



TO: Colorado Water Conservation Board Members

FROM: Alexander Funk, Agricultural Water Resources Specialist

DATE: January 11, 2019

AGENDA ITEM: 25. Colorado Springs Utilities Fallowing-Leasing Pilot Project Proposal

Background:

The Lower Arkansas Valley Super Ditch Company, Inc. (the "Super Ditch") and the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities ("CS-U"), (collectively "Applicants" formally submitted a fallowing-leasing pilot proposal for selection by the Board on November 16th, 2018.

The proposal falls under the auspices of HB13-1248 and the Criteria and Guidelines for Fallowing-Leasing Pilot Projects ("Criteria and Guidelines"), approved as amended by the Board at its January 2016 meeting. HB13-1248 authorizes the Board to administer a pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up and is a critical component of the state's efforts in implementing Colorado's Water Plan.

The Applicants seek selection of the proposed Colorado Springs Utilities Pilot Project ("CS-U Pilot Project") by the Board. The Applicants developed the CS-U Pilot Project to demonstrate the viability of the fallowing-leasing concept on a larger scale, and to provide water to CS-U for drought recovery without the need for permanent dry-up of irrigated agriculture, which can cause significant economic hardship for rural communities. Currently, the proposal would potentially involve transfers from certain shares in the Catlin Canal Company ("Catlin"), Fort Lyon Canal Company ("Fort Lyon"), and Rocky Ford High Line Canal Company ("High Line") for temporary municipal use by CS-U. The pilot project would operate over ten years from January 1, 2020, through December 31, 2029.

Discussion:

The Criteria and Guidelines establish a four-step process for pilot project selection and approval by the Board, in consultation with the State Engineer and the public. First, to be considered for selection, applicants must submit a pilot project proposal to the Board. The purpose of the proposal is to provide the Board and other interested stakeholders with notice and a general description of the proposed pilot project, the land to be fallowed, the proposed use, and other information specified in the Section II.F. of the Criteria and Guidelines. This information includes the proposed specific water rights and the lands and parcels that will be analyzed and dried up as part of the pilot project and other information providing an initial overview of the proposed pilot project's components. The submittal for selection does not require a technical analysis regarding historic use, historic consumptive use, or return flows. The applicants must provide this more detailed information in the application phase and



subsequent consultations with interested parties and the State Engineers. Altogether, the Criteria and Guidelines provide a process through which the proposal is further refined to meet the objectives of HB13-1248, including the development of written terms and conditions for the operation of the project.

Following the submission of a pilot project proposal by a sponsor, the CWCB will post the proposal on its website, and sponsor will provide written notice. Parties may submit comments on the proposed pilot project to the CWCB within 30 days. CWCB staff received four comments on the CS-U Pilot Proposal and discussed the comments with the State Engineer's Office and the sponsors.

Overall, the comments received were generally supportive of the proposal but requested that the project application include additional information about the specific water rights and specific land and parcels that will be analyzed and dried up, and the ownership of them, in the pilot project. CWCB Staff concurs with these comments. This information is critical in evaluating potential return flow obligations and operating the project without causing injury to other water rights or impairing compliance with interstate compacts. Based on both the comments received and conversations with the Applicants, efforts are underway to identify additional farms, water rights, and structures to be included in the pilot project and that this information will be included in the application if the Board selects the proposal. Applicants have also agreed to provide a written response to the comments received to the Board at its March meeting.

Staff recommendation:

Upon the Board's review and consideration, the Board may select the proposed pilot project to participate in the program, request that a sponsor provide more information regarding the proposed pilot project for reconsideration by the Board at its next regularly scheduled meeting (March), or deny the proposal. At this time, CWCB Staff recommends that the Board request the Applicants to provide additional information as to the comments received on the pilot proposal and reconsider the proposal for selection at its March meeting.

Attachments: CS-U Project Proposal Materials, Public Comment Letters





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November 16, 2018

Colorado Water Conservation Board
Rebecca Mitchell, Director
Lauren Ris, Deputy Director
1313 Sherman Street, Room 718
Denver, CO 80203

Re: HB 13-1248 Colorado Springs Utilities Pilot Project Proposal for CWCB Selection

Dear Ms. Mitchell and Ms. Ris,

This fallowing-leasing pilot project proposal is submitted pursuant to HB 13-1248, C.R.S. § 37-60-115(8) (2018), on behalf of the Lower Arkansas Valley Super Ditch Company, Inc. (the “Super Ditch”) and the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities (“CS-U”), (collectively “Applicants”) for the selection of a pilot project to deliver up to 5,000 acre feet of water in a single year, which would begin operation in 2020. The CS-U Pilot Project would meet 10 percent of the 2050 goal of Colorado’s Water Plan for Alternative Transfer Methods.

Applicants seek selection of this proposal pursuant to Section II.A of the Criteria and Guidelines for Fallowing Leasing Pilot Projects, approved as amended by the Colorado Water Conservation Board on January 25, 2016 (the “Criteria and Guidelines”). The proposed Colorado Springs Utilities Pilot Project (“CS-U Pilot Project”) will use water available from certain shares in the Catlin Canal Company (“Catlin”), Fort Lyon Canal Company (“Fort Lyon”), and/or Rocky Ford High Line Canal Company (“High Line”) for temporary municipal uses by CS-U. The proposal is for a pilot project that would operate over a ten-year period, i.e., from January 1, 2020 through December 31, 2029.

HB 13-1248, as amended and extended by Senate Bill (SB) 15-198 and HB 17-1219 and codified at C.R.S. § 37-60-115(8), authorizes the CWCB to administer a pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up. The Super Ditch, along with the Lower Arkansas Valley Water Conservancy District (“Lower Ark”), has been successfully operating the Catlin Pilot Project under HB 13-1248 since 2015 to demonstrate rotational fallowing-water leasing to meet municipal water demands in a manner that avoids permanent

agricultural dry-up. This concept has received support from the CWCB, the IBCC, the Basin Roundtables, the Colorado Legislature, and Governor Hickenlooper. Applicants are pleased to have the opportunity to submit this proposal for a pilot project under HB 13-1248.

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

Applicants request that the CWCB post this CS-U Pilot Project Proposal on its website upon receipt pursuant to Section II.A of the Criteria and Guidelines. Additionally, pursuant to C.R.S. § 37-60-115(8)(e)(II) and Section II.F of the Criteria and Guidelines, Applicants have provided written notice and a copy of this CS-U Pilot Project Proposal and all accompanying materials by first class mail or electronic mail to all parties that have subscribed to the substitute water supply plan notification list for Water Division 2. Proof of such notice is attached hereto.

II. Description of the Pilot Project (Criteria and Guidelines §§ II.F.1.a-f)

A. Generally

The CS-U Pilot Project will fallow parcels of land rotationally or intermittently and provide the transferable consumptive use water without permanent dry-up for municipal use, thereby encouraging farmers to continue farming and remain active members of their communities. The CS-U Pilot Project was developed by the Applicants to demonstrate the viability of the fallowing-leasing concept on a larger scale, and to provide water to CS-U for drought recovery without the need for permanent dry-up of irrigated agriculture. The CS-U Pilot Project will build on the lessons learned from the Catlin Pilot Project and demonstrate the scalability and cost savings of a larger fallowing-leasing project that includes shares in multiple ditch companies.

Super Ditch is a Colorado corporation formed in 2008 for the benefit of the farmers in the Lower Arkansas Valley below Pueblo Reservoir and above the Kansas state line. The Super Ditch in partnership with Lower Ark was created as a farmer-owned company to manage the operations of the water enterprise, including the Catlin Pilot Project and the proposed CS-U Pilot Project.

The CS-U Pilot Project seeks to use water available to shareholders of Catlin, Fort Lyon, and High Line as the source of up to 5,000 acre-feet annually of transferable consumptive use water that will be made available to CS-U for temporary use in its municipal water systems through the rotational fallowing of sufficient acreage to generate such water. CS-U will take delivery of water made available through the CS-U Pilot Project through operation of physical or contract exchanges/trades.

CS-U has contracted for at least 1,000 acre-feet of water annually in three out of the ten years of this Pilot Project. Fallowing-Leasing Project Agreement by and between the Lower Arkansas Valley Super Ditch Company and the City of Colorado Springs, Acting by and through its Enterprise, Colorado Springs Utilities (August 20, 2018) (“CS-U Contract”), attached as **Exhibit A**. CS-U has the option to request up to 5,000 acre-feet of water annually in three out of ten years. Given the nature of the contract between Super Ditch and CS-U, no land will be fallowed for more than three out of ten years in compliance with the Criteria and Guidelines, § II.C.

B. Proposed Municipal Use

CS-U's Municipal Water Use. CS-U is a municipal utility enterprise that provides, among other things, municipal and industrial water service to customers within the City of Colorado Springs, Colorado ("Colorado Springs") and its water service area, and to other municipal and quasi-municipal entities who provide water service within the vicinity of Colorado Springs. CS-U obtained a decree in Case No. 05CW96, Water Division 2, authorizing CS-U to exchange water from Pueblo Reservoir to Colorado Springs' municipal water system for use, reuse, or successive use in Colorado Springs' existing and future water service area (the "05CW96 Exchange"). Pursuant to the CS-U Pilot Project, Super Ditch will deliver water to Pueblo Reservoir under the exchange being decreed in Case No. 10CW4, Water Division 2 ("10CW4 Exchange"), a new exchange, or other legally available means, for use by Colorado Springs under the 05CW96 Exchange. CS-U has contracted for up to 5,000 acre-feet of water delivered by Super Ditch in three out of ten years. CS-U Contract at ¶ 3.2.

Delivery to CS-U. Leased water will be made available to CS-U through delivery via exchange to Pueblo Reservoir. Super Ditch will deliver water to Pueblo Reservoir under the 10CW4 Exchange or other legally available means. CS-U will then deliver the leased water to its municipal water system under the 05CW96 Exchange or other legally available means. Pursuant to the decree in 10CW4, during times of limited exchange potential, stepped exchanges to intermediate storage locations may be utilized to move water further upstream. Depletion credits may also be traded with entities with water available at upstream locations to meet such entities' downstream replacement obligations. It is currently anticipated that these trades could involve entities such as Lower Ark, CWPDA, AGUA, and/or other entities with water stored in Pueblo Reservoir to meet downstream replacement obligations owed under augmentation plans, SWSPs, Rule 10 Plans, and/or Rule 14 Plans. When feasible, depletion credits may also be exchanged back up to the Catlin or High Line headgates and delivered into recharge locations and re-timed either for later use and/or exchange to upstream locations. The CS-U Pilot Project will, when possible, use these and potentially other operational mechanisms in order to ensure maximum utilization of available depletion credits and to test and demonstrate alternative delivery mechanisms.

An exchange concept for replacing delayed return flows may also be implemented as part of the CS-U Pilot Project, subject to further analysis during the application process. During operation of this pilot project, water to replace delayed return flows may ultimately be exchanged upstream to Pueblo Reservoir along with the consumptive use water. The delayed return flow water would be considered fully consumable and transferred to CS-U. CS-U could then make all of the required delayed return flow releases to the Arkansas River from fully consumable sources it has available to it. Conducting this operation as an exchange would maintain the fully consumable character of the water being used to replace delayed return flows.

C. The Participating Ditch Companies, Farmers & Lands to be Fallowed

The potential participating farmers with historically irrigated lands available for fallow for the initial 2020 operations of the CS-U Pilot Project consist of the shareholders of Catlin, Fort Lyon, and High Line, identified in **Table 1**, attached (the "Participating Farmers"). These three canal companies have indicated that enough of their shareholders have expressed an interest in rotationally or

intermittently fallowing all or portions of their farms for three years during the ten-year term of this pilot project to meet CS-U's needs.

Catlin Canal Company. Pursuant to a resolution signed by the Catlin board, Catlin will provide up to 5,000 acre-feet of water for lease to CS-U during the ten-year term of the CS-U Pilot Project. Resolution of the Board of Directors of the Catlin Canal Company, dated November 13, 2018 ("Catlin Resolution"), attached as **Exhibit B**. Catlin will present a contract between Catlin and Super Ditch for shareholder approval at the shareholder meeting in December. Upon approval, Catlin will execute the contract with Super Ditch, and will then enter into contracts with individual shareholders. Catlin will select historically irrigated parcels to be fallowed when CS-U requests lease water during the ten-year term of the CS-U Pilot Project. Information regarding the historically irrigated lands and associated shares used in irrigating the interested shareholders' land is provided in the attached **Table 1**. Additionally, a map showing the interested shareholders' historically irrigated lands is attached as **Exhibit C**.

Fort Lyon Canal Company. Pursuant to a letter of intent signed by the Fort Lyon board, Fort Lyon will provide up to 5,000 acre-feet of water for lease to CS-U during the ten-year term of the CS-U Pilot Project. Fort Lyon Letter of Intent, dated November 14, 2018 attached as **Exhibit D**. Fort Lyon will present a contract between Fort Lyon and Super Ditch for shareholder approval at the shareholder meeting in December. Upon approval, Fort Lyon will execute the contract with Super Ditch, and will then enter into contracts with individual shareholders. Similar to Catlin, Fort Lyon will select historically irrigated parcels to be fallowed when CS-U requests lease water during the ten-year term of the CS-U Pilot Project. Information regarding the historically irrigated lands under Fort Lyon and associated shares used in irrigating these lands is provided in the attached **Table 1**. Additionally, a map showing Fort Lyon's historically irrigated lands is attached as **Exhibit E**.

Rocky Ford High Line Canal Company. Pursuant to a letter of intent signed by the High Line board, High Line will provide up to 5,000 acre-feet of water for lease to CS-U during the ten-year term of the CS-U Pilot Project. High Line Letter of Intent, dated November 16, 2018 attached as **Exhibit F**. High Line will present a contract between High Line and Super Ditch for shareholder approval at the shareholder meeting in December. Upon approval, High Line will execute the contract with Super Ditch, and will then enter into contracts with individual shareholders. Similar to the other canal companies, High Line will select historically irrigated parcels to be fallowed when CS-U requests lease water during the ten-year term of the CS-U Pilot Project. Information regarding the historically irrigated lands under High Line and associated shares used in irrigating these lands is provided in the attached **Table 1**. High Line's historically irrigated lands are shown on the overall map attached as **Exhibit G**.

D. The Water Rights to be Used

The water rights to be utilized in the CS-U Pilot Project are those owned by Catlin, Fort Lyon, and High Line and delivered to the Participating Farmers. Catlin, Fort Lyon, and High Line own the

water rights decreed for irrigation listed in the attached **Table 2**, all located in Water District 17:¹ The canal companies also have rights to Winter Storage Water pursuant to the Decree entered in Case No. 84CW179 (Water Division 2) that are included in the CS-U Pilot Project.

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

Tailwater (irrigation season) and deep percolation (lagged) return flows associated with the historically irrigated lands will be replaced in time, location, and amount through utilizing a number of operational mechanisms and a variety of sources. Tailwater return flows will be released back to the river through augmentation stations as the water is being delivered. Delayed return flows could be met via the exchange conducted with CS-U, as described in section II.B above. Delayed return flows may also be replaced with depletion credits (either transferable consumptive use derived from the fallowed acreage and/or stream depletion credits resulting from lagging groundwater return flows) through diversion at the Catlin, Fort Lyon, or High Line headgates and subsequent release to the stream through augmentation stations. Alternatively, return flows may be maintained by exchanging depletion credits into, and later releasing those credits from, upstream storage locations. Return flows may also be maintained from upstream water supplies made available through effectuating trades with entities who have downstream replacement obligations. This could include, for example, managing operations in conjunction with Rule 10 and/or Rule 14 Plans with return flow obligations owed at downstream locations that could be met with depletion credits, thereby avoiding potential transit losses resulting from delivery from upstream locations. Additionally, return flows may be maintained through the delivery of depletion credits, either directly or by exchange, to existing or future recharge facilities and retiming of the resulting stream accretions via these same mechanisms.

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

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

Generally, stream reaches that will be used to operate the proposed transfers of water under the CS-U Pilot Project will include the Arkansas River upstream to Pueblo Reservoir from its confluence with: (1) Crooked Arroyo; (2) Timpas Creek; (3) Smith Hollow; (4) Horse Creek; (5) the Fort Lyon Canal Wasteway No. 2; (6) the Holbrook Reservoir outlet ditch; (7) the Holbrook Dye Reservoir; (8) the Lake Meredith reservoir outlet; (9) the Rocky Ford High Line Canal Augmentation Station 1; and (10) from the confluences of Patterson Hollow, Timpas Creek, and Crooked Arroyo with the Arkansas River to the point of historical return flow delivery to and/or the delivery of recharge on Patterson Hollow, Timpas Creek, and Crooked Arroyo.

¹ The canal companies also receive allocations of Fry-Ark Project water, but these sources are not a part of the CS-U Pilot Project.

Applicants recognize that the exchange potential on the Arkansas River does pose a hydrological challenge to operation of the CS-U Pilot Project under certain conditions. Although the Super Ditch and Lower Ark are close to obtaining an exchange decree for the Super Ditch (Case No. 10CW4, Div. 2), this proposal has been thoughtfully designed to include various mechanisms to allow for operation in times of limited exchange potential such as the use of stepped exchanges to intermediate storage locations, use of recharge facilities, and trades of water. Also, because the Catlin Canal augmentation stations (located on Timpas Creek and Crooked Arroyo) and the point of delivery of recharge to the Arkansas River from the Schweizer and Hanagan recharge ponds are located downstream of several of the locations of historical return flows, this proposal includes possible additional recharge locations, retiming of recharge, and use of upstream storage in order to ensure the ability of the pilot project to maintain return flows in time, location and amount to prevent injury to other water rights.

G. Necessary Structures & Ownership

Structures that may be necessary and/or desirable in the operation of the CS-U Pilot Project and their ownership are shown in the attached **Table 3**.

As discussed above, water made available through the CS-U Pilot Project's fallowing of the historically irrigated lands will be run through and measured at augmentation stations. The portion of the shares historically lost to ditch seepage will be diverted at the respective canal headgate and left in the ditch. Water may be delivered via Catlin Canal laterals to the Schweizer and Hanagan recharge ponds and other ponds that may be constructed as needed. Rocky Ford High Line Canal will deliver water to the augmentation station where it will be measured back to the river. Fort Lyon Canal will deliver water to the river as approved by its board and/or shareholders. Water will also be exchanged into and/or traded for water stored in Pueblo Reservoir. Additional structures may be used in operation of the CS-U Pilot Project to provide for intermediate storage locations along the Arkansas River and additional recharge facilities. CS-U will take delivery of leased water at Pueblo Reservoir and will be responsible for transporting that water to its water systems for example, via the 05CW96 Exchange.

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

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

The proposed CS-U Pilot Project meets the eligibility requirements of C.R.S. § 37-60-115(8) (a) through (c) and Section II.C of the Criteria and Guidelines. As the second fallowing-leasing pilot project to be considered for selection, the CS-U Pilot Project has been carefully designed to build on the Catlin Pilot Project and demonstrate the efficacy of a larger fallowing-leasing pilot project of fallowing irrigated land for leasing water for temporary municipal use, while incorporating operational components that will provide useful information on the viability of fallowing-leasing. See Resolution of the Board of Directors of the Lower Arkansas Valley Super Ditch Company, Inc., dated November, 13, 2018 attached as **Exhibit H** ("Super Ditch Resolution"). The CS-U Pilot Project will demonstrate

the practice of rotationally fallowing substantial agricultural lands (currently estimated at up to 700 acres annually to supply 1,000 acre-feet of water and 3,500 acres annually to supply 5,000 acre-feet of water) that have been historically irrigated to allow for the leasing of the historical consumptive use water for temporary municipal use by CS-U. *See* Super Ditch Resolution.

The CS-U Pilot Project will demonstrate cooperation among three different canal companies, a different type of water demand (CS-U drought recovery), participating farmers, and the Super Ditch. *See* Super Ditch Resolution; Catlin Resolution; Fort Lyon Letter of Intent; High Line Letter of Intent. The cooperation amongst these groups will be facilitated through Super Ditch's management of operations. *Id.* The State, the participants, and other interested parties will have the opportunity to evaluate the feasibility of delivering leased water to temporary municipal users on a large scale using lease water from multiple ditch companies and their shareholders with more flexibility to fallow irrigated land through operation of the CS-U Pilot Project. *Id.*

The CS-U Pilot Project will provide data from which the CWCB and State Engineer can further evaluate the efficacy of using a streamlined approach for determining historical consumptive use, return flows, the potential for material injury to other water rights, and conditions to prevent injury on a large scale. Unlike the Catlin Pilot Project, the CS-U Pilot Project will involve lease water from shareholders in three different canal companies and provide maximum flexibility to irrigators to determine which acres will be fallowed. Applicant's consultants will conduct an historical use analysis using the Leasing Fallowing Tool that has been developed for the CWCB. It will also utilize the assumptions, presumptive factors and methodologies set forth in Section II.G of the Criteria and Guidelines (or successor), which were conservatively developed to streamline and standardize the historical use analysis so as to prevent injury to vested water rights, conditional water rights, or contract rights to water. *Id.* Through this, along with the imposition of protective terms and conditions, the CS-U Pilot Project will demonstrate how to operate, administer and account for the practice of fallowing irrigated agricultural land under multiple ditch companies for leasing water for temporary municipal use without causing material injury to other vested water rights, decreed conditional water rights, or contract rights to water. *Id.*

The CS-U Pilot Project would not involve the fallowing of the same land for more than three years in a ten-year period because the contract between Super Ditch and CS-U only allows CS-U to lease water in three out of ten years. The CS-U Pilot Project will involve the fallowing of lands irrigated under three different ditches and demonstrate cooperation and operation among Super Ditch, the canal companies, and individual shareholders.

The CS-U Pilot Project would not involve any transfer or facilitation of transfer of water across the continental divide by direct diversion, exchange, or otherwise, nor does it involve the transfer or facilitation of transfer of water out of the Rio Grande Basin by direct diversion, exchange or otherwise. *See* Map (**Exhibit G**). The source of water is water native to the Arkansas River; all historical irrigation with this water has occurred in the Lower Arkansas River Valley in Pueblo, Otero, Prowers, and Bent Counties under the Catlin, Fort Lyon, and High Line canals; and the proposed temporary municipal use will occur within CS-U's water service areas located wholly within El Paso County. Section II.C of the Criteria and Guidelines allows the CWCB to approve a pilot project involving more

than one ditch if the proposal is for a unified pilot project. The CS-U Pilot Project is intended to be a unified pilot project to provide a significant amount of water for temporary municipal use while providing the maximum amount of flexibility to the ditch companies and irrigators. The purpose of the CS-U Pilot Project is to demonstrate the efficacy of a large-scale fallowing-leasing project, not to circumvent the limitation of the number of pilot projects that may be authorized.

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

IV. Necessary Approvals and Agreements (Criteria and Guidelines § II.F.3)

If approved by the CWCBC for operation, the CS-U Pilot Project will require certain other approvals and agreements. Representatives of Super Ditch have met with and discussed the proposed CS-U Pilot Project with representatives for CS-U, the participating farmers, and the Catlin, Fort Lyon, and High Line boards of directors. Based on these discussions, Super Ditch believes that all of the agreements and approvals that may be necessary to operate the CS-U Pilot Project can be reasonably obtained. *See Super Ditch Resolution.* Applicant currently anticipates the following agreements would be necessary for operation of the CS-U Pilot Project, some of which are already in place:

1. Lease Agreement or other appropriate agreement between Super Ditch and CS-U. CS-U has executed a long-term water lease agreement with Super Ditch, attached as **Exhibit A**.
2. Lease Agreements or other appropriate agreements between Super Ditch and Catlin, Fort Lyon, and High Line. Super Ditch has met with the boards of each of the canal companies to discuss the terms of such agreement. Catlin has executed a resolution indicated its intent to work with its shareholders and participate in this project, attached as **Exhibit B**. Fort Lyon and High Line have each executed letters of intent to obtain approval from their respective shareholders to participate in this project, attached as **Exhibits D and F**.
3. Lease Agreements or other appropriate agreements between Catlin, Fort Lyon, and High Line and each participating farmer. Super Ditch and the canal company boards have met with potential participating farmers to discuss the terms of such agreement. Catlin has obtained letters of interest from the participating farmers attached as **Exhibit I**. Fort Lyon and High Line will present the contract with Super Ditch to their shareholders in December and will subsequently obtain firm contracts with interested shareholders.
4. Catlin Canal Company Board approval of use of Catlin Canal facilities (ditch, laterals, and augmentation station) and carriage of non-Catlin water to recharge facilities. The Catlin

- Resolution demonstrates their general support for the CS-U Pilot Project, suggesting that these approvals should reasonably be able to be obtained. **Exhibit B.** Additionally, Lower Ark has already entered into a carriage agreement with Catlin to allow for delivery of non-Catlin water to the recharge ponds, attached as **Exhibit J.** This agreement is assignable, and Lower Ark is able to assign it to Super Ditch if necessary for this project.
5. Fort Lyon Canal Company Board approval of use of Fort Lyon facilities (ditch, laterals, reservoirs, and augmentation stations) and carriage of non-Fort Lyon water to recharge facilities. The Fort Lyon Letter of Intent demonstrates their general support for the CS-U Pilot Project, suggesting that these approvals should reasonably be able to be obtained. **Exhibit D.** Fort Lyon does not currently have any recharge ponds.
 6. High Line Canal Company Board approval of use of High Line facilities (ditch, laterals, and augmentation station) and carriage of non-High Line water to recharge facilities. The High Line Letter of Intent demonstrates their general support for the CS-U Pilot Project, suggesting that these approvals should reasonably be able to be obtained. **Exhibit F.**
 7. Agreements for lease of recharge sites. Applicant currently has Recharge Site Leases in place with the owners of the land upon which the Schweizer and Hanagan recharge facilities are located, which Applicant anticipates can and will be renewed at such time that those agreements expire. *See Exhibits K and L.* Additional agreements for any future locations will be obtained, as needed.
 8. BOR annual renewal of Lower Ark's "if and when" storage contract. BOR routinely approves such contracts for Lower Ark and others.

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

V. Water Conservancy District Limitations/Requirements (Criteria and Guidelines § II.F.4)

Both the place of temporary municipal use and the historically irrigated lands are located within the boundaries of the Southeastern Colorado Water Conservancy District ("Southeastern"). It is anticipated that replacement of return flow obligations could be met through use of Lower's Ark's "if

and when” account or operation of the CWPDA Rule 14 Plan. Trades with entities who store water in Pueblo Reservoir could also be effectuated to facilitate project operations and reduce transit losses. The CWPDA Rule 14 Plan involves use of Pueblo Reservoir, which is owned and operated as part of the Fry-Ark Project by the United States Department of Interior, Bureau of Reclamation. Any use of the Fry-Ark Project facilities used in operation of the CS-U Pilot Project, for storage, exchange, release or otherwise, will occur only pursuant to the terms and conditions of any applicable contracts, any Rule 14 Plan approval or other approval, and all applicable rules and policies of Southeastern and the U.S. Bureau of Reclamation. Use of Winter Water to meet return flow obligations from the fallowing of historically irrigated lands will be consistent with the terms and conditions contained in the Winter Water Storage Program (“WWSP”) decreed in Case No. 84CW179 (Water Div. 2), Southeastern’s contract for Winter Water storage in Pueblo Reservoir and any “if and when” contracts with the Bureau of Reclamation, and other applicable terms and conditions contained in the Rule 14 Plan. Beneficial use of such water will occur within Southeastern’s district boundaries.

VI. Conclusion

Applicant appreciates the opportunity to apply for participation in the HB 13-1248 pilot program to test the efficacy of a larger, more complex fallowing-leasing project as an alternative to permanent agricultural dry-up. We believe that the proposed CS-U Pilot Project meets all of the requirements for, and fulfills the objectives of, the contemplated pilot projects. Moreover, this larger scale demonstration would alone meet 10 percent of the 2050 goal of Colorado’s Water Plan for Alternative Transfer Methods. Applicant therefore requests the CWCB consider selection of this CS-U Pilot Project Proposal pursuant to C.R.S. § 37-60-115(8) and the Criteria and Guidelines at the CWCB’s January, 2019 meeting. Applicant would welcome the opportunity to make a presentation on the CS-U Pilot Project at that time. Selection at the January meeting would allow Applicants to submit their application in time for the CWCB’s consideration at the April meeting, which would accommodate the successful implementation of the CS-U Pilot Project in 2020. Please let us know if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Nichols", followed by a long horizontal line extending to the right.

Peter D. Nichols
Megan Gutwein

cc: John Schweizer; Gerry Knapp

Table 1: Participating Shares and Irrigated Acreage

Ownership	Canal Company	Approximate Acreage	Number of Shares Associated w/ Lands
Chavez Family Farms / Diamond A Products	Catlin	3282.80	3660.863
Chavez Family Farms - Thelin	Catlin	153	101
Diamond A Products	Catlin	3282.80	3410.583
Larsen, Scott & Wendy	Catlin	60	68
The Marion J. & Jack E. Roth Trust	Catlin	31.36	32
Groves, Russell	Catlin	385.63	160.04
Schelegel, Marvin	Catlin	124	100
Schweizer, Kenneth, Arlene, John	Catlin	413.33	389.476
Hostetler, Calvin & Deanna	Catlin	30	30
Hirakatas et. al.	Catlin	570.15	575
Mayhoffer, David, Lacie, Edward	Catlin	1,800	753.833
Elite Enterprises	Catlin	33	50.895
Herbert K. & Herbert D. Mamede	Catlin	150.1	99
Hanagan, Eric, Gary B., Margaret, Hanagan & Knaus	Catlin	549.1	441.410
c/o Fort Lyon Canal Company Board of Directors	Fort Lyon	86,141	93,989.4166
c/o Rocky Ford High Line Canal Company Board of Directors	High Line	22,500	2,250

Table 2: Catlin, Fort Lyon, and High Line Canal Company Water Rights

Water Right	Priority No.	Appropriation Date	Adjudication Date	Amount (c.f.s.)
Catlin Canal	2	04/10/1875	04/08/1905	22.0
Catlin Canal	5	12/03/1884	04/08/1905	226.0
Catlin Canal	7	11/14/1887	04/08/1905	97.0
Fort Lyon Canal	4	04/15/1884	04/08/1905	164.64
Fort Lyon Canal	6	03/01/1887	04/08/1905	597.16
Fort Lyon Canal	25	08/31/1893	04/08/1905	171.20
Adobe Creek Reservoir	27.5	01/25/1906	11/08/1928	8,631 840
Adobe Creek Reservoir	50	03/01/1910	11/08/1928	1,466
Adobe Creek Reservoir, First Enlargement	41	12/29/1908	11/08/1928	8,631 840
Adobe Creek Reservoir, First Enlargement	50	03/01/1910	11/08/1928	1,466
Horse Creek Reservoir	10	08/15/1900	11/08/1928	2,000
Horse Creek Reservoir	27.5	01/25/1906	11/08/1928	840
Horse Creek Reservoir	50	03/01/1910	11/08/1928	1,466
Horse Creek Reservoir, First Enlargement	27.5	01/25/1906	11/08/1928	840
Horse Creek Reservoir, First Enlargement	30.5	12/20/1907	11/08/1928	5,000
Horse Creek Reservoir, First Enlargement	50	03/01/1910	11/08/1928	1,466
Horse Creek Reservoir, Second Enlargement	37	06/12/1908	11/08/1928	5,000
Horse Creek Reservoir, Second Enlargement	50	03/01/1910	11/08/1928	1,466

Water Right	Priority No.	Appropriation Date	Adjudication Date	Amount (c.f.s.)
Thurston Reservoir	1	08/12/1889	04/08/1905	355.2
Rocky Ford High Line Canal	20	09/21/1867	03/23/1896	0.6
Rocky Ford High Line Canal	50	03/11/1886	03/23/1896	2
Rocky Ford High Line Canal	60	01/06/1890	03/23/1896	378
Rocky Ford High Line Canal	61	01/06/1890	03/23/1896	2.5
Rocky Ford High Line Canal	25	07/01/1869	04/27/1900	16
Rocky Ford High Line Canal	48	06/30/1885	04/27/1900	30
Rocky Ford High Line Canal	4	12/31/1861	09/15/1905	40
Rocky Ford High Line Canal	3	03/07/1884	04/08/1905	32.5

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

Structure	Owner
Colorado Springs Utilities Water System	Colorado Springs Utilities
Hanagan Recharge Pond	Roger and Mary Jane Maddux
Schweizer Recharge Pond	Kenneth and Arlene Schweizer
Catlin Canal Company canal, laterals, headgate and the Crooked Arroyo and Timpas Creek augmentation stations	Catlin Canal Company
Fort Lyon Canal Company canal, laterals, headgate, and augmentation stations	Fort Lyon Canal Company
Rocky Ford High Line Canal Company canal, laterals, headgate, and augmentation station	Rocky Ford High Line Canal Company
Suburban Lateral (off Catlin Canal, delivers to Hanagan Recharge Pond)	Eric Hanagan, Jaren Gardner, Diamond A Inc., Bill Seamans
Pueblo Reservoir	U.S. Department of Interior, Bureau of Reclamation
Colorado Canal, Lake Meredith, Lake Henry, Lake Canal	Colorado Canal Company
Fort Lyon Storage Canal, Horse Creek Reservoir, Adobe Creek Reservoir	Fort Lyon Canal Company
Dye Reservoir, Holbrook Reservoir, Holbrook Canal	Holbrook Mutual Irrigating Company
Excelsior Ditch	Excelsior Irrigating Company
Excelsior Ditch Recharge Ponds	AGUA

**FALLOWING-LEASING PROJECT AGREEMENT
BY AND BETWEEN
THE LOWER ARKANSAS VALLEY SUPER DITCH COMPANY
AND
THE CITY OF COLORADO SPRINGS, ACTING BY AND THROUGH ITS
ENTERPRISE, COLORADO SPRINGS UTILITIES**

This FALLOWING-LEASING PROJECT AGREEMENT (this "Agreement") is made and entered into effective the 20 day of August, 2018, by and between the **LOWER ARKANSAS VALLEY SUPER DITCH COMPANY**, a Colorado corporation (the "Super Ditch") and the **CITY OF COLORADO SPRINGS**, a Colorado municipal corporation and home rule city, acting by and through its enterprise, **COLORADO SPRINGS UTILITIES** ("CS-U"). The Super Ditch and CS-U are sometimes referred to herein individually as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, irrigators in the Lower Arkansas River Valley incorporated the Super Ditch to provide water to meet municipal water supply needs through temporary agricultural fallowing and leasing of water and/or other alternative transfer methods ("ATMs") rather than the permanent cessation of agriculture and the sale of irrigation water rights ("Buy and Dry");

WHEREAS, the Super Ditch is in the business of providing water derived from ATMs in the Lower Arkansas River Valley to municipal entities;

WHEREAS, CS-U is a municipal utility enterprise that provides, among other things, municipal and industrial water service to customers within the City of Colorado Springs, Colorado ("Colorado Springs") and its water service area, and to other municipal and quasi-municipal entities who provide water service within the vicinity of Colorado Springs;

WHEREAS, in Case No. 10CW4, Water Division 2, the Super Ditch, jointly with the Lower Arkansas Valley Water Conservancy District (the "Lower Ark District"), applied for appropriative rights of exchange (the "10CW4 Exchange") to deliver fully-consumable water derived from ATMs under all of the major irrigation ditches and canals between Pueblo Reservoir and John Martin Reservoir to Pueblo Reservoir ("ATM Water");

WHEREAS, in Case No. 05CW96, Water Division 2, CS-U obtained a decree that, among other things, authorizes CS-U to exchange ATM Water from Pueblo Reservoir to Colorado Springs' municipal water system for use, reuse, or successive use in Colorado Springs' existing and future water service area (the "05CW96 Exchange");

WHEREAS, the Parties desire to implement a Fallowing-Leasing Pilot Project under House Bill 13-1248, codified at Section 37-60-115(8), C.R.S. (the "Pilot Project"), pursuant to which the Super Ditch will deliver ATM Water to Pueblo Reservoir under the 10CW4 Exchange, a new exchange filed cooperatively by the Parties, or by other legally available and mutually acceptable means, for use by Colorado Springs under the 05CW96 Exchange in three out of

every ten years between January 1, 2020 and December 31, 2029, and up to two additional ten-year periods at the discretion of the Parties. ("Pilot Project ATM Water");

WHEREAS, the Parties contemplate that CS-U will make payment to Super Ditch for each acre-foot of Pilot Project ATM Water delivered in Pueblo Reservoir for CS-U's use, and Super Ditch will then distribute the payments to the irrigators who participate in the Pilot Project (the "Participating Irrigators");

WHEREAS, the Parties contemplate that CS-U will pay to the Super Ditch \$60,000 annually during the term of the Pilot Project, which may be distributed to the Participating Irrigators as readiness to serve payments or otherwise used by the Super Ditch; and

WHEREAS, the Parties contemplate that the Super Ditch will pay the Participating Irrigators for each acre-foot of water delivered to Pueblo Reservoir for use by CS-U.

NOW THEREFORE, for good consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

The Recitals set forth above are hereby incorporated into the Terms and Conditions of this Agreement set forth below.

1. Term

1.1. The term of this Agreement shall begin on the date it is executed by both Parties and shall continue in full force and effect until December 31, 2029. This Agreement shall automatically renew for an additional ten-year period on January 1, 2030, and again on January 1, 2040, unless terminated by one of the Parties pursuant to paragraph 9 below prior to December 1 of the year before the current ten-year period is set to expire. In no event shall the term of this Agreement extend beyond December 31, 2049.

2. ATM

- 2.1. The Parties acknowledge and agree that this Agreement is intended to create and give rise to an Alternative Transfer Method as defined in Colorado's State Water Plan.
- 2.2. The Parties acknowledge that CS-U's rights to the Pilot Project ATM Water provided under this Agreement are exclusively contractual, and that this Agreement does not give rise to any water rights or other property rights.

3. Pilot Project ATM Water

3.1. On or before November 16, 2018, the Super Ditch and CS-U will jointly apply to the Colorado Water Conservation Board for the Pilot Project pursuant to H.B. 13-1248, codified at Section 37-60-115(8), C.R.S. The Super Ditch, in cooperation with the Lower Ark District, shall prepare the application for the Pilot Project, and provide legal counsel, engineering, and other consultants necessary for the application. CS-U agrees

to work cooperatively with the Super Ditch and the Lower District to provide legal and engineering review of the application as needed. Each Party shall be individually responsible for the costs it or its consultants incur in preparing and reviewing the application.

- 3.2. The Super Ditch and CS-U shall seek approval in the application for a Pilot Project that authorizes the Super Ditch to deliver up to 5,000 acre-feet of Pilot Project ATM Water to Pueblo Reservoir for municipal and industrial uses in CS-U's existing and future water service area in any three years between 2020 and 2029.
- 3.3. The Pilot Project ATM Water made available to CS-U in Pueblo Reservoir under this Agreement shall be fully consumable and made available pursuant to the requirements of H.B. 13-1248 and the procedures set forth in paragraph 29.P of the decree entered in Case No. 05CW96. The Pilot Project ATM Water shall be made up of water that can be used for municipal and industrial uses in CS-U's existing and future water service area and shall also qualify as a Class I or Class II Temporary Use Water as those terms are defined in the 05CW96 Exchange decree.
- 3.4. The Pilot Project ATM Water shall be delivered to Pueblo Reservoir by the Super Ditch under the priority applied for in Case No. 10CW4 or a new exchange filed in cooperation with the Lower District, or any other legally available and mutually acceptable means.
- 3.5. The Super Ditch shall be solely responsible for acquiring ATM Water for the Pilot Project from the Participating Irrigators pursuant to separate contracts. The Super Ditch may make actual delivery of Pilot Project ATM Water to CS-U from any source available to it at the option of the Super Ditch.
- 3.6. Super Ditch shall also be solely responsible, financially or otherwise, for obtaining all necessary approvals for the delivery of Pilot Project ATM Water to Pueblo Reservoir, including any necessary permits or other governmental approvals except as expressly provided otherwise in this Agreement.
- 3.7. The Parties understand and agree that Pilot Project ATM Water will be provided on a temporary basis and is not to be considered a permanent or perpetual supply of water for CS-U.
- 3.8. CS-U shall be solely responsible for delivering Pilot Project ATM Water to its municipal water system under the 05CW96 Exchange or otherwise. CS-U shall also be solely responsible, financially or otherwise, for obtaining all necessary approvals for the delivery of Pilot Project ATM Water from Pueblo Reservoir to its municipal water system, including any necessary permits or other governmental approvals.
- 3.9. CS-U may use Pilot Project ATM Water for any lawful purpose.
- 3.10. The Parties acknowledge that it may be necessary for Super Ditch to institute water court or administrative proceedings to implement the Pilot Project. So long as any such filing is consistent with the terms and intent of this Agreement, CS-U shall not oppose, but may participate as a co-applicant or file a "friendly" statement of opposition

in support of, any administrative or water court proceeding necessary to implement the Pilot Project.

4. Price

- 4.1. CS-U shall pay Super Ditch, for distribution by Super Ditch to the Participating Irrigators, five-hundred dollars (\$500) for each acre-foot of Pilot Project ATM Water for the first 1,000 acre-feet per year delivered to Pueblo Reservoir under this Agreement. Beginning in 2021, the price paid by CS-U shall increase two percent (2%) annually, to protect Participating Irrigators against inflation. Super Ditch shall invoice CS-U upon delivery of Pilot Project ATM Water to Pueblo Reservoir. CS-U shall make payments for the delivery of any Pilot Project ATM Water into Pueblo Reservoir to Super Ditch within 90 days of the date of such invoice. Interest shall accrue on late payments at the rate of five percent (5%) per annum. Super Ditch shall be solely responsible for distributing such payments to the Participating Irrigators.
- 4.2. Prior to the delivery of more than 1,000 acre-feet of Pilot Project ATM Water in any year, CS-U and the Super Ditch shall agree in advance on the price per acre-foot for deliveries of more than 1,000 acre-feet of Pilot Project ATM Water per year to Pueblo Reservoir.
- 4.3. CS-U shall pay the Super Ditch \$60,000 annually during the term of this Agreement as partial consideration for Super Ditch's delivery of up to 1,000 acre-feet of Pilot Project ATM Water to CS-U in three years out of ten..
- 4.4. CS-U shall make such \$60,000 payments on or before March 1 of each year this Agreement is in effect. Interest shall accrue on late payments at the rate of five percent (5%) per annum.
- 4.5. The Parties agree that, in years the CS-U calls for the delivery of water under this Agreement, Pilot Project ATM Water will be delivered on a "take or pay" basis, provided that the Super Ditch makes the Pilot Project ATM Water legally and physically available in Pueblo Reservoir pursuant to the terms and conditions of this Agreement.
- 4.6. CS-U shall have no obligation to pay for any amount of Pilot Project ATM Water that was called for but not delivered pursuant to the terms and conditions of this Agreement.
- 4.7. In the event that the Super Ditch fails to make at least 850 acre-feet of Pilot Project ATM Water legally and physically available in Pueblo Reservoir in any year that CS-U calls for water under this Agreement, the Super Ditch shall forego the right to receive CS-U's \$60,000 payment in the following year. This remedy shall apply, however, only if the failure to deliver at least 850 acre-feet of Pilot Project ATM Water is not due to an occurrence beyond the reasonable control of the Super Ditch or the Participating Irrigators such as an act of God, acts or failures to act by governmental entities, strike, war, insurrection, or orders of any court or lawful governmental administrative body or agency clothed with authority to regulate matters pertaining to water use, public health, or water quality control and so long as a failure of the Super Ditch to deliver Pilot Project ATM Water does not occur because of its affirmative action, inaction or negligence.

4.8. All payments by CS-U under this agreement shall be made as follows:

Lower Arkansas Valley Super Ditch, Inc.
801 Swink Avenue
Rocky Ford, Colorado 81067

5. Delivery of Water

- 5.1 CS-U shall call for delivery of a minimum of 1,000 acre-feet of Pilot Project ATM Water in three years between 2020 and 2029, and if the term of the agreement is extended, CS-U shall call for a minimum of 1,000 acre-feet of Pilot Project ATM Water in three years between 2030 and 2039, and in three years between 2040 and 2049. CS-U, in its sole discretion, shall determine which three years it will take delivery of Pilot Project ATM Water from the Super Ditch in each ten-year period. The Super Ditch shall deliver such water no later than October 31 of the year in which CS-U calls for it.
- 5.2 CS-U shall notify the Super Ditch of its intent to call for delivery of Pilot Project ATM Water by January 31 of any given year in which it intends to take delivery of such water under the terms and conditions of this Agreement.
- 5.3 In any year that CS-U calls for delivery of Pilot Project ATM Water, the Super Ditch shall make the Pilot Project ATM Water available to CS-U in Pueblo Reservoir no later than October 31 of that year.
- 5.4 While it is the intent and purpose of the Super Ditch to provide of Pilot Project ATM Water in response to CS-U's calls, there are some factors which make it uncertain whether the water supply can always be adequate. The Parties recognize that the water supply for the Super Ditch and its lessees is dependent upon sources from which the supply is variable in quantity and beyond the control of the Super Ditch. As long as a failure of the Super Ditch to deliver Pilot Project ATM Water does not occur because of its affirmative action, inaction or negligence, no liability in tort or contract shall attach to the Super Ditch under this Agreement on account of an actual failure of the Super Ditch to deliver Pilot Project ATM Water due to inadequate runoff or inadequate storage arising from an occurrence beyond the reasonable control of the Super Ditch, including, but not limited to, acts of God, acts or failure to act by governmental entities, strike, war, insurrection, or inability to delivery water arising from the order of any court or a lawful order of any governmental administrative body or agency clothed with authority to regulate matters pertaining to water use, public health, or water quality control. If Super Ditch anticipates an inability to meet a call from CS-U (for example, in the event of drought or failure of infrastructure), it shall provide notice of such interruption to CS-U at the earliest time practicable.

6. Storage of Water

- 6.1. The Super Ditch shall be responsible for providing the necessary storage space for all Pilot Project ATM Water that is delivered to CS-U in Pueblo Reservoir until such time as the water is moved out of storage by CS-U under the 05CW96 Exchange or otherwise;

provided that, in no event, shall the Super Ditch be required to store CS-U's Pilot Project ATM Water in Pueblo Reservoir after December 31 of the year in which the water was delivered to CS-U. However, if CS-U desires to store its Pilot Project ATM Water for a longer term in Pueblo Reservoir, the parties shall cooperate with each other to secure storage of such water in the Long-Term Excess Capacity Storage Account maintained by the Lower Ark District.

6.2. CS-U shall bear any evaporative and transit losses incurred after the water is delivered into Super Ditch's storage space in Pueblo Reservoir.

7. Future Commitments

7.1. Both parties acknowledge CS-U's need to plan for and secure a perpetual water supply for its customers; and both Parties acknowledge the Super Ditch's desire to preserve irrigated agricultural in the Lower Arkansas Valley. Towards these ends, the Parties agree to meet at least annually with the Lower Ark District to revisit the terms of this Agreement, and the operation of the Pilot Project. Topics to address at these meetings include, but are not limited to, the use of conservation easements, covenants, or other real property interests to secure a permanent supply of leased water; an application for conditional rights of exchange to secure a permanent means of transporting Pilot Project ATM Water to Pueblo Reservoir; use of SWSPs and IWSAs to increase both the number of years in ten that CS-U can call for Pilot Project ATM Water, and the amount of Pilot Project ATM Water that CS-U can call for annually; and the extension of the Pilot Project into a long-term agreement between CS-U, the Super Ditch, and the Lower Ark District.

8. Notice

8.1. Any notice required under this agreement shall be in writing and shall be delivered by courier service delivery (such as Federal Express), by first-class mail, or by electronic mail at the addresses specified below and shall be deemed duly served, given, or delivered when received:

If to the Super Ditch:

Lower Arkansas Valley Super Ditch Company
Attn: President
801 Swink Avenue
Rocky Ford, CO 81067

Electronic Mail Address (c/o General Manager, Lower Arkansas Valley Water Conservancy District):
jwinner@lowerark.com

With copies to:

Lower Arkansas Valley Water Conservancy District
Attn: General Manager
810 Swink Avenue
Rocky Ford, CO 81067

Bart Mendenhall
Mendenhall & Malouf
805 Chestnut
P.O. Box 52
Rocky Ford, CO 81067

Peter D. Nichols
Berg Hill Greenleaf Ruscitti LLP
1712 Pearl St.
Boulder, CO 80302

If to CS-U:

Courier Service Address:
Colorado Springs Utilities
ATTN: Chief Water Services Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Chief Water Services Officer
P.O. Box 1103
Colorado Springs, CO 80947-0950

Electronic Mail Address:
ewilkinson@csu.org

City Attorney's Office - Utilities Division
Courier Service Address:
City Attorney's Office - Utilities Division
30 S. Nevada Ave, Suite 501
Colorado Springs, CO 80903

United States Postal Service Address:
City Attorney's Office - Utilities Division
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

Electronic Mail Address:
mgustafson@springsgov.com

8.2. Any Party may change the above addresses for any reason by providing notice in writing to the other Party.

9. Enforcement and Termination

9.1. This Agreement may be terminated only as described herein, or upon mutual agreement of the Parties.

9.2. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado. A Party may terminate this Agreement based on the other Party's breach of a material term or condition of this Agreement, upon providing thirty (30) days written notice of such breach to the other Party, if the breaching Party fails to cure the breach within ninety (90) days of the date it receives notice of breach from the other Party.

9.3. Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to, any incidence of fire, flood, or strike; acts of God; acts of the Government (except the Parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government (except the Parties hereto); or national fuel shortage, when satisfactory evidence of such cause is presented to the other Parties, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

9.4. Either Party may terminate this Agreement without cause by providing the other Party with notice of such termination prior to December 1 of the year before the current ten-year period of the Agreement is set to expire. Such termination shall be effective as of the date the current ten-year period expires.

10. Miscellaneous

10.1. Except as expressly provided hereunder, each Party shall bear its own fees and expenses incurred in the formation of this Agreement.

10.2. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon CS-U shall constitute or create an indebtedness or debt of CS-U or the City of Colorado Springs within the meaning of any Colorado constitutional provision or statutory limitation.

- 10.3. The Parties will fulfill their obligations under this Agreement in compliance with all applicable laws and with the highest standards of integrity, fair dealing, respect and ethics. The Parties will fulfill their obligations under the Agreement without discriminating, harassing, or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability, sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status protected by applicable law.
- 10.4. In accordance with the Colorado Springs City Charter, performance of CS-U's obligations under this Agreement are expressly subject to appropriations of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of CS-U's obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and CS-U shall thereafter have no liability for compensation or damages to the Super Ditch in excess of CS-U's authorized appropriation for this Agreement or the applicable spending limit, whichever is less.
- 10.5. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, none of the Parties shall be deemed or constitute a partner, joint venturer or agent of the other Parties. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.
- 10.6. Nothing in this Agreement or in any actions taken by the Parties pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time may be amended.
- 10.7. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement, including the Super Ditch's members and shareholders.
- 10.8. Neither this Agreement, nor either Party's rights and obligations under this Agreement shall be assignable, except on mutual written agreement of the parties.
- 10.9. This Agreement may not be amended, altered, or otherwise changed except by a subsequent written agreement by the Parties.
- 10.10. This Agreement shall be construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws) and to the extent necessary to recognize the legal organization of CS-U, the Colorado Springs City Charter, Colorado Springs City Code, City ordinances and resolutions, and City rules and regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of CS-U as provided in Colorado Springs City Code

Section 12.1.108. In the event of any dispute over the terms and conditions of this Agreement, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

10.11. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

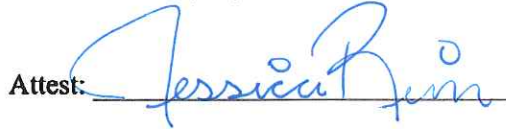
10.12. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

LOWER VALLEY SUPER DITCH COMPANY



John Schweizer, Jr., President

Attest: 

COLORADO SPRINGS UTILITIES


Earl Wilkinson, III
Chief Water Services Officer

Approved as to Form:


Michael J. Gustafson
City Attorney's Office – Utilities Division

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE CATLIN CANAL
COMPANY CONCERNING THE COLORADO SPRINGS UTILITIES PILOT
PROJECT**

Whereas, the Board is aware of the Colorado Water Conservation Board's ("CWCB") pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up, authorized under HB 13-1248;

Whereas, the Board understands that the Lower Arkansas Valley Super Ditch Company ("Super Ditch") is pursuing a rotational fallowing-leasing pilot project involving lands irrigated under the Catlin Canal Company, among other ditch companies, to provide water to the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities ("CS-U") ("CS-U Pilot Project");

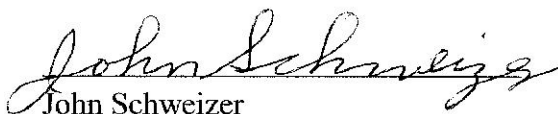
Whereas, the Board is aware that there may be certain approvals and/or agreements that may be required between the Catlin Canal Company and Super Ditch, the participating farmers, and/or CS-U; and

Whereas, the Board believes that the proposed CS-U Pilot Project will further the goals of HB 13-1248 and the Fallowing Leasing Pilot Program through demonstrating cooperation among different types of water users, including cooperation between the Catlin Canal Company and pilot project participants.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of the Catlin Canal Company is generally supportive of the goals of the CWCB Fallowing Leasing Pilot Program and the proposed CS-U Pilot Project.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of the Catlin Canal Company agrees to cooperate with the Super Ditch in its effort to obtain approval for and implement the proposed CS-U Pilot Project in a manner that does not result in injury to the Catlin Canal.

DATED: 11-13-18


John Schweizer
President



Canals/Streams

Arkansas River

Catlin Canal

Farm Unit Boundary

Legend

Off Current Farm Unit

Dry-up Type

Continued Irrigation

Off Farm Unit Permanent Dry-up

On Farm Unit Permanent Dry-up

Townships

Sections

Label Legend

Parcel ID

23563622

Permanent Dry-up

1.3 Ac.

Coordinate System: NAD 1983 UTM Zone 13N
Projection: Transverse Mercator
North American 1983

Base Mapping:
2015 Otero County NAIP Mosaic Imagery captured on 8/25/2015.

COLORADO RIVER

ENGINEERING

16100 PARK BLVD S

PO Box 1301
Rifle, CO 81650
Tel 970-625-4933

Farm Unit 4100

CDWR Parcels

Document Name: DiamondA_4100_Dry-up_Rfill.mxd

Client: CAA

Drawn by: JT

Approved by: CM

Date: 12/28/2017

Figure: 2





ROAD Z

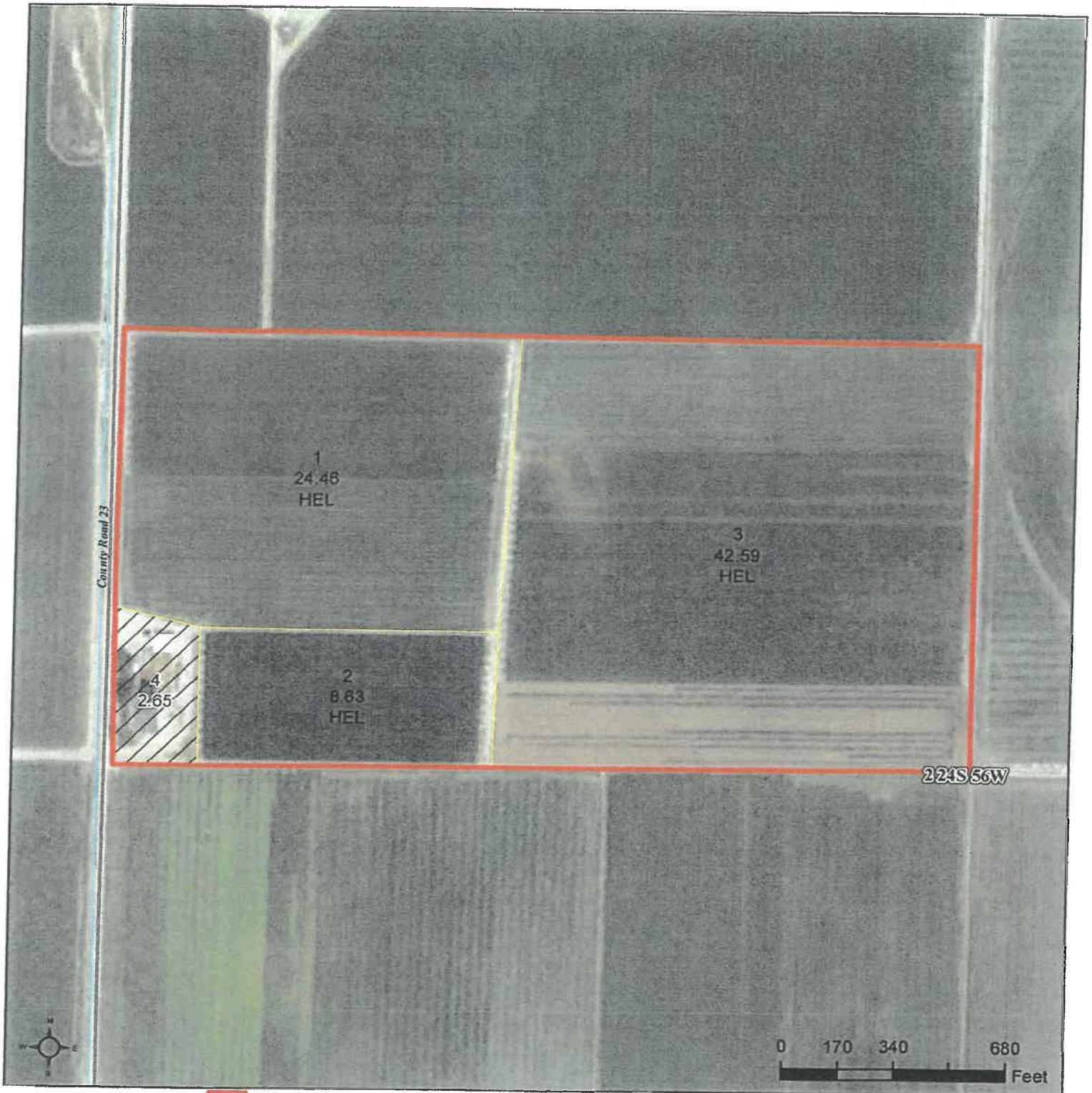
C.R. 25





United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit Tract Boundary
 Non-Cropland
 Cropland
 PLSS

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 75.68 acres

2018 Program Year

Map Created September 01, 2017

Farm 1905
Tract 963

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

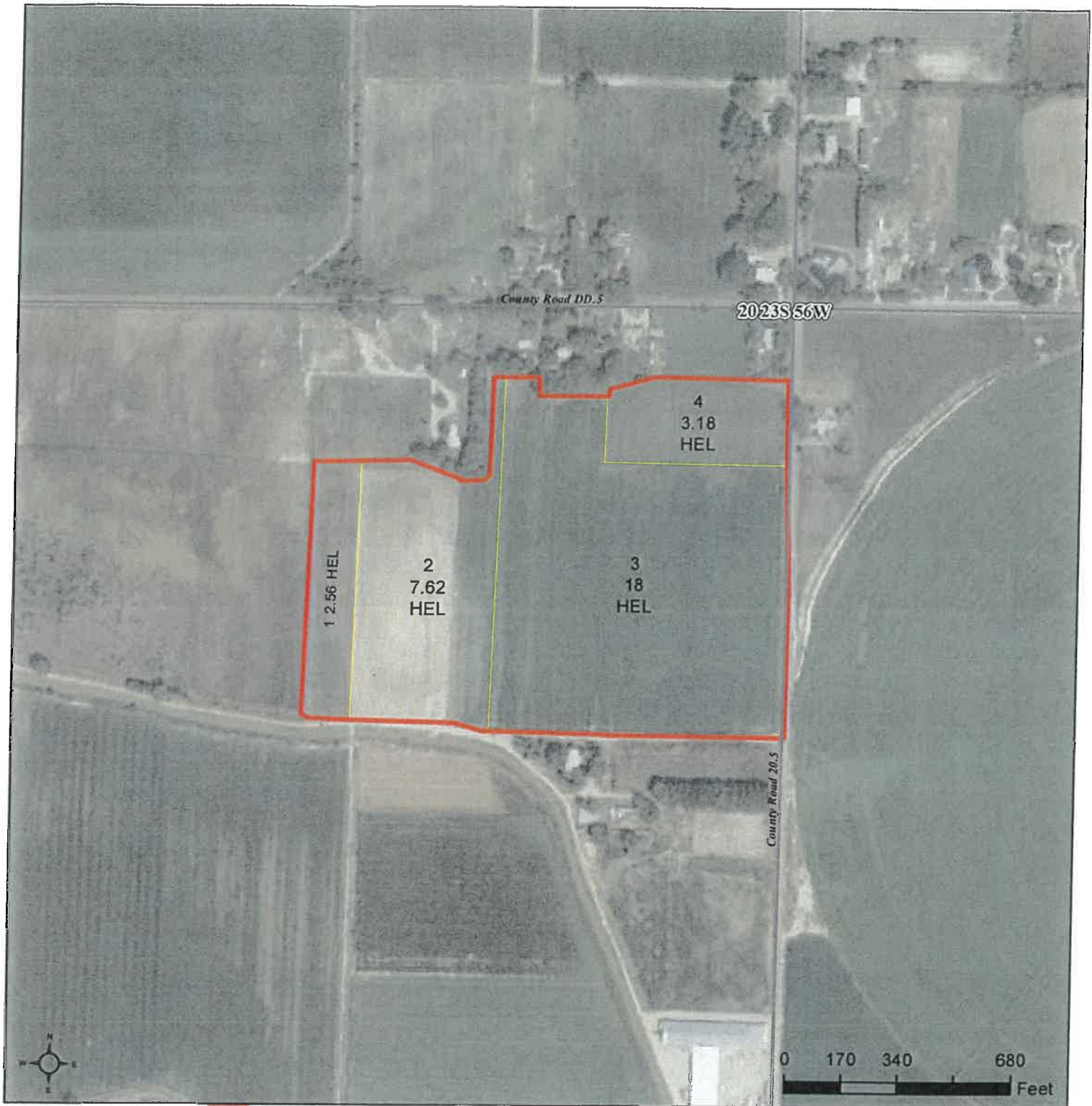
Larsen

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



co_street

Common Land Unit

Cropland

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Boundary

PLSS

Tract Cropland Total: 31.36 acres

2018 Program Year

Map Created September 01, 2017

Farm 2217

Tract 3783

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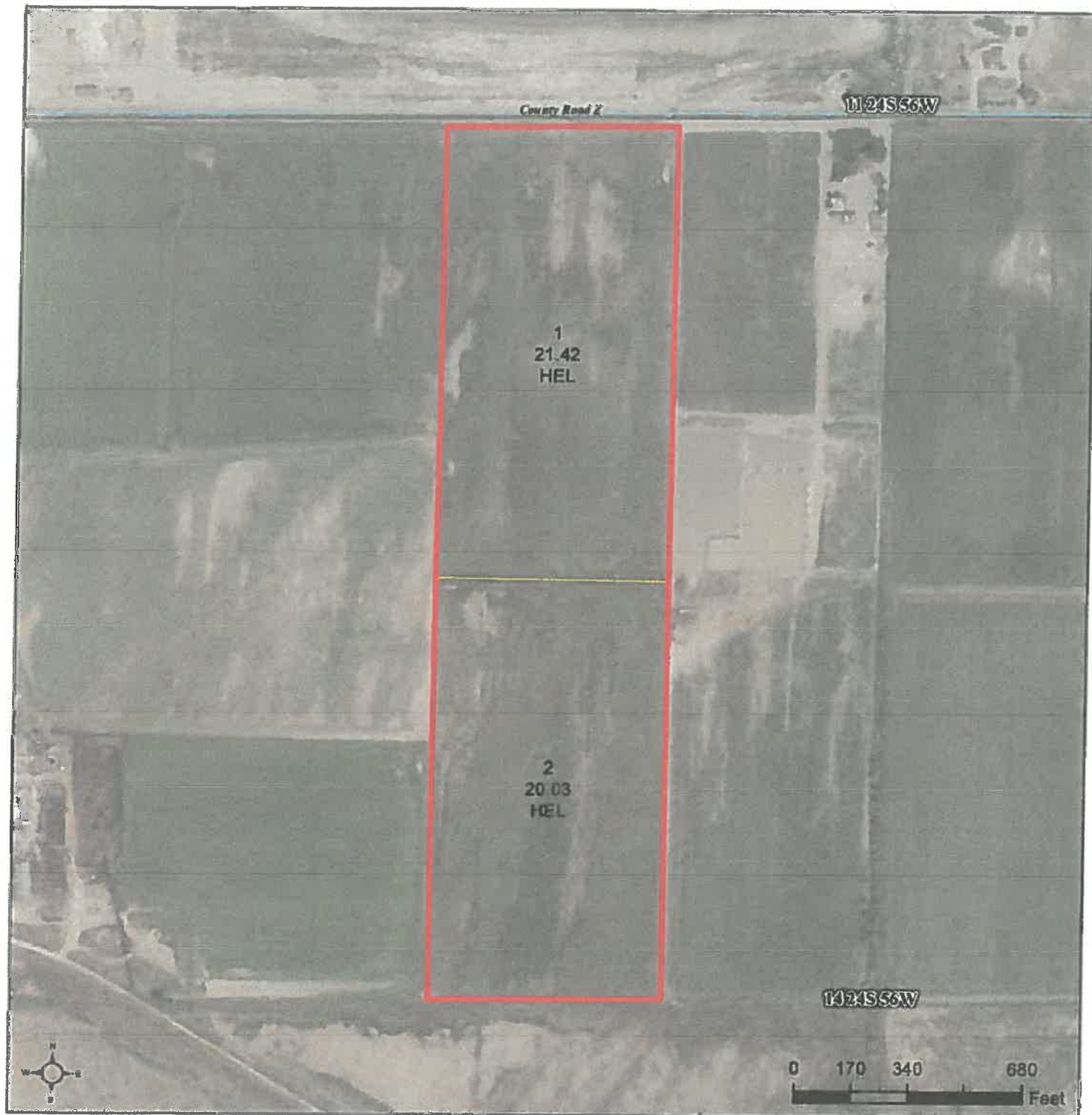
Roth

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit ☐ PLSS

Cropland

☐ Tract Boundary

Wetland Determination Identifiers

☐ Restricted Use

☐ Limited Restrictions

☐ Exempt from Conservation
Compliance Provisions

Tract Cropland Total: 41.45 acres

2018 Program Year

Map Created September 01, 2017

Farm 1540

Tract 2047

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership, rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

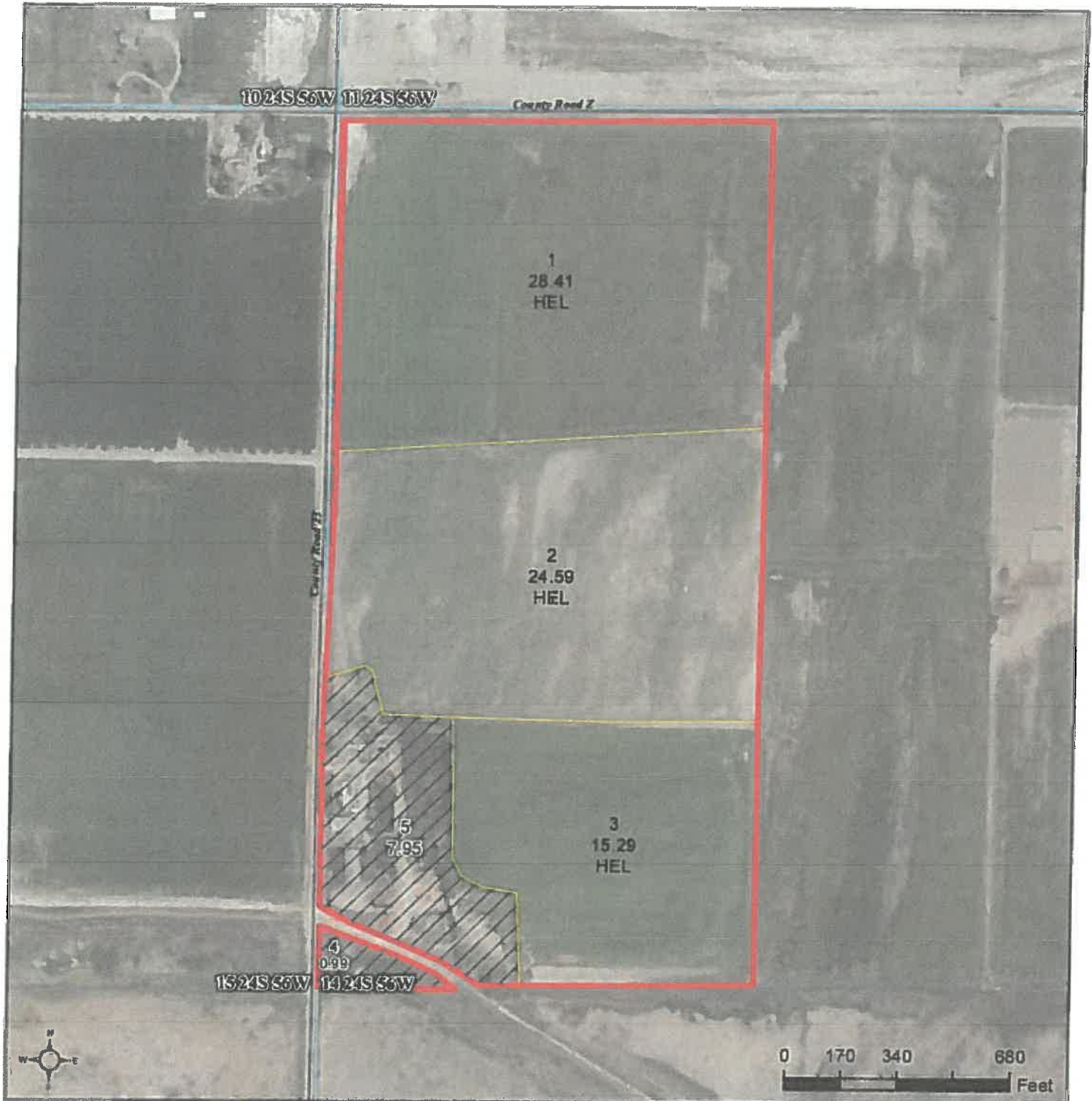
Russell Groves

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit Tract Boundary

Non-Cropland
 Cropland

PLSS

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 68.29 acres

2018 Program Year

Map Created September 01, 2017

Farm 1540

Tract 990

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership, rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

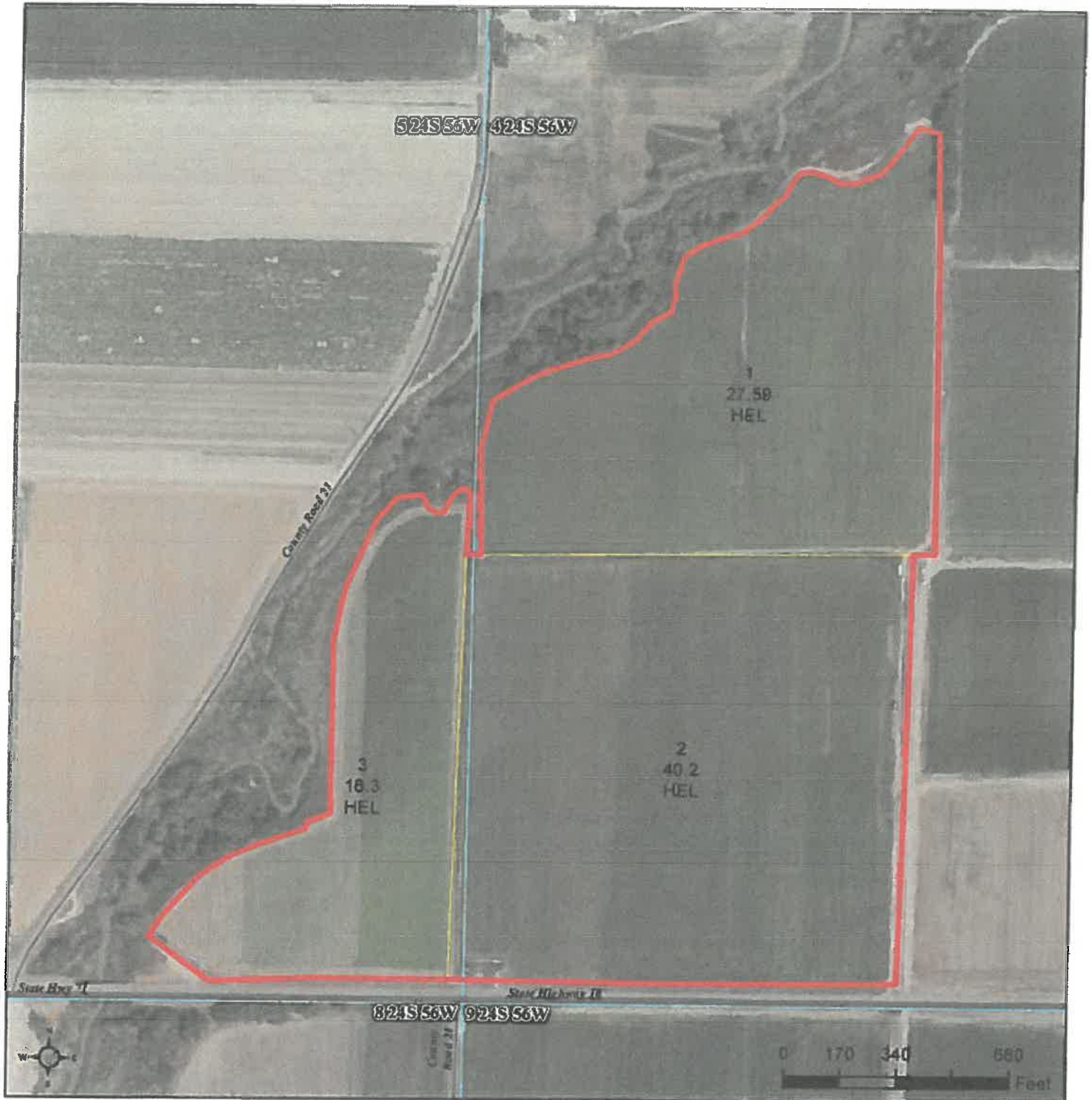
Russell Groves

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit PLSS

Cropland
 Tract Boundary

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 84.09 acres

2018 Program Year

Map Created September 01, 2017

Farm 1540

Tract 869

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Russell Groves

Exhibit C



Map Created September 01, 2017

Tract 3867

-  **Restricted Use**
-  **Limited Restrictions**
-  **Exempt from Conservation Compliance Provisions**

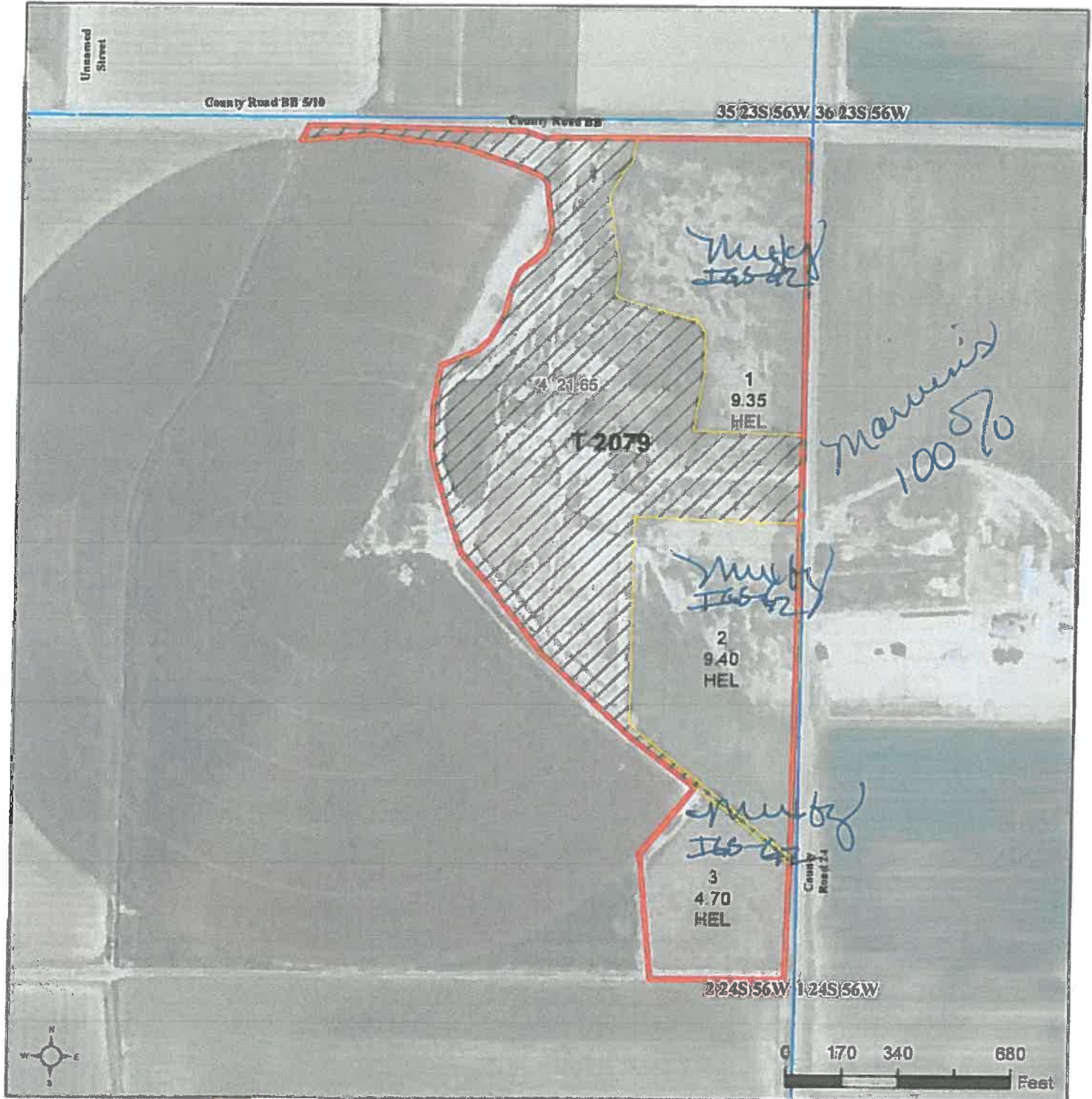
Tract Cropland Total: 191.80 acres

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United States
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Otero County, Colorado



Common Land Unit

- Non-Cropland
- Cropland

- Tract Boundary
- PLSS

Ordnance Imagery 2017 - Not to Scale

2018 Program Year

Map Created April 24, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Cropland Total: 23.45 acres

Farm 1743
Tract 2079

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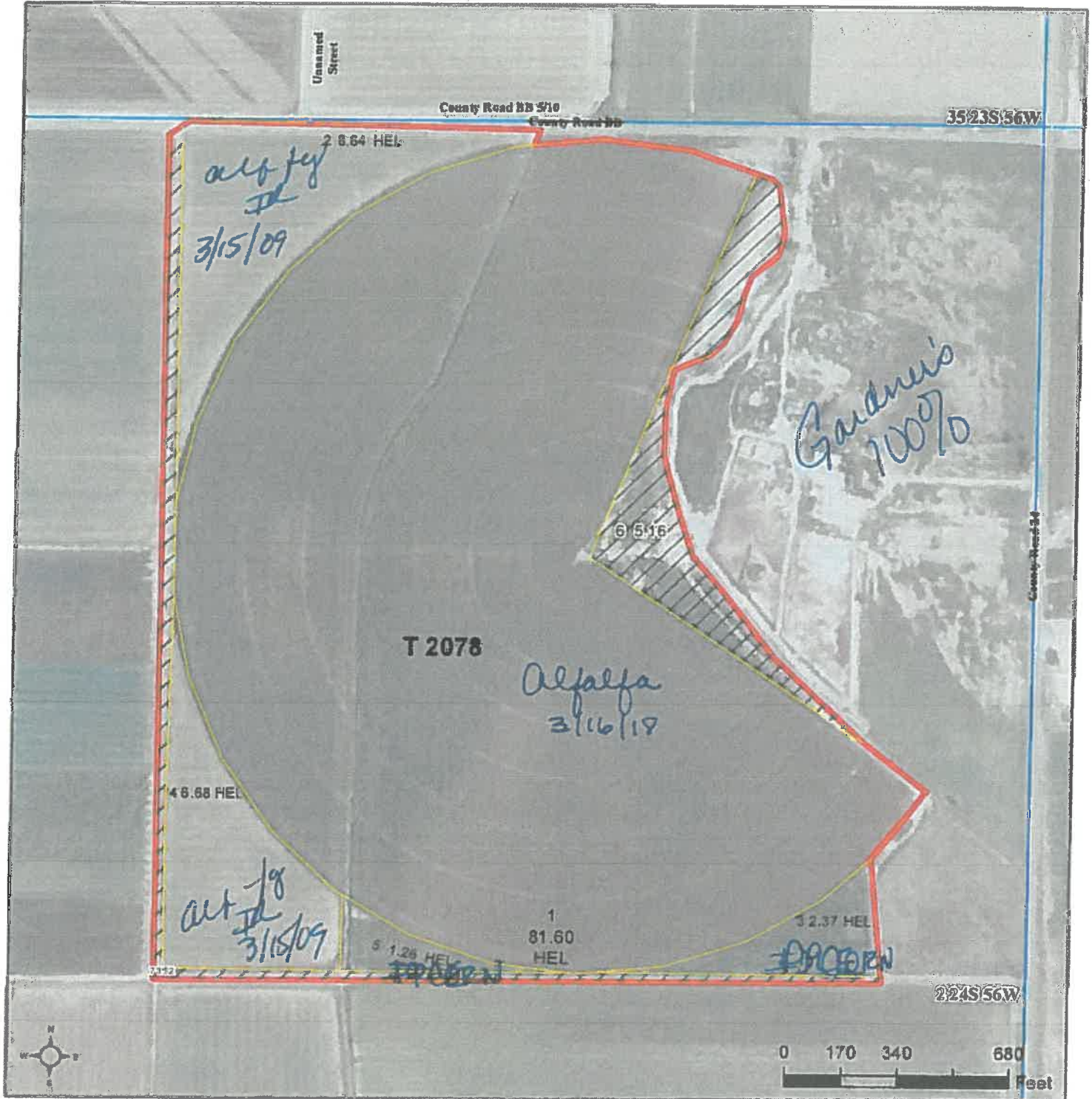
Schlegel

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



co_street
Common Land Unit
Non-Cropland
Cropland
Tract Boundary
PLSS

Orthoimagery 2017 - Not to Scale

2018 Program Year

Map Created April 24, 2018

Farm 1743

Tract 2078

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Cropland Total: 100.55 acres

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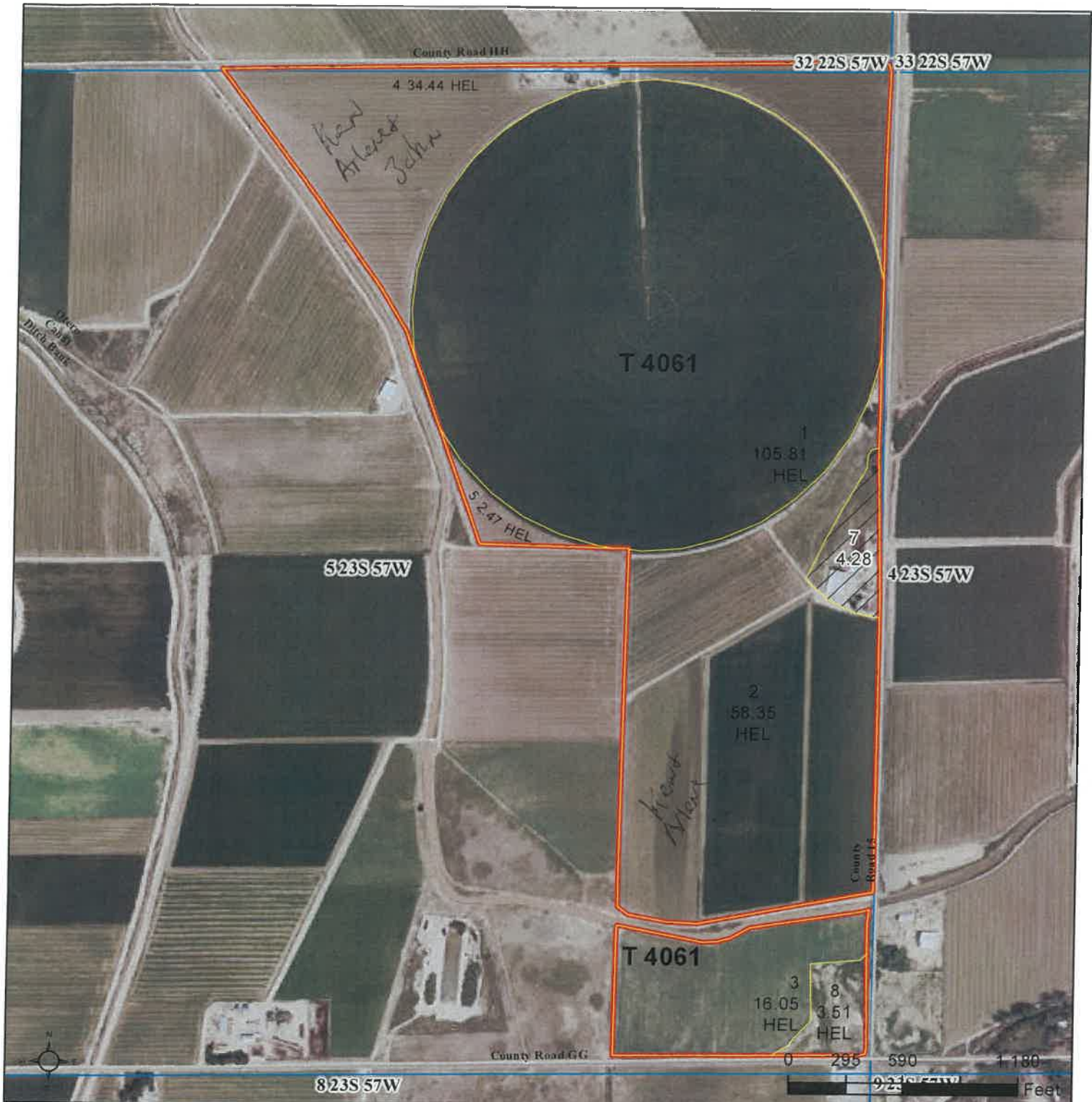
Schlegel

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit

- Tract Boundary
- PLSS
- Non-Cropland
- Cropland

Orthoimagery 2017 - Not to Scale

2019 Program Year

Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 220.63 acres

Farm 2446

Tract 4061

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Schweizer

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Otero County, Colorado



Common Land Unit
Tract Boundary
PLSS
Non-Cropland
Cropland

Orthoimagery 2017 - Not to Scale

2019 Program Year

Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 192.70 acres

Farm 2446
Tract 425

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Schweizer

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit
Tract Boundary
Non-Cropland
Cropland
PLSS

Orthoimagery 2017 - Not to Scale

2019 Program Year
Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 31.59 acres

Farm 2451
Tract 3353

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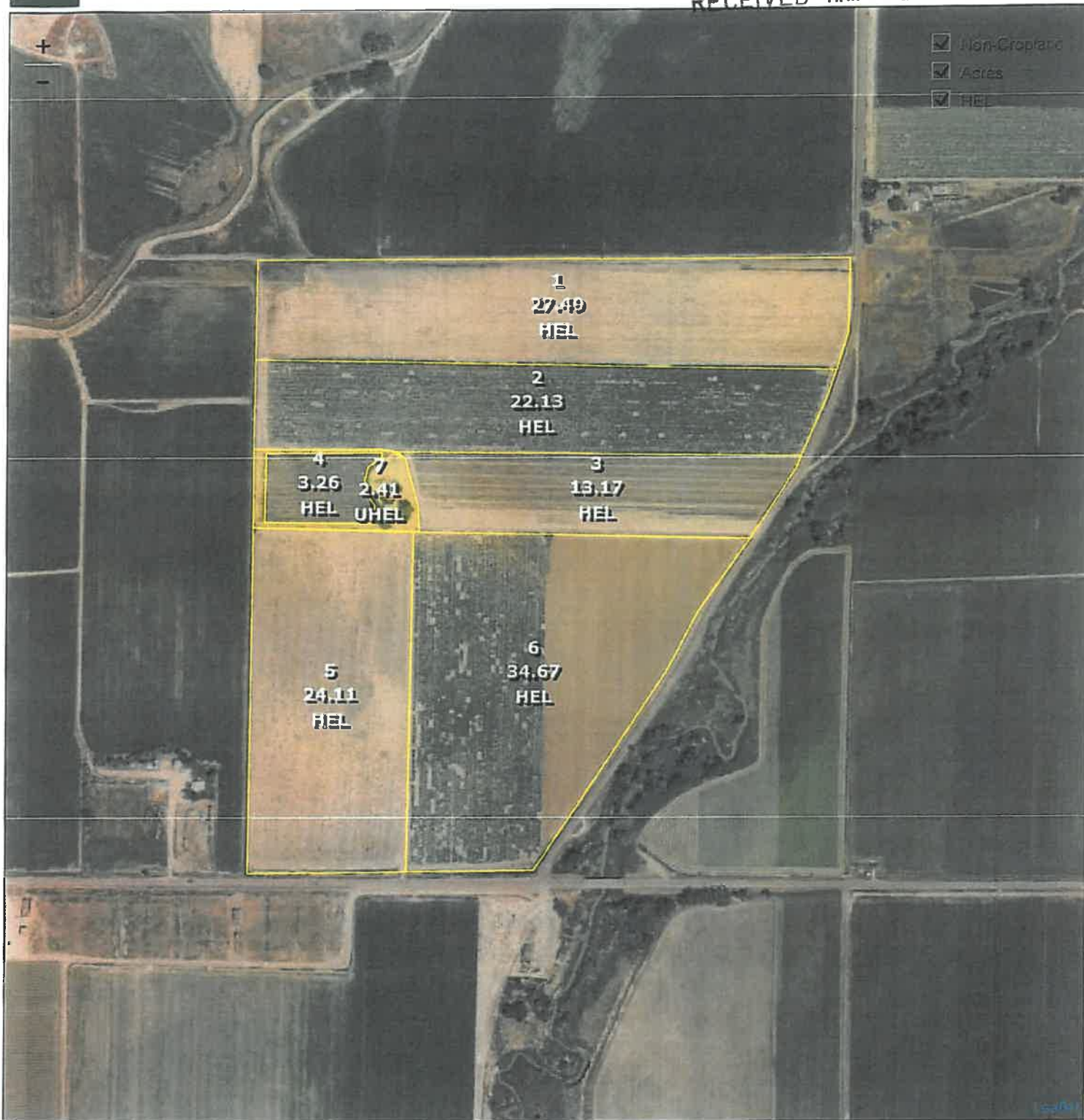
Hostetler

Exhibit C

Headgate
138

Shares
130

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Common Land Unit
Cropland Non-cropland CRP

Wetland Determination Identifiers

- Restricted Use
- ▲ Limited Restrictions
- Exempt from Conservation Compliance Provisions

2017 Crop Year



Tract Page: 1 of 1

Farm 1798
Tract 785

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<https://intranet-apps.fsa.usda.gov/cars/setupReports.do?dispatchTo=report&report=fsa5..> 3/28/2017

Exhibit C

Headgate 128
Shred

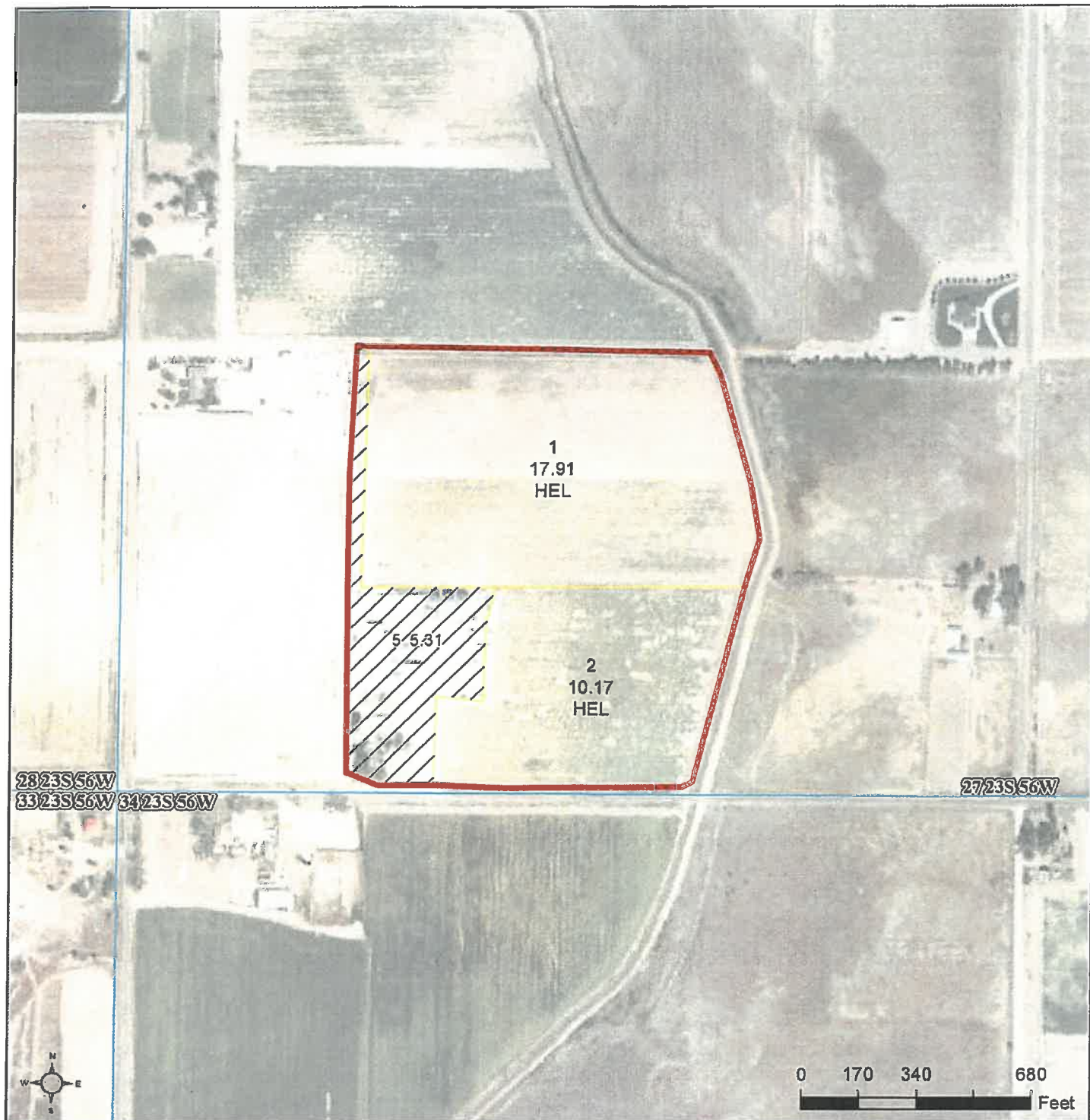
Shred
30



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Common Land Unit
Tract Boundary
PLSS
Non-Cropland
Cropland

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 28.08 acres

2017 Program Year
Map Created September 28, 2016

Farm 1798
Tract 857

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Hirakata

Exhibit C

Headgate ~~120~~
124

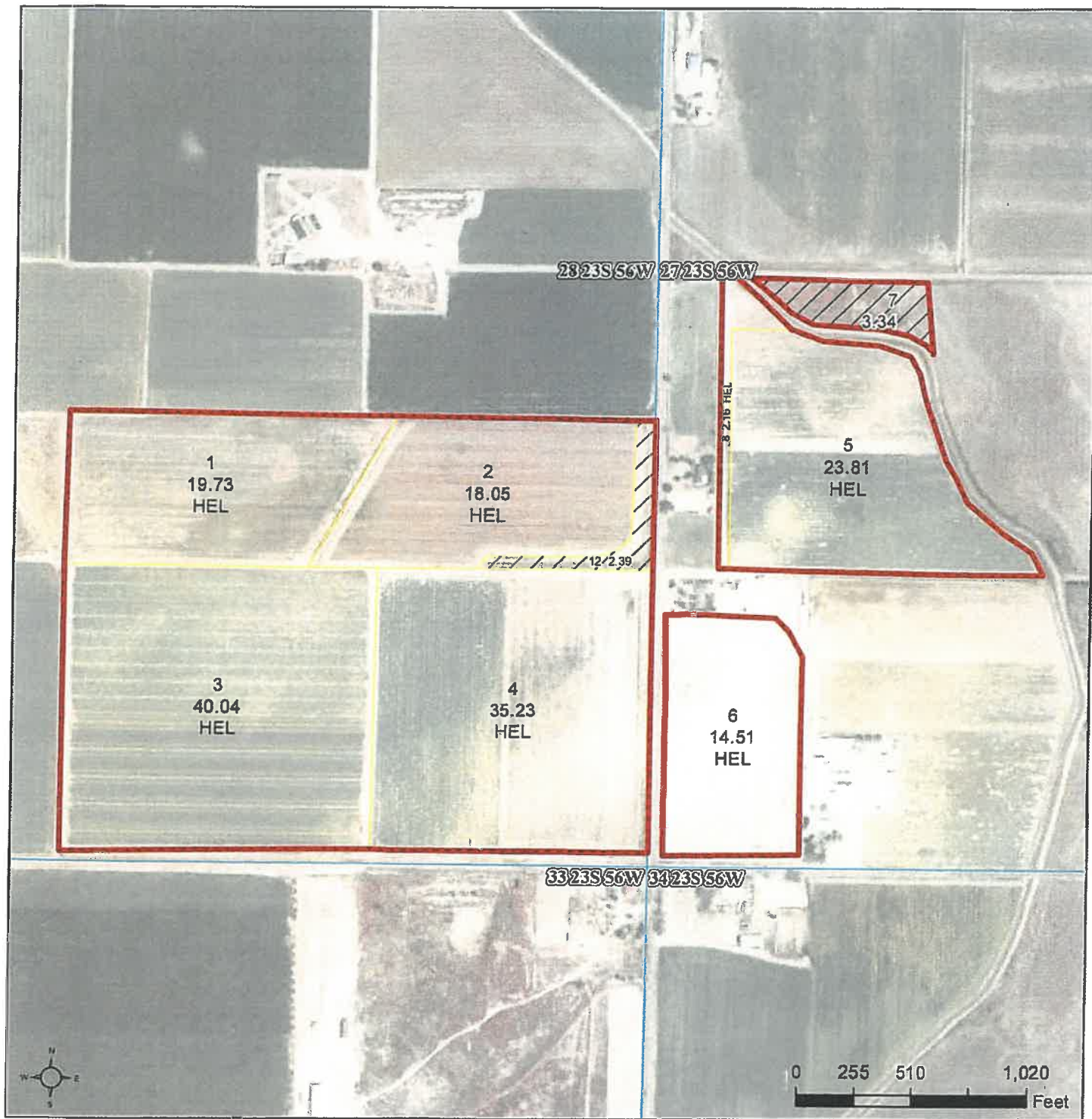
Shirley
151



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Otero County, Colorado

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Common Land Unit

- Tract Boundary (Red line)
- PLSS (Blue line)
- Non-Cropland (Hatched area)
- Cropland (Yellow area)

Wetland Determination Identifiers

- Restricted Use (Red circle)
- Limited Restrictions (Yellow triangle)
- Exempt from Conservation Compliance Provisions (Green square)

Tract Cropland Total: 153.53 acres

2017 Program Year
Map Created September 28, 2016

Farm 1228
Tract 3804

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Hirakata

Exhibit C

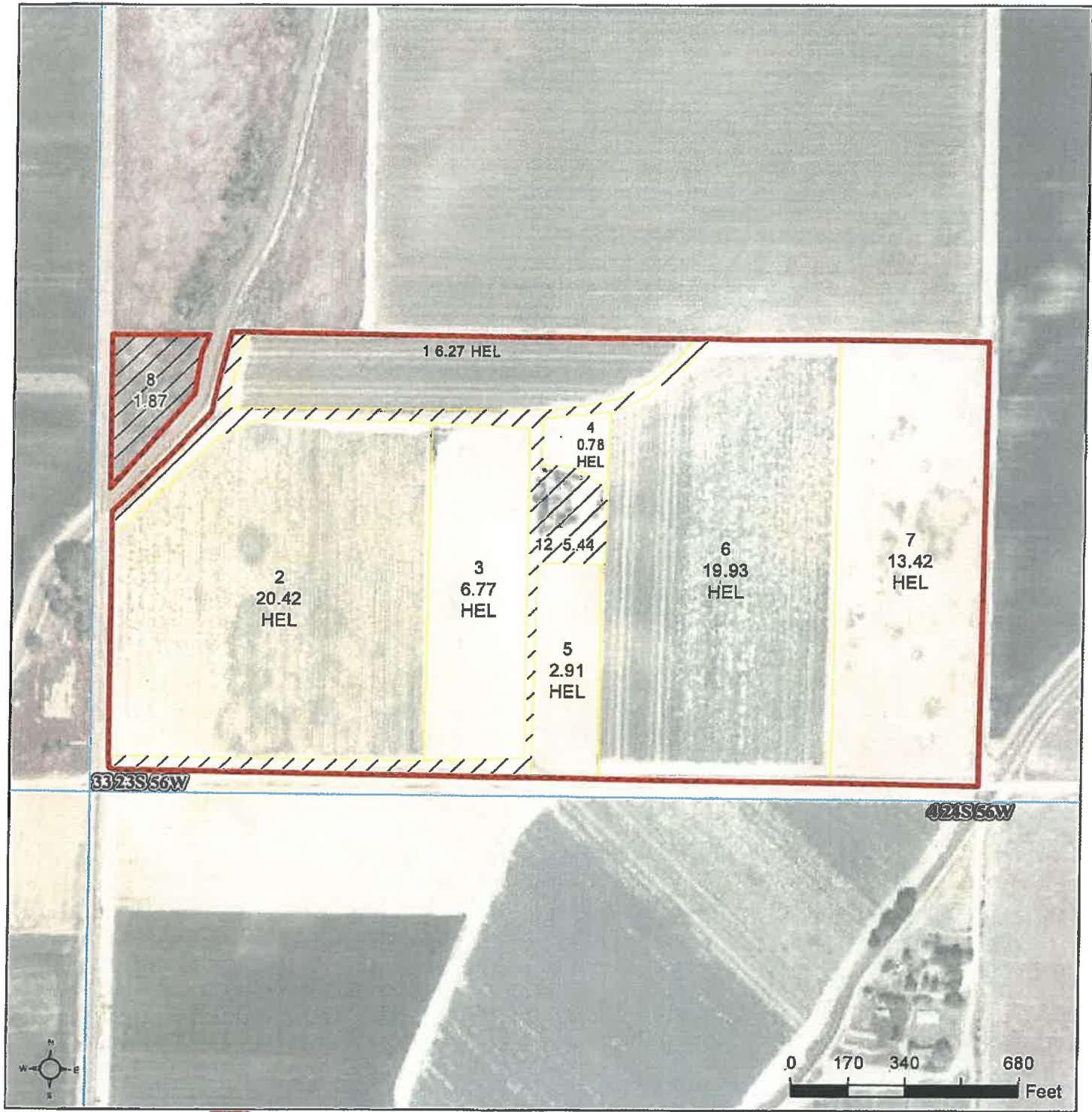
Handwritten: *Headgate 132*

Shane 68.9

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Otero County, Colorado



Common Land Unit

- Tract Boundary (Red line)
- PLSS (Blue line)
- Non-Cropland (Hatched area)
- Cropland (Yellow area)

Wetland Determination Identifiers

- Restricted Use (Red circle)
- Limited Restrictions (Yellow triangle)
- Exempt from Conservation Compliance Provisions (Green square)

Tract Cropland Total: 70.50 acres

2017 Program Year
Map Created September 28, 2016

Farm 1067
Tract 864

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Hirakata

Exhibit C

Academy 119

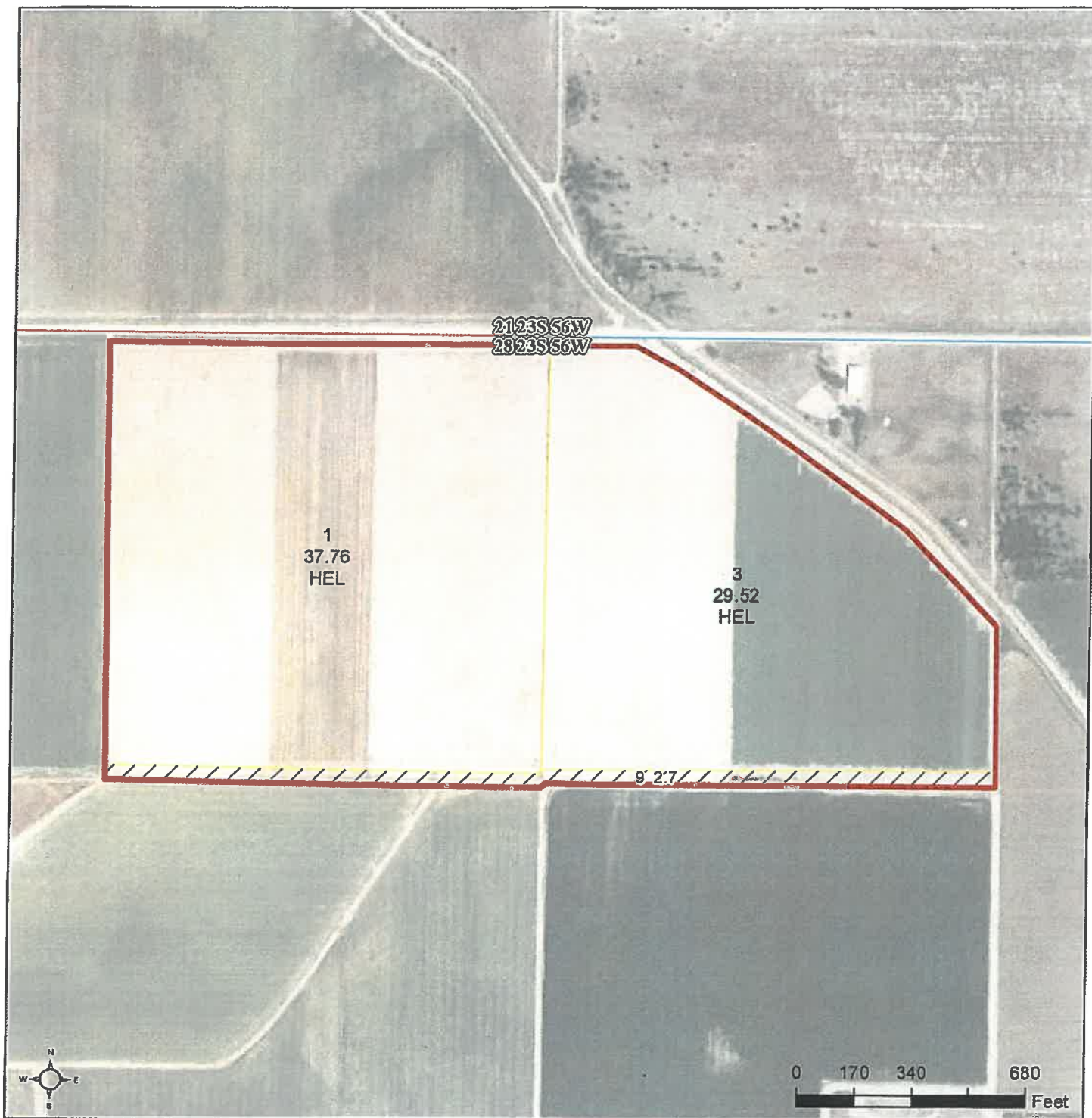
SW 79



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Common Land Unit
 / / Non-Cropland
 Cropland
 Tract Boundary
 PLSS

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Cropland Total: 67.28 acres

2017 Program Year
Map Created September 28, 2016

Farm 1797
Tract 831

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Hirakata

Exhibit C

Hendy 133

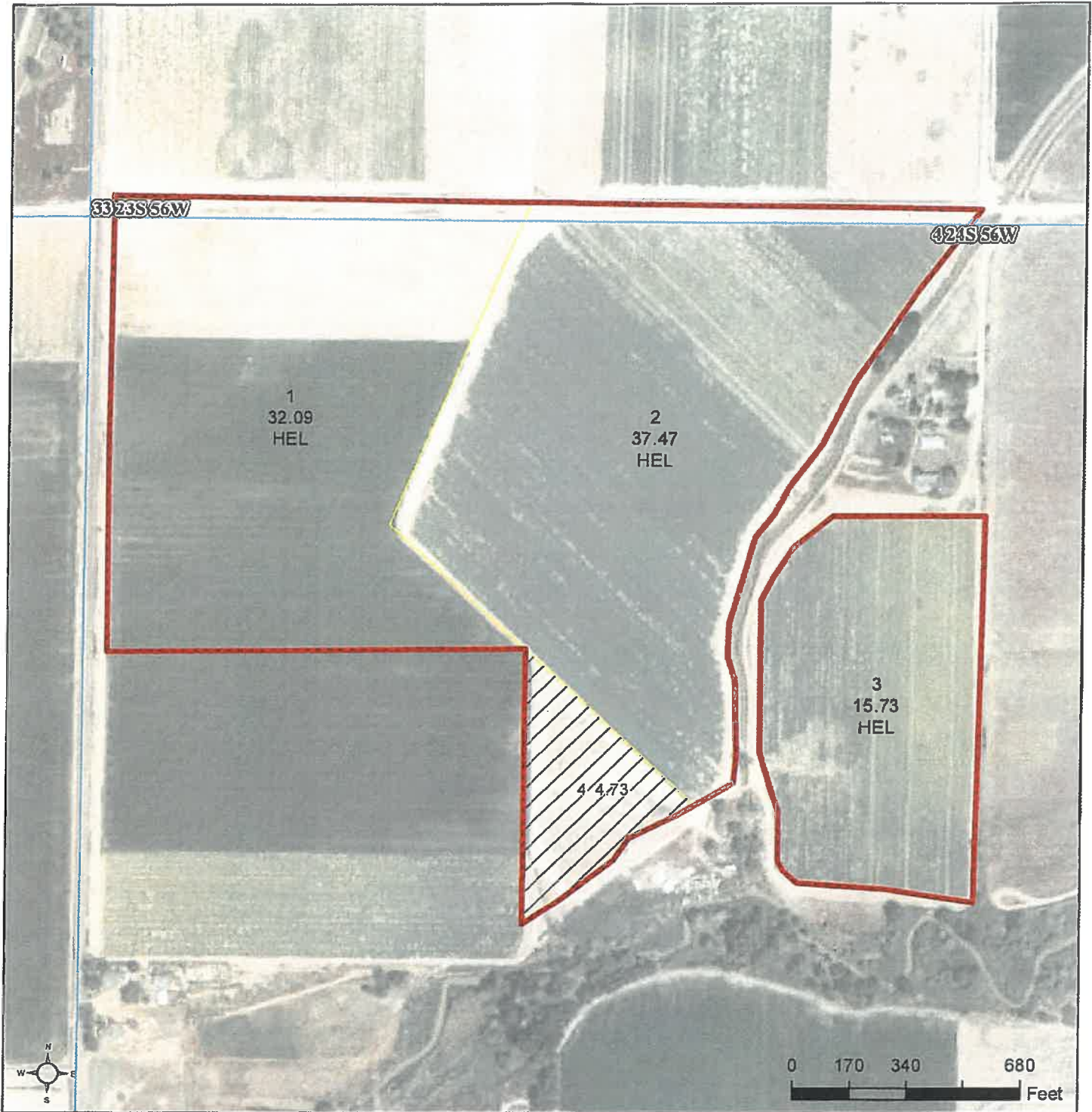
Shores 1/6, 1



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Common Land Unit
Tract Boundary
PLSS
Non-Cropland
Cropland

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 85.29 acres

2017 Program Year
Map Created September 28, 2016

Farm 1798
Tract 865

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Hirakata

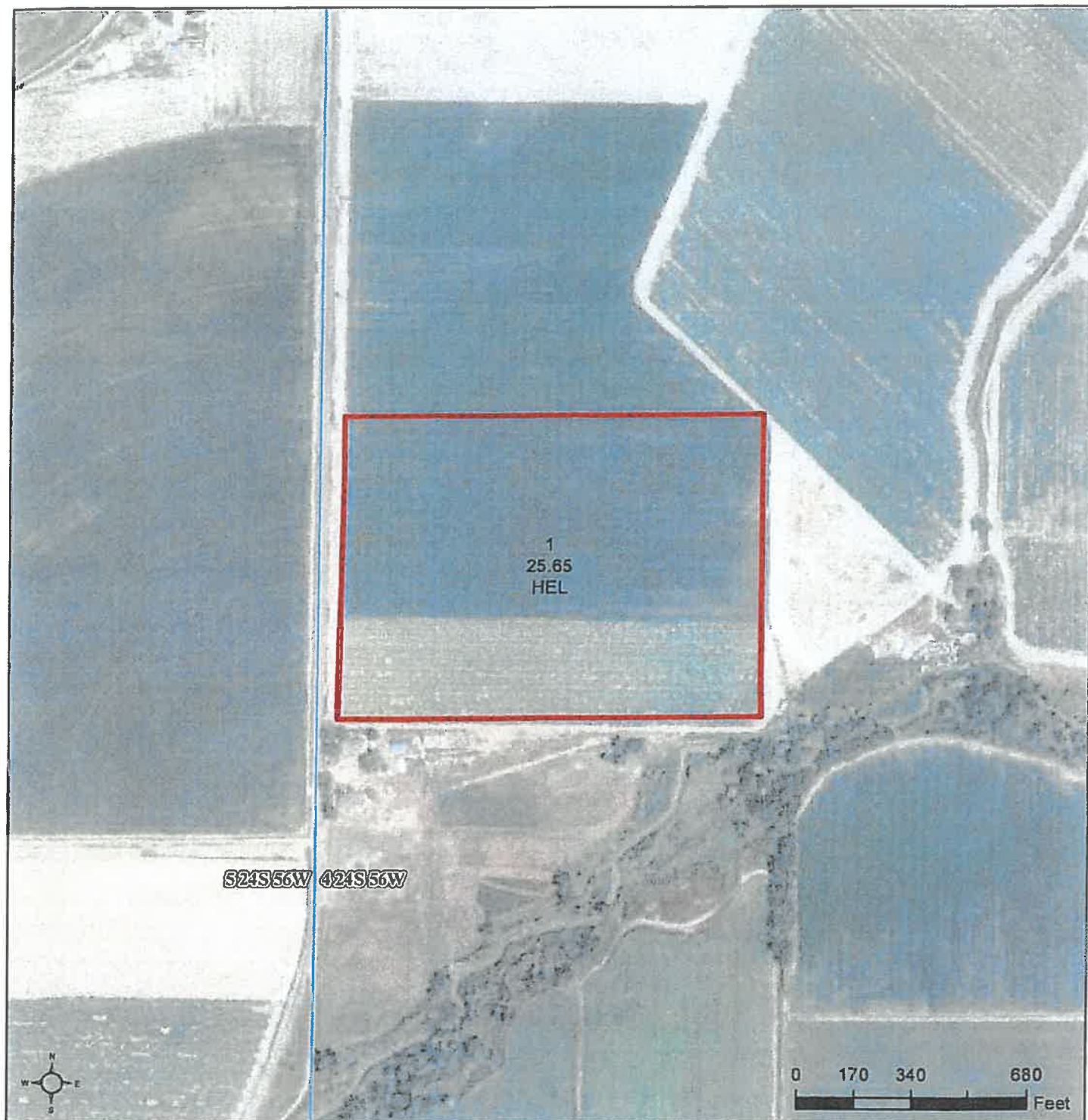
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Otero County, Colorado

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Common Land Unit  PLSS

 Cropland

 Tract Boundary

Wetland Determination Identifiers

 Restricted Use

 Limited Restrictions

 Exempt from Conservation

 Compliance Provisions

Tract Cropland Total: 25.65 acres

2017 Program Year

Map Created September 28, 2016

Farm 510

Tract 868

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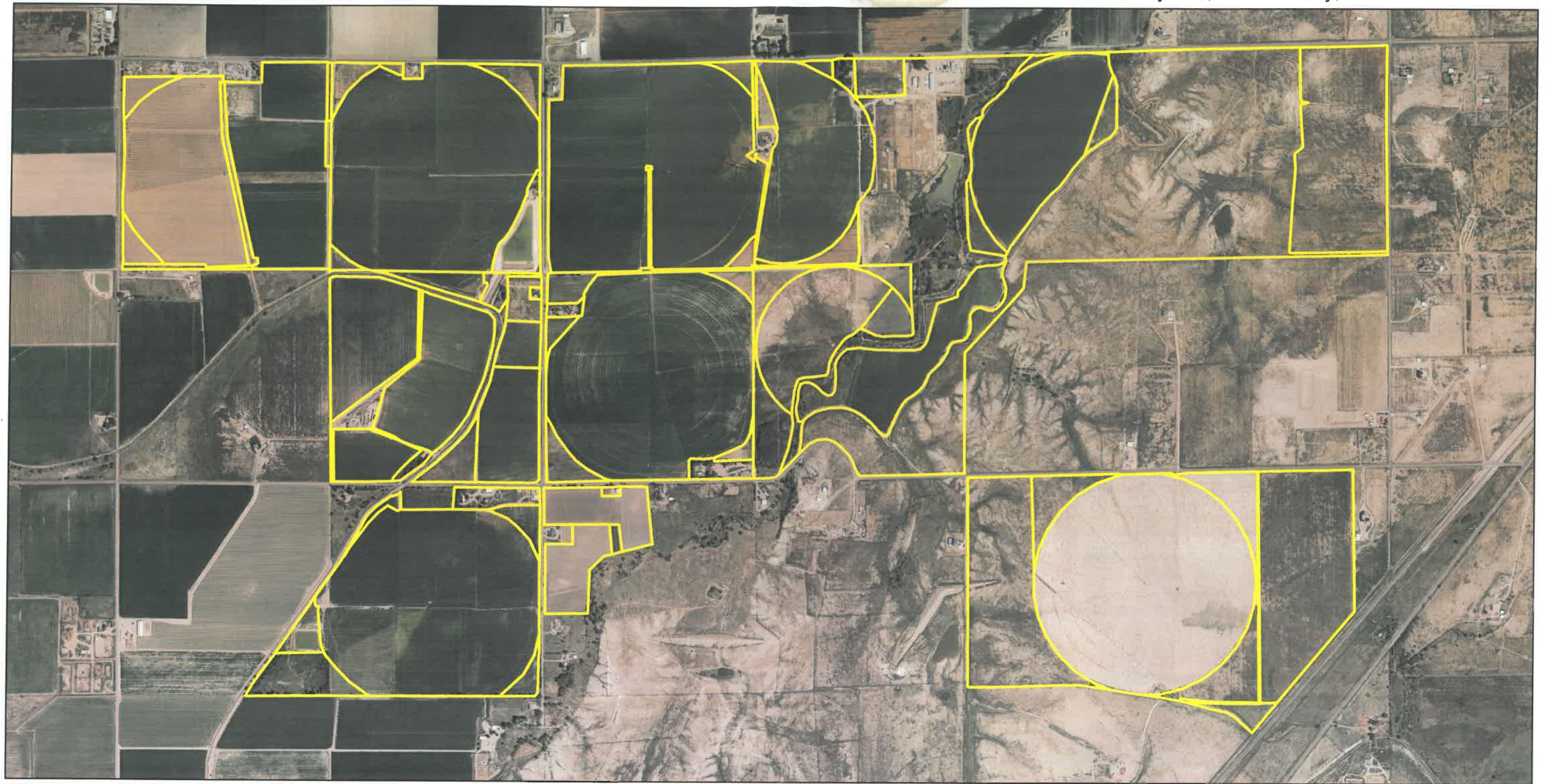
Hirakata

Exhibit C

Conservation Plan Map

Customer(s): DAVID J MAYHOFFER DBA MAYHOFFER FARMS
District: EAST OTERO CONSERVATION DISTRICT

Date: 3/23/2018
Field Office: ROCKY FORD SERVICE CENTER
Agency: USDA-NRCS
Assisted By: RYAN HYTRY
State and County: CO, Otero County, Colorado



Prepared with assistance from USDA-Natural Resources Conservation Service




Mayhoffer

Exhibit C


Elite Enterprises

Legend

 MAM -

MAM - SHIPP 

MAM - GRAIN BINS 

 JUSTIN

C.F. 18

Google Earth

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Elite Enterprises

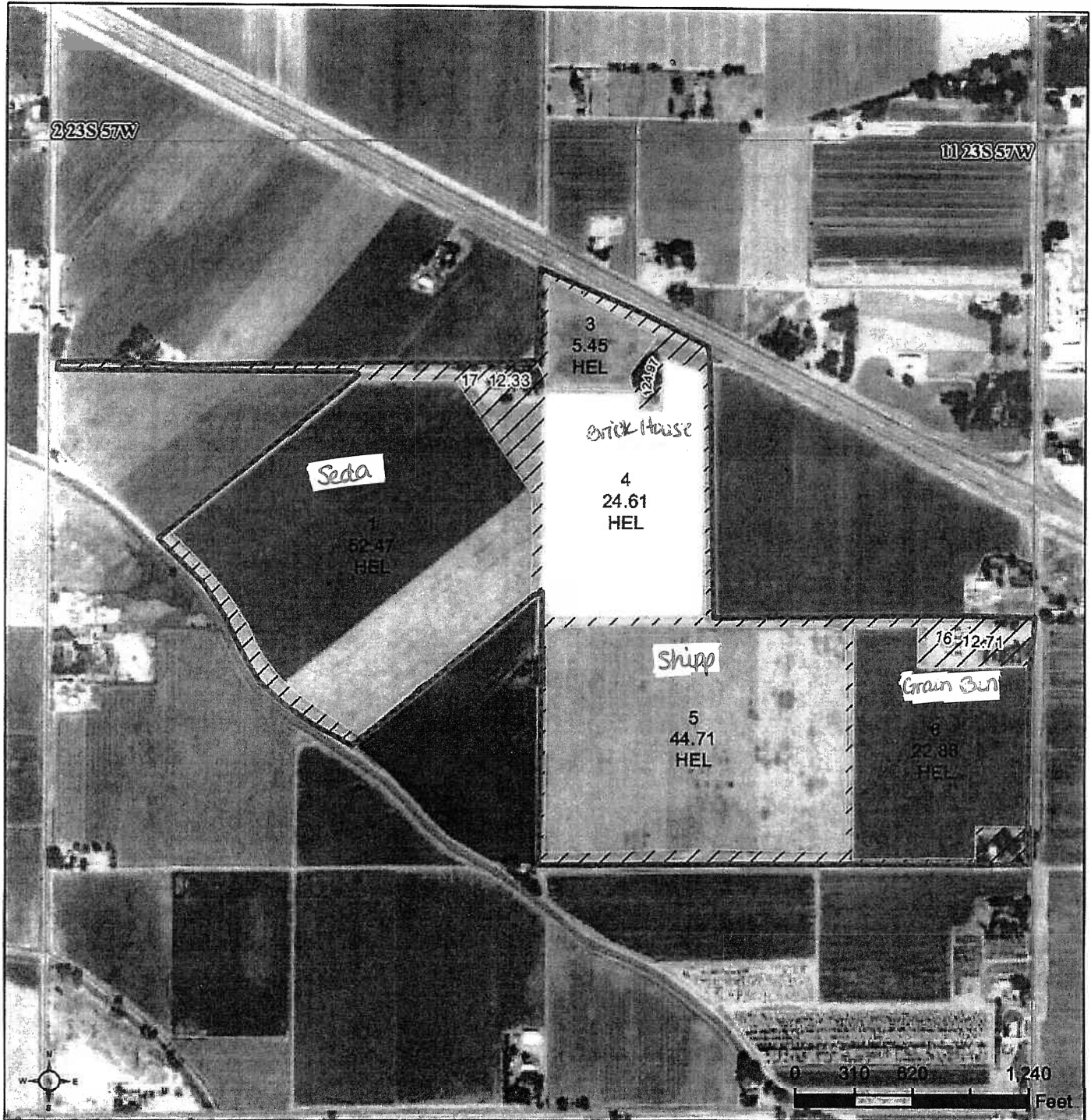
800 ft Exhibit C





United States
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Otero County, Colorado



Common Land Unit

- Non-Cropland
- Cropland
- Tract Boundary
- PLSS

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Seda, Shipp, Grain Bin, Brick House

Tract Cropland Total: 150.10 acres

2017 Program Year
Map Created September 28, 2016

Farm **2570**
Tract **3751**

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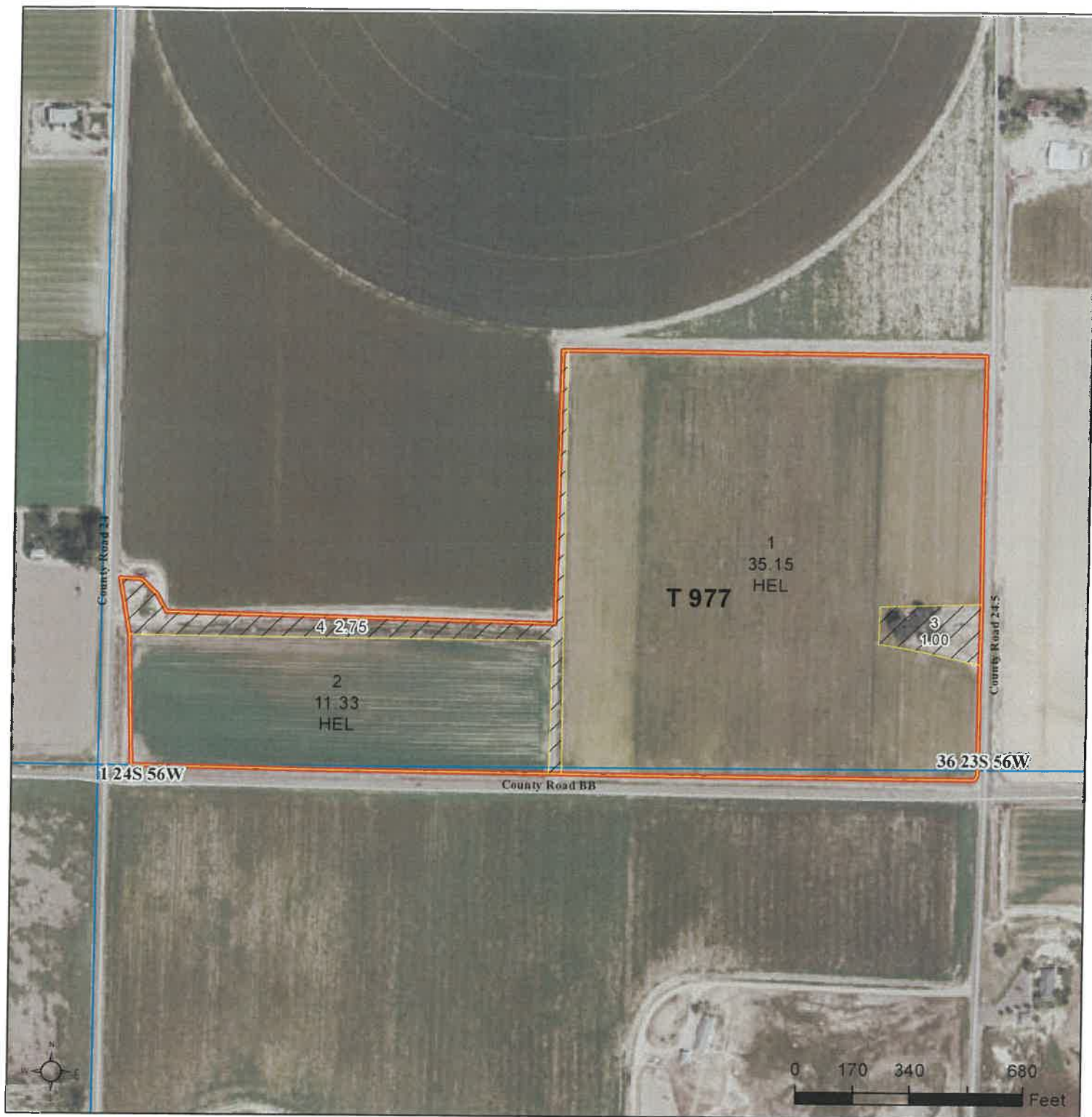
Mameda

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit

- Tract Boundary
- Non-Cropland
- Cropland
- PLSS

Orthoimagery 2017 - Not to Scale

2019 Program Year
Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Cropland Total: 46.48 acres

Farm 556
Tract 977

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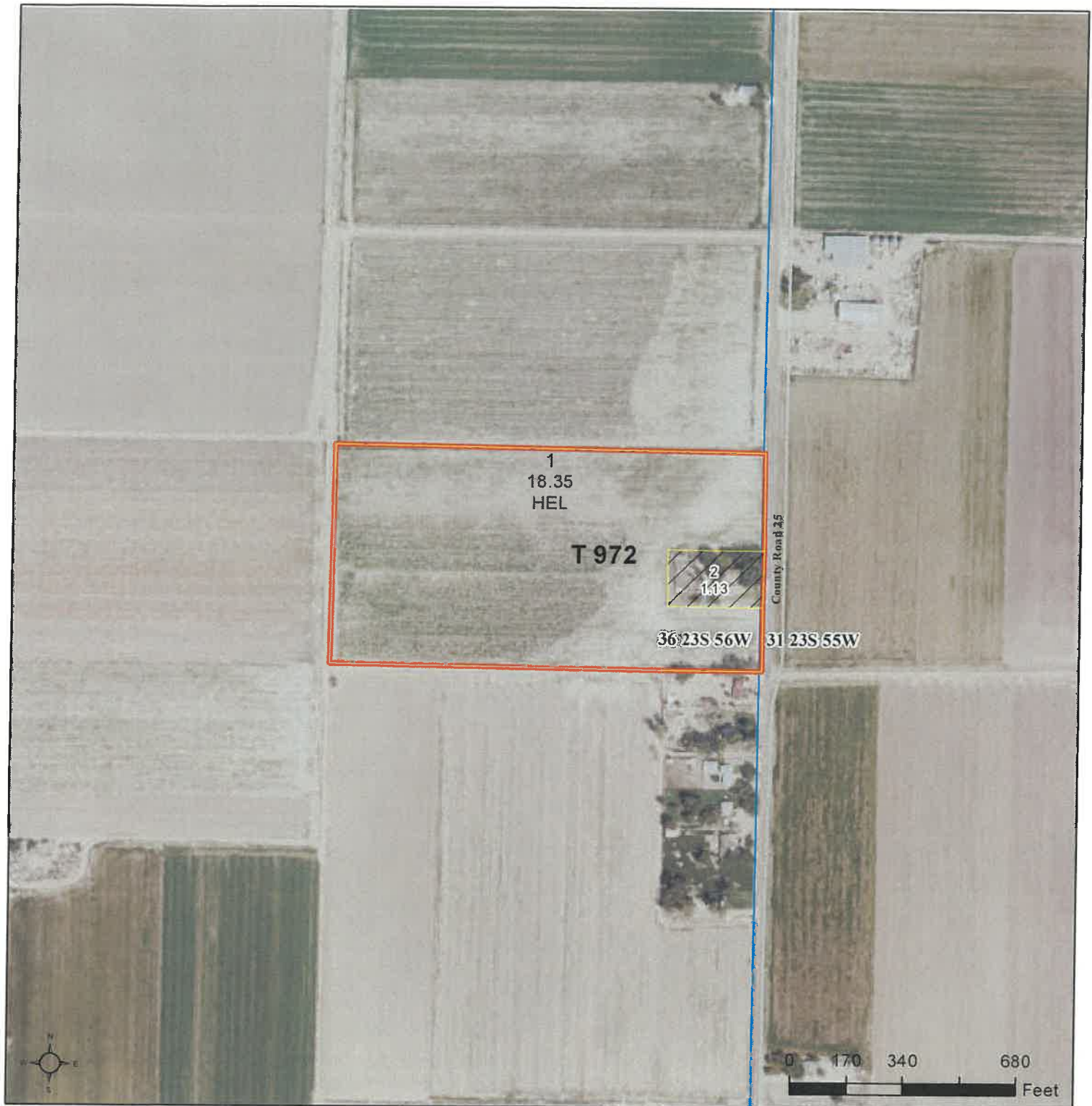
Hanagan

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit

- Non-Cropland
- Cropland

- Tract Boundary
- PLSS

Orthoimagery 2017 - Not to Scale

2019 Program Year

Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 18.35 acres

Farm 2117
Tract 972

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Hanagan

Exhibit C



United States
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Agriculture

Otero County, Colorado



Common Land Unit

- Non-Cropland
- Cropland

- Tract Boundary
- PLSS

Orthoimagery 2017 - Not to Scale

2019 Program Year

Map Created October 04, 2018

Farm 2117
Tract 1315

Tract Cropland Total: 35.67 acres

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Hanagan

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit
Tract Boundary
PLSS
Non-Cropland
Cropland

Orthoimagery 2017 - Not to Scale

2019 Program Year
Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Tract Cropland Total: 60.44 acres

Farm 2117
Tract 1873

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

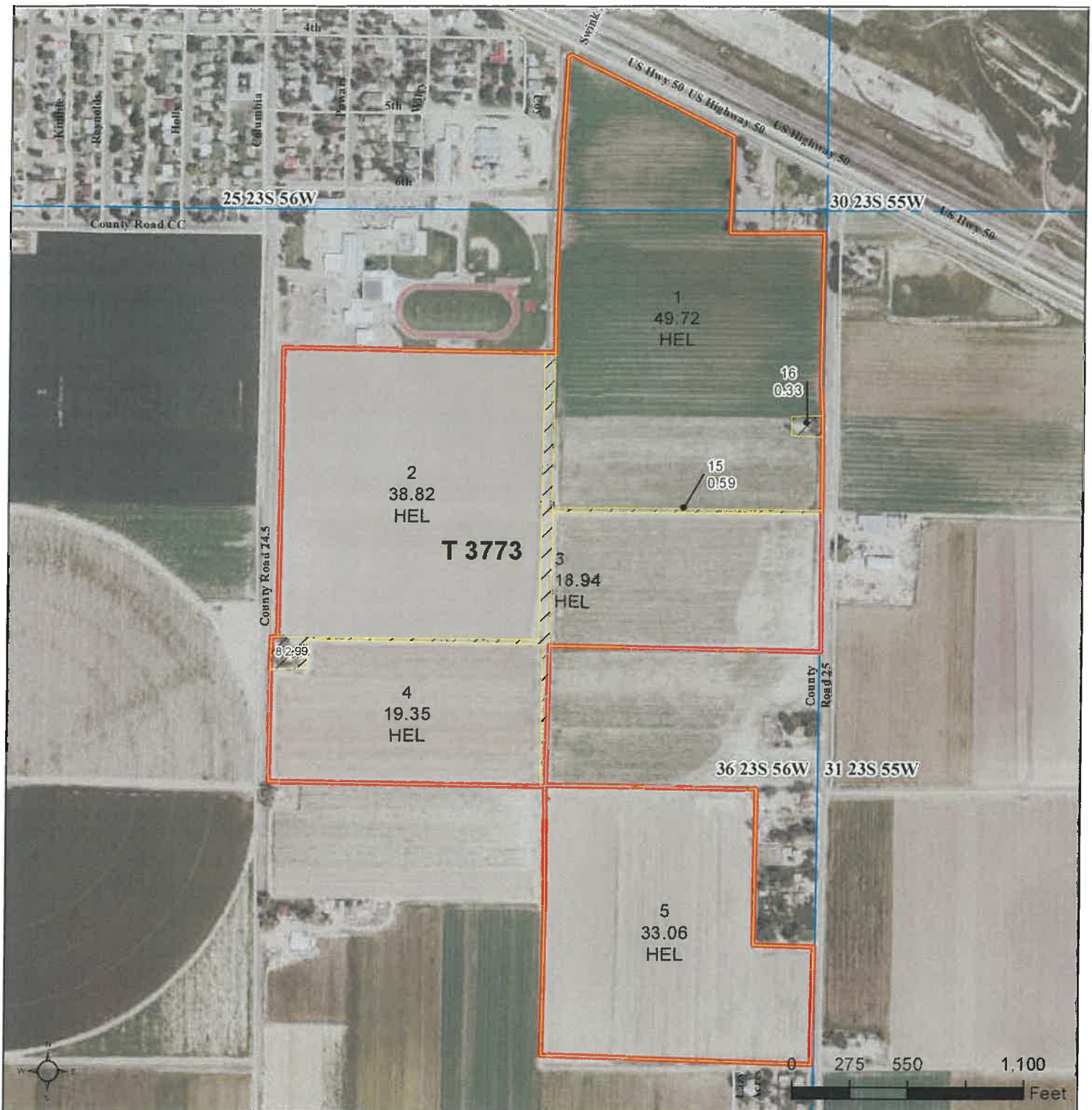
Hanagan

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Orthoimagery 2017 - Not to Scale

2019 Program Year

Map Created October 04, 2018

Farm 2117
Tract 3773

Tract Cropland Total: 159.89 acres

co_street
Common Land Unit
Cropland
Tract Boundary
Non-Cropland
PLSS

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Hanagan

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit
[Red outline] Tract Boundary
[Blue outline] PLSS
[Green hatched] Non-Cropland
[Yellow] Cropland

Orthoimagery 2017 - Not to Scale

2019 Program Year
Map Created October 04, 2018

Wetland Determination Identifiers

- [Red dot] Restricted Use
- [Yellow triangle] Limited Restrictions
- [Green square] Exempt from Conservation Compliance Provisions

Tract Cropland Total: 130.94 acres

Farm 2117
Tract 3774

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

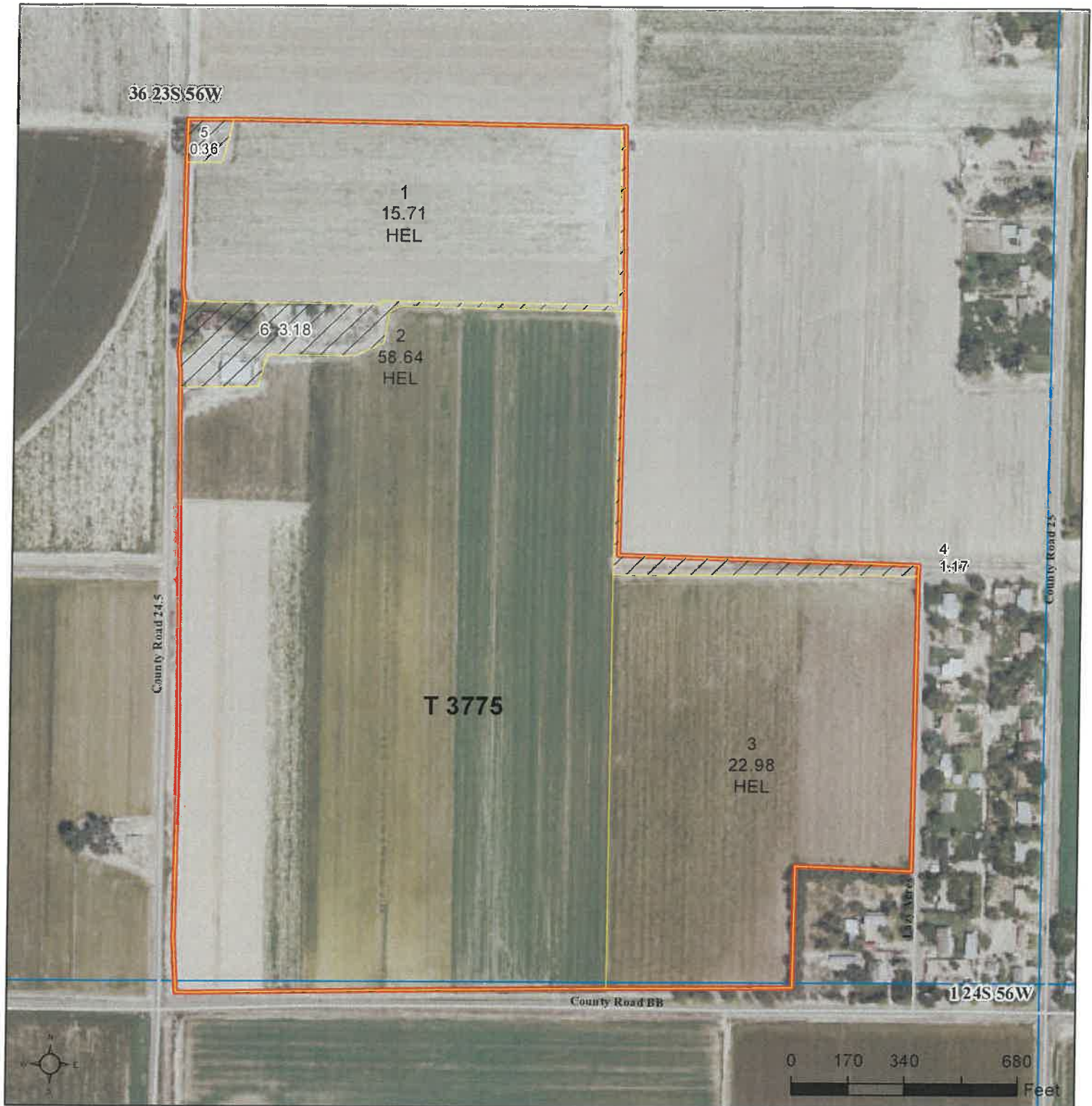
Hanagan

Exhibit C



United States
Department of
Agriculture

Otero County, Colorado



Common Land Unit

- Tract Boundary
- PLSS
- Non-Cropland
- Cropland

Orthoimagery 2017 - Not to Scale

2019 Program Year
Map Created October 04, 2018

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

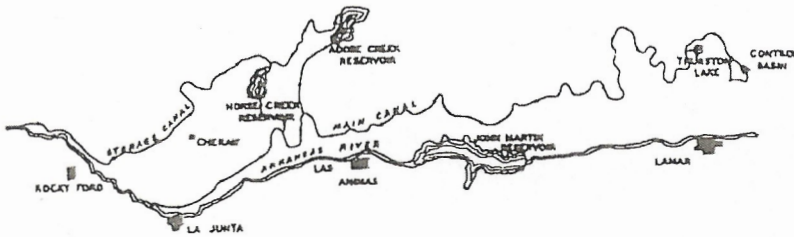
Tract Cropland Total: 97.33 acres

Farm 2117
Tract 3775

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Hanagan

Exhibit C



THE FORT LYON CANAL COMPANY

Telephone (719) 456-0720
750 Bent Avenue

Fax (719) 456-1609
Las Animas, CO 81054

Dale Mauch, President.....Lamar, CO
Rex Davis, Vice President.....Wiley, CO
Wesley Eck, Treasurer.....La Junta, CO
Mike Spady, Secretary.....Las Animas, CO
Burt Heckman, Director.....McClave, CO
Jerred Hoffman.....Superintendent
Balcomb & Green, PC.....Attorney

November 14, 2018

Lower Arkansas Valley Super Ditch Company, Inc.
In care of Peter Nichols and Megan Gutwein
Berg Hill Greenleaf Ruscitti, LLP
pdn@bhgrlaw.com and mg@bhgrlaw.com

Re: Letter of Intent re Colorado Springs Utilities Pilot Project

Dear Peter and Megan:

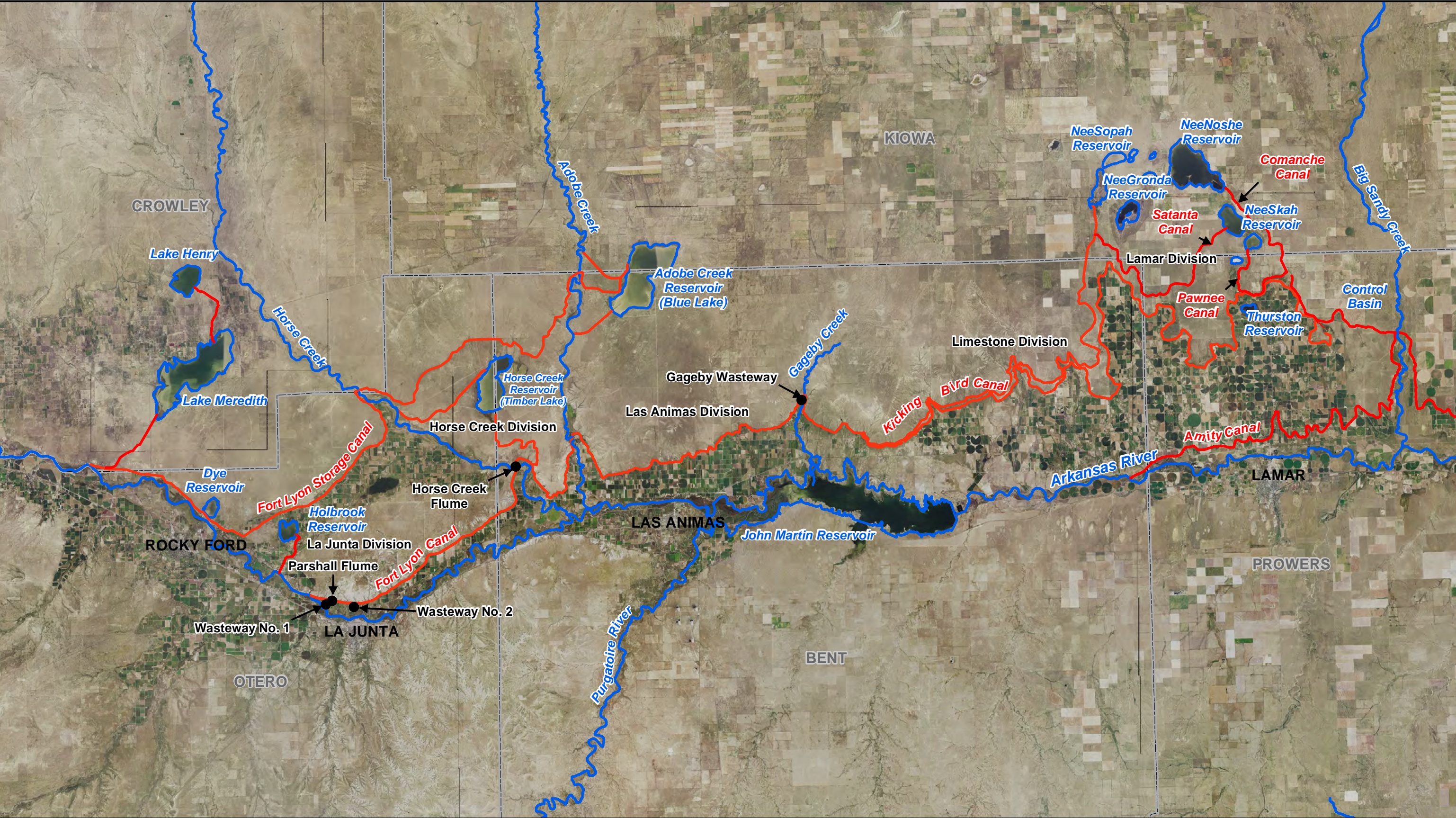
The Fort Lyon Canal Company through its Board of Directors is aware of the Colorado Water Conservation Board's ("CWCB") pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up, authorized under HB 13-1248. The Board understands that the Lower Arkansas Valley Super Ditch Company ("Super Ditch") is pursuing a rotational fallowing-leasing pilot project involving lands irrigated under the Fort Lyon Canal Company, the Catlin Canal Company, and the Rocky Ford High Line Canal Company, to provide water to the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities ("CS-U").



The Board believes that the proposed CS-U Pilot Project will further the goals of HB 13-1248 and the Fallowing Leasing Pilot Program through demonstrating cooperation among different types of water users, including between the Fort Lyon Canal Company and other pilot project participants. The Board of Directors of the Fort Lyon Canal Company is generally supportive of the goals of the CWCB Fallowing Leasing Pilot Program and the proposed CS-U Pilot Project and looks forward to working with its stockholders and with the Super Ditch in the effort to obtain approval for and implement the proposed CS-U Pilot Project in a manner that does not result in injury to the Fort Lyon Canal Company or its stockholders.

The Board understands that there may be certain approvals and/or agreements that may be required between the Fort Lyon Canal Company and Super Ditch, the participating farmers, and/or CS-U. The Fort Lyon Canal Company Board intends to present the Fallowing-Leasing concepts to the Stockholders with a recommendation for further study by a Board Committee at the annual stockholder meeting in December.

Sincerely,

By: *Sara M. Dunn*
Sara M. Dunn, Attorney



Helton & Williamsen, P.C.			 Scale in Miles	FIGURE 1 Location Map Fort Lyon Canal Company System	
Drawn by: ACO				August 26 - September 15, 2017 NAIP Imagery	
File: Fort_Lyon_System_11x17.mxd					
Job No. F104	Date: 9/21/2011	Checked by:		Rev. Date: 10/5/2018	

Board of Directors of the Rocky Ford High Line Canal Company

Address P.O. Box 800
Rocky Ford CO 81067

November 16, 2018

Lower Arkansas Valley Super Ditch Company, Inc.
c/o Peter Nichols; Megan Gutwein
Berg Hill Greenleaf Ruscitti LLP
1712 Pearl Street
Boulder, CO 80302

Re: Case No. 10CW4, WD-2, LAVWCD and LAVSDC (Super Ditch Project); Letter of Interest

To Whom it may Concern:

The Board of Directors of the Rocky Ford High Line Canal Company (the "Board") is aware of the Colorado Water Conservation Board's ("CWCB") pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up, authorized under HB 13-1248. The Board understands that the Lower Arkansas Valley Super Ditch Company ("Super Ditch") is pursuing a rotational fallowing-leasing pilot project involving lands irrigated under various ditch companies, which may include the Rocky Ford High Line Canal Company, to provide water to the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities ("CS-U"). The Board also understands that there may be certain approvals and/or agreements that may be required between the Rocky Ford High Line Canal Company and Super Ditch, the participating farmers, and/or CS-U.

The Board is interested in CWCB's and Super Ditch's efforts to implement rotational fallowing-leasing pilot projects. The Board believes that the proposed CS-U Pilot Project will further the goals of HB 13-1248 and the Fallowing Leasing Pilot Program through demonstrating cooperation among different types of water users, including cooperation between the Rocky Ford High Line Canal Company and pilot project participants.

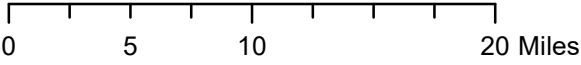
The Board will make reasonable efforts to obtain from its shareholders approval of participation in the CS-U Pilot Project at the next shareholder meeting in December 2018. The Board looks forward to cooperating with the Super Ditch in its effort to obtain approval for and implement the proposed CS-U Pilot Project in a manner that does not result in injury to the Rocky Ford Highline Canal.

Dennis W. Caldwell
president
High Line Canal Co.



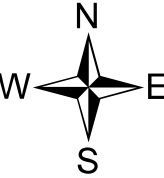
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Lease Fallow Demonstration Project



Legend

- Highline_Canal_Acres
- Fort_Lyon_Acres
- Catlin_Canal_Acres



**RESOLUTION OF THE BOARD OF DIRECTORS OF THE LOWER ARKANSAS
VALLEY SUPER DITCH COMPANY, INC. CONCERNING THE COLORADO
SPRINGS UTILITIES PILOT PROJECT**

Whereas, the stated purpose of the Lower Arkansas Valley Super Ditch Company, Inc. (the “Super Ditch Company”) is “to provide an alternative to the transfer through historical ‘buy and dry’ to other uses of agricultural water rights in the Valley decreed for irrigation, stock, and incidental domestic use, by providing water to other users by such means as water leasing, interruptible water supply agreements, and water banking”;

Whereas, the Super Ditch Company was incorporated to serve as a vehicle to assist shareholders in certain Lower Arkansas Valley ditch companies to lease irrigation water rights for temporary municipal use and to fallow the historically irrigated agricultural land associated with such irrigation water rights on a rotational basis;

Whereas, the Super Ditch Company supported the passage of HB 13-1248, which authorizes the Colorado Water Conservation Board (“CWCB”) to administer a pilot program to test the efficacy of fallowing-leasing as an alternative to permanent agricultural dry-up;

Whereas, the Super Ditch Company has investigated the feasibility of implementing a large-scale, rotational fallowing-leasing pilot project beginning in 2020 to be located wholly within the Arkansas River Valley;

Whereas, the pilot project contemplated by Super Ditch will, during its anticipated ten-year term, demonstrate the practice of rotational fallowing of sufficient agricultural lands that have historically been irrigated under the Catlin Canal Company, Fort Lyon Canal Company, and Rocky Ford High Line Canal Company to allow for the leasing of up to 5,000 acre-feet of historical consumptive use water annually for temporary municipal use and drought recovery by the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities (the “CS-U Pilot Project”);

Whereas, the CS-U Pilot project will further the goals of HB 13-1248 and the Fallowing Leasing Pilot Program through:

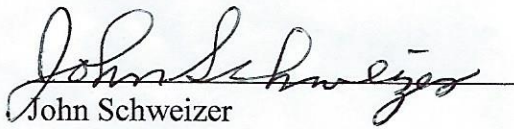
1. Demonstrating cooperation among different types of water users, including City of Colorado Springs, the participating farmers, Catlin Canal Company, Fort Lyon Canal Company, High Line Canal Company, the Super Ditch Company, and possibly other Arkansas Valley water users via exchanges and/or trades;
2. Providing the State, the participants, and other interested parties with an opportunity to evaluate the feasibility of delivering leased water for temporary municipal uses and drought recovery on a large scale;

3. Further evaluating the efficacy of using a streamlined approach for determining historical consumptive use, return flows, the potential for material injury to other water rights, and conditions to prevent injury;
4. Demonstrating how to operate, administer, and account for the practice of fallowing irrigated agricultural land under multiple ditch companies for leasing water for temporary municipal use on a large scale without causing material injury to other vested water rights, decreed conditional water rights, or contract rights to water;

Whereas, Super Ditch Company believes, based on discussions with interested parties, that all of the approvals and agreements necessary for operation of the CS-U Pilot Project can be reasonably obtained;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of the Super Ditch Company strongly supports the CWCB Fallowing Leasing Pilot Program and to that end, authorizes the submittal of a proposal and application for the CS-U Pilot Project to the CWCB.

DATED: 11-13-18


John Schweizer
President

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067
Phone (719) 254-3389
CatlinCanalCo@Yahoo.Com

November 8, 2018

Megan Gutwein

Re: Maps, Letters of Interest, Shares, & Acres

Here is a list of the following entities and shares interested in the Super Ditch:

1.	Diamond A Products:	3,410.583 Shares
2.	Chavez Family Farms:	250.280 Shares
3.	Chavez Family Farms, Thelin Place	101.000 Shares
4.	Larsen, Scott & Wendy	68.000 Shares
5.	The Marion J. & Jack E. Roth Trust	32.000 Shares
6.	Groves, Russell	160.040 Shares
7.	Schelegel, Marvin	100.000 Shares
8.	Schweizer, Kenneth, Arlene, John	389.476 Shares
9.	Hostetler, Calvin & Deanna	30.000 Shares
10.	Hirakatas et. al.	575.000 Shares
11.	Mayhoffer, David, Lacie, Edward	753.833 Shares
12.	Elite Enterprises	50.895 Shares
13.	Herbert K. & Herbert D. Mamede	99.000 Shares
14.	Hanagan, Eric, Gary B., Margaret, Hanagan & Knaus	<u>441.410 Shares</u>

Total Entities interested in the Super Ditch: 13

Total Shares interested in the Super Ditch: 6,020.107 Shares

Sincerely,

George Peter Hanzas

George Peter Hanzas

Secretary

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

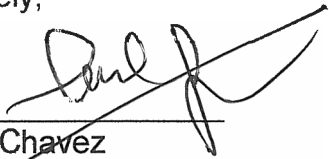
Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

November 8, 2018

I Phillip Chavez represent Chavez Family Farms. Chavez Family Farms is interested in participating in the Super Ditch.

Sincerely,



Phillip Chavez

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

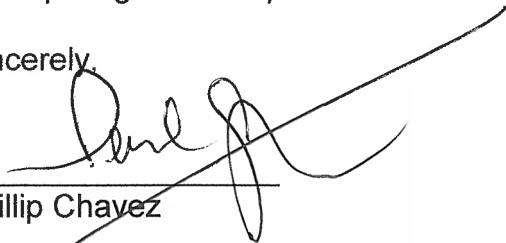
Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

November 8, 2018

I Phillip Chavez represent Diamond A Products. Diamond A Products is interested in participating in the Super Ditch.

Sincerely,



A handwritten signature in black ink, appearing to read 'Phillip Chavez', is written over a horizontal line. A long, diagonal line is drawn across the signature and extends from the bottom left towards the top right of the page.

Phillip Chavez

HG		ACRES	FIELDS	SHARES	RRA	DESCRIPTION	LOCATION	DAP	CFF	CPW	OTHER
14	R	111	10,11,12	143.240	EXCESS	Alternate with HG 20	Road 13.5	143.240			
15			9,13	39.540	EXCESS		wilson		39.540		wilson
18			80,81	33.290	EXCESS		melgosa	33.290			
20	R	557.2	101-6,121-4,131,133	679.940	EXCESS	Alternate with HG	Road 14	679.940			
20				3.300			s. milenski	3.300			
24	W	40.6	238,242	51.000	EXCESS		Road 15	51.000			
24				278.000						278.000	
24		98.3	225,239	140.000	EXCESS			140.000			
33	R	117.1		102.000	EXCESS		Road 16	102.000			
33				122.000						122.000	
50				36.000			Road 17		36.000		wallace
53				99.000							99.000 mameda
58				50.895							50.895 elite
87	W	119	400-405	120.000	EXCESS	Alternate with 143, 144+	Highway 71	120.000			
120	W	96.8	610-616	69.565	EXCESS	Alternate with 121, 122	Road 21	69.565			
120	W		610-616	36.990	EXCESS			34.990	2.000		wayne
125	W	53.3	617, 621W	59.000	EXCESS	Alternate with 129	Road CC	59.000			
128				50.000						50.000	morrison
129	W	258	621E,623-626	244.320	EXCESS	Alternate with 125	Road CC	244.320			
130	R		621E,623-626	200.000						200.000	
143	R	245.7	541-546	290.000	OK	Alternate with 149	Road 19.5	290.000			
144	W	188.7	551-555	180.000	OK	Alternate with 145, 147, 148	Road 19.5	180.000			
147	W				EXCESS	Alternate with 144, 145, 148	Road 19.5				
149	R				EXCESS	Alternate with 143	Road 19.5				
156 AUG				0.000							
171	W		630-635	75.040	EXCESS	Alternate with 177	Road 21.5			75.040	groves
173		42.3	661	50.000	OK			50.000			
177	W		636,637	45.000	EXCESS	Alternate with 171	Road 22			45.000	groves
175	R			263.907	EXCESS	Alternate with 178,183,189,190,191	Road 22		5.907	258.000	beeder +

175	R	248.8	655-673	254.438	EXCESS	Alternate with 175,183,189,190,191	Road 22	254.438				
179		70.3	657	70.000	OK	Center Pivot 1/2	Road 22		70.000			
180		73.1	640,641	80.000	OK	Center Pivot West & East	Road 22		80.000			
183	R		658,659	36.833	EXCESS	Alternate with 175,178,189,190,191	Road 22.5		16.833	20.000	preston /	
188	R	215.3	710-718	287.000	EXCESS		Road 23	287.000				
189	R	309.7	751-757	308.000	OK	Alternate with 175,178,183,190,191 (FIELDS 751-756)	Road 23	308.000				
190	R			100.000	EXCESS	Alternate with 175,178,183,189,191	Road 23			100.000		
191	R			100.000	EXCESS	Alternate with 175,178,183,189,190	Road 23			100.000		
199	W	304.8	701-712	280.500	EXCESS		Road 24	280.500				
AUG				0.000				0.000				
205				75.000						75.000		
205	R	132.8	824-829	80.000	EXCESS		Road 25.5	80.000				
215	W			100.000	EXCESS	Alternate with 221	Road 24.5			100.000		
217	R		781-788	193.000	EXCESS	Alternate with 218-220	Road 24			193.000	matern	
221	W		791,792	100.000	EXCESS	Alternate with 215	Road 24			100.000		
		3282.800		5526.798				3410.583	250.280	1333.000	532.935	
		3282.80		5526.798				→	3660.863	1333.000	532.935	
				29.62%							5526.798	

DA CFF

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

October 30, 2018
Chavez Family Farms
P.O. Box 551
Rocky Ford, CO 81067
(831) 601-4555
phillip@diamonda.com

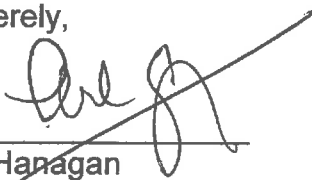
I Phillip Chavez represent Chavez Family Farms. Chavez Family Farms recently purchased 101.000 shares from the Thelin Charitable Remainder Unitrust B as owned and administered by the Mennonite Foundation Inc.

Chavez Family Farms is interested in participating in the Super Ditch with these shares and this land..

Head Gates = Shares: 206.0 = 101.000

Acres +/- 153.0

Sincerely,


Eric Hanagan

Scott & Wendy Larsen
24550 County Road 23
La Junta, Colorado 81050
719-468-4630

George Hanzas, Secretary
Catlin Canal Company
P.O. Box 352
Rocky Ford, Colorado 81067

October 16, 2018

Dear George;

two 30 Ph

Please accept this as my interest to participate in the Super Ditch Lease/ Fallow program. This lease would be limited to ~~one 30~~ acre block, with the exact tract to be determined. Please be advised that the farm being considered consists of 80 acres together with 68.00 shares of Catlin Canal Company, and 79.115 shares of The Pisgah Reservoir and Ditch Company. All land and water is owned by Scott C. Larsen and Wendy D. Larsen in Joint Tenancy.

The farm currently has no Conservation Easement provisions.

The farm is served by a shared lateral via head gate number 188. The other farms on the lateral are Diamond A Farms and Dorothy Muth, of which is currently farmed by Leon Golden. Both have given their consent to make adjustments to the divide boxes.

The ability to dryland farm the fallowed acres would influence my desire to participate in the lease.

It is my understanding that this lease shall consist of three ten year leases, of which it would be my preference to stay with a shorter term lease.

If you should have any questions, or need anything further, please feel free to contact me.

Sincerely,



Scott C. Larsen

Head Gate = 188.0

October 19, 2018

THE MARION J. & THE JACK E. ROTH TRUST
6032 Holland Street.
Arvada, CO 80004
(303) 421-0321

Head gate 105.0 32.0 Shares Total

ACRES \approx +/- 31.36

Represented by Darrell Herman

10-22-2018

Re: Super Ditch Catlin^{Pilot} Project

Jack + Marion Roth give Darrell Herman
authorization to speak on their
behalf concerning the Catlin Canal
Company Shares in a pilot
lease follow project -

Marion J. Roth, Trustee
Jack E. Roth, Trustee -

Subject: Letter of Intent

From: Russell Groves (mrgroves9468@gmail.com)

To: CatlinCanalCo@yahoo.com

Date: Tuesday, October 23, 2018, 3:41 PM MDT

October 23, 2018

Catlin Canal Company,

I would like to express my interest in the possibility of participating in the Super Ditch Water Lease. I have 160 Catlin Shares allowing for 5 contracts of 30 Shares. The shares are currently divided in three gates. Two of these gates are private while the third gate is shared with one other person. Water has been divided by hours and days with no measuring box aside from the main Catlin Headgate. Please find attached Farm Maps and a current Farm Lease with Diamond A Farms (Phillip Chavez) allowing for the water lease options.

I understand there are still numerous obstacles ahead; but would like to begin the process. I may be contacted by mail, phone or email.

Russell Groves
22614 Rd 23
La Junta, CO 81050
Home: (719) 384-9468
Cell: (719) 980-9468
Email: mrgroves9468@gmail.com



Farm Map 2.pdf
235.3kB



Farm Lease.pdf
2.1MB



Farm Map 1.pdf
96.4kB

Head Gate: 165.0 = 40.000 Shares, Head Gate: 171.0 = 120.040 Shares

Subject: FW: Schlegel/Gardner Map

From: Marvin Schlegel (mschlegel@fnblajunta.com)

To: CatlinCanalCo@Yahoo.Com

Date: Monday, October 22, 2018, 12:25 PM MDT

Good afternoon George. I am forwarding a copy of the Catlin farm map. The other information that you are requesting are as follows:

Marvin D. Schlegel

24775 C.R. 24

La Junta, CO 81050

I would sign up all of the acres. There are 100 shares of Catlin on this farm. The farm is not subject to a conservation easement but is in the Catlin augmentation program. The head gate number is 199 and the lateral is shared. I don't believe that I would have any problem getting the consent of the other users of the lateral. The ownership of the farm is in my name only. (Marvin D. Schlegel). If you need any additional information or if I need to come into your office just let me know. Thanks. Marvin

Head Gate = 199.0
Acres = 1/2 124.0

-----Original Message-----

From: Maier, Lori - FSA, Rocky Ford, CO [mailto:lori.maier@co.usda.gov]

Sent: Monday, October 22, 2018 11:36 AM

To: 'mschlegel@fnblajunta.com' <mschlegel@fnblajunta.com>

Subject: Schlegel/Gardner Map

Call if you have any questions.

Lori

-----Original Message-----

From: lori.maier@co.usda.gov <lori.maier@co.usda.gov>

Sent: Monday, October 22, 2018 11:33 AM

To: Maier, Lori - FSA, Rocky Ford, CO <lori.maier@co.usda.gov>

Subject: Scanned from a Xerox multifunction device

Please open the attached document. It was sent to you using a Xerox multifunction printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:

Device Name: ASACOROC7Q7855a

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the

Exhibit I

10/23/2018, 9:22 AM

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

Kenneth J. Schweizer & Arlene Schweizer & John Schweizer Jr.
30102 County Road 15
Rocky Ford, CO 81067
(719) 980-0623

To Participate in the Super Ditch with the following shares:


Head Gate 22: 194.000 Shares

Acres = +/- 413.33

Head Gate 26: 133.476 Shares

Head Gate 29: 62.000 Shares

Sincerely,


Kenneth J. Schweizer

Catlin Canal Company, Super Ditch, Colorado Springs Utilities

Information on Catlin headgate #100, shared lateral, 30 shares water and 30 acres land

Owners: Calvin Hostetler and Deanna Hostetler

Address: 16422 Rd EE.5, Rocky Ford, CO 81067

Phone numbers: Calvin Hostetler 719-469-0393

Deanna Hostetler 719-469-0872

Email addresses: calvinhostetler101@gmail.com

deannahostetler@gmail.com

Note: All correspondence should be sent to both emails.

See attached map.

*We are interested in participating in the Super Ditch.
Thank You,*

Deanna Hostetler

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

October 29, 2018

Glenn Hirakata
Hirakata Farms
22161 County Road CC
Rocky Ford, CO 81067

I Glenn Hirakata represent the Hirakatas and we are interested in participating in the Super Ditch.

Sincerely,


Glenn Hirakata

Head Gate = Shares: 119.0 = 79.000, 128.0 = 10.000, 133.0 = 56.100, 156.0 = 20.000

138.0 = 130.000, 22.0 = 15.510, 124.0 = 109.010, 156.0 = 26.480, 128.0 = 30.000

132.0 = 58.900, 156.0 = 10.000, 123.0 = 30.000

Acres = +/- 570.15

Shares = 575.000

Board of Directors: John Schweizer Jr., Alan Frantz, Jared Gardner, Eric Hanagan, and Phillip Chavez

Exhibit I

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

October 29, 2018

I David John Mayhoffer represent David Mayhoffer and Lacie Dawn & Edward Mayhoffer. We are interested in participating in the Super Ditch.

Head Gates = Shares: 161.0 = 70.000, 201.0 = 140.000, 204.0 = 238.833, 207.0 = 50.000, 208.0 = 95.000, 212.0 = 125.000, & 211.0 = 35.000.

Sincerely,

+/- 1,900 Acres


David John Mayhoffer

753.833 Shares
or

29 Oct., 2018

25510 State Highway

La Junta, Colo. 81050

719-241-0334

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

ELITE ENTERPRISES LTD

JUSTIN ENSOR

P.O. Box 511

Rocky Ford, CO 81067

(719) 241-0022

[eeltld@rocketmail.com](mailto:ee ltd@rocketmail.com)

Head Gates = Shares: 58.0 = 40.895, 156.0 = 10.000

Acres = +/- 33.0

Sincerely,

Justin Ensor (Elite Enterprises, LTD)

SUPER DITCH

From: J.j. Ensor (eeltd@rocketmail.com)

To: CatlinCanalCo@Yahoo.com

Date: Thursday, October 25, 2018, 10:06 AM MDT

Hi, George I'm sending you this message to let you know that I am interested in possibly putting 100% of my shares into the Super ditch program. I,am unable to get you the maps myself because I,m currently out of town but I will try to have Phil Chavez drop off what you need by the 29th of Oct. THANK YOU !

Justin Ensor

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

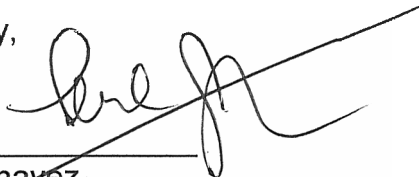
Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

November 8, 2018

I Phillip Chavez have the proxy to represent Herbert K. Mamede, and Herbert D. Mamede. Herbert K. Mamede, and Herbert D. Mamede is interested in participating in the Super Ditch.

Sincerely,



Phillip Chavez

Shares = 99.000, Acres = 150.10

Board of Directors: John Schweizer Jr., Alan Frantz, Jared Gardner, Eric Hanagan, and Phillip Chavez

Exhibit I

CATLIN CANAL COMPANY

917 Elm Ave., P.O. Box 352, Rocky Ford, CO 81067

Phone (719) 254-3389

CatlinCanalCo@Yahoo.Com

October 30, 2018

Eric Hanagan

25620 County Road 24.5

La Junta, CO 81067

(719) 469-5067

ehanagan@live.com

I Eric Hanagan represent Eric Hanagan, Gary B. & Margret Hanagan, and Hanagan & Knaus. We are interested in participating in the Super Ditch.

Head Gates = Shares: 156.0 = 11.470, 199.0 = 7⁶⁰5.870, 202.0 = 61.810, 199.0 = 1.000, 202.0 = 120.260, 156.0 = 100.000, 199.0 = 31.000, & 202.0 = 40.000.

Sincerely,



Eric Hanagan

Acres = 549.1 +/-

Shares = 441,410

CARRIAGE AGREEMENT EXTENSION

This CARRIAGE AGREEMENT EXTENSION, dated _____, 2016, is by and between the Catlin Canal Company (the "Company") and the Lower Arkansas Valley Water Conservancy District ("Lower Ark").

RECITALS

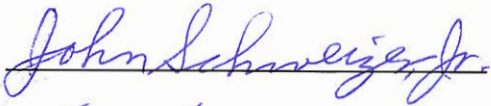

Whereas, the Company and Lower Ark entered into a Carriage Agreement on June 30, 2014 for the carriage of Lower Ark's water through the Company's Catlin Canal in Otero County, Colorado; and

Whereas, the Parties desire to extend the Carriage Agreement, which was to expire on November 15, 2016, for an additional three-year period; and

AGREEMENT

For the mutual promises and covenants contained herein and for good and valuable consideration, the Parties agree as follows:

1. Extension of Term. The Carriage Agreement is hereby renewed and extended for an additional three year period, commencing on November 15, 2016 and continuing through the 2017-2019 irrigation seasons. Unless extended by the Parties in writing, this Agreement shall automatically expire on November 15, 2019.
2. Carriage Agreement Terms. All other terms and conditions of the Carriage Agreement shall remain in full force and effect for the duration of this extension.

CATLIN CANAL COMPANY  By: <u>JOHN SCHWEIZER</u> Its: <u>PRESIDENT</u> Date: <u>11/4/16</u>	LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT  By: <u>R. Jay Winn</u> Its: <u>General Manager</u> Date: <u>11-8-16</u>
--	--

CARRIAGE AGREEMENT

This Agreement is made and entered into this 30 day of June, 2014, by and between the Catlin Canal Company (the "Company") and the Lower Arkansas Valley Water Conservancy District ("Lower Ark").

RECITALS

Whereas, the Company owns and operates the Catlin Canal in Otero County, Colorado (the "Canal");

Whereas, Lower Ark has entered into agreements with two Catlin Canal Company shareholders, Roger and Mary Jane Maddux and John Schweizer, for the construction and use of recharge ponds located on lands irrigated under the Canal (collectively referred to as the "Recharge Ponds"); and

Whereas, Lower Ark desires to divert waters owned or leased by Lower Ark ("Lower Ark Water") into and through the Canal for delivery to the Recharge Ponds.

AGREEMENT

Now therefore, for the mutual promises and covenants contained herein and for good and valuable consideration, the Parties agree as follows:

1. Term. The term of this Agreement shall be effective upon execution by the Parties and shall continue through the 2014-2016 irrigation seasons. Unless extended by the Parties in writing, this Agreement shall automatically expire on November 15, 2016.
2. Carriage of Lower Ark Water. The Company agrees that it will, on behalf of Lower Ark, use the Catlin Canal headgate to divert Lower Ark Water into the Recharge Ponds. It is agreed that Lower Ark shall have first right to use excess capacity in the Canal as necessary to deliver water in to the Recharge Ponds, subject to the rights of the Company and the Company's shareholders to carry and deliver water under the Company's decrees in the Catlin Canal and any other rights for use of the Canal existing as of the date of this Agreement. Lower Ark's use of the excess capacity shall be limited to such amount as may be available for the delivery of water into the Recharge Ponds.
3. Carriage Charge. Lower Ark shall pay to the Company a carriage charge of \$10.00 for each acre-foot of Lower Ark Water carried through the Canal during the term of this Agreement. This carriage charge shall be paid by Lower Ark on the 10th day of each month for the volume of Lower Ark Water carried during the preceding month. Payment shall be made to the Company at the address set forth in paragraph 13, below.

4. Deliveries, Canal Operation. The Company shall be responsible for the day-to-day operation of the Canal, headgates, and structures. Lower Ark shall be responsible for coordinating with and notifying the Company of the amount and timing of releases of Lower Ark Water from storage, taking into account any transit losses charged, to be diverted into the Canal and the amounts of such diversions to be delivered to each of the Maddux and Schweizer farm headgates.
5. Canal Losses. The Lower Ark Water diverted into the Canal for delivery to the Recharge Ponds shall be assessed a 10.4% canal loss or such other appropriate canal loss as may be determined by the Canal superintendent based upon actual conditions prior to delivery to the Schweizer and Maddux farm headgates.
6. Accounting. By the 10th day of each month, Lower Ark shall provide to the Company copies of any records which Lower Ark keeps in connection with Lower Ark's carriage of water in the Canal during the preceding month.
7. Inability to Convey Water. Lower Ark recognizes that there may be times when, due to circumstances beyond the Company's control, the Canal cannot divert water. At such times, Lower Ark shall not pursue any legal remedy, nor require any compensation from the Company for any damages as might be incurred because of the inability to convey Lower Ark Water, provided that the Company exercises reasonable diligence in making all needed maintenance and repairs to the Company structures necessary to convey water in the Canal.
8. Access. Lower Ark shall have access necessary along the right-of way of the Canal for purposes of ingress and egress to accomplish the terms of this Agreement and ensure proper delivery of Lower Ark Water to the Maddux and Schweizer farm headgates.
9. Approvals. Lower Ark shall be responsible for obtaining and maintaining any necessary approvals to allow for the use of the Recharge Ponds as a part of a Rule 10 Compact Compliance Plan, a substitute water supply plan, or other administrative or judicial approval. Lower Ark shall comply with all terms and conditions associated with the use of the Recharge Ponds in any such approval(s).
10. Binding Effect, Assignment. This Agreement is binding upon the Parties and their successors. The rights granted to Lower Ark in this Agreement may not be transferred or assigned without the prior written consent of the Company.

11. Default. In the event that Lower Ark defaults upon any of the terms of this Agreement, upon fifteen (15) days written notice to Lower Ark, the Company may suspend the carriage of water in the Canal until such default is cured to the Company's reasonable satisfaction.
12. Complete Agreement, Modification. This Agreement represents the complete agreement of the Parties and no oral modification shall be recognized. Any amendments or additions shall be made in writing signed by the Parties.
13. Notice. Notices under this Agreement shall be in writing and shall be provided to the following addresses:

To the Company:

John Schweizer, President
Catlin Canal Company
917 Elm Street
Rocky Ford, CO 81067

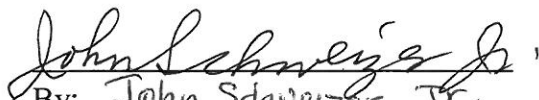
To Lower Ark:

Jay Winner, General Manager
Lower Arkansas Valley Water Conservancy District
801 Swink Avenue
Rocky Ford, CO 81067


14. Choice of Law. This Agreement shall be governed by the laws of the State of Colorado.

[signature page follows]

CATLIN CANAL COMPANY


By: John Schwerzer, Jr.
Its: President
Date: 6-30-14

LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT


By: R. J. W. Wines
Its: General Manager
Date: 6-30-14

AMENDMENT TO RECHARGE SITE LEASE

This Amendment to that certain Recharge Site Lease dated June 18, 2012 and extended by written notice dated December 16, 2014 (the “**Recharge Site Lease**”) is entered into between Kenneth J. Schweizer and Arlen J. Schweizer (“**Lessor(s)**”) and the Lower Arkansas Valley Super Ditch Pilot Program, Inc. (“**Lessee**”).

Recital

The Recharge Site Lease is set to expire on March 31, 2017 and both Lessor and Lessee desire to amend the Recharge Site Lease to continue the Recharge Site Lease beyond the current term and to authorize a future extension of such lease.

Amendment to Paragraph II

Lessor and Lessee agree to amend the Recharge Site Lease as follows:

1. Paragraph II.1 of the Recharge Site Lease is amended to extend the term of the lease until March 31, 2022.
2. Paragraph II.2 is amended to allow Lessee to extend the term of the lease beyond the term provided for in this Amendment, for a period of three (3) years in the manner provided for therein.

Except as specifically amended herein, all other provisions of the Recharge Site Lease remain in full force and effect.

(Signature page follows)

LESSOR(S):

Kenneth J. Schweizer
Kenneth J. Schweizer

Date: 2-13-2017

Arlene J. Schweizer
Arlene J. Schweizer

Date: 2-13-2017

LESSEE: Lower Arkansas Valley Super Ditch Pilot Program, Inc.

By: John Schweizer
President

Date: 2-13-17

RECHARGE SITE LEASE

THIS LEASE, made this 18 day of June, 2012, by and between Kenneth J. Schweizer and Arlene J. Schweizer, 30102 Road 15, Rocky Ford, Colorado 81067, of the County of Otero, and State of Colorado, Lessor(s), and the Lower Arkansas Valley Super Ditch Pilot Program, Inc., of the County of Otero, and State of Colorado, Lessee,

WITNESSETH:

In consideration of the covenants and agreements herein to be kept by both parties, Lessor(s) have leased certain property to Lessee under the terms and conditions herein set forth:

I. PROPERTY:

I.1 The real property leased is described as follows:

See attached exhibit.

I.2 Lessor(s) further grant(s) to Lessee, access over any other property owned by Lessor(s) for access to the leased property, and for such rights of way to transport water as deemed necessary by Lessee.

II. TERM:

II.1 The term of the lease commences June 18, 2012, and continues until March 31, 2015.

II.2 The term may be extended for a period of 2 years, upon written notice three months prior to the termination of the term set forth above.

III. PRICE AND PAYMENT OF RENT:

III.1 The rent shall be at the price of \$200.00 per acre per year. Payable on April 1 of each, the first payment of which is hereby acknowledged.

IV. DUTIES OF LESSOR:

IV.1 Lessor(s) warrant(s) peaceable possession of the premises in Lessee.

V. DUTIES OF LESSEE:

V.1 To pay the rent as due.

V.2 It is understood that Lessee shall use this property as a location for a recharge pond to be used with the Lower Arkansas Valley Super Ditch. Lessee, at the termination of this lease, shall return the site in as good condition as when leased.

V.3 Shall not use, or permit the use of the premises for any unlawful purpose.

V.4 Shall not permit liens to attach to the premises, and shall not enter into any improvement or repair which could cause the same without prior notice to and written consent of Lessor(s), so that (he/she/they) may guard against the attachment of liens.

V.5 May assign this lease to the Lower Arkansas Valley Super Ditch Company, Inc.

V.6 Shall permit Lessor(s) or (his/her/their) representatives, to inspect the premises at all reasonable hours.

V.7 Lessee shall not allow any hazardous or harmful materials to be discharged or stored upon the property.

VI. TERMINATION:

VI.1 This lease shall terminate at the end of its term or upon either party's violation of any of its terms or conditions.


VI.2 Upon termination of this lease, for any reason, Lessee agrees to peaceably surrender the premises to the Lessor(s) and should Lessee fail to do so, Lessor(s) may reenter the premises peaceably, or bring action at law or equity to regain possession of the premises, and should the Lessor(s) incur any expenses, including attorney's fees, in the recovery of said premises the Lessee shall pay the same.

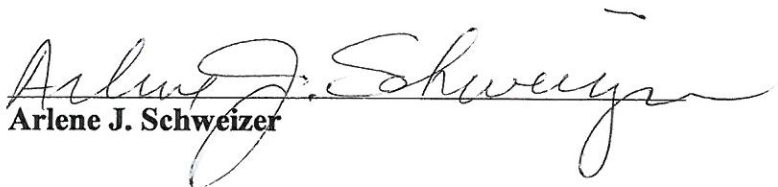
VII. GENERAL:

- VII.1. It is understood that Lessee will use the demised premises for purposes of a recharge pond for use by the Lower Arkansas Valley Super Ditch. This use will likely require excavation and the routing of transmission ditches or lines to the demised property.
- VII.2 The Lessee has examined the premises, and is aware of them and their condition and accepts the same as they now are.
- VII.3 Unless otherwise required by the context hereof, words in the singular shall include the plural and in the plural shall include the singular.
- VII. 4 No waiver of any breach hereof shall constitute a waiver of any other breach of that or any other condition or term of this lease.
- VII.5 This agreement shall extend the heirs, personal representatives, assigns and survivors of the parties.

IN WITNESS WHEREOF, the parties have signed this lease on the above date.

LESSOR(S):


Kenneth J. Schweizer


Arlene J. Schweizer

LESSEE: LOWER ARKANSAS VALLEY
SUPER DITCH PILOT PROGRAM, INC.

By: 
President



EXHIBIT Q

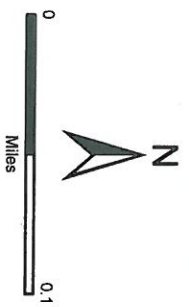
Exhibit K



Adaptive Resources, Inc.

Map Created 06/08/2012
Coordinate System
NAD 1983 UTM Zone 13N
Projection: Transverse Mercator

This map is for reference purposes only; accuracy is not guaranteed. This product should not be construed as a legal document or survey instrument.



- Legend**
- Structure**
- Berm
 - Earthen Ditch
 - Recharge Pond

Schweizer
Recharge Pond

AMENDMENT TO RECHARGE SITE LEASE

This Amendment to that certain Recharge Site Lease dated June 19, 2012 and extended by written notice dated December 10, 2014 (the “**Recharge Site Lease**”) is entered into between Roger L. Maddux and Mary Jane Maddux (“**Lessor(s)**”) and the Lower Arkansas Valley Super Ditch Pilot Program, Inc. (“**Lessee**”).

Recital

The Recharge Site Lease is set to expire on March 31, 2017 and both Lessor and Lessee desire to amend the Recharge Site Lease to continue the Recharge Site Lease beyond the current term and to authorize a future extension of such lease.

Amendment to Paragraph II

Lessor and Lessee hereby agree to amend the Recharge Site lease as follows:

1. Paragraph II.1 of the Recharge Site Lease is amended to extend the term of the lease until March 31, 2022.
2. Paragraph II.2 is amended to allow Lessee to extend the term of the lease beyond the term provided for in this Amendment, for a period of three (3) years in the manner provided for therein.

Except as specifically amended herein, all other provisions of the Recharge Site Lease remain in full force and effect.

(Signature page follows)

LESSOR(S):

Roger L. Maddux
Roger L. Maddux

Date: 2-21-2017

Mary Jane Maddux
Mary Jane Maddux

Date: 2-21-2017

LESSEE: Lower Arkansas Valley Super Ditch Pilot Program, Inc.

By: John Schweitzer
President

Date: 2-13-17

RECHARGE SITE LEASE

THIS LEASE, made this 19 day of June, 2012, by and between Roger L. Maddux and Mary Jane Maddux, 24850 County Road 24.5, La Junta, Colorado 81050, of the County of Otero, and State of Colorado, Lessor(s), and the Lower Arkansas Valley Super Ditch Pilot Program, Inc., of the County of Otero, and State of Colorado, Lessee,

WITNESSETH:

In consideration of the covenants and agreements herein to be kept by both parties, Lessor(s) have leased certain property to Lessee under the terms and conditions herein set forth:

I. PROPERTY:

I.1 The real property leased is described as follows:

See attached exhibit.

I.2 Lessor(s) further grant(s) to Lessee, access over any other property owned by Lessor(s) for access to the leased property, and for such rights of way to transport water as deemed necessary by Lessee.

II. TERM:

II.1 The term of the lease commences June 18, 2012, and continues until March 31, 2015

II.2 The term may be extended for a period of 2 years, upon written notice three months prior to the termination of the term set forth above.

III. PRICE AND PAYMENT OF RENT:

III.1 The rent shall be at the price of \$200.00 per acre per year. Payable on April 1 of each year, the first payment of which is hereby acknowledged.

IV. DUTIES OF LESSOR:

IV.1 Lessor(s) warrant(s) peaceable possession of the premises in Lessee.

V. DUTIES OF LESSEE:

V.1 To pay the rent as due.

V.2 It is understood that Lessee shall use this property as a location for a recharge pond to be used with the Lower Arkansas Valley Super Ditch. Lessee, at the termination of this lease, shall return the site in as good condition as when leased.

V.3 Shall not use, or permit the use of the premises for any unlawful purpose.

V.4 Shall not permit liens to attach to the premises, and shall not enter into any improvement or repair which could cause the same without prior notice to and written consent of Lessor(s), so that (he/she/they) may guard against the attachment of liens.

V.5 May assign this lease to the Lower Arkansas Valley Super Ditch Company, Inc.

V.6 Shall permit Lessor(s) or (his/her/their) representatives, to inspect the premises at all reasonable hours.

V.7 Lessee shall not allow any hazardous or harmful materials to be discharged or stored upon the property.

VI. TERMINATION:

VI.1 This lease shall terminate at the end of its term or upon either party's violation of any of its terms or conditions.

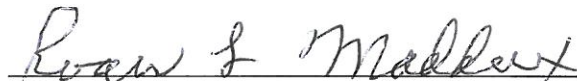
VI.2 Upon termination of this lease, for any reason, Lessee agrees to peaceably surrender the premises to the Lessor(s) and should Lessee fail to do so, Lessor(s) may reenter the premises peaceably, or bring action at law or equity to regain possession of the premises, and should the Lessor(s) incur any expenses, including attorney's fees, in the recovery of said premises the Lessee shall pay the same.

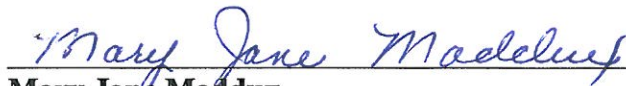
VII. GENERAL:

- VII.1. It is understood that Lessee will use the demised premises for purposes of a recharge pond for use by the Lower Arkansas Valley Super Ditch. This use will likely require excavation and the routing of transmission ditches or lines to the demised property.
- VII.2 The Lessee has examined the premises, and is aware of them and their condition and accepts the same as they now are.
- VII.3 Unless otherwise required by the context hereof, words in the singular shall include the plural and in the plural shall include the singular.
- VII. 4 No waiver of any breach hereof shall constitute a waiver of any other breach of that or any other condition or term of this lease.
- VII.5 This agreement shall extend the heirs, personal representatives, assigns and survivors of the parties.

IN WITNESS WHEREOF, the parties have signed this lease on the above date.

LESSOR(S):


Roger L. Maddux


Mary Jane Maddux

LESSEE: LOWER ARKANSAS VALLEY
SUPER DITCH PILOT PROGRAM, INC.

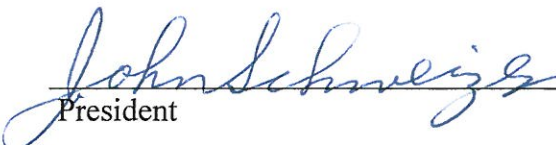
By: 
President

EXHIBIT R

Exhibit L



EXHIBIT R



Adaptive Resources, Inc.

Map Created 06/08/2012

Coordinate System

NAD 1983 UTM Zone 13N

Projection: Transverse Mercator

This map is for reference purposes only, accuracy is not guaranteed. This product should not be construed as a legal document or survey instrument.



Legend

Recharge Ponds

Hanagan
Recharge Pond

Map 1

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

LAW OFFICES

RICHARD J. MEHREN
CAROLYN R. STEFFL
JENNIFER M. DILALLA

2595 CANYON BOULEVARD, SUITE 300
BOULDER, COLORADO 80302

TELEPHONE: (303) 443-8782
FAX: (303) 443-8796
INTERNET: www.mwhw.com

RAPHAEL J. MOSES
(1913-2011)
CHARLES N. WOODRUFF
(1941-1996)

ALISON I.D. GORSEVSKI
WILLIAM D. DAVIDSON
JOHN E. PECKLER

COUNSEL
JOHN WITTEMYER
DAVID L. HARRISON
JAMES R. MONTGOMERY
TIMOTHY J. BEATON

December 14, 2018

By email

Colorado Water Conservation Board
Lauren Ris, Deputy Director
1313 Sherman Street, Room 718
Denver, CO 80203
lauren.ris@state.co.us

Re: LAWMA's comments on Super Ditch/CS-U Pilot Project Proposal

Dear Ms. Ris:

In accordance with the Colorado Water Conservation Board's ("CWCB") Criteria and Guidelines for Fallowing-Leasing Pilot Projects ("Criteria and Guidelines"), this letter provides the Lower Arkansas Water Management Association's ("LAWMA") comments on Lower Arkansas Valley Super Ditch Company, Inc.'s ("Super Ditch") and Colorado Springs Utilities' ("CS-U") (together, "Applicants") November 16, 2018 pilot project proposal ("Proposal").

As CS-U's partner in an innovative water-sharing agreement put into place in 2018, LAWMA unreservedly supports the purpose of the Proposal. However, as summarized below, the Applicants have not yet met a number of the minimum requirements set forth in the Criteria and Guidelines. CWCB therefore should conserve resources—CWCB's, the State Engineer's, and interested parties'—by tabling consideration of the Proposal until the Applicants have provided all such required information. If CWCB decides to select the Proposal in spite of its violation of the Criteria and Guidelines, LAWMA respectfully asks that CWCB document why specific Criteria and Guidelines are not applicable to the Proposal; and that CWCB refuse to accept any pilot project application that does not meet all of the minimum requirements for both proposals and applications.

LAWMA's comments on and concerns with the Proposal are as follows:

1. Specific water rights to be used as sources of supply in the pilot project

The Applicants have not yet met the minimum requirement for a proposal to identify "the specific water rights to be utilized by the pilot project and the ownership of those water rights." Criteria and Guidelines § II.F.1.a. The Proposal does not identify any Fort Lyon Canal Company

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

Colorado Water Conservation Board

December 14, 2018

Page 2

(“FLCC”) or Rocky Ford High Line Canal Company (“Rocky Ford”) shareholders whose water rights are to be used in the pilot project. Instead, the Proposal’s Table 1 simply lists all of each company’s outstanding shares and identifies the owners of those shares as “c/o the [canal company’s] Board of Directors.” With respect to the Catlin Canal Company (“Catlin”), Table 1 indicates that 6,461.877 of Catlin’s 18,660 outstanding shares will participate in the proposed pilot project and identifies the participating shares’ owners but not their certificate numbers.¹

As the owner of 6,080 shares in the FLCC, LAWMA is particularly concerned with the Applicants’ failure to meet this minimum requirement of the Criteria and Guidelines. LAWMA is likewise concerned with the Proposal’s plain misrepresentation of the FLCC “letter of intent” attached to the Proposal as Exhibit D. The Applicants write that “[p]ursuant to [that] letter of intent signed by the Fort Lyon board, Fort Lyon will provide up to 5,000 acre-feet of water for lease to CS-U during the 10-year term of the CS-U Pilot Project,” and that “Fort Lyon will present a contract between Fort Lyon and Super Ditch for shareholder approval at the shareholder meeting in December.” Both statements are false. The letter attached to the Proposal at Exhibit D describes the FLCC Board’s support for the concept of the proposed pilot project, and confirms that the FLCC annual meeting on December 17, 2018, the Board will recommend to FLCC shareholders that the Board create a committee to study that concept. The FLCC letter does not—because the FLCC Board has no authority to—commit any amount of FLCC shareholders’ water to the pilot project, much less 5,000 acre-feet of water per year. The FLCC letter likewise does not indicate that the shareholders will be voting on a “contract between Fort Lyon and Super Ditch” at the annual meeting on December 17, and no such shareholder consideration of a contract is on the agenda for that annual meeting.

Without identification of ownership of the specific water rights to be included in a pilot project, CWCB, the State Engineer, and interested parties cannot determine whether a proposal complies with relevant statutes and the Criteria and Guidelines. As just one example, unless an applicant identifies by certificate number the mutual ditch company shares to be included in a pilot project, it is impossible for CWCB to confirm that those shares are not included in another pilot project, as required by section 37-60-115(8), C.R.S. Further, and most significantly for LAWMA, mutual ditch company shareholders must be able to confirm that participating shares have obtained all required ditch company approvals—with attendant protective terms and conditions—before the share water may be included in an application for a temporary change of use in a pilot project.

¹ By contrast, Super Ditch’s and Lower Arkansas Valley Water Conservancy District’s proposal for their existing pilot project using Catlin water (“Catlin Pilot Project”) complied with the Criteria and Guidelines by identifying the owners and share certificate numbers of the specific Catlin shares to be included in the project. Catlin Pilot Project proposal, Table 1.

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Based on the Applicants' failure to meet the Criteria and Guidelines' minimum requirement for identification of the specific water rights to be included in the pilot project, including the ownership of those water rights and the associated share certificate numbers, CWCB should table consideration of the Proposal until the Applicants have delivered this information to the CWCB and the parties. CWCB also should address Applicants' mischaracterization of the FLCC letter attached to the Proposal as Exhibit D.

Should CWCB determine to select the Proposal in spite of its failure to meet this minimum requirement of the Criteria and Guidelines, LAWMA asks that CWCB, on the record, (i) explain why this requirement does not apply to the Proposal; and (ii) decide that CWCB will accept no application that does not identify the specific water rights to be included in the pilot project, including ownership of the water rights and associated share certificate numbers.

2. Specific lands to be dried up

With respect to lands under the Rocky Ford High Line Canal and the Fort Lyon Canal, the Applicants have not yet met the minimum requirement for a proposal to identify "the specific lands and parcels that will be analyzed and dried up, and the ownership of them." § II.F.1.b. While Exhibit C to the Proposal includes maps of the specific parcels of Catlin land to be dried up, Exhibits E and G include maps of all of the land historically irrigated by the Fort Lyon and Rocky Ford canals, with no identification of specific dry-up parcels.

For the reasons given in Section 1 above, CWCB should table consideration of the Proposal until the Applicants have delivered to the CWCB and the parties this required information about specific dry-up parcels under the Rocky Ford and Fort Lyon canals. Should CWCB determine to select the Proposal in spite of its failure to meet this minimum requirement of the Criteria and Guidelines, LAWMA asks that CWCB, on the record, (i) explain why this requirement does not apply to the Proposal; and (ii) decide that CWCB will accept no application that does not identify the specific Rocky Ford and Fort Lyon parcels to be rotationally fallowed under the pilot project.

3. Necessary approvals from and agreements with FLCC and/or its shareholders

With respect to inclusion of FLCC share water in the proposed pilot project, the Applicants have not yet met the minimum requirement for a proposal to include "evidence to demonstrate that all necessary approvals and agreements between ditch companies [and] ditch members . . . have been obtained or reasonably will be obtained." § II.F.3. While Super Ditch may have begun discussions with FLCC's Board and certain FLCC shareholders, Super Ditch has not yet obtained the right to use any FLCC shares in the proposed pilot project and has not obtained approval to use infrastructure owned by the FLCC or its shareholders. Further, as described in Section 1 above, the Applicants have plainly misrepresented the FLCC letter attached to the Proposal as Exhibit D,

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which does not commit FLCC share water to the proposed pilot project and which does not indicate that FLCC shareholders will be voting on a proposed contract with Super Ditch at the FLCC's annual meeting on December 17.

Even if Super Ditch is able to enter into agreements with FLCC shareholders for use of their water in the proposed pilot project, obtaining the FLCC Board's approval of such temporary change of use of FLCC share water will take significant time and is by no means assured. Under the FLCC's bylaws, the FLCC Board must review all proposed changes in use of FLCC shares, and may approve such changes only if they will not cause injury to FLCC, the Fort Lyon canal, and other FLCC shareholders.² Furthermore, FLCC's Board is on the record as interpreting its bylaws to require shareholders to obtain such approval before they may even submit an application for temporary administrative changes of use of FLCC share water. Accordingly, before the Applicants may include FLCC share water in an application for the proposed pilot project, the owners of any participating FLCC shares must apply for and obtain FLCC's approval of the proposed temporary change in use necessary of those shares. Having twice sought and obtained such approval from FLCC, LAWMA is aware that FLCC will require submission of supporting engineering reports, a hearing before the FLCC Board and interested shareholders, and extensive conferral between the shareholders' attorneys and engineers and the FLCC's attorneys and engineers. That process can be quite lengthy. LAWMA's first request for FLCC approval of a proposed change in use of LAWMA's FLCC shares took approximately one year from application to approval; the second took approximately five and one-half months. The Criteria and Guidelines require that within ninety days of CWCB's selection of any pilot project proposal, the applicant must submit a full application for that pilot project. Here, Super Ditch has not yet identified FLCC shares that will be included in the project, and no FLCC shareholder has initiated an application for the FLCC's required review and approval of any proposed change in use of FLCC share water. The Proposal therefore does not meet the minimum requirement of demonstrating that Super Ditch reasonably will obtain all needed FLCC approvals for inclusion of FLCC share water in the proposed pilot project. The Proposal also does not document the likelihood that the Applicants can obtain approval of their use of necessary infrastructure (e.g., augmentation stations) on the Fort Lyon Canal.

CWCB therefore should table consideration of the Proposal until the Applicants have delivered to the CWCB and the parties the required evidence that the Applicants have obtained or reasonably can obtain the necessary approvals of and/or agreements with the FLCC and its shareholders. Should CWCB determine to select the Proposal in spite of its failure to meet this

² Article V, Section 1 of the Fort Lyon Canal Company Bylaws provides in pertinent part that "[e]ach Stockholder desiring to change the type of use, place of use, time of use, point or means of diversion, storage or other change of said Stockholder's water shall make written request therefore to the Board of Directors. If in the opinion of the Board of Directors, such change may be made without injury to the canal, the Company, and other Stockholders, such request shall be granted, with such terms and conditions as may be necessary to prevent injury."

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minimum requirement of the Criteria and Guidelines, LAWMA asks that CWCB, on the record, (i) explain why this requirement does not apply to the Proposal; and (ii) decide that CWCB will accept no application that includes FLCC share water in the absence of evidence that the FLCC Board has expressly approved the temporary change of use of water rights associated with specified FLCC shares to be included in the pilot project.

4. Necessary approvals from and agreements with Rocky Ford and/or its shareholders

As with FLCC approvals and agreements, the Applicants have not yet met the minimum requirement for a proposal to include “evidence to demonstrate that all necessary approvals and agreements between ditch companies [and] ditch members . . . have been obtained or reasonably will be obtained” for Rocky Ford share water. § II.F.3. The Proposal attaches a “letter of intent” from the Rocky Ford Board of Directors, which letter makes a general statement of support for the proposed project and explains that “the Board will make reasonable efforts to obtain from its shareholders approval of participation in the CS-U Pilot Project at the next shareholder meeting in December 2018.” Like the FLCC letter, however, the Rocky Ford letter includes no commitment of Rocky Ford share water to the proposed project. In addition, while LAWMA is not a Rocky Ford shareholder and is not familiar with that company’s bylaws, we think it likely that participating Rocky Ford shareholders will need to obtain the company’s approval of a temporary change in use of any Rocky Ford share water before that water may be included in an application for a pilot project.

CWCB therefore should table consideration of the Proposal until the Applicants have delivered to the CWCB and the parties the required evidence that the Applicants have obtained or reasonably can obtain the necessary approvals of and/or agreements with the Rocky Ford and its shareholders. Should CWCB determine to select the Proposal in spite of its failure to meet this minimum requirement of the Criteria and Guidelines, LAWMA asks that CWCB, on the record, (i) explain why this requirement does not apply to the Proposal; and (ii) decide that CWCB will accept no application that includes Rocky Ford share water in the absence of evidence that the Rocky Ford Board has given any bylaw-required approval of the temporary change of use of water rights associated with specified Rocky Ford shares to be included in the pilot project.

5. Potential overlap with Catlin Pilot Project

As shown in attached **Table 1**, certain Catlin shareholders whose shares would be included in the proposed pilot project also own shares that are included in the Catlin Pilot Project. Land and water included in one pilot project cannot be included in another pilot project. C.R.S. § 37-60-115(8)(d)(XI); Criteria and Guidelines § II.L.

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CWCB therefore should decide on the record not to accept any application that does not document that none of the Catlin shares or land included in the proposed pilot project are also included in the Catlin Pilot Project.

6. Potential overlap with dry-up land under decree in Case No. 12CW94

As shown in **Table 1**, certain Catlin shareholders whose shares would be included in the proposed pilot project also own Catlin shares that are included in the decree entered in Case No. 12CW94. That decree authorizes temporary or permanent dry-up of the land historically irrigated with certain Catlin shares, and paragraph 14.33 of the decree requires that “[l]and that is encumbered under a lease fallowing program, whether for continued irrigation or for dry-up, may not be claimed for dry-up purposes pursuant to this decree.”

CWCB therefore should decide on the record not to accept any application that does not (i) identify any Catlin shares and land included in the proposed pilot project that also are included in the 12CW94 decree; and (ii) include proposed accounting forms sufficient to ensure and document that any such land is not dried up under the 12CW94 decree during the term of the proposed pilot project.

7. Number of pilot projects included in the Proposal

No more than five fallowing-leasing pilot projects can be authorized in the Arkansas River basin. C.R.S. § 37-60-115(a). Under the Criteria and Guidelines, CWCB will not select a pilot project that involves “fallowing-leasing from lands on more than one ditch, if the use of more than one ditch would have the effect of circumventing the limitation on the number of pilot projects that can be authorized.” § II.C.3.d.

In this case, CWCB’s consideration of the Proposal as a single project would circumvent the limit on the number of pilot projects that can be authorized in the Arkansas basin, where the Catlin Pilot Project already is operating. The Proposal involves three major ditch systems and the transfer of up to 5,000 acre-feet of water each year—two more ditches and ten times more water than is involved in the Catlin Pilot Project. Therefore, to ensure that statutory limits on the numbers of pilot projects that can be selected remain meaningful, LAWMA asks that CWCB consider the Proposal as describing three pilot projects rather than one.

Conclusion

LAWMA strongly supports the purpose of the Proposal, but has significant concerns about CWCB’s potential selection of the pilot project as the Applicants have described it. LAWMA therefore respectfully asks that CWCB require the Applicants to comply strictly with the relevant

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statute, the Criteria and Guidelines, and the relevant ditch company bylaws before CWCB selects the Proposal or accepts any application for new pilot projects under the Fort Lyon Canal, Rocky Ford High Line Canal, or Catlin Canal.

Thank you for your consideration, and please let us know if you have questions or need additional information about these comments.

Sincerely,

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



Richard J. Mehren
Jennifer M. DiLalla
William D. Davidson

Copy: Alexander Funk, CWCB
Bill Tyner, Division Engineer
Peter Nichols, Berg Hill
Megan Gutwein, Berg Hill
Scott Lorenz, CS-U
Matthew Montgomery, Hill & Robbins
David Hallford, Balcomb & Green
Sara Dunn, Balcomb & Green
Don Higbee, LAWMA
Randy Hendrix, Hendrix Wai Engineering

Table 1
Super Ditch / CS-U Pilot Project Share Overlap with Other Projects and Augmentation Plans

Table 1 CS-U Pilot Project Proposal	Super Ditch / CS-U Pilot Project			Super Ditch / Catlin Pilot Project			CAA 12CW94	
Ownership	Canal Company	Approximate Acreage	Number of Shares Associated w/ Lands	Share Cert Nos.	Acreage	No. Shares	Share Cert Nos.	Exhibit A
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(8)
Chavez Family Farms / Diamond A Products	Catlin	3282.8	3660.863	3314, 3329, 3395, 3411, 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3603, 3604	473	491.000	3314, 3329, 3360, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3395, 3404, 3405, 3537, 3538, 3540, 3541, 3542, 3543	3338.998
Chavez Family Farms - Thelin	Catlin	153	101.000					
Diamond A Products	Catlin	3282.8	3410.583	This entry appears to be a duplicate				
Larsen, Scott & Wendy	Catlin	60	68.000					
The Marion J. & Jack E. Roth Trust	Catlin	31.36	32.000					
Groves, Russell	Catlin	385.63	160.040				2765	160.040
Schelegel, Marvin	Catlin	124	100.000				3523	100.000
Schweizer, Kenneth, Arlene, John	Catlin	413.33	389.476	2754		194.000	3494	50.000
Hostetler, Calvin & Deanna	Catlin	30	30.000					
Hirakatas et. al.	Catlin	570.15	575.000	3550		151.000	2484, 2710, 3418, 3479, 3480, 3481, 3525	575.000
Mayhoffer, David, Lacie, Edward	Catlin	1,800	753.833					
Elite Enterprises	Catlin	33	50.895				3448, 3458	50.895
Herbert K. & Herbert D. Mamedea	Catlin	150.1	99.000				3485	99.000
Hanagan, Eric, Gary B., Margaret, Hanagan & Knaus	Catlin	549.1	441.410	3606, 3607, 3317		144.000	2755, 3317, 3363	377.600
c/o Fort Lyon Canal Company Board of Directors	Fort Lyon	86,141	93989.4166					
c/o Rocky Ford High Line Canal Company Board of Directors	High Line	22,500	2250.000					

Notes:

The Diamond A Products ownership highlighted in yellow appears to duplicate the first ownership.

Share totals for the Catlin Members exceed the "Total Shares interested in the Super Ditch" on Exhibit I.

Fort Lyon Canal shares exceed the of 89% in Case No. 10CW04 or 83,650.581 shares

Rocky Ford High Line shares exceed the 41% in Case No. 10CW04 or 922.5 shares



December 14, 2018

Ms. Lauren Ris
Email: Lauren.Ris@state.co.us
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

RE: Pueblo West Metropolitan District Comments on HB 13-1248 Colorado Springs Utilities Pilot Project Proposal for CWCB Selection

Dear Ms. Ris:

On behalf of the Pueblo West Metropolitan District (Pueblo West), we are providing comments on the pilot program request for January 1, 2020 through December 31, 2029 submitted to the Colorado Water Conservation Board ("CWCB") by the Lower Arkansas Valley Super Ditch Company, Inc. ("Super Ditch") and the City of Colorado Springs (acting through its enterprise Colorado Springs Utilities ("CS-U")) on November 16, 2018. We have reviewed the pilot program request and following summarizes our comments.

First, we want to ensure that language agreed to in previous court cases between Pueblo West and other parties (including CS-U) is adhered to during the operation of this pilot program. The applicant should acknowledge that the exchanges to Pueblo Reservoir are junior to and will be operated as junior to, the Pueblo West Metropolitan District exchanges decreed in Case Nos. 1985CW134A (decreed (September 21, 1993), 1985CW134B (decreed June 8, 2009), and 2001CW152 (decreed January 4, 2008). The Settlement Agreements, as part of Case No. 2009CW103, between Pueblo West, the Board of County Commissioners of Pueblo County, the City of Colorado Springs, and the Board of Water Works of Pueblo, dated November 23, 2010, the Pueblo West exchanges are operated subject to the Flow Management Program referenced in Case No. 2009CW103, and may be subject to reduction or curtailment in accordance with the Flow Management Program only to the extent provided in that Settlement Agreement. During



any period in which the Flow Management Program is operated to require Pueblo West to forego diversions and other parties have agreed to not exercise the exchange to Pueblo Reservoir decreed in Case No. 2009CW103.

The proposal states, as though it were a fact, “Super Ditch ...formed in 2008 for the benefit of the farmers in the Lower Arkansas Valley...” This may have been the stated purpose. However, no evidence is presented that it benefits or will benefit farmers who do not lease water to Super Ditch. In addition, it’s our understanding that farmers who do lease water to Super Ditch only get paid for transferable HCU that actually is usable by the purchasing municipalities, and so they take the risk that their lease income may be substantially less than if they had farmed instead of fallowed. Thus, the leasing farmers might or might not benefit. This is mentioned because this pilot program request should be evaluated on the basis of prevention of injury to other water rights, not on a claim of benefits to society in general.

There are concerns about operation of this type of source as source water for an exchange due to questions as to amount and timing of its availability as related to the required analysis of transferable HCU, return flows, sub-irrigation or dry-up verification, all required to be analyzed as part of the pilot program (This was not addressed in 2010CW004 because that was purely an exchange priority case that did not attempt to qualify source water for an exchange.)

Applicants indicated that they recognize that the exchange potential, requested in Case No. 2010CW004, on the Arkansas River does pose a hydrological challenge to operation of the CS-U Pilot Project under certain conditions. In addition, they say that this proposal has been designed to include various mechanisms to allow for operation in times of limited exchange potential such as the use of stepped exchanges to intermediate storage locations, use of recharge facilities, and trades of water. They also state because the Catlin Canal augmentation stations (located on Timpas Creek and Crooked Arroyo) and the point of delivery of recharge to the Arkansas River from the Schweizer and Hanagan recharge ponds are located downstream of several of the locations of historical return flows, this proposal indicates several other possible additional recharge locations, retiming of recharge, and use of upstream storage in order to ensure the ability of the pilot project to



maintain return flows in time, location and amount to prevent injury to other water rights. This concern will lead to significant accounting and control issues that the applicant should address along with detailed engineering analysis typically required for a change-in-water-rights application.

With these issues in mind the following concerns are listed below:

1. The applicant should indicate that they understand that under the proposed pilot program that any water that is to be exchanged under the 2005CW96 decree must conform to the requirements of paragraph 29.P of that decree, including notice, approval by the Division Engineer and opportunity for other parties to object. In addition, the Division Engineer should confirm whether the 2005CW096 decree allows water to be exchanged into Pueblo Reservoir, whether from sources downstream of Fountain Creek or from return flows in Fountain Creek from use of the proposed sources.
2. The applicant should indicate how any potential sub-irrigation of the fallowed parcel from an adjacent irrigated parcel will be accounted for.
3. The applicant should indicate how any potential sub-irrigation that reduces the transferable amount of consumptive will be calculated and accounted for.
4. The applicant should address how the rotational/intermittent fallowing will affect historic return flows from the fallowed parcels and potential interference with continuation of return flows from adjacent non-fallowed parcels.
5. The applicant should indicate that they understand that the winter water storage program, that was stipulated to in Case No. 84CW179, is not to be used to exchange water from Big Johnson Reservoir to Pueblo Reservoir, as we don't believe it allows such an exchange.
6. Use of the exchanges decreed in Colorado Spring Utilities decrees 84CW202, 84CW203, or 89CW036 with an appropriation date of June 13, 1989, from the



sewered return flows from the Las Vegas WWTP plant should only be allowed if the use of the water in this project was contemplated or decreed for use in those decrees.

7. The accounting for this matter will be strenuous and should be reviewed vigorously before approval and during operation of the pilot program.
8. We understand that the applicant will be required to address historic consumptive use, return flows, and mitigation of all potential injury to water rights owned by others including Pueblo West during the approval process. We look forward to the opportunity to review those analysis once they are provided if this application is accepted. We reserve the right to provide additional comments as more information is provided pursuant to the requirements for approval of this pilot program.

Thank you for considering these comments. If you have any questions, please do not hesitate to call.

Sincerely,

Alan J. Leak, P.E.

RESPEC Consulting and Services

cc: Bob Krassa, Esq.



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December 14, 2018

VIA E-MAIL AND U.S. MAIL

Colorado Water Conservation Board
Attn.: Rebecca Mitchell, Director
Lauren Ris, Deputy Director
1313 Sherman Street, Room 718
Denver, CO 80203

Re: HB 13-1248 Colorado Springs Utilities – Super Ditch Pilot Project Proposal

Dear Ms. Mitchell and Ms. Ris:

On behalf of Five Rivers Cattle Feeding LLC d/b/a Colorado Beef (“Colorado Beef”), and pursuant to the Colorado Water Conservation Board’s Criteria and Guidelines for Fallowing Leasing Pilot Projects, this letter provides Colorado Beef’s initial comments regarding the Colorado Springs Utilities fallowing-leasing pilot project proposal (the “proposal”) that was submitted on November 16, 2018 by the Lower Arkansas Valley Super Ditch Company, Inc. (“Super Ditch”) and the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities (“CS-U”) (collectively, “Applicants”).

Applicants have requested selection of a pilot project to deliver up to 5,000 acre-feet of water in a single year, over a plan approval period of ten years from 2020 through 2029. Applicants propose to use water available from certain shares in the Catlin Canal Company, Fort Lyon Canal Company, and/or the Rocky Ford High Line Canal Company, for temporary municipal uses by CS-U.

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

Due to the general nature of the information contained in Applicants’ proposal, Colorado Beef does not have specific comments at this time and takes no position regarding the Board’s

selection process for Applicants' proposal at this time. Should the Board select the Applicants' proposal for further consideration, however, the Board should only consider approving the pilot project upon review and full vetting of a subsequent, well-developed pilot project application that includes detailed information regarding how the proposed pilot project can operate without injury to vested water rights, including without limitation proposed terms and conditions to ensure proper measurement, accounting and reporting, verification of fallowing, and maintenance of historical return flow patterns. Additionally, any use of shares in the subject ditch companies should be subject to approval under all applicable bylaws and rules and regulations of those companies, taking into account the protection of the rights of other shareholders. Colorado Beef reserves all rights to comment upon, and oppose if necessary, the Applicants' pilot project application if and when it is submitted.

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

Sincerely,



William H. Caile
Of Counsel

WHC

cc: Mr. Juan Cocoba
Mary Presecan, P.E.

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December 14, 2018

Via email to Rebecca.Mitchell@state.co.us & Lauren.Ris@state.co.us

Rebecca Mitchell, Director
Lauren Ris, Deputy Director
Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado 80203

Re: Tri-State's Comments re CS-U Pilot Project Proposal for Selection

Dear Ms. Mitchell and Ms. Ris:

Thank you for the opportunity to provide comments regarding the November 16, 2018 proposal ("Proposal") filed by the Lower Arkansas Valley Super Ditch Company, Inc. ("Super Ditch") and the City of Colorado Springs, acting by and through its utility enterprise ("CS-U" and collectively, "Applicants") for an H.B. 13-1248 pilot project involving shares in the Catlin Canal Company, Fort Lyon Canal Company and/or Rocky Ford High Line Canal Company ("CS-U Pilot Project"). I am writing on behalf of Tri-State Generation and Transmission Association, Inc. ("Tri-State") to submit comments on the Proposal for consideration by the Colorado Water Conservation Board ("CWCB") pursuant to section II.A of the CWCB's Criteria and Guidelines for Fallowing-Leasing Pilot Projects dated November 19, 2013 and amended on January 25, 2016 ("Criteria").

According to the Applicants, the CS-U Pilot Project will rotationally or intermittently fallow parcels of land irrigated by the Catlin, Fort Lyon, or Rocky Ford High Line canals and transfer up to 5,000 acre-feet per year of consumptive use water to Colorado Springs Utilities in Pueblo Reservoir. Super Ditch intends to use a forthcoming decree in Case No. 10CW4 approving appropriative rights of exchange to transfer consumptive use water from the historical irrigation locations to Pueblo Reservoir. The proposed CS-U Pilot Project would operate from January 1, 2020 through December 31, 2029.

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

application during 2014 and 2015 and assisted the Catlin Pilot Project applicants in developing the “pay-as-you-go” return flow method.

The Applicants state that Super Ditch and the Lower Arkansas Valley Water Conservancy District have been “successfully operating” the Catlin Pilot Project and seek to “build on the lessons learned from the Catlin Pilot Project.” Proposal at 1, 2. The Catlin Pilot Project has not consistently operated according to its terms and conditions. For example, the accounting posted on the Division Engineer’s website¹ during 2018 shows that exchanges of water for the Catlin Pilot Project were operated without advance approval by the Division Engineer on: May 5-6, May 10, May 12, June 10, June 23-24, July 9-10, July 13 and July 18-30, 2018. This operation was contrary to stipulated term and condition number 28 of the Joint Conference Report for the Catlin Pilot Project (Jan. 6, 2018) that was adopted by the State Engineer and CWCB.² There were also exchanges operated during 2018 on the following dates such that intervening water rights were prevented from diverting the full amount of water from the Arkansas River to which such rights would otherwise be legally and physically entitled in the absence of the Catlin Pilot Project exchange: May 1-7, May 9-10, May 12-13, June 27-28 and July 24-25, 2018. This operation was contrary to agreed term and condition number 30 in the Joint Conference Report.

The proposed CS-U Pilot Project has the potential to move up to 5,000 acre-feet of water per year and Applicants acknowledge its “large scale.” *See, e.g.,* Proposal at 7. If the Proposal had been filed in water court, it would qualify as a “significant water development activity” subject to special terms and conditions. C.R.S. §§ 37-92-103(10.7); 37-92-305(4.5)(b). Accordingly, the Criteria require that “[f]or any proposed pilot projects with transferrable consumptive use in excess of 1,000 acre-feet per year, the Board shall give special consideration to comments received, if any, and to protecting the interests of other water users and the state’s water resources before granting approval.” Criteria § II.D (emphasis added). The large scale of the CS-U Pilot Project means that it has greater potential to cause injury to other water users. It will be important to prevent upsets like the ones that occurred with the Catlin Pilot Project during 2018 when operating the CS-U Pilot Project.

Tri-State supports the CWCB’s selection of the Proposal so long as critical terms and conditions presented in these comments are included. At this early stage, many crucial details of the CS-U Pilot Project have not been developed, and Tri-State’s requested terms and conditions are focused on developing these details before the application stage of the Pilot Project. First, Tri-State requests that Applicants identify all specific farms, water rights and structures that will be included in the CS-U Pilot Project as part of the forthcoming application to the CWCB. Second, Tri-State requests that Applicants present a firm plan to replace return flows as part of

¹ <http://water.state.co.us/DWRDocs/News/Pages/ApprovedPilotProjects.aspx>.

² The State Engineer adopted agreed items from the Joint Conference Report in his Written Determination of the State Engineer, HB13-1248 Catlin Following-Leasing Pilot Project (Jan. 16, 2015). The CWCB adopted the State Engineer’s Written Determination in its written decision dated March 11, 2015.

their forthcoming application. Tri-State hopes to meet with Applicants this month to discuss the development of the return flow plan. Finally, Tri-State requests that Applicants obtain all necessary ditch company approvals before the application stage. Tri-State is providing high level comments at this selection stage and will provide detailed comments after the project is refined in an application.

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

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

Based on the information provided by Applicants, the following terms and conditions should be included as part of the CWCB's selection of the Catlin Pilot Project. The terms and conditions should be included as requirements for the pilot project application to the CWCB. The Criteria provide the Board with specific authority to include these as requirements for the application. Criteria § II.G.1.f.

A. Identification of Specific Lands, Water Rights and Structures Supported by Contracts.

The Criteria require the Proposal to identify "the specific water rights to be utilized by the pilot project and ownership of them" and "the specific lands and parcels that will be analyzed and dried up, and the ownership of them." Criteria § II.F.1.a–b. The Applicants have identified specific farms and shareholders under the Catlin Canal Farms in the Proposal. However, they list the entirety of the Fort Lyon Canal and Rocky Ford High Line ditch systems and water rights and fail to identify specific land and water rights to be included. Water rights in mutual ditch systems are owned by the individual shareholders. *Jacobucci v. Dist. Ct. In and For Jefferson County*, 541 P.2d 667, 673 (Colo. 1975). Applicants have not identified the water rights owners under the Fort Lyon or Rocky Ford High Line canals who may participate in the CS-U Pilot Project. Applicants do not have permission from the owners to include all the water rights under these Canals in the Pilot Project.

Similarly, Criteria require the Proposal to identify "any and all structures necessary for operation of the pilot project and ownership of them." Criteria § II.F.1.f. The Proposal fails to identify any specific structures under the Fort Lyon or Rocky Ford canal systems. *See* Proposal at 6. For example, the Proposal refers to augmentation stations under these canals but does not

identify their locations. In addition, the Proposal notes that additional structures may be incorporated into the project. *Id.*

Tri-State understands that the proposal was prepared on a short time frame based on the execution of a contract between Super Ditch and CS-U in August 2018. It appears that efforts are underway to identify specific farms, water rights, and structures. For example, the Proposal indicates that contracts with individual Fort Lyon and Rocky Ford High Line shareholders are expected after each company's annual shareholder meeting in December 2018. Proposal at 4.

Tri-State requests that the CWCB require Applicants to identify specific Fort Lyon and Rocky Ford High Line lands (farms), water rights, structures and owners at the application stage and limit the lands, water rights, and included structures to those specifically identified and supported by contracts. Tri-State's fundamental concern is that there is not sufficient time or resources to evaluate a change of use of the more than 100,000 irrigated acres included in these two ditch systems within the 60 day review and comment period provided by the Criteria. In addition, a change of use of the entire acreage identified in the Proposal would produce far more than the maximum 10,000 acre-feet of transferrable consumptive use per year. *See* Criteria § II.D. Such a change of water rights would be by far the largest in the history of the Arkansas Basin and would not be a "pilot project."

In addition to the fundamental concern that the CS-U Pilot Project should not include a change of the entire Rocky Ford High Line or Fort Lyon Canal systems, there are many details of the project where specific identification of farms, water rights and structures will avoid or eliminate issues. For example:

- Maintenance of carriage water and ditch seepage will depend on the historical locations of irrigation water delivery in comparison to locations of augmentation stations and recharge projects. Other shareholders in the ditch systems will seek protection from increased ditch loss on their shares that may occur during the pilot project. Conversely, downstream water users will want to ensure that historical ditch seepage loss (which accrues to the Arkansas River and becomes part of their divertable supply) is maintained. The amount of ditch loss obligations will require identification of specific farms, augmentation stations, and recharge sites.
- Some Fort Lyon farms are located east of the Horse Creek drainage. If they are fallowed and water is returned through a local augmentation station, then the depletion reach could exceed the lower boundary at the confluence of Horse Creek and the Arkansas River described at page 5 of the Proposal. Fallowing of Fort Lyon farms located east of John Martin Reservoir could present additional compliance issues with the Arkansas River Compact.

- Identification of and permission to use structures involved in the CS-U Pilot Project will be critical to prevent injury. For example, if Applicants' plan for return flow replacement requires use of a specific augmentation station to prevent injury but Applicants lack the legal right to use the structure, then the pilot project would likely cause injury.

If Applicants do not identify the water rights, irrigated acreage and structures with specificity in their application, they will be unable to satisfy a number additional requirements under the Criteria, including providing: the source of water that will be used to meet return flow obligations (Criteria § II.G.1.e) and how and where necessary replacement water will be delivered to the appropriate stream locations (*id.* § II.G.2.a.v.3.a). At the application stage, the Criteria's detailed list of requirements amount to the need for a specific plan and intent regarding how the CS-U Pilot Project will operate. *Id.* § II.G.

In summary, the CWCB should require Applicants to identify specific lands, water rights, structures and owners at the application stage and limit the lands, water rights, and included structures to those specifically identified and supported by contracts. The Criteria permit the CWCB to extend the application deadline to more than 60 days after selection, and Tri-State would support a moderate (30 to 60 day) extension to allow the Applicants to comply with this condition. *See* Criteria at 10 (§ II.F).

B. Identification of Firm Supply for Return Flow Replacement Obligations.

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

The CWCB Criteria require Applicants to identify, at the selection stage, "the source of water that will be used to meet return flow obligations" and "how and where any necessary replacement water will be delivered to the appropriate stream location(s)." Criteria § II.F.1.c–d. The Proposal does not meet this requirement. The Proposal states that tailwater return flows will be "released back to the river through augmentation stations as the water is being delivered." Proposal at 5. However, there is no current plan for maintaining deep percolation return flows, and the Proposal sets out multiple options:

- "Delayed return flows could be met via the exchange conducted with CS-U" Proposal at 5. However, the current Super Ditch contract with CS-U does not provide for CS-U to deliver any water to maintain historical return flows, so a new contract will be required for this operation. In addition, effluent from Colorado Springs often includes transmountain water that may not be included in a pilot project.

- “Delayed return flows may also be replaced with depletion credits . . . release[d] to the stream through augmentation stations.” Proposal at 5. It is not clear what the term “depletion credit” means, or how a depletion can also be a credit. Assuming that Applicants are referring to the fully consumable portion of farm headgate deliveries for the water rights included in the pilot project, then the application must show that these credits are available at times and locations needed to replace historical return flows. This method does not appear viable for replacement of return flows owed during the non-irrigation (winter) season.
- Delayed return flows may also be replaced with depletion credits that are exchanged to and then released from upstream storage locations. Proposal at 5. This method of return flow replacement is subject to unreliable exchange potential in the Arkansas River. As detailed in Tri-State’s comments regarding the Catlin Pilot Project, use of this method to replace return flows will require extensive terms and conditions to ensure that adequate return flow water is already in storage (or another reliable supply exists) to replace all delayed return flows before fallowing lands each year.
- Delayed return flows may also be replaced through “effectuating trades with entities who have downstream replacement obligations.” Proposal at 5. Applicants have not identified any specific trades, and it is not clear how another entity’s downstream obligation would provide water to make up Applicants’ return flow obligations. The legality of trades will depend on the specific statutes and decrees applicable to each trade. For example, Rule 14 Plans are not authorized to replace return flows on water rights changed to municipal uses, and water in a pilot project may not be traded for water in a substitute water supply plan.
- Delayed return flows may also be replaced “through the delivery of depletion credits . . . to existing or future recharge facilities.” Proposal at 5. The effectiveness of recharge to replace return flows will require detailed information regarding the siting and lagging factors for all proposed recharge sites. For example, recharge should not be sited where shallow groundwater conditions would interfere with recharge accretion to the alluvial aquifer system. Untested and unidentified recharge sites cannot be considered a firm source of supply for replacing return flows.

The Lower Arkansas Valley Water Conservancy District and Tri-State are working to schedule a technical meeting regarding plans to replace historical return flows for the CS-U Pilot Project. Tri-State appreciates the early opportunity to discuss the options above and attempt to identify a return flow plan that is viable and will prevent injury.

At the application stage, the Applicants must include a “description of the source of water to be used to replace all historical return flow obligations, with evidence that the source will provide a firm yield of water.” Criteria, § II.G.1.e (emphasis added). CWCB should condition selection of the CS-U Pilot Project on Applicants’ demonstration in their application that Applicants have refined their return flow plan and identified firm replacement supplies to replace all return flow obligations from the farms, including those obligations that accrue after the ten-year term of the CS-U Pilot Project. The large scale of the CS-U Pilot Project means that return flow obligations, and the potential for injury to other water rights, will also be substantial. By presenting a firm plan to replace return flows, as opposed to a myriad of options and contingencies, Applicants will be able to focus on executing the CS-U Pilot Project and will reduce the risk that the State Engineer would terminate the project because of injury to other water rights. The Criteria permit the CWCB to extend the application deadline to more than 60 days after selection, and Tri-State would support a moderate (30 to 60 day) extension to allow the Applicants to comply with a condition requiring a firm return flow replacement plan at the application stage.

C. Need to Obtain Ditch Company Approvals.

The Proposal discusses the need for ditch company approvals from the Catlin Canal Company, Fort Lyon Canal Company and Rocky Ford High Line Ditch Company. Proposal at 8-9. The Proposal notes the need for ditch company approval of use of company facilities and carriage of non-company water. In addition, ditch company approval may be necessary to (1) transfer shares to different delivery locations under each ditch (e.g. to a location where Applicants have an augmentation station; and (2) to transfer shares to non-agricultural uses outside of the ditch. *See Fort Lyon Canal Co. v. Catlin Canal Co.*, 762 P.2d 1375 (Colo. 1988) (holding that ditch company bylaws conditioning transfers or changes of water rights upon board approval are legally enforceable).

These ditch company approvals will be critical to successful operation of the CS-U Pilot Project, and their details may have significant effects on the design of the project. For example, the locations of delivery of substitute supply water and resulting exchange reaches under the Fort Lyon may depend on transferring shares up-ditch, and the Fort Lyon Canal Company may impose terms and conditions to protect other shareholders from changes in ditch loss resulting from the transfer.

The CWCB should require that submission of an application for the CS-U Pilot Project include final approvals from all three involved ditch companies. The details of such approvals are expected to provide critical guidance on pilot project operations that will protect other water users in each ditch. Having such approvals in place at the application stage will ensure that the pilot project is able to operate as approved, and will reduce the risk of a shutdown related to a subsequent board decision. The Criteria permit the CWCB to extend the application deadline to more than 60 days after selection, and Tri-State would support a moderate (30 to 60 day)

extension to allow the Applicants to comply with a condition requiring a firm return flow replacement plan at the application stage.

II. RESERVATION OF RIGHTS.

Tri-State respectfully requests the selection of the CS-U Pilot Project Proposal include terms and conditions described in Section I of this letter. However, if the Proposal is selected or approved without the terms and conditions that Tri-State deems necessary to prevent injury, or if the project is injurious in its operation, Tri-State reserves the right to raise all issues with the CS-U Pilot Project and pursue them before the CWCB, State Engineer, and Division 2 Water Court. These include but are not limited to the issues described in this letter and additional comments that Tri-State may provide in the future, including comments at the application stage of the CS-U Pilot Project. Nothing in this letter waives Tri-State's rights under Colorado law or establishes a precedent regarding lease-fallowing or pilot projects.

Without waiving its right to comment further during the application stage of the CS-U Pilot Project, Tri-State notes the following additional issues with the Proposal:

- H.B. 13-1248 requires that “during the term of a pilot project, land and water included in a pilot project is not also included in a substitute water supply plan . . . an interruptive water supply agreement . . . or another pilot project.” C.R.S. § 37-60-115(8)(d)(XI); *see also*, Criteria § II.L. The farms listed on Exhibit I to the Proposal appear to overlap with farms included in the Catlin Pilot Project approved by the CWCB in 2015.
- The Proposal discusses trading of “depletion credits” with SWSPs at page 3. Such trades would violate the pilot project statute. C.R.S. § 37-60-115(8)(d)(XI).
- Applicants claim the use of Winter Water Storage Program water as a potential replacement source. Proposal at 10. However, the decree in Case No. 84CW179 provides that “any future change of purpose or use is subject to proof of historic consumptive use, year round river depletions, and conditions to prevent injury under C.R.S. 37-92-305.” Decree ¶ W, at 22-23, Case No. 84CW179, Water Division No. 2 (Nov. 10, 1987) (emphasis added). This statutory reference in the decree requires a water court proceeding to change the use of any Winter Water Storage Program water. The inclusion of Winter Water Storage Program water in the CS-U Pilot Project is prohibited by the decree in Case No. 84CW179.

CONCLUSION

Thank you for the opportunity to comment regarding Applicants' Proposal for the CS-U Pilot Project. Tri-State supports the CWCB's selection of the Proposal with the terms and conditions listed in this letter. If the CWCB has any questions regarding this letter, please let me

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know. Please consider Tri-State a party to the CS-U Pilot Project and copy me on further communications affecting the Proposal and on the CWCB's decision regarding the Proposal. Tri-State anticipates providing further comments and input on the CS-U Pilot Project once the application has been presented to the CWCB as contemplated by the Criteria.

Very truly yours,

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