



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Tom Browning, P.E.
Deputy Director

DATE: August 28, 2014

AGENDA ITEM #23: Catlin Canal Fallowing-Leasing Pilot Project

Background:

The Lower Arkansas Valley Water Conservancy District (Lower Ark) and the Lower Arkansas Valley Super Ditch Company, Inc. (Super Ditch) formally submitted a proposal to CWCB staff on July 14, 2014 for a fallowing-leasing pilot project. The proposal falls under the auspices of HB13-1248 and the CWCB's Criteria and Guidelines for the Fallowing-Leasing Pilot Program in Colorado, which was unanimously adopted by the Board at its November 2013 meeting.

The proposal involves transfers from certain shares of agricultural water from farmland irrigated by the Catlin Canal, within Otero County, for temporary municipal uses by the Town of Fowler, City of Fountain, and the Security Water District. The project proponents aim to carry out the pilot operation beginning in the 2015 irrigation season. It would fallow no more than 30% of a single irrigated farm each year over ten consecutive years (e.g. April 1, 2015 through March 31, 2015), which is an allowable scenario in the approved Criteria and Guidelines.

Lower Ark and Super Ditch have been attempting to launch a pilot project to demonstrate and learn from the idea of rotational fallowing. Their overall goal is to meet municipal water needs in a way that reduces permanent agricultural dry-up, or "buy and dry".

Staff will provide a fairly brief presentation for this agenda item to further illuminate details and features of the proposed pilot project, leaving ample time for public comment and board discussion.

Staff recommendation:

Staff recommends that the Board approve the Catlin Pilot Project Proposal for formal selection as an eligible pilot project within the Arkansas River Basin. Staff further recommends that the Board encourage the project proponents to use the attached *fallowing-leasing pilot project checklist* to develop a complete application for future review by the CWCB.

Attachments: Catlin Pilot Project Proposal, Pilot Project Checklist, and Public Comment Letters



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July 14, 2014

Colorado Water Conservation Board
James Eklund, Director
Tom Browning, Deputy Director
1313 Sherman Street, Room 721
Denver, CO 80203

Re: HB 13-1248 Catlin Canal Pilot Project Proposal for CWCB Selection

Dear Mr. Eklund and Mr. Browning:

This fallowing-leasing pilot project proposal is submitted pursuant to HB 13-1248, C.R.S. § 37-60-115(8) (2013), on behalf of the Lower Arkansas Valley Water Conservancy District (“Lower Ark”) and the Lower Arkansas Valley Super Ditch Company, Inc. (the “Super Ditch”) (collectively, “Applicants”) for the selection of a pilot project aiming to begin operation in 2015. Applicants seek selection of this proposal pursuant to Section II.A of the Criteria and Guidelines for Fallowing Leasing Pilot Projects, approved by the Colorado Water Conservation Board on November 19, 2013 (the “Criteria and Guidelines”). The proposed Catlin Pilot Project will use water available from certain shares in the Catlin Canal Company for temporary municipal uses by the Town of Fowler; the City of Fountain; and the Security Water District (collectively referred to as the “Municipal Participants”). The proposal is for a pilot project that would operate each year over the ten-year period (currently anticipated to be April 1, 2015 through March 31, 2025).

Applicants have been working for some time to establish a pilot project to demonstrate the Super Ditch concept of rotational agricultural fallowing to meet municipal water demands in a manner that avoids permanent agricultural dry-up. This concept has received support from the CWCB, the IBCC, the Basin Roundtables, and most recently the Colorado Legislature and Governor Hickenlooper with the passage of HB 13-1248. HB 13-1248, codified at C.R.S. § 37-60-115(8), authorizes the CWCB to administer a pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up. Applicants are pleased to have the opportunity to submit this proposal for a pilot project under HB 13-1248.

I. Notice Requirements (Criteria and Guidelines §§ II.B, & F)

Applicants request that the CWCB post this Catlin Pilot Project Proposal on its website upon receipt pursuant to Section II.A of the Criteria and Guidelines. Additionally, pursuant to C.R.S. § 37-60-115(8)(e)(II) and Section II.F of the Criteria and Guidelines, Applicants have provided written

notice and a copy of this Catlin Pilot Project Proposal and all accompanying materials by first class mail or electronic mail to all parties that have subscribed to the substitute water supply plan notification list for Water Division 2. Proof of such notice is attached hereto.

II. Description of the Pilot Project (Criteria and Guidelines §§ II.F.a.i-vi)

A. Generally

The Catlin Pilot Project will fallow parcels of land in rotation and provide the transferable consumptive use water without permanent dry-up for municipal use, thereby encouraging farmers to continue farming and remain active members of their communities. The Catlin Pilot Project was developed by the Applicants to demonstrate the viability of the fallowing-leasing concept on a relatively small scale, while incorporating exchange, storage, and recharge components that will test the ability of fallowing-leasing to provide a workable alternative to the “buy-and-dry” of irrigated agriculture.

Lower Ark is a water conservancy district formed by voters in November 2002 whose mission is to acquire, retain and conserve water resources within the Lower Arkansas River; to encourage the use of water for the socio-economic benefit of the District’s citizens; and to participate in water-related projects that embody thoughtful conservation, responsible growth, and beneficial water usage within the Lower Arkansas Valley. Super Ditch is a Colorado corporation formed in 2008 for the benefit of the farmers in the Lower Arkansas Valley below Pueblo Reservoir and above the Kansas state line. The Super Ditch in partnership with Lower Ark was created as a farmer-owned company to manage the operations of the water enterprise, including this Pilot Project.

This Catlin Pilot Project seeks to use water available to shareholders of the Catlin Canal Company as the source of up to approximately 500 acre-feet annually of transferable consumptive use water¹ that will be made available to Fowler, Fountain, and Security for temporary use in their respective municipal water systems through the rotational fallowing of sufficient acreage to generate such water. Generally, the Municipal Participants will take delivery of water made available through the Catlin Pilot Project through operation of physical or contract exchanges/trades.

The Catlin Pilot Project seeks to operate each year during the ten-year approval period, but will not fallow the same land for more than three of the ten years of operation. In order to allow for such continuous operation, Applicants may seek to add additional farms to the Catlin Pilot Project through amendment or other appropriate mechanism approved by the CWCB and in compliance with the Statute and Criteria and Guidelines.

¹ This amount is not intended to operate as a ceiling for the amount of water available for use in the Catlin Pilot Project in any given year, but to reflect the amount likely available from the fallowing of approximately 30% of the included acreage in an average water year. The amount available would be higher in wet water years, but would not in any event exceed the 1,000 acre-foot per year quantity established in Section II.D of the Criteria.

B. Proposed Municipal Use

Fowler's Municipal Water Use. Fowler is a small community of approximately 1,200 residents located in Otero County, Colorado within the Lower Arkansas River Valley. Fowler's municipal water supply is derived from the operation of 12 wells. Fowler is enrolled in a Rule 14 Plan operated by the Colorado Water Protection and Development Association ("CWPDA"). This Rule 14 Plan is approved pursuant to the Arkansas River Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado (Case No. 02-95CW211) and provides for the replacement of out-of-priority stream depletions to senior water rights in Colorado resulting from junior well pumping. Fowler's wells provide the only source of water supply available to meet all municipal water demands arising within Fowler's water service area. Fowler's allocation of Fry-Ark Project municipal water has been severely reduced in recent years, resulting in the need to drastically curtail outdoor water use by all of its customers. Fowler has expressed an interest in leasing up to approximately 250 acre-feet of water annually through operation of the Catlin Pilot Project for use in its system in an effort to allow for some relaxation of its watering restrictions.

Fountain's Municipal Water Use. The City of Fountain is a community of approximately 27,000 residents that is located along Fountain Creek approximately 30 miles north of Pueblo. Fountain receives the majority of its water from the Fry-Ark Project, which is delivered to Fountain from Pueblo Reservoir via the Fountain Valley Conduit. Fountain may also deliver water to its system through the Southern Delivery System ("SDS"), once it is operational. Fountain also obtains a portion of its water supply from four groundwater wells that pump water from the Fountain Creek Alluvium. Fountain has expressed an interest in leasing up to 125 acre-feet of water annually through operation of the Catlin Pilot Project for use in its water system to supplement its existing water supplies.

Security's Municipal Water Use. The Security Water District ("Security") is located in unincorporated El Paso County, encompassing an area of approximately 5 square miles east of Fountain Creek. Security provides a water supply to a population of approximately 18,000. Its water supply is obtained from numerous groundwater wells and supplemented by Fry-Ark Project water delivered through the Fountain Valley Conduit. Security may also deliver water to its system through the SDS, once it is operational. Security has expressed an interest in leasing up to 125 acre-feet of water annually through operation of the Catlin Pilot Project for use in its water system to supplement its existing water supplies.

Delivery to Municipal Participants. It is anticipated that Fowler will use its leased water through depletion credits (made up of transferable consumptive use water and/or stream depletion credits resulting from lagging of deep percolation²) that will be used through an SWSP or be dedicated by Fowler to the CWPDA Rule 14 Plan to replace increased out-of-priority depletions associated with

² That portion of the farm headgate delivery that deep percolates into the soil, after application to an irrigated field, typically results in an immediate stream depletion when delivered, with an equivalent amount later being returned to the stream as lagged groundwater return flows.

increased well pumping and to meet associated historical return flow obligations.³ Fountain and Security's leased water would also be depletion credits available at Pueblo Reservoir in their respective "if and when" storage accounts with the Bureau of Reclamation. Fountain and Security would subsequently deliver leased water to their water systems via the Fountain Valley Conduit and/or the SDS. Both Fountain and Security are participants in the Fountain Valley Authority.

Leased water as depletion credits will be made available to the Municipal Participants through a variety of mechanisms. As to Fowler, there may be times when only a limited upstream exchange to the point of their well depletions is needed to make use of the depletion credits. When adequate exchange potential exists, depletions credits may be exchanged into Pueblo Reservoir for later release (Fowler) or for delivery via the Fountain Valley Conduit and/or the SDS (Fountain and Security). During times of limited exchange potential, stepped exchanges to intermediate storage locations may be utilized to move depletion credits further upstream. Depletion credits may also be traded with entities with water available at upstream locations to meet such entities' downstream replacement obligations. It is currently anticipated that these trades could involve entities such as Lower Ark, CWPDA, AGUA, and/or other entities with water stored in Pueblo Reservoir to meet downstream replacement obligations owed under augmentation plans, SWSPs, Rule 10 Plans, and/or Rule 14 Plans. When feasible, depletion credits may also be exchanged back up to the Catlin Canal Company headgate and delivered into recharge locations and re-timed either for later use and/or exchange to upstream locations. The Catlin Pilot Project will, when possible, use these and potentially other operational mechanisms in order to ensure maximum utilization of available depletion credits and to test and demonstrate alternative delivery mechanisms.

C. The Participating Farmers & Lands to be Fallowed

The participating farmers with historically irrigated lands available for fallow for the initial 2015 operations of the Catlin Pilot Project consist of six shareholders of the Catlin Canal Company identified in **Table 1**, attached (the "Participating Farmers"), representing seven farms. These farmers have expressed an interest in rotationally fallowing all or portions of their farms during ten-year term of this pilot project.

Information regarding the historically irrigated lands and associated Catlin Canal Company shares used in the irrigation of the Participating Farmers' historically irrigated lands is provided in the attached **Table 1**. A site map for the Catlin Pilot Project is attached as **Exhibit A**. Maps showing each Participating Farmers' historically irrigated lands are attached as **Exhibits B through H**.

Applicants anticipate the potential inclusion of additional farms and their associated historically irrigated lands served by shares in the Catlin Canal Company into the Catlin Pilot Project to permit continuous generation of approximately 500 acre-feet of water annually during the project's ten-year term. Applicants anticipate that such additional lands would be included and utilized in the Catlin Pilot Project by amendment to the approved Catlin Pilot Project. Such an amendment would be requested in

³ CWPDA has indicated that it has the ability to incorporate such additional water and to meet return flow obligations and replace Fowler's additional out-of-priority depletions pursuant to operation of its current and future Rule 14 Plans.

compliance with any terms and conditions adopted by the CWCB to govern such additions, subject to applicable statutory requirements and the Criteria and Guidelines.

D. The Water Rights to be Used

The specific water rights to be utilized in the Catlin Pilot Project are those owned by the Catlin Canal Company and delivered to the Participating Farmers. The Catlin Canal Company owns the following water rights decreed for irrigation, all located in Water District 17:⁴

Table 2: Catlin Canal Company Water Rights

Water Right	Priority No.	Appropriation Date	Adjudication Date	Amount (c.f.s.)
Catlin Canal	2	04/10/1875	04/08/1905	22.0
Catlin Canal	5	12/03/1884	04/08/1905	226.0
Catlin Canal	7	11/14/1887	04/08/1905	97.0

The Catlin Canal Company also has rights to Winter Storage Water pursuant to the Decree entered in Case No. 84CW179 (Water Division 2) that are included in the Catlin Pilot Project. These same Catlin Canal water rights would be used in connection with any additional historically irrigated lands and associated shares in the Catlin Canal Company added to the Catlin Pilot Project in future years.

E. Source of Water for Return Flow Obligations and Delivery of Replacement Water

Tailwater (irrigation season) and deep percolation (lagged) return flows associated with the historically irrigated lands will be replaced in time, location, and amount through utilizing a number of operational mechanisms and a variety of sources. When possible, return flows will be met with depletion credits (either transferable consumptive use derived from the fallowed acreage and/or stream depletion credits resulting from lagging groundwater return flows) through diversion at the Catlin Canal headgate and subsequent release to the stream through the Catlin augmentation stations. Alternatively, return flows may be maintained by exchanging depletion credits into, and later releasing those credits from, upstream storage locations. If water is dedicated to the CWPDA Rule 14 Plan for Fowler's wells or as part of an SWSP, return flows from portions of the fallowed acreage would be met through operation of that Rule 14 Plan or SWSP. Return flows may also be maintained from upstream water supplies made available through effectuating trades with entities who have downstream replacement obligations. This could include, for example, managing operations in conjunction with Rule 10 and/or Rule 14 Plans with return flow obligations owed at downstream locations that could be met with depletion credits, thereby avoiding potential transit losses resulting from delivery from upstream locations. Additionally, return flows may be maintained through the delivery of depletion credits, either directly or by exchange, to existing or future recharge facilities and retiming of the resulting stream accretions via these same mechanisms.

⁴ The Catlin Canal Company also receives allocations of Fry-Ark Project water and stores water in an "if and when" account in Pueblo Reservoir, but these sources are not a part of the Catlin Pilot Project.

Two recharge ponds have been constructed on the Catlin Canal and are located on the Schweizer and Hanagan farms. These recharge ponds are scheduled to be tested this irrigation season. Other existing or subsequently constructed recharge facilities may also be used (such as the Excelsior Ditch recharge facilities), if determined feasible. Applicants may also construct additional recharge ponds on or near other participating farms, and/or in other locations as determined appropriate to deliver water to the appropriate stream locations.

At times when return flow obligations cannot be met with depletion credits, additional replacement sources may be derived from supplies in Lower Ark's "if and when" storage account in Pueblo Reservoir. If the Fowler portion of the project is included in the CWPDA Rule 14 Plan, Fowler's return flow obligations could also be met through other sources available to that plan. Lower Ark leases 2,500 acre-feet of agricultural storage and 500 acre-feet of municipal storage in Pueblo Reservoir via "if and when" accounts. Water supplies that may be stored in Lower Ark's "if and when" account may include: (1) up to 500 acre-feet annually leased by Lower Ark from the Pueblo Board of Water Works pursuant to a five-year agreement with an effective date of April 1, 2012; (2) water available pursuant to Lower Ark's ownership of 91.34 shares in Twin Lakes Reservoir; and/or (3) other sources of water that may come available to Lower Ark either through trades, lease, or ownership.

F. Stream Reaches Used to Operate the Proposed Transfer & Administrative or Hydrological Obstacles

Generally, stream reaches that will be used to operate the proposed transfers of water under the Catlin Pilot Project will include the Arkansas River: (1) from its confluence with Crooked Arroyo upstream to Pueblo Reservoir; and (2) from the confluences of Patterson Hollow, Timpas Creek, and Crooked Arroyo with the Arkansas River to the point of historical return flow delivery to and/or the delivery of recharge on Patterson Hollow, Timpas Creek, and Crooked Arroyo.

Applicants recognize that the exchange potential on the Arkansas River does pose a hydrological challenge to operation of the Catlin Pilot Project under certain conditions. Therefore, this proposal has been thoughtfully designed to include various mechanisms to allow for operation in times of limited exchange potential such as the use of stepped exchanges to intermediate storage locations, use of recharge facilities, and trades of water. Also, because the Catlin Canal augmentation stations (located on Timpas Creek and Crooked Arroyo) and the point of delivery of recharge to the Arkansas River from the Schweizer and Hanagan recharge ponds are located downstream of several of the locations of historical return flows, this proposal includes possible additional recharge locations, retiming of recharge, and use of upstream storage in order to ensure the ability of the pilot project to maintain return flows in time, location and amount to prevent injury to other water rights.

G. Necessary Structures & Ownership

Structures that may be necessary and/or desirable in the operation of the Fowler Pilot Project and their ownership are as follows:

Table 3: Structures Necessary/Desirable for Operation of Pilot Project

Structure	Owner
Fowler Municipal Well ID Nos.1705166A, 1705167A, 1705168A, 1705169A, 1705171A, 1705172B, 1705172A, 1705174A, 1705175A, 1705502A, 1706458A, 1706459A & Associated Water Distribution System	Town of Fowler
Fountain Valley Conduit	Fountain Valley Authority
Fountain Water System	City of Fountain
Security Water System	Security Water District
Hanagan Recharge Pond	Roger and Mary Jane Maddux
Schweizer Recharge Pond	Kenneth and Arlene Schweizer
Catlin Canal Company canal, laterals, headgate and the Crooked Arroyo and Timpas Creek augmentation stations	Catlin Canal Company
Suburban Lateral (off Catlin Canal, delivers to Hanagan Recharge Pond)	Eric Hanagan, Jaren Gardner, Diamond A Inc., Bill Seamans
Pueblo Reservoir	U.S. Department of Interior, Bureau of Reclamation
Twin Lakes Reservoir	U.S. Department of Interior, Bureau of Reclamation
Colorado Canal, Lake Meredith, Lake Henry, Lake Canal	Colorado Canal Company
Fort Lyon Storage Canal, Horse Creek Reservoir, Adobe Creek Reservoir	Fort Lyon Canal Company
Dye Reservoir, Holbrook Reservoir, Holbrook Canal	Holbrook Mutual Irrigating Company
Excelsior Ditch	Excelsior Irrigating Company
Excelsior Ditch Recharge Ponds	AGUA

As discussed above, water made available through the Pilot Project's following of the historically irrigated lands will be run through and measured at the Catlin Canal Company augmentation stations. The portion of the shares historically lost to ditch seepage will be diverted at the Catlin Canal Company headgate and left in the ditch. Water will be delivered via Catlin Canal Company laterals to the Schweizer and Hanagan recharge ponds. Water will also be exchanged into and/or traded for water stored in Pueblo Reservoir. Additional structures may be used in operation of the Catlin Pilot Project to provide for intermediate storage locations along the Arkansas River and additional recharge facilities. Fountain and Security will take delivery of leased water at Pueblo Reservoir and will be responsible for transporting that water to their water systems for example, via the Fountain Valley Conduit and/or the SDS (once operational).

It is not currently anticipated that any other structures or facilities are necessary for operation of the Catlin Pilot Project. However, it is possible that additional structures either currently existing or that may be constructed during the term of the Catlin Pilot Project may be used to maximize the operational flexibility of the project.

III. Eligibility Requirements (Criteria and Guidelines § II.C)

The proposed Catlin Pilot Project meets the eligibility requirements of C.R.S. § 37-60-115(8) (a) through (c) and Section II.C of the Criteria and Guidelines. As the first following-leasing pilot project to be considered for selection, the Catlin Pilot Project has been thoughtfully designed to provide

an early demonstration of the feasibility of fallowing irrigated land for leasing water for temporary municipal use, while incorporating operational components that will provide useful information on the viability of leasing-fallowing. *See* Resolution of the Board of Directors of the Lower Arkansas Valley Water Conservancy District dated July 11, 2014, attached as **Exhibit I** (“Lower Ark Resolution”); Resolution of the Board of Directors of the Lower Arkansas Valley Super Ditch Company, Inc., dated July 14, 2014, attached as **Exhibit J** (“Super Ditch Resolution”).

The Catlin Pilot Project will demonstrate the practice of rotationally fallowing sufficient agricultural lands (currently estimated at up to 500 acres annually) that have been historically irrigated to allow for the leasing of the historical consumptive use water for temporary municipal use by Fowler, Fountain, and/or Security in their respective municipal water systems. *See* Lower Ark Resolution; Super Ditch Resolution. The Catlin Pilot Project will demonstrate cooperation among different types of water users, including the Municipal Participants, the participating farmers, the Super Ditch, Lower Ark, and the Catlin Canal Company, CWPDA and possibly other entities operating Rule 14 plans. *See* Lower Ark Resolution; Super Ditch Resolution; Resolution of the Board of Directors of the Catlin Canal Company, dated July 8, 2014, attached as **Exhibit K** (“Catlin Resolution”). The cooperation amongst these groups will be facilitated through Lower Ark’s management of operations. *Id.* The State, the participants, and other interested parties will have the opportunity to evaluate the feasibility of delivering leased water to temporary municipal users through operation of the Catlin Pilot Project. *Id.*

The Catlin Pilot Project will provide data from which the CWCB and State Engineer can evaluate the efficacy of using a streamlined approach for determining historical consumptive use, return flows, the potential for material injury to other water rights, and conditions to prevent injury. Applicants’ consultants will conduct an historical use analysis using the streamlined Leasing Fallowing Tool that has been developed for the CWCB. It will also utilize the assumptions, presumptive factors and methodologies set forth in Section G of the Criteria and Guidelines, which were conservatively developed to streamline and standardize the historical use analysis so as to prevent injury to vested water rights, conditional water rights, or contract rights to water. *Id.* Through this, along with the imposition of protective terms and conditions, the Catlin Pilot Project will demonstrate how to operate, administer and account for the practice of fallowing irrigated agricultural land for leasing water for temporary municipal use without causing material injury to other vested water rights, decreed conditional water rights, or contract rights to water. *Id.*

The Catlin Pilot Project would not involve the fallowing of the same land for more than three years in a ten-year period. Additionally, because the historically irrigated lands are located in Otero County, no more than two of the three years of fallowing during the pilot project term would be consecutive pursuant to Otero County’s 1041 regulations. The Catlin Pilot Project will involve only the fallowing of lands irrigated under the Catlin Canal and will not involve the fallowing of lands from more than one ditch.

The Pilot Project would not involve any transfer or facilitation of transfer of water across the continental divide by direct diversion, exchange, or otherwise, nor does it involve the transfer or facilitation of transfer of water out of the Rio Grande Basis by direct diversion, exchange or otherwise. *See* Map (**Exhibit A**). The source of water is water native to the Arkansas River; all historical

irrigation with this water has occurred in the Lower Arkansas River Valley in Otero County under the Catlin Canal; and the proposed temporary municipal use will occur within each of the Municipal Participants' water service areas located wholly within Otero County as to Fowler, and El Paso County as to Fountain and Security.

It is anticipated that the Catlin Pilot Project can be implemented using existing infrastructure. However, Applicants may investigate the construction of additional recharge facilities in order to maximize the operational flexibility of the Catlin Pilot Project. Moreover, it is possible that during the 10-year term of the Catlin Pilot Project, additional facilities would be constructed that may be useful in project operations.

IV. Necessary Approvals and Agreements (Criteria and Guidelines § II.F.c)

If approved by the CWCB for operation, the Catlin Pilot Project will require certain other approvals and agreements. Representatives of Lower Ark and Super Ditch have met with and discussed the proposed Catlin Pilot Project with representatives for the Municipal Participants, the participating farmers, the Catlin Canal Company Board of Directors, and CWPDA. Based on these discussions, Lower Ark and Super Ditch believe that all of the agreements and approvals that may be necessary to operate the Catlin Pilot Project can be reasonably obtained. *See* Lower Ark Resolution; Super Ditch Resolution. Applicants currently anticipate the following agreements would be necessary for operation of the Catlin Pilot Project, some of which are already in place:

1. Lease Agreement or other appropriate agreement between Lower Ark/Super Ditch and the Municipal Participants. Lower Ark/Super Ditch have been in discussions with each of the Municipal Participants regarding the Catlin Pilot Project and letters of interest have been executed by the Municipal Participants, attached as **Exhibit L**. Additionally, both Fountain and Security previously executed long-term water lease agreements with Super Ditch which remain in place. *See* Water Lease between City of Fountain and Super Ditch dated March 13, 2012 (**Exhibit M**) and Water Lease between Security Water District and Super Ditch dated May 7, 2013 (**Exhibit N**).
2. Lease Agreements or other appropriate agreements between Lower Ark/Super Ditch and each participating farmer. Lower Ark/Super Ditch has met with potential participating farmers to discuss the terms of such agreement. Letters of interest have been obtained from the participating farmers and are attached as **Exhibit O**.
3. Catlin Canal Company approval of a plan to rotationally fallow lands historically irrigated by the canal pursuant to Article IV, Section 2 of the Catlin Canal Company Bylaws. This approval was obtained for the Super Ditch Pilot Project SWSP in 2012, indicating that such approval may be reasonably obtained for this Catlin Pilot Project. Additionally, the Catlin Resolution demonstrates their general support for the Catlin Pilot Project. **Exhibit K**.
4. Catlin Canal Company Board approval of use of Catlin Canal facilities (ditch, laterals, and augmentation station) and carriage of non-Catlin water to recharge facilities. Additionally,

the Catlin Resolution demonstrates their general support for the Catlin Pilot Project, suggesting that these approvals should reasonably be able to be obtained. **Exhibit K.** Additionally, Lower Ark has already entered into a carriage agreement with the Catlin Canal Company to allow for delivery of non-Catlin water to the recharge ponds, attached as **Exhibit P.**

5. Agreements for lease of recharge sites. Applicants currently have Recharge Site Leases in place with the owners of the land upon which the Schweizer and Hanagan recharge facilities are located, which Applicants anticipate can and will be renewed at such time that those agreements expire. *See Exhibits Q and R.* Additional agreements for any future locations will be obtained, as needed.
6. BOR annual renewal of Lower Ark's "if and when" storage contract. BOR routinely approves such contracts for Lower Ark and others.

In the event that Fowler depletions are to be managed as a part of CWPDA, this could involve their acceptance of water made available through operation of the Fowler Pilot Project under shares in Catlin Canal Company used on historically irrigated lands for replacement of additional out-of-priority depletions, historical return flows, and lagged return flow obligations from operation of Fowler's municipal wells through CWPDA's Rule 14 Plan and approvals/agreements associated therewith. In the event that CWPDA does not accept the dedication of the water made available through operation of the Pilot Project to provide for lagged return flows and/or approvals of the CWPDA Rule 14 Plan are not timely, the Fowler portion of the Catlin Pilot Project may nevertheless operate so long as lagged return flows are properly replaced in time, location, and amount as a part of an SWSP or other appropriate approval.

To facilitate more efficient operations, Applicants may seek to obtain permission to utilize intermediate storage locations along the Arkansas River to facilitate operation of a stepped exchanged into Pueblo Reservoir from the Colorado Canal Company, the City of Aurora, the City of Colorado Springs, and/or the Fort Lyon Canal Company. Applicants may also work with other entities to effectuate trades that could be subject of separate agreements. Applicants may also seek permission to utilize the Excelsior Recharge Ponds from the Excelsior Ditch Company and/or AGUA, or to utilize other recharge facilities that may be constructed in the future. However, these permissions and/or agreements are not necessary for operation of the Catlin Pilot Project.

V. Water Conservancy District Limitations/Requirements (Criteria and Guidelines § II.F.d)

Both the place of temporary municipal use and the historically irrigated lands are located in El Paso and Otero Counties within the boundaries of the Southeastern Colorado Water Conservancy District ("Southeastern"). It is anticipated that replacement of return flow obligations could be met through use of Lower's Ark's "if and when" account and, as to Fowler, operation of the CWPDA Rule 14 Plan. Trades with entities who store water in Pueblo Reservoir could also be effectuated to facilitate project operations and reduce transit losses. The CWPDA Rule 14 Plan involves use of Pueblo Reservoir, which is owned and operated as part of the Fry-Ark Project by the United State Department

of Interior, Bureau of Reclamation. Additionally, both Fountain and Security will take delivery of their leased water into their respective "if and when" accounts in Pueblo Reservoir. Any use of the Fry-Ark Project facilities used in operation of the Catlin Pilot Project, for storage, exchange, release or otherwise, will occur only pursuant to the terms and conditions of those applicable contracts, any Rule 14 Plan approval or other approval, and all applicable rules and policies of Southeastern.

Use of Winter Water to meet return flow obligations from the fallowing of historically irrigated lands will be consistent with the terms and conditions contained in the Winter Water Storage Program ("WWSP") decreed in Case No. 84CW179 (Water Div. 2), Southeastern's contract for Winter Water storage in Pueblo Reservoir and any "if and when" contracts with the Bureau of Reclamation, and other applicable terms and conditions contained in the Rule 14 Plan. Beneficial use of such water will occur within Southeastern's district boundaries.

VI. Conclusion

Applicants appreciate the opportunity to apply for participation in the HB 13-1248 pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up. We believe that the Catlin Pilot Project requested herein meets all of the requirements for, and fulfills the objectives of, the contemplated pilot projects. Applicants therefore request the CWCB consider selection of this Catlin Pilot Project Proposal pursuant to C.R.S. § 37-60-115(8) and the Criteria and Guidelines at the CWCB's September 11-12, 2014 meeting. Applicants would welcome the opportunity to make a presentation on the Catlin Pilot Project at that time. Selection at the September meeting would allow Applicants to submit their application in time for the CWCB's consideration at the January meeting, which would accommodate the successful implementation of the Catlin Pilot Project in 2015. Please let us know if you have any questions or would like additional information.

Sincerely,



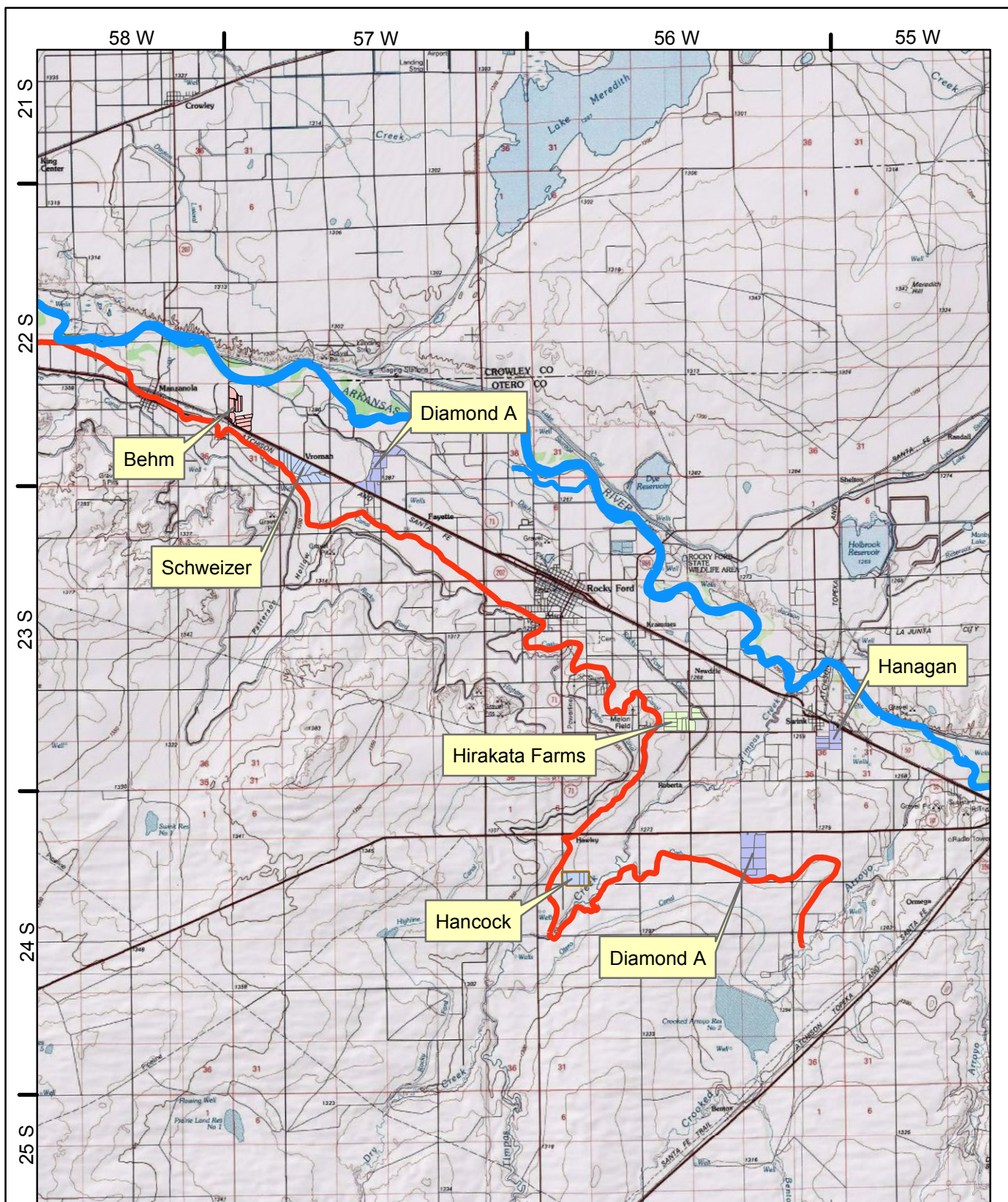
Peter D. Nichols
Leah K. Martinsson

cc: Lynden Gill, Chairman, Lower Ark
John Schweizer, President, Super Ditch
Jay Winner, General Manager, Lower Ark

Table 1
Participating Farms: Specific Lands and Parcels that will be Analyzed and Dried Up

Ownership	Lands and Parcels	Approximate Acreage based on 2003 Division 2 Data	Share Cert. Nos.⁵	# Shares Associated with Lands and Parcels
Diamond A, Inc	Portions of the W½ of Section 11, T24S, R56W of the 6th P.M., Otero County, Colorado	297	3604, 3603, 3314, 3329, 3395, 3543, 3542, 3541, 3540, 3539, 3538, 3537, 3411	267
Diamond A, Inc	Portions of the E½ of Section 33 and the W½ of Section 34, T22S, R57W, and the NE¼ of Section 4, T23S, R57W, all of the 6th P.M., Otero County, Colorado	176	Same as above	224
K2 Farms Inc. (Hirakata Farms)	Portions of the SW¼ of Section 27 and the S½ of Section 28, all in T23S, R56W of the 6 th P.M., Otero County, Colorado	152	3550	151
Ken Schweizer	Portions of the S½ of the NW¼ and the S½ of Section 32, T22S, R57W of the 6th P.M., Otero County, Colorado	193	2754	194
Eric Hanagan	NE¼ of Section 36, T23S, R56W of the 6 th P.M., Otero County, Colorado	108	3606, 3607, 3317	144
Willard Behm	W½ of Section 30, T22S, R57W of the 6 th P.M., Otero County, Colorado	126	3196	88
Lee Hancock	S½ SE¼ of Section 7, T24S, R56W of the 6 th P.M., Otero County, Colorado	76	3116	80
		1128		1148

⁵ Share certificate numbers listed may represent shares in excess of those being proposed for inclusion in the Catlin Pilot Project. The shares that have been used on the lands to be fallowed in the Catlin Pilot Project will be more specifically determined as a part of Applicants' engineering analysis to support its future pilot project application.




Legend

- Arkansas River
- Catlin Canal

0 1 2 3 4 5 Miles



Job No.: 816.2	Catlin Canal Pilot Project Proposal	Participating Farms Exhibit A	 MARTIN AND WOOD WATER CONSULTANTS, INC.	538 Commons Drive Golden, CO 80401 (303) 526-2600 www.martinandwood.com
Date: 14-Jul-2014				
Drawn: CML				
Checked: CRR				

HB13-1248 FOLLOWING-LEASING PILOT PROJECT CHECKLIST

STEP 2: APPLICATION

Step 1: Submittal of a proposed pilot project proposal to the Colorado Water Conservation Board (CWCB) for selection as one of three possible pilot projects within a specific river basin as allowed by HB13-1248 and the CWCB's Criteria and Guidelines for Following-Leasing Pilot Projects (C&G). The Step 1 checklist is available on the CWCB's website at www.cwcb.state.co.us;

Step 2: Submittal of a proposed pilot project application to the CWCB.

The checklist below represents items that are necessary for consideration of a pilot project as part of a complete application, in accordance with the CWCB's Criteria and Guidelines. Each box should be checked unless the checklist expressly provides for an alternative.

- ☐ A description of the proposed project, including items from Step 1 not addressed below,
- ☐ An analysis of the historical use, the historical consumptive use, and the historical return flows of the water rights to be used for temporary use using a water budget model,
 - ☐ The analysis of historical use, historical consumptive use, and historical return flows ("Analysis") uses the Excel or MatLab version of ISAM or the Lease-Following Tool being developed for the CWCB.
 - ☐ All Required Tables listed in Appendix A, Section A. of the C&G document are included,
 - ☐ All applicable tables listed in Appendix A., Section B. are included,
 - ☐ A table listing all assumptions, presumptive factors, and methodologies used in the analysis is included,
 - ☐ All assumptions, presumptive factors, and methodologies are consistent with Section II.G.1.b through e of the C&G document (Pages 10 and 11),
 - ☐ A comparison of historical values and projected operations
- ☐ A map showing all parcels that will be fallowed as part of the pilot project,
- ☐ Evidence that the requirements of in C&G Section II.K (Page 13), and as identified in 37-60-115(8)(d)(X), are satisfied.
 - ☐ The project operation meets local land use requirements,
 - ☐ The project operation will prevent erosion and blowing soils,
 - ☐ The project operation complies with local county noxious weed requirements.
- ☐ A description of the source of water to be used to replace all historical return flow obligations,
 - ☐ Evidence that the source will provide a firm yield, to replace all return flow obligations
- ☐ Verification that all parcels to be fallowed have been historically irrigated,
 - ☐ Include aerial photo from each decade of the study period or,
 - ☐ Other evidence that will be subject to verification by the Board
- ☐ Verification of written notice (See Section II.H of the C&G document (Page 11) ad 37-60-115(8)(e)(II)).

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August 11, 2014

Mr. Tom Browning, Deputy Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Subject: Comments concerning the proposal of a fallowing-leasing pilot project –
Lower Arkansas Valley Water Conservancy District and
Lower Arkansas Valley Super Ditch Company, Inc.

Dear Mr. Browning:

This letter provides comments on the proposal by the Lower Arkansas Valley Water Conservancy District and the Lower Arkansas Valley Super Ditch Company, Inc. (proponents) for a fallowing-leasing pilot project involving certain farms under the Catlin Canal. It is understood that if the proposal is approved by the CWCB, the proponents will submit an application for a 10-year fallowing-leasing pilot project that would operate beginning in April 2015. The application will include the details of the pilot project and the engineering evaluations needed to quantify yield and return flow replacement requirements and to establish terms and conditions for operation.

My clients are the Fort Lyon Canal Company, Holbrook Mutual Irrigating Company, and Water District 67 Irrigation Canals Association. These entities hold numerous direct flow and storage water rights on the Arkansas River downstream of the Catlin Canal. My comments follow:

1. The proponents submitted an application in December 2013 for a pilot project involving shareholders under the Rocky Ford Highline Canal but withdrew the application because they were unable to obtain the agreements needed to operate the pilot project. Meanwhile other interested parties, including my clients, spent significant time and effort to understand the application and to submit comments and concerns about operating the pilot project without injury to other water users. We urge you to thoroughly review the application and to make sure that all needed leases and agreements are in place and are enforceable before the application is circulated to Arkansas River water users for their review and comment.
2. The proposal indicates that the proponents intend to amend their pilot project during the 10-year operating period to include additional farms for fallowing-leasing. The Criteria and Guidelines require the proponents to identify all farms in the application that will be part of the fallowing-leasing project. I do not see a provision that would allow the proponents to switch to other farms that were not identified in the application during the course of the project.
3. The proposal also indicates that the proponents may amend their project during the 10-year operation period to include other exchanges or trades with other water users. The proponents should identify details in the application and include the necessary executed agreements and leases needed to operate the exchanges and trades. I do not see a

provision in the Criteria and Guidelines that allow the proponents to change their operation during the course of the 10-year pilot project.

4. The proposal indicates that other ditches and reservoirs may be used to step the exchanges upstream to Pueblo Reservoir. Those identified structures include the Holbrook Canal, Dye Reservoir, Holbrook Reservoir, Fort Lyon Storage Canal, Adobe Creek Reservoir, and Horse Creek Reservoir. To my knowledge, the proponents have not approached the Holbrook and the Fort Lyon companies about the use of their facilities. Both companies have bylaw provisions that must be followed before either company could grant a use agreement or lease of canal and storage space.

The purpose of the following-leasing pilot project is to demonstrate the effectiveness of such a program for supplying municipal water needs without permanent dry up of irrigated farms and without injury to other water users. My concern about the proposed project is that the effectiveness will be difficult to ascertain if the proponents amend or continually modify their project during the 10-year evaluation period.

Thank you for accepting our comments.

Sincerely yours,

HELTON & WILLIAMSEN, P.C.



Thomas A. Williamsen

TAW/mlc

cc:Fort Lyon Canal Company
Holbrook Mutual Irrigating Company
Water District 67 Irrigation Canals Association

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August 12, 2014

Colorado Water Conservation Board
c/o James Eklund, Director
c/o Tom Browning, Deputy Director
1313 Sherman Street, Room 721
Denver, CO 80203

Via E-mail:

To: tom.browning@state.co.us
Hard Copy to Follow

RE: The City of Aurora's comments to the Colorado Water Conservation Board regarding the Lower Arkansas Valley Water Conservancy District and the Lower Arkansas Valley Super Ditch Company, Inc.'s proposed Catlin Canal Lease-Following Pilot Project

Dear Mr. Eklund, and Mr. Browning,

Pursuant to C.R.S. § 37-60-115(8) and Section II.A. of the Colorado Water Conservation Board ("CWCB") *Criteria and Guidelines for Following-Leasing Pilot Projects* ("Criteria and Guidelines"), this letter is submitted on behalf of the City of Aurora, acting by and through its Utility Enterprise ("Aurora") with the purpose of commenting on Lower Arkansas Valley Water Conservancy District's ("Lower") and Lower Arkansas Valley Super Ditch Company, Inc.'s proposed Catlin Canal Lease-Following Pilot Project.

Aurora supports the commitment to develop and implement programs to advance various agricultural transfer methods that are alternatives to permanent agricultural dry-up, including lease-fallowing projects like Lower's proposed Catlin Canal Lease-Following Project.

The comments included herein are intended to facilitate and improve the project by ensuring that it complies with all legal requirements, that the plan is fully identified and complete, that the proposal accurately reflects the intended operations, and that the proposed

project will provide adequate information for the CWCB to meet its statutory requirements of determining whether such lease-fallowing projects are feasible.

City of Aurora and Lower Arkansas Valley Conservancy District Intergovernmental Agreement

On September 28, 2011, the City of Aurora and Lower Arkansas Valley Water Conservancy District entered into an Intergovernmental Agreement (“IGA”).

Pursuant to Section V.A. of that agreement, Aurora and Lower “agree to support the development of a Water Leasing Program . . . to facilitate the lease of agricultural water for other uses.”

In Section X of the IGA, Aurora and Lower “agree to negotiate in good faith the stipulated resolution of the following pending or future cases based on the sharing of all relevant information concerning the existence or absence of injury to the respective decreed water rights of each party.”

Aurora’s support of this pilot project, and the above-mentioned supportive agreements between Lower and Aurora notwithstanding, Aurora and Lower agreed in section XI.C. of the IGA, “the Parties do not waive their right to protect their own water rights and other interests by all lawful means.”

Proposed Catlin Canal Lease-Fallowing Pilot Project Should Only be Selected as to its Currently Identified Lands and Waters.

In order to avoid confusion, and to insure that the proposed Catlin Canal Lease-Fallowing Pilot Project operates successfully without harming any other water user, Aurora supports the selection of this proposed plan, as to the currently identified lands and waters to be included.

While this proposal identifies the 7 farms listed on Table 1 of the *Catlin Canal Lease-Fallowing Pilot Project Proposal*, it also states that “Applicants anticipate the potential inclusion of additional farms,” and that “Applicants anticipate that such additional lands would be included and utilized in the Catlin Pilot Project by amendment to the approved Catlin Pilot Project.” *Catlin Canal Lease-Fallowing Pilot Project Proposal*. at p. 4-5.

Neither the controlling statute nor the *Criteria and Guidelines* allow for later amendments to an approved lease-fallowing project. The statute governing such lease-fallowing pilot projects states the CWCB may only approve 10 projects statewide, and 3 projects within the Arkansas River Basin. See C.R.S. § 37-60-115(8)(a). A pilot project proposal must identify the “specific lands and parcels that will be analyzed and dried up.” See *Criteria and Guidelines*, II.F. Various sections of the statute require specific technical analysis of specifically identified lands. See e.g. C.R.S. § 37-60-115(8)(d) – (e). Therefore amendments are not permitted, or contemplated.

Because the proposed Catlin Canal Lease-Following Project cannot be approved in reliance upon future included lands, Aurora requests that the CWCB approve this proposed pilot project only as currently identified in Lower's Catlin Canal Lease-Following Pilot Project Proposal.

Proposed Catlin Canal Lease-Following Pilot Project Needs to Identify All Sources of Supply to be Used as Replacement of Return Flows

All pilot project proposals must identify "the source of water that will be used to meet return flow obligations," and "how and where any necessary replacement water will be delivered to the appropriate stream location(s)." *Criteria and Guidelines*, II.F. If this proposal is selected, Lower must then be able to show that its identified source of replacement water will provide a firm yield sufficient to make necessary replacements. *Criteria and Guidelines*, II.G.5.

Lower proposes to replace irrigation season return flows through several different potential sources of replacement water. Those potential sources include: (1) depletion credits derived from the fallowing of farms included into the pilot project at a future date; (2) exchange of excess stream depletion credits to Pueblo Reservoir, and/or other unidentified locations; (3) CWPDA's Rule 14 Plan "if and when" storage in Pueblo Reservoir; (4) Lower Arkansas Valley Water Conservancy District "if and when" storage in Pueblo Reservoir, including that water supplied by an annual 500 acre-feet lease from PBWW. *See Catlin Canal Lease-Following Pilot Project Proposal*, at p. 5-6.

The proposal, therefore, does not identify the "source" of replacement supply, but rather alternative sources of supply. Similarly, it does not identify "how and where" such replacement sources will be introduced, but rather various alternative plans for how such replacement water will be introduced.

Therefore, Aurora supports the CWCB's selection of this proposal only after Lower identifies and communicates a firm proposal regarding what source of replacement supply will be used, and how and where such replacement supply will be introduced.

The Contracts and Agreements Necessary to Permit the Proposed Operation of the Catlin Canal Lease-Following Pilot Project need to be Produced.

Any lease-fallowing proposal must submit "evidence to demonstrate that all necessary approvals and agreements between ditch companies, ditch members, municipalities, and other parties have been obtained" *Criteria and Guidelines*, Section II.F.c.

While the Applicant has submitted several preliminary agreements among necessary parties, the following contracts, agreements, leases, or other such necessary documents should also be supplied to the CWCB:

- Contract or agreements with Colorado Well Protective Development Association

- Contract between Pueblo Board of Water Works and Lower Arkansas Valley Water Conservancy District (including, but not limited to, the 5 year contract described in the proposal)
- The Lower Arkansas Valley Water Conservancy District Rule 10 Plan(s)
- The Colorado Well Protective Development Association Rule 14 plan

In addition, if this proposal is selected and permitted to file an application for approval, the CWCB should require the Applicants to secure – in a final form -- all contracts, agreements, leases, or any other documentation necessary to operate the Catlin Canal Lease-Following Pilot Project as proposed. Any such contract or agreement should identify and clearly define the obligations and responsibilities for each party to the contract, agreement, or lease. All such contracts and agreements should be submitted, in final form, with any application to the CWCB for approval of this proposal.

Statutory Language Limiting the Inclusion of Lease-Following Pilot Project Water in a Substitute Water Supply Plan

Lower states “It is anticipated that [the Town of] Fowler will use its leased water through depletion credits . . . that will be used through an SWSP” *Catlin Canal Lease-Following Pilot Project Proposal*, p.3. An SWSP, or substitute water supply plan, is a statutory temporary water replacement plan which may be authorized by the State Engineer’s Office pursuant to C.R.S. § 37-92-308.

However, C.R.S. 37-60-115(8)(d)(XI) broadly, and specifically, precludes including water from a lease-following pilot project in a substitute water supply plan. *See also Criteria and Guidelines*, Section I.D.2.k.

This is the second lease-following pilot project that has proposed to include lease-following pilot project water into a SWSP. *See also Fowler Lease-Following Pilot Project Proposal and Application*, p.5, December 17, 2013. No resolution on that issue was reached in the first application because it was withdrawn. *See Withdrawal Letter of Fowler Lease-Following Pilot Project Proposal and Application*, March 4, 2014.

While the CWCB does not have the ultimate authority in interpreting statutory language, it would be the appropriate first-step in this case for CWCB to resolve the ongoing issue of whether there are any circumstances in which the plain statutory language of C.R.S. 37-60-115(8)(d)(XI) can be ignored, and instead whether such lease-following pilot project water may be included in an SWSP.

Provide Greater Information Concerning the Proposed Exchanges and Deliveries of Water to be Included in the Operation of the Proposed Catlin Canal Lease-Following Pilot Project

The proposed Catlin Canal Lease-Following Pilot Project proposal discusses proposed exchanges in several locations. *See e.g. Catlin Canal Lease-Following Pilot Project Proposal*, p.5-7. However, the applicants do not identify any of the obstacles to these operations as required, instead merely claiming “that the exchange potential on the Arkansas River does pose a

hydrological challenge,” and “[t]herefore, this proposal has been thoughtfully designed to include various mechanisms to allow for operation in times of limited exchange potential such as the use of stepped exchanges to intermediate storage locations, use of recharge facilities, and trades of water.” *Catlin Canal Lease-Following Pilot Project Proposal*, p.6.

A pilot project proposal is required to identify “any administrative or hydrologic obstacles to exchanges or delivery of the replacement water.” *Criteria and Guidelines*, Section II.F. A pilot project proposal is also required to identify “any and all structures necessary for the operation of the pilot project.” Therefore, this proposal should be required to specifically identify:

- All senior water rights and senior exchanges operating within these stream reaches, accompanied by a plan for moving water through the described reaches in priority.
- All structures necessary to operate stepped exchanges, intermediate storage, use of recharge facilities, and trades of water.
- Contractual commitments allowing the use of the variously identified structures.
- Contracts and operational plans allowing contract exchange / trade with other entities

Therefore, this proposal should not be accepted until the Applicants identify the obstacles to operating the proposed exchanges, intermediate storage, use of recharge facilities, and trades of water, and additionally identify a plan to the CWCB showing that such operations are feasible.

In Order to Comply with the Intent and Purpose of the Lease-Following Pilot Project, the Applicant Should Establish a Plan for Identifying and Disclosing Information Necessary to Allow a Determination of Whether Lease-Following is a Feasible Alternative to Permanent Dry-Up of Agricultural Land.

The Legislative Declaration of House Bill 13-1248, which is the enabling act for Lease-Following Pilot Projects, declares “The state needs to evaluate whether fallowing-leasing is a practical alternative to permanent agricultural dry-up” and then determined the CWCB “is the appropriate agency to test the efficacy of implementing fallowing-leasing as an alternative to permanent agricultural dry-up.” See HB13-1248, ch. 210, sec. I, 2013 Colo. Sess. Laws 879.

Pursuant to C.R.S. § 37-60-115(8)(b), the purpose of the lease fallowing pilot program is to “[e]valuate the feasibility of delivering leased water to the temporary municipal users,” and to “[p]rovide sufficient data from which the Board, in consultation with the State Engineer, can evaluate the efficacy of using a streamlined approach,” and to “[d]emonstrate how to operate, administer, and account for the practice of fallowing irrigated agricultural land for leasing water for temporary municipal use” The *Criteria and Guidelines* also requires “evidence” that the proposed pilot project will support these same “eligibility requirements.” See *Criteria and Guidelines*, Section II.F.b.

These requirements on pilot project applicants -- to provide sufficient evidence by which the CWCB may judge whether lease-fallowing is a practical alternative to permanent agricultural dry-up -- are not merely academic. The *Criteria and Guidelines* specifically mandates that applicants provide ongoing reports concerning the feasibility of the projects. See *Criteria and*

Guidelines, Section II.N. Similarly, the CWCB is mandated pursuant to C.R.S. 37-60-115(8)(i) to annually report to the Water Resources Review Committee on the reported results of the pilot projects. Accordingly, the CWCB must have sufficient information from these pilot projects for it to “evaluate the feasibility” of lease fallowing, and “evaluate whether fallowing-leasing is a practical alternative to permanent agricultural dry-up.”

Applicants have not provided any plan, or information concerning how it will report to the CWCB, or how the CWCB will obtain suitable information such that it is able to make determinations regarding the feasibility of the proposed lease-fallowing pilot projects. Therefore, Aurora suggests that the CWCB select this lease-fallowing pilot project only on the condition that applicants provide, at a minimum, the following information allowing the CWCB to evaluate the feasibility of lease-fallowing:

- Annual Report submitted by Applicants which (A) discloses all information generated during the operation of the pilot project, (B) analyzes whether the pilot project is complying with the statutory requirements of C.R.S. § 37-60-115(8), and the CWCB’s *Criteria and Guidelines*, and (C) identifies all obstacles to the operation of a lease-fallowing pilot project, and (if possible) explains how Applicants intend to resolve those issues;
- Accounting of all payments of money, or in-kind transfers related to the proposed pilot project,
- Submission of all contracts or agreements related to pilot project,

Conclusion

Aurora supports the commitment to develop and implement programs to advance various agricultural transfer methods that are alternatives to permanent agricultural dry-up, including lease-fallowing projects similar to the proposed Catlin Canal Lease-Fallowing Project.

The comments included herein are intended to facilitate and improve the project by insuring that it complies with all legal requirements, that the plan is fully identified and complete, and that the proposed project will provide adequate information for the CWCB to meet its statutory requirements of determining whether such lease-fallowing projects are feasible.

Aurora supports the selection of this pilot project upon further action by Lower Arkansas Valley Water Conservancy District and Lower Arkansas Valley Super Ditch Company, Inc. to resolve those issues described in this comment letter.

Please direct future correspondence on this matter, including final determinations by the State Engineer and the Colorado Water Conservation Board, by e-mail to the undersigned counsel listed below.

Respectfully Submitted,

DUNCAN OSTRANDER & DINGESS, P.C.

By:



John M. Dingess

jdiness@dodpc.com

By:

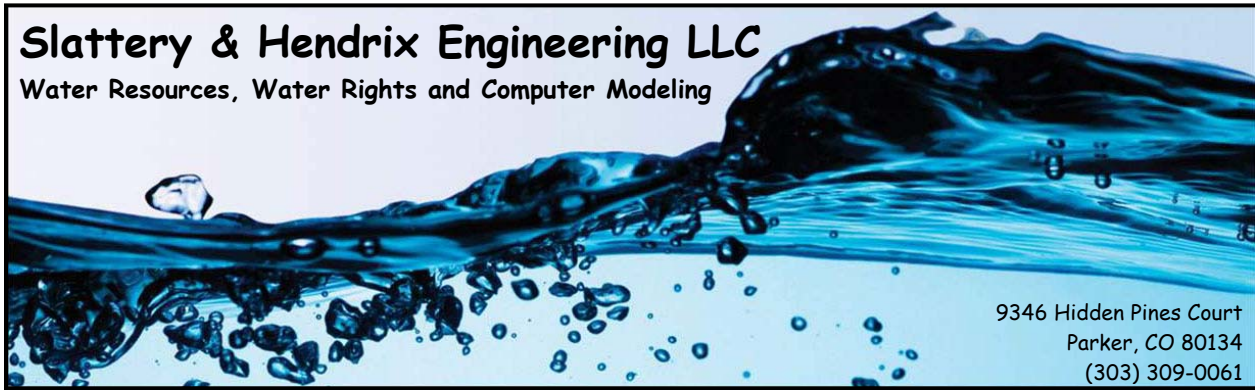


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To: Richard Mehren – Moses, Wittemyer, Harrison & Woodruff, P.C.
Jennifer DiLalla – Moses, Wittemyer, Harrison & Woodruff, P.C.

From: Randy L. Hendrix

Date: August 13, 2014

Subject: Comments on HB 13-1248 Catlin Pilot Project Proposal

On behalf of the Lower Arkansas Water Management Association (LAWMA), this memorandum provides our comments on the HB 13-1248 Catlin Pilot Project Proposal (Proposal) for Colorado Water Conservation Board (CWCB) Selection submitted by Lower Arkansas Valley Water Conservancy District (Lower Ark) and the Lower Arkansas Valley Super Ditch Company (Super Ditch) on July 14, 2014. Lower Ark and Super Ditch (Applicants) are requesting an approval of a pilot project to use consumptive use credits from shares in the Catlin Canal Company to provide water for temporary municipal uses by the Town of Fowler (Fowler), City of Fountain (Fountain), and the Security Water District (Security), which are collectively referred to in the Proposal as “Municipal Participants”. This Memorandum describes issues of concern to LAWMA that the CWCB should consider in its review of the Proposal.

In preparing this memorandum, we reviewed the following documents:

- HB 13-1248 Catlin Pilot Project Proposal for CWCB Selection, dated July 14, 2014 (Proposal);
- HB 13-1248 Criteria and Guidelines for Following-Leasing Pilot Projects, approved by the Colorado Water Conservation Board (CWCB) on November 19, 2013 (CWCB Guidelines);
- Draft – HB 13-1248 Pilot Projects Submittal Checklist developed by Kevin Rein and sent to Ivan Walter for circulation to and feedback from the parties’ experts after the June 5, 2014 informational meeting about the Fowler Pilot Project Proposal submitted and later withdrawn by the Applicants in 2013 (Checklist);
- Diversion records, streamflow records, geographic information system (GIS) data and other technical reports that relate to typical reviews of engineering analyses.

This memorandum provides comments on the Applicants’ Proposal in two sections: background and items to consider during the selection process of this pilot project.

Background

The Applicants are requesting a lease-fallowing pilot project to demonstrate the viability of the lease-fallowing concept on a small scale. Under the Catlin Pilot Project (CPP), Applicants will lease to Fowler 250 acre-feet, Fountain 125 acre-feet, and Security 125 acre-feet of historical consumptive use (HCU) credits annually for a total of 500 acre-feet derived from Catlin Canal Company (Catlin) shares owned by six participating farmers who will rotationally fallow their land on seven farms under the Canal. Fowler would then be able to increase pumping of its wells, with the lagged depletions from that increased pumping being augmented by the leased HCU. Fountain and Security will integrate the leased HCU exchanged into Pueblo Reservoir into their overall municipal supplies. The six participating farmers are Diamond A, Inc. (owner of two separate farms); K2 Farms Inc.; Ken Schweizer; Eric Hanagan; William Behm; and Lee Hancock (collectively referred to in the Proposal as the “Participating Farmers”).

The following table shows, for each subject farm as mapped by the Applicants, the Super Ditch ID number, Ownership, number of shares of Catlin stock (Subject Shares) historically used on the farm, and approximate acreage. The table also shows our comments on the information that Applicants have provided for several of the parcels.

Super Ditch ID No.	Ownership	Number of Catlin Shares	Amount of Mapped Irrigated Acres	Comments
1	Diamond A, Inc.	224	175.2	
2	K2 Farms Inc.	151	151.5	
5	Ken Schweizer	194	192.1	
6	Eric Hanagan	144	107.8	
8	William Behm	88	173.5	Acreage mapped exceeds amount listed in Table 1 of the Proposal
9	Lee Hancock	80	75.7	
10	Diamond A, Inc.	267	296.7	20.3 acres are above the Catlin Canal.

We obtained the mapped irrigated acreage totals from the GIS coverage for 2003 developed for input to the Colorado Decision Support System (CDSS) by the CWCB and the Division of Water Resources (DWR).

Fowler currently has 11 wells identified in Colorado Water Protection and Development Association’s (CWPDA) Rule 14 plan. One well has two separate flow meters, which is why the Applicants have identified 12 Fowler Municipal Wells in Table 3 of the Proposal. The Proposal requests that approximately 250 acre-feet of HCU to be derived from the Subject Shares be approved for use in CWPDA’s 2015 Rule 14 plan to provide additional pumping to the 11 Fowler wells. Applicants indicate in the Proposal that Fowler seeks to lease the HCU credits to allow for relaxation of its watering restrictions. Neither CWPDA nor Fowler is a co-applicant in the Proposal.

Fountain would utilize approximately 125 acre-feet of HCU that would be integrated into its overall water supply. The HCU water would be exchanged up the Arkansas River into Pueblo Reservoir and stored in Fountain's "if and when" account. The water would then be delivered to Fountain via the Fountain Valley Conduit or the Southern Delivery System when the latter becomes operational. Fountain is not a co-applicant in the Proposal.

Security would also utilize approximately 125 acre-feet of HCU that would be integrated into its overall water supply. The HCU water would again be exchanged up the Arkansas River into Pueblo Reservoir and stored in Security's "if and when" account. The water would then be delivered to Security via the Fountain Valley Conduit or the Southern Delivery System when the latter becomes operational. Security is not a co-applicant in the Proposal.

Under the proposed CPP, the Participating Farmers' farms would be temporarily dried-up, or fallowed, on an as-yet undisclosed schedule. When each farm or portion thereof is fallowed, the Subject Shares will be delivered through the augmentation stations on the Catlin Canal, placed into recharge ponds, or stored in unidentified upstream storage locations. The HCU water not required for replacement of both tailwater and lagged groundwater return flow obligations (RFO) would be available for exchange upstream on the Arkansas River to the point of stream depletion for the Fowler additional well pumping, and to Pueblo Reservoir for distribution to Fountain and Security. The Applicants have generally identified the stream reaches on the Arkansas River that would be subject to the exchange of the HCU credits. The Applicants also recognize that the exchange potential on the Arkansas River in the identified stream reaches poses a challenge under certain hydrologic conditions. Their Proposal refers to mechanisms such as a series of stepped exchanges to intermediate storage locations, use of recharge facilities, and trades of water to allow for operation of the CPP during times of limited exchange potential. Table 3 of the Proposal lists structures necessary and desirable for operation of the CPP. The Applicants have not yet provided evidence of their agreements with owners of the "desirable" structures as outlined in the Proposal.

Items of Consideration

The following are issues of concern to LAWMA that the CWCB should consider during its selection process review of Applicants' Proposal for the CPP:

1. Review of the Proposal Request

The Applicants submitted the Proposal to the CWCB for consideration on July 14, 2014. The Proposal asks that the CWCB consider selection of the CPP at its September 11-12, 2014 meeting. However, the CWCB Guidelines provide that the CWCB will consider any proposed pilot project for selection at its next regularly scheduled meeting that is more than sixty days after receiving the proposal. Sixty days after July 14, 2014, is September 12, 2014; accordingly, the CWCB should consider the Proposal at its November 19-20, 2014 meeting, which is the next regularly scheduled meeting after

September 12. This timeframe will allow Applicants sufficient time to submit additional information required by the CWCB Guidelines for the CWCB's consideration of the Proposal; that additional information is summarized below.

2. Applicants' general description of the proposed pilot project

Following the application process for the Applicants' 2013 proposal for the Fowler Pilot Project—including the subsequent withdrawal of the application after the parties had devoted extensive time to reviewing and providing comments on the application, and requesting additional information required by the CWCB Guidelines—the CWCB hosted a “CWCB & DWR Workshop” entitled “Following-Leasing Program – Fowler Pilot Project – Lessons Learned.” After that workshop Kevin Rein circulated a draft “Submittal Checklist” to summarize the discussion in the workshop with respect to items required to be included in all future following-leasing proposals and applications.

Based on the draft Checklist and the CWCB Guidelines, LAWMA is concerned that the Applicants have not fully provided the following information required for the Proposal's consideration by the CWCB:

- a. Evidence to demonstrate that all necessary approvals and agreements have been obtained or reasonably will be obtained for Applicants' use of the “desirable” structures if the stepped exchanges are needed to deliver the HCU credits to the Municipal Partners.
- b. Specification of all lands and parcels that will be dried up and the ownership of them. While the Applicants did identify seven separate farms, and the owners, acreage, and shares for each farm, there are several references in the Proposal to additional farms to be added to the pilot project at a later time through an amendment process. Any proposal to amend the CPP by the later addition of lands and parcels to be fallowed is explicitly contrary to the CWCB Guidelines and the Checklist. Therefore, any selection of the CPP Proposal for an application should be conditioned upon the Applicants' specifically identifying all land and parcels to be dried up and the ownership of them, with no request for the possibility of amendment outside of a new proposal and application for a pilot project.
- c. Identification of specific sources of water to be used to meet the RFO. The Proposal indicates that the RFO would be met with depletion credits, additional replacement sources from supplies in Lower Ark's “if and when” account, and water from CWPDA's Rule 14 plan (for Fowler's RFO). Lower Ark leases 2,500 acre-feet of agricultural storage and 500 acre-feet of municipal storage in Pueblo Reservoir in the Lower Ark “if and when” accounts. The Applicants also identified a 5-year annual lease of 500 acre-

feet of water from Pueblo Board of Water Works with an effective date of April 1, 2012, which would leave only 2 years remaining during a proposed 10-year pilot project. The Applicants have not indicated that they will seek to extend or renew the lease.

The Applicants also stated that HCU credits will be exchanged to upstream storage for later release to meet RFOs. The Applicants did not identify any of the structures other than the recharge sites which would be used to recharge the HCU credits to meet the RFOs. No structures other than Pueblo Reservoir were identified for release of stored HCU credits to meet RFOs.

The Applicants proposed meeting RFOs with “other sources of water that may come available to Lower Ark either through trades, lease or ownership.” LAWMA is not opposed to trades or leases during a plan year, but LAWMA disagrees that Applicants may assume that they will obtain those trades and leases in developing an application for the CPP. If Applicants have a specific plan and intent to purchase or lease other water rights that would be used in the CPP, then a general description of the proposed purchase or lease should have been included in the Proposal.

Two recharge sites were identified for recharge of HCU credits to meet RFOs, but the Applicants stated that additional recharge sites would be added through an amendment process. As with the specific lands and parcels to be dried up, the CWCB Guidelines and the Checklist require that Applicants identify in the Proposal any and all structures necessary for operation of the pilot project and ownership of them. Therefore, any selection of the CPP Proposal for an application should be conditioned upon the Applicants’ specifically identifying all recharge sites to be used for delivery of return flows or any other purpose, with no request for the possibility of amendment outside of a new proposal and application for a pilot project.

- d. How and where the necessary water will be delivered to the appropriate stream locations. The Applicants generally described the reaches of the contemplated exchanges but did not describe which reaches on the river would receive the HCU water or where any substitute water supplies will be delivered (except for water within Pueblo Reservoir in the exchanges).
- e. Evidence to demonstrate that all necessary approvals and agreements between ditch companies, ditch members, municipalities and other parties have been obtained. Applicants provided letters of interest from two of Municipal Participants, Fountain and Security, but did not provide evidence

of any agreement with Fowler in the Proposal. There has been ample time to get an agreement in place with Fowler, because the Applicants were working with Fowler in the previous pilot project application (Fowler Pilot Project) that was withdrawn on March 4, 2014. The applicants also did not provide any evidence of agreements with the owners of the “desirable” structures or indicated that they will be getting an agreement with those owners prior to submittal of an application for the CCP.

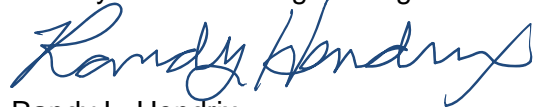
Applicants should be required to submit all information required by the Guidelines before CWCB considers the Proposal, and the parties should be allowed an additional thirty days to review and provide any comments on that information before the CWCB’s consideration.

Conclusion

The above are our comments on the Proposal for the Catlin Pilot Project. If the Applicants can address the above deficiencies and interested parties are allowed a chance to review and comment on the required information before the November 2014 CWCB meeting, then the Applicants will have met the conditions of the CWCB for consideration of the CPP.

If you have any questions relating to the comments I have identified in this memorandum, please call me.

Slattery & Hendrix Engineering LLC



Randy L. Hendrix

cc: Donald F. Higbee

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

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August 13, 2014

BY EMAIL AND US MAIL

James Eklund, Director
Tom Browning, Deputy Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Re: LAWMA's comments on proposed Catlin Pilot Project

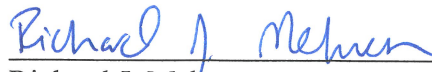
Dear Mr. Eklund and Mr. Browning:

In accordance with Section 37-60-115(8)(a), C.R.S., and Section II.A of the Criteria and Guidelines for Fallowing-Leasing Pilot Projects adopted by the Colorado Water Conservation Board on November 19, 2013, Lower Arkansas Water Management Association ("LAWMA") submits the attached comments on the HB 13-1248 Catlin Pilot Project Proposal ("Proposal") submitted by Lower Arkansas Valley Water Conservancy District and Lower Arkansas Valley Super Ditch Company, Inc., on July 14, 2014.

Thank you for your consideration of LAWMA's comments and concerns, and please contact us with any questions about the attached report from Slattery & Hendrix Engineering LLC.

Sincerely,

MOSES, WITTEMYER, HARRISON AND
WOODRUFF, P.C.



Richard J. Mehren

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RJM:JMD/jab

Cc: Donald F. Higbee
Randy L. Hendrix, P.E.
Peter D. Nichols, Esq.

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

HB 13-1248 CATLIN PILOT PROJECT PROPOSAL

**COMMENTS BY THE SOUTHEASTERN COLORADO WATER CONSERVANCY
DISTRICT**

The Southeastern Colorado Water Conservancy District (“Southeastern”) submits the following comments consistent with the Criteria and Guidelines for Fallowing-Leasing Pilot Projects adopted by the Colorado Water Conservation Board (CWCB) and Colorado Division of Water Resources (DWR) on November 19, 2013, regarding the HB13-1248 Catlin Pilot Project Proposal (CPP).

1. Southeastern is a statutory water conservancy district (*see* C.R.S. §§ 37-45-101, *et seq.*), which includes within its boundaries most of the municipalities and irrigated land in the Arkansas River Valley in Colorado. Southeastern administers and repays reimbursable costs for the Fryingpan-Arkansas Project, a \$550 million multi-purpose reclamation project authorized by Congress and built by the U.S. Bureau of Reclamation, and holds all water rights for the Project, except certain rights in Ruedi Reservoir. The Project diverts water underneath the Continental Divide, from the Fryingpan and Roaring Fork River drainages, which are tributaries to the Colorado River, into the Arkansas River drainage, where Project water is stored in reservoirs. Southeastern provides Project water and return flows to supplement the decreed water rights of water users throughout the District, which extends across parts of nine counties. Southeastern repays a large part of the Project’s construction costs (estimated at \$127 million over a minimum 40 year period), as well as annual operation and maintenance costs, in accordance with its repayment contract with the United States. Payments are made primarily from property tax revenues available to Southeastern, supplemented by revenue from Project water sales.

2. Southeastern is interested in this matter as an owner of water rights within the Arkansas and Colorado River Basins and as the repayment entity for the Fryingpan-Arkansas Project. In addition, as administrator of the Fryingpan-Arkansas Project water rights, Southeastern is party to numerous agreements with the Bureau of Reclamation, the Colorado Department of Natural Resources, local governments, quasi-municipal entities and private entities. These agreements relate to operation and use of the Fryingpan-Arkansas Project facilities, distribution and sale of Project water and voluntary maintenance of Arkansas River stream flows for recreational purposes. While generally supportive of the CPP, Southeastern is concerned about the potential impact of the CPP on its operations and existing agreements.

3. Southeastern requests that any Fallowing-Leasing Pilot Project approval allows use of Fryingpan-Arkansas Project facilities in the Fallowing-Leasing Pilot Project, the approval include the following standard terms and conditions regarding such use:

- A. Pueblo Reservoir, Twin Lakes Reservoir and Fountain Valley Pipeline (or Conduit) are owned and operated as part of the Fryingpan-Arkansas Project by the United States Department of Interior, Bureau of Reclamation. [*Applicant incorrectly identifies the owner of the Fountain Valley Conduit as the Fountain Valley Authority.*] Any Fallowing-Leasing Pilot Project approval will not give the Lower Arkansas Valley Water Conservancy District (Lower Ark) or Lower Arkansas Valley Super Ditch Company, Inc. (Super Ditch) any rights to use of Fryingpan-Arkansas Project structures, including Pueblo Reservoir, but will not alter any existing rights Lower Ark or Super Ditch may have. Any use of the Fryingpan-Arkansas Project facilities by Lower Ark or the Super Ditch, for storage, exchange, release or otherwise, will occur only with the written permission of the owner of said reservoir, and will be made consistent with such policies, procedures, contracts, charges and terms as may be lawfully determined by the U.S. Bureau of Reclamation or its successors in interest, in their good faith discretion.
- B. Any Fallowing-Leasing Pilot Project approval in this matter has no effect on the authority of the United States to regulate and/or deny use of federal facilities. Lower Ark and Super Ditch recognizes that the consideration of and action on requests for any necessary federal contracts and authorizations shall be carried out pursuant to all pertinent statutes, regulations and policies applicable to the occupancy and use of Bureau of Reclamation facilities, including, but not limited to Fryingpan-Arkansas Project authorization legislation, the National Environmental Policy Act, and the Endangered Species Act.
- C. Applicants shall store or transport water in Fryingpan-Arkansas Project structures only so long as they have a contract with the owners of that structure(s), and such storage and use is within the effective time period of such contract. This Fallowing-Leasing Pilot Project approval does not give Applicants any rights to ownership or use of any Fryingpan-Arkansas Project structure, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water, and does not alter any existing rights (including any right to renew existing contracts) Applicants may otherwise have.
- D. Applicants shall not operate the CPP in a manner that would interfere with the lawful operation of the Fryingpan-Arkansas Project.

4. Southeastern notes that the CPP intends to use Winter Water from Catlin Canal Company shares for its changed uses. This change of Winter Water poses three potential problems.
 - A. The Winter Water storage account in Pueblo Reservoir may only store water to be used for irrigation purposes. Because the CPP seeks to use Catlin Canal ditch shares and associated winter water from irrigation uses to other uses, the decree must acknowledge that any Winter Water used for non-irrigation purposes must be stored in an excess capacity account, and not in the Winter Water storage account.
 - B. When Winter Water that is historically associated with agricultural ditch shares is changed to non-irrigation uses, these shares remain subject to the same operating and accounting procedures as the irrigation water stored in that ditch's Winter Water storage account.
 - C. When changing water rights on the Arkansas River, there is a risk that the WWSP can be injured if return flows are not appropriately replaced. To help alleviate this risk, and to make these return flow obligations, entities may book over non-Project water stored in Pueblo Reservoir to the WWSP account in Pueblo Reservoir, as long as that methodology is specified in the decree.
5. Several WWSP participants have changed Winter Water from irrigation uses to non-irrigation uses. To ensure that the WWSP is protected, and all participants are treated equally, Southeastern has developed standard language designed to protect the WWSP from such changes. To that end, Southeastern requests the approval include the following standard terms and conditions regarding such use:
 - A. **Winter Storage Water:** The portion of the water associated with shares used for municipal purposes derived from water stored pursuant to the decree dated November 10, 1990 in Case No. 84CW179 ("Winter Storage Water") shall be stored in an excess capacity storage account in Pueblo Reservoir. Applicants shall obtain space in an excess capacity storage account to allow storage of its Winter Storage Water, and such water shall be available for municipal use or for the replacement of return flows. If no excess capacity account is available in a given year, Applicant will not take delivery of its Winter Storage Water associated with the municipal shares during that year. All of Applicant's Winter Storage Water shall be delivered through the Catlin Canal during the period of March 16 through November 14 at the same time as deliveries of Winter Storage Water are made to other Catlin Canal shareholders. If the Winter Storage Program described in the decree in Case No. 84CW179 terminates, the return flows owed on the CPP lease shall continue to be calculated as set forth herein.
 - B. **Delivery of Winter Stored Water:** Applicant's lease of shares from the Catlin Canal entitle it to a pro rata share of the water made available to the Catlin Canal that shall be accounted for as released to Lower Ark's or Super

Ditch's account in Pueblo Reservoir. This Winter Water will be available for release at any time during the year subject to the operating rules of the Winter Water Storage Program and may be carried over until May 1 of the water year (November 1 through October 31) following the water year in which the Winter Water is stored. Any Winter Water unused by that date will be released from Pueblo Reservoir to the system as decreed in Case No. 84CW179. Delivery of that Winter Water is also subject to the rules and regulations of the Catlin Canal regarding orders and assessments for such deliveries.

- C. **Winter Water Return Flows:** To the extent the CPP stores the net depletion amount of the Subject Water Rights in Pueblo Reservoir, such water may be booked over to replace winter return flow on a monthly or weekly basis, or as otherwise required by the Division Engineer, to participants in the Winter Water Storage Program decreed in Case No. 84CW179, Water Division No. 2 as necessary to prevent injury to the water rights included in that Program.
6. It is unclear whether Lower Ark's existing annual excess capacity contract (sometimes referred to as an "if-and-when") permits the use contemplated in the CPP. In any event, the existing contract will expire before the CPP begins and will require a new annual excess capacity contract, which should address the CPP uses. It is also unclear to what extent other participants' excess capacity contracts may be used (the application incorrectly states that Catlin Canal Co. has entered into an excess capacity contract). In addition to Lower Ark's annual excess capacity contract from Reclamation, CPP will likely need a conveyance contract for use of the Fountain Valley Pipeline. The new use of the Fountain Valley Pipeline and new uses of the excess capacity may require supplemental National Environmental Policy Act (NEPA) analysis.
 7. Southeastern entered into an Intergovernmental Agreement (IGA) among the City of Pueblo, the City of Aurora, the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado ("IGA") executed by the parties on various dates in May 2004. Exhibit 1 to the IGA outlines the "Arkansas River Flow Management Program" that contemplates certain river operations by the parties. Lower Ark has a 2011 MOA with Southeastern that obligates Lower Ark to comply with the requirements of the Arkansas River Flow Management Program to the same extent that Southeastern is obligated to comply in the event that a long-term excess capacity contract is entered into with Reclamation and Lower Ark enters into a sub-contract with Southeastern for use of the excess capacity space. Approval of the CPP should recognize that this may be a limitation on the CPP's ability to exchange water to Pueblo Reservoir.
 8. Southeastern reserves the right to raise considerations raised by other parties in their comments but not repeated here.
 9. Additional grounds for consideration may be identified as Southeastern learns more about the CPP proposal.

Respectfully submitted this 14th day of August, 2014.

Southeastern Colorado Water
Conservancy District

By: _____/s/_____
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White & Jankowski

Lawyers

RECEIVED

AUG 13 2014

Colorado Water
Conservation Board

August 13, 2014

Via hand delivery and email to james.eklund@state.co.us; tom.browning@state.co.us

James Eklund, Director
Tom Browning, Deputy Director
Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado 80203

Re: Tri-State's Comments re Catlin Pilot Project Proposal

Dear Mr. Eklund and Mr. Browning:

Thank you for the opportunity to provide comments regarding the July 14, 2014 proposal ("Proposal") filed by the Lower Arkansas Water Conservancy District and Lower Arkansas Valley Super Ditch Company, Inc. (collectively, "Applicants") for a fallowing-leasing project involving the Catlin Canal ("Catlin Pilot Project"). I am writing on behalf of Tri-State Generation and Transmission Association, Inc. ("Tri-State") to submit the following comments on the Proposal for consideration by the Colorado Water Conservation Board ("CWCB") pursuant to section II.A of the CWCB's Criteria and Guidelines for Fallowing-Leasing Pilot Projects dated November 19, 2013 ("Criteria").

For the Catlin Pilot Project, Applicants propose to rotationally fallow seven farms owned by six shareholders in the Catlin Canal ("Farms").¹ The consumable amount of water historically used to irrigate the Farms will then be leased by the Town of Fowler (250 acre feet), the City of Fountain (125 acre feet) and Security Water and Sanitation District (125 acre feet). Fowler intends to use its leased water to augment well depletions caused by increased pumping of its municipal wells. Fowler intends to file a substitute water supply plan ("SWSP") to allow for increased pumping, or to dedicate its leased water to a Rule 14 Plan² operated by Colorado Well Protective and Development Association ("CWPDA"). For Fountain and Security, Applicants plan to attempt to exchange the consumable Catlin water up to Pueblo Reservoir so that those municipalities can take delivery via the Fountain Valley Conduit or the Southern Delivery System.

¹ Several of the Farms also appear to be included in the pending water court change Case No. 2012CW94 (Div. 2). Tri-State does not object to inclusion of the same farms in the Catlin Pilot Project.

² A plan that Applicants hope will be approved by the Division Engineer under Rule 14 of the Arkansas River Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin.

Tri-State owns water rights that divert from the Arkansas River downstream or in the vicinity of the proposed Pilot Project, including shares in the Amity Mutual Irrigation Company, Fort Lyon Canal Company, and Buffalo Canal Company; other well and surface diversion water rights; conditional exchange, groundwater, and storage water rights decreed in Case No. 2007CW74; and shares in the Lower Arkansas Water Management Association. Tri-State is participating in the Pilot Project process to ensure that its water rights are protected from injury and to assist the CWCB and Applicants in demonstrating the viability of non-injurious alternative methods to transfer water rights from agricultural to municipal uses.

Tri-State supports selection of the Proposal so long as critical terms and conditions presented in these comments are included as part of the CWCB's selection. As you are aware, Applicants previously proposed a pilot project for the Town of Fowler in a combined selection and approval request to the CWCB, but withdrew the application after the public comment period because leasing farmers decided not to participate. A 2012 SWSP request by Applicants using shares in the Catlin Canal Company never operated because Applicants' proposed recharge sites for return flow replacement proved infeasible.

Tri-State's proposed terms and conditions in this letter will increase the likelihood of success of the Catlin Pilot Project by preventing a recurrence of the issues that plagued Applicants' previous projects. First, Tri-State requests that Applicants present signed agreements that will be required for project operations as part of their forthcoming application to the CWCB. Second, Tri-State requests that Applicants present a firm plan to replace return flows as part of their forthcoming application. Third, Tri-State requests that the Pilot Project be limited to the farms and lessees identified in the Proposal.

Tri-State's requested terms and conditions and the reasons for seeking their inclusion are described in more detail in Part I of this letter. While Tri-State supports the CWCB's selection of the Proposal with proper terms and conditions, it also must reserve its legal rights in the event Tri-State determines that the terms and conditions in this letter are not imposed in the CWCB's selection. Part II of this letter summarizes certain legal and injury issues that Tri-State may pursue if necessary terms and conditions are not imposed on the CWCB's selection of Applicants' Proposal.

I. TRI-STATE'S REQUESTED TERMS AND CONDITIONS FOR CWCB'S CATLIN PILOT PROJECT SELECTION.

Based on the information provided by Applicants, the following terms and conditions should be included as part of the CWCB's selection of the Catlin Pilot Project. The terms and conditions should be included as requirements for the Pilot Project Application to the CWCB.

A. Obtaining necessary agreements for Catlin Pilot Project operation.

The Criteria require that at the selection stage, Applicants must either present necessary agreements and approvals or demonstrate that they can be reasonably obtained. Criteria, § II.F.c. Applicants have attempted to do so in the Proposal and they claim the agreements and approvals

that they have identified are obtainable before operation of their project. As a condition of selection, CWCB should require the Applicants to complete the necessary agreements and obtain the necessary approvals and include them with their application.

The Criteria provide that an application must include evidence of a “firm yield of water to replace all return flow obligations.” Criteria, § II.G.5 (p. 9). Applicants’ return flow sources described in the Proposal all require agreements with third parties (e.g. agreements with Catlin farmers for replacement of irrigation season return flows, agreements related to the use of recharge pits and Pueblo Reservoir). Therefore, Applicants will need to have signed contracts in order to demonstrate a firm yield to replace return flows. In addition, the Criteria provide the CWCB with discretion to require “additional information” from the Applicants in their forthcoming application. *Id.* The Board should exercise this discretion to require applicants to submit all necessary agreements for successful operation of the project, including agreements that may not be related to firm return flow replacement supplies (e.g. leases with municipal users of consumptive use water, and approval by relevant ditch companies).

The existence of binding commitments from third parties at the application stage will increase the likelihood of a successful pilot project by reducing the risk that a third party withdraws its approval and prevents the project from operating. There was a discussion regarding this issue at the CWCB’s “post mortem” meeting regarding the Fowler Pilot Project on June 5, 2014. This requirement will also allow Applicants to focus on operation of the project if it is approved and will avoid the need to re-design or withdraw the project based on a third party’s lack of approval or agreement.

B. Identification of firm supply for return flow replacement obligations.

Maintenance of historical return flows is a critical element of a successful pilot project. Other water rights owners, including Tri-State, depend on historical return flows to make up a portion of their supply. Therefore, maintaining the historical return flow pattern while rotationally fallowing lands is a critical step in preventing injury to other water rights.

The CWCB Criteria require Applicants to identify, at the selection stage, “the source of water that will be used to meet return flow obligations” and “how and where any necessary replacement water will be delivered to the appropriate stream locations.” Criteria, § II.F.a.iii–iv. However, at the application stage, the Applicants must include a “description of the source of water to be used to replace all historical return flow obligations, with evidence that the source will provide a firm yield of water...” *Id.* § II.G.5 (emphasis added). Five of the seven Farms included in the Proposal were also included in the SWSP application filed by Applicants on February 27, 2012. Based on Applicants’ previous engineering, the delayed return flow obligations from some of these farms extend out 17 years, which exceeds the ten-year period of the pilot project. However, Applicants have not yet identified any firm sources of water to meet the return flow replacement obligations associated with the Farms. Instead, they claim:

- The use of 500 acre feet of water that Lower Arkansas Water Conservancy District leases from the Pueblo Board of Water Works. Proposal at 6. However,

this lease expires in 2017, well short of the 10 years that the Catlin Pilot Project is expected to operate and well short of the 17 year return flow obligation period after the last year of operation.

- The use of 91.34 shares in Twin Lakes Reservoir owned by the Lower Arkansas Water Conservancy District. *Id.* at 6. However, this source is prohibited by C.R.S. § 37-60-115(8)(c)(III), which requires that CWCB “shall not select a pilot project that involves...the transfer or facilitation of the transfer across the continental divide by direct diversion, exchange, or otherwise.”
- The use of recharge credits from two recharge sites on the Schweizer and Hanagan farms. Proposal at 6. However, the contracts for use of the two recharge sites expire in 2017, and the Catlin Pilot Project is expected to operate for 10 years. *Id.* at 2, 4. Moreover, as stated above, the return flow obligation period is expected to extend 17 years from the last year of operation.
 - Also, Applicants have previously indicated shallow ground water conditions exist under much of the Catlin Canal, which will prevent the accretion of recharge credits back to the Arkansas River. It is possible that this will prevent the recharge sites from producing enough recharge water to replace return flow obligations, similar to one of the recharge sites Applicants proposed in 2012 that was subsequently discovered to have shallow groundwater that prohibited recharge uses.
 - Recharge credits that accrue above the headgate of the Catlin Canal that are intended to replace return flow obligations that accrue below the Catlin Canal headgate may be intercepted by this structure, thereby shorting the Arkansas River below the Catlin Canal headgate.
 - Applicants also propose the use of other recharge facilities to be added in the future. *Id.* at 6. However, no information has been provided regarding these additional facilities, including contracts for their use. Without this information, it is impossible to determine whether and where the recharge credits will be introduced into the Arkansas River and how they will be used to make return flow obligation replacements.

Untested and unidentified recharge sites cannot be considered a firm source of supply for replacing return flows.

- The use of consumptive use water from the Farms that will be exchanged upstream to various storage facilities and later released to make return flow obligations. However, “Applicants recognize that the exchange potential on the Arkansas River does pose a hydrological challenge to the operation of the Catlin Pilot Project under certain conditions.” Proposal at 6. Applicants’ engineering presented in water Case No. 10CW4 (Div. 2), regarding the same exchange

reaches, shows zero exchange potential in 75% of the scenarios modeled by Applicants, including zero exchange potential in both average and dry years. Based on Applicants' engineering in Case No. 10CW4, a return flow replacement plan involving exchanges, standing alone, will not provide the firm yield required by the Criteria.

- The use of "paper exchanges" with other entities with upstream water supplies that have downstream replacement obligations. *Id.* at 5. However, Applicants have provided no evidence of contracts or other agreements with any other entities for these "paper exchanges."
- The replacement of return flows by a Rule 14 Plan or SWSP, if water leased by Fowler is dedicated to such Rule 14 Plan or SWSP. *Id.* at 5.
 - First, dedicating water to a SWSP is contrary to C.R.S. 37-60-115(8)(d)(XI), which prohibits that "water included in a pilot project is not also included in a [SWSP]."
 - Second, Rule 14, and the other rules in the State Engineer's Arkansas River Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, do not authorize the use of a Rule 14 plan to replace return flows from fallowing of surface water irrigation as part of a Pilot Project.
 - Finally, based on information provided by Applicants in 2012, several of the Farms already have Catlin shares dedicated to Rule 14 Plans for replacement supplies for pumping of wells included in those Rule 14 Plans. Tri-State is concerned that if the same Catlin shares are used as part of the Catlin Pilot Project, there will be double counting of those shares as Rule 14 replacement supplies and return flow replacement supplies for the Catlin Pilot Project.

CWCB should condition selection of the Catlin Pilot Project on Applicants' demonstration in their application that Applicants have firm replacement supplies available to replace all return flow obligations from the Farms, including those obligations that accrue after the ten-year term of the Catlin Pilot Project. By presenting a firm plan to replace return flows, as opposed to a myriad of options and contingencies, Applicants will be able to focus on executing the Pilot Project and will reduce the risk that the State Engineer would terminate the project because of injury to other water rights.

C. No inclusion of additional farms.

Pursuant to the Proposal, "Applicants anticipate the potential inclusion of additional farms and their associated historically irrigated lands served by shares in the Catlin Canal Company into the Catlin Pilot Project...by amendment to the approved Catlin Pilot

Project...Such an amendment would be requested in compliance with any terms and conditions adopted by the CWCB to govern such additions..." *Id.* at 4-5.

The Proposal should only be selected if a term and condition is included that prohibits the addition of farms because such additions are contrary to both the Criteria and Colorado statute. The Criteria do not provide any mechanism by which additional farms can be added in the future. Rather, the Criteria require the Proposal to identify "the specific water rights to be utilized by the pilot project and ownership of them" and "the specific lands and parcels that will be analyzed and dried up, and the ownership of them." Criteria, § II.F.a.i–ii. Allowing future, unknown farms to be fallowed and added to the Catlin Pilot Project is contradictory to the Criteria because it does not identify all of the land and water rights to be included in the Project prior to selection by the CWCB.

By proposing to add unknown farms in the future, Applicants cannot satisfy a number additional requirements under the Criteria, including providing: the source of water that will be used to meet return flow obligations (Criteria, § II.F.a.iii); how and where necessary replacement water will be delivered to the appropriate stream locations (*Id.*, § II.F.a.iv); any stream reaches that will be used to operate the proposed transfer of water, along with a description of any administrative or hydrologic obstacles to exchanges or delivery of the replacement water (*Id.*, § II.F.a.v); any and all structures necessary for operation of the pilot project and ownership of them (*Id.*, § II.F.a.vi); and evidence to demonstrate that all necessary approvals and agreements between...ditch members...have been or will be reasonably obtained (*Id.*, § II.D.c).

Moreover, the pilot project statute requires the application to specify "[t]he maximum quantity of transferable consumptive use per year for any single pilot project." C.R.S. § 37-60-115(8)(d)(III); *see also* Criteria, § I.D.2.c. If additional farms are added to the pilot project in the future, it will affect the maximum quantity of transferable consumptive use in violation of the statute and Criteria. Tri-State's comments and conditional support for selection of the Catlin Pilot Project Proposal are predicated on the modest size of the project, which reduce the magnitude of injury to Tri-State's water rights that could occur if there were a mishap in operation of the project.

Therefore, CWCB should condition its selection of the Catlin Pilot Project by prohibiting the future addition of farms. Applicants' proposal to add additional unidentified farms in the future is also inconsistent with the first two terms and conditions in this letter. Applicants do not propose to have agreements with the owners of these farms at the application stage, and the return flow obligations for such farms will be unknown until the farms are identified.

II. RESERVATION OF RIGHTS.

Tri-State respectfully requests the selection of the Catlin Pilot Project Proposal include terms and conditions described in Section I of this letter. However, if the Catlin Pilot Project Proposal is selected or approved without the terms and conditions that Tri-State requests in order deems necessary to prevent injury to its water rights, or if the project is injurious in its operation, Tri-State reserves the right to raise all issues with the Catlin Pilot Project and pursue them before

the CWCB, State Engineer, and Division 2 Water Court. These include but are not limited to the issues described in this letter and additional comments that Tri-State may provide in the future, including but not limited to comments at the application stage of the Catlin Pilot Project. Nothing in this letter waives Tri-State's rights under Colorado law or establishes a precedent regarding lease-fallowing or pilot projects.

Without waiving its right to comment further during the application stage of the Catlin Pilot Project, Tri-State notes the following additional issues with the Applicants' proposal:

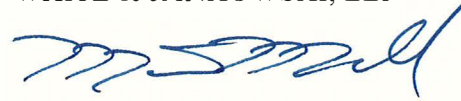
- The Proposal cannot be considered at CWCB's September meeting because that meeting is not more than 60 days after the proposal was received. Criteria at 8.
- The Proposal relies entirely on exchanges to deliver the fully consumable water from the Farms up to the point of depletion for Fowler's wells, or Pueblo Reservoir for pipeline delivery to Security and Fountain. As noted above, Applicants' engineering in Case No. 10CW4 demonstrates that exchange potential is nonexistent during average and dry years.
- Fowler plans to use its leased water for augmentation, as opposed to municipal uses. There is no evidence that Pilot Project water can be incorporated into a Rule 14 plan, or that lagged depletions from increased pumping of Fowler's municipal wells will be replaced after the Pilot Project ends. Tri-State will be injured if lagged depletions are not replaced in time, location and amount.
- Applicants claim the use of Winter Storage Water as a potential replacement source. Proposal at 11. However, the decree in Case No. 84CW179 (Div. 2), at paragraph W on page 22-23, provides that "any future change of purpose or use is subject to proof of historic consumptive use, year round river depletions, and conditions to prevent injury under C.R.S. 37-92-305." Any change of winter stored water requires a water court proceeding before it can be used as augmentation water to replace return flow obligations. The inclusion of Winter Water Storage Program water in the Fowler Pilot Project is prohibited by the decree in Case No. 84CW179.

CONCLUSION

Thank you for the opportunity to comment regarding Applicants' Proposal for the Catlin Pilot Project. Tri-State supports the CWCB's selection of the Proposal with the terms and conditions listed in this letter. If the CWCB has any questions regarding this letter, please let me know. Please consider Tri-State a party to the Catlin Pilot Project and copy me on further communications affecting the Proposal and on the CWCB's decision regarding the Proposal. Tri-State anticipates providing further comments and input on the Catlin Pilot Project once the application has been presented to the CWCB as contemplated by the Criteria.

Very truly yours,

WHITE & JANKOWSKI, LLP

A handwritten signature in blue ink, appearing to read 'm. l. merrill', written in a cursive style.

Matthew L. Merrill

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August 15, 2014

VIA E-MAIL AND U.S. MAIL

Colorado Water Conservation Board
Attn.: Tom Browning, Deputy Director
1313 Sherman Street, Room 721
Denver, CO 80203

Re: HB 13-1248 Catlin Pilot Project Proposal

Dear Mr. Browning:

On behalf of JBS Five Rivers Cattle Feeding LLC d/b/a Colorado Beef (“Colorado Beef”), and pursuant to the Colorado Water Conservation Board’s Criteria and Guidelines for Fallowing Leasing Pilot Projects, this letter provides Colorado Beef’s initial comments regarding the Catlin Canal fallowing-leasing pilot project proposal (the “proposal”) that was submitted on July 14, 2014 by the Lower Arkansas Valley Water Conservancy District and the Lower Arkansas Valley Super Ditch Company (collectively, “Applicants”).

Colorado Beef operates a cattle feedlot in Prowers County, Colorado, with a present capacity of approximately 60,000 head of cattle. Colorado Beef’s water supply relies heavily on water delivered pursuant to Colorado Beef’s ownership of 492 shares of the Fort Lyon Canal Company, which were changed to allow use for feedlot purposes in Case No. 08CW83, Water Division 2. In addition to its Fort Lyon Canal water supply, Colorado Beef is a significant shareholder in the Lamar Canal & Irrigation Company, and a member of the Lower Arkansas Water Management Association (“LAWMA”). Additionally, Colorado Beef is one of the largest employers in Prowers County, and a significant contributor to the agricultural economy in the Lower Arkansas Valley.

Due to the general nature of the information contained in Applicants’ proposal, Colorado Beef does not have specific comments at this time and does not oppose the Board’s selection of Applicants’ proposal for further consideration pursuant to a subsequent, well-developed pilot project application. Any such pilot project application should contain, however, detailed information regarding how the proposed pilot project can operate without injury to vested water rights, including without limitation proposed terms and conditions to ensure proper measurement, accounting and reporting, verification of fallowing, and maintenance of historical return flow patterns. Colorado Beef reserves all rights to comment upon, and oppose if necessary, the Applicants’ pilot project application if and when it is submitted.

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Colorado Beef respectfully requests that it be included on any list of interested parties developed by Applicants or the Board, and copied on any future correspondence regarding Applicants' proposal. Thank you for your consideration of these initial comments, and please do not hesitate to contact me should you have any questions whatsoever.

Sincerely,

William H. Caile
Of Counsel

WHC:whc

cc: Nicholas White, Esq.
Doug Morris
Mary Presecan, P.E.