COLORADO WATER CONSERVATION BOARD

ALERNATIVE AGRICULTURAL WATER TRANSFER METHODS COMPETITIVE GRANT PROGRAM

GRANT APPLICATION FORM

South Platte River ATM & Conservation Easement	South Platte River Basin
Program/Project Name	**River Basin Name**
$284,500	$1,144,500
Amount of Funds Requested	Amount of Matching Funds

Instructions: This application form must be submitted in electronic format (Microsoft Word or Original PDF). The application can be emailed or a disc can be mailed to the address at the end of the application form. The Alternative Agricultural Water Transfer Methods Competitive Grant Program, Criteria and Guidelines can be found at http://cwcb.state.co.us/LoansGrants/alternative-agricultural-water-transfer-methods-grants/Pages/main.aspx. **The criteria and guidelines must be reviewed and followed when completing this application**. You may attach additional sheets as necessary to fully answer any question, or to provide additional information that you feel would be helpful in evaluating this application. Include with your application a cover letter summarizing your request for a grant. If you have difficulty with any part of the application, contact Craig Godbout of the Water Supply Planning Section (Colorado Water Conservation Board) for assistance, at (303) 866-3441 x3210 or email at craig.godbout@state.co.us. Generally, the applicant is also the prospective owner and sponsor of the proposed program/project. If this is not the case, contact Craig before completing this application.

Alternative Agricultural Water Transfer Methods – Grant Application Form
October 2010

Part A. - Description of the Applicant(s) (Program/Project Sponsor);

1. Applicant Name(s): Colorado Open Lands

Mailing address: 1546 Cole Boulevard #200
Lakewood, CO 80401

Taxpayer ID#: 84-0866211 Email address: cfarmer@coloradoopenlands.or

Phone Numbers: Business: 970-829-1014
Home:
Fax:

2. Person to contact regarding this application if different from above:

Name: Carmen Farmer

Position/Title Conservation Project Manager

3. If the Contracting Entity is different then the Applicant, please describe the Contracting Entity here.

Not Applicable.

4. Provide a brief description of your organization. The applicant may be a public or private entity. Given the diverse range of potential applicants, not all of the following information may be relevant. Where applicable and relevant the description should include the following:

    a) Type of organization, official name, the year formed, and the statutes under which the entity was formed, a contact person and that person's position or title, address and phone number. For private entities, a copy of the Articles of Incorporation and By-laws should be appended to the application.

        Colorado Open Lands (COL) is a private, nonprofit, 50l(c)3 organization based in Lakewood, Colorado. Since our founding in 1981, COL has actively worked to protect the agricultural lifestyle and character of Colorado. COL works with willing landowners, communities, local governments, and non-governmental entities throughout the state to develop win-win conservation solutions that permanently protect the agricultural landscape while addressing the needs of landowners and communities. In our 34 years, we have protected over 260,500 acres of agricultural lands, along with the water rights necessary to keep these lands viable.

        Led by a full-time staff of fifteen and governed by a Board of Directors with wide ranging expertise, COL operates efficiently and effectively. COL's Board of Directors brings a wide range of expertise to our work that includes the financial, real estate, legal, public relations, economic, agricultural, and wildlife fields. Our staff has an equally wide range of expertise that spans fundraising, non-profit management, environmental education, community outreach and engagement, and event management, to geographic information systems (GIS), rangeland ecology, conservation easement negotiations and stewardship, ecosystem science and water rights law. Operating by consensus, our close-knit team brings strengths to each project that include excellent communication and negotiations skills, creativity, flexibility, and of course, a sense of humor.

        In 2008, COL became one of the first land trusts in the nation to receive accreditation by the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance. Accreditation provides public recognition of standards for organization and operations that typify best practices. We are also certified by the State of Colorado to hold conservation easements and therefore must show adherence to certain operational and procedural standards of operational governance, as well as acquisition, monitoring, and enforcement of conservation easements.

        The contact for this application is Carmen Farmer, Conservation Project Manager for the Northern Front Range and Lower South Platte River. Her contact information is:

        Colorado Open Lands
        1546 Cole Boulevard #200
        Lakewood, CO 80401
        970-829-1014
        cfarmer@coloradoopenlands.org

    b) For waters suppliers, information regarding the number of customers, taps, service area, and current water usage, and future growth plans, water related facilities owned or used, funding/revenue sources (existing service charges, tap fees, share assessments, etc.), the number of members or shareholders and shares of stock outstanding or a description of other means of ownership.

Not applicable.

c) For other entities, background, organizational size, staffing and budget, and funding related to water that is relevant in determining whether the applicant has the ability to accomplish the program/project for which funding is sought.

Western Water Partnerships (WWP) will manage the ATM component of this project. WWP is a Colorado Public Benefit Corporation with the mission of preserving irrigated agricultural lands by facilitating water sharing agreements between farmers, ranchers, municipal water providers, land trust, open space departments and local governments. Using market-based approaches, WWP provides a vehicle for entities to help create a West where cities and farms/ranches coexist while supporting local agricultural production and sustainable communities. WWP will lead a highly qualified project team that has many decades of collective experience working on ATM projects issues. The anticipated project team is comprised of Western Water Partnerships (ATM Project Management), Brown & Caldwell (Engineering), TZA Water Engineers (Engineering), Harvey Economics (Economics/Finance), AgSkill, Inc. (Agronomy/Crop Consulting) and Vranesh and Raisch, LLP (Legal).[1] Most notably, WWP recently (August 2017) successfully implemented the Larimer County-Broomfield water agreement which allows Larimer County to conserve a working farm in perpetuity and Broomfield to bolster the water supply for its citizens without drying up a farm for its water. That project was supported by the CWCB and is Colorado's first perpetual agricultural-to-municipal Alternative Transfer Methods project. This project is similar in many regards to the Larimer County-Broomfield ATM project which should help ensure this project's success. Aside from the Larimer County-Broomfield ATM, WWP not only implemented a wide variety of CWCB grant funded projects. Members of our team collectively have likely conducted more ATM-related projects than any consultant team in Colorado.

d) A brief history of the Applicant(s).

See 4.a. above.

e) Please include any relevant Tabor issues relating to the funding request that may affect the Contracting Entity.

Colorado Open Lands does not have TABOR limits on revenue.

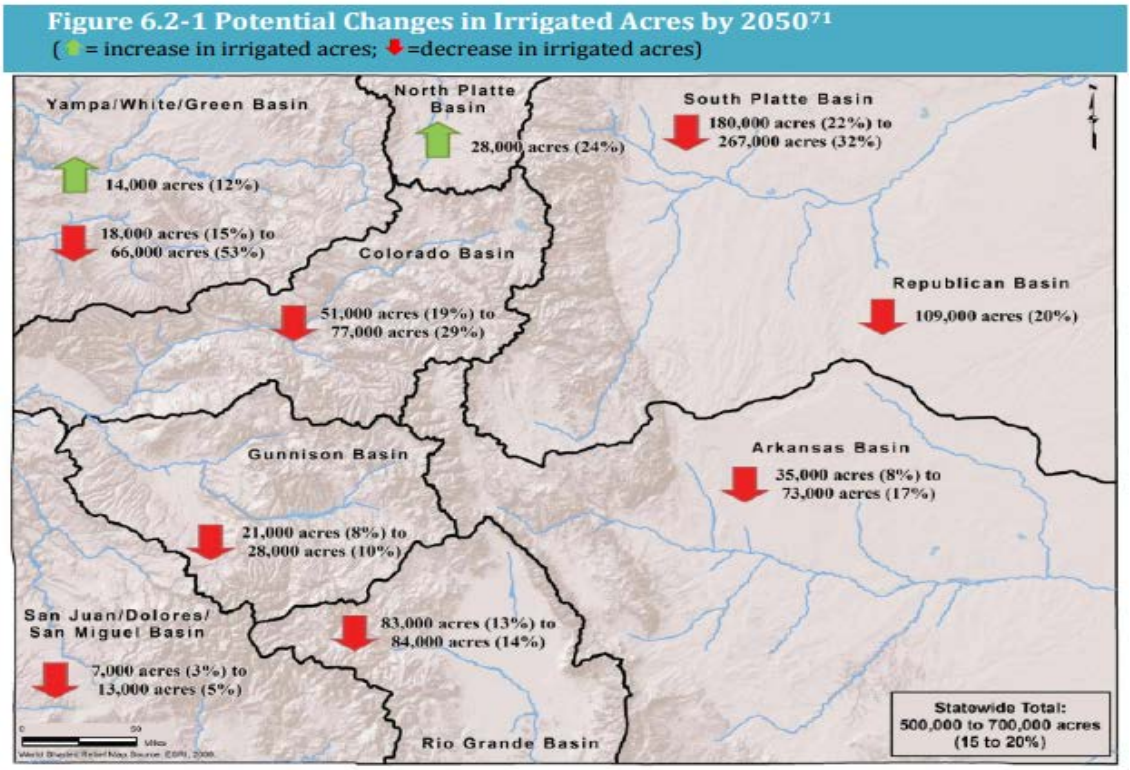
[1] Changes/additions to the project team may be required as work progresses to accommodate legal representation conflicts of interest that may develop. Such changes/additions would be noticed to CWCB staff and done in accordance with the requirements for any grant approval.

Part B. - Description of the Alternative Water Transfer Program/Project –

1. Purpose of the Program/Project

Please provide a summary of the proposed program/project, including a statement of what the program/project is intended to accomplish, the need for the program/project, the problems and opportunities to be addressed, the expectations of the applicant(s), and why the program/project is important to the applicant(s). The summary must include a description of the technical, institutional (i.e., how the program/project will be organized and operated), and legal elements that will and/or have been addressed by the applicant and proposed program/project. The summary should also discuss relevant project history, if applicable, and any other relevant issues.

Farms along the Front Range are facing ever increasing pressure from municipalities seeking out agricultural properties with water rights for conversion to municipal and industrial uses. This practice of "buying and drying" farms has consumed thousands of acres of farmland in the last 30 years, leaving barren and unproductive land with far reaching ramifications for soil erosion, water recharge into aquatic ecosystems, wildlife habitat, local agricultural economies and food security. The Colorado Water Plan includes the diagram below showing anticipated loss of irrigated acreage by river basin by the year 2050.



This scale of loss of irrigated farmland not only has the potential to radically shift rural economies and communities, but it drastically impacts many of the conservation values that many of us are working to

protect. Well managed, working agricultural lands also contribute to watershed health, and conservation of these private lands and their associated water rights is critical to the maintenance of many native species of Colorado wildlife. Working agricultural lands also help maintain the open spaces and scenic vistas that Coloradans (and tourists) know and love.

Alternative transfer mechanisms (ATMs) have been touted as a solution to keep productive lands in irrigated agriculture. However, some municipal providers contend that leasing water rights does not provide adequate certainty and they may worry that for valuable senior water rights, competing municipalities may purchase the water right at a higher price upon the expiration of their lease. Conservation easements can provide the permanence and enforceability to give all parties comfort that a leasing structure can remain in place, but the water rights can never be sold from the property. However, from a landowner perspective, their water rights are often their most valuable asset, one that they may be reluctant to place into a traditional conservation easement, which would eliminate their option to realize income from their water in the future.

COL believes that conservation easements have the potential to offer farmers and municipalities a third path *if the conservation community can learn to incorporate more flexibility into traditional easements.* Over the last year, COL has been working to draft due diligence guidelines and conservation easement language regarding water rights to accommodate for use of water off of the property, whether for municipal or environmental use. To date, funders of traditional conservation easements have been wary of this new approach. However, after significant conversations between COL and the Natural Resources Conservation Service (NRCS), NRCS is willing to consider federal funding for a pilot conservation easement that would utilize this new language and permit limited water leasing to municipalities. The focus of this particular project is a proposed conservation easement on a highly productive farm in eastern Weld County.

COL is requesting support from the CWCB to provide crucial funding to couple the conservation easement with an ATM. Should the grant be awarded, the conservation easement on the farm will be an unprecedented example of private and public partners coming together to provide the impetus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. In an industry where water is so imperative and subject to the unpredictable whims of nature, the option to lease the water on the property during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production. In this particular context, permanently conserved lands in Weld County provide a solid foundation for the continued operation and sustainability of the agriculture industry as a whole in one of the most productive counties in the country.

Previous Studies

To the maximum extent possible, the results of any previous studies and investigation should be utilized and incorporated into the proposed program/project. The application for funding should include a brief summary of the results of previous studies and how they will be utilized.

As discussed in 4.c. above, the project team has extensive experience working on ATM issues and projects in Colorado and are well versed on the various ATM efforts, studies and investigations that have occurred to date. There are several key reports and efforts that have or will provide guidance to this project. As discussed in Section 4.c. above, the project team successfully implemented the Larimer County—Broomfield ATM project which is Colorado's first perpetual agricultural-municipal water agreement and provided many lessons regarding what M&I water providers are willing to consider as well as considerations of the agricultural producer/irrigator. In addition, the COL and WWP are developing a "Handbook for Land Trust and Open Space Programs" as part of a CWCB funded project: Agricultural

Land and Water Buffer Feasibility Analysis. The handbook provides key analysis and guidance on coupling conservation easements and ATMs. In addition, the project team will look to several other key documents throughout the project including:

- Colorado Water Plan
- South Platte Basin Implementation Plan
- Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update from 2012
- Development of Practical Alternative Agricultural Water Transfer Methods (Flex Market)
- Feasibility Study for the Northeast Colorado Water Cooperative

2. Study Area/Service Area Description

The study area/service area is generally the geographic area that is the subject of the proposed program/project (include both the source of supply and location and type of new use). The description should include the following items:

a) A narrative description of the study area/service area including: the county, the location of towns or cities, topography, and locations of major surface and ground water features.

The supply area of water rights for this project are within Water District 1 of Division 1 (South Platte River Basin). However, potential municipal and industrial end users of water are located throughout the South Platte Basin.

The specific source of the water rights, consists of a 390-acre farm and associated augmentation ponds located in Weld County, just west of Orchard on the north side of the South Platte River. Water for the farm is provided via a well located on the eastern portion of the property with the source being the South Platte River Alluvium. The water to be provided for the ATM is derived from an undivided individual interest in the water rights and augmentation described in the decree of the Water Court for Water Division No. 1 entered in Case No. 89CWD27 on April 30, 1996, which interest shall consist of 39.6% of the first 1,275 acre feet of recharge credits available under said augmentation plan, up to but not to exceed 505 acre feet in any year, hereinafter referred to as the Sublette Augmentation Plan.

The following undisputed water rights are associated with the farm:

- An undivided individual interest in the water rights and augmentation plan described (Sublette Augmentation Plan) in the decree of the Water Court for Water Division No. 1 entered in Case No. 89CWD27 on April 30, 1996, which interest shall consist of 39.6% of the first 1,275 acre feet of recharge credits available under said augmentation plan, up to but not to exceed 505 acre feet in any year, with all its appurtenances; and together with an interest in the following "Agreements" concerning the operation, maintenance, and use of water rights and augmentation plan: 1) "Agreement" dated March 4, 1994 which is unrecorded, between Sublette Land and Cattle Company and Walter Thomas Jones and John Edward Jones; 2) "Memorandum of Agreement" dated April 10, 1995 and recorded in the records of Morgan County, Colorado on April 17, 1995 in Book

880 at page 22;3) "Agreement" dated July 5, 1994 and recorded in the records of Weld County, Colorado on July 14, 1994 in Book 1450, F2047.

- All water rights and all wells and equipment used for the irrigation of said land including, but not limited to, Well No. 1, Permit No. 9393F, Priority Date August 4, 1965, adjudicated December 31, 1972, in Case No. W-2929 A-34 in the State of Colorado, at a pumping rate not to exceed 977 GPM to irrigate a maximum of 160 acres; also Well No. 2, Permit No. 9393F, Priority Date May 31, 1975, adjudicated December 31, 1972, in Case No. 89CW027 in the State of Colorado; and also adjudicated in Case No. 97CW169 in the State of Colorado, at a pumping rate not to exceed 1,184 GPM to irrigate a maximum of 180 acres.
- Three (3) units of Groundwater Appropriators of the South Platte River Basin, Inc. (GASP). (now defunct).

b) An area map showing each of the items above, as well as the locations of existing facilities, proposed project facilities and boundaries of lands involved in the proposed program/project.

See Exhibit "A" attached hereto.

c) Information regarding the irrigated lands that are involved in the program/project. This must include a tabulation of total irrigated acreage, description of cropping types, crop yields, and total average annual water diversions for existing agricultural lands.

The farm has a well that provides water for two center pivots and irrigates approximately 313.5 acres each year. In 2016, the farm produced 658 tons of hay and 23,000 bushels of corn.

d) Information regarding the location of the new water use(s) that will be served by transferred water including the estimated number of users/taps and/or uses served.

In Task 2 (Exploration of Municipal & Industrial Partners/Feasibility), the project team will explore interest from municipal and/or industrial partners in the water rights associated with the property. Once the team has an interested party(ies) willing to negotiate, we will begin the development of specific terms of the agreement including information regarding the location of the new water use(s) that will be served by transferred water including the estimated number of users/taps and/or uses served.

e) Socio-economic characteristics of the area such as population, employment and land use.

The socio-economic characteristics of the area primarily consist of small rural communities with agriculture (crop production, livestock, dairy, greenhouses, etc.) serving as the base for the local economies. Mid-sized municipalities such as Sterling and Ft. Morgan (which each have an approximate population of 12,000 to 13,000 residents) are located just downstream of the supply area. In addition, numerous smaller towns are located in Water District 1. Other commerce and industry exists within the project area, including but not limited to: coal fired and wind powered electricity generation, ethanol production, State of Colorado correctional facilities, and local construction. In addition, amenities and enhancements such as river and floodplain lands, wetlands, reservoirs, streams, recharge facilities and upland habitat within Weld, Morgan, Logan, Washington and Sedgwick counties provide multiple benefits and opportunities for hunting,

fishing, boating, camping, and wildlife viewing in addition to other environmental and recreational values.

3. Description of the Alternative Water Transfer Method

Please describe the type(s) of water transfers that will be examined/utilized (i.e., conceived transfer methods include, but are not limited to: 1) interruptible water supply agreements; 2) long-term agricultural land fallowing; 3) water banks; 4) reduced consumptive use through efficiency or cropping changes while maintaining historic return flows; and 5) purchase by end users with leaseback under defined conditions). In addition, please describe how the transferable consumptive use will be calculated and quantified, and how return flow patterns will be addressed/maintained.

In Task 1, Farmland Viability Analysis, COL and WWP will engage consultants, including an agronomist, water engineer and economist to analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. This consulting team would provide recommendations on farm/water management with a potential ATM in the form of a Farmland Viability Plan. This plan would also provide a determination of the type of ATM to be pursued (e.g. Interruptible water supply agreement, rotational fallowing, partial supply). Considering the source of water supply is up to 505 acre-feet of recharge credits in any given year, it is not envisioned that a historic consumptive use (HCU) analysis will be necessary. The engineer will develop strategies to ensure the continuation of return flow patterns are met.

Ultimately, the water rights will need to go through Water Court to add the new M&I User. It is possible that this project would utilize the Substitute Water Supply Plan statute or the CWCB's HB 13-1248 process. As we proceed through this task, the team will document any the process as well as any issues that arise in our final report to the CWCB.

It should be noted that no CWCB grant funds will be used for engineering and legal costs directly related to the water court application.

4. Program/Project Eligibility

Please describe how the proposed program/project meets each of the following eligibility requirements (please see Criteria and Guidelines for additional information regarding the alternative water transfer methods/strategies that qualify for funding). Note: If these requirements are addressed in other parts of the application you may simply reference the applicable section(s).

a) A description of how, if implemented, the proposed program/project will protect property and water rights.

The owner of the farm plans to convey a conservation easement to COL, preserving the property from future development in perpetuity, while enabling the agricultural production to continue. The water rights will be permanently encumbered by the conservation easement and restricted primarily for continued agricultural use and future viability and related conservation values on the property, provided however, the option to lease water will be reserved. Leasing rights include the right to enter into legally enforceable water leases, contracts, emergency water loans or similar agreements including, but not limited to: (A) an interruptible water supply agreement as authorized by C.R.S.

Section 37-92-309, up to three years in every rolling ten year period; (B) participation in a water conservation program not to exceed 5 out of every 10 years, pursuant to C.R.S. Section 37-92-305(3)(c); or (C) other transfers of water rights as authorized by law.

b) Identified group(s) of agricultural users that are or may be willing to transfer a portion of their water and identified entity(s), group(s) or area(s) where the transferred water could or would be put to the new use and a description of the new use.

The landowner/agricultural water rights subject to the ATM project are identified above in paragraph 2.a. The identification of the M&I partner(s) will be part of the project in Task 2 (Exploration of Municipal and Industrial Partners/Feasibility) where WWP and COL will explore interest from municipal and/or industrial partners in the water rights associated with the property. As part of these discussions, the feasibility and potential costs for implementing an alternative transfer mechanism will be investigated and gauged.

c) The program/project must at a minimum conceptually describe the technical, institutional, and legal elements of the water transfer. Grant monies may be used to address one or more of these elements. If grant monies are not requested for all three elements, the grant applicant must describe how the applicant has or intends to address the elements, which are not included in the grant request, through other efforts.

Through the implementation of this project, the team intends to develop a model and/or template for other similar ATM project sponsors to use. While each farm will have its unique attributes, including its water rights, this project will help to establish guidance for those wanting to replicate the approach. To ensure this, the applicant will provide a report detailing the financial, legal and technical considerations and lessons learned through this pilot project. The report will describe negotiations with a M&I provider, development of an interruptible water supply agreement, land preservation options, development of a farm and water management program, water right court and/or administrative processes and the financial analyses, tools and agreements.

d) If grant monies are proposed for use for legal assistance then the use of those funds shall be oriented toward advancing the knowledge of alternative agricultural water transfer methods and techniques; not for preparation of a specific water court case. The total requested funds for legal assistance shall not exceed 40 percent of the total grant request. In addition, grant monies proposed for use for legal assistance must be used to collaboratively address issues and concerns related to agricultural water transfer. Funds shall not be used to solely advance the cause of the project proponents.

Grant funds will not be used for the preparation of a specific water court case. The grant funds for legal services will be applied to the interruptible supply agreements, assistance with negotiating between the parties and helping to address issues and concerns that parties may have regarding these specific pilot projects and/or alternative water transfers.

e) A minimum of a 10 percent cash match of total project cost (past expenditures and “in kind” can not be counted toward the 10 percent match).

A minimum of 10 percent cash match of the total project cost is committed for this project. COL is only asking for approximately 20% of total project costs. The cash match exceeds 75% of total

project cost. See attached Budget.

5. Program/Project Evaluation Criteria

The following grant evaluation criteria will be used by the CWCB to evaluate and make recommendations to fund, partially fund or not fund a grant application. The criteria are aimed at advancing alternative transfer methods from the literature and studies to actual on the ground projects/programs that provide reliable water supply and sustain key elements of the agricultural area from which the water is transferred. The applicant should fully address and explain in detail in the application how, and the extent to which, the proposed project/program meets each of the criteria. However, it should be noted that the project does not have to meet all of the criteria to be eligible to receive funding and the criteria below are not listed in any order of importance or priority.

a. The proposed project/program builds upon the work of former alternative water transfer methods efforts and addresses key areas that have been identified. For more detailed information on this work, please refer to the draft report: *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update*, November 2012.

   The report summarizes the past ATM funded projects and provides a list of findings and recommendations based on this work. Many of the studies that have been funded by the CWCB through the ATM program have identified several barriers to successful implementation. This project seeks to directly address three of the four major barriers to successful implementation of ATMs: permanency issues, high transaction costs associated and water rights administration uncertainties and water rights accounting questions associated with ATMs. By placing a conservation easement on the land and water rights (with the ability to lease the water for M&I uses during drought years), the project team believes the permanency issue is addressed. The high transaction costs associated with water court proceedings is a reality and we intend to include this cost in the price of the ATM water. Through this pilot and the farm/water management plans, and through the water court process, specific water rights administration and accounting questions will be addressed and a description will be included in the final report to the CWCB.

b. The proposed project addresses one or more key recommendation(s) in the report: *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update*, November 2012.

   The *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update* (Update) specifically recommends:

   - Continue to support demonstration/pilot projects to determine the feasibility of new concepts or techniques as needed.
   - The CWCB should continue its support of coupling conservation easements with interruptible supply agreements, which has the potential to provide a reliable source of water and preserve agricultural productivity in perpetuity. This strategy should be examined in more detail including an analysis of which lands and/or ditches are most amenable to this approach, the identification of funding partners (e.g., Great Outdoors Colorado, Colorado Department of Revenue/Tax Credits, etc.), and the terms of the conservation easement deeds and interruptible supply agreements (Section 1.3.1).

COL is working with the landowner to negotiate a conservation easement that preserves a highly productive farm with prime soils in perpetuity, while reserving the right to share water. Furthermore, this innovative project is happening in Weld County, the most productive agricultural County in the state, paving the way for the potential for future projects in this highly valuable agricultural area which is so dependent upon water for irrigation.

This project brings together funders which have traditionally funded conservation easements, but never water projects, with those which fund water projects and not conservation easements. Funding is already secured from the Natural Resources Conservation Service (NRCS) through their Agriculture Land Easement program to provide purchase money for the conservation easement. This NRCS funding is the first of its kind to provide federal funding for a conservation easement that would permit limited water leasing to municipalities. In the past, NRCS has always required as a condition of funding, that all of the water rights be restricted to their historical use in perpetuity, thus prohibiting any water-sharing. Recognizing the threat posed by water development to Colorado's most productive agricultural communities, NRCS has elected to waive this requirement. By doing significant outreach with state and regional NRCS staff throughout this project, COL will pave the way for future NRCS projects that reserve the right to share water.

Additional funding will also be supplied by U.S. Fish & Wildlife through the North American Wetlands Conservation Act (NAWCA). NAWCA grants help preserve waterfowl habitat, while supporting local economies and family farming.

COL is also working to secure private funding from the Walton Family Foundation, to assist with both funding for the conservation easement and the exploration of an ATM. Like CWCB, the Walton Family Foundation has expressed interest in funding an on-the-ground ATM project, resulting in usable and transferable information that could be used to inform and shape similar projects throughout the State. As a result, COL has requested $394,480 from the Walton Family Foundation.

Lastly, because a portion of the conservation easement value will be donated, the project will provide an opportunity to work with staff at the Colorado Division of Real Estate conservation easement tax credit program to help them better understand water-sharing in the context of conservation easements.

This pilot project specifically addresses the recommendation from the Update by coupling a conservation easement with an interruptible supply agreement. Furthermore, the inclusion of multiple funding partners, demonstrates the interest in seeing a project of this scope implemented. Ultimately, a tangible template for the implementation of future projects to the broader conservation community will be provided.

c. Preference will be given to projects that provide additional matching resources in the form of cash, past expenditures and in-kind contributions that are in addition to the required 10% cash match.

Total cash match for this grant is $1,144,500, which equals 79%, far exceeding the required 10% match.

d. The proposed project/program has the ability/potential to produce a reliable water supply that can be administered by the State of Colorado, Division of Water Resources.

While the team has not presupposed which legal mechanism will be utilized in changing the recharge credits for use by the municipal partner (e.g. water court, interruptible water supply statute, HB 1248--CWCB's pilot program, HB1128), it will be able to be administered by the Division of Water Resources. Once an ATM strategy has been identified by the team, the team will consult with Division One Engineer's Office.

e. The proposed project/program produces information that is transferable and transparent to other users and other areas of the state (i.e., would provide an example "template" or roadmap to others wishing to explore alternate transfer methods).

All of the information produced from this project would be transferable and transparent to other users and other areas of the state. The intent of this project is to demonstrate the feasibility of protecting agricultural land through the use of a conservation easement, while structuring the easement to permit an alternative transfer mechanism. For the first time, NRCS is funding a pilot conservation easement that allows the flexibility to share water for multiple uses. As the first of its kind, the hope is that the implementation of this project, with this specific funding, will open the door for future NRCS funded projects with an ATM component. The outcome will also benefit the land trust and open space community in Colorado, which has long shared template documents. The development of this ATM coupled with a conservation easement will allow COL and partners to "ground truth" the proposed due diligence process and conservation easement language outlined in the Handbook to the benefit of the entire conservation community.

f. The proposed project/program addresses key water needs identified in SWSI 2010 or as identified in a basin's needs assessment.

In the South Platte Basin Implementation Plan (April 17, 2015) developed jointly by the South Platte and the Metro Basin Roundtables, specific recommendations for the coupling of conservation easements with ATMs were included in Section 5.3.2. (Page 5.13).

"To leverage water sharing partnerships between municipal and agriculture water uses that have reduced impacts to agricultural economies, the following strategies should be implemented:

• Continuance of state funding for pilot projects for water sharing partnerships between cities and agriculture entities including alternative water transfer methods

• Reforming the water court process to encourage water sharing partnerships that continue to protect vested senior water rights

• Support of free market water sharing transaction methods without interference

• Support for agricultural conservation easements coupled with municipal water lease options

In addition to efforts made within the state of Colorado, national policies and programs could assist in limiting the buy and dry of agriculture. The state of Colorado should engage its Federal legislators to explore changes in Federal agricultural programs to help promote water sharing agreements between agricultural water users and municipalities."

This last recommendation is noteworthy as this project has secured funding from the NRCS through its Agriculture Land Easement program to provide purchase money for the conservation easement that would permit water leasing to municipalities. This is important as NRCS could be an important partner in ATMs in future projects in Colorado as they are the only funder, national or otherwise, that exclusively funds agricultural conservation easements.

Throughout the Colorado Water Plan, there are policy recommendations geared towards the promotion of conservation easements coupled with ATMs to allow for certainty and permanent preservation of agricultural lands. In Section 6.5.2., Agricultural Viability Actions and Strategies, Program to facilitate agricultural opportunities (Page 6-143), the IBCC recommends "that the State needs to provide additional education and assistance to farmers and ranchers to help realize more transactions that allow for ATMs, and to enable new Colorado farmers to successfully enter the agricultural industry. This assistance may include financial and other support for land links, land trusts, and conservation easements that protect working farmland and make irrigated land affordable for the next generation of farmers and ranchers. The program should include education on and assistance with the following:

- Deals, contracts, and other options for sharing agricultural water.
- Strategies to remain market competitive.
- Ways to achieve long-term certainty for both water lessors and lessees.
- ATMs that allow the farmer to continue owning the land.
- Opportunities to overcome entry barriers for young growers (in collaboration with such entities as Land Link, Farm Bureau's Young Farmer Group, and Colorado State University Extension).
- Perpetual agricultural agreements, such as conservation easements (such as those demonstrated by entities like the Lower Arkansas Valley Water Conservancy District).
- Other similar contractual agreements that allow for more long-term flexibility (an example is the purchase of water rights in the Arkansas Basin by Aurora Water).
- Funding opportunities for agricultural producers."

g. The proposed project/program advances the preservation of high value agricultural lands. Value can be viewed as: the value of crops produced, the value the agriculture provides to the local community, and the value the agricultural area provides for open space and wildlife habitat.

The proposed project advances the preservation of high value agricultural lands in the heart of the most productive agricultural county in Colorado. Per the 2012 Census of Agriculture, Weld County produced $1.9 billion in agricultural products sold, registering Weld County as the 9th highest producing County in the country.
The specific property's combination of excellent soils and reliable water make it ideal for production agriculture in a region well suited to support the ongoing operation of the property as a farm. The property's proximity to U.S. Highway 34 provides easy access to markets. Over 65% of the soils on the property contain soils classified as having Statewide Significance.

The property is located less than a quarter mile from the Lower South Platte River and just West of Jackson Lake, prime habitat for both local and migratory waterfowl. On the cornfields of the farm, once the harvest takes place, the stubble provides cover and foraging areas for white tailed deer, mule deer and waterfowl. The farm also provides prime upland habitat for a variety of species including pheasants, turkey and pronghorn.

h. The proposed project/program addresses water quality, or provides other environmental benefits to rivers, streams and wetlands.

The property's close proximity to the South Platte River enables the farm to provide important recharge water to the river through its irrigation practices. By conserving this farm and keeping the water in productive use on the farm in most years, the farmer is helping to insure a continued source of instream flow in the river, thus contributing to both the habitat on the farm as well as the habitat off site along and in the river.

i. The proposed project/program increases our understanding of and quantifies program/project costs. This could include: institutional, legal, technical costs, and third party impacts.

This project will provide valuable information on program/project costs including the legal and technical costs as well as third party impacts. As further described in the Statement of Work, there will be an economic analysis as part of the farm and water plan to determine the options for compensation to the farmer and/or continued farming with less water during the years the municipal water providers uses the water.

j. The proposed project/program does not adversely affect access to other sources of water (not subject to/participating in the program) where owners of these water rights may wish to pursue traditional transfer of their rights to other users.

This ATM project will utilize existing legal mechanisms to add M&I uses to the water right through Water Court and/or administrative approval via the State Engineer's Office using Substitute Water Supply Plans or Interruptible Water Supply Statute (C.R.S. 37-92-309). All of these tools incorporate protections to other water right holders to ensure no injury.

k. The proposed project/program provides a perpetual water supply for the new and/or alternate use and preserves agricultural production and/or helps sustain the area's economy from which the transfer is occurring.

By coupling a conservation easement with an ATM, the water agreement can be developed that provides a perpetual water supply to the M&I water provider and preserves the agricultural viability of the farm and contribution to the productivity of the area.

l. The quantity of water produced by the proposed project/program. Preference will be given to programs that can address larger water supply needs.

The project will provide up to 505 acre-feet of water available per year in ATM water supplies.

m. Applicants are encouraged to develop projects demonstrating participation and/or support from a diverse set of stakeholders and interests.

This project involves the agricultural producer, Colorado Open Lands, a M&I water provider, Natural Resources Conservation Service (NRCS), USFWS and the Walton Family Foundation.

6. Statement of Work

Provide the proposed statement of work. On the following page there is an example format for the statement of work. You can use the example format or your own format, provided that comparable information is included. The statement of work should outline by task how the proposed program/project will be accomplished. It is important that the statement of work detail the specific steps, activities/procedures that will be followed to accomplish each individual task and the overall program/project and the specific products/deliverables that will be accomplished. The statement of work must include but not be limited to: task description, key personnel, budget, schedule and deliverables and the final report/project documentation upon completion of the water activity.

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

Please provide a detailed statement of work using the following template. Additional sections or modifications may be included as necessary. Please define all acronyms. If a grant is awarded an independent statement of work document will be required with correct page numbers.

Statement of Work

WATER ACTIVITY NAME - South Platte River ATM & Conservation Easement

GRANT RECIPIENT – Colorado Open Lands

FUNDING SOURCE - The Alternative Agricultural Water Transfer Methods Competitive Grant Program

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

Colorado Open Lands and Western Water Partnerships are working with a landowner in Weld County to permanently conserve a farm through a conservation easement, while permitting limited water leasing to municipalities. This conservation easement will be an unprecedented example of private and public partners coming together to provide the impetus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. In an industry where water is so imperative and subject to the unpredictable whims of nature, the option to lease the water on the property during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production. In this particular context, permanently conserved lands in Weld County provide a solid foundation for the continued operation and sustainability of the agriculture industry as a whole in one of the most productive counties in the country.

OBJECTIVES
List the objectives of the project

The objectives of this project consist of 2 primary components:

1. Completion of a conservation easement to preserve a valuable and productive farm in perpetuity.
2. Implementation of an Alternative Transfer Mechanism that would permit limited sharing of the water rights associated with the farm.

TASKS
Provide a detailed description of each task using the following format

TASK 1 – Farmland Viability Analysis

Description of Task
COL and WWP will engage consultants, including an agronomist, water engineer, attorney and economist to analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. This consulting team would provide recommendations on farm/water management with a potential ATM in the form of a Farmland Viability Plan. This plan would also provide a determination of the type of ATM to be pursued (e.g. Interruptible water supply agreement, rotational fallowing, partial supply).

Deliverable
Write-up on the Final Farmland Viability Analysis

TASK 2 – Exploration of Municipal and Industrial Partners/Feasibility

Description of Task
WWP and COL will explore interest from municipal and/or industrial partners in the water rights associated with the property. As part of these discussions, the feasibility and potential costs for implementing an alternative transfer mechanism will be investigated and gauged. Legal services including the review of the term sheet and development of a Letter of Intent will also be part of this task.

Deliverable
Letter of Intent from municipal or industrial partner expressing interest in negotiating a water sharing agreement with the farmer.

TASK 3 – Conservation Easement Development

Description of Task
COL will work with the landowner and NRCS to draft a conservation easement encumbering the property in perpetuity. The conservation easement will prohibit future non-agricultural development of the property, while permitting limited sharing of the water associated with the property. During certain periods (generally during dry years), the landowner will have the option to share water with a municipal or industrial user. However, the conservation easement will prohibit the permanent separation of the associated water rights from the property. Through funding from NRCS and a partial donation by the landowner, COL will ultimately acquire a conservation easement on the farm. COL will monitor the farm annually to ensure compliance with the terms of the conservation easement in perpetuity. This task will involve the following:

1. Negotiate terms of deed of conservation easement with property owner that provide flexibility for water-sharing.
2. Meet with NRCS to discuss farm operations plan and water-sharing; secure conservation easement language approval.
3. Review due diligence in advance of closing on conservation easement (Baseline Report, Appraisal, Phase I Environmental Report, Title Work, Geologist Report).
4. Complete conveyance of conservation easement from landowner to COL.

Deliverable
Recorded Conservation Easement.

TASK 4 – Farm & Water Operations Plan

Description of Task
A Farm and Water Operations Plan will be developed to inform strategies for maintaining the viability of the farm into the future. It will provide operational recommendations from a water supply and irrigation perspective so that combined farming sales revenues and water lease/sales revenues will sustain the operational costs of the farm in the long term. The plan will also provide recommendations for operations for multiple water supply

scenarios, including years with a full water supply and years that the municipality uses some of the water for off-farm uses pursuant to the ATM.
The plan should be used as a guide for the management of the water and land with the ATM water agreement. The intent of the plan is to provide guidance on how to maximize the use and management of the water and land in such a way that it benefits all parties and fulfills the multiple purposes for which the land and water were conserved.

Deliverable
Farm and Water Operations Plan

TASK 5 – Water Sharing Agreement

Description of Task
The purpose of this task is to work with the parties to develop a mutually acceptable water supply agreement or contract between the owner of the land and the M&I water provider. In this task, project team will negotiate with the participating M&I water provider to determine the specific terms of the water supply contract. All disciplines will offer their expertise to help bring this contract to fruition. This will include:

- Determine the trigger that implements the interruptible supply (i.e. 3 out of 10 years, snowpack conditions, water supply conditions, timing)
- Agreement on each party's costs (e.g. purchase price of water, water court costs)
- Delivery of water to the M&I provider
- Determination of (potential) payment to farmer or landowner during fallowing years, including weed control
- Water accounting responsibilities
- Other responsibilities assumed by the parties

Deliverable
Fully Executed Water Sharing Agreement

TASK 6 – Water Court/Change of Use/Administrative Action
(No CWCB Funds Used for this Task)

Description of Task
In Tasks 1 and 2, the project team will explore which type of ATM is most appropriate for this farm and the M&I partner. Once this is complete, the project team will determine how best to add the M&I water use to the water right and weigh the pros/cons of each legal tool available. Some of the legal mechanisms include a formal change in water court, substitute water supply plans, interruptible water supply agreement (CRS 37-92-309), Ag Protection Water Right Transfer Mechanism (HB16-1228) or CWCB's Ag Fallowing Leasing Pilot Program (HB13-1248).

Deliverable
Final water court decree or approval allowing M&I use of the water rights per the terms of the agreement.

Task 7- Project Management

Description of Task
This task involves the management of the project, including conducting team meetings, calls and grant management responsibilities including submitting regular progress reports and invoicing.

Deliverable
Regular progress reports and invoicing.

Task 8: Final report to the CWCB

Description of Task:
The purpose of this task is to compose a final report to the CWCB describing the implementation an ATM projects, including any legal, political, financial, or other obstacles that we encounter along the way, lessons learned, and also templates for agreements and road maps that other communities or conservation organizations could use to implement ATMs and accomplish irrigated farmland conservation.

Final Deliverable
One ATM project accompanied by a final report (electronic and hardcopies).

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

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

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.

See Exhibit "B" attached hereto.

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.

See Exhibit "C" attached hereto.

PAYMENT

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

Additional Information – If you would like to add any additional pertinent information please feel free to do so here.

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

Signature of Applicant:
Carmen Farmer

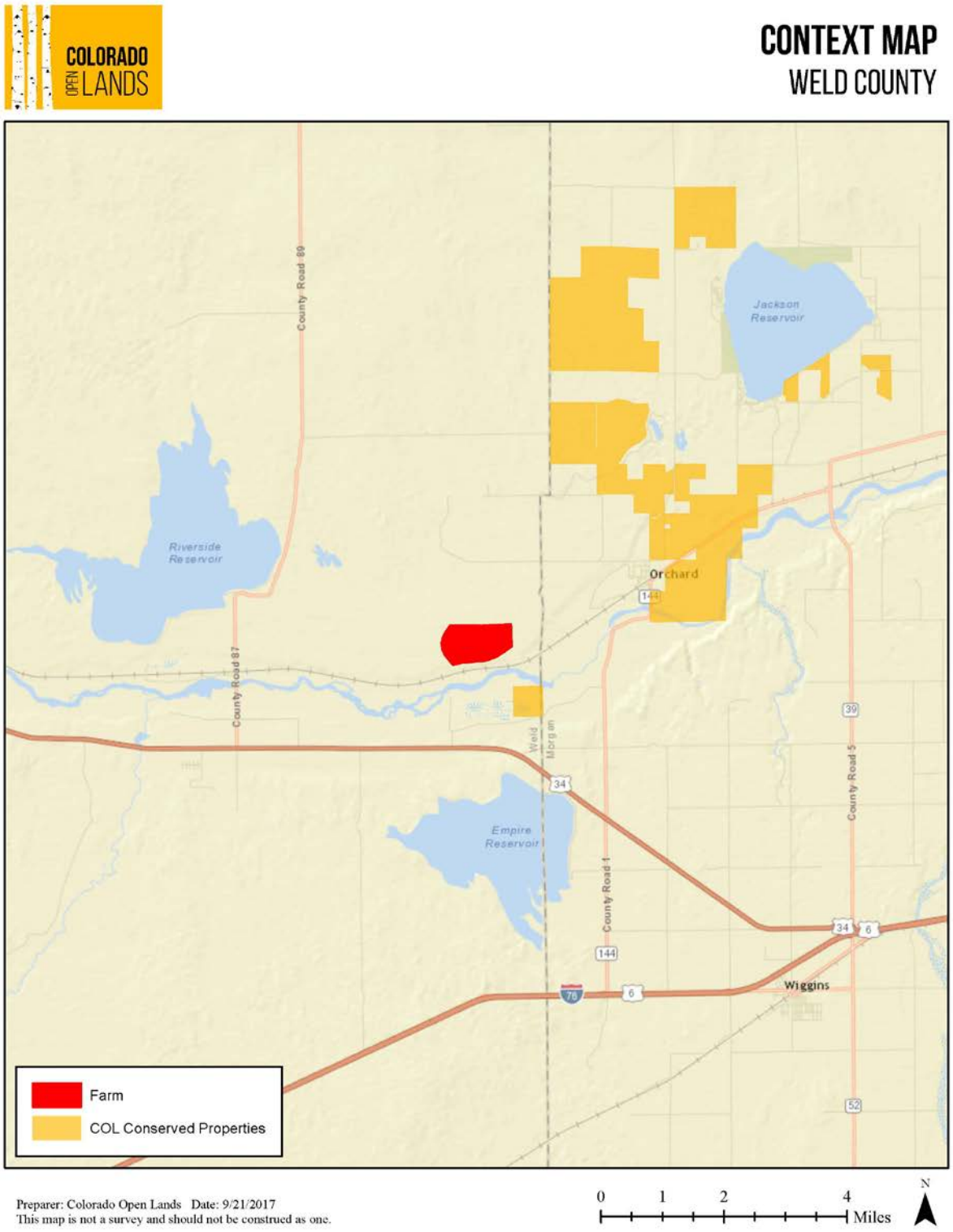
Print Applicant's Name:
Carmen Farmer, Conservation Project Manager

Project Title: South Platte River ATM & Conservation Easement

Return this application to:

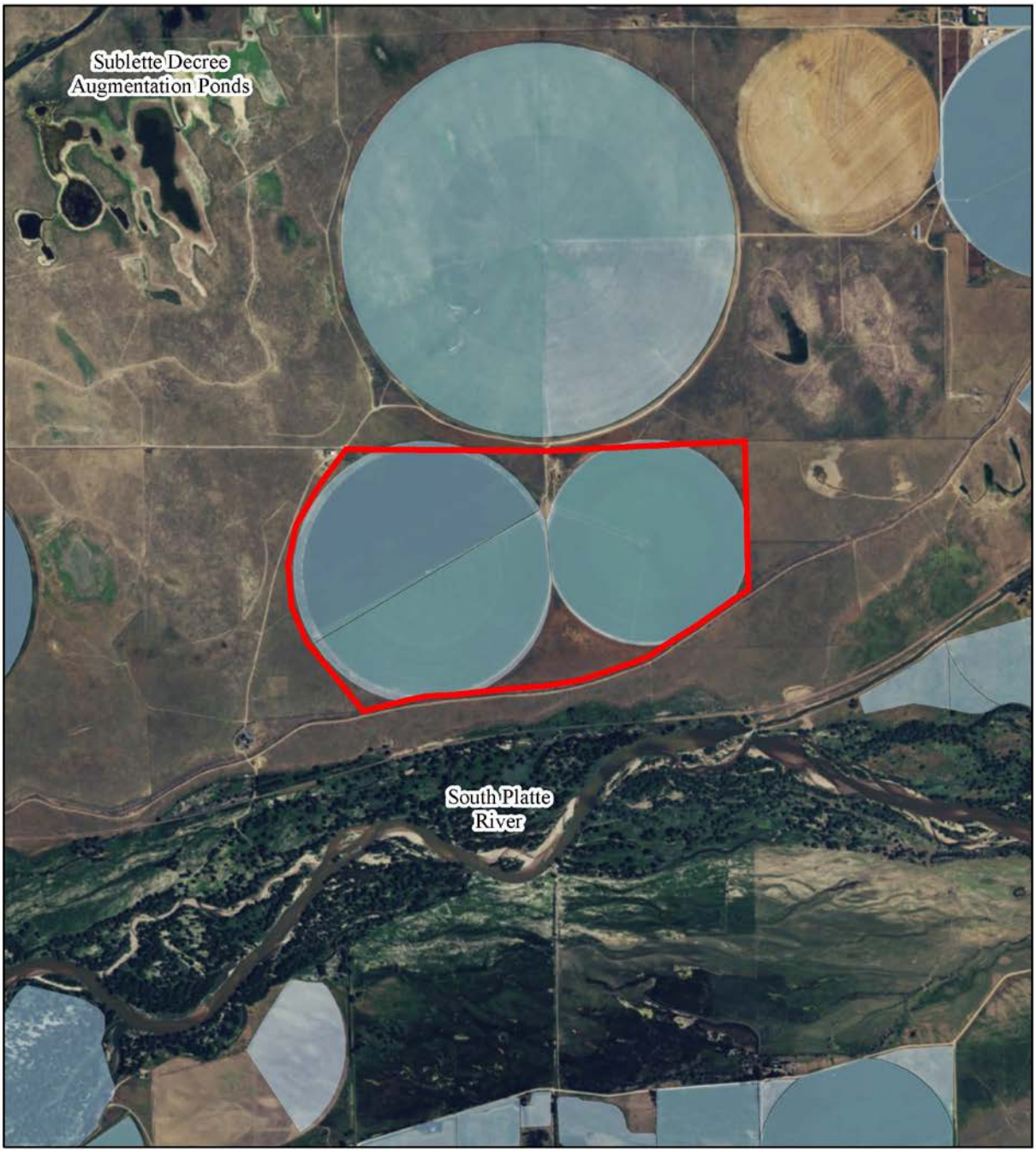
Mr. Craig Godbout
Colorado Water Conservation Board
Water Supply Planning Section
1313 Sherman St., Room 721
Denver, CO 80203
craig.godbout@state.co.us

EXHIBIT A – MAPS



COLORADO OPEN LANDS

IRRIGATED LANDS MAP
WELD COUNTY



Preparer: Colorado Open Lands Date: 9/21/2017 Data Source: CWCB
Public Access should not be inferred from this map. This map is not a survey and should not be construed as one.

0 0.1 0.2 0.4 Miles

N

Exhibit B – Budget

Last Updated: July 5, 2017

COLORADO
Colorado Water Conservation Board
Department of Natural Resources

Colorado Water Conservation Board

Alternative Agricultural Water Transfer Methods Competitive Grant Program - Exhibit A

Budget and Schedule

Date: September 18, 2017
Name of Applicant: Colorado Open Lands
Name of Water Project: South Platte River ATM & Conservation Easement

Task No.	Task Description	Start Date[1]	End Date	Project Cost by Task	Match Funding Cash	CWCB Grant Request	Match Funding In-Kind	Total
1 - Farmland Viability Analysis	Analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. Provide recommendations on farm/watermanagement with ATM. Determination of the type of ATM to be pursued (e.g. interruptible water supply agreement, rotational fallowing, partial supply).	NTP	NTP + 6 mos	$ 28,000.00	$ 12,000.00	$ 16,000.00	$ -	$ 28,000.00
2 - Exploration of Municipal & Industrial Partners/Feasibility	Meet with potential Municipal & Industrial end users. Develop a draft report outlining the options.	NTP	NTP + 12 mos	$ 39,000.00	$ 17,000.00	$ 21,000.00	$ -	$ 38,000.00
3 - Conservation Easement Development	Draft & negotiate terms of conservation easement. Review by NRCS. Conduct due diligence for conservation easement closing. Purchase Conservation Easement.	NTP	NTP + 8 mos	$ 1,210,000.00	$ 1,025,000.00	$ 175,000.00	$ 10,000.00	$ 1,210,000.00
4 - Farm & Water Operations Plan	Develop document to provide guidance for the farmer on operational options during ATM years and recovery years. Guidance may include water rights operations strategies, recommendations for specific farm improvements and cropping options for certain years.	NTP + 3 mos	NTP + 16 mos	$ 32,500.00	$ 15,500.00	$ 17,000.00	$ -	$ 32,500.00
5 - Water Sharing Agreement	Develop a Termsheet between Farmer & Municipal or Industrial User. Draft Water Sharing Agreement.	NTP + 3 mos	NTP + 16 mos	$ 40,000.00	$ -	$ 40,000.00		$ 40,000.00
Task 6 - Water Court/Change of Use	Add M&I Use to Water Right via Water Court and/or Administrative Approval	NTP + 8 mos	NTP + 38 mos	$ 75,000.00	$ 75,000.00	$ -		$ 75,000.00
7 - Project Management	Coordinate team efforts including meetings, calls and ensuring that project is on-task and on-schedule.	NTP	NTP + 38 mos	$ 5,000.00		$ 5,000.00		$ 5,000.00
8 - Final Report	Develop electronic and hardcopy versions of a final report detailing the process of developing the ATM project, lessons learned and recommendations for improvement.	NTP + 16 mos	NTP + 38 mos	$ 6,000.00		$ 6,000.00		$ 6,000.00
	Direct Costs (Mileage and Copies)			$ 4,500.00		$ 4,500.00		$ 4,500.00
			Total	$ 1,439,000.00	$ 1,144,500.00	$ 294,500.00	$ 10,000.00	$ 1,439,000.00
			Percentage		80%	20%	1%	100%

Project Personnel:	Project Manager (WWP)	Water Engineer -(Brown & Caldwell; TZA Engineering)	Agronomist (Ag Skill, Inc)	Economist (Harvey Economics)	Legal (Vranesh and Raisch)	Colorado Open Lands		Total Labor Costs	CWCB Grant Request
Hourly Rate:	$150	$175	$125	$225	$240	$0			
Task 1 - Farmland Viability Analysis	$8,000	$9,500	$3,500	$5,000	$2,000	$0		$28,000	$16,000
Task 2 - Exploration of M&I Partners/Feasibility	$12,000	$10,000	$1,500	$8,500	$6,000	$0		$38,000	$21,000
Task 3 - Conservation Easement Development	$0	$0	$0	$0	$0	$10,000		$10,000	$0
Task 4 - Farm & Water Operations Plan	$10,000	$15,500	$3,000	$3,500	$500	$0		$32,500	$17,000
Task 5 - Water Sharing Agreement	$8,000	$9,000	$1,000	$7,000	$15,000	$0		$40,000	$40,000
Task 6 - Water Court/Change of Use	$0	$25,000	$0	$0	$50,000	$0		$75,000	$0
Task 7 - Project Management	$5,000	$0		$0	$0	$0		$5,000	$5,000
Task 8 - Final Report	$2,000	$1,000	$1,000	$1,000	$1,000	$0		$6,000	$6,000
Total Hours:	300	400	80	111	310				
Total Labor Costs:	$45,000	$70,000	$10,000	$25,000	$74,500	$10,000		$234,500	
Direct Costs:									
Mileage								$ 3,000	$3,000
Copies (including final report)								$ 1,500	$1,500
Conservation Easement								$ 1,200,000	$ 175,000
Total Project Costs								$ 1,439,000	
Total CWCB Grant Request									$ 284,500

Exhibit "C" – Schedule

Task	Start Date	Finish Date
Task 1 - Farmland Viability Analysis	NTP	NTP + 6 mos
Task 2 - Exploration of M&I Partners/Feasibility	NTP	NTP + 12 mos
Task 3 - Conservation Easement Development	NTP	NTP + 8 mos
Task 4 - Farm & Water Operations Plan	NTP + 3 mos	NTP + 16 mos
Task 5 - Water Sharing Agreement	NTP + 3 mos	NTP + 16 mos
Task 6 - Water Court/Change of Use	NTP + 8 mos	NTP + 38 mos
Task 7 - Project Management	NTP	NTP + 38 mos
Task 8 - Final Report	NTP + 16 mos	NTP + 38 mos

Alternative Agricultural Water Transfer Methods – Competitive Grant Program
Water Activity Summary Sheet
November 15-16, 2017
Agenda Item 9(a)

Applicant & Grantee:	Colorado Open Lands
Water Activity Name:	South Platte River ATM & Conservation Easement
Water Activity Purpose:	Pilot project to implement in the South Platte basin a permanent interruptible ATM water supply coupled with and encumbered by a conservation easement for a M&I provider while providing perpetual protection of irrigated lands.
Drainage Basin:	South Platte
Water Source:	Native South Platte basin water
Amount Requested:	$284,500
Matching Funds:	**$1,144,500** total cash match (Walton Family Foundation - $369,500; NRCS - $750,000; US Fish & Wildlife Service - $25,000)

Staff Recommendation
Staff recommends approval of up to $284,500 from the Alternative Agricultural Water Transfer Methods Program to help fund the "South Platte River ATM & Conservation Easement."

Water Activity Summary: Colorado Open Lands (COL) will lead the effort to prove the concept of implementing a permanent Alternative Agricultural Water Transfer Methods (ATM) water supply coupled with a conservation easement for an M&I provider located within the South Platte River basin. This project will implement an ATM pilot project providing for the perpetual protection of irrigated farm land and perpetual use and ownership of interruptible water supplies by a participating M&I water provider.

ATMs have been touted as a solution to keep irrigated agricultural lands productive,. However, some municipal providers contend that leasing water rights does not provide adequate certainty and may worry that for valuable senior water right, competing municipalities may purchase the water right at a higher price upon expiration of their lease. Conservation easements can provide the permanence and enforceability to give all parties comfort that a leasing structure can remain in place, but the water rights can never be separated from the property. Over the last year, COL has been working to draft due diligence guidelines and conservation easement language regarding water rights to accommodate for use water off the property, whether for municipal or environmental use. After significant conversations between COL and the Natural Resource Conservation Service (NRCS), NRCS is willing to consider federal funding for a pilot conservation easement that would utilize this new language and permit limited water leasing to municipalities. The focus of this particular project is a proposed conservation easement on a highly productive farm in eastern Weld County.

COL is requesting support from the CWCB to provide funding to couple the conservation easement with an ATM. Should the grant be awarded, the conservation easement on the farm will be an

example of private and public partners coming together to provide the stimulus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. The opportunity to lease water during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production.

Discussion: Staff supports COL's effort based on: the need to execute additional alternative water transfer agreements; the involvement of NRCS; given the successful track record of the proposed consulting team assembled; and when successful this effort will further Colorado's Water Plan's Measurable Objectives and Critical Goals and Actions.

Issues/Additional Needs: No issues or additional needs have been identified.

CWCB Project Manager: Craig Godbout

COLORADO WATER CONSERVATION BOARD

ALERNATIVE AGRICULTURAL WATER TRANSFER METHODS COMPETITIVE GRANT PROGRAM

GRANT APPLICATION FORM

South Platte River ATM & Conservation Easement	South Platte River Basin
Program/Project Name	**River Basin Name**
$284,500	$1,144,500
Amount of Funds Requested	Amount of Matching Funds

Instructions: This application form must be submitted in electronic format (Microsoft Word or Original PDF). The application can be emailed or a disc can be mailed to the address at the end of the application form. The Alternative Agricultural Water Transfer Methods Competitive Grant Program, Criteria and Guidelines can be found at http://cwcb.state.co.us/LoansGrants/alternative-agricultural-water-transfer-methods-grants/Pages/main.aspx. **The criteria and guidelines must be reviewed and followed when completing this application**. You may attach additional sheets as necessary to fully answer any question, or to provide additional information that you feel would be helpful in evaluating this application. Include with your application a cover letter summarizing your request for a grant. If you have difficulty with any part of the application, contact Craig Godbout of the Water Supply Planning Section (Colorado Water Conservation Board) for assistance, at (303) 866-3441 x3210 or email at craig.godbout@state.co.us. Generally, the applicant is also the prospective owner and sponsor of the proposed program/project. If this is not the case, contact Craig before completing this application.

Alternative Agricultural Water Transfer Methods – Grant Application Form
October 2010

Part A. - Description of the Applicant(s) (Program/Project Sponsor);

1. Applicant Name(s): Colorado Open Lands

Mailing address: 1546 Cole Boulevard #200
Lakewood, CO 80401

Taxpayer ID#: 84-0866211 Email address: cfarmer@coloradoopenlands.or

Phone Numbers: Business: 970-829-1014
Home:
Fax:

2. Person to contact regarding this application if different from above:

Name: Carmen Farmer

Position/Title Conservation Project Manager

3. If the Contracting Entity is different then the Applicant, please describe the Contracting Entity here.

Not Applicable.

4. Provide a brief description of your organization. The applicant may be a public or private entity. Given the diverse range of potential applicants, not all of the following information may be relevant. Where applicable and relevant the description should include the following:

    a) Type of organization, official name, the year formed, and the statutes under which the entity was formed, a contact person and that person's position or title, address and phone number. For private entities, a copy of the Articles of Incorporation and By-laws should be appended to the application.

        Colorado Open Lands (COL) is a private, nonprofit, 50l(c)3 organization based in Lakewood, Colorado. Since our founding in 1981, COL has actively worked to protect the agricultural lifestyle and character of Colorado. COL works with willing landowners, communities, local governments, and non-governmental entities throughout the state to develop win-win conservation solutions that permanently protect the agricultural landscape while addressing the needs of landowners and communities. In our 34 years, we have protected over 260,500 acres of agricultural lands, along with the water rights necessary to keep these lands viable.

        Led by a full-time staff of fifteen and governed by a Board of Directors with wide ranging expertise, COL operates efficiently and effectively. COL's Board of Directors brings a wide range of expertise to our work that includes the financial, real estate, legal, public relations, economic, agricultural, and wildlife fields. Our staff has an equally wide range of expertise that spans fundraising, non-profit management, environmental education, community outreach and engagement, and event management, to geographic information systems (GIS), rangeland ecology, conservation easement negotiations and stewardship, ecosystem science and water rights law. Operating by consensus, our close-knit team brings strengths to each project that include excellent communication and negotiations skills, creativity, flexibility, and of course, a sense of humor.

        In 2008, COL became one of the first land trusts in the nation to receive accreditation by the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance. Accreditation provides public recognition of standards for organization and operations that typify best practices. We are also certified by the State of Colorado to hold conservation easements and therefore must show adherence to certain operational and procedural standards of operational governance, as well as acquisition, monitoring, and enforcement of conservation easements.

        The contact for this application is Carmen Farmer, Conservation Project Manager for the Northern Front Range and Lower South Platte River. Her contact information is:

        Colorado Open Lands
        1546 Cole Boulevard #200
        Lakewood, CO 80401
        970-829-1014
        cfarmer@coloradoopenlands.org

    b) For waters suppliers, information regarding the number of customers, taps, service area, and current water usage, and future growth plans, water related facilities owned or used, funding/revenue sources (existing service charges, tap fees, share assessments, etc.), the number of members or shareholders and shares of stock outstanding or a description of other means of ownership.

Not applicable.

c) For other entities, background, organizational size, staffing and budget, and funding related to water that is relevant in determining whether the applicant has the ability to accomplish the program/project for which funding is sought.

Western Water Partnerships (WWP) will manage the ATM component of this project. WWP is a Colorado Public Benefit Corporation with the mission of preserving irrigated agricultural lands by facilitating water sharing agreements between farmers, ranchers, municipal water providers, land trust, open space departments and local governments. Using market-based approaches, WWP provides a vehicle for entities to help create a West where cities and farms/ranches coexist while supporting local agricultural production and sustainable communities. WWP will lead a highly qualified project team that has many decades of collective experience working on ATM projects issues. The anticipated project team is comprised of Western Water Partnerships (ATM Project Management), Brown & Caldwell (Engineering), TZA Water Engineers (Engineering), Harvey Economics (Economics/Finance), AgSkill, Inc. (Agronomy/Crop Consulting) and Vranesh and Raisch, LLP (Legal).[1] Most notably, WWP recently (August 2017) successfully implemented the Larimer County-Broomfield water agreement which allows Larimer County to conserve a working farm in perpetuity and Broomfield to bolster the water supply for its citizens without drying up a farm for its water. That project was supported by the CWCB and is Colorado's first perpetual agricultural-to-municipal Alternative Transfer Methods project. This project is similar in many regards to the Larimer County-Broomfield ATM project which should help ensure this project's success. Aside from the Larimer County-Broomfield ATM, WWP not only implemented a wide variety of CWCB grant funded projects. Members of our team collectively have likely conducted more ATM-related projects than any consultant team in Colorado.

d) A brief history of the Applicant(s).

See 4.a. above.

e) Please include any relevant Tabor issues relating to the funding request that may affect the Contracting Entity.

Colorado Open Lands does not have TABOR limits on revenue.

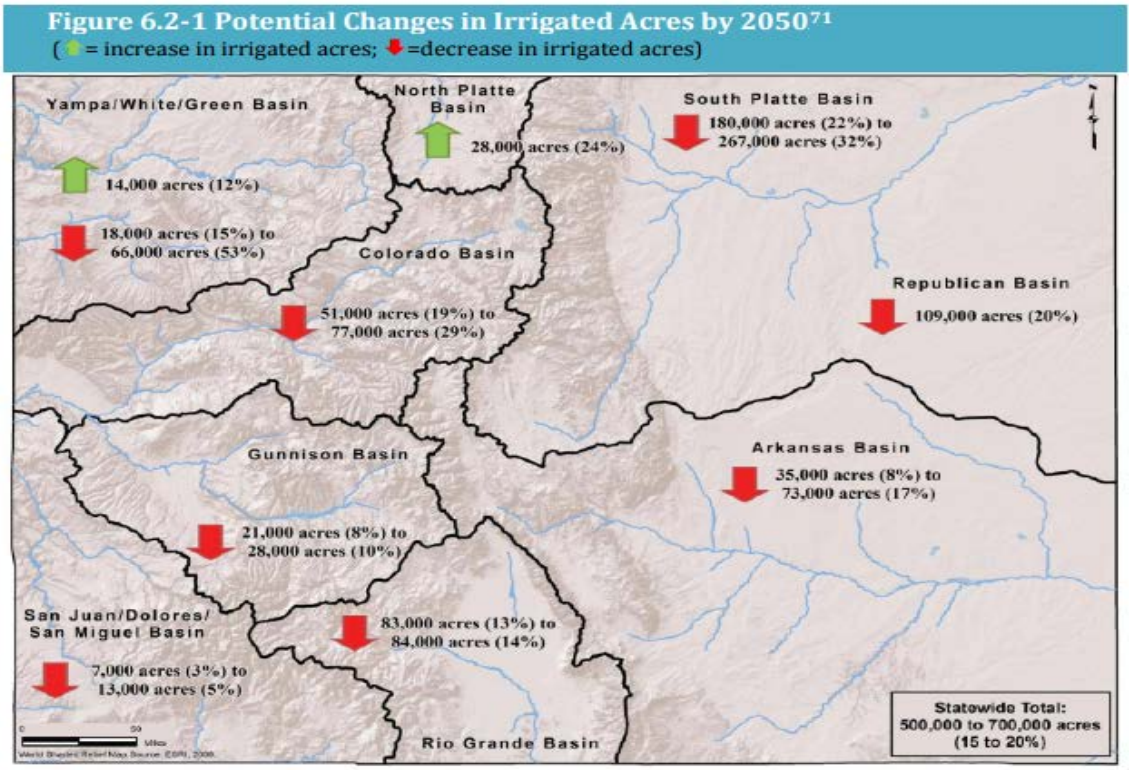
[1] Changes/additions to the project team may be required as work progresses to accommodate legal representation conflicts of interest that may develop. Such changes/additions would be noticed to CWCB staff and done in accordance with the requirements for any grant approval.

Part B. - Description of the Alternative Water Transfer Program/Project –

1. Purpose of the Program/Project

Please provide a summary of the proposed program/project, including a statement of what the program/project is intended to accomplish, the need for the program/project, the problems and opportunities to be addressed, the expectations of the applicant(s), and why the program/project is important to the applicant(s). The summary must include a description of the technical, institutional (i.e., how the program/project will be organized and operated), and legal elements that will and/or have been addressed by the applicant and proposed program/project. The summary should also discuss relevant project history, if applicable, and any other relevant issues.

Farms along the Front Range are facing ever increasing pressure from municipalities seeking out agricultural properties with water rights for conversion to municipal and industrial uses. This practice of "buying and drying" farms has consumed thousands of acres of farmland in the last 30 years, leaving barren and unproductive land with far reaching ramifications for soil erosion, water recharge into aquatic ecosystems, wildlife habitat, local agricultural economies and food security. The Colorado Water Plan includes the diagram below showing anticipated loss of irrigated acreage by river basin by the year 2050.



This scale of loss of irrigated farmland not only has the potential to radically shift rural economies and communities, but it drastically impacts many of the conservation values that many of us are working to

protect. Well managed, working agricultural lands also contribute to watershed health, and conservation of these private lands and their associated water rights is critical to the maintenance of many native species of Colorado wildlife. Working agricultural lands also help maintain the open spaces and scenic vistas that Coloradans (and tourists) know and love.

Alternative transfer mechanisms (ATMs) have been touted as a solution to keep productive lands in irrigated agriculture. However, some municipal providers contend that leasing water rights does not provide adequate certainty and they may worry that for valuable senior water rights, competing municipalities may purchase the water right at a higher price upon the expiration of their lease. Conservation easements can provide the permanence and enforceability to give all parties comfort that a leasing structure can remain in place, but the water rights can never be sold from the property. However, from a landowner perspective, their water rights are often their most valuable asset, one that they may be reluctant to place into a traditional conservation easement, which would eliminate their option to realize income from their water in the future.

COL believes that conservation easements have the potential to offer farmers and municipalities a third path *if the conservation community can learn to incorporate more flexibility into traditional easements.* Over the last year, COL has been working to draft due diligence guidelines and conservation easement language regarding water rights to accommodate for use of water off of the property, whether for municipal or environmental use. To date, funders of traditional conservation easements have been wary of this new approach. However, after significant conversations between COL and the Natural Resources Conservation Service (NRCS), NRCS is willing to consider federal funding for a pilot conservation easement that would utilize this new language and permit limited water leasing to municipalities. The focus of this particular project is a proposed conservation easement on a highly productive farm in eastern Weld County.

COL is requesting support from the CWCB to provide crucial funding to couple the conservation easement with an ATM. Should the grant be awarded, the conservation easement on the farm will be an unprecedented example of private and public partners coming together to provide the impetus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. In an industry where water is so imperative and subject to the unpredictable whims of nature, the option to lease the water on the property during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production. In this particular context, permanently conserved lands in Weld County provide a solid foundation for the continued operation and sustainability of the agriculture industry as a whole in one of the most productive counties in the country.

Previous Studies

To the maximum extent possible, the results of any previous studies and investigation should be utilized and incorporated into the proposed program/project. The application for funding should include a brief summary of the results of previous studies and how they will be utilized.

As discussed in 4.c. above, the project team has extensive experience working on ATM issues and projects in Colorado and are well versed on the various ATM efforts, studies and investigations that have occurred to date. There are several key reports and efforts that have or will provide guidance to this project. As discussed in Section 4.c. above, the project team successfully implemented the Larimer County—Broomfield ATM project which is Colorado's first perpetual agricultural-municipal water agreement and provided many lessons regarding what M&I water providers are willing to consider as well as considerations of the agricultural producer/irrigator. In addition, the COL and WWP are developing a "Handbook for Land Trust and Open Space Programs" as part of a CWCB funded project: Agricultural

Land and Water Buffer Feasibility Analysis. The handbook provides key analysis and guidance on coupling conservation easements and ATMs. In addition, the project team will look to several other key documents throughout the project including:

- Colorado Water Plan
- South Platte Basin Implementation Plan
- Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update from 2012
- Development of Practical Alternative Agricultural Water Transfer Methods (Flex Market)
- Feasibility Study for the Northeast Colorado Water Cooperative

2. Study Area/Service Area Description

The study area/service area is generally the geographic area that is the subject of the proposed program/project (include both the source of supply and location and type of new use). The description should include the following items:

a) A narrative description of the study area/service area including: the county, the location of towns or cities, topography, and locations of major surface and ground water features.

The supply area of water rights for this project are within Water District 1 of Division 1 (South Platte River Basin). However, potential municipal and industrial end users of water are located throughout the South Platte Basin.

The specific source of the water rights, consists of a 390-acre farm and associated augmentation ponds located in Weld County, just west of Orchard on the north side of the South Platte River. Water for the farm is provided via a well located on the eastern portion of the property with the source being the South Platte River Alluvium. The water to be provided for the ATM is derived from an undivided individual interest in the water rights and augmentation described in the decree of the Water Court for Water Division No. 1 entered in Case No. 89CWD27 on April 30, 1996, which interest shall consist of 39.6% of the first 1,275 acre feet of recharge credits available under said augmentation plan, up to but not to exceed 505 acre feet in any year, hereinafter referred to as the Sublette Augmentation Plan.

The following undisputed water rights are associated with the farm:

- An undivided individual interest in the water rights and augmentation plan described (Sublette Augmentation Plan) in the decree of the Water Court for Water Division No. 1 entered in Case No. 89CWD27 on April 30, 1996, which interest shall consist of 39.6% of the first 1,275 acre feet of recharge credits available under said augmentation plan, up to but not to exceed 505 acre feet in any year, with all its appurtenances; and together with an interest in the following "Agreements" concerning the operation, maintenance, and use of water rights and augmentation plan: 1) "Agreement" dated March 4, 1994 which is unrecorded, between Sublette Land and Cattle Company and Walter Thomas Jones and John Edward Jones; 2) "Memorandum of Agreement" dated April 10, 1995 and recorded in the records of Morgan County, Colorado on April 17, 1995 in Book

880 at page 22;3) "Agreement" dated July 5, 1994 and recorded in the records of Weld County, Colorado on July 14, 1994 in Book 1450, F2047.

- All water rights and all wells and equipment used for the irrigation of said land including, but not limited to, Well No. 1, Permit No. 9393F, Priority Date August 4, 1965, adjudicated December 31, 1972, in Case No. W-2929 A-34 in the State of Colorado, at a pumping rate not to exceed 977 GPM to irrigate a maximum of 160 acres; also Well No. 2, Permit No. 9393F, Priority Date May 31, 1975, adjudicated December 31, 1972, in Case No. 89CW027 in the State of Colorado; and also adjudicated in Case No. 97CW169 in the State of Colorado, at a pumping rate not to exceed 1,184 GPM to irrigate a maximum of 180 acres.
- Three (3) units of Groundwater Appropriators of the South Platte River Basin, Inc. (GASP). (now defunct).

b) An area map showing each of the items above, as well as the locations of existing facilities, proposed project facilities and boundaries of lands involved in the proposed program/project.

See Exhibit "A" attached hereto.

c) Information regarding the irrigated lands that are involved in the program/project. This must include a tabulation of total irrigated acreage, description of cropping types, crop yields, and total average annual water diversions for existing agricultural lands.

The farm has a well that provides water for two center pivots and irrigates approximately 313.5 acres each year. In 2016, the farm produced 658 tons of hay and 23,000 bushels of corn.

d) Information regarding the location of the new water use(s) that will be served by transferred water including the estimated number of users/taps and/or uses served.

In Task 2 (Exploration of Municipal & Industrial Partners/Feasibility), the project team will explore interest from municipal and/or industrial partners in the water rights associated with the property. Once the team has an interested party(ies) willing to negotiate, we will begin the development of specific terms of the agreement including information regarding the location of the new water use(s) that will be served by transferred water including the estimated number of users/taps and/or uses served.

e) Socio-economic characteristics of the area such as population, employment and land use.

The socio-economic characteristics of the area primarily consist of small rural communities with agriculture (crop production, livestock, dairy, greenhouses, etc.) serving as the base for the local economies. Mid-sized municipalities such as Sterling and Ft. Morgan (which each have an approximate population of 12,000 to 13,000 residents) are located just downstream of the supply area. In addition, numerous smaller towns are located in Water District 1. Other commerce and industry exists within the project area, including but not limited to: coal fired and wind powered electricity generation, ethanol production, State of Colorado correctional facilities, and local construction. In addition, amenities and enhancements such as river and floodplain lands, wetlands, reservoirs, streams, recharge facilities and upland habitat within Weld, Morgan, Logan, Washington and Sedgwick counties provide multiple benefits and opportunities for hunting,

fishing, boating, camping, and wildlife viewing in addition to other environmental and recreational values.

3. Description of the Alternative Water Transfer Method

Please describe the type(s) of water transfers that will be examined/utilized (i.e., conceived transfer methods include, but are not limited to: 1) interruptible water supply agreements; 2) long-term agricultural land fallowing; 3) water banks; 4) reduced consumptive use through efficiency or cropping changes while maintaining historic return flows; and 5) purchase by end users with leaseback under defined conditions). In addition, please describe how the transferable consumptive use will be calculated and quantified, and how return flow patterns will be addressed/maintained.

In Task 1, Farmland Viability Analysis, COL and WWP will engage consultants, including an agronomist, water engineer and economist to analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. This consulting team would provide recommendations on farm/water management with a potential ATM in the form of a Farmland Viability Plan. This plan would also provide a determination of the type of ATM to be pursued (e.g. Interruptible water supply agreement, rotational fallowing, partial supply). Considering the source of water supply is up to 505 acre-feet of recharge credits in any given year, it is not envisioned that a historic consumptive use (HCU) analysis will be necessary. The engineer will develop strategies to ensure the continuation of return flow patterns are met.

Ultimately, the water rights will need to go through Water Court to add the new M&I User. It is possible that this project would utilize the Substitute Water Supply Plan statute or the CWCB's HB 13-1248 process. As we proceed through this task, the team will document any the process as well as any issues that arise in our final report to the CWCB.

It should be noted that no CWCB grant funds will be used for engineering and legal costs directly related to the water court application.

4. Program/Project Eligibility

Please describe how the proposed program/project meets each of the following eligibility requirements (please see Criteria and Guidelines for additional information regarding the alternative water transfer methods/strategies that qualify for funding). Note: If these requirements are addressed in other parts of the application you may simply reference the applicable section(s).

a) A description of how, if implemented, the proposed program/project will protect property and water rights.

The owner of the farm plans to convey a conservation easement to COL, preserving the property from future development in perpetuity, while enabling the agricultural production to continue. The water rights will be permanently encumbered by the conservation easement and restricted primarily for continued agricultural use and future viability and related conservation values on the property, provided however, the option to lease water will be reserved. Leasing rights include the right to enter into legally enforceable water leases, contracts, emergency water loans or similar agreements including, but not limited to: (A) an interruptible water supply agreement as authorized by C.R.S.

Section 37-92-309, up to three years in every rolling ten year period; (B) participation in a water conservation program not to exceed 5 out of every 10 years, pursuant to C.R.S. Section 37-92-305(3)(c); or (C) other transfers of water rights as authorized by law.

b) Identified group(s) of agricultural users that are or may be willing to transfer a portion of their water and identified entity(s), group(s) or area(s) where the transferred water could or would be put to the new use and a description of the new use.

The landowner/agricultural water rights subject to the ATM project are identified above in paragraph 2.a. The identification of the M&I partner(s) will be part of the project in Task 2 (Exploration of Municipal and Industrial Partners/Feasibility) where WWP and COL will explore interest from municipal and/or industrial partners in the water rights associated with the property. As part of these discussions, the feasibility and potential costs for implementing an alternative transfer mechanism will be investigated and gauged.

c) The program/project must at a minimum conceptually describe the technical, institutional, and legal elements of the water transfer. Grant monies may be used to address one or more of these elements. If grant monies are not requested for all three elements, the grant applicant must describe how the applicant has or intends to address the elements, which are not included in the grant request, through other efforts.

Through the implementation of this project, the team intends to develop a model and/or template for other similar ATM project sponsors to use. While each farm will have its unique attributes, including its water rights, this project will help to establish guidance for those wanting to replicate the approach. To ensure this, the applicant will provide a report detailing the financial, legal and technical considerations and lessons learned through this pilot project. The report will describe negotiations with a M&I provider, development of an interruptible water supply agreement, land preservation options, development of a farm and water management program, water right court and/or administrative processes and the financial analyses, tools and agreements.

d) If grant monies are proposed for use for legal assistance then the use of those funds shall be oriented toward advancing the knowledge of alternative agricultural water transfer methods and techniques; not for preparation of a specific water court case. The total requested funds for legal assistance shall not exceed 40 percent of the total grant request. In addition, grant monies proposed for use for legal assistance must be used to collaboratively address issues and concerns related to agricultural water transfer. Funds shall not be used to solely advance the cause of the project proponents.

Grant funds will not be used for the preparation of a specific water court case. The grant funds for legal services will be applied to the interruptible supply agreements, assistance with negotiating between the parties and helping to address issues and concerns that parties may have regarding these specific pilot projects and/or alternative water transfers.

e) A minimum of a 10 percent cash match of total project cost (past expenditures and “in kind” can not be counted toward the 10 percent match).

A minimum of 10 percent cash match of the total project cost is committed for this project. COL is only asking for approximately 20% of total project costs. The cash match exceeds 75% of total

project cost. See attached Budget.

5. Program/Project Evaluation Criteria

The following grant evaluation criteria will be used by the CWCB to evaluate and make recommendations to fund, partially fund or not fund a grant application. The criteria are aimed at advancing alternative transfer methods from the literature and studies to actual on the ground projects/programs that provide reliable water supply and sustain key elements of the agricultural area from which the water is transferred. The applicant should fully address and explain in detail in the application how, and the extent to which, the proposed project/program meets each of the criteria. However, it should be noted that the project does not have to meet all of the criteria to be eligible to receive funding and the criteria below are not listed in any order of importance or priority.

a. The proposed project/program builds upon the work of former alternative water transfer methods efforts and addresses key areas that have been identified. For more detailed information on this work, please refer to the draft report: *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update*, November 2012.

   The report summarizes the past ATM funded projects and provides a list of findings and recommendations based on this work. Many of the studies that have been funded by the CWCB through the ATM program have identified several barriers to successful implementation. This project seeks to directly address three of the four major barriers to successful implementation of ATMs: permanency issues, high transaction costs associated and water rights administration uncertainties and water rights accounting questions associated with ATMs. By placing a conservation easement on the land and water rights (with the ability to lease the water for M&I uses during drought years), the project team believes the permanency issue is addressed. The high transaction costs associated with water court proceedings is a reality and we intend to include this cost in the price of the ATM water. Through this pilot and the farm/water management plans, and through the water court process, specific water rights administration and accounting questions will be addressed and a description will be included in the final report to the CWCB.

b. The proposed project addresses one or more key recommendation(s) in the report: *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update*, November 2012.

   The *Alternative Agricultural Water Transfer Methods Grant Program Summary and Status Update* (Update) specifically recommends:

   - Continue to support demonstration/pilot projects to determine the feasibility of new concepts or techniques as needed.
   - The CWCB should continue its support of coupling conservation easements with interruptible supply agreements, which has the potential to provide a reliable source of water and preserve agricultural productivity in perpetuity. This strategy should be examined in more detail including an analysis of which lands and/or ditches are most amenable to this approach, the identification of funding partners (e.g., Great Outdoors Colorado, Colorado Department of Revenue/Tax Credits, etc.), and the terms of the conservation easement deeds and interruptible supply agreements (Section 1.3.1).

COL is working with the landowner to negotiate a conservation easement that preserves a highly productive farm with prime soils in perpetuity, while reserving the right to share water. Furthermore, this innovative project is happening in Weld County, the most productive agricultural County in the state, paving the way for the potential for future projects in this highly valuable agricultural area which is so dependent upon water for irrigation.

This project brings together funders which have traditionally funded conservation easements, but never water projects, with those which fund water projects and not conservation easements. Funding is already secured from the Natural Resources Conservation Service (NRCS) through their Agriculture Land Easement program to provide purchase money for the conservation easement. This NRCS funding is the first of its kind to provide federal funding for a conservation easement that would permit limited water leasing to municipalities. In the past, NRCS has always required as a condition of funding, that all of the water rights be restricted to their historical use in perpetuity, thus prohibiting any water-sharing. Recognizing the threat posed by water development to Colorado's most productive agricultural communities, NRCS has elected to waive this requirement. By doing significant outreach with state and regional NRCS staff throughout this project, COL will pave the way for future NRCS projects that reserve the right to share water.

Additional funding will also be supplied by U.S. Fish & Wildlife through the North American Wetlands Conservation Act (NAWCA). NAWCA grants help preserve waterfowl habitat, while supporting local economies and family farming.

COL is also working to secure private funding from the Walton Family Foundation, to assist with both funding for the conservation easement and the exploration of an ATM. Like CWCB, the Walton Family Foundation has expressed interest in funding an on-the-ground ATM project, resulting in usable and transferable information that could be used to inform and shape similar projects throughout the State. As a result, COL has requested $394,480 from the Walton Family Foundation.

Lastly, because a portion of the conservation easement value will be donated, the project will provide an opportunity to work with staff at the Colorado Division of Real Estate conservation easement tax credit program to help them better understand water-sharing in the context of conservation easements.

This pilot project specifically addresses the recommendation from the Update by coupling a conservation easement with an interruptible supply agreement. Furthermore, the inclusion of multiple funding partners, demonstrates the interest in seeing a project of this scope implemented. Ultimately, a tangible template for the implementation of future projects to the broader conservation community will be provided.

c. Preference will be given to projects that provide additional matching resources in the form of cash, past expenditures and in-kind contributions that are in addition to the required 10% cash match.

Total cash match for this grant is $1,144,500, which equals 79%, far exceeding the required 10% match.

d. The proposed project/program has the ability/potential to produce a reliable water supply that can be administered by the State of Colorado, Division of Water Resources.

While the team has not presupposed which legal mechanism will be utilized in changing the recharge credits for use by the municipal partner (e.g. water court, interruptible water supply statute, HB 1248--CWCB's pilot program, HB1128), it will be able to be administered by the Division of Water Resources. Once an ATM strategy has been identified by the team, the team will consult with Division One Engineer's Office.

e. The proposed project/program produces information that is transferable and transparent to other users and other areas of the state (i.e., would provide an example "template" or roadmap to others wishing to explore alternate transfer methods).

All of the information produced from this project would be transferable and transparent to other users and other areas of the state. The intent of this project is to demonstrate the feasibility of protecting agricultural land through the use of a conservation easement, while structuring the easement to permit an alternative transfer mechanism. For the first time, NRCS is funding a pilot conservation easement that allows the flexibility to share water for multiple uses. As the first of its kind, the hope is that the implementation of this project, with this specific funding, will open the door for future NRCS funded projects with an ATM component. The outcome will also benefit the land trust and open space community in Colorado, which has long shared template documents. The development of this ATM coupled with a conservation easement will allow COL and partners to "ground truth" the proposed due diligence process and conservation easement language outlined in the Handbook to the benefit of the entire conservation community.

f. The proposed project/program addresses key water needs identified in SWSI 2010 or as identified in a basin's needs assessment.

In the South Platte Basin Implementation Plan (April 17, 2015) developed jointly by the South Platte and the Metro Basin Roundtables, specific recommendations for the coupling of conservation easements with ATMs were included in Section 5.3.2. (Page 5.13).

"To leverage water sharing partnerships between municipal and agriculture water uses that have reduced impacts to agricultural economies, the following strategies should be implemented:

• Continuance of state funding for pilot projects for water sharing partnerships between cities and agriculture entities including alternative water transfer methods

• Reforming the water court process to encourage water sharing partnerships that continue to protect vested senior water rights

• Support of free market water sharing transaction methods without interference

• Support for agricultural conservation easements coupled with municipal water lease options

In addition to efforts made within the state of Colorado, national policies and programs could assist in limiting the buy and dry of agriculture. The state of Colorado should engage its Federal legislators to explore changes in Federal agricultural programs to help promote water sharing agreements between agricultural water users and municipalities."

This last recommendation is noteworthy as this project has secured funding from the NRCS through its Agriculture Land Easement program to provide purchase money for the conservation easement that would permit water leasing to municipalities. This is important as NRCS could be an important partner in ATMs in future projects in Colorado as they are the only funder, national or otherwise, that exclusively funds agricultural conservation easements.

Throughout the Colorado Water Plan, there are policy recommendations geared towards the promotion of conservation easements coupled with ATMs to allow for certainty and permanent preservation of agricultural lands. In Section 6.5.2., Agricultural Viability Actions and Strategies, Program to facilitate agricultural opportunities (Page 6-143), the IBCC recommends "that the State needs to provide additional education and assistance to farmers and ranchers to help realize more transactions that allow for ATMs, and to enable new Colorado farmers to successfully enter the agricultural industry. This assistance may include financial and other support for land links, land trusts, and conservation easements that protect working farmland and make irrigated land affordable for the next generation of farmers and ranchers. The program should include education on and assistance with the following:

- Deals, contracts, and other options for sharing agricultural water.
- Strategies to remain market competitive.
- Ways to achieve long-term certainty for both water lessors and lessees.
- ATMs that allow the farmer to continue owning the land.
- Opportunities to overcome entry barriers for young growers (in collaboration with such entities as Land Link, Farm Bureau's Young Farmer Group, and Colorado State University Extension).
- Perpetual agricultural agreements, such as conservation easements (such as those demonstrated by entities like the Lower Arkansas Valley Water Conservancy District).
- Other similar contractual agreements that allow for more long-term flexibility (an example is the purchase of water rights in the Arkansas Basin by Aurora Water).
- Funding opportunities for agricultural producers."

g. The proposed project/program advances the preservation of high value agricultural lands. Value can be viewed as: the value of crops produced, the value the agriculture provides to the local community, and the value the agricultural area provides for open space and wildlife habitat.

The proposed project advances the preservation of high value agricultural lands in the heart of the most productive agricultural county in Colorado. Per the 2012 Census of Agriculture, Weld County produced $1.9 billion in agricultural products sold, registering Weld County as the 9th highest producing County in the country.
The specific property's combination of excellent soils and reliable water make it ideal for production agriculture in a region well suited to support the ongoing operation of the property as a farm. The property's proximity to U.S. Highway 34 provides easy access to markets. Over 65% of the soils on the property contain soils classified as having Statewide Significance.

The property is located less than a quarter mile from the Lower South Platte River and just West of Jackson Lake, prime habitat for both local and migratory waterfowl. On the cornfields of the farm, once the harvest takes place, the stubble provides cover and foraging areas for white tailed deer, mule deer and waterfowl. The farm also provides prime upland habitat for a variety of species including pheasants, turkey and pronghorn.

h. The proposed project/program addresses water quality, or provides other environmental benefits to rivers, streams and wetlands.

The property's close proximity to the South Platte River enables the farm to provide important recharge water to the river through its irrigation practices. By conserving this farm and keeping the water in productive use on the farm in most years, the farmer is helping to insure a continued source of instream flow in the river, thus contributing to both the habitat on the farm as well as the habitat off site along and in the river.

i. The proposed project/program increases our understanding of and quantifies program/project costs. This could include: institutional, legal, technical costs, and third party impacts.

This project will provide valuable information on program/project costs including the legal and technical costs as well as third party impacts. As further described in the Statement of Work, there will be an economic analysis as part of the farm and water plan to determine the options for compensation to the farmer and/or continued farming with less water during the years the municipal water providers uses the water.

j. The proposed project/program does not adversely affect access to other sources of water (not subject to/participating in the program) where owners of these water rights may wish to pursue traditional transfer of their rights to other users.

This ATM project will utilize existing legal mechanisms to add M&I uses to the water right through Water Court and/or administrative approval via the State Engineer's Office using Substitute Water Supply Plans or Interruptible Water Supply Statute (C.R.S. 37-92-309). All of these tools incorporate protections to other water right holders to ensure no injury.

k. The proposed project/program provides a perpetual water supply for the new and/or alternate use and preserves agricultural production and/or helps sustain the area's economy from which the transfer is occurring.

By coupling a conservation easement with an ATM, the water agreement can be developed that provides a perpetual water supply to the M&I water provider and preserves the agricultural viability of the farm and contribution to the productivity of the area.

l. The quantity of water produced by the proposed project/program. Preference will be given to programs that can address larger water supply needs.

The project will provide up to 505 acre-feet of water available per year in ATM water supplies.

m. Applicants are encouraged to develop projects demonstrating participation and/or support from a diverse set of stakeholders and interests.

This project involves the agricultural producer, Colorado Open Lands, a M&I water provider, Natural Resources Conservation Service (NRCS), USFWS and the Walton Family Foundation.

6. Statement of Work

Provide the proposed statement of work. On the following page there is an example format for the statement of work. You can use the example format or your own format, provided that comparable information is included. The statement of work should outline by task how the proposed program/project will be accomplished. It is important that the statement of work detail the specific steps, activities/procedures that will be followed to accomplish each individual task and the overall program/project and the specific products/deliverables that will be accomplished. The statement of work must include but not be limited to: task description, key personnel, budget, schedule and deliverables and the final report/project documentation upon completion of the water activity.

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

Please provide a detailed statement of work using the following template. Additional sections or modifications may be included as necessary. Please define all acronyms. If a grant is awarded an independent statement of work document will be required with correct page numbers.

Statement of Work

WATER ACTIVITY NAME - South Platte River ATM & Conservation Easement

GRANT RECIPIENT – Colorado Open Lands

FUNDING SOURCE - The Alternative Agricultural Water Transfer Methods Competitive Grant Program

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

Colorado Open Lands and Western Water Partnerships are working with a landowner in Weld County to permanently conserve a farm through a conservation easement, while permitting limited water leasing to municipalities. This conservation easement will be an unprecedented example of private and public partners coming together to provide the impetus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. In an industry where water is so imperative and subject to the unpredictable whims of nature, the option to lease the water on the property during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production. In this particular context, permanently conserved lands in Weld County provide a solid foundation for the continued operation and sustainability of the agriculture industry as a whole in one of the most productive counties in the country.

OBJECTIVES
List the objectives of the project

The objectives of this project consist of 2 primary components:

1. Completion of a conservation easement to preserve a valuable and productive farm in perpetuity.
2. Implementation of an Alternative Transfer Mechanism that would permit limited sharing of the water rights associated with the farm.

TASKS
Provide a detailed description of each task using the following format

TASK 1 – Farmland Viability Analysis

Description of Task
COL and WWP will engage consultants, including an agronomist, water engineer, attorney and economist to analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. This consulting team would provide recommendations on farm/water management with a potential ATM in the form of a Farmland Viability Plan. This plan would also provide a determination of the type of ATM to be pursued (e.g. Interruptible water supply agreement, rotational fallowing, partial supply).

Deliverable
Write-up on the Final Farmland Viability Analysis

TASK 2 – Exploration of Municipal and Industrial Partners/Feasibility

Description of Task
WWP and COL will explore interest from municipal and/or industrial partners in the water rights associated with the property. As part of these discussions, the feasibility and potential costs for implementing an alternative transfer mechanism will be investigated and gauged. Legal services including the review of the term sheet and development of a Letter of Intent will also be part of this task.

Deliverable
Letter of Intent from municipal or industrial partner expressing interest in negotiating a water sharing agreement with the farmer.

TASK 3 – Conservation Easement Development

Description of Task
COL will work with the landowner and NRCS to draft a conservation easement encumbering the property in perpetuity. The conservation easement will prohibit future non-agricultural development of the property, while permitting limited sharing of the water associated with the property. During certain periods (generally during dry years), the landowner will have the option to share water with a municipal or industrial user. However, the conservation easement will prohibit the permanent separation of the associated water rights from the property. Through funding from NRCS and a partial donation by the landowner, COL will ultimately acquire a conservation easement on the farm. COL will monitor the farm annually to ensure compliance with the terms of the conservation easement in perpetuity. This task will involve the following:

1. Negotiate terms of deed of conservation easement with property owner that provide flexibility for water-sharing.
2. Meet with NRCS to discuss farm operations plan and water-sharing; secure conservation easement language approval.
3. Review due diligence in advance of closing on conservation easement (Baseline Report, Appraisal, Phase I Environmental Report, Title Work, Geologist Report).
4. Complete conveyance of conservation easement from landowner to COL.

Deliverable
Recorded Conservation Easement.

TASK 4 – Farm & Water Operations Plan

Description of Task
A Farm and Water Operations Plan will be developed to inform strategies for maintaining the viability of the farm into the future. It will provide operational recommendations from a water supply and irrigation perspective so that combined farming sales revenues and water lease/sales revenues will sustain the operational costs of the farm in the long term. The plan will also provide recommendations for operations for multiple water supply

scenarios, including years with a full water supply and years that the municipality uses some of the water for off-farm uses pursuant to the ATM.
The plan should be used as a guide for the management of the water and land with the ATM water agreement. The intent of the plan is to provide guidance on how to maximize the use and management of the water and land in such a way that it benefits all parties and fulfills the multiple purposes for which the land and water were conserved.

Deliverable
Farm and Water Operations Plan

TASK 5 – Water Sharing Agreement

Description of Task
The purpose of this task is to work with the parties to develop a mutually acceptable water supply agreement or contract between the owner of the land and the M&I water provider. In this task, project team will negotiate with the participating M&I water provider to determine the specific terms of the water supply contract. All disciplines will offer their expertise to help bring this contract to fruition. This will include:

- Determine the trigger that implements the interruptible supply (i.e. 3 out of 10 years, snowpack conditions, water supply conditions, timing)
- Agreement on each party's costs (e.g. purchase price of water, water court costs)
- Delivery of water to the M&I provider
- Determination of (potential) payment to farmer or landowner during fallowing years, including weed control
- Water accounting responsibilities
- Other responsibilities assumed by the parties

Deliverable
Fully Executed Water Sharing Agreement

TASK 6 – Water Court/Change of Use/Administrative Action
(No CWCB Funds Used for this Task)

Description of Task
In Tasks 1 and 2, the project team will explore which type of ATM is most appropriate for this farm and the M&I partner. Once this is complete, the project team will determine how best to add the M&I water use to the water right and weigh the pros/cons of each legal tool available. Some of the legal mechanisms include a formal change in water court, substitute water supply plans, interruptible water supply agreement (CRS 37-92-309), Ag Protection Water Right Transfer Mechanism (HB16-1228) or CWCB's Ag Fallowing Leasing Pilot Program (HB13-1248).

Deliverable
Final water court decree or approval allowing M&I use of the water rights per the terms of the agreement.

Task 7- Project Management

Description of Task
This task involves the management of the project, including conducting team meetings, calls and grant management responsibilities including submitting regular progress reports and invoicing.

Deliverable
Regular progress reports and invoicing.

Task 8: Final report to the CWCB

Description of Task:
The purpose of this task is to compose a final report to the CWCB describing the implementation an ATM projects, including any legal, political, financial, or other obstacles that we encounter along the way, lessons learned, and also templates for agreements and road maps that other communities or conservation organizations could use to implement ATMs and accomplish irrigated farmland conservation.

Final Deliverable
One ATM project accompanied by a final report (electronic and hardcopies).

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

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

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.

See Exhibit "B" attached hereto.

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.

See Exhibit "C" attached hereto.

PAYMENT

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

Additional Information – If you would like to add any additional pertinent information please feel free to do so here.

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

Signature of Applicant:
Carmen Farmer

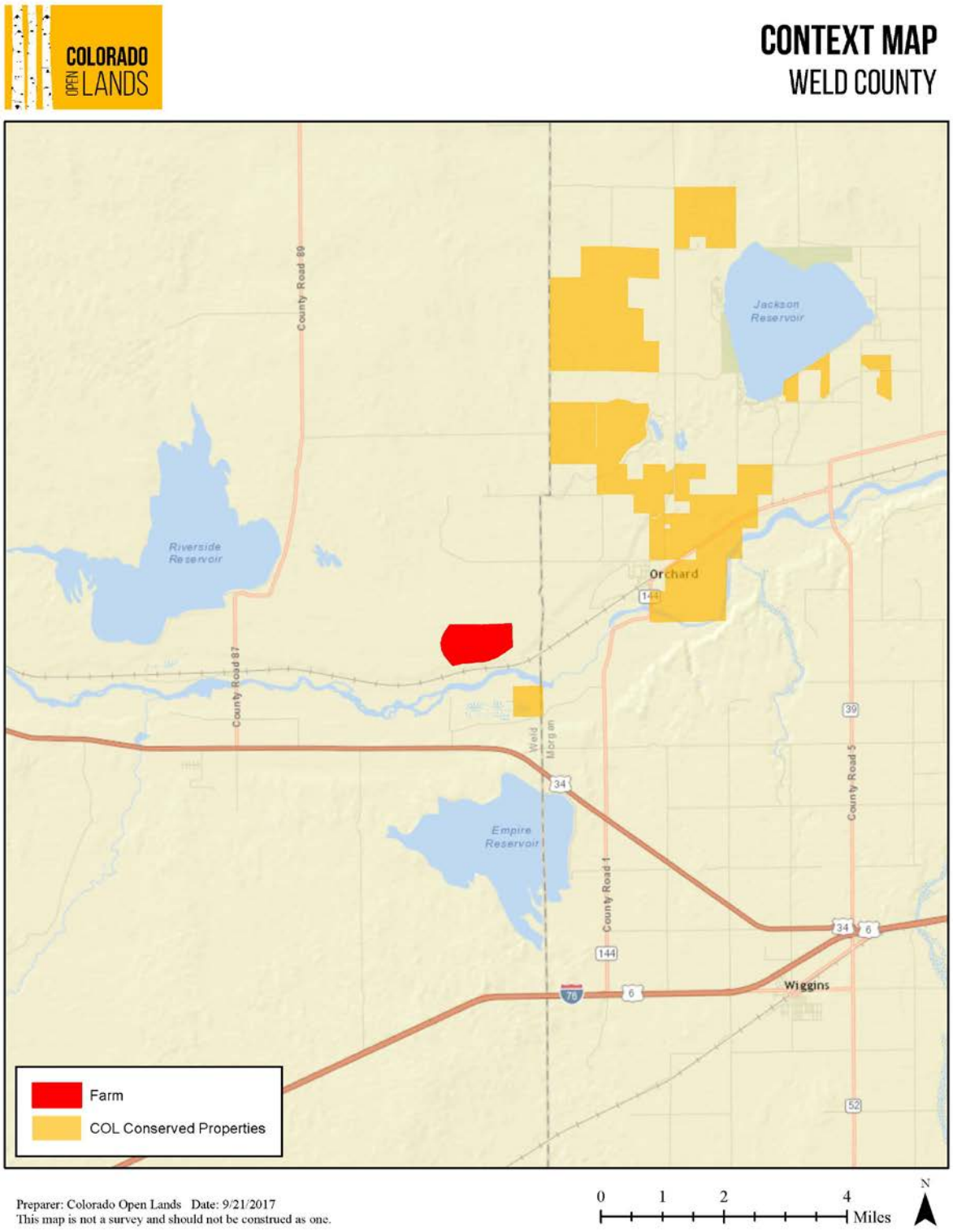
Print Applicant's Name:
Carmen Farmer, Conservation Project Manager

Project Title: South Platte River ATM & Conservation Easement

Return this application to:

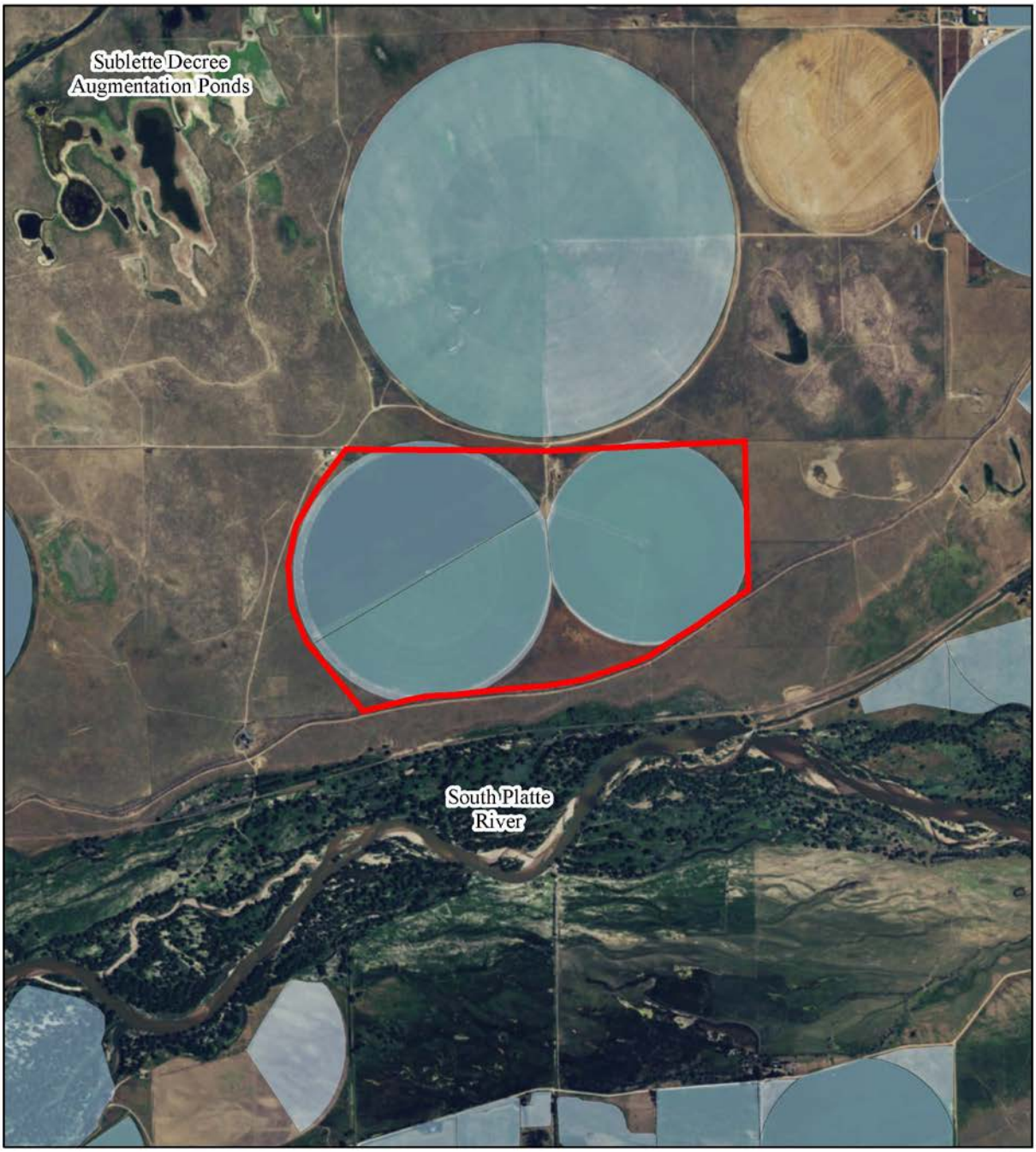
Mr. Craig Godbout
Colorado Water Conservation Board
Water Supply Planning Section
1313 Sherman St., Room 721
Denver, CO 80203
craig.godbout@state.co.us

EXHIBIT A – MAPS



COLORADO OPEN LANDS

IRRIGATED LANDS MAP
WELD COUNTY



Preparer: Colorado Open Lands Date: 9/21/2017 Data Source: CWCB
Public Access should not be inferred from this map. This map is not a survey and should not be construed as one.

0 0.1 0.2 0.4 Miles

N

Exhibit B – Budget

Last Updated: July 5, 2017

COLORADO
Colorado Water Conservation Board
Department of Natural Resources

Colorado Water Conservation Board

Alternative Agricultural Water Transfer Methods Competitive Grant Program - Exhibit A
Budget and Schedule

Date: September 18, 2017
Name of Applicant: Colorado Open Lands
Name of Water Project: South Platte River ATM & Conservation Easement

Task No.	Task Description	Start Date[1]	End Date	Project Cost by Task	Match Funding Cash	CWCB Grant Request	Match Funding In-Kind	Total
1 - Farmland Viability Analysis	Analyze the ATM and develop scenarios on how the farm would operate during normal years, ATM years and recovery years. Provide recommendations on farm/watermanagement with ATM. Determination of the type of ATM to be pursued (e.g. interruptible water supply agreement, rotational fallowing, partial supply).	NTP	NTP + 8 mos	$ 28,000.00	$ 12,000.00	$ 16,000.00	$ -	$ 28,000.00
2 - Exploration of Municipal & Industrial Partners/Feasibility	Meet with potential Municipal & Industrial end users. Develop a draft report outlining the options.	NTP	NTP + 12 mos	$ 38,000.00	$ 17,000.00	$ 21,000.00	$ -	$ 38,000.00
3 - Conservation Easement Development	Draft & negotiate terms of conservation easement. Review by NRCS. Conduct due dilligence for conservation easement closing. Purchase Conservation Easement.	NTP	NTP + 8 mos	$ 1,210,000.00	$ 1,025,000.00	$ 175,000.00	$ 10,000.00	$ 1,210,000.00
4 - Farm & Water Operations Plan	Develop document to provide guidance for the farmer on operational options during ATM years and recovery years. Guidance may include water rights operations strategies, recommendations for specific farm improvements and cropping options for certain years.	NTP + 3 mos	NTP + 18 mos	$ 32,500.00	$ 15,500.00	$ 17,000.00	$ -	$ 32,500.00
5 - Water Sharing Agrement	Develop a Termsheet between Farmer & Municipal or Industrial User. Draft Water Sharing Agreement.	NTP + 3 mos	NTP + 18 mos	$ 40,000.00	$ -	$ 40,000.00		$ 40,000.00
Task 6 - Water Court/Change of Use	Add M&I Use to Water Right via Water Court and/or Administrative Approval	NTP + 8 mos	NTP + 38 mos	$ 75,000.00	$ 75,000.00	$ -		$ 75,000.00
7 - Project Management	Coordinate team efforts including meetings, calls and ensuring that project is on-task and on-schedule.	NTP	NTP + 38 mos	$ 5,000.00		$ 5,000.00		$ 5,000.00
8 - Final Report	Develop electronic and hardcopy versions of a final report detailing the process of developing the ATM project, lessons learned and recommendations for improvement.	NTP + 18 mos	NTP + 38 mos	$ 6,000.00		$ 6,000.00		$ 6,000.00
	Direct Costs (Mileage and Copies)			$ 4,500.00		$ 4,500.00		$ 4,500.00
			Total	$ 1,439,000.00	$ 1,144,500.00	$ 284,500.00	$ 10,000.00	$ 1,439,000.00
			Percentage		80%	20%	1%	100%

Project Personnel:	Project Manager (WWP)	Water Engineer--(Brown & Caldwell; TZA Engineering)	Agronomist (Ag Skill, Inc)	Economist (Harvey Economics)	Legal (Vranesh and Raisch)	Colorado Open Lands		Total Labor Costs	CWCB Grant Request
Hourly Rate:	$150	$175	$125	$225	$240	$0			
Task 1 - Farmland Viability Analysis	$8,000	$9,500	$3,500	$5,000	$2,000	$0		$28,000	$16,000
Task 2 - Exploration of M&I Partners/Feasibility	$12,000	$10,000	$1,500	$8,500	$6,000	$0		$38,000	$21,000
Task 3 - Conservation Easement Development	$0	$0	$0	$0	$0	$10,000		$10,000	$0
Task 4 - Farm & Water Operations Plan	$10,000	$15,500	$3,000	$3,500	$500	$0		$32,500	$17,000
Task 5 - Water Sharing Agreement	$8,000	$9,000	$1,000	$7,000	$15,000	$0		$40,000	$40,000
Task 6 - Water Court/Change of Use	$0	$25,000	$0	$0	$50,000	$0		$75,000	$0
Task 7 - Project Management	$5,000	$0		$0	$0	$0		$5,000	$5,000
Task 8 - Final Report	$2,000	$1,000	$1,000	$1,000	$1,000	$0		$6,000	$6,000
Total Hours:	300	400	80	111	310				
Total Labor Costs:	$45,000	$70,000	$10,000	$25,000	$74,500	$10,000		$234,500	
Direct Costs:									
Mileage								$ 3,000	$3,000
Copies (including final report)								$ 1,500	$1,500
Conservation Easement								$ 1,200,000	$ 175,000
Total Project Costs								$ 1,439,000	
Total CWCB Grant Request									$ 284,500

Exhibit "C" – Schedule

Task	Start Date	Finish Date
Task 1 - Farmland Viability Analysis	NTP	NTP + 6 mos
Task 2 - Exploration of M&I Partners/Feasibility	NTP	NTP + 12 mos
Task 3 - Conservation Easement Development	NTP	NTP + 8 mos
Task 4 - Farm & Water Operations Plan	NTP + 3 mos	NTP + 16 mos
Task 5 - Water Sharing Agreement	NTP + 3 mos	NTP + 16 mos
Task 6 - Water Court/Change of Use	NTP + 8 mos	NTP + 38 mos
Task 7 - Project Management	NTP	NTP + 38 mos
Task 8 - Final Report	NTP + 16 mos	NTP + 38 mos