

**State of Colorado
acting by and through the
Department of Natural Resources,
for the use and benefit of the
Colorado Water Conservation Board
REAL PROPERTY GRANT
with
Rio Grande Headwaters Land Trust
FOR THE PURCHASE OF DUGAN II RANCH
FOR
CONSERVATION EASEMENT**

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1. PARTIES

This grant agreement (“Grant”) is entered into by Rio Grande Headwaters Land Trust (“Grantee”), whose address is P.O. Box 444, Del Norte, CO 81132, and the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (the “State” or “CWCB”) located at 1313 Sherman St., Denver, Colorado 80203. The Parties agree to the provisions set forth in this Grant.

2. EFFECTIVE DATE

This Grant shall not be effective or enforceable until the Effective Date as defined in §4. The State shall not be liable to pay or reimburse Grantee for any performance hereunder including, but not limited to, costs or expenses incurred or be bound by any provision hereof prior to the Effective Date or after termination.

3. RECITALS

A. State's Authority, Appropriation, and Approval

Authority to enter into this Grant exists pursuant to CRS §§ 37-60-106, 39-29-109(2)(c) and 38-30.5-102; sufficient funds have been budgeted, appropriated and paid; and all prior reviews and approvals have been obtained, except as provided in §9.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A (Scope of Work, Budget and Schedule)**, **Exhibit CE (Conservation Easement-Executed CE to be attached at closing)**, **Exhibit PLD (Preliminary Property Legal Description)**, and **Exhibit PM (Preliminary Property Map)**. At Closing, **Exhibit PLD-Final (Final Property Legal Description)** and **Exhibit PM-Final (Final Property Map)** will be incorporated into this Grant and shall replace and supersede **Exhibit PLD** and **Exhibit PM**. Exhibits are identified by relevant acronyms based on their title rather than being assigned random letters or numbers.

D. Grantee Intent

Grantee intends to obtain from Owner (as defined in §4.H) a grant, transfer, and conveyance of a perpetual right to preserve and protect the Conservation Values of the Property via a perpetual conservation easement burdening the Property and to prohibit any uses that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the conservation easement.

E. Purpose

This Grant supports the legislative policies, purposes, and uses enumerated in CRS §§39-29-109(2)(c) and 38-30.5-102 as the Property possesses some or all of the values, opportunities, and characteristics listed therein which are important to the Parties, the residents of the surrounding area, and the people of the State of Colorado. Grantee has entered or will enter into a contract with Owner for the purchase of a conservation easement burdening the Property. At Grantee's request the State has agreed to provide funding to assist Grantee with such purchase for the purpose of permanently protecting the Dugan II Ranch Conservation Easement and its senior water rights along the Rio Grande river corridor in Rio Grande County, and the Conservation Values set forth in detail in **Exhibit CE**.

F. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Closing and Closing Date

"Closing" means the completion or waiver of all conditions precedent in the purchase and sale contract by and between Grantee and the Owner and on which all related documents, including Easement deed are contemporaneously executed, and "Closing Date" is the date on which the Closing occurs.

B. Conservation Values

"Conservation Values" means those values, opportunities, and characteristics referred to in §3.E and set forth in detail in **Exhibit CE**.

C. CRS

"CRS" means the Colorado Revised Statutes as amended.

D. Easement

"The Easement" is the Conservation Easement set forth in **Exhibit CE**.

E. Effective Date

"Effective Date" is the date this Grant is approved and signed by the State Controller or designee.

F. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments, or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

G. Grant Funds

“Grant Funds” are the funds the State will provide on behalf of Grantee at Closing as set forth in §7.A.

H. Owner

“Owner” means the owner of the Property from whom Grantee is purchasing the Easement.

I. Party or Parties

“Party” means either the State or Grantee, and “Parties” means both the State and Grantee.

J. Property

“Property” is the real property legally described in Exhibit PLD and generally depicted on Exhibit PM attached hereto or on Exhibit PLD-Final and generally depicted on Exhibit PM-Final, to be attached at Closing.

K. Purchase Price

“Purchase Price” is the total amount of money Grantee will pay Owner to purchase the Easement.

L. Title Commitment

“Title Commitment” means a current standard ALTA form(s) in common use of a title insurance commitment issued by a Title Company authorized to do business in the State of Colorado, and insuring Grantee’s interest in the Easement in an amount not less than the Purchase Price, together with, as applicable, any updates of the Title Commitment that are issued.

5. TERM and EARLY TERMINATION

A. Term

The Parties’ respective duties and obligations shall commence on the Effective Date, and shall continue through the Closing.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. The State shall notify Grantee of such termination in accordance with §14, specifying the effective date of the termination and whether it affects all or a portion of this Grant. Upon receipt of a termination notice, the Parties shall be subject to and comply with the provisions of §13.

6. PURCHASE AND SALE OF EASEMENT

Subject to the provisions of this Grant, by the Closing, the State shall provide the Title Company, on behalf of Grantee, with the Grant Funds to purchase the Easement, and Grantee shall purchase the Easement from Owner. The Easement shall burden the Property in perpetuity, and shall be substantially in the form set forth in Exhibit CE. Grantee shall maintain a complete file of all material records, communications, and other written materials, which pertain to the performance of the Grant, including the acquisition of the Easement, and shall maintain such records for a period of three years after the Closing Date. The State may audit such records at reasonable times and upon reasonable notice.

7. PAYMENT TO GRANTEE

A. Maximum Amount Payable and Allocation

The maximum amount payable by the State to or on behalf of Grantee for Grant Funds is forty thousand dollars (\$40,000) as determined by the State from available funds.

B. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State’s current fiscal year and making payment to Grantee beyond the State’s current Fiscal Year is contingent upon the continuing availability of State appropriations. Payments pursuant to this Grant during any State fiscal year shall be made only from available funds encumbered for this Grant for such State fiscal year and the State’s liability

for such payments shall be limited to the amount remaining of such encumbered funds. If State, GOCO, or federal funds are not fully appropriated or otherwise become unavailable, the State may terminate this Grant in whole or to the extent of such funding reduction, without further liability, after providing notice to Grantee in accordance with §14.

C. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under transactions between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

8. LITIGATION REPORTING

A. Litigation Reporting

Within five days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CWCB.

B. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or exercise of any remedies provided under this Grant, including termination.

9. PERFORMANCE CONTINGENCIES FOR THE STATE

The State's performance hereunder is contingent upon successful completion or express waiver, of each of the following conditions in this §9. If one or more of these contingencies are not satisfied by Closing, and the Parties have not agreed in writing to allow additional time for satisfaction, then this Grant shall automatically terminate and Grantee and the State shall be released from all further obligations and liabilities under this Grant.

A. Approvals

Final approvals of this transaction by the following entities and persons:

- i. The Rio Grande Basin Roundtable and the CWCB Board; and
- ii. The applicable agency of the federal government if federal funding is involved.

B. Appraisal and Other Due Diligence

i. Appraisal

Grantee shall, at no cost and expense to the State, have an appraisal completed in accordance with CRS §24-30-202(5)(b) that supports the Purchase Price and is satisfactory to and accepted by the Colorado State Controller. The appraisal shall be acceptable to any review appraiser if a review appraisal is requested by the State. Copies of all appraisals ordered by Grantee shall be provided to the State.

ii. Contract

Grantee shall provide the State with an executed copy of the contract between Grantee and Owner relating to the purchase of the Easement.

iii. Option Agreement

Grantee shall provide the State with an executed copy of the Option Agreement between Grantee and Owner relating to the Grantee's Option Agreement for the purchase of the Easement.

iv. Description and Maps

Grantee shall cause to be prepared, without cost or expense to the State, a legal description of the Property and Easement areas and site and area maps that are acceptable to and approved by the State.

v. Management Plan

Grantee shall, at no cost and expense to the State, create a management plan in conjunction with Owner and the State that is acceptable to and approved by the State. Grantee shall deliver the Management Plan to the State within six (6) months of Closing.

vi. Reports

Grantee shall, at no cost and expense to the State, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, a geologist's remoteness report if needed, and a phase I environmental assessment, and should the State deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of the State. Such reports shall be acceptable to and approved by the State. After Closing, Grantee shall, at its sole cost and expense, create an annual report detailing its monitoring of the Easement, and provide a copy of such report to the State within 30 days of the completion thereof.

C. Title Inspection and Review

The State's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in this §9.C. If any of the State's objections made pursuant to this provision are not rectified, then the State may terminate this Grant by written notice and both Grantee and the State shall be released from any further obligations.

i. Evidence of Title – Matters of Public Record

As soon as practicable, Grantee shall obtain, without cost or expense to the State, a Title Commitment. Grantee shall also deliver to the State copies of any abstracts of title covering all or any portion of the Property in Grantee's possession.

ii. Standard Title Exceptions

Grantee shall require Owner to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the Title Commitment of Schedule B-II of the Title Commitment. Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the Grantee or the State determines that one or more of the following items must be deleted in the title insurance policy, then Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, and (c) survey matters.

iii. Exceptions - Title Review - Matters of Public Record

Grantee, without cost or expense to the State, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to the State: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-II of the Title Commitment.

iv. Title Review and Inspection - Matters Not Shown by the Public Records

Grantee shall require Owner to deliver to Grantee and the State true copies of all lease(s), survey(s), and other similar documentary information in Owner's possession pertaining to the Property, and shall require Owner to disclose in writing to Grantee and the State all easements, liens, or other title matters not shown by the public record of which Owner has actual knowledge. The State and Grantee shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

v. Unrecorded Burdens – Grantee's Liability

Grantee shall, at no cost to the State, cause Owner to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by Grantee or Owner that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §9.C(iv). Grantee shall reimburse the State in an amount equal to CWCB's proportionate contribution to Purchase Price of any diminution in value of the Easement if any such burden cannot be discharged or cured. The State may bring an action to enforce this §9.C(v) if Grantee fails or refuses to do so within a reasonable time, and Grantee shall reimburse the State for its costs and reasonable attorney's fees incurred with regard to such action.

10. STATUS PENDING CLOSING

A. Maintenance of the Property

Grantee shall require Owner to maintain the Property in its present condition until closing. Specifically, but not by way of limitation, Grantee shall, in its purchase and sale contract with Owner, prohibit the following activities on the Property: cutting, slashing, removing, destroying or wasting of any trees or plants; diking, dredging, filling or other disturbances; or disturbance of the soils or any alteration of the surface or of any vegetation thereon (with the exception of historic livestock grazing and harvesting of seasonal crops, which shall be in accordance with acceptable range management and farming standards). In the event of any such loss or damage prior to Closing, the State may, without liability, terminate this Grant.

B. Risk of Loss

The State may elect to terminate this Grant without liability to Grantee to provide Grant Funds in the event of loss or damage to the Property before closing, including, but not limited to, losses from acts of nature, such as fire, flood, and landslide.

11. CLOSING

A. Date and Time

The date and time of Closing shall be at the mutual agreement of Grantee and Owner, but not later than 9:00 a.m. on December 30, 2016. Closing shall occur at the offices of the title company. **At Closing Owner shall deliver to Grantee a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE and suitable for recording, and the Grantee shall deliver to Owner payment of the Purchase Price.** That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under explicit instructions (i) that said payment shall be returned to the State if for any reason acquisition of the Easement does not occur, and (ii) that said payment shall be returned to the State if the Easement approved by the State in its instruction letter or at Closing are not delivered to the escrow agent/title insurance company.

B. Exhibits PLD and PM

At Closing Owner shall deliver **Exhibits PLD-Final and PM-Final** (see Paragraph 3.C. Exhibits and other Attachments) and at that time **Exhibit PLD-Final (Final Property Legal Description) and Exhibit PM-Final (Final Property Map)** will be incorporated into this Grant and shall replace and supersede **Exhibit PLD and Exhibit PM** attached to the ORIGINAL CONTRACT.

C. Closing at Title Company

The Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Owner and Grantee shall sign and complete all customary or required documents at or before Closing.

12. REPRESENTATIONS AND WARRANTIES

A. Owner to Grantee

As a condition of entering into this Grant the State requires Grantee to obtain from Owner the following representations and warranties in the purchase and sale contract between Grantee and Owner, each of which, shall also, notwithstanding anything to the contrary in §16.P or equivalent provision in any agreements or easements between Owner and Grantee, flow to and be enforceable by the State as a third-party beneficiary thereof:

i. Compliance with Law

Owner is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse affect on the Property.

ii. Ownership of the Property

Owner is the sole owner in fee simple of the Property as of the Effective Date of this Grant, Owner is the record owner of the Property, and at closing Grantee shall receive good and marketable title to the Easement, subject to those matters of record revealed in the Title Commitment and those matters disclosed to Grantee and the State.

iii. Other Agreements

Owner is not a party to, or subject to, nor bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with Owner's performance under the purchase and sale contract with Grantee other than those matters of record revealed in the Title Commitment and found acceptable to the State.

iv. Pending Actions

There are not any actions, suits, proceedings, or investigations pending or, to Owner's knowledge, threatened, against or affecting the Property, or arising out of Owner's actions or inactions related to the Property.

B. Grantee to the State

Grantee makes the following representations and warranties to the State, each of which was relied on by the State in entering into this Grant:

i. Grantee's Intent

Grantee intends that the Conservation Values of the Property be preserved and protected in perpetuity, and that any uses be prohibited that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the Easement.

ii. Legal Authority—Grantee Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant, and, if Grantee is not a natural person, that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Grant, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

iii. Qualified Holder

Grantee is qualified to hold easements under CRS §38-30.5-101 et seq., which provides for conservation easements to retain or maintain land, water, airspace, or water rights, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or, life-sustaining ecological diversity.

13. DEFAULT-TIME IS OF THE ESSENCE-REMEDIES

Time is of the essence hereof. If any note or check received or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

A. Grantee in Default

If Grantee is in default, all things of value received or performed hereunder shall be forfeited by Grantee and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is the State's sole and only remedy for Grantee's failure to perform Grantee's obligations under this Grant. The State waives the remedies of specific performance and additional damages.

B. The State in Default

If the State is in default, all things of value received or performed hereunder shall be forfeited by the State and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is Grantee's sole and only remedy for the State's failure to perform its obligations under this Grant. Grantee waives the remedies of specific performance and additional damages.

14. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party, and is entitled to provide all approvals and consents on behalf of the Party they represent unless unless specifically noted otherwise elsewhere in this Agreement.. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute

addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State

Craig Godbout
CWCB
1313 Sherman Street
Room 718
Denver, CO 80203
craig.godbout@state.co.us

Grantee

Nancy Butler
Rio Grande Headwaters Land Trust
P.O. Box 444
Del Norte, CO 81132
nancyb@riograndelandtrust.org

15. LIMITATION OF STATE LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management).

16. GENERAL PROVISIONS

A. Assignment

Grantee may not assign its rights under this Grant absent written consent of the State which may be withheld at the State's sole and absolute discretion.

B. Binding Effect

All provisions herein, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions and Headings

The captions and headings in this Grant are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction Against the Drafter

In the event of an ambiguity in this Grant the rule of Grant construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

F. Counterparts

This Grant may be executed in multiple identical original counterparts constituting one Grant.

G. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

H. Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, up to the amount of the Grant Funds, together with costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

I. Jurisdiction and Venue

All suits or actions related to this Grant shall be filed and proceedings held in the State of Colorado and venue shall be in the County in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situate in more than one county.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies. Modifications specifically permitted in this Grant shall be made in accordance with the State Controller's Policy entitled MODIFICATION OF GRANTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions, then
- ii.** The remaining provisions of this Grant.

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Grant in accordance with its intent.

M. Repayment of Grant Funds

Grantee shall repay to the State the Grant Funds and any appreciation in the value of the Easement (if any appreciation exists and only in an amount equal to the State's proportionate contribution to the Purchase Price), if the Easement is terminated or extinguished or its material provisions rendered unenforceable due to acts or omissions of Grantee, its employees, agents, successors or assigns, including, but not limited to, complying with or enforcing the provisions of the Easement. If any part of the Grant Funds were originally received by the State from GOCO, then Grantee shall make repayment to the State if GOCO makes a demand for repayment to CWCB on the grounds set forth in this §16.M.

N. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after Closing or termination hereof, shall survive such Closing or termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

O. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 et seq. and 201 et seq. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Grantee for such taxes.

P. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

Q. Waiver

Waiver of any default under a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent default, provision or, requirement, or of any other term, provision, or requirement.

COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be valid until it has been approved by the State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

5. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

6. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

7. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

Revised 1/1/09

[END OF SPECIAL PROVISIONS]

17. SIGNATURE PAGE

CTGG1 2017-1105
CMS No. 95452

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">GRANTEE</p> <p style="text-align: center;">Rio Grande Headwaters Land Trust</p> <p>Name: <u>Nancy J. Butler</u> (Print)</p> <p>Title: <u>Executive Director</u></p> <p><u>Nancy J. Butler</u> Signature</p> <p>Date: <u>11/8/16</u></p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, Governor Department of Natural Resources</p> <p>By: <u>[Signature]</u></p> <p>Name: <u>Kirk Russell, P.E., Section Chief</u> Finance Section Colorado Water Conservation Board</p> <p>Date: <u>11/18/16</u></p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>Name: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW</p> <p>By: _____ N/A Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: [Signature]

Name: Maggie VanCleaf
Purchasing Director

Title: _____

Effective Date: 12/16/2016

Exhibit A

Statement of Work for Dugan II Ranch Conservation Easement

WATER ACTIVITY NAME –

Rio Grande Initiative: Dugan II Ranch Conservation Easement

GRANT RECIPIENT – Rio Grande Headwaters Land Trust (RiGHT)

FUNDING SOURCE - Basin and Statewide Accounts

INTRODUCTION AND BACKGROUND

The *Rio Grande Initiative* is a collaborative, community-based, landscape-scale effort to protect the land and water along the Rio Grande river corridor through voluntary, incentive-based, permanent conservation easements, with nearly 25,000 acres and 43 miles protected to date. The requested funds will be used by the Rio Grande Headwaters Land Trust (RiGHT) for the acquisition of conservation easements on a 316-acre conservation easement in Rio Grande County. This conservation opportunity will directly protect senior surface water rights in order to help sustain the historic water use patterns along the Rio Grande, while securing agricultural productivity, an important part of the economic base of the San Luis Valley. The protection of senior water rights is also important for wildlife habitat, the flood plain function of the river corridor, and beauty of the scenic landscape. RiGHT accomplishes conservation through voluntary conservation easements. The *Rio Grande Initiative* provides vital benefits to *both* consumptive and non-consumptive water needs in the Rio Grande Basin and contributes to the overall goal of the Round Table to achieve water sustainability.

OBJECTIVES

As part of the overall *Rio Grande Initiative*, this project will permanently protect the Dugan II Ranch Conservation Easement and its senior water rights, through the purchase of a voluntary conservation easements.

TASKS

TASK 1 – Implementation

The initial task consists of implementation of a voluntary conservation easement on this key parcel on the Rio Grande corridor, in Rio Grande County with associated senior water rights. WSRA funds will be used solely toward the acquisition of the conservation easement. All other related costs for personnel, due diligence, etc. will be borne by RiGHT, the landowner and/or other funders and therefore are not documented in this application. The WSRA funds would be expended at closing on the conservation easement through a Title Company and only when all the due diligence is finalized, in a similar process to the prior WSRA awards.

Description of Task

Easement process includes:

- Fundraising/submitting grant(s) for balance of state and/or federal funds
- All due diligence required by law and funding sources including:
Appraisal, title work, mineral and water rights, survey (as needed), Phase I Environmental Site Assessment, Baseline Condition Report, negotiation of the deed of conservation easement, etc.
- Closing and recording of the conservation easement

- Long-term stewardship of the conservation easement as required, including annual monitoring, and enforcement of easement terms when and if necessary.

Method/Procedure

The conservation easement funded through this application will be held by the Rio Grande Headwaters Land Trust and the implementation will be conducted according to:

- 1) All legal requirements
- 2) Best practices determined by national land trust standards, and
- 3) All due diligence requirements of RiGHT and the project’s funders will be fulfilled prior to and as a condition of closing.

Deliverable

The deliverable from this activity will be the completion of a perpetual conservation easement on the Dugan II Ranch..

REPORTING AND FINAL DELIVERABLE

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

Final Deliverable: At completion of the project, the applicant shall provide the CWCB a final report that summarizes the project and documents how the project was completed. This report may contain photographs and documents related to the conservation easement.

BUDGET

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

Funding Source:	Dugan II Ranch
WSRA Funds (\$5,000 Roundtable/\$35,000 State)	\$40,000
NRCS	\$315,000
Gates Family Foundation	\$120,000
Landowner	\$250,000
TOTAL CE Value/Cost	\$725,000
Percent of Project Funding from WSRA	5%

SCHEDULE

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

Task	2015				2016			
	3/15 – 6/15	7/15 – 12/15	1/16 – 6/16	7/16 – 12/16	1/16 – 6/16	7/16 – 12/16	1/16 – 6/16	7/16 – 12/16
A – Additional funds raised								
B – Due Diligence								
C – Closing on Conservation Easement								
Final Report								

EXHIBIT CE (CONSERVATION EASEMENT)

EXHIBIT CE

Any time the Property itself or any interest in it is transferred by Grantor to any third party, Grantor shall pay a transfer fee of one thousand five hundred dollars (\$1,500.00) to Grantee. The transfer fee shall be adjusted by 3% per year for inflation and be used by Grantee for purposes consistent with its mission, pursuant to the terms and provisions of Paragraph 18 of this Easement.

**DUGAN II RANCH
DEED OF CONSERVATION EASEMENT**

NOTICE: The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (“ALE”) on real property described in Exhibit A, hereafter referred to as the “Property”, for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Property.

Robert W. Dugan and Carol Lee Dugan (collectively, Grantor), the Rio Grande Headwaters Land Trust (Grantee), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee to protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Property.

Notice: This Conservation Easement has also been acquired in part with a grant from the Colorado Water Conservation Board (“CWCB”).

THIS DEED OF CONSERVATION EASEMENT (“Easement” or “Deed”) is made this _____ day of _____ 2016, by and between Robert W. Dugan and Carol Lee Dugan having their address at 2494 Swede Lane, Monte Vista, CO 81144 (“Grantor”), in favor of the RIO GRANDE HEADWATERS LAND TRUST, a Colorado nonprofit corporation, with a principal place of business at 840 Grande Avenue, Del Norte, Colorado 81132 (“Grantee”). Grantor and Grantee are referred to herein individually as a “Party”, and collectively as “Parties”. The following exhibits are attached hereto and are incorporated by reference:

- Exhibit A - Description of Property
- Exhibit B - Map of Property
- Exhibit C - Survey of Property
- Exhibit D - Acknowledgement of Baseline Report
- Exhibit E - Description of Water Rights
- Exhibit F - Subordination of Deed of Trust
- Exhibit G - Exceptions to Title

RECITALS:

A. Grantor is the sole owner in fee simple of approximately three hundred and sixteen point sixty-two (316.62) acres of real property located in Rio Grande County, Colorado, more particularly described in **Exhibit A**, depicted in **Exhibit B**, and water rights described in **Exhibit E**, all of which are incorporated herein by this reference (collectively the “**Property**”). The legal description of the Property consists of two (2) assessor’s parcels of land (Schedule Nos. 3322200113 and 3321100093).

B. The Property possesses relatively natural habitat, scenic open space, and agricultural productivity values (collectively, “**Conservation Values**”) that are important to the Grantor, the people of Rio Grande County and the people of the State of Colorado.

In accordance with 26 U.S.C.A. § 170(h)(4)(A)(iii), and the Treasury Regulations adopted pursuant thereto, the Easement on the Property will preserve the Property’s open space characteristics for the scenic enjoyment of the general public and pursuant to the governmental conservation policies outlined below, yield a significant public benefit. The Property is highly visible from Rio Grande County Road 27, U.S. Highway 160 and nearby Bureau of Land Management Lands. The highway and county road are used by local traffic and tens of thousands of visitors and tourists annually. The Property presents a highly scenic view to the public of a working ranch landscape with irrigated fields, and the tall cottonwood trees along the river beyond. Protection of the Property contributes to the conservation of the intact ranching and natural landscapes that currently characterize the Rio Grande river corridor in this area. Additionally, the Property contains highly productive agricultural lands with senior surface water rights, supporting irrigated grass/alfalfa hay and livestock grazing.

In accordance with 26 U.S.C.A. § 170(h)(4)(A)(ii), and the Treasury Regulations adopted pursuant thereto, the Easement on the Property will preserve the Property’s relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, and yield a significant public benefit pursuant to the governmental conservation policies outlined below. Per the Baseline, at least 80 species of birds, mammals, reptiles and amphibians are likely found on the Property as year-round residents, and many more species visit the Property seasonally. The Property provides exceptionally valuable habitat for wildlife because of its canal habitat, riparian cottonwood woodlands, agricultural lands, and wetlands. The Property is within Colorado Parks and Wildlife mapped winter range for Bald Eagles (State species of Concern), geese and mule deer and is within one-half mile of winter range and severe winter range for elk. The Property’s conserved riparian habitat contributes significantly to regional connectivity, allowing animals to move across the landscape without significant barriers and helping to maintain historic and natural ecological processes of the river system. The Rio Grande represents one of the few remaining major river corridors in Colorado that is still relatively intact. Conservation of the Property’s high-quality habitats adds to a growing acreage of conserved lands in the river floodplain in the San Luis Valley.

C. Grantor is donating a portion of its Property interest to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the Conservation Values of the Property will be conserved and maintained forever. Grantor intends that the Conservation Values be preserved and protected, and that any uses be prohibited that would materially diminish or impair the Conservation Values or that otherwise would be inconsistent with the Purpose of this Easement, as defined in Paragraph 1 below. The Parties acknowledge and agree that uses expressly permitted by this Deed and the current land use patterns, including, without limitation, those relating to agricultural use existing at the time of this grant, do not materially diminish or impair the Conservation Values and are consistent with the Purpose of the Deed.

D. Grantor further intends, as owner of the Property, to convey to Grantee the affirmative right to enforce the terms of this Easement in order to conserve and protect the Conservation Values of the Property in perpetuity in accordance with the Purpose of this Easement, as defined in Paragraph 1 below. Grantee accepts the responsibility of enforcing the terms of this Easement.

E. Grantee is a publicly-supported, tax-exempt organization described in Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, whose primary purpose is "Conserving our land, water and way of life in Colorado's Rio Grande Basin, the San Luis Valley".

F. Grantee is also a charitable organization as required under C.R.S. § 38-30.5-101 *et seq.*, which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

G. Grantee is certified by the State of Colorado's Department of Revenue and Division of Real Estate and is accredited by the Land Trust Alliance Accreditation Commission.

H. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grant applications and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

I. The conservation purpose of this Easement is recognized by, and the grant of this Easement will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C.A. §§ 4201- 4209 whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with

state, unit of local government and private programs and policies to protect farmland.” 7 U.S.C.A. § 4201(b) (2011).

- Colorado Revised Statutes §§ 38-30.5-101 to 38-30.5-111, providing for the establishment of conservation easements to maintain land “in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity....” C.R.S. § 38-30.5-102 (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, Colorado Revised Statutes §§ 33-1-101 to 33-1-121, which provide that “it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.” C.R.S. § 33-1-101(1) (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, Colorado Revised Statutes §§ 33-2-101 to 33-2-106, which provide that “it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual property owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere...” C.R.S. § 33-2-102 (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, Colorado Revised Statutes §§ 33-10-101 to 33-10-114, which provide that “it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.” C.R.S. § 33-10-101(2) (2010).
- The Colorado Department of Agriculture Statutes, Colorado Revised Statute § 35-3-102, which provides in part that “the soil resources and fertility of the land of this state, and the economic use thereof, the prosperity of the farming population of this state, and the waters of the rivers of this state, and the prevention of floods are matters affected with a public interest.” C.R.S. § 35-3-102(1)(a) (2010).
- The Colorado Department of Agriculture Statutes, Colorado Revised Statute § 35-3-102, which provides in part that “the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful and unscientific use of its soil resources, by floods and impairment of its rivers as a result of soil erosion and by the decrease in the purchasing power of the net income per person on farms in the state as compared with the net income per person in the state not on farms.” C.R.S. § 35-3-102(1)(b) (2010).

- The Rio Grande County “Right to Farm and Ranch Policy 98-18” which states that “The Board of County Commissioners of Rio Grande County, Colorado recognizes the need to protect the viability and to emphasize the importance of farming, ranching and other agricultural activities in Rio Grande County” and the “the Board shall attempt and aspire to Conserve, enhance and encourage farming, ranching and associated agricultural activities and operations within Rio Grande County.”
- The 2004 Rio Grande County Joint Master Plan under Stable Areas Action 2.4, stating: “work with the Rio Grande Headwaters [Land] Trust, landowners and others to establish conservation easements using the Colorado Conservation Tax Exchange program”; River Corridor Area Goal 1 “To minimize the risk of potential flooding and to maintain the natural character of the Rio Grande River corridor”; River Corridor Area Policy 1.2 “The County shall discourage new developments within the 100 year floodplain so as to minimize the risks of potential flood hazards”; and River Corridor Area Policy 1.3 “The County shall promote land use practices that protect the natural character of the Rio Grande River”.
- Rio Grande County Land Use Code, Article IV “To provide for higher quality in site and land planning, to conserve open space and to provide more efficient and attractive open space”; and Article IX “permitted land uses within the [Rural District and Agricultural District] are to encourage the preservation and protection of irrigated croplands, rangelands, watershed and wildlife habitats in the County; the maintenance of agricultural production; and preservation of associated life styles.”

J. Grantee agrees by accepting this Easement to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations;

NOW, THEREFORE, for the reasons given, and in consideration of the foregoing and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual conservation easement in gross, over the Property of the nature and character and to the extent hereinafter set forth. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

1. Purpose

The purpose of this Easement is to **protect the agricultural use and future viability, and related Conservation Values, by limiting nonagricultural uses on the Property** and to ensure that the Conservation Values are preserved and protected in perpetuity (“**Purpose**”). This Purpose is in accordance with §170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To effectuate the Purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property that do not materially diminish or impair the Conservation Values and to prevent any use of the Property

that will materially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property other than the preservation and protection of the Conservation Values.

2. Baseline Documentation Report

The Parties acknowledge that a written report has been prepared, reviewed, and approved by both Parties that documents the Property's condition as of the conveyance date of this Deed (the "**Baseline Report**"), and by this reference the Baseline Report is incorporated into this Deed. The Grantee shall maintain and keep a copy of the Baseline Report on file and the Grantor shall also keep a copy of the Baseline Report in its files. The Parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Deed in accordance with Treasury Regulations, 26 C.F.R. § 1.170a-14(g)(5)(i) and both Parties have acknowledged the same in a signed statement, a copy of which is attached hereto as **Exhibit D**. The Baseline Report may be used by the Parties to establish that a change in the use or character of the Property has occurred; however, the Parties further agree that its existence shall in no way limit the Parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Deed.

3. Grantee's Affirmative Rights and Responsibilities

To accomplish the terms of this Easement, in addition to the rights described in C. R. S. §§ 38-30.5-101, *et seq.*, as the same may be amended from time to time, the following rights are hereby conveyed to Grantee:

- a. To preserve and protect the Conservation Values of the Property;
- b. To enter upon the Property pursuant to Paragraph 7 at reasonable times to monitor Grantor's compliance with and, if necessary, to enforce the terms of this Deed; provided, that such right of entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- c. To enjoin or prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

4. Rights and Responsibilities Reserved by Grantor

Notwithstanding any provisions of this Deed to the contrary, Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to sell, lease, license and devise the property, as well as any other rights consistent with the Conservation Values of the Property and not prohibited or limited by this Easement, and to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or restricted by this

Easement and that do not materially diminish or impair the Conservation Values. The Property may not be used for industrial activities, but may be used for other activities that are not prohibited by the terms of this Easement.

5. Uses and Restrictions on Uses

The following uses and practices by Grantor are not an exhaustive recital of uses and practices on the Property. Some of these uses and practices are identified as being subject to specified conditions or to the requirement of prior approval by the Grantee. The procedures for such prior approval are provided in Paragraph 6. Except as prohibited or otherwise limited by this Paragraph 5, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the terms of this Easement. Any activity on or use of the Property that is inconsistent with the Purpose of this Easement is prohibited.

a. Development Rights

To fulfill the Purpose of this Easement, Grantor hereby conveys to Grantee all development rights deriving from, based upon, or attributable to the Property in any way ("**Grantee's Development Rights**"), except those expressly reserved by Grantor herein, and the Parties agree that Grantee's Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose of this Easement, and to ensure that such rights are forever released, terminated, and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.

b. Construction of Buildings and Other Structures

All new structures and improvements must be located within the Building Envelopes, except for minor agricultural structures and improvements less than 1,000 square feet referenced below in Paragraph 5.b.(3). The Building Envelopes contain approximately 6.85 acres and described in **Exhibit B**, which is appended to and made part of this Easement. Additionally, all existing buildings, structures, and other improvements are generally identified on the map attached hereto as **Exhibit B** and are further listed in the Baseline Report. Two (2) Building Envelopes (**Building Envelope(s)**) have been designated in the locations referred to on the survey in **Exhibit C**. Building Envelope #1 encompasses 4.01 acres and Building Envelope #2 encompasses of 2.84 acres, both as depicted and described in **Exhibit B**.

The construction of any new structures is prohibited except in accordance with this Paragraph 5b. In accordance with Paragraph 6, before undertaking any construction requiring advance written approval Grantor shall notify Grantee of its proposed construction in writing sixty (60) days prior to construction and obtain written approval from Grantee. Grantee shall grant permission, only if the proposed construction is consistent with the terms of this Easement and Grantee determines that the proposed construction does not materially diminish or impair the Conservation Values of the Property.

(1) All Structures and Improvements

All existing structures and improvements that are within the Building Envelopes may be maintained and repaired without Grantee's approval. All existing structures and improvements that are within the Building Envelopes may be also reasonably enlarged, demolished, or replaced but with Grantee's written approval pursuant to Paragraph 6.

Existing agricultural structures and improvements outside of the Building Envelopes may be replaced or rebuilt with another of similar size in its current footprint if they neither individually or collectively have an adverse impact on the agricultural use and future viability of the Property, but may not be used for long-term occupancy on the Property or converted to other uses that are inconsistent with the Purpose of the Easement.

The location and design of any structures replaced or enlarged shall not detract from the Conversation Values and the substantially unbuilt character of the Property when viewed from public vantage points.

In no event shall any building height except for one major barn, referenced below, exceed thirty (30) feet above high finished grade contact.

(2) Residential Structures and Improvements

At no time shall more than one (1) residential structure be built, maintained or used for long-term occupancy within each Building Envelope on the Property. The cumulative square footage of the Footprint of any residential structure shall not exceed 3,500 square feet. "Footprint" means the land area of the structure calculated on the basis of the exterior dimensions of the outermost perimeter walls or bounds of the structure whether at or above ground level, but excludes the land occupied by any enclosed porches, steps, stairs, patios, decks, terraces, balconies, eaves, pergolas, breezeways, carports, and shall not include driveways, roadways, parking areas, or sidewalks, whether or not constructed of concrete, pavement or other impervious material.

Residential improvements such as sheds, garages, and other associated outbuildings may be built without prior written approval of Grantee, as long as they do not exceed 500 square feet and are located within the Building Envelopes. Residential improvements larger than 500 square feet may only be built with the prior written approval of Grantee in accordance with Paragraph 6. Provided that the total cumulative Footprint for all such other residential improvements shall not exceed 2,000 square feet per Building Envelope.

(3) Agricultural Structures and Improvements

Major agricultural structures and improvements larger than 1,000 square feet, including without limitation barns and sheds may be constructed with Grantee's prior written approval in accordance with Paragraph 6, provided that no such structure or improvement exceeds thirty (30) feet in height above high finished grade, except for a major barn, which may be thirty-five (35)

feet in height above high finished grade contact. Major agricultural structures may only be built within the Building Envelopes noted above, provided that the total cumulative Footprint for all such major agricultural structures and improvements shall not exceed 10,000 square feet per Building Envelope.

Minor agricultural structures and improvements smaller than 1,000 square feet, such as loafing sheds, corrals, water lines, and water tanks, that neither individually or collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Property, may be constructed and/or repaired or replaced anywhere on the Property without Grantee's approval provided that the structures are consistent with the ALE Plan.

Notwithstanding the foregoing, no agricultural improvements shall be constructed in the wetlands, riparian areas, or hay meadows, identified on **Exhibit B** attached hereto, the preservation of which is central to the Purpose of this Easement. Construction of any other new agricultural buildings or improvements other than those covered by this subparagraph (2) is prohibited.

(4) Recreational Improvements

Under no circumstances shall any new recreational building, structure or improvement be built on the Property, including but not limited to, athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or commercial shooting ranges. The use of any recreational buildings and other recreational structures existing as of the date of this Easement as set forth above shall not be expanded in use without Grantee's advance written approval of Grantee as set forth in Paragraph 6.

(5) Fences

New fences may be constructed on the Property and existing fences may be repaired or replaced for purposes of reasonable and customary management of livestock and wildlife, crop storage and gardens, or to mark boundaries of the Property without Grantee's approval. Grantor shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats unless specifically agreed to by Grantor and Grantee for special protection of a designated natural area. Construction of fences other than those covered by this subparagraph (5) is prohibited. Except in the Building Envelopes and around gardens or crop storage areas, new and replacement fencing shall be constructed to current wildlife friendly specifications, as outlined by either the Colorado Parks and Wildlife or the Natural Resources Conservation Services (or their respective successors).

(6) Paving and Road and Trail Construction; Impervious Surface Limitations

No portion of the Property, outside the Building Envelopes, shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, nor shall any new road or trail be constructed without the advance written approval of the Grantee in accordance with Paragraph 6. Grantee shall grant such approval only if the Grantee determines that the proposed paving or covering of the soil, or the location of any such road or trail, will not materially diminish

or impair the Conservation Values, is within the impervious surface limits and is necessary to carry out the agricultural operations or other allowed uses on the Property.

Maintenance of existing roads (all of which are unpaved at the time of this Deed) which are documented in the Baseline Report shall be limited to normal practices for unpaved roads, including, without limitation, grading; placing porous road surface gravel; the removal of vegetation; necessary pruning or removal of hazardous trees and plants; application of permeable materials necessary to correct erosion; placement of culverts, water control structures, and bridges; and maintenance of roadside ditches provided that no maintenance activities shall materially diminish or impair the Conservation Values. Existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Property. Notwithstanding the foregoing, and subject to the impervious surface limitation described below, Grantor may pave the existing access roads to the Building Envelopes, as identified in the Baseline Report, without further approval of Grantee.

Impervious surfaces will not exceed 2% (6.3 acres), of the Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. Impervious surface limitations include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement.

(7) *Surface Alteration*

Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:

- (1) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an Agricultural Land Easement Plan;
- (2) erosion and sediment control pursuant to a plan approved by the Grantee;
- (3) as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or
- (4) Agricultural activities conducted in accordance with the Agricultural Land Easement Plan.

c. *Agriculture and Ranching*

(1) *Agricultural Purposes*

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law. For purposes of this Easement, agriculture is defined as the production of food, fiber, and forage and agricultural uses include the breeding, raising, boarding, pasturing, and grazing of livestock normal and customary for the area in which the Property is located; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, horticultural, and forestry crops customary for the area in which the Property is located, and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products, provided that such agricultural use does not materially diminish or impair the Conservation Values and, except as permitted in Paragraph 5g, prohibiting commercial feed lots and other intensive growth livestock farms.

The provisions of this Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Property, so long as the agricultural operations are consistent with the Agricultural Land Easement Plan and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the Easement's protection for the agricultural use and future viability, and related conservation values of the Property.

(2) *Agricultural and Ranching Uses*

The Grantor reserves the right to participate in any conservation directed agricultural contracts, programs, or leases offered by any private entity or governmental entity, including but not limited to the United States Department of Agriculture, the United States Department of Interior, the State of Colorado, or any branch thereof. The Grantor reserves the right to enter into any other state or federal program existing now, or created in the future for any activity or use permitted in this Easement.

The Grantor and the Grantee recognize that changes in economic conditions, agricultural technologies, including accepted ranch management practices, and in the situation of the Grantor may result in an evolution of agricultural activities on the Property. Such evolution shall be permitted so long as it is consistent with the Purpose and requirements of this Easement and does not in any way materially impair or interfere with the Conservation Values of the Property.

Allowed uses of the Property include, the specific uses allowed in Paragraph 5.g and the production, processing, and marketing of agricultural crops and livestock, provided it is conducted in a manner consistent with the terms of the Agricultural Land Easement Plan (see Paragraph 3.d)

Grantor is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this Easement. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the

Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Grantors, or set forth within the Agricultural Land Easement Plan for the Property.

(3) *Agrichemicals*

The Grantor reserves the right to use agrichemicals, in accordance with label instructions, including, but not limited to, fertilizers, biocides, herbicides, and rodenticides, but only in those amounts and with the frequency of application constituting the minimum necessary to accomplish reasonable agricultural activities permitted by the terms of this Easement and applied in accordance with the label instructions. Notwithstanding the foregoing sentence, no use of agrichemicals will be made if such use would result in any significant impairment of any natural ecosystem or process on the Property.

d. *Agricultural Land Easement Plan*

As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Property are subject to an Agricultural Land Easement Plan, as approved NRCS, to promote the long-term viability of the land to meet the ALE purposes. The Agricultural Land Easement Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the Property will be subject to the Agricultural Land Easement Plan on the Property.

The Agricultural Land Easement Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this Easement. The Grantee and Grantor agree to update the Plan in the event the agricultural uses of the Property change. A copy of the current Agricultural Land Easement Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the Agricultural Land Easement Plan. In the event of substantial or ongoing noncompliance with the Agricultural Land Easement Plan or the requirement to update the Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of this Easement, including, but not limited to compliance with the Agricultural Land Easement Plan, the United States may exercise its right of enforcement.

e. *Vegetation and/or Forest Management*

Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Property. In addition, if the Property contains 40 contiguous acres of forest or 20 percent of the Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i)

cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

Commercial timber harvesting for any purpose other than wildfire mitigation, or to control insects or disease on the Property is prohibited, except in the future if timber is grown as an agricultural product as is allowed in Paragraph 5h(1)(a). Any timber harvesting shall be conducted in accordance with generally accepted best management practices for the sites, soils and terrain of the Property and in a manner that does not materially diminish or impair the Conservation Values.

Notwithstanding the foregoing, Grantor may cut and remove grass or other vegetation and, to the extent customary, perform routine upkeep, maintenance, and landscaping, including the planting of trees, shrubs, flowers, a domestic garden, and other native and non-native plant species consistent with the reserved rights and the terms of this Easement. Subject to other provisions of this Easement, Grantor may selectively cut, burn, mow, and clear trees and vegetation in existing fields to maintain the character and nature of the habitat, and to preserve winter range for deer, elk, and other wildlife. Grantor may undertake activities for fire mitigation, road maintenance, weed control, insect control and to prevent personal injury and property damage. All such activities shall be undertaken in order to maintain and protect the Property and the Conservation Values.

Conversion of native vegetation to exotic cover species or the introduction of non-native plant species, plowing or any type of cultivation is prohibited except as is allowed for uses consistent with existing agricultural uses and the raising and irrigation of crops typically cultivated in Rio Grande County, Colorado, and except where it may be necessary for restoration or enhancement of the Conservation Values in the event of their degradation or destruction.

f. Recreational Uses

In addition to the limited commercial recreational uses allowed above, the Grantor reserves the right to engage in non-commercial recreational activities, such as horseback riding, hiking, fishing, cross-country skiing, or other similar low-impact recreational uses, to be enjoyed solely by the Grantor, its family and guests. Fishing and hunting are also permitted, so long as they are undertaken in compliance with applicable state and federal laws and regulations and pursued in a manner that does not materially diminish or impair the Conservation Values.

g. Commercial or Industrial Activity

(1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, are consistent with the Purpose of the Easement, and do not materially diminish or impair the Conservation Values. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

(a) Agricultural production and related uses conducted as described in the Agricultural Land Easement Plan;

(b) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Property herein protected;

(c) small scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts;

(d) Producing, processing or selling plants, animals, or other farm or ranch products that are predominantly grown or raised outdoors on the Property, including forages, grains, feed crops, field crops, berries, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, aquaculture, trees, and other similar uses and activities consistent with the Conservation Values;

(e) Breeding and grazing livestock, such as cattle, horses, sheep, swine, fish, fowl, and similar animals, including seasonally confining livestock into a corral or other small area for feeding, and/or leasing pasture to third parties for grazing livestock consistent with the Conservation Values;

(f) Customary rural enterprises, such as agri-tourism, processing, packaging, marketing of farm products, farm machinery repair or livestock veterinary services, bed and breakfasts operated within a residential structure, and similar enterprises conducted by Grantor or by another person residing on the Property, conducted within the Building Envelopes set forth in Paragraph 5b;

(g) Home occupations or similar enterprises; and,

(h) Fishing and hunting for Grantors and guests and for private parties with permission of the Grantors is permitted on the Property.

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots are inconsistent with the terms of this Easement and are prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception, feeding and finishing of livestock.

h. Water Rights

(1) Water Rights Included

The Parties agree that it is appropriate to include certain water rights beneficially used on the Property in the Easement pursuant to C.R.S. §38-30.5-102. The "Water Rights" consist of all of

Grantors' right, title, and interests in and to the water and water rights described in **Exhibit E**, together with all associated canals, ditches, laterals, headgates, springs and spring rights, reservoir and storage rights groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property (collectively, the "**Water Rights**").

The Parties intend and desire that the obligations and restrictions set forth in this Section be enforceable pursuant to Colorado Revised Statutes §§38-30.5-101 through 38-30.5-111, inclusive, in as much as the same relate hereto. In the alternative, the Parties intend and desire that the obligations set forth in this Section be enforceable as a restrictive covenant or equitable servitude.

(2) Permitted Water Uses

The Parties agree that the Water Rights are hereby dedicated and restricted exclusively for agricultural uses consistent with the terms of this Easement (the "**Permitted Water Uses**"). The Permitted Water Uses are continued irrigation and stock water or other historical use of the Water Rights, and Grantor shall have the paramount right to use and enjoyment of the Water Rights on the Property consistent with recent historical practices and the adjudicated use of the water. The Parties acknowledge that the Permitted Water Uses and the Water Rights provide a substantial benefit to the Property's Conservation Values, by, among other things, providing return flow to riparian and wetland areas on the Property.

(3) Restrictions on Water Rights

Grantor shall retain and reserve the Water Rights and shall not transfer, sell or otherwise separate the Water Rights from the Property. Except as set forth in Paragraph 24 herein, Grantor may only encumber, lease, or change the historic use of the Water Rights with the advance written approval of Grantee, and in accordance with Paragraph 6, provided that such encumbrance or lease does not de facto or de jure separate the Water Rights from the Property, change the historic use of the Water Rights, or materially diminish or impair the Conservation Values of the Property, and is otherwise consistent with the Purpose of this Easement.

Grantor may not have the points of diversion, or the place of use changed, except after the Grantor's receipt of a written determination by the Grantee that such changes are not inconsistent with the Permitted Water Uses and will not impair the Conservation Values of the Property. Grantor shall not construct or permit others to construct, any new diversion, storage, or other water structures on the Property, and shall not otherwise undertake any new development of water resources for use on the Property without the prior written approval of Grantee, which approval shall not be unreasonably withheld.

Grantor shall have the right, without Grantee's prior written approval, to maintain, repair, and if necessary, reconstruct or replace any existing structures or equipment associated with the Water Rights (such as ditches, wells, irrigation equipment, reservoirs, sloughs and impoundments), so long as any activity does not materially impair or interfere with the Conservation Values.

Nothing in this paragraph shall be deemed to require Grantor to undertake steps to ensure flow from the water ditch or any decreed springs on the Property in the event such flow is interrupted as a result of seasonal fluctuations in water flows, drought conditions, a naturally occurring decline in the water table, a naturally occurring lack of artesian pressure, and/or curtailments from the Division of Water Resources.

(4) *Protection of Water Rights*

Grantor shall promptly pay, when due, all assessments, charges and fees of any kind for ownership, delivery and use of the Water Rights. If in the future any Water Rights associated with the Property are included within a mutual ditch company, or any other entity that issues shares of stock representing the Water Rights, Grantor shall include the following notation on the stock certificates and issue a copy to Grantee.

"These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed from [Name of Landowner] to Rio Grande Headwaters Land Trust recorded at [Reception No.], in the office of the Rio Grande County Clerk and Recorder on [DATE]."

Grantor shall provide Grantee a copy of any written notice received from the Company concerning any unpaid assessments, fees and charges of any kind related to Water Rights. Grantor hereby authorizes and appoints Grantee as its agent and attorney-in-fact for the limited purpose of contacting the Company to inquire about assessments and to pay any such assessments on behalf of the Grantor, and thereafter to collect any such amount, together with interest, reasonable attorney fees and court costs from the Grantor.

Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights. Grantor shall provide Grantee a copy of any written notice received by Grantor from any state water official concerning the use, or possible abandonment, of the Water Rights. If the Water Rights appear on the decennial abandonment list or the Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, the Grantee shall give the Grantor written notice of such threat of abandonment.

If, and only if, Grantor fails to address the threat of abandonment or impairment within 90 days of receiving such notice from the Grantee, the Grantee shall, in addition to any other remedies available to the Grantee under this Easement or law, have the right to, (a) seek removal of the Water Rights from the decennial abandonment list, (b) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights. Grantor agrees to cooperate as necessary to accomplish such removal, and authorizes and appoints the Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate such removal. Grantor agrees to reimburse Grantee for the costs of such action including staff time, legal fees, court costs, consultant costs and equipment costs.

(5) *Change of Conditions*

Grantor expressly waives any claim to use, change or transfer all or any part of the Water Rights other than as provided in this Conservation Easement, regardless of any future change in circumstances, change in values, or other reasons, based on any theory of reasonable accommodation or other theory that would release any or all of the Water Rights from the provisions of this Conservation Easement.

i. Water Features

Grantor shall be allowed to take such action as Grantor deems necessary and appropriate with regard to existing ponds, wetlands, stream channels or other water features with advance written notice in accordance with Paragraph 6. If an emergency exists, Grantor may commence the work provided that Grantor gives Grantee notice within ten (10) working days of the emergency and describes the alteration or modification performed on the water feature to address the emergency. Any alterations or modifications to existing ponds, wetlands, streams, channels or other water features shall be conducted in compliance with all applicable statutes and regulations.

j. Subdivision

Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. The legal description of the Property consists of two (2) assessor's tax parcels of land owned by Grantor. The Parties further agree that the division, subdivision or de facto subdivision of the entire Property (which includes both assessor's tax parcels), whether by legal or physical process, into more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. Notwithstanding the total number of assessor's tax parcels, at all times the entire Property shall be owned in a single ownership and shall be conveyed as a single parcel which shall be subject to the provisions of this Easement. Ownership of the single parcel by joint tenancy or tenancy in common is permitted; provided, however, that Grantor, and Grantor's successors in interest, shall not undertake any legal proceeding to partition in kind, subdivide or divide in any manner the Property.

k. Mining

(1) Mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, coal, or any other mineral substance of any kind or description owned by the Grantor as of the dates of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Property is prohibited, except for the limited extraction of sand, gravel, soil or rock used for agricultural operations solely on the Property. Extraction of materials used for non-commercial or agricultural purposes must be limited to an area less than one-half acre in size at any given time must not harm the Conservation Values or the agricultural uses of the Property. Any area which is disturbed by extraction must be revegetated and restored to a natural condition promptly after completion of extraction.

(2) Oil and gas exploration and extraction on the Property is permitted, in accordance with this Paragraph 2, if approved with advanced written approval by Grantee and NRCS. Grantee and Grantor must demonstrate that such exploration and extraction of oil and gas is (i) not

accomplished by any surface mining method (ii) accomplished by a method of extraction, production and transport that has no more than a limited, localized impact on the Property that does not harm the agricultural use or Conservation Values of the Property, (iii) is within the impervious surface limits (see Paragraph 3b(6)), and (iv) is subject to a plan (“**Extraction Plan**”) approved by Grantee and the NRCS. Impervious surfaces, as defined in Paragraph 5b(6) will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this paragraph.

(3) Grantor agrees that by granting this Easement to Grantee, it has granted to Grantee a portion of its rights as owner of the surface of the Property on which the exploration, development, operations and reclamation of any minerals (including but not limited to oil and gas, helium, carbon dioxide, and coalbed methane) may be conducted (“Surface Owner”). Grantor intends that Grantee, in addition to its interest as a holder of this Easement, shall have the rights of a Surface Owner to receive notices of any proposed mineral activities and to take appropriate action to protect the Purpose of this Easement. Any proposed lease, renewal of an existing lease, surface use agreement, or other conveyance by Grantor to a third party to develop any mineral rights, subsequent to the date of recording this Deed, shall expressly reference this Easement, shall be subordinate to this Deed, shall contain terms consistent with the provisions of this Easement, and a copy of the proposed lease agreement or conveyance shall be provided to Grantee prior to its execution by Grantor for Grantee’s review and advance written approval in accordance with Paragraph 6. Accordingly, Grantor agrees: (i) to provide Grantee with any notices Grantor receives related to the exploration, development, operations and reclamation of any minerals; and (ii) that Grantee’s prior written approval must be obtained before Grantor enters any lease or agreement pertaining to use of the surface or subsurface of the Property for the exploration, development, operations and reclamation of any minerals, including any agreement permitted or required of a Surface Owner under C.R.S. §§ 34-60-101 *et seq.*, as amended from time to time, and rules and regulations promulgated thereunder (“Surface Use Agreement”), between Grantor and owners or lessees of minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane). Grantee may withhold its approval in its reasonable discretion if it determines that the proposed surface use would materially diminish or impair the Conservation Values, is inconsistent with the terms of this Easement, or is not permitted under the terms of the mineral reservation or severance or the mineral lease.

If any third party owns or leases the oil, natural gas or any other mineral substance as the time this Easement is executed, and their interest have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph 5k.

(4) No extraction permitted pursuant to this Paragraph 5k shall occur without advance written notice in accordance with Paragraph 6. Notice to Grantee shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact.

(5) This Paragraph 5k shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto.

l. Motorized Vehicles

Motorized vehicles may be used only in conjunction with activities permitted by this Easement and in a manner that does not materially diminish or impair the Conservation Values. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited. Nothing in this paragraph is intended to prohibit the use of motorized vehicles for any agricultural, recreational, hunting, or fishing use or other use that is permitted under this Easement.

m. Signs or Billboards

No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing or other low impact recreational uses, signs to describe the fact that the Property is protected by a conservation easement and to list the agencies and organizations involved, and signs informing the public of the status of ownership. No signs shall materially diminish or impair the Conservation Values.

n. Utilities, Storage and Septic Systems

(1) Wells: Grantor may construct and maintain new wells on the Property, as permitted by law, for uses consistent with the Conservation Values and terms of this Easement.

(2) Granting of Easements for Utilities and Roads: The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability and related conservation values of the Property as determined by the Grantee in consultation with the Chief of NRCS.

(3) General Utilities: Existing utilities, including wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be maintained, repaired, removed and replaced in the same location with a similar structure without any further approval from Grantee. New utilities within the Building Envelopes or that that are typically installed at grade level or below ground may be installed without advance written approval of the Grantee. New utilities to serve approved buildings or structures, including on-farm energy structures, that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Property, may be built outside of the Building Envelopes with prior written approval of the Grantee provided

that the utilities or agricultural structures are consistent with the Agricultural Land Easement Plan (see Paragraph 5d). When appropriate, Grantor may grant easements under the Property for such purposes, provided that the surface above the utilities is promptly restored to its natural state.

(4) **Energy Generation Facilities:** Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Property and consistent with the purposes of this Easement. If any excess energy is produced by the energy generation facilities allowed herein, Grantor may sell back that excess energy. Energy generation facilities may be built within the Building Envelopes without further permission of the Grantee; however, the design, location, and construction of any energy generation facilities located outside of the Building Envelopes shall be subject to the advance written approval of the Grantee in accordance with Paragraph 6. Grantee shall grant such approval only if Grantee determines that the facilities do not materially diminish or impair the Conservation Values of the Property.

o. Lights

All outdoor lights installed after the date of this Easement shall be hooded, such that the lighting is fully shielded so that all light rays emitted are projected below, and not above, the horizontal plane of the fixture.

p. Trash

Accumulation or dumping of trash, refuse, sewage, junk or toxic materials, including but not limited to household trash and hazardous chemicals is not allowed on the Property. Limited dumping or accumulation of other farm-related trash and refuse produced on the Property is permitted, provided that such dumping does not materially diminish or impair the Conservation Values, and is confined within a total area less than one-quarter acre in size at any given time. This paragraph shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations. No radioactive or hazardous waste shall be placed, stored, dumped, or buried on the Property.

6. Grantee's Approval

The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the terms of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than 45 days prior (with the exception noted in Paragraph 5h for emergencies) to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement. Grantor shall provide such

additional information as Grantee reasonably may request. Where Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee's approval in writing. Grantee shall grant or deny its approval in writing within 30 days of receipt of Grantor's written request for approval and submittal of sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee's reasonable determination that the activity as proposed would materially diminish or impair the Conservation Values, or would be inconsistent with the Purpose of this Easement. Grantee shall specify in writing its basis for denial.

To the extent required by this Easement, Grantee's written approval is required prior to Grantor initiating the following action:

- a.* Demolishing, enlarging, or replacing existing buildings (Paragraph 5b(1));
- b.* Residential improvements larger than 500 square feet (Paragraph 5b(2));
- c.* Major agricultural structures and improvements larger than 1,000 square feet (Paragraph 5b(3)) ;
- d.* Expansion of the use of existing recreational improvements (Paragraph 5b(4));
- e.* Covering any portion of the property outside the Building Envelopes with concrete, asphalt, or any other impervious paving material, or construction of any new road or trail (Paragraph 5b(6));
- f.* Widening and improving existing roads (Paragraph 5b(6));
- g.* Surface alteration as required in the construction of approved buildings, structures, roads, and utilities (Paragraph 5b(7)(3));
- h.* Encumber lease or change the historic use of the Water Rights (Paragraph 5h(3));
- i.* Alteration of points of diversion or place of use of Water Rights and construction of new diversions, storage or other water structures, including new development of water resources (Paragraph 5h(3));
- j.* Alter an existing pond, wetland, or stream channel (Paragraph 5i);
- k.* Mining Extraction (Paragraph 5k(2));
- l.* Entering into a proposed surface mining lease, surface use agreement, or other conveyance by Grantor to a third party to develop any mineral rights (Paragraph 5k(3));

- m.* Installing new utilities outside the Building Envelopes, that can sometimes be installed overhead, such as electric lines (Paragraph 5n(3));
- n.* The design, location and construction of energy generation facilities outside the Building Envelopes with appropriate utilities and access. (Paragraph 5n(4)); and,
- o.* Any other activity or use set forth in this Conservation Easement that requires Grantee's prior written approval.

7. Enforcement

Grantee shall have the right to prevent, correct, or require correction of violations of the terms of this Easement. With written notice to Grantor not less than fifteen (15) and not more than thirty (30) days prior to visiting the Property, Grantee may enter the Property for the purpose of inspecting for violations. However, in the case of an emergency, Grantee has the right to enter the Property to inspect without advance notice. In the event Grantee gains knowledge of a non-emergency violation, Grantee may enter the property three (3) calendar days after written notice is mailed or delivered to Grantor. Notwithstanding the foregoing, Grantee shall use reasonable efforts to provide Grantor with advance or contemporaneous notice of its intent to enter the Property. Grantor or its representative may accompany Grantee on any inspections of the Property; however, Grantor's unavailability to accompany the Grantee shall not limit the Grantee in its inspections, monitoring visits or in the performance of its duties as related to this Easement

Grantee may not bring an action against Grantor for violations of this Easement resulting from any Act of God, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

If Grantee finds what it believes is a violation of this Easement, or Grantee has a reasonable and good faith basis for believing that a violation may occur, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation ("**Notice of Violation**"). Upon receipt of the Notice of Violation, Grantor shall immediately discontinue the activity or use that has caused the alleged violation and shall either:

- (a) restore the Property to its condition prior to the violation; or
- (b) provide Grantee with a written plan of correction including a timetable for completion of the correction of the violation; or
- (c) provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event both Parties agree to meet as soon as possible to resolve their differences.

If a resolution in clause (c) of this difference cannot be achieved at the meeting, both Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute

pursuant to Paragraph 9 below. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute within ninety (90) days of Grantee's written notice to Grantor of the alleged violation, or by such other date as the Parties may mutually agree, Grantee may, at its discretion, take appropriate legal action. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, Grantee may, at its discretion, take appropriate legal action without pursuing mediation. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may seek an injunction to stop such violation, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, all of Grantee's costs and expenses of suit, expenses incurred in stopping and correcting the violation or imminent violation, Grantee's reasonable attorneys' fees, shall be borne by Grantor. If a court finds that any enforcement action by Grantee was groundless, frivolous, or brought in bad faith, Grantee shall reimburse Grantor for all its reasonable expenses incurred in defending against said action, including but not limited to reasonable attorneys' fees.

Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Easement and Agricultural Land Easement Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Easement, the Agricultural Land Easement Plan, and the United

States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Property with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property.

8. Reasonable Delays of Enforcement Not A Bar

Enforcement of the terms of this Deed shall be at the sole discretion of the Grantee. Any failure by Grantee to discover a violation or any forbearance by Grantee to exercise its rights under this Easement in the event of a violation of any term shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy under the terms of this Easement shall impair such right or remedy or be construed as a waiver. Grantor hereby expressly waives any defenses of laches, estoppel, rights of prescription and the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*

9. Mediation

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) working days of the receipt of such request, the Parties shall select a single, trained, and impartial mediator with experience in conservation easements and other land preservation tools. Mediation shall then proceed in accordance with the following guidelines:

a. Purpose

The purpose of the mediation is to: (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the Parties to develop proposals which will enable them to arrive at a mutually

acceptable resolution of the controversy. The mediation shall not result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.

b. Participation

The mediator may meet with the Parties and their counsel jointly or *ex parte*. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as required by the mediator.

c. Confidentiality

All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the approval of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a party in accordance with Colorado Rules of Evidence, Rule 408.

d. Time Period

Neither party shall be obligated to continue the mediation process beyond a period of one hundred eighty (180) days from the date of receipt of the initial request.

The costs of the mediator shall be borne equally by Grantor and Grantee; the Parties shall bear their own expenses and attorney's fees.

10. Acts Beyond Grantor's Control

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, the Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose of this Easement.

11. Access

No right of access by the general public to any portion of the Property is conveyed by this Easement. Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

12. Costs and Liabilities

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication. Grantor shall maintain adequate comprehensive general liability insurance coverage, against claims for injury, death or property damage. Grantee shall be named as an additional insured party on all such insurance policies, and Grantor shall provide evidence of such insurance to Grantee promptly upon request. Grantor shall keep the Property free of any viable mechanic's liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

13. Taxes

Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property (including without limitation the Water Rights) by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

14. Hold Harmless; General Disclaimer

Grantor shall hold harmless, indemnify, and defend Grantee and the members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, litigation claims, demands, or judgments, including, without limitation attorney's fees reasonably incurred, arising from or connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the limited extent due to the negligence of any of the Indemnified Parties; (2) the obligations costs and expenses associated with enforcement of this Easement as specified in Paragraph 7; and (3) as provided in Paragraph 23, herein.

The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property.

15. Real Property Interest

This Easement constitutes a real property interest immediately vested in Grantee. The Parties stipulate, based on a qualified appraisal, that this Easement (which includes the value of the

Grantee's Development Rights) has a fair market value of forty-two percent (42%) of the full unencumbered fair market value of the Property (the "Easement Value Ratio"). The values at the time of this Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Grant, pursuant to Section 170(h) of the Code and the Treasury Regulations adopted pursuant thereto, whether or not Grantor claims any deduction for federal income tax purposes. For the purposes of this Easement, Easement Value Ratio shall remain constant.

16. Termination, Extinguishment, and Condemnation (Eminent Domain)

The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of this Easement is forty-two percent (42%), hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Easement. The Proportionate Share will remain constant over time.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee, CWCB and the United States an amount at least equal to the Proportionate Share of the fair market value of the land unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the CWCB, the United States and the Grantee will be as follows: (a) to the CWCB five point five percent (5.5%) of the Proportionate Share; (b) to the United States forty-three point six percent (43.6%) of the Proportionate Share; and (c) to Grantee the balance of the Proportionate Share, which is fifty point nine percent (50.9%). Until such time as the Grantee, CWCB and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee, CWCB and the United States each have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

Grantee shall use its proceeds in a manner consistent with the conservation purpose of this Easement.

17. Transfer of Easement

This Easement is transferable. With the advance written approval of Grantor (which shall not be unreasonably withheld), Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer:

- a) a "qualified organization" under § 170(h) of the Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder;
- b) is authorized to acquire and hold conservation easements under Colorado Revised Statute §§ 38-30.5-101 to 38-30.5-111 (or any successor provision then applicable);
- c) expressly agrees, in writing, to assume the responsibility imposed on Grantee by this Easement; and,
- d) is approved in writing as a transferee by the CWCB and the United States each in their sole and absolute discretion. Grantee shall provide the CWCB and the United States with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction.

The CWCB or the United States may disapprove of the transfer for any reason, including but not limited to, the holder's desire to sell its interest in the Property.

If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but Grantor, the CWCB or the United States refuses to approve the transfer, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Easement, provided that Grantor, the CWCB, and the United States shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

Upon compliance with the applicable portions of this Paragraph 17, the Parties shall record an instrument completing the assignment in the records of the county or counties in which the Property is located. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.

18. Transfer of Property

Grantor shall expressly reference the terms and conditions of this Easement in any contract for sale, lease, deed or other legal instrument by which it divests itself or attempts to divest itself of any interest in all or a portion of the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest, except for leases of the Property, at least thirty (30) days prior to the date of such transfer.

Any time the Property itself or any interest in it is transferred by Grantor to any third party, Grantor shall pay a transfer fee of one thousand five hundred dollars (\$1,500.00) to Grantee. The transfer fee shall be adjusted by 3% per year for inflation and be used by Grantee for purposes consistent with its mission (“**Transfer Fee**”). The Transfer Fee shall not be due upon transfer of any interest in the Property by Grantor to: 1) a trust for the exclusive benefit of Grantor; 2) a family partnership, family limited partnership, limited liability company or entity, provided that the majority of interest is held by Grantor; 3) a third party lessee; 4) a lender through the form of a grant of a mortgage, deed of trust or similar security interest; and 5) upon Grantor’s death. Grantee may also waive this Transfer Fee if the Property is transferred to Grantor’s heirs or beneficiaries before their death.

The failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way. Failure to provide notice pursuant to this section or in the recorded document shall not invalidate any transfer of the Property.

19. Perpetual Duration

The covenants, terms, conditions, and restrictions of this Easement shall be servitudes running with the land in perpetuity. Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, lessees and all other successors as their interests may appear; provided, however, that either party’s rights and obligations under this Easement shall terminate (as to such party, but not as to such party’s successor, who shall be bound as provided herein) upon a transfer of such party’s entire interest in this Easement or the Property, except that liability of such transferring party for acts or omissions occurring prior to such transfer shall survive the transfer.

20. Remediation

If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

21. Notices

Any notice, demand, request, consent, approval or communication that either party or other addresses as the Parties may designate written notice is required to give the other in writing shall be either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:
Robert and Carol Lee Dugan
P.O. Box 333
Monte Vista, CO 81144

To Grantee:
Rio Grande Headwaters Land Trust
P.O. Box 444
Del Norte, CO 81132

To the CWCB
Attn: To Craig Godbout
1313 Sherman, #718
Denver, CO 80203

To the United States
State Conservationist
USDA Natural Resources Conservation Service
Denver Federal Center
Building 56, Room 2604
P.O. Box 25426
Denver, CO 80225

22. Grantor's Title Warranty

Grantor owns the fee simple interest in the Property, subject to a Financing Statement held by Irrigation Finance Solutions, LLC ("Lien"), which has agreed to subordinate its interest in the Property to this Deed as evidenced by the Subordination attached to this Deed in **Exhibit F**. Grantor acknowledges that the Lien is subordinate to all rights of Grantee under this Easement, including the right of Grantee to its proportionate percentage of Grantor's interest as defined in Paragraph 16 in any (1) insurance proceeds as a result of any casualty, hazard or accident occurring to or about the Property, and (2) proceeds of condemnation or involuntary taking. By executing the Subordination in **Exhibit F**, the beneficiary of the Lien agrees that all such Grantee proceeds shall be paid to Grantee in the manner required by Treas. Reg. Sec. 1.170A-14, with the intention that the subordination of the Lien fully complies with the requirements of such regulation for the purpose of qualifying the donation of the Easement under Sec. 170(h) of the Code as a qualified conservation contribution.

Notwithstanding the lien noted above, Grantor warrants that Grantor has good and sufficient title to the Property and Water Rights, whether now owned or hereafter acquired, free from all liens and encumbrances, securing monetary obligations and ad valorem property taxes for the current year and hereby promises to defend the same against all claims from persons claiming by, through and under Grantor.

Grantor warrants to Grantee that Grantor is seized fee simple title of the Property and Water Rights conveyed, and has the right, power and lawful authority to grant, bargain, and convey to Grantee the rights conveyed in this Conservation Easement, and that the Property, including the Water Rights, are free and clear from any and all adverse claims, liens, and encumbrances (except

those noted in **Exhibit G** attached hereto and incorporated by this reference. Grantor and Grantor's successors in interest, shall and will warranty and forever defend the above bargained for Conservation Easement against all claims from persons claiming by, through and under Grantor.

Grantor further represents and warrants to Grantee that, after reasonable investigation and to the best of its knowledge:

(b) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(c) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(d) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with any federal, state, or local law, regulations, or requirement applicable to the Property or its use.

(e) Other than the exceptions listed on the attached **Exhibit G**, there are no other persons who may claim an interest in the Property or Water Rights that Grantor is aware of to the best of Grantors' knowledge.

23. Environmental Warranty

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by the Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability of Grantee, nor shall Grantee, have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. Subsequent Liens on the Property

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for a subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinate to this Easement.

25. Recording

Grantee shall record this instrument in a timely fashion in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

26. Amendment

The Parties acknowledge that biological, geological, climate and other changes will occur on the Property, and over time those changes may warrant amendments to this Easement to address such changes, while preserving one or more of the Conservation Values, subject to the requirements of this Paragraph 26.

If the circumstances arise under which an amendment to or modification of this Easement or any of its exhibits would be appropriate, this Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, and if the amendment:

- (a) is consistent with the Conservation Values and Purpose of this Easement;
- (b) does not affect the perpetual duration of the restrictions contained in this Easement;
- (c) complies with all applicable laws and regulations;
- (d) does not affect, sever from the Property or in any way diminish any of the water rights covered by this Easement;
- (e) complies with Grantee's procedures and standards for amendments (as such procedures and standards may be amended from time to time).

No amendment shall be allowed that would materially diminish or impair the qualifications of this Easement under any applicable laws or as a charitable gift or the status of any applicable laws, including Section 170 (h) of the Code or the laws of Colorado.

The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

Any amendment must be recorded in the records of the Clerk and Recorder of Rio Grande County. In order to preserve the Easement's priority, the Grantor may require that the Grantee obtain subordinations of any then existing liens, mortgages, easements, or other encumbrances. Nothing in this paragraph shall be construed as requiring Grantee to agree to any particular proposed amendment.

If the amendment is at the request of the Grantor for any reason, including Grantor error or omission in the original Deed, the Grantor shall pay all costs associated with the amendment, including closing costs, costs of consultants, including but not limited to appraisers, surveyors, and biologists; and shall pay all of Grantee's administrative, implementation, and legal costs; but Grantor shall not pay an amount less than one thousand five-hundred dollars (\$1,500.00) adjusted for inflation as measured by the Consumer Price Index for the Denver area.

If the amendment is at the request of Grantee, Grantee shall bear the closing and recording costs as well as its own costs. The Grantor shall bear the costs of any outside consultants or advisors whose counsel Grantor seeks.

Any purported amendment that is recorded without the prior approval of the United States is null and void.

27. General Provisions

a. Controlling Law

The interpretation and performance of this Easement shall be governed by the laws of the United States and the State of Colorado.

b. Liberal Construction

Any general rule of construction to the contrary notwithstanding this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Colorado Revised Statutes §§ 38-30.5-10, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement

This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. Joint Obligation

The obligations imposed upon by the Grantor and Grantee of this Easement shall be joint and several in the event that more than one entity or individual holds either interest at any given time.

f. Non-Merger

No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the Parties expressly state that they intend a merger of estates or interests to occur. The Parties further intend that no merger of interests occurs if Grantee acquires fee title to the Property.

g. Termination of Rights and Obligations

Provided a transfer is permitted by this Easement, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. No Third Party Beneficiaries

This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, the CWCB and the United States and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor, Grantee, the CWCB and the United States.

j. Change of Conditions

A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement in whole or in part.

k. Authority to Execute

Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Easement, that the individual executing this Easement on behalf of said party is fully empowered and authorized to do so, and that this Easement constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

l. Violation of Criminal Laws

Violation of Federal, State, or local criminal law is prohibited. No activities shall be permitted on the Property in violation of current Federal, State or local criminal laws.

28. Acceptance; Acknowledgement of Donation (I.R.C. § 170(f)(8)). As attested by Rio Grande Headwaters Land Trust and the signature of its representative affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement. The Grantee acknowledges receipt and acceptance of this Deed of Conservation Easement encumbering the Property for which no goods or services were provided.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, the United States of America, their successors and assigns, forever.

Exhibit A
Legal Description of Property

Tract 1:

The W1/2 NW1/4 and the W1/2 SW1/4 of Section 22, in Township 39 North, Range 7 East, N.M.P.M., County of Rio Grande, State of Colorado.

LESS

That part of the W1/2 W1/2 of Section 22, in Township 39 North, Range 7 East, N.M.P.M., lying South of the County Road known as Swede Lane, County of Rio Grande, State of Colorado.

Tract 2:

The NE1/4 of that portion of the SE1/4 of Section 21 more particularly described as follows:

Beginning at a point on the East line of said Section 21, whence the Southeast quarter of said Section 21 bears South 1640.2 feet; thence North 999.8 feet; thence South 88°56' West 2591.5 feet; thence South 00°15' West 79.8 feet; thence South 48°31' East 284 feet; thence South 74°15' East 2517.4 feet to the point of beginning; EXCEPTING therefrom that portion conveyed to the County of Rio Grande by instrument recorded April 13, 1910 at Reception No. 37691;

All in Township 39 North, Range 7 East, N.M.P.M., County of Rio Grande, State of Colorado.

Exhibit B
Maps of Property
(Page 1 of 3)

Exhibit B
Maps of Property
(Page 2 of 3)

**Exhibit B
Maps of Property
(Page 2 of 3)**



Map created: 09/30/2016

Locations of boundaries and features are approximate.

Basemap Source:
ESRI World Imagery
Aerial photos taken summer 2015

Legend

- Dugan Ranch II Conservation Easement Boundary
- Photopoints

Rio Grande Headwaters Land Trust
Dugan Ranch II Conservation Easement
Page 41 of 47

**Dugan Ranch II
Conservation Easement**

**Figure 4
Photopoints Map**

BIO-Logic, Inc.
125 Colorado Avenue, Suite B
Montrose, CO 81401
(970) 240-4374
www.bio-geo.com

Exhibit B
Maps of Property
(Page 3 of 3)

Exhibit B
Maps of Property
(Page 3 of 3)



0 500 1,000 Feet
 1:10,000

Map created: 08/30/2016

Locations of boundaries and features are approximate.

Basemap Source:
 ESRI World Imagery
 Aerial photos taken summer 2015

Legend

- Dugan Ranch II Conservation Easement Boundary
- Building Envelope
- Wetland-Wet Meadow
- Irrigated Pasture
- Irrigated Cropland
- Dryland Pasture
- Cottonwood Woodland
- Hay Yard
- Disturbed Area
- Pond
- Consolidated Slough

Dugan Ranch II Conservation Easement
Figure 6
Land Cover Map

BIO-Logic, Inc.
 125 Colorado Avenue, Suite B
 Montrose, CO 81401
 (970) 240-4374
 www.bio-geo.com

**Exhibit C
Survey**

**Exhibit D
Acknowledgement
of Baseline**

Baseline Documentation Report: Dugan Ranch II Conservation Easement

GRANTOR:

Robert W. Dugan 11/2/16
Dugan Ranch II, Robert W. Dugan Date

Carol Lee Dugan 11/2/16
Dugan Ranch II, Carol Lee Dugan Date

GRANTEE:

Nancy J. Both 11/2/16
Rio Grande Headwaters Land Trust Date

REPORT PREPARER:

Jim Le Fevre November 4, 2015
Jim Le Fevre, BIO-Logic, Inc. Date

**Exhibit E
Description of Water Rights**

Dugan Ranch II	San Jose (Lucero) #3 Priority Date of Decree and Case No.: 5-1-1896 Appropriated 4/30/1866	San Jose (Lucero) #144.5 Priority Date of Decree and Case No.: 5-1-1896 Appropriated 6/1/1877	San Jose (Lucero) #248 Priority Date of Decree and Case No.: 5-1-1896 Appropriated 5/31/1883	Marajo Ditch #231 Priority Date of Decree and Case No.: 5-1-1896 Appropriated 6/1/1882
East Parcel		0.75 cfs	0.60 cfs	0.70 cfs
West Parcel	0.55 cfs		1.65 cfs	
Total:	0.55 cfs	0.75 cfs	2.25 cfs	0.70 cfs
Overall Total				4.25 cfs

W3842 Well No. 01R (west parcel)	Decreed Rate of Flow
Structure ID No. 13593 Case No. W3842 Adjudication Date: 12-31-1971 Appropriation Date: 8-31-1943	2.23 cfs

Exhibit F
Subordination of Financing Statement

Forthcoming

Exhibit G
Exceptions to Title

1. Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purpose, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises, as contained in the following Patents:
 - a. U.S. Patent recorded on March 29, 1890 at Reception No. 12507.
 - b. U.S. Patent recorded on February 4, 1881 in Book 8 at Page 365.
 - c. U.S. Patent recorded May 13, 1891 in Book 17 at Page 85.
 - d. U.S. Patent recorded June 15, 1889 in Book 17 at Page 54.
2. Rights of way for and rights of others to N. County Road 3 West and Swede Lane.
3. Those items contained in Agreement for Electric Service to Irrigation Pump recorded May 17, 1974 at Reception No. 254366.
4. Those items contained in Easement Deed recorded October 29, 2013 at Reception No. 201300419645.

EXHIBIT PLD

Legal Description of Property

Tract 1:

The W1/2 NW1/4 and the W1/2 SW1/4 of Section 22, in Township 39 North, Range 7 East, N.M.P.M., County of Rio Grande, State of Colorado.

LESS

That part of the W1/2 W1/2 of Section 22, in Township 39 North, Range 7 East, N.M.P.M., lying South of the County Road known as Swede Lane, County of Rio Grande, State of Colorado.

Tract 2:

The NE1/4 of that portion of the SE1/4 of Section 21 more particularly described as follows:

Beginning at a point on the East line of said Section 21, whence the Southeast quarter of said Section 21 bears South 1640.2 feet; thence North 999.8 feet; thence South 88°56' West 2591.5 feet; thence South 00°15' West 79.8 feet; thence South 48°31' East 284 feet; thence South 74°15' East 2517.4 feet to the point of beginning; EXCEPTING therefrom that portion conveyed to the County of Rio Grande by instrument recorded April 13, 1910 at Reception No. 37691;

All in Township 39 North, Range 7 East, N.M.P.M., County of Rio Grande, State of Colorado.

EXHIBIT PM
Maps of Property
(Page 1 of 3)



Map created: 9/30/2016
 Locations of boundaries and features are approximate.
 Basecamp Source:
 Earth World Imagery
 Aerial photos taken summer 2015

0 250 500 750 1000 Feet

17,000

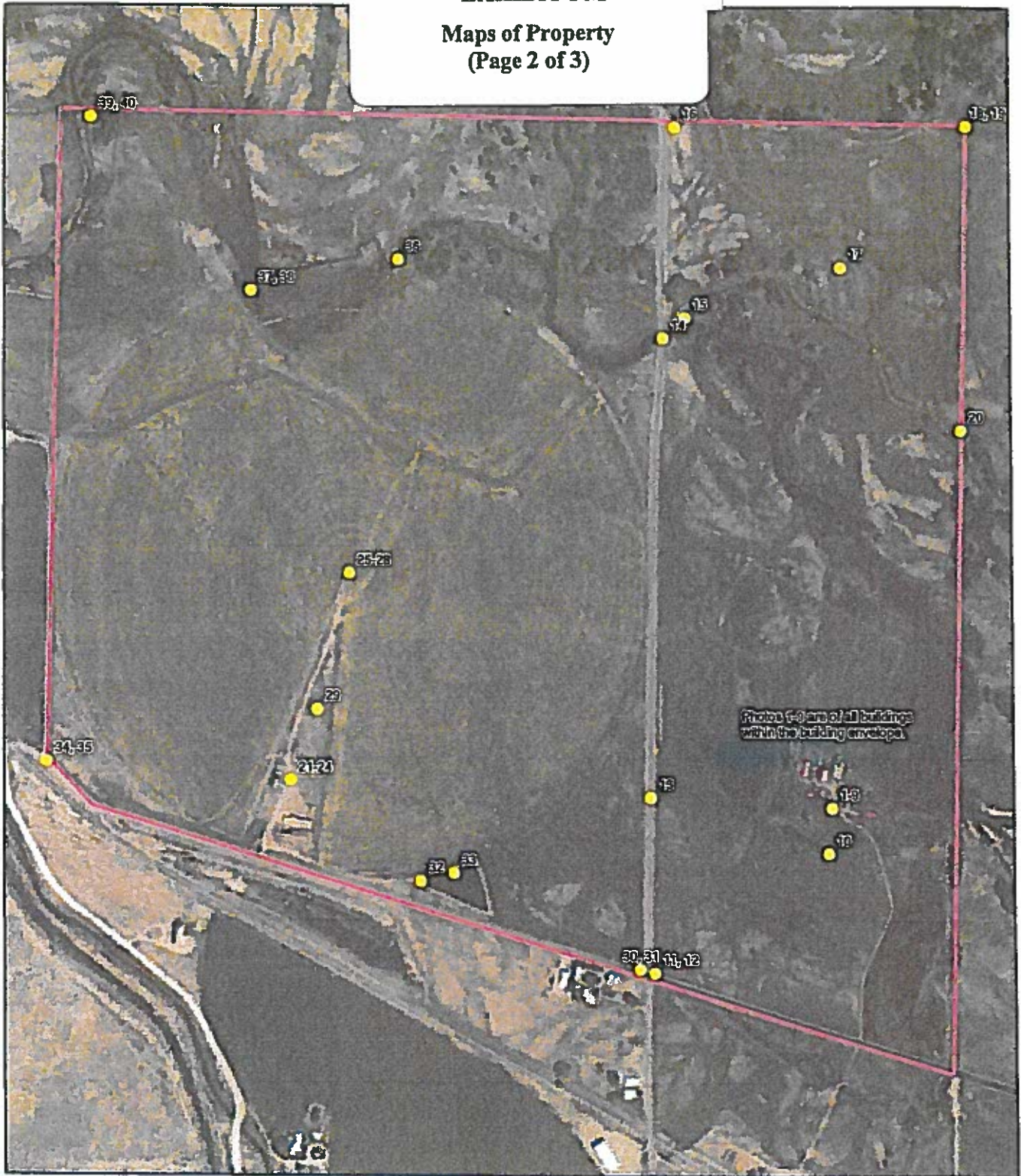
Legend

Dugan Ranch II Conservation Easement Boundary	Marejo Ditch	Irrigation Upright
Building Envelope	San Jose (Lucero) Ditch	Capped Well
Roads	Unmanned Ditch	Water Pump and Electrical Box
Fence	Rock Creek Overflow	Corral
Pond	Center Pivot and Well	Powerline
	Wheeled Sprinkler	

Dugan Ranch II Conservation Easement

Figure 3
Improvements Map
 BCO Logic, Inc.
 122 Colorado Avenue, Suite B
 Mundree, CO 81401
 (970) 240-4374
 www.bco-gee.com

EXHIBIT PM
Maps of Property
(Page 2 of 3)



0 250 500 750 Feet  1:7,000

Map created: 09/30/2016

Locations of boundaries and features are approximate.

Basemap Source:
 ESRI World Imagery
 Aerial photos taken summer 2015

Legend

-  Dugan Ranch II Conservation Easement Boundary
-  Photopoints

Rio Grande Headwaters Land Trust
 Dugan Ranch II Conservation Easement
 Page 41 of 47

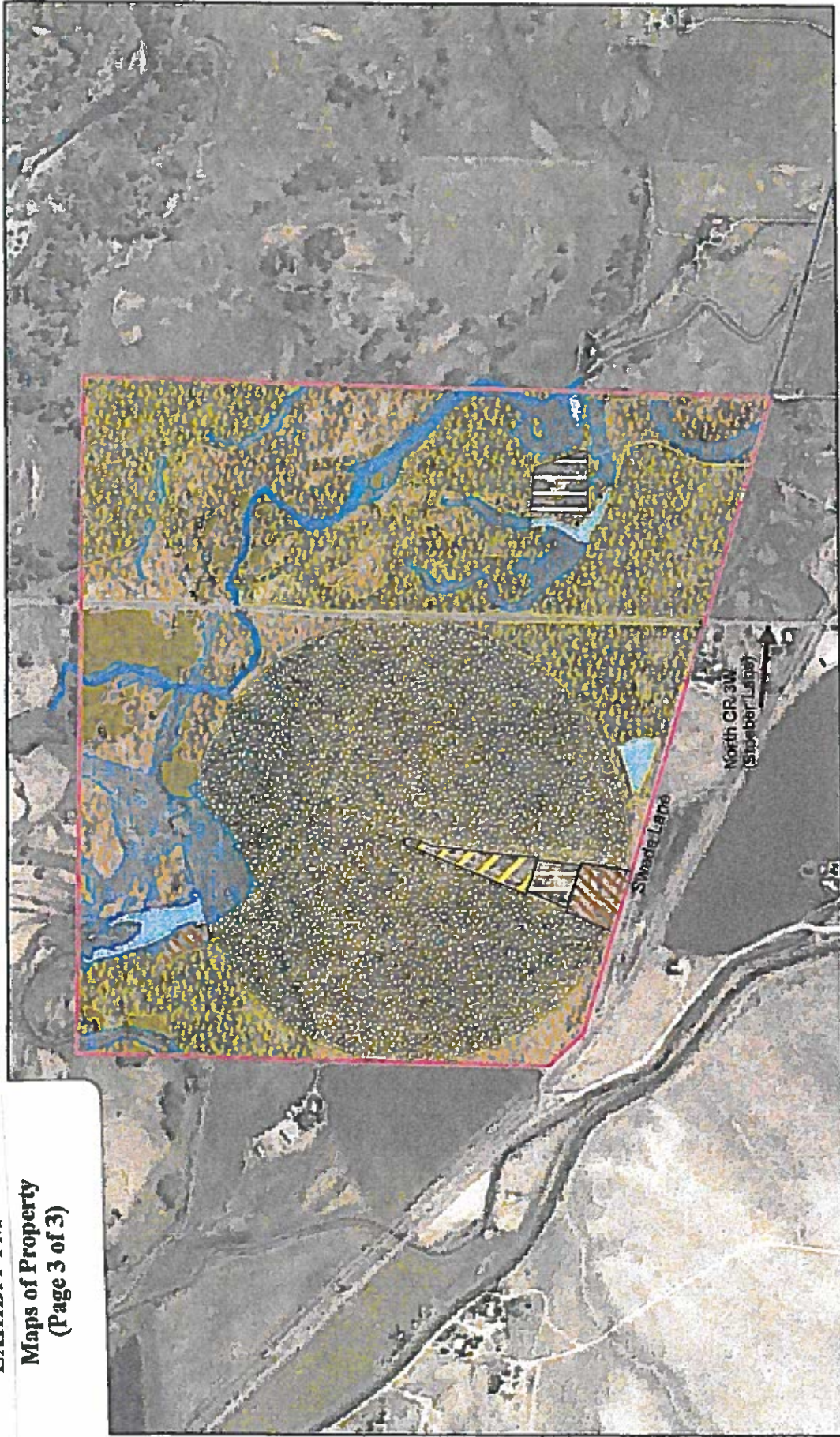
**Dugan Ranch II
 Conservation Easement**

**Figure 4
 Photopoints Map**

BIO-Logic, Inc.
 125 Colorado Avenue, Suite B
 Montrose, CO 81401
 (970) 240-4374
 www.bio-geo.com

EXHIBIT PM

**Maps of Property
(Page 3 of 3)**



0 500 1,000 Feet
1:10,000

Map created: 08/30/2016

Locations of boundaries and features are approximate.

BaseMap Sources:
ESRI World Imagery
Aerial photos taken summer 2016

Dugan Ranch II Conservation Easement
Figure 6
Land Cover Map
BIO-Logic, Inc.
125 Colorado Avenue, Suite B
Montrose, CO 81401
(970) 240-4374
www.bio-geo.com

- Legend**
- Dugan Ranch II Conservation Easement Boundary
 - Building Envelope
 - Wetland-Wet Meadow
 - Irrigated Pasture
 - Irrigated Cropland
 - Dryland Pasture
 - Cottonwood Woodland
 - Hay Yard
 - Disturbed Area
 - Pond
 - Consolidated Slough