

**Water Supply Reserve Account – Grant and Loan Program
Water Activity Summary Sheet
Agenda Item 25.a.**

Applicant: Lower Arkansas Valley Water Conservancy District

Water Activity Name: Ag-Municipal Conservation Easement Demonstration

Water Activity Purpose: Non-Structural Water Project

County: Otero

Drainage Basin: Arkansas

Water Source: Arkansas River

Amount Requested: Up to \$270,000

Source of Funds: Up to \$216,000 (Statewide Account)

Up to \$54,000 (Arkansas Basin Account)

Matching Funds: In addition to the Arkansas Basin account there is a total of \$370,000 of match (\$270,000 cash match and \$100,000 in-kind services match). Together with the basin account funds, this represents \$425,000 or nearly 200% of the statewide request.

Staff Recommendation
Staff recommends approval of up to \$216,000 from the Statewide Account and up to \$54,000 from the Arkansas Basin Account to help fund the Ag-Municipal Conservation Easement Demonstration project contingent upon the applicant addresses items described in the “Issues/Additional Needs” section.

Water Activity Summary:

The purpose of this project 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.

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.

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.

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.

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.

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

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 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.

Discussion:

Recognizing the importance “permanency” of water supply for the municipal water providers, staff has been supportive of the concept of coupling a conservation easement with an interruptible water supply agreement to help sustain irrigated agriculture while at the same time providing some portion of the water to be used for municipal purposes. This type of water-sharing arrangement holds promise of preserving irrigated agriculture while allowing for a defined amount of water to be transferred to M&I uses. As this is a demonstration project, the applicant will document any impediments encountered, recommendations for future agreements, basis for appraised value, basis of negotiations between city and farmer, and the basis for establishment of years and conditions in which the water is to be transferred (i.e. hydrologic triggers).

Staff believes the project meets several key Statewide Evaluation Criteria. This demonstration project moves the State closer to creating feasible alternative agricultural water transfers in a way that helps sustain irrigated agriculture and supplies the municipal water providers permanent water supplies.

Proposed Stipulations:

During the basin roundtable discussions, the applicant agreed to include the following stipulations in this application.

1. The CWCB believes that the legal and technical details of the Ag-Municipal Conservation Easement transaction are an important component of the application and anticipate that a municipal Water Lease Option will be purchased. This will allow for the submission of a complete set of transactional documents to the CWCB and assist in advancing alternative agricultural transfer methods. Until such time as the municipal component of the transaction is complete, Applicant shall file with the CWCB an annual report describing progress made to date on that component, including an identification of any impediments to such completion which may have arisen.
2. Within 45 days of the completion of any water use agreement between the landowner and a municipal water provider, a written supplemental report shall be filed which summarizes the nature of the municipal transaction, and all “lessons learned” during the course of the negotiation leading to such agreement. This shall be accompanied by a template of the language used in completing the water use agreement transaction.
3. In the development of such template, the Applicant shall specifically address:
 - a. The means employed to place a value upon the water use agreement, whether through appraisal or otherwise;
 - b. The basis of negotiation for establishing the amount of the payments made by the municipality in the years of water receipt;
 - c. The manner in which the parties addressed those concerns surrounding the use of an “in perpetuity” easement approach in a situation where changed factual circumstances could affect the continued viability of the underlying easement.
4. An advisory panel consisting of at least two municipal representatives and two agricultural representatives, each with an interest in Arkansas River basin water supplies, shall assist in the development of the above-referenced template.

Issues/Additional Needs:

Staff requests that the applicant submit a letter agreeing to the stipulations listed above as well as the agreement that the applicant will reimburse the CWCB of the purchase price of the Municipal Water Lease Option.

Staff Recommendation:

Staff recommends approval of up to \$216,000 from the Statewide Account and up to \$54,000 from the Arkansas Basin Account to help fund the Ag-Municipal Conservation Easement Demonstration project contingent upon the applicant addresses items described in the “Issues/Additional Needs” section.

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 will help promote the development of a common technical platform.

In accordance with the revised WSRA Criteria and Guidelines, staff would like to highlight additional reporting and final deliverable requirements. The specific requirements are provided below.

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 scope 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.

Engineering: All engineering work (as defined in the Engineers Practice Act (§12-25-102(10) C.R.S.)) performed under this grant shall be performed by or under the responsible charge of professional engineer licensed by the State of Colorado to practice Engineering.