



Arkansas Basin Roundtable  
Official Records Location  
c/o Board of Water Works of Pueblo  
Attention: Leslie Martinez  
P.O. Box 400  
Pueblo CO 81002-0400

July 18, 2012

**Greg Johnson**  
Colorado Water Conservation Board  
Water Supply Planning Section  
1580 Logan Street, Suite 600  
Denver, Colorado 80203

**Re: Water Supply Reserve Account Grant Application for Ag-Municipal Conservation Easement Demonstration**

Dear Greg:

Under separate cover you will receive a WSRA grant application for the Ag-Municipal Conservation Easement Demonstration. At the July 11, 2012, Arkansas Basin Roundtable meeting, the Roundtable agreed by consensus to approve this application for \$54,000 in Basin Funds and \$216,000 of Statewide Funds.

My expectation is that this grant request will be heard at the September, 2012 CWCB meeting since it includes Statewide Funds. Please do not hesitate to contact me if you have any questions.

Sincerely,

Gary Barber  
Chair

c: Executive Committee, Ark Roundtable  
Todd Doherty, CWCB staff  
Elise Bergsten



# COLORADO WATER CONSERVATION BOARD



## WATER SUPPLY RESERVE ACCOUNT APPLICATION FORM

Ag-Municipal Conservation Easement Demonstration

### Name of Water Activity/Project

Lower Arkansas Valley Water Conservancy District (Lower Ark District)

### Name of Applicant

Arkansas

Amount from Statewide Account:

Up to \$216,000

Amount from Basin Account(s):

Up to \$54,000.00

Total WSRA Funds Requested:

Up to \$270,000

### Approving Basin Roundtable(s)

*(If multiple basins specify amounts in parentheses.)*

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### Required Exhibits

- Statement of Work, Budget, and Schedule
- Project Map
- As Needed (i.e. letters of support, photos, maps, etc.)

### Appendices – Reference Material

- Program Information
- Insurance Requirements
- WSRA Standard Contract Information (Required for Projects Over \$100,000)
- W-9 Form (Required for All Projects Prior to Contracting)

## Water Supply Reserve Account – Application Form

Revised December 2011

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### **Instructions**

To receive funding from the Water Supply Reserve Account (WSRA), a proposed water activity must be approved by the local Basin Roundtable **AND** the Colorado Water Conservation Board (CWCBC). The process for Basin Roundtable consideration and approval is outlined in materials in Appendix 1.

Once approved by the local Basin Roundtable, the applicant should submit this application **with a detailed statement of work including budget and schedule as Exhibit A** to CWCBC staff by the application deadline.

WSRA applications are due with the roundtable letter of support 60 calendar days prior to the bi-monthly Board meeting at which it will be considered. Board meetings are held in January, March, May, July, September, and November. Meeting details, including scheduled dates, agendas, etc. are posted on the CWCBC website at: <http://cwcb.state.co.us> Applications to the WSRA Basin Account are considered at every board meeting, while applications to the WSRA Statewide Account are only considered at the March and September board meetings.

When completing this application, the applicant should refer to the WSRA Criteria and Guidelines available at: <http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Documents/WSRACriteriaGuidelines.pdf>

The application, statement of work, budget, and schedule **must be submitted in electronic format** (Microsoft Word or text-enabled PDF are preferred) and can be emailed or mailed on a disk to:

Greg Johnson – WSRA Application  
Colorado Water Conservation Board  
1580 Logan Street, Suite 200  
Denver, CO 80203  
[gregory.johnson@state.co.us](mailto:gregory.johnson@state.co.us)

If you have questions or need additional assistance, please contact Greg Johnson at: 303-866-3441 x3249 or [gregory.johnson@state.co.us](mailto:gregory.johnson@state.co.us).

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### Part I. - Description of the Applicant (Project Sponsor or Owner);

1.	Applicant Name(s):	Lower Arkansas Valley Water Conservancy District Attn: Jay Winner, General Manager		
	Mailing address:	801 Swink Ave. Rocky Ford, CO 81067		
	Taxpayer ID#:	481298144		
	Primary Contact:	Jay Winner	Position/Title:	General Manager
	Email:	jwinner@centurytel.net		
	Phone Numbers:	Cell: 719-469-8935	Office:	719-254-5115
	Alternate Contact:	Peter D. Nichols	Position/Title:	Attorney
	Email:	pnichols@troutlaw.com		
	Phone Numbers:	Cell: 303-494-0278	Office:	303-339-5825

### 2. Eligible entities for WSRA funds include the following. What type of entity is the Applicant?

- ☐ Public (Government) – municipalities, enterprises, counties, and State of Colorado agencies. Federal agencies are encouraged to work with local entities and the local entity should be the grant recipient. Federal agencies are eligible, but only if they can make a compelling case for why a local partner cannot be the grant recipient.
- ☒ Public (Districts) – authorities, Title 32/special districts, (conservancy, conservation, and irrigation districts), and water activity enterprises.
- ☐ Private Incorporated – mutual ditch companies, homeowners associations, corporations.
- ☐ Private individuals, partnerships, and sole proprietors are eligible for funding from the Basin Accounts but not for funding from the Statewide Account.
- ☐ Non-governmental organizations – broadly defined as any organization that is not part of the government.

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3. Provide a brief description of your organization

The Lower Ark District was formed in 2002 by a vote of the electorate of Pueblo, Otero, Crowley, Bent and Prowers Counties to conserve water resources for their greatest beneficial use within the District. The Lower Ark District encompasses most of the Lower Arkansas River Basin, from above Pueblo Reservoir to the Kansas state line, including Pueblo and John Martin Reservoirs.

The District has a general fund budget of approximately \$1.7 million per year, funded primarily by a 1.5 mill levy on real property within the District. All of the budget is spent on water related activities, as described in more detail in (d) below.

The full-time staff of four includes the General Manager, Jay Winner; Project Manager, Bill Hancock; Financial Officer, Brenda Fillmore; and Administrative Assistant, Carla Quezada. In addition, the District uses the services of its outside General Counsel, Bart Mendenhall, and Special Counsel, Peter Nichols and Trout, Raley, Montañó, Witwer & Freeman, P.C., as well as the services of independent appraisers and consultants.

4. If the Contracting Entity is different then the Applicant (Project Sponsor or Owner) please describe the Contracting Entity here.

Lower Arkansas Valley Water Conservancy District Water Enterprise Fund

5. Successful applicants will have to execute a contract with the CWCB prior to beginning work on the portion of the project funded by the WSRA grant. In order to expedite the contracting process the CWCB has established a standard contract with provisions the applicant must adhere to. A link to this standard contract is included in Appendix 3. Please review this contract and check the appropriate box.

☒

The Applicant will be able to contract with the CWCB using the Standard Contract

☐

The Applicant has reviewed the standard contract and has some questions/issues/concerns. Please be aware that any deviation from the standard contract could result in a significant delay between grant approval and the funds being available.

6. The Tax Payer Bill of Rights (TABOR) may limit the amount of grant money an entity can receive. Please describe any relevant TABOR issues that may affect the applicant.

The Lower Ark District's 1.5 mill property tax levy is exempt from TABOR pursuant to the election that formed the District in 2002.

The District formed a Water Activity Enterprise in 2003 to manage the District's water assets and provide services to the District on a reimbursable basis. The Lower Arkansas Valley Water Enterprise Fund would be the contracting entity for this project.

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### Part II. - Description of the Water Activity/Project

1. What is the primary purpose of this grant application? (Please check only one)

☐ Nonconsumptive (Environmental or Recreational)

☐ Agricultural

☐ Municipal/Industrial

☐ Needs Assessment

☐ Education

☒ Other      Explain:

2. If you feel this project addresses multiple purposes please explain.

The purpose of the Ag-Municipal Conservation Easement Demonstration is to demonstrate the use of conservation easements on irrigated agricultural land to both preserve long-term agricultural irrigation and provide secure long-term water supplies to a municipality.

The concept would create another, new alternative to historical “buy-and-dry” of irrigation water rights for M&I uses. More specifically, an Ag-Municipal Conservation Easement would perpetually preserve the irrigated land and give the municipality a secure, legally enforceable permanent source of additional water supplies.

3. Is this project primarily a study or implementation of a water activity/project? (Please check only one)

☐ Study      ☒ Implementation

4. To catalog measurable results achieved with WSRA funds can you provide any of the following numbers?

New Storage Created (acre-feet)

New Annual Water Supplies Developed, Consumptive or Nonconsumptive (acre-feet)

Existing Storage Preserved or Enhanced (acre-feet)

Length of Stream Restored or Protected (linear feet)

Length of Pipe/Canal Built or Improved (linear feet)

Efficiency Savings (acre-feet/year OR dollars/year – **circle one**)

Area of Restored or Preserved Habitat (acres)

☒ Other -- Explain:

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4. To help us map WSRA projects please include a map (Exhibit B) and provide the general coordinates below:

Latitude:

Longitude:

5. Please provide an overview/summary of the proposed water activity (no more than one page). Include a description of the overall water activity and specifically what the WSRA funding will be used for. A full **Statement of Work** with a detailed budget and schedule is required as **Exhibit A** of this application.

The Goal. The purpose of the Ag-Municipal Conservation Easement Demonstration is to demonstrate the use of conservation easements on irrigated agricultural land to both preserve long-term agricultural irrigation and provide secure long-term water supplies to a municipality. The concept would create another, new alternative to historical “buy-and-dry” of irrigation water rights for M&I uses. More specifically, an Ag-Municipal Conservation Easement would perpetually preserve the irrigated land *and* give the municipality a secure, legally enforceable permanent source of additional water supplies.

Expectations of the Lower Ark District. Implementation of the Ag-Municipal Conservation Easement Demonstration would demonstrate the viability of the concept, as well as provide a concrete example of the legal and technical details of such a transaction. Specifically, completion of the Easement transaction would contain example or model language for a ag-municipal conservation easement, including an enforceable municipal interest in the use of water rights under defined terms and conditions in, for example, 3 years out of 10 – leaving the water in irrigation 7 years out of 10.

### Description of the Technical, Institutional and Legal Elements.

Overview. The Project involves the purchase of 320 acres of land, 120 irrigated, in Otero County, Colorado, by a young farm family. Simultaneous with the closing of the purchase, the purchasers will grant a conservation easement to the Lower Arkansas Valley Water Conservancy District. The conservation easement will be funded by the CWCB, perhaps shared by a municipal water lessee. The conservation easement will restrict the use of the land and water for agricultural purposes in perpetuity, but will provide for municipal use of the water rights in 3 in 10 years on a rolling 10-year average. The Applicant will also comply with all applicable federal, state and local laws, for example Otero County 1041 Regulations, and ditch company articles of incorporation and bylaws.

Technical details. This Project is at heart a pretty straightforward real property transaction, coupled with a simultaneous grant of a conservation easement to protect the agricultural use in perpetuity while providing for municipal use of the water rights in 3 in 10 years.

Institutional details. The purchasers will grant the conservation easement to the Lower Arkansas Valley Water Conservancy District, which is qualified to hold conservation easements under Colorado Statute and certified by the Division of Real Estate to accept conservation easements.

Legal details. The Ag-Municipal Conservation Easement Demonstration will be created as a statutory conservation easement pursuant to C.R.S. § 38-30.5-101 (*et seq.*). The conservation easement may be coupled with an ancillary water use agreement between the landowner and a municipal water provider, if one agrees to participate in this demonstration to secure the

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permanent right to use the water for municipal purposes in the future under defined conditions on defined terms.

### Part III. – Threshold and Evaluation Criteria

1. Describe how the water activity meets these **Threshold Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines.)

- a) The water activity is consistent with Section 37-75-102 Colorado Revised Statutes.<sup>1</sup>

Conservation easements are authorized by Colorado statute, and voluntarily created by the owner of the land and the water rights. C.R.S. § 38-30.5-104(1). Associated ag-municipal water use agreements would necessarily operate under existing Colorado law, with its existing protections of vested water rights and not supersede, abrogate or otherwise impair the current system of water allocation within Colorado.

The Applicant will also comply with all applicable federal, state and local laws, for example Otero County 1041 Regulations, and ditch company articles of incorporation and bylaws.

- b) The water activity underwent an evaluation and approval process and was approved by the Basin Roundtable (BRT) and the application includes a description of the results of the BRT's evaluation and approval of the activity. At a minimum, the description must include the level of agreement reached by the roundtable, including any minority opinion(s) if there was not general agreement for the activity. The description must also include reasons why general agreement was not reached (if it was not), including who opposed the activity and why they opposed it. Note- If this information is included in the letter from the roundtable chair simply reference that letter.

[To be completed by Arkansas Roundtable.]

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<sup>1</sup> 37-75-102. Water rights - protections. (1) It is the policy of the General Assembly that the current system of allocating water within Colorado shall not be superseded, abrogated, or otherwise impaired by this article. Nothing in this article shall be interpreted to repeal or in any manner amend the existing water rights adjudication system. The General Assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article is not intended to restrict the ability of the holder of a water right to use or to dispose of that water right in any manner permitted under Colorado law. (2) The General Assembly affirms the protections for contractual and property rights recognized by the contract and takings protections under the state constitution and related statutes. This article shall not be implemented in any way that would diminish, impair, or cause injury to any property or contractual right created by intergovernmental agreements, contracts, stipulations among parties to water cases, terms and conditions in water decrees, or any other similar document related to the allocation or use of water. This article shall not be construed to supersede, abrogate, or cause injury to vested water rights or decreed conditional water rights. The General Assembly affirms that this article does not impair, limit, or otherwise affect the rights of persons or entities to enter into agreements, contracts, or memoranda of understanding with other persons or entities relating to the appropriation, movement, or use of water under other provisions of law.



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- c) The water activity meets the provisions of Section 37-75-104(2), Colorado Revised Statutes.<sup>2</sup> The Basin Roundtable Chairs shall include in their approval letters for particular WSRA grant applications a description of how the water activity will assist in meeting the water supply needs identified in the basin roundtable's consumptive and/or non-consumptive needs assessments.

[To be completed by Arkansas Roundtable Chair.]

- d) Matching Requirement: For requests from the Statewide Fund, the applicants is required to demonstrate a **20 percent** (or greater) match of the request from the Statewide Account. Statewide requests must also include a minimum match of **5 percent** of the total grant amount from Basin Funds. Sources of matching funds include but are not limited to Basin Funds, in-kind services, funding from other sources, and/or direct cash match. Past expenditures directly related to the project may be considered as matching funds if the expenditures occurred within 9 months of the date the application was submitted to the CWCB. Please describe the source(s) of matching funds. (NOTE: These matching funds should also be reflected in your Detailed Budget in **Exhibit A** of this application)

The total Project will cost \$540,000 in cash, plus \$100,000 in in-kind services.

Available matching totals \$270,000 in cash and \$100,000 in in-kind services.

CWCB grant monies are requested to fund the appraised value of the conservation easement, not to exceed 50 percent of the total cash cost (up to \$270,000 of the Project). If a municipality purchases the Municipal Water Lease Option prior to closing, the purchase price will reduce the amount of the CWCB's grant for the conservation easement accordingly. If a municipality purchases the Municipal Water Lease Option after closing, the purchase price will be remitted to the CWCB to reimburse it for funding the conservation easement.

The farm and water rights purchasers will pay for the balance of the purchase price, beyond

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<sup>2</sup> 37-75-104 (2)(c). Using data and information from the Statewide Water Supply Initiative and other appropriate sources and in cooperation with the on-going Statewide Water Supply Initiative, develop a basin-wide consumptive and nonconsumptive water supply needs assessment, conduct an analysis of available unappropriated waters within the basin, and propose projects or methods, both structural and nonstructural, for meeting those needs and utilizing those unappropriated waters where appropriate. Basin Roundtables shall actively seek the input and advice of affected local governments, water providers, and other interested stakeholders and persons in establishing its needs assessment, and shall propose projects or methods for meeting those needs. Recommendations from this assessment shall be forwarded to the Interbasin Compact Committee and other basin roundtables for analysis and consideration after the General Assembly has approved the Interbasin Compact Charter.

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the cost of the conservation easement (up to \$270,000) in cash upon closing.

The Lower Ark District will contribute the necessary appraisal, engineering, and legal in-kind services (estimated at \$100,000) to complete the Project.

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2. For Applications that include a request for funds from the **Statewide Account**, describe how the water activity/project meets all applicable **Evaluation Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines and repeated below.) Projects will be assessed on how well they meet the Evaluation Criteria. **Please attach additional pages as necessary.**

**Evaluation Criteria** – the following criteria will be utilized to further evaluate the merits of the water activity proposed for funding from the Statewide Account. In evaluation of proposed water activities, preference will be given to projects that meet one or more criteria from each of the three “tiers” or categories. Each “tier” is grouped in level of importance. For instance, projects that meet Tier 1 criteria will outweigh projects that only meet Tier 3 criteria. WSRA grant requests for projects that may qualify for loans through the CWCB loan program will receive preference in the Statewide Evaluation Criteria if the grant request is part of a CWCB loan/WSRA grant package. For these CWCB loan/WSRA grant packages, the applicant must have a CWCB loan/WSRA grant ratio of 1:1 or higher. Preference will be given to those with a higher loan/grant ratio.

### Tier 1: Promoting Collaboration/Cooperation and Meeting Water Management Goals and Identified Water Needs

- a. The water activity addresses multiple needs or issues, including consumptive and/or non-consumptive needs, or the needs and issues of multiple interests or multiple basins. This can be demonstrated by obtaining letters of support from other basin roundtables (in addition to an approval letter from the sponsoring basin).
- b. The number and types of entities represented in the application and the degree to which the activity will promote cooperation and collaboration among traditional consumptive water interests and/or non-consumptive interests, and if applicable, the degree to which the water activity is effective in addressing intrabasin or interbasin needs or issues.
- c. The water activity helps implement projects and processes identified as helping meet Colorado’s future water needs, and/or addresses the gap areas between available water supply and future need as identified in SWSI or a roundtable’s basin-wide water needs assessment.

### Tier 2: Facilitating Water Activity Implementation

- d. Funding from this Account will reduce the uncertainty that the water activity will be implemented. For this criterion the applicant should discuss how receiving funding from the Account will make a significant difference in the implementation of the water activity (i.e., how will receiving funding enable the water activity to move forward or the inability obtaining funding elsewhere).
- e. The amount of matching funds provided by the applicant via direct contributions, demonstrable in-kind contributions, and/or other sources demonstrates a significant & appropriate commitment to the project.

### Tier 3: The Water Activity Addresses Other Issues of Statewide Value and Maximizes Benefits

- f. The water activity helps sustain agriculture & open space, or meets environmental or recreational needs.
- g. The water activity assists in the administration of compact-entitled waters or addresses problems related to compact entitled waters and compact compliance and the degree to which the activity promotes maximum utilization of state waters.
- h. The water activity assists in the recovery of threatened and endangered wildlife species or Colorado State species of concern.
- i. The water activity provides a high level of benefit to Colorado in relationship to the amount of funds requested.
- j. The water activity is complimentary to or assists in the implementation of other CWCB programs.

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Continued: Explanation of how the water activity/project meets all applicable **Evaluation Criteria**.

**Please attach additional pages as necessary.**

Evaluation Criteria: Tier 1. c. The water activity helps implement projects and processes identified as helping meet Colorado's future water needs, and/or addresses the gap areas between available water supply and future need as identified in SWSI or a roundtable's basin-wide water needs assessment.

The Ag-Municipal Conservation Easement Demonstration will help meet Colorado's future water needs by making irrigation water rights available to address the municipal water supply gap, as identified in SWSI 2010 and the Arkansas Roundtable's water needs assessment. The Project will do this by making 30 percent of the irrigation water available to 120 acres under the High Line Canal available for municipal use through a conservation easement, and ancillary municipal water use agreement with a municipal water provider.

Evaluation Criteria: Tier 2. d. Funding from this Account will reduce the uncertainty that the water activity will be implemented. For this criterion the applicant should discuss how receiving funding from the Account will make a significant difference in the implementation of the water activity (i.e., how will receiving funding enable the water activity to move forward or the inability obtaining funding elsewhere).

The Ag-Municipal Conservation Easement Demonstration will not go forward without outside funding. Neither the farm purchasers nor the Lower Arkansas Valley Water Conservancy District can afford to move the Project forward without additional funds.

Evaluation Criteria: Tier 2. e. The amount of matching funds provided by the applicant via direct contributions, demonstrable in-kind contributions, and/or other sources demonstrates a significant & appropriate commitment to the project.

The purchasers will entirely fund the agricultural value of the farm and its irrigation water rights, which is a significant and appropriate commitment to the Project since that will cover the value of all of the rights in the assets that they are acquiring. The Lower Arkansas Valley Water Conservancy District will cover the costs of the transaction, although that's not being claimed as in-kind matching. Grant funds are requested only to cover the conservation value of placing the farm and water rights under a conservation easement, a public benefit that preserves agriculture and open space while ensuring additional water supplies are permanently available to meet future municipal needs.

Evaluation Criteria: Tier 3. f. The water activity helps sustain agriculture & open space, or meets environmental or recreational needs.

The purpose of the Ag-Municipal Conservation Easement Demonstration is to preserve 120 acres of irrigated agriculture and open space in perpetuity through the creation of a conservation easement pursuant to Colorado statute.

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Evaluation Criteria: Tier 3. i. The water activity provides a high level of benefit to Colorado in relationship to the amount of funds requested.

The Ag-Municipal Conservation Easement Demonstration is an alternative to historical buy-and-dry of irrigated agriculture to meet municipal water supply needs. If successful, it can be readily replicated to both preserve irrigated agriculture and provide secure sources of new supplies to meet future municipal water supply needs.

Evaluation Criteria: Tier 3. J. The water activity is complimentary to or assists in the implementation of other CWCB programs.

The Ag-Municipal Conservation Easement Demonstration compliments the CWCB's Alternative Agricultural Transfer Methods program because it is, in reality, an alternative agricultural transfer method.

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### Part IV. – Required Supporting Material

1. **Water Rights, Availability, and Sustainability** – This information is needed to assess the viability of the water project or activity. Please provide a description of the water supply source to be utilized, or the water body to be affected by, the water activity. This should include a description of applicable water rights, and water rights issues, and the name/location of water bodies affected by the water activity.

The Project includes 12 shares in the capital stock of the High Line Canal Company. The following direct flow water rights are decreed to the Canal from the mainstem of the Arkansas River.

District #	Priority Number	Priority Date	Adjudication Date	Amount in cfs
14	4	12/31/1861	03/23/1896	40.0
14	25	07/01/1869	03/23/1896	16.0
17	3	03/07/1884	04/08/1905	32.5
14	48	06/30/1885	03/23/1896	30.0
14	50	03/11/1886	03/23/1896	2.0
14	60	01/06/1890	03/23/1896	378.0
14	61	12/13/1890	03/23/1896	2.5

2. Please provide a brief narrative of any related studies or permitting issues.

Although this is a new concept, conservation easements are not new. Nor is their use to preserve irrigated agriculture new. Likewise, water leases are not new, nor are leases of irrigation water to municipalities new. The ag-municipal conservation easements will incorporate relevant information from conservation easements and ag-municipal water leases throughout Colorado, and particularly within the Lower Arkansas Valley. The Lower Ark District holds many similar easements, including one on the High Line Canal with the purchasers of the Project farm. In addition, the Aurora-High Line Water Lease of 2004-05 is a good example of an ag-municipal water lease, also involving the High Line Canal.

3. Statement of Work, Detailed Budget, and Project Schedule

The statement of work will form the basis for the contract between the Applicant and the State of Colorado. In short, the Applicant is agreeing to undertake the work for the compensation outlined in the statement of work and budget, and in return, the State of Colorado is receiving the deliverables/products specified. **Please note that costs incurred prior to execution of a contract or purchase order are not subject to reimbursement.** All WSRA funds are disbursed on a reimbursement basis after review invoices and appropriate backup material.

**Please provide a detailed statement of work using the template in Exhibit A.** Additional sections or modifications may be included as necessary. Please define all acronyms and include page numbers.

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### **REPORTING AND FINAL DELIVERABLE**

**Reporting:** The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of the executed contract. The progress report shall describe the completion or partial completion of the tasks identified in the statement of work including a description of any major issues that have occurred and any corrective action taken to address these issues.

**Final Deliverable:** At completion of the project, the applicant shall provide the CWCB a final report that summarizes the project and documents how the project was completed. This report may contain photographs, summaries of meetings and engineering reports/designs.

The Project will take less than 6 months from the date of the executed contract. Thus, the Lower Ark District will not prepare any formal progress reports. The District, however, will be happy to update the CWCB at any time.

The Final Report will summarize the Ag-Municipal Conservation Easement Demonstration Project, and document each of the steps to implement the Project, that is, the contract to purchase and actual purchase of the farm and shares in the High Line Canal Company and their encumbrance with a conservation easement that preserves irrigation in perpetuity but also allows a municipal water provider to lease the irrigation water for municipal use under specified terms and conditions. The Report will discuss any unique aspects of the Demonstration Project, and contrast them to more generally applicable factors expected in future ag-municipal conservation easements elsewhere in Colorado, with recommendations for appropriate practices in future transactions.

In addition to the narrative report, the Report will include copies of all of the transactional documents, e.g., the general warranty deed, deed of conservation easement, municipal water lease option agreement, encumbrance language for the shares of the High Line Canal Company, and copy of the reissued share certificate in the High Line Canal Company. A copy of the appraisal of the conservation value of the conservation easement will also be included.

### **PAYMENT**

Payment will be made based on actual expenditures and invoicing by the applicant. Invoices from any other entity (i.e. subcontractors) cannot be processed by the State. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 5 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed. All products, data and information developed as a result of this grant must be provided to the CWCB in hard copy and electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

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The above statements are true to the best of my knowledge:

Signature of Applicant:

Print Applicant's Name: Jay Winner, General Manager

Project Title: Ag-Municipal Conservation Easement Demonstration

**Return an electronic version (hardcopy may also be submitted) of this application to:**

Greg Johnson – WSRA Application  
Colorado Water Conservation Board  
1580 Logan Street, Suite 200  
Denver, CO 80203  
[gregory.johnson@state.co.us](mailto:gregory.johnson@state.co.us)



**Exhibit A**  
**Statement of Work**

**WATER ACTIVITY NAME – Ag-Municipal Conservation Easement Demonstration**

**GRANT RECIPIENT – Lower Arkansas Valley Water Conservancy District Water Enterprise Fund**

**FUNDING SOURCE – Statewide Account and Basin Account**

**INTRODUCTION AND BACKGROUND**

Provide a brief description of the project. (Please limit to **no more than 200 words**; this will be used to inform reviewers and the public about your proposal)

The purpose of the Ag-Municipal Conservation Easement Demonstration is to demonstrate the use of conservation easements on irrigated agricultural land to both preserve long-term agricultural irrigation and provide secure long-term water supplies to a municipality. The concept would create another, new alternative to historical “buy-and-dry” of irrigation water rights for M&I uses. More specifically, an Ag-Municipal Conservation Easement would perpetually preserve the irrigated land *and* give the municipality a secure, legally enforceable permanent source of additional water supplies.

**OBJECTIVES**

List the objectives of the project

Implementation of the Ag-Municipal Conservation Easement Demonstration would demonstrate the viability of the concept, as well as provide a concrete example of the legal and technical details of such a transaction. Specifically, completion of the Easement transaction would contain example or model language for a ag-municipal conservation easement, including an enforceable municipal interest in the use of water rights under defined terms and conditions in, for example, 3 years out of 10 – leaving the water in irrigation 7 years out of 10.

**SCOPE OF WORK**

This Project is at heart a pretty simple real property transaction, coupled with the simultaneous grant of a conservation easement. It is the structure and terms of the transaction and conservation easement that have significance for preserving irrigated agricultural land and securing municipal water supplies. These are set forth below:

Parties: There are four or five parties for the Project:

1. The Sellers of the farm: Raymond W. Pieper and Susan S. Pieper.
2. The Buyers of farm and Grantors of the Conservation Easement, and Water Lessors: Wesley Herman and Brenda Herman.
3. The Purchaser and Grantee of the Conservation Easement: Lower Arkansas Valley Water Conservancy District.
4. The Funder of the Conservation Easement: Colorado Water Conservation Board.
5. The Municipal Water User (optional): to be determined.
6. Cash or certified funds on closing.

7. Closing on or before December 15, 2012.

Purchase terms (see attached Land Agreement dated 2 July 2012):

1. S 1/2 of Sec. 22, T. 24 S, R. 57 W. of the 6<sup>th</sup> P.M., Otero County, Colorado, comprising 320 acres more or less, together with 12 shares of the capital stock of the High Line Canal Company.
2. Purchase price for land and water rights: \$540,000.
3. Purchase price for conservation easement: based on appraisal (estimated \$270,000 to \$324,000).
4. Cash or certified funds on closing.
5. Closing on or before December 15, 2012.
6. Sellers to provide currently updated abstract of title, or a title commitment for title insurance in the amount of the purchase price.
7. Buyers to make any objections to title with 5 days of the receipt of title evidence.
8. Sellers and Buyers to proceed with due diligence to resolve any defect in title.

Conservation Easement terms (see attached example Deed of Conservation Easement):

1. The irrigated and to remain in agricultural production at least 7 years in 10 in perpetuity.
2. The non-irrigated land to remain perpetually in agricultural production.
3. Water rights:
  - a. To be used to irrigate historically irrigated land;
  - b. To be used for municipal purposes off the property, such use to occur no more often than 3 in 10 years on a rolling 10-year average, or 30 percent each year with the fallowed land to be rotated at least every fourth year.
    - i. Municipality may be a party and grantee of an easement on the use of the water in accordance with the above.
      1. Ag-municipal water use terms may be included in conservation easement or separate Municipal Water Lease Option Agreement document.

Municipal water use terms:

1. Municipality to purchase option to lease water in future years.
  - a. Option would give municipality an undivided 30% fee interest in the water rights and right to lease water 3 years in 10, or 30% annually.
2. Municipality to pay farmer/grantor for use of water in years when use water.
  - a. Annual use payment could be based on ag value (farmer's foregone economic opportunity); or
  - b. Annual use payment could be negotiated up front/periodically; and
    - i. Could include factor for price escalation.
3. Could include deadlines for notice of municipal use.
  - a. Could include additional payments for late notice for municipal use.

## **TASKS**

1. Due diligence on real property ownership and encumbrances.
  - a. Review abstract of title and/or title insurance commitment.
  - b. Serve seller with title objections within 5 days.
  - c. Resolve title objections.
  - d. Obtain subordination of all real estate liens and mortgages.
  - e. Confirm ownership of 12 shares of capital stock of High Line Canal Company with Company.
2. Obtain qualified appraisal of conservation value of land and water rights.
3. Obtain certified copy of original patent if minerals reserved by the government and/or certified copy of document(s) reserving other minerals.
  - a. Obtain subordination of all mineral rights reserved or owned by others, or professional report concluding “the possibility of surface mining on the property is so remote as to be negligible” and stating there is no current mineral production if minerals leased.
4. Provide 60-day notice to High Line Ditch Company of proposed conservation easement.
  - a. Draft notice of encumbrance for reissued share certificate.
5. Draft General Warranty Deed.
6. Draft Ag-Municipal Deed of Conservation Easement.
7. Draft Municipal Water Lease Option Agreement, if needed.
8. Closing.
  - a. Execute General Warranty Deed.
  - b. Execute Deed of Conservation Easement.
  - c. Execute assignment of stock certificate to Buyers and Lower Ark District, as easement holder.
  - d. Execute Municipal Water Lease Option Agreement, if any.
  - e. Deliver purchase price to Sellers.
    - i. Conservation easement value (up to \$270,000, less any municipal water lease option purchase) from CWCB.
    - ii. Farm ag value (\$540,000 less conservation easement value) from Buyers.
    - iii. Municipal Water Lease Option, if any, from municipal provider.
9. Record General Warranty Deed, Deed of Conservation Easement, and Municipal Water Lease Option Agreement (if any).
10. Request reissuance of share certificate with notation of conservation easement encumbrance from High Line Canal Company.
11. Prepare Project Report, to include copies of Land Agreement (purchase contract), General Warranty Deed, Deed of Conservation Easement, Municipal Water Lease Option Agreement (if any), and reissued share certificate with encumbrance.

## **II. PERSONNEL**

H. Barton Mendenhall, Esq., Mendenhall & Malouf, will preform the due diligence for the Lower Arkansas Valley Water Conservancy District, prepare the General Warranty Deed and other closing documents, conduct the closing and complete the post-closing tasks.

Jay Winner, General Manager, and Bill Hancock, Project Manager, Lower Arkansas Valley Water Conservancy District, will obtain the appraisal of the conservation value from a qualified appraiser and a mineral remoteness letter, if required.

Peter Nichols, Esq., Trout Raley Montano Witwer & Freeman PC, will draft the deed of conservation easement, the municipal water lease option agreement, and the encumbrance for the reissued share certificate for High Line Canal Company, and prepare the Project Report.

Heath Kuntz, Adaptive Resources, will prepare any necessary engineering analyses concerning the consumptive use, exchange, storage, and subsequent municipal use of the water rights.

### **III. ADDITIONAL INFORMATION**

The following exhibits are included in this Application by reference:

1. Warranty Deed from David J. Lundquist to Raymond W. Pieper and Susan S. Pieper, dated 25 May 1993, recorded 5/28/1993 in the real property records of Otero County, Colorado, at Book 875, Page 408, reception # 36690.
2. Land [and Water Sales] Agreement between Raymond W. Pieper and Susan S. Pieper and Wesley Herman and Brenda Herman, dated 2 July 2012.
3. Share Certificate No. 2259, High Line Canal Company.
4. Map of Raymond W. Pieper and Susan S. Pieper Farm.
5. Draft example of a Deed of Conservation Easement.

### **REPORTING AND FINAL DELIVERABLE**

**Reporting:** The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of the executed contract. The progress report shall describe the completion or partial completion of the tasks identified in the statement of work including a description of any major issues that have occurred and any corrective action taken to address these issues.

**Final Deliverable:** At completion of the project, the applicant shall provide the CWCB a final report that summarizes the project and documents how the project was completed. This report may contain photographs, summaries of meetings and engineering reports/designs.

The Project will take less than 6 months from the date of the executed contract. Thus, the Lower Ark District will not prepare any formal progress reports. The District, however, will be happy to update the CWCB at any time.

The Final Report will summarize the Ag-Municipal Conservation Easement Demonstration Project, and document each of the steps to implement the Project, that is, the contract to purchase and actual purchase of the farm and shares in the High Line Canal Company and their encumbrance with a conservation easement that preserves irrigation in perpetuity but also allows a municipal water provider to lease the irrigation water for municipal use under specified terms and conditions. The Report will discuss any unique aspects of the Demonstration Project, and contrast them to more generally applicable factors expected in future ag-municipal conservation easements elsewhere in Colorado, with recommendations for appropriate practices in future transactions.

In addition to the narrative report, the Report will include copies of all of the transactional documents, e.g., the general warranty deed, deed of conservation easement, municipal water lease option agreement, encumbrance language for the shares of the High Line Canal Company, and copy of the reissued share certificate in the High Line Canal Company. A copy of the appraisal of the conservation value of the conservation easement will also be included.

## BUDGET

Provide a detailed budget by task including number of hours and rates for labor and unit costs for other direct costs (i.e. mileage, \$/unit of material for construction, etc.). A detailed and perfectly balanced budget that shows all costs is required for the State's contracting and purchase order processes. Sample budget tables are provided below. Please note that these budget tables are examples and will need to be adapted to fit each individual application. Tasks should correspond to the tasks described above.

Total Costs				
Purpose		Direct Costs	Matching Funds	Total Project Costs
Purchase of farm and water			\$270,000	\$270,000
Purchase of conservation easement		\$270,000		\$270,000*
In-Kind Contributions			\$100,000	\$100,000
Total Costs:		\$270,000	\$370,000	\$640,000

\*Estimate

d appraised value; final value to be determined by qualified appraisal.

	In-Kind Contributions (If Applicable)				
Project Personnel:	LAVWCD	Mendenhall	Kuntz	Nichols	
Hourly Rate:	n/a	\$125	\$140	\$235	Total
Appraisal, mineral report, stewardship fee, etc,	\$20,000				\$20,000
Legal		\$7,500		\$23,500	31,000
Engineering			\$49,000		49,000
Total Hours:	n/a	60	350	100	
Total Cost:	\$20,000	\$7,500	\$49,000	\$23,500	\$100,000

## **SCHEDULE**

Provide a project schedule including key milestones for each task and the completion dates or time period from the Notice to Proceed (NTP). This dating method allows flexibility in the event of potential delays from the procurement process. Sample schedules are provided below. Please note that these schedules are examples and will need to be adapted to fit each individual application.

The Project is expected to take 7 months to complete (4 months after approval by CWCB)

<b>Task</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>
<b>Ark BRT Review and Recommendation</b>							
<b>CWCB Review and Approval</b>							
<b>Due Diligence and Drafting</b>							
<b>Closing</b>							
<b>Recording and Post Closing</b>							
<b>Project Report</b>							

## **PAYMENT**

Payment will be made based on actual expenditures and invoicing by the applicant. Invoices from any other entity (i.e. subcontractors) cannot be processed by the State. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 5 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed. All products, data and information developed as a result of this grant must be provided to the CWCB in hard copy and electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

## **Appendix 1**

### **Reference Information**

The following information is available via the internet. The reference information provides additional detail and background information.

- Water Supply Reserve Account main webpage:
  - <http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Pages/main.aspx>
- Water Supply Reserve Account – Basin Fund Application Details:
  - <http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Pages/BasinWaterSupplyReserveAccountGrants.aspx>
- Water Supply Reserve Account – Statewide Fund Application Details:
  - <http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Pages/StatewideWaterSupplyReserveAccountGrants.aspx>
- Colorado Water Conservation Board main website:
  - <http://cwcb.state.co.us/>
- Interbasin Compact Committee and Basin Roundtables:
  - <http://cwcb.state.co.us/about-us/about-the-ibcc-brts/Pages/main.aspx/Templates/BasinHome.aspx>
- House Bill 05-1177 – (Also known as the Water for the 21<sup>st</sup> Century Act):
  - <http://cwcbweblink.state.co.us/DocView.aspx?id=105662&searchhandle=28318>
- House Bill 06-1400 – (Adopted the Interbasin Compact Committee Charter):
  - <http://cwcbweblink.state.co.us/DocView.aspx?id=21291&searchhandle=12911>
- Senate Bill 06-179 – (Created the Water Supply Reserve Account):
  - <http://cwcbweblink.state.co.us/DocView.aspx?id=21379&searchhandle=12911>
- Statewide Water Supply Initiative 2010:
  - <http://cwcb.state.co.us/water-management/water-supply-planning/Pages/SWSI2010.aspx>



## **Appendix 2**

### **Insurance Requirements**

NOTE: The following insurance requirements taken from the standard contract apply to WSRA projects that exceed \$25,000 in accordance with the policies of the State Controller's Office. Proof of insurance as stated below is necessary prior to the execution of a contract.

### **13. INSURANCE**

Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

#### **A. Grantee**

##### **i. Public Entities**

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

##### **ii. Non-Public Entities**

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-Grantees that are not "public entities".

#### **B. Sub-Grantees**

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

##### **i. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

##### **ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Grantees, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

##### **iii. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

##### **iv. Additional Insured**

Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and the State by certified mail.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

### **Appendix 3**

#### **Water Supply Reserve Account Standard Contract Information**

NOTE: The standard contract is required for WSRA projects that exceed \$100,000. (Projects under this amount will normally be funded through a purchase order process.) Applicants are encouraged to review the standard contract to understand the terms and conditions required by the State in the event a WSRA grant is awarded. Significant changes to the standard contract require approval of the State Controller's Office and often prolong the contracting process.

It should also be noted that grant funds to be used for the purchase of real property (e.g. water rights, land, conservation easements, etc.) will require additional review and approval. In such cases applicants should expect the grant contracting process to take approximately 3 to 6 months from the date of CWCB approval.

The standard contract is available here under the header "Additional Resources" on the right side:

<http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Pages/BasinWaterSupplyReserveAccountGrants.aspx>

**Appendix 4**  
**W-9 Form**

NOTE: A completed W-9 form is required for all WSRA projects prior execution of a contract or purchase order. Please submit this form with the completed application.

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That I, David J. Lundquist, whose address is 17081 Highway 10, Rocky Ford, County of Otero, and State of Colorado, for the consideration of TEN DOLLARS and other good and valuable considerations, in hand paid, hereby sell, and conveys to Raymond W. Pieper and Susan S. Pieper, as joint tenants with right of survivorship whose address is 20415 County Road 17.5, Rocky Ford, County of Otero, State of Colorado, the following real property, in Otero County, Colorado, to-wit:

The South 1/2 of Section 22, Township 24 S., Range 57 West of the 6th P.M. in Otero County, Colorado,

TOGETHER WITH all water rights thereunto belonging or in any way appertaining thereto, more especially including 14 shares of the capital stock of the High Line Canal Company.

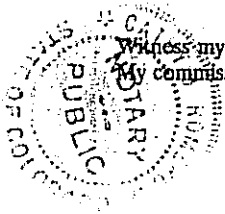
with all its appurtenances and warrant the title to the same, subject to easements, restrictions, and encumbrances of record, inclusion within any governmental entities, or subdivisions and taxes for the year 1993.

Signed this 25th day of May A.D., 1993.

David J. Lundquist  
David J. Lundquist

STATE OF COLORADO )  
COUNTY OF OTERO ) ss.

The foregoing instrument was acknowledged before me this 25th day of May, 1993, by David J. Lundquist.



Witness my hand and official seal.  
My commission expires 12/13/95

Cathy B. Rosendo  
Notary Public  
Business Address:  
201 N. Main, Rocky Ford, CO 81067

OTERO CO.

MAY 28 1993

STATE DOCUMENTARY FEE

\$ 11.50

## LAND AGREEMENT

**THIS AGREEMENT**, made and entered into this 2<sup>ND</sup> day of July, 2012, by and between **Raymond W. Pieper and Susan S. Pieper**, of 20415 Road 17.5, Rocky Ford, Colorado 81067, of the County of Otero, State of Colorado, party of the first part, hereinafter called the Sellers, and **Wesley Herman and Brenda Herman**, of as joint tenants with right of survivorship, of the County of Otero, State of Colorado, parties of the second part, hereinafter called the Buyers.

### **WITNESSETH:**

That the Sellers have agreed to sell and the Buyers have agreed to buy, certain real and personal property under the terms and conditions hereinafter set forth:

### **I. PROPERTY:**

I.1 The real property and water rights to be sold and purchased is described as follows:

S1/2 of Sec. 22, T.24 S., R.57 W. of the 6<sup>th</sup> P.M. In Otero County, Colorado.

TOGETHER WITH all water rights thereunto belonging or in any way appertaining thereto, more especially including 12 shares of the capital stock of the High Line Canal Company.

I.2 The personal property to be sold and purchased is described as follows:

All irrigation wells, pumps and irrigating equipment including gated pipe, pipelines, and the like.

### **II. CONSIDERATION:**

II.1 The total consideration for the sale and purchase of said property is \$540,000.00 to the Sellers payable as follows:

\$500.00 hereby receipted for as earnest money, and the balance due in cash at closing.

Provided however, that this contract is contingent upon the Buyers being able to obtain financing for the purchase of said property at rates and terms satisfactory to them.

### **III. CONVEYANCE:**

III.1 The Sellers shall convey the real property to the Buyers by Warranty Deed, to joint tenants with right of survivorship, free and clear of all liens and encumbrances. And shall further convey all personal property to the Buyers by Bill of Sale.

#### **IV. POSSESSION AND CLOSING:**

IV.1 Buyers are currently in possession of said property.

IV.2 Closing shall be on or before December 15, 2012 at the offices of Mendenhall & Malouff, Attorneys at Law, 805 Chestnut Avenue, Rocky Ford, Colorado or such other place as the parties may designate.

#### **V. PROOF OF TITLE:**

V.1 The Sellers shall provide a currently updated abstract of title, or a current commitment for title insurance in the amount of the purchase price for the benefit of the Buyers and the Buyers shall proceed in all convenient haste to examine the same.

V.2 Any objections to the title shall be served in writing upon the Seller within five (5) days of the receipt of the title evidence, and any objections not set forth in writing shall be deemed waived by the Buyers.

V.3 The Seller shall proceed with diligence to correct any defect in title disclosed by Buyers.

#### **VI. TAXES, INSURANCE AND ASSESSMENTS:**

VI.1 Taxes for the year 2011 and prior years shall be paid by the Seller(s). Taxes for the year 2012 and all subsequent years shall be paid by the Buyers.

VI.2 Water assessments and irrigation water pumping bills for the year 2011 shall be paid by the Sellers. Any subsequent water assessments and irrigation pumping bills shall be paid by the Buyers.

VI.3 Other assessments, including water, electricity, and other utilities, shall be paid by the Buyer from and after the date of possession of the improvements on the premises.

#### **VII. SPECIAL TAXING DISTRICT DISCLOSURE - GENERAL OBLIGATION INDEBTEDNESS:**

**"SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES."**

**IX. MISCELLANEOUS:**

IX.1 This agreement is conditioned upon the Buyers entering into, and closing simultaneously with this agreement, a contract for the purchase of a Conservation Easement on the described property with the Lower Arkansas Valley Water Conservancy District in an amount not less than 50% of the purchase price of this property. Further, this agreement is conditioned upon the Lower Arkansas Valley Water Conservancy District obtaining a grant from the Colorado Conservation Board to fund this purchase.

IX.2 Time is of the essence herein.

IX.3 This terms of this agreement shall survive the closing of this agreement and delivery of deed.

IX.4 This agreement shall not be assigned by the Buyers without the written consent of the Sellers first had and obtained.

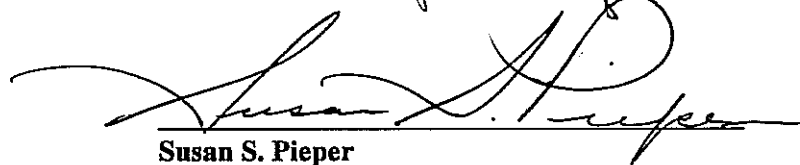
IX.5 By signing this document the parties acknowledge that they are advised that this document has important legal consequences and the examination of title and consultation with legal tax and other counsel is recommended before signing this contract.

IX.6 This agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, survivors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names the day and year first above written.

**SELLERS:**

  
Raymond W. Pieper

  
Susan S. Pieper

**BUYERS:**

  
Wesley Herman

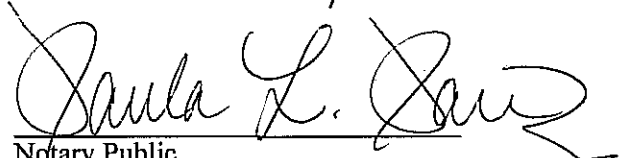
  
Brenda Herman



STATE OF COLORADO     )  
  )ss.  
COUNTY OF OTERO     )

The foregoing instrument was acknowledged before me this 2<sup>ND</sup> day of July, 2012, by Raymond W. Pieper and Susan S. Pieper.

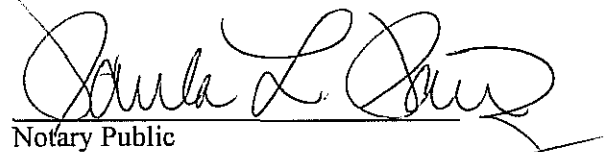
Witness my hand and official seal.  
My commission expires: 10/07/2014

  
\_\_\_\_\_  
Notary Public  
Business Address: 805 Chestnut Avenue  
Rocky Ford, CO 81067

STATE OF COLORADO     )  
  )ss.  
COUNTY OF OTERO     )

The foregoing instrument was acknowledged before me this 2<sup>ND</sup> day of July, 2012, by Wesley Herman and Brenda Herman.

Witness my hand and official seal.  
My commission expires: 10/07/2014

  
\_\_\_\_\_  
Notary Public  
Business Address: 805 Chestnut Avenue  
Rocky Ford, CO 81067

No. A 2259

CAPITAL STOCK, \$225,000.00

INCORPORATED UNDER THE LAWS OF THE STATE OF COLORADO

Shares Fourteen (14.)

# The High Line Canal Company

ORIGINAL CORPORATE NAME

THE ROCKY FORD CANAL, RESERVOIR, LAND, LOAN AND TRUST COMPANY

2,250 SHARES

OTERO COUNTY, COLORADO

SHARES \$100 EACH

RAYMOND W. PIEPER and SUSAN S. PIEPER, Joint Tenancy, Equity Owners  
and Rocky Ford National Bank, Mortgagee

This is to Certify, that

Fourteen

is the owner of \_\_\_\_\_ shares of the Capital Stock of The High Line Canal Company, fully paid up and transferable only on the books of the Company in person or by attorney on surrender of this certificate properly endorsed.

This certificate is issued and accepted, and the same is held subject to the Articles of Incorporation, and By-Laws of said Company, and the laws under which the Company is organized, and is subject to a lien for delinquent assessments as authorized by law and provided by said Articles of Incorporation and By-Laws.

The owner hereof is entitled to the use of \_\_\_\_\_ Two & 52/100

Cubic Feet of water per second of time from the Canal of said Company, subject however to the By-Laws, rules and regulations of said Company, said water to be used for domestic and irrigating purposes, solely on lands and premises situate in the County of \_\_\_\_\_ Otero State of Colorado, described as follows:

140 Acres in S $\frac{1}{2}$  of Section 22, Township 24 S., Range 57 W. of 6th P. M.

IN WITNESS WHEREOF, the \_\_\_\_\_ President and Secretary have hereunto attached their signatures and caused the seal of the Company to be affixed at the Company's office at Rocky Ford, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_ September \_\_\_\_\_ A.D. 19 \_\_\_\_\_ 93

Attest

Secretary

THE HIGH LINE CANAL COMPANY

By

President



Raymond W. Pieper  
Farm #: 1569  
Tract #: 511

8  
82.3

PP corn  
44.7  
10.0

34.7  
DATE + Hwy

2 15.3  
25.3 PP corn

10 Hwy

7  
53.2

Grassy

3.8 ~~5.1~~ PP corn  
5.1 ~~8.1~~ PPB  
20.2  
11.0 corn

5  
12.6

3  
3.7

6  
21.1  
1.2 white onion  
1.4 valley  
5.0  
1.0

9  
29.0

**DEED OF CONSERVATION EASEMENT  
FOR THE  
WESLEY HERMAN AND BRENDA HERMAN FARM**

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by Wesley Herman and Brenda Herman whose address is 19501 Co Rd 17.5, Rocky Ford, Colorado 81067 ("Grantor"), to the Lower Arkansas Valley Water Conservancy District ("District" or "Grantee"), for the purpose of forever conserving one or more of the following: the open space character, agricultural productivity, wildlife habitat, and scenic qualities of the subject property.

**WITNESS THAT**

Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A attached to and made a part of this Deed, which consists of approximately 231.03 acres of land, together with buildings and other improvements, located in Otero County, State of Colorado.

The Property is primarily irrigated farmland, and is an important part of the productive agricultural land still remaining in the Lower Arkansas Valley. The property is supplied irrigation water from the High Line Canal. The Property also includes relatively natural habitat with a variety of wildlife species, including deer, antelope, pheasant, quail, duck, geese, coyote, and fox to name a few. For a more detailed list of wildlife present on this farm see the Present Condition Report.

The Property contains approximately 100 acres of irrigated farmland along with 131.03 acres of native range. This farm is adjacent to Timpas Creek and is supplied irrigation water from the High Line Canal. The property directly across Timpas Creek to the east is also encumbered with a conservation easement.

The agricultural, ecological and other characteristics of the Property, its current use and state of improvement, are described in the Present Condition Report prepared by Grantor with the cooperation of Grantee, which Report is subject to approval by both Grantor and Grantee. The Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, this Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

Grantor intends to convey interests by this Deed to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property ("Conservation Values") will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Deed.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland."

- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-1-101, *et seq.*, which provide in part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."

- Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."

- The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, *et seq.*, which provide that "it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state."

- The Lower Arkansas Valley Water Conservancy District policy, which provides for the preservation of open space (including farm and ranch land) within the District boundaries and the conservation of native water of the Arkansas River and its tributaries for the scenic enjoyment of the general public, and to insure that the preservation of open space through regional conservation (including irrigation and water supply protection) will yield significant public benefits to the citizens of the District.

Grantee is a "qualified conservation organization," as defined by the United States Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

Grantor owns the fee simple interest in the Property. Grantor intends to subject the property to a Deed of Trust held by Farm Credit of Southern Colorado, which has agreed that its Deed will be recorded subsequent to and subject to this Deed.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property (the "Conservation Values").

1) *Use of Property.* It is the intention of Grantor to preserve the ability of the Property to be used for agricultural production, and to preserve any open space character, wildlife habitat, and scenic qualities of the Property. The Property may not be used for industrial activities, but may be used for other activities which are not prohibited by the terms of this Deed. As used herein, agricultural production shall mean the production, processing, storage or retail



marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to:

- (a) crops commonly found in the community surrounding the Property;
  - (b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, herbs and dry beans;
  - (c) fruits, including apples, peaches, grapes, cherries, nuts and berries;
  - (d) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;
  - (e) horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;
  - (f) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs; and
  - (g) timber, wood, and other wood products derived from trees.
- 2) *Prohibited Acts.* Grantor promises not to perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor hereby authorizes Grantee to enforce these covenants in the manner described below. However, unless otherwise specified, nothing in this Deed shall require Grantor to take any action to restore the condition of any buildings or structures located on the Property after any fire, Act of God, or other event over which Grantor has no control, provided, however, that Grantor shall make reasonable efforts to return all agricultural land to productivity on the property after any fire, Act of God or other event over which Grantor has no control. Grantor understands that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.
- 3) *Construction of Buildings and Other Structures.* The construction of any building or other structure, except those existing on the date of this Deed or those approved by Grantee subsequent to the date hereof but prior to construction, is prohibited except in accordance with subparagraphs b) through e) below. Before undertaking any construction that requires advance permission, Grantor shall notify Grantee of such request.
- a) Fences. Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock, without any further permission of Grantee. Grantor shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats.
  - b) Agricultural Structures and Improvements. All existing agricultural buildings and agricultural structures may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. New buildings and improvements to be used solely for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be built within the building envelope described on Exhibit B attached to and made a part of this Deed (the "Building Envelope"). Loafing sheds, corrals and other minor agricultural buildings and

improvements may be constructed anywhere on the Property. Grantor will notify Grantee prior to construction within the Building Envelope, so Grantee can update its records. No construction of any other new agricultural buildings or improvements other than those covered by the preceding three sentences shall be constructed.

- c) Single-Family Residential Dwellings. All existing single-family residential dwellings may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. Not more than TWO new single-family residential dwellings, together with associated outbuildings such as barns, garages and sheds, may be built on the Property within the Building Envelope without further permission of Grantee. At the time that construction of such dwelling or dwellings is to commence, Grantee shall be notified so that its records can be updated.
  - d) Repair and Replacement. All buildings which are permitted hereunder may be repaired, reasonably enlarged, and replaced at their permitted location without further permission from Grantee. At the time that construction is to commence, Grantee shall be notified so that its records may be updated.
  - e) New Farm Support Housing. New dwellings or structures to be used primarily to house tenants or employees engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located within the area identified as "Farm Support Housing" on Exhibit B. Farm Support Housing shall not be subdivided from the Property under any circumstances.
- 4) Subdivision. The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is prohibited.
  - 5) Development Rights. Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.
  - 6) Conservation Practices. Grantor recognizes the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using standard stewardship and management practices, which shall include compliance with governmental noxious weed control regulations.
  - 7) Timber Harvesting. Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Any commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.
  - 8) Mining. The commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method is prohibited; provided that mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the real property that is not irretrievably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the

type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

- 9) *Grantor Extractions.* Notwithstanding anything in paragraph 8 above to the contrary, soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is solely for noncommercial purposes on the Property, is in conjunction with activities permitted herein, is accomplished in a manner which is consistent with the Conservation Values expressed in this Deed. This provision shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
- 10) *Paving and Road Construction.* No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property. Any such road permitted by this Paragraph shall be constructed in a manner that does not substantially diminish or impair the Conservation Values of the Property.
- 11) *Trash.* The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.
- 12) *Recreational Uses.* Golf courses, airstrips, and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Paragraph 3, and then only in a manner that does not substantially diminish or impair the Conservation Values of the Property, except that use of the Property for more than "de minimus" commercial recreation activity is prohibited. The term "de minimus" shall have the meaning as set forth in § 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
- 13) *Feed Lot and Industrial Agricultural Operations.* The establishment or maintenance of a commercial feed lot, and the use of the Property for concentrated agricultural operations such as hog raising or industrial dairy operations, are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding, or from leasing pasture for the grazing of livestock, but not to exceed the carrying capacity of the Property for the existing conditions, consistent with practices recommended by the United States Department of Agriculture.
- 14) *Water Rights.*
  - a) *Water Rights Included.* The parties agree that it is appropriate to include certain water rights beneficially used on the Property in this Deed (the "Water Rights"). The "Water Rights" include all of the Grantor's right, title and interests in and to the water and water rights described on Exhibit C, together with all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and rights of way, and irrigation equipment.



- b) Permitted Water Uses. The parties agree that the Water Rights are hereby dedicated and restricted exclusively for conservation purposes, including, but not limited to, the Conservation Values of the Property, agricultural, wildlife habitat, horticultural, wetlands, recreational, forest or other uses consistent with the protection of open land, environmental quality or life-sustaining ecological diversity (the “Permitted Water Uses”). The Permitted Water Uses include, but are not limited to, the continuation of the recent historical use, and the Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices. Grantor shall have the right to maintain, repair, and if destroyed, reconstruct any existing facilities related to the Water Rights (such as ditches, wells and reservoirs), unless the Conservation Values of the Property would be irreversibly damaged thereby, as determined by the Grantee in its sole judgment.
- c) Restrictions on Water Rights. The parties agree that the Grantor may not (i) permanently change the Water Rights to or use the Water Rights for municipal, industrial, commercial or any other new uses, (ii) permanently change the Water Rights for use other than on the Property, (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property, or (iv) change the points of diversion, or the type or the place of use within or without the Property, except after Grantor’s receipt of a written determination by Grantee that such changes are not inconsistent with the Permitted Uses and will not impair the Conservation Values of the Property. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property without the prior written approval of the Grantee.
- d) Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, the Grantor shall continue the recent historical use of the Water Rights on the Property consistent with the Conservation Values and shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. In the event such Water Rights are represented by water shares, stock certificates, water allotments, contracts, units, or interests in a joint ditch, ditch and/or reservoir company, water users association, or similar entity, the Grantor shall promptly pay all assessments and shall not allow the Water Rights or shares to be forfeited, sold or otherwise impaired as a result of nonpayment. Grantor shall annually report to the Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner. The Grantor shall provide the Grantee a copy of any written notice received by Grantor from any water official concerning the assessment, use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list or the Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, the Grantee shall give the Grantor written notice of such threat of abandonment. If, and only if, Grantor fails to cure the threat of abandonment within 90 days of receiving such notice from the Grantee, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed or law, have the right to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (ii) seek removal of the Water Rights from the decennial abandonment list; (iii) seek to change the Water Rights to another Permitted Water Use; and/or (iv) sell or otherwise

convey all or part of such Water Rights to the Colorado Water Conservation Board or other entity for the specific conservation purpose of protecting or enhancing instream flows and/or water levels in streams, rivers, lakes and/or reservoirs to preserve or improve the natural environment of such water body(s). Grantor agrees to cooperate in any manner necessary to accomplish the Grantee's election, and authorizes and appoints Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.

If the Grantor shall fail to pay any assessment of any joint ditch, ditch and/or reservoir company, water user association, or other similar entity and the Water Rights become subject to forfeiture, sale, or other impairment as a result of such delinquency, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed or law, have the right to pay such assessment. In such event, the Grantor shall reimburse Grantee for all its expenses incurred in paying such assessment and preventing the forfeiture, sale or impairment of the Water Rights, including but not limited to reasonable attorneys' fees. The Grantee shall thereafter have a lien upon the Water Rights which are the subject matter of this Conservation Easement Deed for such expenses, and shall have the right to foreclose upon that lien if not reimbursed within 90 days.

- e) Temporary Instream Flow Use of Water Rights. The parties recognize that adverse environmental conditions, such as drought, occur from time to time, and that such conditions may pose a greater threat to the environment and life-sustaining ecological diversity than to the Conservation Values of the Property. Therefore, the parties agree that the Grantor may enter into legally-enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes to temporarily increase instream flows and/or water levels in streams, rivers, lakes, and/or reservoirs to preserve the natural environment of such water body(s), provided that (i) the Grantee has given its prior written consent to such arrangements, and (ii) the Water Rights shall not be used for such uses more than three out of every 10 years without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property.
- f) Temporary Municipal Use of Water Rights. The parties recognize that the long-term economic viability of any agricultural activity on the Property is necessary to accomplish the purposes of this Deed, and that enhancing such economic viability will foster the purposes of this Deed. The parties also recognize that adverse environmental conditions, such as drought, occur from time to time and that such conditions may prevent effective irrigation of the Property. Such conditions may also pose serious water supply problems for municipal, commercial, and industrial water users, which users may need to acquire the temporary use of alternate water supplies to meet their needs. Therefore, the parties specifically anticipate and intend that the Grantor (after 30 days notice to the Grantee) may enter into legally-enforceable interruptible supply contracts, fallowing programs, emergency water loans, or similar agreements to allow the temporary municipal, commercial, or industrial use of the Water Rights. No more than thirty-five per cent (35%) of the Water Rights shall be used for such purposes without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property. The Grantor may request temporary leases for more than thirty-five (35) percent of said water rights, however such leases will require the further written consent of the Grantee. The parties agree that the provisions of this paragraph constitute an independent contract enforceable under law, in addition to any other remedies available under this Deed.

- g) Recording encumbrance on stock certificates. If the Water Rights include any shares in ditch or reservoir companies, the Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch and reservoir company for inclusion of the following notation thereon: "These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed from Wesley and Brenda Herman to The Lower Arkansas Valley Water Conservancy District recorded in the Real Property Records of Otero County Colorado on \_\_\_\_\_, 20\_\_ at Reception No. \_\_\_\_\_." A copy of the re-issued stock certificate(s) shall be promptly provided by Grantor to Grantee.
- 15) *Rights Retained by Grantor.* Subject to interpretation under Paragraph 22, as owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose. Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products which are grown on the Property; farm machinery repair; sawmills; and firewood distribution; provided such uses are confined to locations within the Building Envelope described in Paragraph 3(B).
- 16) *Responsibilities of Grantor and Grantee Not Affected.* Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:
- a) Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.
  - b) Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.
  - c) Liability and Indemnification. If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, Grantor warrants that Grantee is and will continue to be an additional insured on Grantor's liability insurance policy covering the Property. Grantor shall provide certificates of such insurance to Grantee on an annual basis.
- 17) *Enforcement.* Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With reasonable advance notice to Grantor, Grantee or Grantee's agents may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee may, at its discretion, take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and sixty (60) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently, in addition to such other relief as the court

deems appropriate. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, and Grantor hereby waives any defense available to Grantor pursuant to C.R.S. § 38-41-119, or the defense of laches or estoppel.

- 18) *Transfer of Easement.* With the prior written consent of Grantor (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee desires to transfer this easement to a qualified organization having similar purposes as Grantee, but Grantor unreasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility provided that Grantor receives notice of, and an opportunity to participate in, the court proceeding.
- 19) *Transfer of the Property.* Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing at least twenty (20) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.
- 20) *Amendment of Easement.* This easement may be amended only with the written consent of Grantee and Grantor by an instrument duly executed and recorded in the real property records of Otero County, Colorado. Any such amendment shall be consistent with the purposes of this Deed and may not affect its perpetual duration. Any such amendment shall comply with §170(h) of the United States Internal Revenue Code, and any regulations promulgated thereunder. Any such amendment shall also be consistent with Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and any regulations promulgated thereunder.
- 21) *Termination of Easement.*
  - a) If it is determined that conditions on or surrounding the Property change so much that it becomes impossible or impracticable to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated in whole or in part or all or part of the Property is sold or taken for public use, then, Grantee shall be entitled to the percent of the gross sale proceeds or condemnation award that represents an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. Grantee shall use the proceeds consistent with the conservation purposes of this Deed.
  - b) If this Deed is terminated in whole or in part, District shall execute an appropriate instrument and record it in the real property records of Otero County, Colorado.

- 22) *Interpretation.* This Deed shall be interpreted under the laws of the State of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to preserve the Conservation Values and give maximum effect to its conservation purposes.
- 23) *Perpetual Duration.* The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 24) *Notices.* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:
- To Grantor: Wesley Herman and Brenda Herman  
19501 County Road 17.5  
Rocky Ford, CO 81067
- To Grantee: Lower Arkansas Valley Water Conservancy District  
801 Swink Avenue  
Rocky Ford, Colorado 81067
- 25) *Grantor's Title Warranty.* Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.
- 26) *Grantor's Environmental Warranty and Indemnity.* Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 27) *Subsequent Liens on the Property.* No provision of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed.
- 28) *No Merger.* Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Deed.
- 29) *Acceptance.* As attested by its signature affixed hereto, Grantee hereby accepts, without reservation, the rights and responsibilities conveyed by this Deed.

- 30) *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in a manner that best effectuates and protects Conservation Values and the purposes of this Deed and the policies and purposes of C.R.S. §38 30.5 101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 31) *Interpretation.* This Deed shall be interpreted as any other real property deed according to the laws of the State of Colorado.
- 32) *Internal Revenue Code.* This Deed shall always be interpreted in a manner consistent with the Internal Revenue Code to insure that the Conservation Values as defined by the Internal Revenue Code are protected.
- 33) *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 34) *Recording.* Grantor shall record this Deed in the real property records of Otero County, Colorado within 10 days from the date first written above.

TO HAVE AND TO HOLD, this Deed unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

**GRANTOR:**

\_\_\_\_\_  
**Wesley Herman**

\_\_\_\_\_  
**Brenda Herman**

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF OTERO       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by Wesley Herman and Brenda Herman.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**ACCEPTED:**

**Lower Arkansas Valley Water Conservancy District**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF COLORADO

)

) ss.

COUNTY OF OTERO

)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the Lower Arkansas Valley Water Conservancy District.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit A**    Legal Description of Property  
**Exhibit B**    Building Envelope  
**Exhibit C**    Water Rights [*delete if not relevant*]

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXAMPLE**



**EXHIBIT B**  
**BUILDING ENVELOPE**

EXAMPLE

**EXHIBIT C**  
**WATER RIGHTS**  
*[delete if not relevant]*

1. **[When the water rights to be included in the conservation easement can be described with specificity, include as much detail as possible, i.e., name of water right, source of water, amount, court and case number, date(s) of appropriation and date(s) of adjudication, well permit number(s), allotment contract(s), and/or certificate number(s) for shares in ditch and reservoir companies.]**
2. **[When the water rights to be included in the conservation easement cannot be described with specificity, but the intent of the parties is to include ALL of the water rights.]** The “Water Rights” consists of all of the Grantor’s right, title and interests in any and all water and water rights of any kind or nature historically used on the Property, together with all canals, ditches, laterals, headgates, springs, ponds, reservoirs, water allotments, water shares and stock certificates, contracts, units, permits, wells, easements and rights of way, and irrigation equipment associated therewith. The Water Rights include surface water rights and groundwater rights (tributary, nontributary, not nontributary, and designated) whether decreed or undeclared.