



AGREEMENT

THIS AGREEMENT is made and entered into this 1 day of ^{May} April, 2019, between John L. Archer ("Archer"), whose address is 38061 CR GG, Wray, CO 80758, and the Republican River Water Conservation District ("RRWCD"), acting by and through its Water Activity Enterprise ("Enterprise"), whose address is 410 Main Street, Suite 8, Wray, Colorado 80758.

RECITALS

WHEREAS, Archer owns 3.5 cubic feet per second of time (c.f.s.) to and out of a water right decreed to the Hayes Creek Ditch No. 3 that was decreed to divert from Hayes Creek, a tributary of the North Fork of the Republican River, with an appropriation date of June 1, 1884, Priority No. 11 in former Water District 65 ("Hayes Creek Ditch No. 3 water right"); and

WHEREAS, Archer is willing to sell his Hayes Creek Ditch No. 3 water rights to the Enterprise on the terms and conditions of this Agreement; and

WHEREAS, the Enterprise has conducted due diligence on the historical use and ownership of Archer's Hayes Creek Ditch No. 3 water right and the Enterprise is willing to purchase said water rights on the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purchase and Sale of Archer's Hayes Creek Ditch No. 3 Water Rights, Purchase Price for Archer's Hayes Creek Ditch No. 3 Water Rights, Dry-Up Acreage, and Revegetation. The Enterprise agrees to purchase, and Archer agrees to sell, all of Archer's right, title, and interest in and to 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right on the terms and conditions set forth in this Agreement. The purchase price for Archer's 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right is Six Hundred Thousand Dollars (\$600,000.00), which shall be payable in U.S. Dollars by the Enterprise at the time of closing. The RRWCD will be responsible for any incidental costs of closing.

1.1 The acres that are owned by and have been irrigated by Archer's 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right are as follows:

Portions of the SWSE, SESE, of Section 33 and SWSW, SESW of Section 34, Township 2 North, Range 43 West of the 6th P.M. and portions north of the river in Lots 3 and 4 of Section 3 and Lots 1 and 2 of Section 4, Township 1 North, Range 43 West of the 6th P.M.



1.2 Archer agrees to comply with the terms of any valid law or regulation requiring the lands to be dried up pursuant to this Agreement to be revegetated, using accepted best management practices; and, further, Archer agrees to revegetate such lands if revegetation is required as a term and condition of any decree to change the use of the 3.5 c.f.s of the Hayes Creek Ditch No. 3 water right that is being sold to the Enterprise pursuant to this Agreement. If a measuring device is required to be installed in the Hayes Creek Ditch No. 3 as a term and condition of any decree to change the use of the 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right, Archer agrees to allow the Enterprise to install and maintain a measuring device in the Hayes Creek Ditch No. 3 and to maintain the Hayes Creek Ditch No. 3 headgate and a section of the Hayes Creek Ditch No. 3 from the headgate to a wasteway that may be installed and maintained by the RRWCD WAE on the Hayes Creek Ditch No. 3 that will allow water diverted at the Hayes Creek Ditch No. 3 to be returned back to the North Fork of the Republican River as necessary to measure water at the measuring device and to return water diverted at the Hayes Creek Ditch No. 3 back to Hayes Creek. The parties agree that any revegetation required pursuant to this Agreement can be accomplished, using accepted best management practices, without the need for irrigation water

1.3 1031 Exchange. The parties agree that if Archer desires to structure the sale of the water rights as an exchange under the terms and requirements of Section 1031 of the Internal Revenue Code, the RRWCD and Enterprise shall cooperate with such exchange. The parties agree that Archer's rights under this Agreement are assignable prior to closing to structure an exchange of the water rights under Section 1031, and the RRWCD and the Enterprise agree to reasonably cooperate in such an exchange with Archer at no additional cost or liability to the RRWCD and/or the Enterprise. The parties hereto agree that they shall perform all obligations and execute all documents necessary to effectuate a 1031 tax deferred exchange.

2. Deeds. On the closing date, Archer shall execute and deliver to the Enterprise a good and sufficient general warranty deed in a form consistent with C.R.S. § 38-30-113(1) or alternatively, if Archer has provided the Enterprise with an acceptable title opinion letter, then Archer shall execute and deliver to the Enterprise a good and sufficient special warranty deed in a form consistent with C.R.S. § 38-30-115. The form of the deed shall be mutually acceptable to the parties hereto and shall convey Archer's interest in and to 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right to the Enterprise free and clear of all liens and encumbrances. If Archer elects to provide the Enterprise with a title opinion letter, he shall cause to be furnished to the Enterprise at least seven days prior to the closing date, at Archer's expense, a title opinion, prepared by a licensed Colorado attorney acceptable to the Enterprise stating that Archer has good and marketable title to 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right.

3. Dry-Up Covenant; Documents, Historical Use Affidavit, and Cooperation. Archer agrees not to irrigate the acres described in paragraph 1 above. This agreement shall be a covenant running with the land and shall be binding upon the successors, legal representatives, heirs, and assigns of Archer. Enterprise may require the completion of a separate dry-up covenant to comply with this paragraph which Archer agrees to execute upon presentation.



3.1 At the closing, Archer agrees to provide the Enterprise with all documents and information in his possession or control relating to the Hayes Creek Ditch No. 3, the Hayes Creek Ditch No. 3 water right, the use of the Hayes Creek Ditch No. 3 water rights, and the ownership of the Hayes Creek Ditch No. 3 water rights, and further, Archer agrees that at the closing he will provide an affidavit describing the historical use of the Hayes Creek Ditch No. 3 water rights and will cooperate with the Enterprise in any Water Court proceeding to change the use of Archer's 3.5 c.f.s. of the Hayes Creek Ditch No. 3 water right.

3.2 Archer currently owns and maintains a crossing of Hayes Creek with a twenty-four inch culvert. Archer agrees, at his own expense and within 180 days of closing, to replace such twenty-four inch culvert with a forty-eight inch culvert installed a level relative to the bed of the stream to allow the natural non-flood flows of Hayes Creek to pass through without ponding or otherwise backing up said flows and maintain such culvert as is necessary to meet the intent of this sub-paragraph.

3.3 Archer agrees to grant the Enterprise a perpetual easement to access Hayes Creek across and upon any property currently held by Archer that abuts Hayes Creek, to take such reasonable actions as the Enterprise deems necessary to maintain the stream bed and banks and natural flow of the stream, including but not limited to the removal of beaver dams. Said easement shall burden, attach to and run with said lands, and shall be binding not only upon Archer, but also upon Archer's heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of said property. This covenant shall also run with and benefit the Water Rights. The terms and provisions of this covenant shall not expire and shall be perpetual unless specifically released in writing by Enterprise or its successors and assigns. This covenant may be enforced by Enterprise or by any party having any right, title or interest in the Hayes Creek Ditch No. 3 water rights, at any time in any action at law or in equity

4. Approval by the RRWCD Board of Directors. The parties acknowledge and agree that this Agreement must be approved by the board of directors of the RRWCD before it is binding on the Enterprise. For 15 days after the date of this Agreement, this Agreement shall be an irrevocable offer by Archer that may be accepted by approval of this Agreement by the board of directors of the RRWCD as provided herein. The board of directors of the RRWCD will hold a regular or special meeting within 15 days of the date of this Agreement to approve this Agreement. Notice of such approval shall be provided to Archer. If the board of directors of the RRWCD does not approve this Agreement within 15 days of the date of this Agreement, this Agreement shall be null and void.

5. Closing Date. The closing shall take place within 28 days after the date of this Agreement at a time and place mutually agreed upon by Archer and the Enterprise. If Archer and the Enterprise cannot agree upon a time and place for the closing, the closing shall be at the RRWCD office at 10:00 am on the 28th day after the date of this Agreement. At the closing Archer shall execute and deliver the appropriate deed, as provided in paragraph 2 above, and the Enterprise shall deliver the payment for the water rights, as provided in paragraph 1 above.

6. Notices. Notices, consents, approvals or other communications provided for herein or given in connection herewith shall be deemed given, made, delivered, or served if made



in writing and delivered personally or sent by registered or certified United States mail, return receipt requested and postage prepaid, to:

ARCHER:

John L. Archer
38061 CR GG
Wray, CO 80758

ENTERPRISE:

Deb Daniel
Republican River Water Conservation District
410 Main Street, Suite 8
Wray, CO 80758

With copy to:

David W. Robbins, Esq.
Hill & Robbins, P.C.
1660 Lincoln Street, Ste. 2720
Denver, CO 80264

or to such other address as either party hereto may from time to time designate in writing and deliver in a like manner to the other party. Such notices or other communications shall be deemed given or made upon delivery, if delivered personally, or upon the date of the mailing, if sent by registered or certified United States mail.

7. Default, Right to Cure and Remedies. In the event that either party believes that the other is in default of any obligation under this Agreement, the non-defaulting party shall give written notice of the default to the party it believes is in default. If a notice of default is provided, the party accused of the default shall either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within 30 days, the parties may resort to their remedies.

8. Time is of the Essence. Time is of the essence hereof and if any payment or condition hereof is not made, tendered, or performed by either Archer or the Enterprise as provided herein, and such default is not cured as provided above, the non-defaulting party may have any such remedies as provided by law, including the right to specific performance and damages. If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday, or federal or Colorado state holiday, then such date shall automatically be extended to the next day which is not a Saturday, Sunday, or federal or Colorado state holiday. In no event shall either party hereto be liable to the other for lost profits or punitive, exemplary, or consequential damages.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs and successors.

10. Assignment. Except as allowed under paragraph 1.1, above, there shall be no assignment of any interest under this Agreement without the prior written consent of the other



party. Upon an authorized assignment, all the provisions hereof shall inure to the benefit and be binding upon the successors, heirs, and assigns of Archer and the Enterprise.

11. Waiver. No delay in exercising any remedy shall constitute a waiver thereof, and no waiver by Archer or the Enterprise of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same, or any other covenant or condition of this Agreement.

12. Captions. The captions of the paragraphs of this Agreement are for convenience only and shall not govern or influence the interpretation hereof.

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

14. Place of Performance and Venue. The parties agree that this Agreement is performable in the Yuma County, Colorado, and that venue for any disputes over any issue resulting from this Agreement shall be in Yuma County District Court.

15. Further Documents, Etc. Each party shall execute and deliver all such documents and perform all such acts as are reasonably requested by the other party from time to time at and after the closing to carry out the matters contemplated by this Agreement.

16. Entire Agreement and Changes. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understanding of the parties, oral or written, are hereby superseded and merged herein. No change or addition may be made to this Agreement, except by a written agreement executed by the parties.

17. Survival of Closing. All terms and conditions of this Agreement shall survive the closing and shall not merge into the deed.

18. Counterparts. This Agreement may be executed in duplicate counterparts and the counterparts shall together constitute this Agreement.

19. Date of this Agreement. The date of this Agreement shall be the date of the execution of this Agreement by Archer and the Enterprise, if executed on the same date. If the Agreement is not executed by Archer and the Enterprise on the same date, then the date of this Agreement shall be the latest date on which Archer or the Enterprise executed this Agreement.

20. Additional Warranties by the Enterprise. If this Agreement is approved by the Board of Directors of the RRWCD as provided herein, the Enterprise makes the following representations, warranties, and covenants to Archer:

(a) The execution and performance of this Agreement has been duly approved by the board of directors of the RRWCD, which is the Governing Body of the Enterprise, in accordance with applicable law.



(b) The Enterprise has the right, power, and authority to enter into this Agreement and to perform its obligations hereunder, and the person executing this Agreement on behalf of the Enterprise has the right, power, and authority to do so.

(c) This Agreement constitutes the legal, valid, and binding obligation of the Enterprise enforceable against the Enterprise in accordance with its terms. Neither this Agreement nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or documents to which the Enterprise is a party or to which the Enterprise is bound.

(d) There is no suit, action, or arbitration, or legal, administrative, or other proceeding, formal or informal, pending or threatened, which affects the Enterprise's ability to perform this Agreement.

21. Additional Warranties by Archer. If the conditions set forth in paragraph 4, above are satisfied, Archer make the following representations, warranties, and covenants to the Enterprise:

(a) Archer has the right, power, and authority to enter into this Agreement and to perform their obligations hereunder.

(b) This Agreement constitutes the legal, valid, and binding obligation of Archer enforceable against Archer in accordance with its terms. Neither this Agreement nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or documents to which Archer is a party or to which Archer is bound.

(c) There is no suit, action, or arbitration, or legal, administrative, or other proceeding, formal or informal, pending or threatened, which affects Archer's ability to perform this Agreement.

(d) The execution, delivery, and performance of this Agreement shall not breach or constitute a default, or grounds for the acceleration of the maturity of, any agreement, indenture, undertaking or other instrument, to which Archer is a party or by which Archer or any of his property may be bound or affected.



**REPUBLICAN RIVER WATER
CONSERVATION DISTRICT, Acting by
and through its WATER ACTIVITY
ENTERPRISE**

JOHN L. ARCHER

By: *Rod Lenz*
Rod Lenz
President
RRWCD Board of Directors

By: *John L. Archer*
John L. Archer

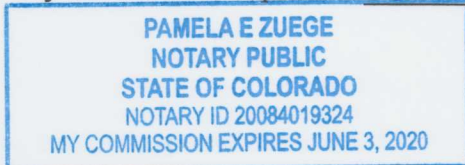
ATTEST:

By: *Timothy Pautler*
Timothy Pautler
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF YUMA)

Subscribed and sworn to before me this 1st day of May, 2019, by Rod Lenz as
President of the Republican River Water Conservation District, acting by and through its Water
Activity Enterprise.
Witness my hand and seal.

My commission expires: 6-3-2020

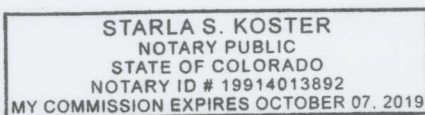


Pamela E Zuege
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF YUMA Kit Carson)

Subscribed and sworn to before me this 1st day of May, 2019, by Timothy Pautler as
Secretary of the Republican River Water Conservation District, acting by and through its Water
Activity Enterprise.
Witness my hand and seal.

My commission expires: 10/7/2019



Starla S Koster
Notary Public



STATE OF COLORADO

)

) ss.

COUNTY OF YUMA

)

Subscribed and sworn to before me this 1st day of May 2019, by John L. Archer.

Witness my hand and seal.

My commission expires: 6-3-2020



Pamela E Zuege
Notary Public



SPECIAL WARRANTY DEED

THIS DEED, made this 1st day of May, 2019, between JOHN ARCHER, whose address is 38061 CR GG, Wray, Colorado 80758 ("Grantor"), and the REPUBLICAN RIVER WATER CONSERVATION DISTRICT, a water conservation district and a body corporate under the laws of Colorado, acting by and through its WATER ACTIVITY ENTERPRISE, whose legal address is 410 Main Street, Suite 8, Wray, CO 80758 ("Grantee");

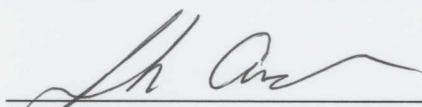
WITNESSETH, that the Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, its successors and assigns forever, all of the Grantor's right, title, interest, claim and demand in and to the following described water right that was decreed for diversion in the County of Yuma, State of Colorado:

All water and property rights to the Hayes Creek Ditch No. 3, 3.5 cubic feet per second, Priority No. 11 within Water District No. 65, Date of Appropriation: June 1, 1894, Date of Adjudication: July 3, 1912, Court of Adjudication: County of Phillips District Court, Civil Action No. 872.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained water right, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said water right above bargained and described, with the appurtenances, unto the Grantee, its successors and assigns forever. And the Grantor, for themselves, their heirs, their successors and assigns, do covenant and agree that the Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained and described water right in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof by, through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

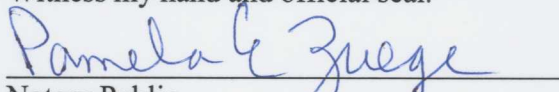


John Archer

STATE OF COLORADO)
)
COUNTY OF Yuma)

The foregoing instrument was acknowledged before me this 1 day of May, 2019 by John Archer.

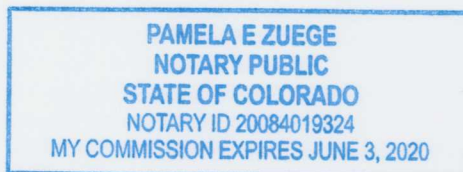
Witness my hand and official seal.



Notary Public

6-3-2020

My Commission Expires



DRY-UP AND NON-DIVERSION COVENANT

1st THIS DRY-UP AND NON-DIVERSION COVENANT ("Agreement") dated as of this day of May, 2019, is granted by JOHN ARCHER ("Grantor"), whose address is 38061 CR GG, Wray, CO 80758 and the Republican River Water Conservation District ("RRWCD"), acting by and through its Water Activity Enterprise ("Enterprise") ("Grantee"), whose address is 410 Main Street, Suite 8, Wray, Colorado 80758.

RECITALS

A. The Enterprise has purchased from Grantor all water and property rights to the Hayes Creek Ditch No. 3, 3.5 cubic feet per second, Priority No. 11 within Water District No. 65 Date of Appropriation: June 1, 1894, Date of Adjudication: July 3, 1912, Court of Adjudication: County of Phillips District Court, Civil Action No. 872 ("Water Rights").

B. The Water Rights have historically been used for the irrigation of certain real property located in Yuma County, Colorado, and more particularly described as: Portions of the SWSE, SESE, of Section 33 and SWSW, SESW of Section 34, Township 2 North, Range 43 West of the 6th P.M. and portions north of the river in Lots 3 and 4 of Section 3 and Lots 1 and 2 of Section 4, Township 1 North, Range 43 West of the 6th P.M. ("Property").

C. Grantor is the owner of the Property.

D. Grantor acknowledges that the Water Rights are intended to be utilized by the RRWCD and Enterprise to further the statutory purposes of the RRWCD and that the RRWCD may elect to change the Water Rights in an appropriate proceeding before the Water Court or pursuant to administrative approval by the Colorado Division of Water Resources, to change the place and/or type of use of the Water Rights.

E. Grantor understands that the Water Court and State Engineer may require, as a term and condition of such change, that the Property must be dried up and not further irrigated with the Water Rights as a term and condition of allowing such change.

F. Grantor desires to execute this Agreement affirming the permanent removal from irrigation of the Property, and cessation of all other consumptive uses of the Water Rights on the Property, as well as certain other covenants with respect to the Property under the terms of this Agreement, a covenant running with and burdening the Property.



AGREEMENT

NOW, THEREFORE, Grantor, in consideration of the purchase transaction for the Water Rights, hereby covenants and agrees as follows:

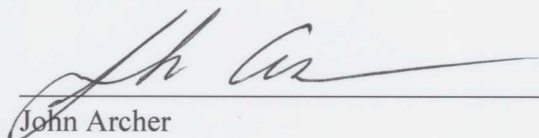
1. The Recitals, above, are incorporated as if fully set forth herein.
2. Grantor agrees that he will not divert water from Hayes Creek to irrigate the Property, and will not irrigate the Property from any source of water, including groundwater, except as allowed in this Agreement.
3. Grantor hereby grants to Grantee a non-exclusive, perpetual easement for, over, and across the Property for the purposes of providing a reasonable means for Grantee and its agents to access the Property, travel upon the Property and to take all actions reasonably necessary to accomplish the dry-up of the Property and demonstrate to the satisfaction of the Colorado Division of Water Resources and the Water Court that permanent dry-up has occurred, provided such actions do not unreasonably interfere with Grantor's use of the Property. In addition, Grantee will be allowed to construct, maintain and monitor stream or ditch gauging devices and observation wells or lysimeters, conduct soil evaporation and plant transpiration tests, conduct vegetative studies and surveys all at Grantee's expense. Grantee will provide to Grantor reasonable advance notice of Grantee's exercise of this easement. Grantee will minimize interruption of Grantor's operations on the Property, will consult with Grantor prior to taking such actions in order to minimize disruption of Grantor's use and enjoyment of the Property and the proposed location of any observation holes or drainage facilities must be approved by Grantor before construction. Such approval will not be unreasonably withheld.
4. This Agreement burdens, attaches to and runs with the Property, and will be binding not only upon Grantor, but also upon its successors and assigns and any other persons or entities that may acquire an ownership or leasehold interest in all or any portion of the Property. The terms and provisions of this Agreement will not expire and are perpetual unless specifically released in writing by Grantee or its successors and assigns. This Agreement may be enforced by Grantee or by any party having any right, title or interest in the Water Rights.
5. Grantor is entitled to use the Property for any purposes not inconsistent with this Agreement, including but not limited to, dry-land grazing, agriculture, and recreational, residential, commercial, and industrial purposes. Unless otherwise required by any decree changing the Water Rights, and provided further that the consumptive use component of the Water Rights is not diminished thereby, this Agreement will not



prohibit Grantor or their successors and assigns from: (a) irrigating the Property with water rights which may, in the future, be transferred to such lands and for such use through an appropriate Water Court proceeding; (b) irrigating the Property with water wells located on the Property as long as such well use is authorized pursuant to a valid permit or decree; (c) irrigating the Property with water approved for use in a Substitute Water Supply Plan approved pursuant to C.R.S. 37-92-308, or successor statutes, using a replacement source or sources other than the Water Rights subject of this Agreement; or, (d) irrigating the Property with treated water supplied by a municipality or water district.

6. Upon transfer of the Water Rights by Grantee to any party, that party will succeed to Grantee's rights under this Agreement and will have the right to enforce the terms of this Agreement against Grantor, or, if the Property has been conveyed by Grantor to others, against the then current owner of the Property.
7. Grantor warrants that Grantor is the fee simple owner of the Property.
8. This Agreement may be recorded in the office of the Yuma County, Colorado Clerk and Recorder.

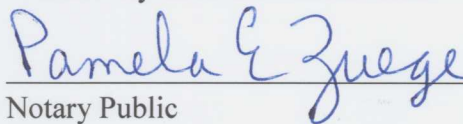
IN WITNESS WHEREOF, the Grantor sets his hand and seal this day and year indicated.


John Archer

STATE OF COLORADO)
)
COUNTY OF YUMA)

The foregoing instrument was acknowledged before me this 1st day of May, 2019 by John Archer.

Witness my hand and official seal.


Notary Public

6-3-2020
My Commission Expires

