with monitoring ISF releases from Terrace Reservoir. However, there may be additional outside funding or partnership opportunities available to defray potential CWCB costs.

The CWCB has a history of supporting the Alamosa River watershed restoration project. In addition to partial funding and management of the \$250,000 Master Plan, the Board has provided assistance to ARK in the form of matching funds from the Severance Tax Operational Account to leverage NRD monies for the ISF Project. In FY 2008-2009, ARK received \$100,000 in matching Severance Tax funds to be used for engineering and legal services and purchasing water rights. By accepting this water donation, CWCB can continue to support this important restoration project and maximize benefits from its previous expenditures.

Staff Recommendation

The Staff recommendation is set forth on pages 1 and 2 of this memo.

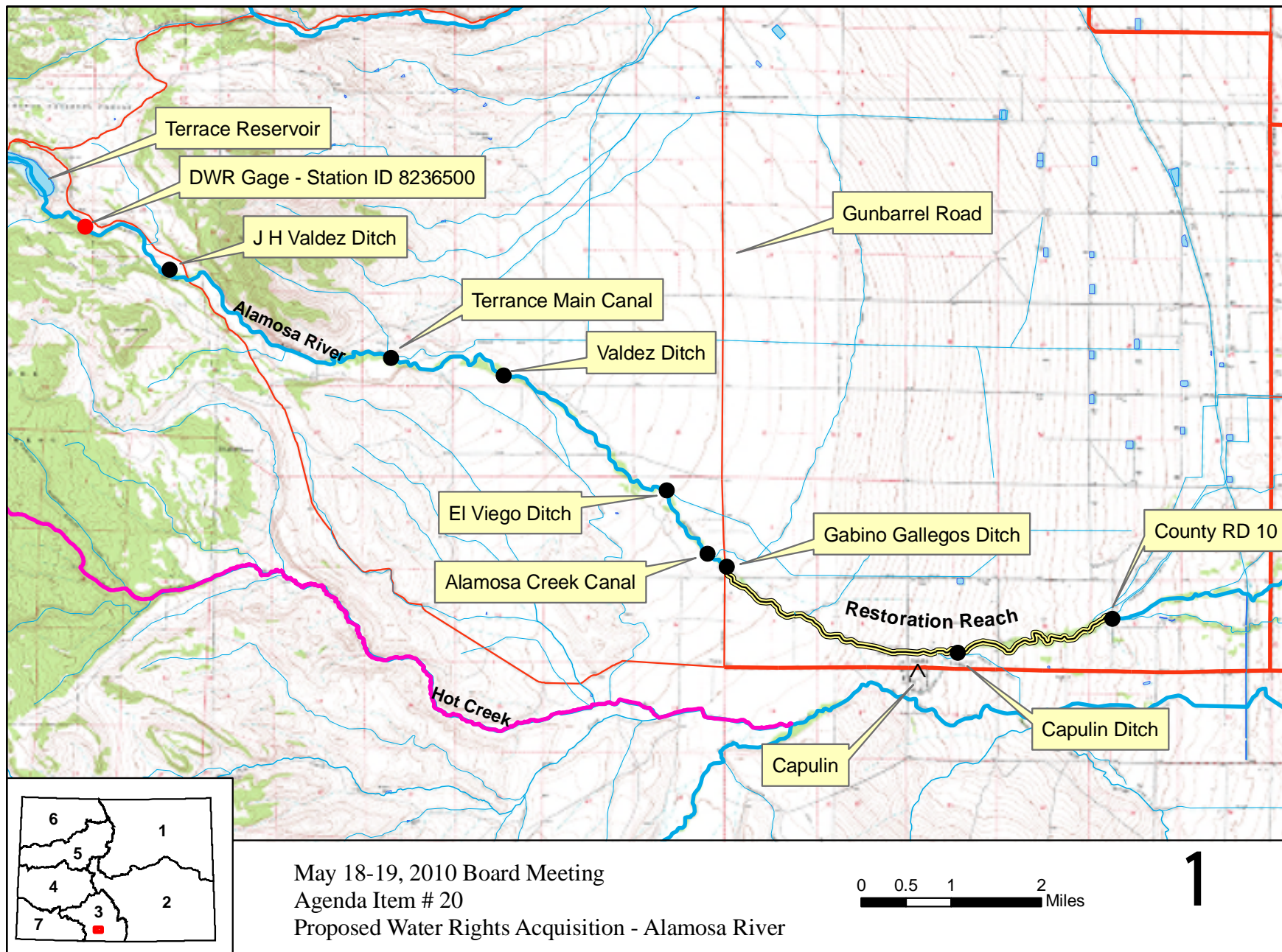
Attachments

Map

Comment Letters

Exhibit A – Acquisition Agreement

Exhibit B – Storage Agreement





United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
7250 (CO-932)

RECEIVED

APR 13 2010

APR 12 2010

Colorado Water Conservation Board

Colorado Water Conservation Board
Linda Bassi
1313 Sherman Street, Seventh Floor
Denver, CO 80203

Dear Ms. Bassi:

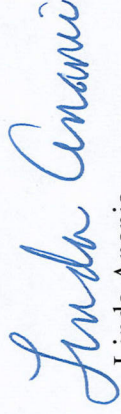
The Bureau of Land Management (BLM) is writing this letter to support the Colorado Water Conservation Board's proposed acquisition of 2.5 cubic feet per second from the Gabino Gallegos Ditch on the Alamosa River. The BLM is making this recommendation as part of its role as trustee for the funds associated with the Alamosa River Natural Resources Damage Assessment settlement at the Summitville Mine site on the upper Alamosa River. The BLM believes that the board should accept the donation for multiple reasons.

- The BLM believes that the proposed donation will significantly improve riparian and aquatic habitat along the lower Alamosa River by providing stream flows at times when the stream channel would otherwise be dry.
- The donated water rights will start to recharge the alluvial aquifer during the late fall through early winter period. This will result in greater benefits from subsequent water donations, because less water will be lost to seepage and remain in the channel to deliver aquatic and riparian benefits. In addition, the riparian community will begin the growing season with a recharged alluvial aquifer rather than a depleted aquifer.
- The donation will further leverage stream habitat improvement projects that have recently been constructed along the Alamosa River.
- This acquisition is the first of multiple proposed acquisitions that would provide a total of up to 2,000 acre feet in the lower Alamosa River from late fall through early spring. Successful completion of this acquisition will demonstrate to other willing water rights sellers that a viable process is in place to convert historic irrigation water rights to instream flow water rights.

- The BLM is also hopeful that the proposed donation will improve water quality conditions in the river by diluting heavy metal concentrations, and by encouraging riparian community species that can absorb and process heavy metals.

If you have any questions about this recommendation, please contact Roy Smith at 303-239-3940.

Sincerely,



Linda Anania
Deputy State Director
Natural Resources and Fire Management

cc:

Greg Shoop, Front Range District
Dan Dallas, San Luis Valley Public Lands Center
Laura Archuleta, Saguache Field Office
Cindy Medina, Alamosa Riverkeepers, P.O. Box 753, La Jara, CO 81140

RECEIVED

DEC 21 2009

Colorado Water Conservation Board

December 14, 2009

Geoff Blakeslee, Chairman
Colorado Water Conservation Board
1313 Sherman Street
Room 721
Denver, CO 80203

RE: Donation of 2.5 cfs of Gabino Gallegos water

Dear M. Blakeslee:

I have ranched at my present location for seventy-five years and have watched the condition of the Alamosa River during this time.

In the early years, the Alamosa River supplied the town of Capulin with domestic water, which was available only a few feet from the surface of the ground. Trout were in the river, along with ducks and geese. I trapped muskrats and other fur-bearing animals out of the water of the river during the winters.

It was possible to plant grain in early April when the land had been irrigated during the first part of the month with early Alamosa River water. It was possible to drill artesian wells almost any place in the meadows.

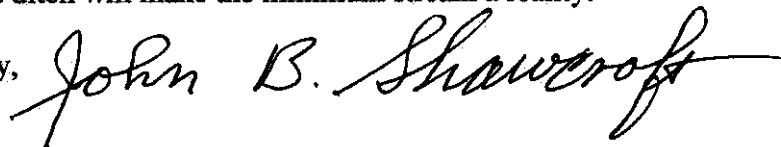
All of this has changed during the last twenty-five to thirty years. Now Capulin is very short of water for the town. The underground water table has dropped as never before. Now there are no longer trout, ducks, geese in or on the river. Nor are there any more fur-bearing animals living there.

The river has traditionally recharged the artesian aquifer in two distinct places along its length. Now this does not happen.

Surely this is of great concern because it affects so many people; so much agriculture; so many species of wildlife; and so many acres of wetlands.

Of all the projects planned for the river, surely a minimum stream flow for the Alamosa River must be one of the most important! The donation of the 2.5 cfs from the Gabino Gallegos ditch will make the minimum stream a reality.

Sincerely,



John B. Shawcroft, President
Alamosa-La Jara Conservancy District
25176 South Highway 285, Alamosa, CO 81101

CAPULIN WATER DISTRICT

P.O. Box 154
Capulin, CO 81124

RECEIVED

JAN 11 2010

Colorado Water Conservation Board

January 5, 2010

Geoff Blakeslee, Chairman
Colorado Water Conservation Board
1313 Sherman Street
Room 721
Denver, Colorado 80203

RE: Donation of Gabino Gallegos Water to the Colorado Water Conservation Board

Dear Chairman Blakeslee:

The Capulin Water District Board of Directors endorse the donation of 2.5 cfs to the Colorado Water Conservation Board, which will remove that water from farming into a storage-and-release regime designed to improve the natural environment in the Alamosa River.

The Capulin Water District supplies water to approximately 100 households in the town of Capulin. Eight years ago the water district had to drill a deeper well because the well which was in use for 40 years became dry due to the severe drought in 2002. At that time the Capulin Water District Board of Directors imposed water restrictions on its water consumers; currently, water restrictions continue to be enforced.

The storage of water in Terrace Reservoir for instreams flows will replenish the groundwater for a longer period of time. This, in turn, will benefit the Capulin Water District because the aquifer will be replenished, and the board of directors wouldn't have to worry about the town's well going dry.

Before the Summitville disaster the Alamosa River was major source of recreation for the children in the Capulin community. During the summer months they swam and fished in the river. Hopefully, once again, the river will provide recreational activities for the children in our community.

Sincerely,



Vivien L Rivera
President



Board of County Commissioners

J. Steven McCarroll
Chairman

John Sandoval
Vice Chairman

Joe Mestas
Vice Chairman

RECEIVED

JAN 13 2010

Colorado Water Conservation Board

January 11, 2010

Geoff Blakeslee, Chairman
Colorado Water Conservation Board
1313 Sherman Street
Room 721
Denver, CO 80203

RE: Donation of Water to the Colorado Water Conservation Board of Instream Flow

Dear Chairman Blakeslee:

This letter is a gesture of support from the Conejos County Commissioners for the donation of water to the Colorado Water Conservation Board for the purpose of an instream flow in the Alamosa River.

The benefits to the Alamosa River watershed and its hydrology include enhancing the riparian areas, recharging the aquifer, and potentially developing a fishery. The Summitville disaster devastated the watershed with cyanide and heavy metals. The instream flows can only advance the health of the Alamosa River watershed.

Sincerely,

Steve McCarroll
Chairman

/tm

Rio Grande Inter-Basin Roundtable
c/o San Luis Valley Water Conservancy District
415 San Juan Avenue
Alamosa, CO 81101
Telephone: (719) 589 – 2230
Email: slvwcdco1@qwestoffice.net

RECEIVED

DEC 14 2009

Colorado Water Conservation Board

December 10, 2009

Geoff Blakeslee, Chairman
Colorado Water Conservation Board
1313 Sherman Street
Room 721
Denver, CO 80203

RE: Donation of Water to the Colorado Water Conservation Board: In-Stream Flow

Dear Chairman Blakeslee:

This letter is to reiterate the support of the Rio Grande Inter-Basin Roundtable to the proposal for Alamosa Riverkeepers to donate a water right for an in-stream flow in the Alamosa River.

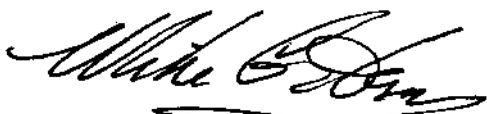
The Alamosa Riverkeepers will donate 2.5 cfs of the Gabino Gallegos Ditch. These water rights were purchased as part of a larger project that included the Terrace Reservoir Company donating storage space for the subject water right.

The donation of the subject water right to CWCB will be a milestone in the efforts of the Alamosa Riverkeepers to address the impacts to the Alamosa River because of the Summitville issues.

The benefits to the Alamosa River and associated hydrology include: improve the flow regime of the Alamosa River, enhance the riparian zones, recharge the underlying aquifer, and potentially allow the upstream fishery to migrate downstream.

The Rio Grande Inter-Basin Roundtable is a stakeholder in this project as they unanimously recommended the initial funding request for this project, and are enthusiastic that a major milestone has been reached.

Sincerely,



Mike Gibson
Chair, Rio Grande Inter-Basin Roundtable

STATE OF COLORADO

Bill Ritter, Jr., Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WILDLIFE

AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director

6060 Broadway

Denver, Colorado 80216

Telephone: (303) 297-1192

wildlife.state.co.us



*For Wildlife-
For People*

January 14, 2010

Ms. Linda Bassi
Colorado Water Conservation Board
1313 Sherman Street, Room 723
Denver, CO 80203

Dear Linda,

The following is the Colorado Division of Wildlife's (DOW) analysis and recommendation regarding the possible donation of 2.5 cfs of the Gabino Gallegos Ditch Water Right for instream flow purposes on the Alamosa River.

General Information

The Colorado Water Conservation Board (CWCB) requested the DOW to evaluate the benefits and possible impacts associated with accepting the proposed donation of the Gabino Gallegos Ditch Water Right to the natural environment of the Alamosa River. The CWCB currently does not hold an instream flow water right on the Alamosa River downstream from Terrace Reservoir. The Alamosa River is a tributary of the Rio Grande River and is located in Conejos County near the Town of Capulin (see Figure 1).

Biological Survey Data

The CDOW has conducted field surveys of the fishery resources on the Alamosa River and has found the fishery of the Alamosa River within this reach has been severely impacted by heavy metal contamination and extremely low wintertime stream flows. The Alamosa River is classified as a large river (between 60 to 99 feet wide) and habitat surveys indicate the stream environment of the Alamosa River could support a self-sustaining fishery, in the future, if current water quality and wintertime water quantity continues to improve.

Existing Field Data Collection

The existing R2Cross data collected to date by the CDOW was collected downstream of Terrace Reservoir and upstream of the Gabino Gallegos Ditch. This R2Cross data indicates that for this reach of stream, instream flows of 45 cfs, summer, and 15 cfs, winter, would be appropriate goals to strive for to preserve and improve the natural environment to a reasonable degree. However, these results are only based on the physical data collected to date and do not incorporate any water availability constraints.

Water Right Donation Analysis

The 2.5 cfs of the Gabino Gallegos Ditch, associated with this acquisition, was historically diverted from the Alamosa River to irrigate approximately 180 acres of land near the Town of Capulin. Historic irrigation return flows associated with the lands irrigated by the Gabino Gallegos Ditch accrued to the unconfined aquifer. The CDOW believes that the best use of this water right would be to store it during the irrigation season in Terrace Reservoir for later release. By storing in Terrace Reservoir the amount historically diverted during the irrigation season, up to approximately 430 acre-feet, for release after existing irrigation releases are discontinued, around the end of October, would benefit the existing natural environment of the Alamosa River. Currently late fall and early winter stream flows are less than 5 cfs below the reservoir which results in a dry streambed in a significant portion of the reach between the reservoir and the Gabino Gallegos Ditch headgate. Even though acquiring the 430 acre-feet associated with the Gabino Gallegos Ditch would not solve all of the water needs of this reach of stream, it would provide the first block of water to meet the goal of providing a year-round supply.

CDOW Recommendation

Based on the above analysis, the CDOW recommends the CWCB accept the donation of the water rights associated with the Gabino Gallegos Ditch to preserve and improve the natural environment of the Alamosa River. Accepting this senior water right will potentially increase the amount of time the Alamosa River carries sufficient flows to maintain a fishery and it will also extend the reach of wetted stream channel downstream. Increasing the amount of time the upper reach can support a fishery and extending the wetted stream channel reach should increase the quality of the instream habitats currently associated with this segment of the Alamosa River. As stated above, this block of water by itself may not be enough to establish a naturally reproducing fishery but it is an important first step in trying to recover a significantly impacted natural resource.

If you have any questions regarding the above recommendation, please contact me at (303)-291-7267.

Sincerely,



Mark Uppendahl
Colorado Division of Wildlife
Instream Flow Program Coordinator

Cc: Jay Skinner, CDOW Water Unit Program Manager
John Alves, CDOW Senior Aquatic Biologist – Southwest Region

**DONATION AND ACQUISITION AGREEMENT
(Gabino Gallegos Water Right)**

This Donation and Acquisition Agreement is between the **COLORADO WATER CONSERVATION BOARD** ("CWCB" or "Board"), and the **VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS®**, an unincorporated nonprofit Colorado association ("ARK").

WHEREAS, the Board is authorized by section 37-92-102(3), C.R.S. (2009), to acquire from any person, including any governmental entity, such water, water rights or interests in water as the Board determines may be required for instream flows to preserve or improve the natural environment to a reasonable degree and to take whatever action may be needed to ensure such instream flows remain in the river; and

WHEREAS, under section 37-92-102(3), no person or entity other than the Board "shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points ... for any purpose whatsoever"; and

WHEREAS, the Alamosa River Watershed Restoration Master Plan and Environmental Assessment, dated July 2005, identifies the need to improve stream flow in the Alamosa River below Terrace Reservoir as part of an overall restoration plan for the Alamosa River, to be funded, in part, by Natural Resources Damages money (NRD); and

WHEREAS, the Board does not currently hold an instream flow right on the Alamosa River downstream from Terrace Reservoir; and

WHEREAS, from time to time, ARK intends to acquire and donate to the CWCB, and the CWCB expects to accept donation of existing decreed water rights that divert from the Alamosa River or its tributaries below Terrace Reservoir to provide instream flows to preserve or improve the natural environment in the Alamosa River below the Terrace Reservoir; and

WHEREAS, ARK has purchased 2.5 cfs of the 16.0 cfs of water decreed to the Gabino Gallegos Ditch, which was decreed Stream Priority No. 11 by the Conejos County District Court on July 11, 1888, with an appropriation date of April 15, 1870, for irrigation use (the "Gallegos Ditch Right"); and

WHEREAS, the sellers have executed an amended Dry-Up Covenant certifying that the lands associated with the 2.5 cfs will be permanently removed from irrigation following termination of any lease arrangement with ARK; and

WHEREAS, ARK and the Board have also entered into an agreement with Terrace Reservoir Company allowing storage of the Gallegos Ditch Right in Terrace Reservoir (the "Stored Water");

WHEREAS, Terrace Reservoir Company is currently involved in a project to redesign and reconstruct the spillway for Terrace Reservoir, so as to lift the State Engineer's storage restriction; and

WHEREAS, the Board's use of the Gallegos Ditch Right for instream flow purposes will require the storage restriction for Terrace Reservoir to be lifted; and

WHEREAS, the Board intends to accept the donation of the Gallegos Ditch Right from ARK and to file an application with the Division 3 Water Court for a change of use of such water right to allow storage and subsequent instream flow use by the Board to preserve or improve the natural environment to a reasonable degree in the Alamosa River from the outlet of Terrace Reservoir downstream to the bridge at County Road 10 (the "Instream Flow Reach");

WHEREAS, the Board's use of the Gallegos Ditch Right for instream flow purposes will require Water Court approval of a change in use of the Gallegos Ditch Right; and

WHEREAS, ARK wishes to assist the Board in obtaining judicial approval of the change in use to storage and subsequent instream flow use;

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

1. Conveyance. Within thirty days of the Effective Date of this Agreement, as described in Paragraph 11 herein, ARK will convey the Gallegos Ditch Right to the Board by Special Warranty Deed in substantially the form as the deed attached hereto as **Exhibit A**. ARK shall record said deed with the Conejos County Clerk and Recorder within ten days of such conveyance, and shall provide a copy of the recorded deed to the Board. ARK will retain the right to lease the Gabino Gallegos water right to the sellers for continued irrigation use until the Board desires to begin using the Gallegos Ditch Right for instream flow purposes.

2. Water Court Proceedings. At such time as deemed appropriate by the Board, the Board shall file an application with the Water Court to change the use for the Gallegos Ditch Right to allow for storage in Terrace Reservoir, and subsequent release for instream flow use exclusively by the Board in the Instream Flow Reach, and/or to allow the bypass of the Gallegos Ditch Right at the headgate for immediate use in the Instream Flow Reach (the "Change Proceeding"). ARK may file a statement of opposition in the Change Proceedings in support of the change application and in order to keep informed of all proceedings in the Change Proceeding. The Board will not enter into stipulations in the Change Proceeding or submit a proposed ruling or decree to the Court without first consulting with and obtaining the approval of ARK, which approval shall not be unreasonably withheld.

3. Assistance. The Board will be responsible for the normal and reasonable costs of the Change Proceeding. ARK shall provide reasonable engineering and other assistance to the Board in the Change Proceeding, providing funding is available.

4. Enforcement. If the Board successfully obtains a decree in the Change Proceeding, the Board commits to use the Gallegos Ditch Right, as changed, for instream flow purposes to preserve or improve the natural environment to a reasonable degree, consistent with the terms of the decree, and to take reasonable steps to enforce those rights for instream flow purposes and

protect them from injury. If the Board receives a request to consider injury with mitigation for the portion of the Alamosa River benefited by the change of the Gallegos Ditch Right, the Board shall promptly inform ARK of such request, consult with ARK regarding such request, and not take any action that, in the CWCB's and ARK's reasonable judgment, would impair the benefits to the Alamosa River resulting from ARK's donation to the Board of the Gallegos Ditch Right and its change to instream flow uses. Nothing herein shall diminish the Board's right to exercise its discretion regarding enforcement of instream flow water rights; however, the Board acknowledges that the intended use of the Gallegos Ditch Right is to preserve or improve the natural environment of the Alamosa River to a reasonable degree.

5. Effect of Denial. If the Change Proceeding is unsuccessful for any reason, or if the decree entered therein is conditioned in such a manner as to prevent the purposes of this Agreement from being fulfilled, then the parties hereto shall consult on future action regarding the Board's use of the Gallegos Ditch Right.

6. Re-Use Right. Pursuant to section 37-92-102(3) and to the water court decree that will implement this Agreement, ARK shall have the right to bring about beneficial use of the historical consumptive use of the Gallegos Ditch Right as fully consumable water at any point downstream from County Road 10 (the "Re-Use Right"), subject to such terms and conditions as the Water Court deems necessary to prevent injury to vested water rights or decreed conditional water rights. ARK shall notify the Division 3 Engineer of any agreement for such beneficial use downstream of the Instream Flow Reach prior to the use. However, given the current hydro-geologic conditions, it is unlikely that the historical consumptive use of water associated with the Gallegos Ditch will be maintained as surface flow through the entire Instream Flow Reach and be available for the Re-Use Right.

7. Releases. All requests for releases of Stored Water from Terrace Reservoir shall be made by CWCB pursuant to the Storage Agreement among Terrace Irrigation Company, CWCB and VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS, attached hereto as Exhibit B. CWCB agrees to request releases of Stored Water in such amounts as may be needed to provide a target instream flow of 10 cfs in the Instream Flow Reach. CWCB and ARK acknowledge that the Alamosa River downstream from Terrace Reservoir is a losing stream, and it may be difficult to meet the target flow until additional water rights are acquired and the aquifer is replenished. Representatives of the CWCB and ARK shall meet at least once a year to develop a mutually agreed plan for release of the Stored Water.

8. Monitoring and Administration of Releases. CWCB and ARK agree to develop a plan for agreeing upon and monitoring releases of Stored Water, including installing, maintaining and funding stream gages, and devising such other measures as may be deemed necessary by the Division Engineer CWCB shall take such action under state law, including requesting administration by the State Engineer and the Division Engineer for Water Division No.3, as may be necessary to put the released water to beneficial use and to prevent the unlawful diversion of the released water at any point downstream of Terrace Reservoir.

9. Remedies. Pursuant to section 37-92-102(3), the terms of this Agreement shall be enforceable by each party as a water matter in the District Court for Water Division 3; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good faith effort to resolve their differences through informal consultation. Specific performance shall be the exclusive remedy for failure of either party to comply with any provision of this Agreement.

10. Miscellaneous. This Agreement shall not be assignable by either party without the written consent of the other. All of the provisions of this Agreement shall survive the conveyance of the Gallegos Ditch Right from ARK to the Board, and shall not merge therewith.

11. Effective Date. The Effective Date of this Agreement shall be the date on which it has been signed by both parties.

Dated this ____ day of _____, 2010.

VALLE DEL SOL COMMUNITY CENTER,
on behalf of the ALAMOSA RIVERKEEPERS

COLORADO WATER
CONSERVATION BOARD

BY: _____
Julie Gomez-Nuanes, President

BY: _____
Jennifer Gimbel, Director

Date: _____

Date: _____

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This First Amendment to Purchase and Sale Agreement, dated this ____ day of May, 2010, is between PAUL FAUCETTE and JOYCE ELAINE FAUCETTE (“Sellers”) and VALLE DEL SOL COMMUNITY CENTER, a Colorado non-profit corporation acting on behalf of the ALAMOSA RIVERKEEPERS (“Buyer”).

WHEREAS, Sellers and Buyers are the parties to that certain Purchase and Sale Agreement dated June 6, 2009 (the “Purchase Agreement”) regarding the purchase and sale the 2.5 CFS (which term, and all other defined terms used herein that are not separately defined herein, have the meanings given to them in the Purchase Agreement);

WHEREAS, as set forth in the Purchase Agreement, the Buyer will donate the 2.5 CFS following the Closing to the CWCB for use in its instream flow program;

WHEREAS, the CWCB and Buyer have agreed that the Buyer may lease the 2.5 CFS back to the Sellers until such time as the CWCB desires to begin use of the 2.5 CFS in its instream flow program;

THEREFORE, Sellers and Buyer desire to amend the Purchase Agreement as follows:

1. Lease. At the Closing under the Purchase Agreement, Sellers and Buyer shall enter into a lease back of the 2.5 CFS on the terms and conditions set forth in the Water Lease attached hereto as Exhibit A (the “Lease”). The Lease will be executed at the Closing under the Purchase Agreement.
2. Dry-Up Covenant. Buyer and ARK agree not to enforce the Dry-Up Covenant to be executed and recorded at the Closing as long as the Lease is in effect.
3. Full Force and Effect. Except as modified by this Amendment, the Purchase Agreement remains in full force and effect.

Executed as of the date first set forth above.

SELLERS:

Paul Faucette

Joyce Elaine Faucette

BUYER:
VALLE DEL SOL COMMUNITY
CENTER, on behalf of the ALAMOSA
RIVERKEEPERS

By: _____
Name: _____
Title: _____

EXHIBIT A

WATER LEASE AND MODIFICATION TO DRY-UP COVENANT

This Water Lease, dated this _____ day of _____, 2010 (this "Lease") is from the VALLE DEL SOL COMMUNITY CENTER, a Colorado non-profit corporation acting on behalf of the ALAMOSA RIVERKEEPERS ("Lessor") to PAUL FAUCETTE and JOYCE ELAINE FAUCETTE ("Lessee").

1. Lease. Lessor hereby leases to Lessee, on the terms and conditions of this Lease, Two and One-Half (2.5) cfs of the 16 cfs decreed to the Gabino Gallegos Ditch by the District Court in and for Conejos County, State of Colorado by decree dated July 11, 1888, as Priority No. 11, with an appropriation date of April 15, 1870, and having Administration Number 7410.00000 (the "Water Right"), which Water Right was recently purchased by Lessor from Lessee.

2. Term. The term of this Lease shall commence on the date hereof and terminate thirty (30) days after written notice to the Lessee that the CWCB desires to begin use of the Water Right in its instream flow program, or such later termination date as may be set forth in such notice. If such termination date would otherwise fall between May 1 and October 30, the termination date shall be extended to November 1 of that same year, unless the Lessor and Lessee otherwise agree in writing.

3. Payments. As full payment of rent hereunder, Lessee shall pay all ditch assessments or other amounts owed with respect to the Water Right during the term of this Lease.

4. Use. Lessee shall use the Water Rights to the fullest extent water from the Water Right is physically and legally available, for the irrigation of the lands described in the Dry-Up Covenant between Lessor and Lessee, which Dry-Up Covenant is hereby amended to allow such use during the term of this Lease.

Executed as of the date first set forth above.

LESSEE:

Paul Faucette

Joyce Elaine Faucette

LESSOR:
VALLE DEL SOL COMMUNITY
CENTER, on behalf of the ALAMOSA
RIVERKEEPERS

By: _____
Name: _____
Title: _____

STORAGE AGREEMENT
(Terrace Reservoir)

This Storage Agreement, dated this _____ day of January, 2010, is between THE TERRACE IRRIGATION COMPANY, a Colorado nonprofit corporation (the “Company”), the COLORADO WATER CONSERVATION BOARD (“CWCB”), and the VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS®, an unincorporated nonprofit Colorado association (“ARK”).

WHEREAS, the Company owns and operates Terrace Reservoir located in Conejos County, Colorado, which derives its water from, and releases water to, the Alamosa River (the “Reservoir”);

WHEREAS, due to existing deficiencies in the spillway, the Reservoir is currently under a State Engineer storage restriction to 7 feet below the crest of its spillway, which limits its current capacity to approximately 13,180 acre feet;

WHEREAS, the Company intends, utilizing money provided by natural resource damage (“NRD”) funds available in connection with the cleanup of the Summitville Mine, to redesign and reconstruct the spillway, so as to lift the storage restriction, which would allow approximately 15,182 acre feet to be stored in the Reservoir (the “Spillway Improvements”);

WHEREAS, the Alamosa River Watershed Restoration Master Plan and Environmental Assessment dated July 2005(the “Master Plan”) identifies the need to improve stream flow in the Alamosa River below the Reservoir as part of an overall restoration plan for the Alamosa River, to be funded, in part, by NRD money;

WHEREAS, from time to time, ARK intends to acquire and donate to the CWCB, and the CWCB expects to accept donation of existing decreed water rights that divert from the Alamosa River or its tributaries above or below the Reservoir using, in part, NRD money, to provide instream flows to preserve and improve the natural environment in the Alamosa River below the Reservoir (the “Acquired Rights”);

WHEREAS, ARK and the CWCB desire to store the Acquired Rights in the Reservoir for release from time to time to provide instream flows in the Alamosa River below the Reservoir (the “Instream Flow Releases”);

WHEREAS, the Company has agreed to allow such storage and Instream Flow Releases, on the terms and conditions set forth in this Agreement;

THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the parties agree as follows:

1. Storage Right. The Company agrees to allow the CWCB to store up to 2,000 acre feet of water derived from the Acquired Rights in the Reservoir on an annual basis (the “Stored Instream Flow Water”), provided that, and only if and when, the Spillway Improvements to Terrace Reservoir are completed and the existing storage restriction lifted. If the existing storage restriction only partially lifted, the Stored Instream Flow Water shall be limited to the amount over and above 13,180 acre feet that can be legally stored in the Reservoir after the Spillway Improvements are completed.

2. Change of Acquired Rights. ARK and/or the CWCB shall be responsible for the acquisition of the Acquired Rights, and for obtaining the approval of the Division 3 Water Court for the change and storage of the Acquired Rights in Terrace Reservoir for subsequent release for instream flow purposes (the “Water Court Change”). The Acquired Rights cannot be diverted into storage in Terrace Reservoir except when and to the extent (a) the Acquired Rights are in priority, and (b) there is physical water available (without regard to Instream Flow Releases) at the historic headgates of the Acquired Rights. Any such Water Court Change decree shall incorporate this Agreement by express reference and be subject to the provisions of this Agreement. Subject to compliance with the foregoing, the Company agrees not to oppose any such Water Court Change proceeding.

3. Instream Flow Releases. The Company will make releases of the Stored Instream Flow Water from time to time on the dates and in the amounts directed in writing by the CWCB, or its agents, provided that the Company need not make such releases at times that the full release capacity of Terrace Reservoir is otherwise being used to make releases of irrigation water for delivery to shareholders in the Company. Neither the Company nor any of its shareholders (nor any other water user) shall be entitled to divert from the Alamosa River any Stored Instream Flow Water released from the Reservoir under the provisions of this Paragraph 3. The CWCB or its agents will work with the Division 3 Engineer and Water Commissioners to ensure that the Instream Flow Releases are protected from diversion and are appropriately documented in annual records maintained by the Office of the Division 3 Engineer. If the CWCB elects to appoint a person or entity to act as its agent with regard to this Paragraph 3, the CWCB shall provide written notification to the Company of such designation.

4. Evaporation and Seepage Losses. The Stored Instream Flow Water shall be subject to the same evaporation and seepage losses charged by the Company or Water Commissioner to any other water stored in Terrace Reservoir, on a pro rata basis. The Company shall notify ARK and the CWCB of the rate of evaporation and seepage losses charged, and update such information whenever the rate is changed.

5. Beginning of Season Bookover. Any Stored Instream Flow Water that remains in storage on the date that the Reservoir begins to make irrigation water releases (normally in April) shall be booked over to the Company for irrigation use by its shareholders, and shall no longer be available for Instream Flow Releases unless this

Agreement is amended to provide for carry-over storage on terms and conditions acceptable to all parties. The Company shall notify ARK and the CWCB in writing, if possible, before the start of each irrigation season to allow any Stored Instream Flow water remaining in the Reservoir to be released for instream flow purposes prior to such bookover. The Company agrees to use its best efforts to assist the CWCB in fully utilizing the Stored Instream Flow Water each year.

6. Spill. In the event of a spill from the Reservoir, any Stored Instream Flow water will be spilled first. If the Company anticipates such a spill event, it will provide ARK and the CWCB, if possible, prior notice before the spill is expected to occur, in order to enable ARK and CWCB to make a controlled release of the Stored Instream Flow water prior to such a spill. ARK and the Company acknowledge that it may not always be possible for the Company to anticipate a spill event and provide such prior notice.

7. Accounting. The Company, working with the District 21 Water Commissioner, shall maintain complete and accurate records of the amount of Acquired Instream Flow Rights stored in the Reservoir at any time, the amount of any evaporation and seepage losses assessed against such water, the amount of any Instream Flow Releases, the amount of any Stored Instream Flow Water booked-over pursuant to Paragraph 5 above, and the amount of any Stored Instream Flow Water spilled pursuant to Paragraph 6 above. The Company or Water Commissioner shall provide such records to the CWCB and ARK from time to time upon reasonable request.

8. Costs and Expenses. The Company shall bear all costs and expenses associated with the storage and release of water pursuant to this Agreement, except as expressly set forth herein. As part of the improvements of the spillway, the Company will design and install a mechanism to allow the release of measurement of the Stored Instream Flow water at low flow release rates.

9. Priority of Rights. Any new instream flow appropriations made by the CWCB on the Alamosa River shall be junior in priority to the existing storage rights decreed to the Reservoir. However, the Acquired Rights can continue to exercise their original priorities, subject to any terms and conditions imposed in the Water Court Change proceedings.

10. Dispute Resolution. The Company, the CWCB and ARK shall meet at least once a year to review and discuss operations under this Agreement, and to attempt to resolve any disputes. Before commencing any litigation relating to this Agreement, the parties agree to meet and attempt to resolve their dispute in good faith. The parties shall have the right to enforce this Agreement by injunction or specific performance. All parties waive any claim to assert or recover damages for breach of this Agreement.

11. Notices. Any notices required or permitted under this Agreement shall be given to the party, or their successors and assigns, at their address set forth below. Any party may change their address from time to time by notice properly given. Notices shall

be delivered by U.S. Mail, first class postage prepaid, and shall be deemed received three days after deposit in the U.S. Mail. An email copy of a notice is encouraged to be given as well, but is not required.

If given to the Company:

President
The Terrace Reservoir Company

Email: _____

Phone: _____

If given to ARK:

Cindy Medina
Alamosa River Keepers
P.O. Box 753
La Jara, CO 81140
Email: cindymedina@gmail.com
Phone: 719-274-4298

If given to the CWCB:

Linda Bassi, Chief
Stream & Lake Protection Section
Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, CO 80203
Email: Linda.bassi@state.co.us
Phone: 303-866-3441

12. ARK/CWCB Agreement. ARK and the CWCB are or may become parties to separate agreement(s) between them regarding the acquisition, donation and use of the Acquired Rights. Nothing in this Agreement shall be deemed to modify or amend any such agreements.

13. Miscellaneous.

(a) This Agreement constitutes the complete agreement between the Company, on one hand, and ARK/CWCB on the other. All prior negotiations, understandings or agreements related hereto as merged herein, subject to Paragraph 12 above.

(b) This Agreement shall be enforceable in the Water Court as a water matter, pursuant to C.R.S. §37-92-102(3).

(c) The waiver, or failure by a party to enforce any of its rights under this Agreement, on one or more occasions shall not modify this Agreement or preclude such party from fully enforcing its rights on subsequent occasions.

(d) The parties recognize that operation experiences may require modifications to be made to this Agreement to best achieve the goals of all parties. The parties agree to discuss any such possible amendments in good faith. Any modification or amendment of this Agreement, however, must be set forth in a document executed by all of the parties hereto; provided that should ARK cease to exist prior to the time it assigns its rights hereunder to another party, then only the written consent of the CWCB and the Company shall be required to amend or modify this Agreement.

(e) This Agreement shall constitute a restrictive covenant running with and burdening the Reservoir and benefitting the CWCB and the Acquired Rights, shall be recorded in Conejos County, and shall be binding on the Company and its successors and assigns. ARK may freely assign any of rights or obligations under this Agreement to another entity, but shall notify the Company and CWCB of any such assignment.

(f) This Agreement shall be perpetual in term.

(g) This Agreement shall not be effective until and unless executed by authorized representatives of all the parties hereto. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same Agreement.

Executed as of the date first set forth above.

[SEPARATE EXECUTION PAGES FOLLOW]

THE TERRACE RESERVOIR COMPANY,
a Colorado nonprofit corporation

By: _____
Name: _____
Its: President

STATE OF COLORADO)
) ss.
COUNTY OF CONEJOS)

The foregoing instrument was executed and acknowledged before me this _____
day of _____, 20____, by _____ as President of
The Terrace Reservoir Company, a Colorado nonprofit corporation.

Witness my hand and official seal.

Notary Public

My commission expires: _____

THE ALAMOSA RIVER KEEPERS,
a unincorporated nonprofit Colorado association

By: _____

Name: _____

Its: President

STATE OF COLORADO)
) ss.
COUNTY OF CONEJOS)

The foregoing instrument was executed and acknowledged before me this _____
day of _____, 20__, by _____ as President of The
Alamosa River Keepers, an unincorporated nonprofit Colorado association.

Witness my hand and official seal.

Notary Public

My commission expires: _____

THE COLORADO WATER CONSERVATION
BOARD

By:_____

Name: Jennifer Gimbel

Its: Director

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____
day of _____, 20____, by Jennifer Gimbel as Director of the Colorado Water
Conservation Board.

Witness my hand and official seal.

Notary Public

My commission expires:_____