

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: November 5, 2012

SUBJECT: **Agenda Item No. 6, November 13-14, 2012 Board Meeting**
Stream and Lake Protection Section – Proposed Water Rights Acquisition on the Alamosa River

John W. Hickenlooper.
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Introduction

The Alamosa Riverkeepers (“ARK”) has offered the CWCB the opportunity to acquire 0.5 cfs of water from Gilbert Lucero’s Valdez Ditch Priority 9 water right on the Alamosa River near the town of Capulin in Conejos County, Colorado, Water Division 3. This proposed acquisition is the second water right donated to the CWCB by the ARK as part of the larger Alamosa River Instream Flow Project (“Alamosa ISF Project”) to restore flows and replace natural resources damaged by mining operations at the Summitville Mine in the upper Alamosa River watershed.

The CWCB has already accepted two donations in furtherance of the Alamosa ISF Project. In May 2010, the Board accepted from ARK a donation of 2.5 cfs in the Gabino Gallegos Ditch to be used in the Alamosa ISF Project. The CWCB also accepted donation of 2,000 af of storage space in Terrace Reservoir from the Terrace Irrigation Company to allow acquired water rights to be stored and released for instream flow (“ISF”) use by the Board to increase stream flows during the late summer through early winter. Terrace Reservoir is located on the Alamosa River upstream from the Valdez Ditch headgate. With this water right and additional water acquisitions, volumes are anticipated to reach the goal of 2,000 acre-feet of water stored for ISF use to be released at rates up to 10 cfs. A map of the area is attached as **Exhibit A**. The offer letter from ARK and letters of support are attached as **Exhibit B**. The Draft Donation and Acquisition Agreement with Valle Del Sol Community Center/Alamosa Riverkeepers is attached as **Exhibit C**.

The Board first considered this acquisition at its September 2012 meeting. Additional background information was provided in staff’s September 2012 meeting memo to the Board for Agenda Item 14. This is the second meeting of the Board’s two-meeting process for acquisitions.

Staff Recommendation

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

1. Conclude that the proposed acquisition by donation of 0.5 cfs of this Valdez Ditch water right is appropriate to preserve and improve the natural environment of the Alamosa River to a reasonable degree.
2. Determine that the acquired Valdez Ditch water right would be best utilized by storing in Terrace Reservoir up to 145 acre feet of water historically diverted by the Valdez Ditch water right, and releasing such water to the Alamosa River during the late summer, fall, and early winter to preserve and improve the natural environment by establishing more sustainable surface stream flows in the river segment between Terrace Reservoir and County Road 10.
3. Authorize the Director to execute an agreement allowing the ARK to retain an interest in the water so that ARK may lease back the acquired water right for irrigation use in order to protect the HCU while the reservoir spillway is reconstructed.
4. Determine that until the reservoir spillway is reconstructed, the CWCB should maintain an option to utilize the water right by bypassing the water at the headgate for instream flow use downstream of the headgate on the Alamosa River.
5. Approve the Donation and Acquisition Agreement with Valle Del Sol Community Center/Alamosa Riverkeepers.
6. Accept the donation of 0.5 cfs of the Valdez Ditch from Valle Del Sol Community Center/Alamosa Riverkeepers.
7. Authorize the Director to execute the Donation and Acquisition Agreement.
8. Direct staff to work with the Attorney General's Office to file the necessary change of water right application with the Water Court.

Discussion

The Alamosa ISF Project includes:

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

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

The Alamosa ISF Project is a two-phased, community-based effort spearheaded by the ARK and Terrace Irrigation Company. Phase I includes purchasing senior irrigation water rights, transferring the water rights to the CWCB, changing the use in water court to ISF use by CWCB, and designing the spillway improvements to Terrace Reservoir. Phase II involves reconstructing the Terrace Reservoir spillway, currently underway, storing the acquired water rights in the reservoir, and releasing the water rights to restore flows in the Alamosa River during the late summer, fall, and early winter months. This proposal helps advance both phases.

The Board's Water Acquisition Procedures

Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. (2009) provides 120 days for the Board to determine what terms and conditions it will accept in an acquisition agreement for water, water rights, or interests in water to preserve or improve the natural environment. ISF Rule 6 requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal was conducted at the September 2012 Board meeting, which initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. Final action on the proposal will occur at this November 2012 Board meeting. ISF Rule 6m.(4) provides that any person may request the Board to hold a hearing on the proposed acquisition, and that such a request must be filed within twenty days of this Board meeting. No such hearing was requested.

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

Pursuant to statute, Staff has requested recommendations from the Colorado Division of Parks and Wildlife ("CPW"), the Division of Parks and Outdoor Recreation, the U.S. Department of Agriculture and the U.S. Department of Interior. Pursuant to ISF Rule 6m.(1), Staff has provided notice of the proposed acquisition to all persons included on the appropriate ISF Subscription Mailing Lists and provided notice to the State Engineer's Substitute Supply Plan Notification List. The CPW's recommendation letter is attached in Exhibit B. A letter of support from BLM is also attached in Exhibit B.

1. Water Right Proposed for Acquisition

The water right proposed for this acquisition is Mr. Lucero's 0.5 cfs of the Valdez Ditch, Priority 9, which diverts from the Alamosa River, downstream from Terrace Reservoir, approximately 5 miles northwest of the town of Capulin in Conejos County. Priority 9 of the Valdez Ditch was decreed for irrigation by the Conejos County District Court on July 11, 1888, in the amount of 14 cfs absolute, with an appropriation date of April 10, 1870. The proposed Acquisition Agreement is attached as Exhibit C.

The Valdez Ditch diverts from the south side of the Alamosa River approximately five miles downstream from Terrace Reservoir. The ditch flows in a southerly direction to irrigate approximately 17 acres of alfalfa and hay.

2. Proposed Method of Acquisition

The Valle Del Sol Community Center, a Colorado non-profit corporation acting on behalf of ARK has entered into a Purchase and Sale Agreement with the owner of the subject water right ("the Seller). The Seller has executed a Dry-Up Covenant for the lands historically irrigated by the subject water right. The Valle Del Sol / ARK intend to donate the purchased water right to CWCB.

In addition to CWCB's use of Terrace Reservoir to release stored water for ISF purposes, ARK and CWCB are considering options for using the donated right by bypassing the acquired right at the headgate for ISF use until the reservoir is capable of storing the acquired water. During the

pendency of water court approval for ISF use of the water right, CWCB and ARK may explore a temporary use of the water for ISF via a substitute water supply plan.

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

The reach of stream proposed for use of the acquired Valdez Ditch water right extends from the outlet of Terrace Reservoir, downstream approximately 16 miles, to the bridge at County Road 10, which includes the restored section of stream channel between Gunbarrel Road and County Road 10. Alternatively, the water right may be bypassed at the headgate for instream use from the headgate downstream approximately 6 miles to County Road 10. The Alamosa River is currently dry most years downstream from Gunbarrel Road (see attached map) during late summer until spring runoff.

4. Natural Flow Regime

The Alamosa River watershed is approximately 148 square miles, and ranges in elevation from over 13,000 feet to about 7,600 feet. The headwaters are located near the Continental Divide, and the river terminates at ditch headgates just east of Highway 285. Stream flow in the Alamosa River is derived primarily from snow melt and local precipitation, with peak flows occurring in June. Surface water in the Alamosa River rarely reaches the Rio Grande, located down valley approximately 15 miles east of County Road 10. Terrace Reservoir is the only mainstem storage facility on the Alamosa River.

In the segment of the Alamosa River downstream from Terrace Reservoir, the river is confined by steep valley walls. Peak flow typically occurs in June, and drops off quickly in July and August of most years. Approximately 2-3 miles downstream from the reservoir, the valley widens, and irrigation diversions pull water from the River. Senior decreed water rights in the reach of the River between Terrace Reservoir and the Town of Capulin total nearly 90 cfs, and significantly reduce stream flows.

5. Existing ISF Water Rights

The CWCB does not currently hold ISF water rights on the Alamosa River downstream from Terrace Reservoir. CWCB holds an ISF water right on the Alamosa River located upstream of the reservoir between Treasure Creek/Cascade Creek and the confluence of Wightman Fork (Case No. 3-82W209), as well as an ISF right located in the adjacent drainage to the south, on Hot Creek (Case No. 3-77W3808), but those water rights will not be affected by this proposal.

6. Existing Natural Environment

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

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

7. Proposed Use of the Water Right

This proposed acquisition will require a new point of diversion and new type and method of use for 0.5 cfs of the Valdez water right. The new point of diversion is at Terrace Reservoir, the new type of use is ISF and the new method of use is storage rather than simply direct flow diversion.

This proposal contemplates storage in Terrace Reservoir of up to approximately 145 acre-feet of water. This amount represents the average annual diversions attributable to 0.5 cfs of the Valdez Ditch, Priority 9 water right. Storage will begin in March, when the Valdez right comes into priority. Stored water may be released from Terrace Reservoir to the Alamosa River during late summer, fall, and early winter to maintain flows in the river downstream to County Road 10 (the restoration reach). The amount of water released for ISF use would include the amount historically diverted by the ditch as well as the historical consumptive use amount. The Master Plan has identified a target flow of 10 cfs for the proposed ISF reach based upon interviews with water administration officials and their experience with water deliveries from Terrace Reservoir. This initial target flow is expected to maintain flows through a longer reach of the Alamosa River than historically available. Staff is working with the CPW to establish what amounts are needed to preserve and improve the natural environment.

ISF releases from Terrace Reservoir would be used to preserve and improve the natural environment by providing additional surface stream flows. It is expected that the ISF releases will establish more sustainable stream flows in the Alamosa River, replenish the alluvial aquifer and extend surface flows further downstream to County Road 10. Downstream of County Road 10, dominion and control of the water would be relinquished to other users.

8. Proposed Season of Use

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

9. Stacking Evaluation

The CWCB does not currently hold ISF water rights for the Alamosa River downstream from Terrace Reservoir; therefore, no stacking evaluation is needed for existing ISF water rights. However, as CWCB acquires and adjudicates water rights for ISF use on the Alamosa River in this area, the water rights will be “stacked,” as they are separate water rights to be used at the same time in the same reach of stream.

10. Historical Use and Historical Return Flows

Ken Knox of Knox Water Consultants, LLC has evaluated the historical use and historical return flows of the Valdez Ditch water right.

The KWC report evaluated the historical use and historical return flows associated with the 0.5 cfs of the Valdez, Priority 9 water right. The subject water right has been used to flood irrigate approximately 17 acres of alfalfa and hay. Diversions begin in March and extend into November. Records indicate the Valdez Ditch is able to provide a full irrigation water supply in most years. The KWC report indicates average annual diversions for the 0.5 cfs of Mr. Lucero’s Valdez Ditch right amounts to approximately 145 acre-feet, and a historical consumptive use of approximately 27 acre-feet.

The KWC report evaluated return flows from the use of Mr. Lucero's 0.5 cfs Valdez Ditch right, and found no evidence of excess surface water runoff from the irrigated fields. The report indicates that the land in this area of the valley is relatively flat, and KWC concluded that any irrigation water not consumed by the crop percolates through the soil and accrues to the unconfined aquifer, not to the surface water. Therefore, maintenance of surface return flows should not be required by this change case because there were no surface return flows historically. The location and amount of groundwater return flows will be maintained by using the entire diversion amount for ISF, allowing the historic return flow amounts to percolate near the same location as historically occurred. The timing of the groundwater return flows may change slightly from a historical irrigation use in spring to mid-summer to a changed practice of ISF use in late summer to early fall. The slight change in timing should not cause any injury to wells because the changed timing of recharge to the groundwater will be absorbed by the groundwater in storage, which will dissipate the seasonal change in timing. It is possible that the historical groundwater return flows may have reached the Rio Grande, but groundwater return flows that may have eventually accrued to the Rio Grande would likely take many years to decades after application to the irrigated field(s) to reach the river due to the minimal hydraulic gradient, distance and permeability through the geologic materials. The changed use to ISF will provide return flows to the groundwater in the same vicinity and will eventually accrue to the Rio Grande in a similar manner to the former irrigation practice many years to decades after application to ISF. It is highly unlikely that the slight change in seasonal return flow timing will change the timing of return flow accrual to the Rio Grande River.

11. Location of Other Water Rights

There are five large irrigation diversions located between Terrace Reservoir and County Road 10 where this water right will be used for ISF. These five structures include the Terrace Main Canal, El Viego Ditch, Alamosa Creek Canal, and the Gabino Gallegos Ditch, and the Capulin Ditch. See attached map. The senior Capulin Ditch is located approximately 5 miles downstream from the Valdez Ditch, and is decreed for 31.37 cfs.

12. Material Injury to Existing Rights

To prevent material injury to existing water rights, protective terms and conditions will be included in any water court change decree that allows use of this water for ISF purposes. This proposed acquisition will require a new point of diversion and new type and method of use for 0.5 cfs of the Valdez water right. The proposed Terrace Reservoir Storage Agreement contains a provision limiting diversion of the water right into storage to times when the right is in priority and there is physical water available at the historical headgate (the physical water "available" at the headgate will include actual water present less any simultaneous ISF releases from the reservoir).

Water users located both upstream and downstream from the Valdez Ditch would be entitled to protection from potential injury from this change of water right, including potential expansion of use and maintenance of return flows as a result of a water court change of the Valdez water right. The KWC Report evaluated return flows from the historically irrigated lands and concluded that "[d]ue to the rather unique circumstances...natural hydrology of the Alamosa River...there is no apparent evidence the return flows migrate back to the stream and contribute toward fulfilling downstream water rights during periods of time in which they are in priority and could apply water to a beneficial use." The ISF flow releases will naturally percolate into the stream channel and recharge the unconfined aquifer.

13. Effect on Interstate Compact Issues

Water rights in Water Division 3 are subject to the water delivery obligations of the 1938 Rio Grande Compact. However, in a 1983 decision, the Colorado Supreme Court determined that the compact negotiators did not include the Alamosa River since “practically no water from [La Jara Creek or Alamosa Creek] reaches the Rio Grande except during periods of flooding.” *Alamosa-La Jara Water Users Protection Association v. Gould*, 674 P.2d 914, 925-26 (Colo. 1983). The Division 3 Engineer has confirmed that the Valdez Ditch is not subject to the requirements of the Rio Grande Compact. Because use of the acquired water is fully contained on the Alamosa River, Staff believes the proposed acquisition will not impair the State’s ability to meet its compact delivery obligations.

14. Effect on Maximum Utilization of Waters of the State

The 0.5 cfs of the Valdez Ditch water right was historically used to irrigate alfalfa and hay. The changed water right will be directly put to beneficial use as an ISF to preserve and improve the natural environment to a reasonable degree. This proposal is an integral first component of the Alamosa ISF Project, which will ultimately provide increased water level in the aquifers, thus contributing to maintaining a more sustainable aquifer and associated base flow condition in the river. The water will be available for use by others downstream of County Road 10, where dominion and control of the water will be relinquished.

15. Availability for Downstream Use

The Alamosa River is a losing stream in the reach downstream from Terrace Reservoir. Most of the surface flow is either diverted for irrigation use or lost through the stream bed to groundwater. Although the proposed acquisition is expected to increase stream flows through a longer reach of stream, the additional stream flows provided by this water acquisition will also percolate into the stream bed of the Alamosa River and accrue to the unconfined aquifer. For that reason, there will be little surface water available for subsequent, downstream use.

16. Administrability

CWCB staff has discussed administration of this proposal with Craig Cotten, the Division Engineer, and the District 21 Water Commissioner. Although there are several large diversion structures within the proposed ISF reach, water officials believe the ISF releases from Terrace Reservoir will be administrable. A state-operated satellite gage, Station ID 8236500, located on the Alamosa River approximately 0.5 mile downstream from Terrace Reservoir, will facilitate administration.

17. Potential Benefits of This Proposed Acquisition

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

- Releases of stored water will restore the highly altered hydrologic regime of the Alamosa River which impairs natural functions and values;
- The Project is designed to improve the natural environment that was injured by release of hazardous substances from the Summitville Mine site;
- Existing riparian habitat along the lower Alamosa River will be enhanced and new habitat created due to introduction of more sustained and dependable stream flows and increased ground water levels;

- Improving stream flow characteristics in the lower Alamosa River will improve biological resources, with the goal of eventually recovering a sustainable fishery;
- Increasing the duration of stream flows in the lower Alamosa River should increase alluvial groundwater levels adjacent to the stream; and
- Preservation and improvement of riparian areas, stream restoration, and ISF would benefit waterfowl, sparrows, warblers, raptors, beaver and other species known to inhabit the riparian zone.

Additionally, the CPW determined that this water right acquisition “will potentially increase the amount of time of each year that the Alamosa River has sufficient streamflows to support and maintain a fishery;” that it “will also extend the amount of flowing stream habitat (reach length);” and that “the Valdez Ditch acquisition is an important step towards recovery” of the Alamosa River. CPW’s recommendation letter is attached in Exhibit B.

18. Cost to Complete Transaction

CWCB has already demonstrated commitment and has contributed significant sums toward restoration of the Summitville Mine and the Alamosa River. This water right acquisition was contemplated in Phase I of the Alamosa ISF Project, which was funded in part by a grant from the Summitville Natural Resource Damage (NRD) account. Phase II of the Alamosa ISF Project, which includes rehabilitation of the Terrace Reservoir spillway, has been funded and construction should be completed by the end of this year.

Potential CWCB costs could include analysis of the water right acquisition proposal, as well as costs associated with preparing, filing, and prosecuting a change of water right application for the acquired water right. CWCB may also incur costs associated with monitoring any bypasses at the headgate and ISF releases from Terrace Reservoir. Additional outside funding or partnership opportunities may be available.

The CWCB has historically supported the Alamosa River watershed restoration project. In addition to partial funding and management of the \$250,000 Master Plan, the Board provided assistance to ARK in the amount of \$100,000 in matching funds from the Severance Tax Operational Account to add to NRD monies for the Alamosa ISF Project. By accepting this water donation, CWCB can continue to support this important restoration project and maximize benefits from its previous expenditures.

Staff Recommendation

The Staff recommendation is set forth on page 2 of this memo.

Attachments

Exhibit A - Map
 Exhibit B – Offer letter and letters of support
 Exhibit C – Acquisition Agreement

EXHIBIT A

MAP

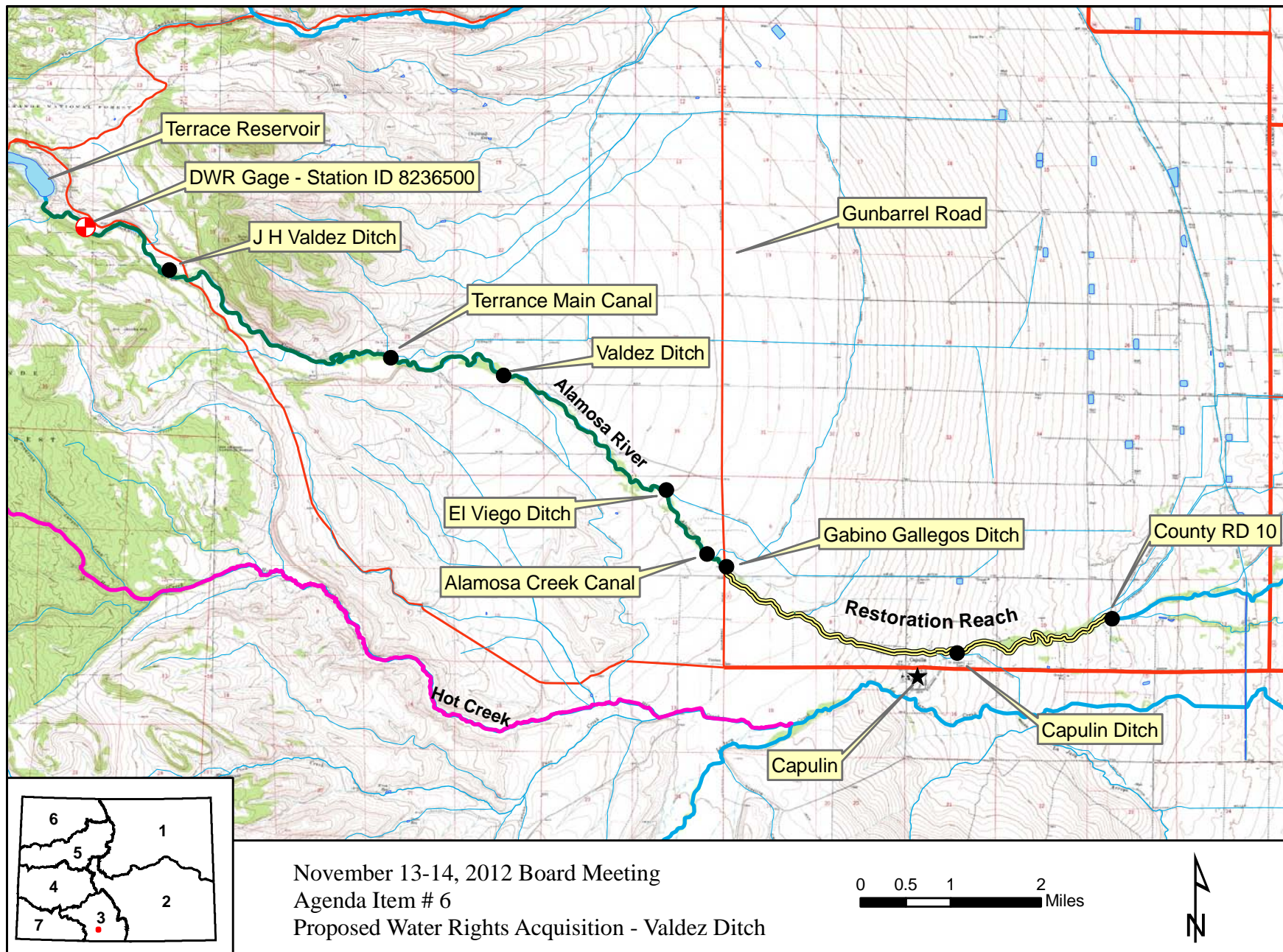


EXHIBIT B

Offer Letter

And

Letters of Support



Alamosa RIVERKEEPERS®

P.O. Box 223, Capulin, CO 81124

Mr. John McCloy, Chairman
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

September 13, 2012

Dear Chairman McCloy:

Alamosa Riverkeeper's (ARK) mission strives for a clean functional river system which benefits the economic, ecological, and recreational needs of the Alamosa River watershed. ARK has partnered with the Terrace Irrigation Company (TIC) to provide an instream flow for the Alamosa River. Terrace Irrigation Company owns and operates Terrace Reservoir located in Conejos County, Colorado, which derives its water from, and releases water to, the Alamosa River.

Alamosa Riverkeeper is pleased to offer to the Colorado Water Conservation Board (CWCB) .5 cfs decreed to the Valdez Ditch by the District Court in and for Conejos County, in the State of Colorado. ARK requests that CWCB consider the first step towards acceptance of this interest in the Valdez Ditch water right during the Board's September 2012 meeting.

The CWCB, with the leadership of Brian Hyde, sponsored the *Alamosa River Watershed Restoration Master Plan and Environmental Assessment* (Master Plan), which was funded by the Summitville natural resource damage settlement. The \$250,000 Master Plan was completed in July, 2005. The Master Plan summarizes current environmental conditions and develops solutions for identified problems that will lead to a healthier watershed. An instream flow was identified as a "tier one" project for the Alamosa River.

The Instream Flow Project benefits the Alamosa River and its hydrology by improving the flow regime of the Alamosa River, enhancing the riparian zones, recharging the underlying aquifer and developing a fishery. Once a dead river, anecdotal stories reported during the summer of 2012 describe fish being caught above and below Terrace Reservoir. Monies from the Summitville natural resource damage settlement and the CWCB are funding this project.

Over the past few years, ARK has worked closely with Linda Bassi, Kaylea White and staff in the Stream and Lake Protection Section to make this offer to you. We look forward to working with CWCB to complete this transaction.

Respectfully,

Cindy Medina, Alamosa Riverkeeper



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September 17, 2012

Ms. Linda Bassi
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

SUBJ: Valdez Ditch Acquisition/Donation – Alamosa River

Dear Linda:

The following is Colorado Parks and Wildlife's (CPW) analysis and recommendation regarding the possible acquisition/donation of 0.5 cfs of the Valdez Ditch water right for instream flow purposes on the Alamosa River near the town of Capulin, Colorado.

General Information

The Colorado Water Conservation Board (CWCB) recently asked CPW to evaluate the benefits and possible impacts associated with accepting the proposed donation of the Valdez Ditch water right to the natural environment of the Alamosa River. The CWCB currently does not hold an instream flow water right on the Alamosa River downstream of Terrace Reservoir. The Alamosa River is a tributary of the Rio Grande in Conejos County near Capulin, Colorado (approximately 7 miles south of Alamosa, Colorado).

Biological Survey Data

The former Division of Wildlife conducted field surveys of the fishery resources on the Alamosa River and has found that the fishery is severely impacted by both heavy metals contamination and extremely low streamflows during the winter months. The Alamosa River is classified as a large river (between 60 and 90 feet of bankfull width); habitat surveys have indicated that the Alamosa River could support a self-sustaining fishery if, in the future, current water quality and wintertime streamflows were to improve.

Field Data Collection

The R2CROSS data that we have on file was collected downstream of Terrace Reservoir and upstream of all of the major ditches that divert water from the Alamosa River during the irrigation season. This R2CROSS data indicates that instream flows of 45 cfs during the summer months and 15 cfs during the winter months would be necessary to preserve and improve the natural environment to a reasonable degree. These flow levels have been used as target flows or goals for re-establishment of a fishery in the Alamosa River near Capulin; in the restoration reach, a wintertime flow goal of 10 cfs has been identified in master planning documents for the Alamosa River Restoration Project. However, it is

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John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Horne
Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair
Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman
Ex Officio Members: Mike King and John Salazar

important to note that these flow recommendations are based on current, pre-restoration physical data collected to date and have not been thoroughly analyzed in light of water availability constraints.

Water Right Donation Analysis

CPW is of the understanding that the 0.5 cfs of the Valdez Ditch that is the subject of the proposed acquisition has been historically used to irrigate approximately 17 acres of land near Capulin. As was the case with previous water right acquisitions to support restoration efforts on the Alamosa River, CPW is supportive of the concept of drying up the irrigated lands and storing the yield (approximately 145 acre-feet) from the Valdez Ditch in Terrace Reservoir for release during the late summer, fall and early winter months to address the historic low flow issues (above and below the Valdez Ditch point of diversion) on the Alamosa River. CPW realizes that this is an incremental process in an effort to meet the target flow levels for the winter months and we are committed to continued work with CWCB staff and the Alamosa River stakeholders into the future. The acquisition of the Valdez Ditch water right, when added to the prior acquisition of the Gabino Gallegos Ditch in 2010, is only a step along the way toward restoration of the Alamosa River fishery.

CPW Recommendation

Based on the above analysis, CPW recommends that the CWCB accept the donation of water rights associated with the Valdez Ditch to preserve and improve the natural environment of the Alamosa River. Accepting this senior water right will potentially increase the amount of time each year that the Alamosa River has sufficient streamflows to support and maintain a fishery. Further, accepting this water and managing it for late summer, fall and early winter streamflow maintenance will also extend the amount of flowing stream habitat (reach length) over what has occurred historically. As stated above, the incremental nature of this restoration project dictates to us the fact that we are not done with the water acquisition activities on the Alamosa River, but the Valdez Ditch acquisition is an important step towards recovery.

If you have any questions regarding this matter, please contact me at 303-291-7260.

Sincerely,



Jay W. Skinner
Water Resources Unit manager
Colorado Parks and Wildlife

CC: John Alves, Southwest Region Senior Aquatic Biologist



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office

2850 Youngfield Street

Lakewood, Colorado 80215-7210

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OCT 16 2012

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In Reply Refer To:
7250 (CO-932)

**Colorado Water
Conservation Board**

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

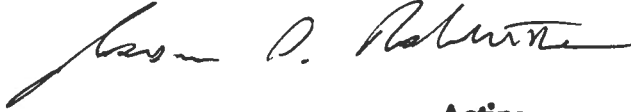
Dear Ms. Bassi:

The Bureau of Land Management (BLM) is writing this letter to support the Colorado Water Conservation Board proposed acquisition of 0.5 cubic feet per second from the Valdez Ditch on the Alamosa River. The BLM is making this recommendation as part of its role as trustee for the funds associated with the Alamosa River Natural Resources Damage Assessment settlement at the Summitville Mine site on the upper Alamosa River. The BLM believes that the board should accept the donation for multiple reasons.

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

If you have any questions about this recommendation, please contact Roy Smith, Water Rights Specialist at (303) 239-3940.

Sincerely,

A handwritten signature in black ink, appearing to read "Leigh D. Espy".

Leigh D. Espy
Deputy State Director
Division of Resource and Fire

Acting

cc: Manager, Front Range District
Andrew Archuleta, San Luis Valley Field Office
Laura Archuleta, San Luis Valley Field Office
Cindy Medina, Alamosa Riverkeepers, P.O. Box 753, La Jara, CO 81140



Board of County Commissioners

J. Steven McCarroll
Chairman

John Sandoval
Vice Chairman

Mitchell Jarvies
Vice Chairman

October 1, 2012

Mr. John McClow, Chairman
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

Dear Mr. McClow:

We, the Conejos County Board of Commissioners, are in support of the dedication of .5 cfs of the Valdez Ditch to the Colorado Conservation Board.

The project would increase the storage capacity at Terrace Reservoir; enhance the riparian area, while improving wildlife resources and recreational uses. Any additional water left in the rivers would help regenerate the aquifer for the Town of Capulin as well as citizen's private wells along the Alamosa, River.

Sincerely
Conejos County Board of Commissioners

Steve McCarroll
Chairman

EXHIBIT C

Donation and Acquisition Agreement

**DONATION AND ACQUISITION AGREEMENT
(Valdez Water Right)**

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

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

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

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

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

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

WHEREAS, ARK has purchased from Gilbert Lucero 0.5 cfs of the 14.0 cfs of water decreed to the Valdez Ditch, with a Stream Priority No. 9 by the Conejos County District Court on July 11, 1888, with an appropriation date of April 10, 1870, for irrigation use ("Lucero's Valdez Ditch Right"); and

WHEREAS, the sellers have executed an amended Dry-Up Covenant certifying that the lands associated with the 0.5 cfs will be permanently removed from irrigation following termination of any lease arrangement with ARK; and

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

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

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

WHEREAS, the Board intends to accept the donation of Lucero's Valdez Ditch Right from ARK and to file an application with the Division 3 Water Court for a change of use of such water right to allow storage and subsequent instream flow use by the Board to preserve or improve the natural environment to

a reasonable degree in the Alamosa River from the headgate or from the outlet of Terrace Reservoir downstream to the bridge at County Road 10 (the "Instream Flow Reach");

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

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

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

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

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

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

4. Enforcement. If the Board successfully obtains a decree in the Change Proceeding, the Board commits to use Lucero's Valdez Ditch Right, as changed, for instream flow purposes to preserve or improve the natural environment to a reasonable degree, consistent with the terms of the decree, and to take reasonable steps to enforce those rights for instream flow purposes and protect them from injury. If the Board receives a request to consider injury with mitigation for the portion of the Alamosa River benefited by the change of Lucero's Valdez Ditch Right, the Board shall promptly inform ARK of such request, consult with ARK regarding such request, and not take any action that, in the CWCB's and ARK's reasonable judgment, would impair the benefits to the Alamosa River resulting from ARK's donation to the Board of Lucero's Valdez Ditch Right and its change to instream flow uses. Nothing herein shall diminish the Board's right to exercise its discretion regarding enforcement of instream flow water rights; however, the Board acknowledges that the intended use of Lucero's Valdez Ditch Right is to preserve or improve the natural environment of the Alamosa River to a reasonable degree.

5. Effect of Denial. If the Change Proceeding is unsuccessful for any reason, or if the decree entered therein is conditioned in such a manner as to prevent the purposes of this Agreement from being fulfilled,

then the parties hereto shall consult on future action regarding the Board's use of Lucero's Valdez Ditch Right.

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

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

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

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

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

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

Dated this ____ day of _____, 2012.

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

COLORADO WATER
CONSERVATION BOARD

BY: _____
Julie Gomez-Nuanes, President

Date: _____

BY: _____
Jennifer Gimbel, Director

Date: _____

SPECIAL WARRANTY DEED

This Deed is made this ____ day of _____, 2012, by the **VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS**, an unincorporated nonprofit Colorado Association (hereinafter “ARK” or “Grantor”), to the **COLORADO WATER CONSERVATION BOARD**, an agency of the State of Colorado (hereinafter “CWCB” or “Grantee”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey and assign to Grantee, its successors and assigns, forever, all of the Grantor’s right, title and interest in and to the following described water right located in Water Division 3, State of Colorado:

One-half (0.5) cubic feet per second of the 14 cubic feet per second decreed to the **Valdez Ditch** by the District Court in and for Conejos County, State of Colorado by decree dated July 11, 1888, as Priority No. 9, with an appropriation date of April 10, 1870, (the “Priority 9 Water” or “Lucero’s Valdez Ditch Right”).

Grantor hereby covenants and agrees that it shall and will warrant and forever defend Lucero’s Valdez Ditch Right in the quiet and peaceable possession of the CWCB, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

Grantee shall use the subject water right in accordance with the provisions of the Donation and Acquisition Agreement between Grantor and Grantee dated _____ to preserve or improve the natural environment to a reasonable degree in the Alamosa River from the headgate or from the outlet of Terrace Reservoir downstream to the bridge at County Road 10 (“the Instream Flow Reach”)

Grantor hereby reserves the right to lease Lucero’s Valdez Ditch Right to the original sellers for continued irrigation use until the CWCB desires to begin using Lucero’s Valdez Ditch Right for instream flow purposes in the Instream Flow Reach. Grantor further reserves the right to bring about beneficial use of the historical consumptive use of Lucero’s Valdez Ditch Right as fully consumable water at any point downstream from County Road 10, subject to such terms and conditions as the Water Court deems necessary to prevent injury to vested water rights or decreed conditional water rights.

In witness whereof, Grantor has executed this deed on the date first written above.

VALLE DEL SOL COMMUNITY CENTER,

on behalf of the ALAMOSA RIVERKEEPERS

Julie Gomez-Nuanes

ATTEST:

By: _____

Name: _____

Title: _____

County of Conejos)
) SS
State of Colorado)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011,
by Julie Gomez-Nuanes as President of Valle Del Sol Community Center on behalf of the
Alamosa Riverkeepers.

Notary Public

My commission expires: _____