

Loan Feasibility Study  
For  
San Luis Creek Subdistrict Peachwood Farm Water Rights Purchase

Sponsored By

The Rio Grande Water Conservation District, acting for and on behalf of Special Improvement District  
No. 4 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise

## Executive Summary

The Rio Grande Water Conservation District, acting for and on behalf of Special Improvement District No. 4 (Subdistrict No. 4) has executed a **Lease and Option to Purchase** contract for twelve fields under center pivot irrigation from Ron Bowman in Saguache County. The land is located just north of the town of Moffat, Colorado. The reason for the purchase is to obtain a secure source of water to be used as a remedy for injurious stream depletions caused by groundwater withdrawals from Subdistrict No. 4 Wells and assist in the recovery and maintenance of the sustainability of the region's confined aquifer. The purchase includes 13 groundwater rights and two surface water rights.

Subdistrict No. 4 is requesting a loan in the amount of **\$3,490,560** to: **1) purchase land and appurtenant water rights; 2) construct two augmentation wells; and, 3) install measurement devices and/or other structures needed to return groundwater and surface water to San Luis Creek** for the replacement of injurious stream depletions and to maintain a sustainable water supply in the San Luis Creek Response Area.

Subdistrict No. 4 will assess its members an annual Groundwater Withdrawal Fee (per ac-ft.) in an amount sufficient to cover both the loan and interest payments and the operation and maintenance costs for the project. Subdistrict No. 4 is required to prepare and approve an annual budget through an open and public process. The Board of Managers of Subdistrict will set the annual Groundwater Withdrawal Fee rate during the budget process at a rate sufficient to cover the loan payments, any operation and maintenance costs for the project, and to cover all additional operating costs necessary to operate the Subdistrict No. 4 Annual Replacement Plan. Those fees will be incorporated into the Rio Grande Water Conservation District's annual budget.

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## Contents

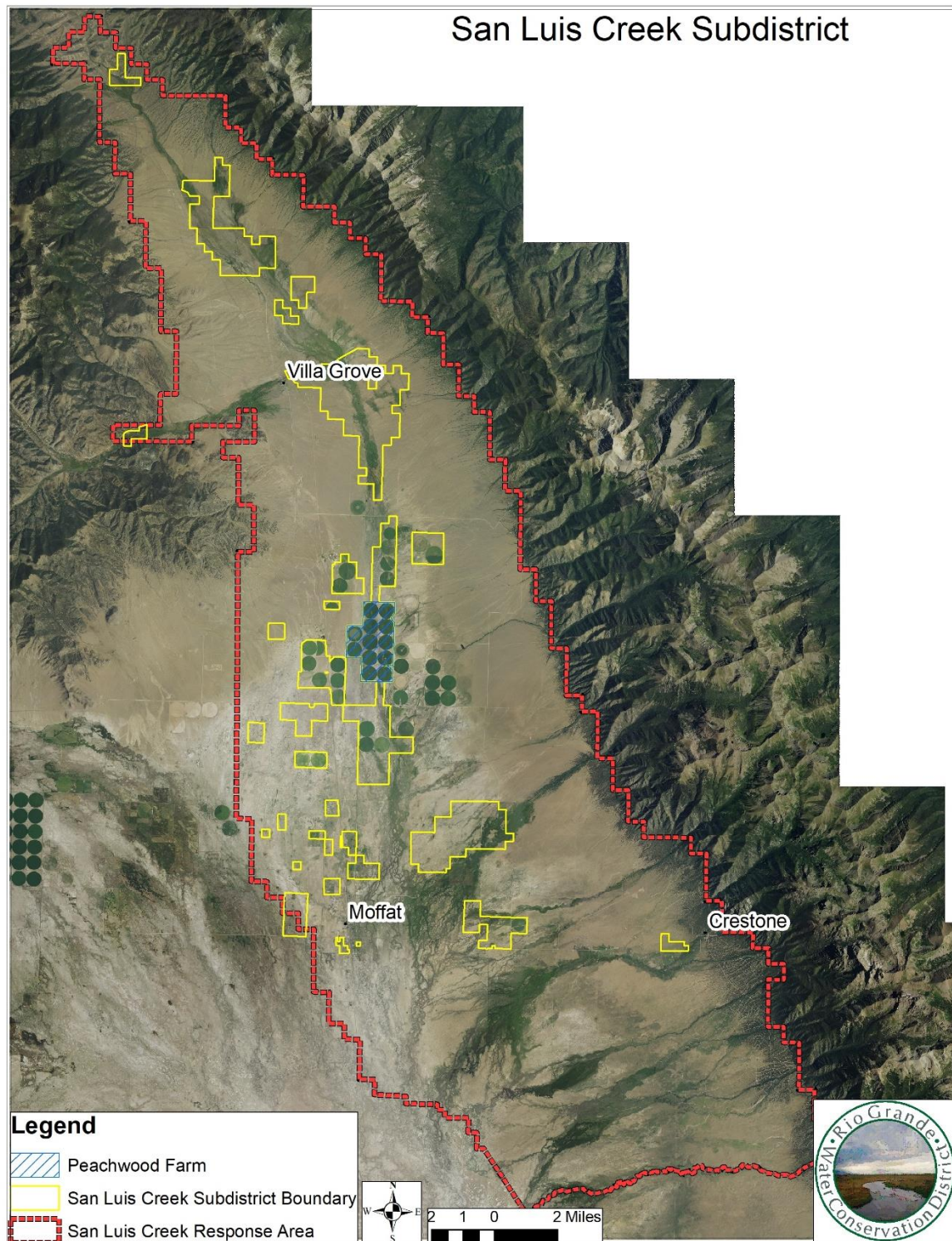
<b>1.0</b>	<b>Introduction</b>	<b>5</b>
1.1	Purpose of the Water Rights Purchase	5
1.2	Project Sponsor – Special Improvement District No. 4 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise	7
1.3	Project Area	7
1.4	Land Uses	8
<b>2.0</b>	<b>Water Demands and Water Rights Included in the Peachwood Farm Project</b>	<b>8</b>
2.1	Sustainable Aquifer Requirements	8
2.2	Water Supply Demands	9
2.3	Water Rights Included in the Peachwood Farm Project	9
<b>3.0</b>	<b>Project Description</b>	<b>11</b>
3.1	Purpose and Background of the Peachwood Farm Project	11
3.2	Analysis of Alternatives	11
3.2.1	Alternative 1 – Purchase Surface Water Rights and Well Injury Payment Agreements	11
3.2.2	Alternative 2 – Peachwood Farm Project	13
3.2.3	Alternative 3 – No Action	14
3.3	Preferred Alternative – Alternative 2	14
<b>4.0</b>	<b>Engineering Analysis for the Preferred Alternative</b>	<b>15</b>
4.1	Source of Water for the Peachwood Farm Project	15
4.2	Hydrologic Evaluation	15
<b>5.0</b>	<b>Project Cost</b>	<b>15</b>
<b>6.0</b>	<b>Permitting, Change of Water Rights</b>	<b>16</b>
<b>7.0</b>	<b>Implementation Schedule</b>	<b>16</b>
<b>8.0</b>	<b>Institutional Considerations</b>	<b>16</b>
<b>9.0</b>	<b>Social and Environmental Impacts of the Project</b>	<b>16</b>
<b>10.0</b>	<b>Financial feasibility</b>	<b>17</b>
10.1	Financial Repayment	17
10.2	Credit Worthiness	17
<b>11.0</b>	<b>Conclusions and Recommendations</b>	<b>18</b>

## **1.0 Introduction**

### **1.1 Purpose of the Water Rights Purchase**

Members of Subdistrict No. 4 are landowners within the Rio Grande Water Conservation District who rely on groundwater for all or part of their commercial, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System (RGDSS) Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division 3, District Court, Water Division No. 3, Case No. 15CW3024 (Groundwater Rules) as the San Luis Creek Response Area. Subdistrict 4 is a “checkerboard” encompassing specific lands within the Response Area, see Figure 1 below showing a map of the Subdistrict and Response Area. The RGDSS Groundwater Model has calculated stream depletions occurring to surface water streams caused by wells withdrawing water from the groundwater system within the San Luis Creek Response Area that may cause injury to senior surface water rights and/or unreasonably interfere with the state’s ability to fulfill its obligations under the Rio Grande Compact, codified in section 37-66-101, C.R.S. In order to remedy the injury or interference, the State Engineer has promulgated Groundwater Rules that have a direct impact on the current and future use of groundwater within the San Luis Creek Response Area. Under the Groundwater Rules non-exempt wells can only continue groundwater withdrawals if they have either: an individual Plan for Augmentation, a Substitute Water Supply Plan, or their well is included in a subdistrict’s Groundwater Management Plan and Annual Replacement Plan. A subdistricts Annual Replacement Plan must demonstrate that the subdistrict has a sufficient source of replacement water available to replace injurious stream depletions resulting from the Subdistrict Wells’ groundwater withdrawals. The Subdistrict must also demonstrate progress towards achieving and maintaining a sustainable water supply. Subdistrict No. 4 seeks a Three Million, Four Hundred and Ninety Thousand, Five Hundred and Sixty dollar (\$3,490,560.00) loan from the CWCW Water Project Loan Program in order to fund acquisition of Peachwood Farm and its associated water rights. The Subdistrict intends to use the retained water rights to replace some or up to all of its injurious stream depletions occurring to San Luis Creek when there is not a Well Injury Payment in place. Subdistrict 4 has plans in place to remedy any injurious stream depletions which may occur to Crestone Creek as a result of the groundwater withdrawals from these Subdistrict Wells. Funding for the acquisition of the Peachwood Farm water rights and the associated augmentation well construction will allow the Subdistrict No. 4 Members to continue operating their Subdistrict Wells and protect the local economy.

Figure 1 – San Luis Creek Response Area Map



### **1.2 Project Sponsor –The Rio Grande Water Conservation District, acting for and on behalf of Special Improvement District No. 4 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise**

The Rio Grande Water Conservation District (District) was created by the Colorado General Assembly and formed in 1967 by a vote of the people residing within its boundaries. The District was created to protect, enhance, and develop water resources in the Rio Grande River basin. The District encompasses a five county region, which includes Alamosa, Rio Grande, Conejos and those portions of Saguache and Mineral Counties within the Rio Grande River basin, including the Closed Basin. The District is a corporate body and a political subdivision. In order to accomplish its mission, the District is authorized to levy an ad valorem tax on all real property located within the District, collect fees assessments and surcharges. In addition, the District is also authorized to contract with Federal, State and local agencies, and individuals. Under section 37-48-108 C.R.S., the District is authorized to form Special Improvement Districts (subdistricts), which address specific needs and purposes for groups of water users in the District.

Beginning in the early 2000's, the District began the process of forming subdistricts to address the needs of water users in various regions of the District and aid them in complying with the proposed Groundwater Rules.

Subdistrict 4 was established by the Saguache County District Court on July 21, 2017, in Case 2017CV30005. The overall purpose of this Subdistrict is to provide a community-oriented water management alternative to individual augmentation plans or state-imposed regulations limiting the use of wells in Water Division No. 3; that is, to provide a mechanism through which a group of well users in the San Luis Creek Response Area can work collaboratively to develop and implement a system of self-regulation using economic-based incentives and other management tools that promote responsible groundwater management and that remedies the injury to senior surface water rights that result from groundwater use from Subdistrict wells. The Subdistrict currently consists of 160 wells that withdraw an average of 11,400 acre-feet of groundwater.

In order to fund their operations, the Subdistrict assesses Annual Service and User Fees by special assessments placed on their members and contract holders' taxes. The fees assessed by the Subdistrict are a per well Administrative Fee and a per acre-foot Groundwater Withdrawal Fee. The per acre-foot Groundwater Withdrawal Fee will be used to fund repayment of the Peachwood Farm Project. For 2022, the Groundwater Withdrawal Fee was assessed at \$30.72 per acre-foot, with \$9.55 per acre-foot being designated for remedying injurious depletions and \$21.17 per acre-foot being designated for aquifer sustainability costs.

### **1.3 Project Area**

The Project Area is located in the northeasterly portion of the San Luis Valley in Saguache County, within the Closed Basin. The economy in this area is predominately controlled by the agricultural sector. Crops grown in the San Luis Valley include alfalfa, native grass hay,

wheat, barley, sorghum, canola, spinach, lettuce, carrots, and potatoes. Some of the other economic sectors include forestry, tourism, and mining.

The San Luis Valley is a large intermountain basin covering approximately 3,200 square miles of land in southern Colorado and northern New Mexico. The valley is bordered by the Sangre de Cristo Mountains to the east and northeast, the San Juan and La Garita Mountains to the west and northwest, and the Taos Plateau to the south. Snowmelt from the mountains surrounding the valley is responsible for most of the area's stream flow in the associated watershed, including Saguache Creek, the Rio Grande and Conejos River. Approximately 56 percent of the valley is in private ownership. The remaining acres are protected and managed by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and State of Colorado. Most of the private land and wetland habitat occurs on the valley floor, creating one of the largest intermountain valleys in the world.

#### **1.4 Land Uses**

Land use in the Subdistrict is predominately irrigated agriculture, with a small amount of municipal and commercial use. The main crops grown in the Subdistrict are small grains and alfalfa. Subdistrict wells withdraw an average of 11,400 ac-ft annually, 77 percent of withdrawals are used for sprinkler irrigation, 10 percent are used for flood irrigation, and 13 percent are for other uses.

### **2.0 Water Demands and Water Rights Included in the Peachwood Farm Project**

#### **2.1 Sustainable Aquifer Requirements**

The Groundwater Rules require confined aquifer response areas to achieve and maintain a sustainable water supply. The sustainable water supply is currently defined as maintaining the five-year running average groundwater withdrawals within the range of the average annual groundwater withdrawals for the period from 1978-2000. No later than ten years from the effective date of the Groundwater Rules, the State Engineer is to prepare a report detailing the preferred methodologies to maintain a sustainable water supply and manage artesian pressures. Currently, the San Luis Creek Response Area's five-year average groundwater withdrawals are 11,388 acre-feet and average groundwater withdrawals from 1978-2000 were 9,869 acre-feet. This means the total groundwater withdrawals in the response area are 1,519 acre-feet above the sustainability requirement. Additionally, there is a large area of groundwater decline of five feet centered around the Peachwood Farm property.

The wells on the property are subject to volumetric limitations of 180 acre-feet each, which gives a maximum possible value for the annual groundwater withdrawals of 2,160 acre-feet. From 2009-2020 the average annual groundwater withdrawals for Peachwood Farm were 1,681 acre-feet. Reducing the total groundwater withdrawals in the San Luis Creek Response Area through this purchase will place the Subdistrict within or very near the sustainability requirement of the 1978-2000 groundwater withdrawals. Using the RGDSS Groundwater



Model, preliminary estimates of the effect this project will have on groundwater levels indicate the aquifer level will increase. The range of increase could be several feet, but this analysis is inexact. This project should enable the Subdistrict to achieve and maintain a sustainable water supply using either the 1978-2000 groundwater withdrawals analysis or the artesian pressure method that the Division of Water Resources may implement in the future.

## 2.2 Water Supply Demands

The water supply demands are determined by the Rio Grande Decision Support System (RGDSS) Groundwater Model and the San Luis Creek Response Area Response Functions. These tools are used to calculate the Subdistrict's depletions to San Luis Creek on a monthly basis. The magnitude of depletions varies with the April to September flows in Saguache Creek. Saguache Creek is used in the Response Function due to the availability of data there and a relative lack of data on San Luis Creek. The Response Function evaluates three unique stream flow conditions; flows less than 26,000 acre-feet (Dry Years), flows between 26,000 and 37,999 acre-feet (Average Years), and flows of 38,000 acre-feet and more (Wet Years). The irrigation season depletions are an average of 460 ac-ft in Wet Years, 406 ac-ft in Average Years, and 241 ac-ft in Dry Years, see Table 1 below.

**Table 1 – San Luis Creek Water Supply Demands**

	<b>Monthly Injurious Stream Depletions to San Luis Creek</b>												
<b>Wet Years</b>	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total
Ac-Ft/Month	144	97	22	5	3	3						186	460
Ac-Ft/Day	5	3	0.7	0.2	0.1	0.1						6	
c.f.s./Day	2.34	1.63	0.36	0.08	0.05	0.05						3.13	
<b>Average Years</b>	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total
Ac-Ft/Month	127	72	15	3	3	3						183	406
Ac-Ft/Day	4	2	0.5	0.1	0.1	0.1						6	
c.f.s./Day	2.06	1.21	0.24	0.05	0.05	0.05						3.07	
<b>Dry Years</b>	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total
Ac-Ft/Month	37	7	3	3	3	3						185	241
Ac-Ft/Day	1.2	0.2	0.1	0.1	0.1	0.1						6.2	
c.f.s./Day	0.60	0.12	0.05	0.05	0.05	0.05						3.12	

Table 1. The table shows the average stream depletions from Response Function results under different April to September Saguache Creek stream flows. Wet Year stream flows are greater than 38,000 ac-ft, Average Years are between 26,000 and 37,999 ac-ft, and Dry Years are less than 26,000 ac-ft. San Luis Creek depletions are modeled in relation to Saguache Creek stream flows.

## 2.3 Water Rights Included in the Peachwood Farm Project

This project involves the purchase of thirteen irrigation well rights and two irrigation ditches. Each of these water rights are legally decreed through the Division of Water Resources. The decrees for the thirteen wells are included in Attachment 1. The water rights are listed below:

Surface Water Rights:

Ditch Name	Priorities	Flowrate	Approp. Date
Tobler	29	0.4 c.f.s.	2/15/1873
	85	1.0 c.f.s.	5/15/1882
Tobler Rominger	36	10 c.f.s.	6/15/1873

Groundwater Rights:

Pivot #	Permit #	WDID	Case #	Approp. Date	Well Depth (feet)
1	12717-F	2505060	90CW0037	3/3/1968	120
2	174-R-R	2505061	W3202	6/25/1949	161
1/3	176-R-R	2505057	90CW0037	2/18/1947	216
3	23182-F-R	2505059	90CW0037	3/3/1968	108
4	177-R-R	2505058	90CW0037	3/3/1968	148
5	172-R	2505029	W3202	6/29/1949	219
6	22442-F	2505032	W3202	6/29/1949	124
7	22445-F	2505036	W3202	2/18/1947	118
8	173-R-R	2505030	W3202	6/20/1949	130
9	22443-F	2505035	W3202	6/25/1949	127
10	22446-F	2505034	W3202	2/18/1947	127
14	22441-F	2505031	W3202	8/5/1949	124
15	175-R-R	2505056	W3202	8/5/1949	127

### **3.0 Project Description**

#### **3.1 Purpose and Background of the Peachwood Farm Project**

This project involves a partnership between the Subdistrict, Colorado Open Lands, and the private land owner. Over the previous year and a half these three entities negotiated a transaction that was met the needs and goals of all three parties. This project consists of two parts, which address both the sustainability and stream depletion requirements of the Groundwater Rules for Subdistrict 4. The sustainability requirements are addressed through the first of its kind groundwater conservation easement, while the stream depletions are addresses through the acquisition of the water rights. The easement is included as Attachment 2.

The well owners in Subdistrict 4 are required to reduce the total groundwater withdrawals in the response area to the sustainable level no later than 2030. The landowner has agreed to place the land in a permanent conservation easement. This easement restricts the use of a portion of the groundwater rights to aquifer sustainability. The restricted water rights will be placed in the Groundwater Conservation Easement Conservation Program of the Rio Grande Water Conservation District. This program will ensure the water rights are not subject to the Division of Water Resources decennial abandonment. The property consists of twelve center pivot irrigated fields. These fields will be permanently removed from irrigated agriculture and revegetated. Through the negotiations with the landowner, the Subdistrict has agreed to undertake the responsibility, costs, and risk of achieving the revegetation. Once the revegetation is complete, the groundwater withdrawals on most of the property will cease, which will bring the Subdistrict within the sustainability requirements.

The groundwater wells within the San Luis Creek Subdistrict are also required to replace injurious depletions to the streams on an ongoing basis. The wells will owe a certain amount to San Luis Creek and Crestone Creek. To ensure an available supply of water on San Luis Creek, the conservation easement will only restrict half of the water rights on five of the Peachwood Farm Wells. This will leave the Subdistrict with 450 acre-feet available for use as augmentation through a Substitute Water Supply Plan while the water rights are changed through water court. It is anticipated that the San Luis Creek Subdistrict will be able to work with surface water right owners who also rely on their wells to remedy depletions on Crestone Creek. Subdistrict 4 will replace depletions to San Luis Creek with water rights not encumbered by the Conservation Easement. The Subdistrict has worked with the community for more than five years to find a suitable source(s) to remedy depletions on San Luis Creek that everyone would agree upon. The following alternatives described below have been considered to remedy depletions on San Luis Creek.

#### **3.2 Analysis of Alternatives**

##### **3.2.1 Alternative 1 – Purchase Surface Water Rights and Well Injury Payment Agreements**

Surface water rights could be purchased, and the irrigation land could be dried up. The historical consumptive use would be changed to augmentation through water court. The San Luis Creek drainage does not have any existing reservoir storage; therefore, the water would have been either left in the creek to meet depletions or with DWR approval the water could be recharged and pumped back to the creek later during the irrigation season when it was needed.

San Luis Creek is a small, mostly ephemeral stream, with limited surface water rights having a reliable supply of water. The water rights which receive a reliable supply of water typically do not yield the amount of water needed in the month of April, when stream depletions are high and historical consumptive use is low. Therefore, Subdistrict 4 has limited options available for purchasing surface water rights that would meet the Subdistrict's needs. The San Luis Creek Subdistrict has evaluated several properties which included surface water rights and the feasibility of building a reservoir. Even if Subdistrict 4 were to purchase several properties, the historical consumptive use would not amount to enough replacement water at the proper times, so the Subdistrict would still have to come up with other replacement remedies for San Luis Creek.

Another replacement remedy that was considered with this option is a Well Injury Payment Agreement. A Well Injury Payment Agreement is specifically recognized by section 37-92-501(4)(b)(I)(B), C.R.S. It is an agreement between a subdistrict and the surface right owner who is being injured at a certain time and place. The agreement lays out an alternative to remedy injurious depletions between the surface water right owner and a subdistrict when the surface water right owner is the injured party. The surface water right owner would forego the water owed to their water right as replacement in exchange for some other type of compensation agreeable to them. This practice is common on the Rio Grande, the Conejos, and the Alamosa Rivers and has assisted other Subdistricts to meet their required remedy injurious depletions on those stream systems. The agreement allows the Owner and the Subdistrict to be creative with the compensation methods, but the most common type of compensation has been monetary.

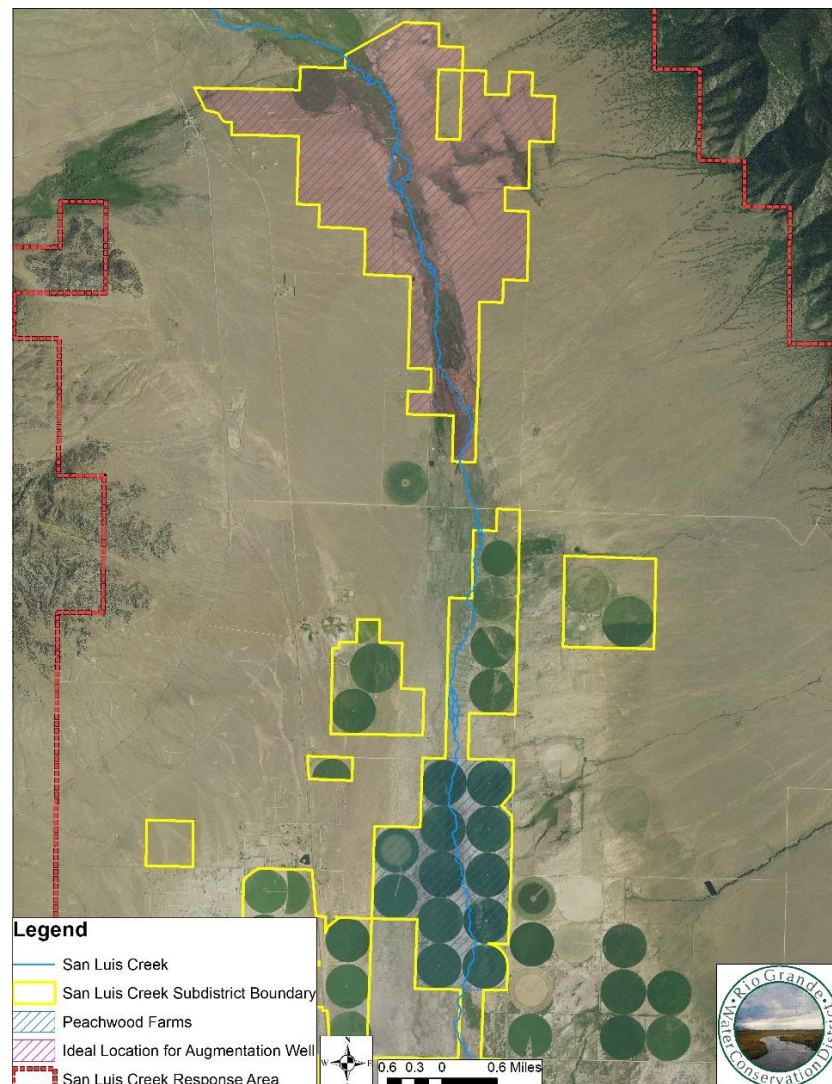
To this point Subdistrict 4 has been able to operate with Well Injury Payments as their sole source of remedy for injurious depletions. Although these agreements are a much more cost-effective tool than the Peachwood Farm Project, they do not provide security for the well users who make up the Subdistrict. They are at-will contracts and must be agreed upon by the surface water right owner and the Subdistrict. If any individual surface water owner decides not to renew their agreement, the Subdistrict would be forced to scramble for a source of augmentation water. Additionally, if stream conditions change, there are surface water right owners who could come into priority that have stated they will not sign a Well Injury Payment Agreement.

Under this option the Subdistrict would still need to find a method to reduce groundwater withdrawals to achieve sustainability.

### 3.2.2 Alternative 2 – Peachwood Farm Project

The second alternative considered is the acquisition of augmentation wells which will pump water directly to San Luis Creek at times when a Well Injury Payment is not available to remedy injurious depletions. The augmentation wells will pump the historical consumptive use from irrigated land that has been dried up and revegetated to drought tolerant species. Using the historic consumptive use from groundwater rights allows the Subdistrict to use the aquifer as a reservoir and to have a source of water available during the high depletion months early in the irrigation season and the ability to precisely match the needed replacement water in time, location, and amount.

**Figure 2 – Proposed Proposed Augmentation Well Location**



A portion of the groundwater rights will need to be transferred to a location upstream from where they have historically been used in order to assure remedy of injury further upstream from the current location. This will require negotiations to find a landowner willing to grant access for an augmentation well. Subdistrict No. 4 will need to drill a new well at this upstream location and run power to the well. The Subdistrict may also need to drill a new well on Peachwood Farm to insure a well with adequate capacity to meet demands. Subdistrict 4 will also have to comply with requirements and restrictions in the Division of Water Resources Confined Aquifer Rules.

The Peachwood Farm Project also addresses the sustainability needs of Subdistrict 4. Through the conservation easement approximately 1,200 acre-feet of groundwater withdrawals will be permanently retired. The ability to use the remaining 450 acre-feet of groundwater rights for augmentation provides the Subdistrict with security, but the Subdistrict is still incentivized to work with surface water right owners to negotiate well injury payment agreements and avoid using groundwater as the source for augmentation water. This is because every acre-foot of groundwater the Subdistrict withdraws for augmentation may need to be offset by a reduction in total Subdistrict groundwater withdrawals by Subdistrict Members to assure the Subdistrict meets the Groundwater Rules' sustainability requirements.

### **3.2.3 Alternative 3 – No Action**

No action would result in approximately 160 groundwater irrigation wells being shut off throughout the San Luis Creek Response Area if Subdistrict 4 is unable to renew a WIP agreement or if the Response Area continues to withdraw groundwater above the sustainability limits. The economic impact would be devastating to the area, so this is not a preferred alternative.

## **3.3 Preferred Alternative – Alternative 2**

The community has come together and shown that Well injury Payments are a valuable tool to help subdistricts succeed. However, although they remain a valuable tool, they are a risky option when a Subdistrict does not have a source of augmentation water, therefore, the preferred alternative is the second alternative, presented above. The ability to use augmentation wells pumping water to San Luis Creek will provide a guaranteed water source to San Luis Creek to ensure injurious depletions can be remedied by the Subdistrict in time, place, and amount, as required by the Groundwater Rules. The augmentation water will be placed at or exchanged to a point high enough upstream to guarantee water can remedy depletions either downstream or upstream from that point. The preferred alternative has the additional benefit of addressing the sustainability requirements of the Groundwater Rules. Both of the benefits will allow the Subdistrict Members long-term security in their water supply.

## 4.0 Engineering Analysis for the Preferred Alternative

### 4.1 Source of Water for the Peachwood Farm Project

The source for augmentation water for the Peachwood Farm Project will come from five separate irrigation wells which have historically irrigated acres under center pivot sprinklers. The irrigation wells withdraw groundwater from the confined aquifer. The irrigation under the center pivots will cease, acres will be dried up and planted to drought tolerant species to protect the soils, and the historical consumptive use from those center pivots will then be used to remedy depletions from Subdistrict 4 wells through one or two new augmentation wells.

The crops under the irrigated ground which will be dried up have been in an Alfalfa/Small Grain rotation for the last 20 years. The Subdistrict intends to change 90 acre-feet of average historical consumptive use from each of the five fields from irrigation to augmentation. Each irrigated area under the center pivots will yield an annual average historical consumptive use greater than 90 acre-feet per pivot. The total annual amount of 450 acre-feet is expected to be available to remedy injurious depletions to San Luis Creek.

### 4.2 Hydrologic Evaluation

All five wells are drilled to a depth that would classify them as layer 2 wells in the RGDSS model. The RGDSS model identifies layer 2 as a confined aquifer layer. The depths of these five wells range from 120 feet to 131 feet. Each of the irrigation wells currently pump  $\pm 900$  gpm.

## 5.0 Project Cost

The estimated cost for the Peachwood Farm Project is Three Million, Four Hundred Ninety, Five Hundred and Sixty dollars (\$3,490,560.00). The detailed construction cost estimate for the project is shown in the Table 2, below.

**Table 2 – Peachwood Farm Project Cost Estimate**

Item	Units	Quantity	Unit Cost	Total Cost
Peachwood Farm Purchase	ea.	1	\$2,600,000	\$2,600,000.00
10"Ø Pipeline (from field #1 to stream)	l.f.	1,400	\$50	\$70,000.00
10"Ø Pipeline (from field #2 to stream)	l.f.	4,000	\$50	\$200,000.00
Augmentation Well	ea.	2	\$150,000	\$300,000.00
Control System	l.s.	1	\$30,000	\$30,000.00
Total Construction Cost (TCC)				\$3,200,000.00
Legal & Engineering Costs @ 3% TCC				\$96,000

Contingency @5% TCC	\$160,000.00
Total Project Cost	\$3,456,000.00
Total Project Cost with 1% Origination Fee	\$3,490,560.00

\*Cost shown in this estimate is the amount estimated to purchase each Sprinkler Quarter

## 6.0 Permitting, Change of Water Rights

As stated above all wells are permitted through the Division of Water Resources and the well decrees are included as Attachment 1.

Subdistrict 4's plan is to temporarily change the water rights use from irrigation to augmentation through the SWSP process for the first few of years and assess the suitability of the operations of the project. After this time, they plan to permanently change the water rights through the District Court, in and for Water Division No. 3.

## 7.0 Implementation Schedule

The Subdistrict intends to close on the Peachwood Farm property in April 2023 and negotiations with landowners for a suitable site to construct an additional augmentation well are underway. Subdistrict No. 4 estimates having the bid documents completed by mid-February 2023. Subdistrict 4 believes the project will be bid immediately after that and a contractor will be selected. The contractor will be selected not only on cost but also on availability and schedule to complete the project. Subdistrict 4 anticipates construction starting sometime in 2023 depending on availability of well drillers.

## 8.0 Institutional Considerations

The Subdistrict does not anticipate it will be required to obtain any permits or permissions from any state or county agency to complete the infrastructure portions of this project. The Subdistrict will need to negotiate for access to an additional property for a second well. This second well is not a requirement for the purchase and use of the Peachwood Farm water rights, but is desirable to the Subdistrict. All other construction will take place on Peachwood Farm after it is acquired by the Subdistrict. The Subdistrict will obtain any necessary permits if the need arises.

As mentioned previously, the water rights involved in this project will need to be changed either through an SWSP or through a water court case to allow for their use as a source of remedy for injurious stream depletions.

## 9.0 Social and Environmental Impacts of the Project

The environmental impacts of the augmentation wells are very minimal. The increased flows in San Luis Creek should have a positive impact on wildlife in the area. The environmental impacts of drying



the irrigated acres will be mitigated by revegetation of the property to drought tolerant species and those lands will be maintained as open lands.

The social impact for majority of the area including the Subdistrict members will be positive. It will allow irrigation wells to continue to withdraw groundwater while also allowing replacement of injurious depletions owed to senior surface water rights from these continued groundwater withdrawals.

## **10.0 Financial feasibility**

### **10.1 Financial Repayment**

Subdistrict 4 is applying for a loan in the amount of Three Million, Four Hundred Ninety, Five Hundred and Sixty dollars (\$3,490,560.00) from the Colorado Water Conservation Board Water Project Loan Program with a 40-year repayment period and an interest rate of not more than 2.27%. The Subdistrict currently consists of 160 wells that withdraw an average of 11,400 acre-feet of water per year, which will be reduced to 147 wells withdrawing approximately 9,800 acre-feet by the Peachwood Farm Project. Subdistrict 4 assess a Groundwater Withdrawal Fee on each acre-foot withdrawn from Subdistrict Wells. Subdistrict 4 will fund the Peachwood Farm Project through these Groundwater Withdrawal Fees. In 2021, the assessed Groundwater Withdrawal Fees were \$15.11 per acre-foot. The total Groundwater Withdrawal Fees assessed in 2021 were \$144,212.47. In 2022, the Groundwater Withdrawal Fees were raised to \$30.72 per acre-foot for a total of \$299,034.58. It is anticipated that groundwater withdrawals will continue to fluctuate year to year based on the overall amount of groundwater withdrawn and the budgetary needs of the Subdistrict. The Schedule of Revenue and Expenditures is included as Attachment 3.

### **10.2 Credit Worthiness**

Subdistrict 4 is entitled to raise funds by assessment of reasonable Annual Service and User Fees to carry out the goals and overall objective set forth in the Subdistrict's approved Plan of Water Management. Subdistrict 4 intends to finance its costs by raising sufficient revenue, in a fair and equitable manner, through the imposition of Annual Service and User Fees. Annual Service and User Fees will consist of two components, an annual Administrative Fee and an annual Groundwater Withdrawal Fee. Each component will be evaluated annually, and if appropriate, will be adjusted by the Board of Managers through an open and public process, as required by the Plan of Water Management, and in response to the demands of the Annual Replacement Plan. The total annual Groundwater Withdrawal Fee must be limited to the amount shown by specific items in the ensuing annual budget as required to provide sufficient revenue for the Subdistrict's operations, including: protection of senior surface water rights; funds to support a portfolio of water and/or a fund to assure the remedy of Post-Plan Injurious Stream Depletions; permanent retirement and/or annual fallowing of lands; establishment of a reasonable reserve fund; achievement and maintenance of a Sustainable Water Supply; and, any necessary infrastructure improvements.

As a special improvement district of the Rio Grande Water Conservation District, the Subdistrict's finances are included in those of the District. Attachment 4, shows the last three years of District Audit Reports.

#### **11.0 Conclusions and Recommendations**

1. The Peachwood Farm Project is vital in assisting the San Luis Creek Subdistrict to remedy injurious depletions owed to senior surface water users on San Luis Creek from groundwater withdrawals in the Subdistrict and to achieve and maintain a sustainable aquifer system, as required by the Groundwater Rules. The change of water right for the augmentation wells will result in a total of  $\pm 450$  ac-ft based on the historical consumptive use of the irrigated areas.
2. The Peachwood Farm Project is feasible from both a financial and engineering viewpoint.
3. The San Luis Creek Subdistrict has the legal ability to budget the annual payment for the loan into their annual Groundwater Withdrawal Fee.

# **Attachment 1**

## **Water Rights**

*Filed in District Court  
Water Division 3, Colorado*

*JUN 13 1986*

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. W-3202

*Carol S. Daigler*

*Clk. Of The Water Court*

JUDGMENT AND DECREE ADJUDICATING UNDERGROUND WATER RIGHTS  
Well Nos. 1, 2, 3, 4, 5, 6, 7, 5R, 6R, 1A, 2A, 7A, 3A, 2AA & 6A.

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF

JERRY L. CUPPS, RONNIE G. OLSON, HUGH F. KRAGOR AND ANDREW J. MARTIN

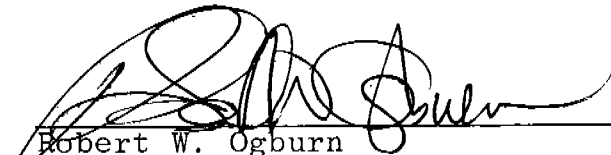
IN SAGUACHE COUNTY.

THE COURT FINDS That no protest has been filed to the  
Ruling(s) of the Water Referee in the above case within the time  
provided by law, and that the said Ruling(s) should be confirmed,  
approved and adopted,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the  
Ruling(s) of the Water Referee entered on May 13, 1986  
be and the same is incorporated herein by reference and is hereby  
confirmed, approved and adopted as the Judgment of this Court.

Done this 13th day of June A.D., 1986.

BY THE COURT:

  
Robert W. Ogburn  
Water Judge

c: Steve Vandiver  
Division Engineer

Jeris A. Danielson  
State Engineer

Jerry L. Cupps, Ronnie G. Olson,  
Hugh F. Kragor, Andrew J. Martin  
KSD, Ltd.  
George W. Woodard

**CHANGE OF WATER RIGHT**

**CASE NO. W- 906037**

*Well nos. 1, 1R, 2R, 3R,  
4R, 4A and 7R*

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

**COPY**

REFEREE'S REPORT AND RULING

*Filed in District Court  
Water Division 3, Colorado*

Change of Water Right - Well No. 1

*JUL 5 1991*

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP

*Carol S. Redding  
Clerk Of The Water Court*

**CENTRAL FILES**

IN SAGUACHE COUNTY.

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following findings and Rulings therein:

(1) That the application of the above named  
applicant for a change of underground  
water right was filed on the 11th day of October, 19 90.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31st day of December, 19 90, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant ~~(s)~~ (was and is) ~~(xxx and xxx)~~ the owner ~~(x)~~ of the following described underground water right:

Well No. 2, Case No. W-3202  
Registration No. 176-R, adjudicated and decreed by this Court on June 13, 1986, for 2227 gallons of water per minute, being 4.96 cubic feet of water per second of time, being 9.92 acre feet of water in a period of twenty-four hours from ~~(xxxxxx)~~ (an unconfined) aquifer with an appropriation date as of February 18, 1947 for irrigation purposes. That this well is located in the SE 1/4 NE 1/4 of Section 19, Township 45 North, Range 10 East, NMPM, at a point which is 1920 feet from the North Section line and 20 feet from the East Section line of said section, in Saguache County, Colorado.

**CENTRAL FILES**

9.9CW37

Well No. 1

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location, the details of which are as follows:

Well No. 1, Permit No. 156624, is located in the watershed of unconfined aquifer of San Luis Creek, at a point which is 1500 feet from the North Section line and 200 feet from the East Section line, in the SE1 NE1 of Section 19, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~(unconfined)~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 164 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 0 feet and perforated from a depth of 0 feet to a depth of 141 feet, and produces 15 gallons of water per minute, being .033 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is ~~XXXXXX~~  
for Well No. 2, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant~~(s)~~ be and hereby ~~xxxx~~(is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 1, Registration No. 156624

3. Location of well and point of diversion:

SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, Township 45 North, Range 10 East, NMPM, at a point 1500 feet from the North Section line and 200 feet from the East Section line in Saguache County, Colorado.

90CW37  
Well No. 1

4. Amount and source of diversion:

15 gallons of water per minute, being  
.033 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.

5. Type of beneficial use:

Stockwater.

6. Priority date of appropriation:

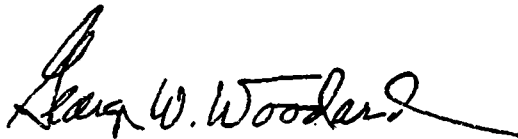
February 18, 1947.

7. That said well is ~~and shall be used as a replacement~~  
~~ment~~ (the former ~~the former~~) for Well No. 2,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 5<sup>th</sup> day of  
July, 1947.



George W. Woodard  
Water Referee  
Water Division 3

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 1R

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP

*Filed in District Court  
Water Division 3, Colorado*

*JUL - 5 1991*

*Carol S. Redding  
Clerk Of The Water Court*

IN SAGUACHE COUNTY.

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

(1) That the application of the above  
applicant for a change of underground  
water right was filed on the 11th day of October, 1990.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31st day of December, 1990, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant(s) (was and is) ~~xxxxxx~~ the owner(s) of the following described underground water right:

Well No. 1, Case No. W-3202  
Registration No. 175-R, adjudicated and decreed by this Court  
on June 13, 1986, for 1520 gallons of  
water per minute, being 3.38 cubic feet of water per second of  
time, being 6.76 acre feet of water in a period of twenty-four  
hours from ~~xxxxxx~~ (an unconfined) aquifer with an appropriation  
date as of August 5, 1949 for irrigation  
purposes. That this well is located in  
the SW1 SW1 of Section 17, Township 45 North,  
Range 10 East, NMPM, at a point which is 1280 feet from  
the South Section line and 25 feet from the West  
Section line of said section, in Saguache County, Colorado.



90CW37  
Well No. 1R

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 1R, Permit No. R175-RF, is located in the watershed of the unconfined aquifer of San Luis Creek, at a point which is 1320 feet from the South Section line and 1320 feet from the East Section line, in the Center of SE1 of Section 19, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~(unconfined)~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 127 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 30 feet and perforated from a depth of 30 feet to a depth of 127 feet, and produces 900 gallons of water per minute, being 2.01 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is (a Replacement) ~~(a Replacement)~~ ~~XXXXXX~~ for Well No. 1, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant(s) be and hereby ~~(are)~~ (is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 1R, Registration No. R175-RF

3. Location of well and point of diversion:

Center of SE1, Section 19, Township 45 North, Range 10 East, NMPM, at a point which is 1320 feet from the South Section line and 1320 feet from the East Section line in Saguache County, Colorado.

90CW37  
Well No. 1R

4. Amount and source of diversion:  
900 gallons of water per minute, being  
2.01 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.
5. Type of beneficial use:  
Irrigation.
6. Priority date of appropriation:  
August 5, 1949.

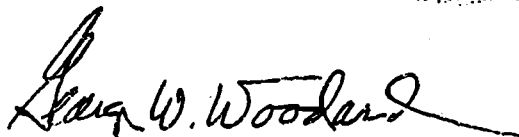
7. That said well is and shall be used as (a replace-  
ment) ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ for Well No. 1,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

9. 180 acre feet of water to be diverted to  
irrigate 132 acres in the SE $\frac{1}{4}$  of Section 19, Township 45 North,  
Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 5<sup>th</sup> day of  
July, 19 49.



George W. Woodard  
Water Referee  
Water Division 3

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 2R

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

*Filed in District Court  
Water Division 3, Colorado*

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP JUL - 5 1991

IN SAGUACHE

COUNTY.

*Carol S. Redding  
Clerk Of The Water Court*

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

(1) That the application of the above applicant for a change of underground water right was filed on the 11th day of October, 1990.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31th day of December, 1990, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant(~~is~~ was and is) ~~(owner and owner)~~ the owner(~~is~~) of the following described underground water right:

Well No. 2, Case No. W-3202,  
Registration No. 176-R, adjudicated and decreed by this Court  
on June 13, 1986, for 2227 gallons of  
water per minute, being 4.96 cubic feet of water per second of  
time, being 9.92 acre feet of water in a period of twenty-four  
hours from ~~(XXXXXXXXXX)~~ (an unconfined) aquifer with an appropriation  
date as of February 18, 1947 for irrigation  
purposes. That this well is located in  
the SE1 NE1 of Section 19, Township 45 North,  
Range 10 East NMPM, at a point which is 1920 feet from  
the North Section line and 20 feet from the East  
Section line of said section, in Saguache County, Colorado.

90CW37  
Well no. 2R

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 2R, Permit No. R176-RF, is located in the watershed of the unconfined aquifer of San Luis Creek, at a point which is 1200 feet from the North Section line and 2200 feet from the West Section line, in the NE 1/4 NW 1/4 of Section 20, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~(XXXXXX)(unconfined)~~ aquifer into which such well penetrates; that the depth of the well is 216 feet; that the casing is 20 1/16 inches in diameter, and is plain cased to a depth of 37 feet and perforated from a depth of 37 feet to a depth of 202 feet, and produces 2200 gallons of water per minute, being 4.90 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is (a Replacement) ~~(XXXXXX)(XXXXXX)~~ for Well No. 2, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant(s) be and hereby ~~(are)~~(is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 2R, Registration No. R176-RF.

3. Location of well and point of diversion:

NE 1/4 NW 1/4, Section 20, Township 45 North, Range 10 East, NMPM, at a point 1200 feet from the North Section line and 2200 feet from the West Section line in Saguache County, Colorado.

90CW37

Well No. 2R

4. Amount and source of diversion:  
2200 gallons of water per minute, being  
4.90 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.
5. Type of beneficial use:  
Irrigation.
6. Priority date of appropriation:  
February 18, 1947.

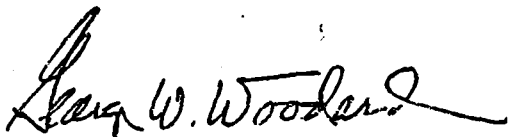
7. That said well is and shall be used as (a replacement) ~~(as a source of diversion)~~ for Well No. 2,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain continuing jurisdiction of this case for a period of three (3) years, for the purpose of reconsidering the question of injury to the vested rights of other appropriators.

9. 84 acre feet of water to be diverted to irrigate 28 acres in the corners in the W $\frac{1}{2}$  NE $\frac{1}{4}$  and the E $\frac{1}{2}$  NW $\frac{1}{4}$ , Section 20, Township 45 North, Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail copies of this report and ruling as provided by statute.

Dated and entered of record this 5th day of  
July, 1991.



George W. Woodard  
Water Referee  
Water Division 3

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 3R

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP

*Filed in District Court,  
Water Division 3, Colorado*

JUL - 5 1991

IN SAGUACHE

COUNTY.

*Carol S. Redding  
Clerk Of The Water Court*

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

(1) That the application of the above applicant for a change of underground water right was filed on the 11th day of October, 1990.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31st day of December, 1990, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant(s) (was and is) ~~XXXXXX and XXXX~~ the owner(s) of the following described underground water right:

Well No. 3, Case No. W-3202,  
Registration No. 177-R, adjudicated and decreed by this Court,  
on June 13, 1986, for 1780 gallons of  
water per minute being 3.96 cubic feet of water per second of  
time, being 7.92 acre feet of water in a period of twenty-four  
hours from ~~XXXXXX~~ (an unconfined) aquifer with an appropriation  
date as of October 10, 1949 for irrigation  
purposes. That this well is located in  
the NW 1/4 SE 1 of Section 19, Township 45 North,  
Range 10 East, NMPM, at a point which is 2600 feet from  
the South Section line and 2600 feet from the East  
Section line of said section, in Saguache County, Colorado.

90CW37  
Well No. 3R

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 3R, Permit No. R177-RF, is located in the watershed of unconfined aquifer of San Luis Creek, at a point which is 2620 feet from the North Section line and 1300 feet from the East Section line, in the SE1 NE1 of Section 20, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~(confined)~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 148 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 48 feet and perforated from a depth of 48 feet to a depth of 148 feet, and produces 900 gallons of water per minute, being 2.01 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is (a Replacement) ~~XXXXXX~~ ~~Point XXXX~~ for Well No. 3, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant(s) be and hereby ~~(are)~~ (is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 3R, Registration No. R177-RF.

3. Location of well and point of diversion:

SE1 NE1 of Section 20, Township 45 North, Range 10 East, NMPM, at a point 2620 feet from the North Section line and 1300 feet from the East Section line in Saguache County, Colorado.

90CW37  
Well no. 3R

4. Amount and source of diversion:

900 gallons of water per minute, being  
2.01 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.

5. Type of beneficial use:

Irrigation.

6. Priority date of appropriation:

October 10, 1949.

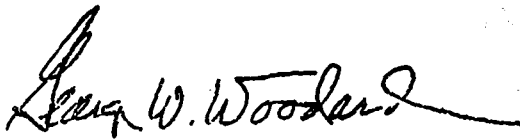
7. That said well is and shall be used as (a replace-  
ment) (~~xxxxxx~~) for Well No. 3,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

9. 180 acre feet of water to be diverted to  
irrigate 130 acres in the S $\frac{1}{2}$  of NE $\frac{1}{4}$  and N $\frac{1}{2}$  of SE $\frac{1}{4}$ , Section  
20, Township 45 North, Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 5<sup>th</sup> day of  
July, 19 91.



George W. Woodard  
Water Referee  
Water Division 3



OK  
DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 4R

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP

*Filed in District Court  
Water Division 3, Colorado*

JUL - 5 1991

*Carol S. Redding  
Clerk Of The Water Court*

IN SAGUACHE COUNTY.

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

(1) That the application of the above applicant for a change of underground water right was filed on the 11th day of October, 1990.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31st day of December, 1990, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant ~~(xxx)~~ (was and is) ~~(xxxxxx and xxx)~~ the owner ~~(xx)~~ of the following described underground water right:

Well No. 4, Case No. W-3202,  
Registration No. R-12717, adjudicated and decreed by this Court  
on June 13, 1986, for 2000 gallons of  
water per minute, being 4.46 cubic feet of water per second of  
time, being 8.92 acre feet of water in a period of twenty-four  
hours from ~~(xxxxxx and xxx)~~ (an unconfined) aquifer with an appropriation  
date as of March 3, 1968 for irrigation  
purposes. That this well is located in  
the NE 1/4 NW 1/4 of Section 20, Township 45 North,  
Range 10 East, NMPM, at a point which is 1300 feet from  
the North Section line and 2500 feet from the West  
Section line of said section, in Saguache County, Colorado.

90CW37  
Well No. 4R

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 4R, Permit No. 12717RF, is located in the watershed of unconfined aquifer of San Luis Creek, at a point which is 50 feet from the North Section line and 1300 feet from the West Section line, in the NW1 NW1 of Section 20, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~(unconfined)~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 120 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 20 feet and perforated from a depth of 20 feet to a depth of 120 feet, and produces 900 gallons of water per minute, being 2.01 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is (a Replacement) ~~(a Replacement)~~ ~~for Well No. 4~~ for Well No. 4, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant(s) be and hereby ~~(are)~~ (is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 4R, Registration No. 12717RF

3. Location of well and point of diversion:

NW1 NW1 of Section 20, Township 45 North, Range 10 East, NMPM, at a point 50 feet from the North Section line and 1300 feet from the West Section line in Saguache County, Colorado.

24  
90CW37  
Well No. 4R

4. Amount and source of diversion:

900 gallons of water per minute, being  
2.01 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.

5. Type of beneficial use:

Irrigation.

6. Priority date of appropriation:

March 3, 1968.

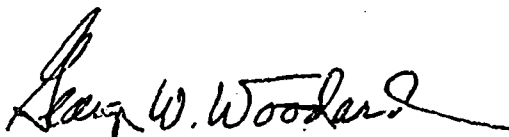
7. That said well is and shall be used as (a replace-  
ment) (~~XX~~ of diversion) for Well No. 4,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

9. 180 acre feet of water to be diverted to  
irrigate 129 acres in the S $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 17 and N $\frac{1}{2}$  of NW $\frac{1}{4}$ ,  
Section 20, Township 45 North, Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 5<sup>th</sup> day of  
July, 1971.



George W. Woodard  
Water Referee  
Water Division 3

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 4A

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

*Filed in District Court  
Water Division 3, Colorado*

PEACIWOOD PARTNERSHIP, A COLORADO PARTNERSHIP JUL - 5 1991

IN SAGUACHE COUNTY.

*Carol S. Redding  
Clerk Of The Water Court*

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

(1) That the application of the above named applicant for a change of underground water right was filed on the 11th day of October, 1990.

(2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.

(3) That the time for filing statements of opposition expired on the 31st day of December, 1990, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.

(4) The Referee finds that at the time of filing said application and since, the applicant ~~(s)~~ (was and is) ~~(were and are)~~ the owner~~(s)~~ of the following described underground water right:

Well No. 4, Case No. W-3202,  
Registration No. R12717F, adjudicated and decreed by this Court  
on June 13, 1986, for 2000 gallons of  
water per minute, being 4.46 cubic feet of water per second of  
time, being 8.92 acre feet of water in a period of twenty-four  
hours from ~~(XXXXXX)~~ (an unconfined) aquifer with an appropriation  
date as of March 3, 1968 for irrigation  
purposes. That this well is located in  
the NE 1/4 NW 1/4 of Section 20, Township 45 North,  
Range 10 East, NMPM, at a point which is 1300 feet from  
the North Section line and 2500 feet from the West  
Section line of said section, in Saguache County, Colorado.

90CW37  
Well No. 4A

(5) That the applicant(s) propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 4A, Permit No. 23182-F, is located in the watershed of unconfined aquifer of San Luis Creek, at a point which is 2600 feet from the North Section line and 1300 feet from the West Section line, in the SW 1/4 NW 1/4 of Section 20, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~unconfined~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 131 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 32 feet and perforated from a depth of 32 feet to a depth of 131 feet, and produces 900 gallons of water per minute, being 2.01 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is ~~XXXXXXXXXXXXXXX~~ (an Alternate Point of Diversion) for Well No. 4, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant(s) be and hereby ~~xxxxxx~~ (is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 4A, Registration No. 23182-F.

3. Location of well and point of diversion:

SW 1/4 NW 1/4 of Section 20, Township 45 North, Range 10 East, NMPM, at a point 2600 feet from the North Section line and 1300 feet from the West Section line in Saguache County, Colorado.

90CW37  
Well No. 4A

4. Amount and source of diversion:

900 gallons of water per minute, being  
2.01 cubic feet of water per second of  
time, from an unconfined aquifer of San  
Luis Creek.

5. Type of beneficial use:

Irrigation.

6. Priority date of appropriation:

March 3, 1968.

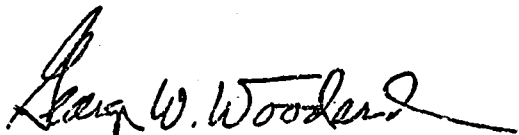
7. That said well is and shall be used as ~~(XXXXXXXXXX)~~  
~~XXXXX~~ (an alternate point of diversion) for Well No. 4,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

9. 180 acre feet of water to be diverted to  
irrigate 131 acres in the S $\frac{1}{2}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 20,  
Township 45 North, Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 5<sup>th</sup> day of  
July, 19 71.



George W. Woodard  
Water Referee  
Water Division 3

14  
DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

REFEREE'S REPORT AND RULING

Change of Water Right - Well No. 7R

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

*Filed in District Court  
Water Division 3, Colorado*

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP

JUL - 5 1991

IN SAGUACHE

COUNTY.

*Carol S. Redding  
Clerk Of The Water Court*

THIS MATTER coming on to be heard this day before the undersigned Referee, pursuant to Order of Referral herein, and upon examination of the records and files herein, and upon his investigation, hereby makes the following Findings and Rulings therein:

- (1) That the application of the above  
applicant for a change of underground  
water right was filed on the 11th day of October, 1990.
- (2) That the Water Clerk for Water Division 3 issued and caused a resume of said application to be published and mailed as required by statute.
- (3) That the time for filing statements of opposition expired on the 31st day of December, 19 90, and no statements of opposition have been filed herein; or if filed, have been heard and determined, or withdrawn.
- (4) The Referee finds that at the time of filing said application and since, the applicant(s) (was and is) ~~(were and are)~~ the owner(s) of the following described underground water right:

Well No. 7, Case No. W-3202,  
Registration No. 174-R, adjudicated and decreed by this Court  
on June 13, 1986, for 2340 gallons of  
water per minute, being 5.21 cubic feet of water per second of  
time, being 10.42 acre feet of water in a period of twenty-four  
hours from ~~XXXXXX~~ (an unconfined) aquifer with an appropriation  
date as of June 25, 2949 for irrigation  
purposes. That this well is located in  
the SW 1/4 SE 1/4 of Section 17, Township 45 North,  
Range 10 East, NMPN, at a point which is 1300 feet from  
the South Section line and 1550 feet from the East  
Section line of said section, in Saguache County, Colorado.

90CW37  
Well No. 7R

(5) That the applicant~~(s)~~ propose(s), for use in the future, to change the point of diversion of said underground water right to a new location; the details of which are as follows:

Well No. 7R, Permit No. R174-RF, is located in the watershed of unconfined aquifer of San Luis Creek, at a point which is 50 feet from the South Section line and 1300 feet from the East Section line, in the SE1 SE1 of Section 17, Township 45 North, Range 10 East, NMPM, in the County of Saguache, State of Colorado, and draws its supply of water from the same ~~XXXXXX~~ (unconfined) aquifer into which such well penetrates; that the depth of the well is 161 feet; that the casing is 16 inches in diameter, and is plain cased to a depth of 61 feet and perforated from a depth of 61 feet to a depth of 161 feet, and produces 900 gallons of water per minute, being 2.01 cubic feet of water per second of time, by pumping. That the well shall be used for irrigation purposes.

(6) That the well is (a Replacement) ~~XXXXXX~~ ~~XXXXXX~~ for Well No. 7, Case No. W-3202

(7) That this change of underground water right will not injuriously affect the vested water rights of any other appropriators.

THEREFORE, IT IS HEREBY RULED AND ORDERED, that the applicant~~(s)~~ be and hereby ~~(are)~~ (is) granted the requested change of underground water right as follows:

1. Applicant's name(s) and address(es):

Peachwood Partnership, A Colorado Corporation  
9085 E. Mineral Circle, No. 200  
Englewood, CO 80112.

2. Name or designation of well:

Well No. 7R, Registration No. R174-RF

3. Location of well and point of diversion:

SE1 SE1 of Section 17, Township 45 North, Range 10 East, NMPM, at a point which is 50 feet from the South Section line and 1300 feet from the East Section line in Saguache County, Colorado.



90CW37  
Well No. 7R

4. Amount and source of diversion:

900 gallons of water per minute, being  
2.01 cubic feet of water per second of  
time from an unconfined aquifer of San  
Luis Creek.

5. Type of beneficial use:

Irrigation.

6. Priority date of appropriation:

June 25, 1949.

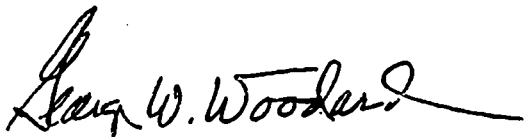
7. That said well is and shall be used as (a replace-  
ment) ~~(an alternate point of diversion)~~ for Well No. 7,  
Case No. W-3202.

8. The Water Court, Water Division 3, shall retain  
continuing jurisdiction of this case for a period of three (3)  
years, for the purpose of reconsidering the question of injury  
to the vested rights of other appropriators.

9. 180 acre feet of water to be diverted to  
irrigate 130 acres in the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 17, and N $\frac{1}{2}$  NE $\frac{1}{4}$   
of Section 20, Township 45 North, Range 10 East, NMPM.

IT IS FURTHER ORDERED that the Water Clerk shall mail  
copies of this report and ruling as provided by statute.

Dated and entered of record this 7<sup>th</sup> day of  
July, 1949.



George W. Woodard  
Water Referee  
Water Division 3

State  
DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 90CW37

JUDGMENT AND DECREE ADJUDICATING CHANGE OF WATER RIGHTS  
WELL NOS. 1, 1R, 2R, 3R, 4R, 4A AND 7R.

CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF:

PEACHWOOD PARTNERSHIP, A COLORADO PARTNERSHIP


IN SAGUACHE COUNTY.

THE COURT FINDS that no protest has been filed to  
the Ruling(s) of the Water Referee in the above case within  
the time provided by law, and that the said Ruling(s) should  
be confirmed, approved and adopted;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that  
the Ruling(s) of the Water Referee, entered on July 5, 1991  
\_\_\_\_\_ be and the same is incorporated herein by reference  
and is hereby confirmed, approved and adopted as the Judgment  
of this Court.

Done this 5th day of August, A.D., 1991.

BY THE COURT:

  
Robert W. Ogburn  
Water Judge  
Water Division 3

xc: Steve Vandiver, Division Engineer  
Jeris A. Danielson, State Engineer  
Peachwood Partnership, A Colorado Partnership  
Rio Grande Water Conservation District  
William A. Martinez  
Mark J. Wagner

CENTRAL FILES

and the length about one-half mile—headgate and ditch all on claimant's land; the width is 4 feet at top and 3 feet at bottom, the depth is 2 feet, the grade is  $2\frac{1}{4}$  feet per mile and the carrying capacity computed at 11 cubic feet of water per second of time.

It is used to irrigate 120 acres of the land belonging to claimant, and it is hereby adjudged and decreed that there be allowed to flow in said ditch from said creek for the use and benefit of the party aforesaid and the parties lawfully entitled thereto, under and by virtue of Priority No. 27, 2.40 cubic feet of water per second of time.

**DITCH**

**PRIORITY**

No. 60 Shellabarger Home Ditch No. 2..... No. 28

That said Shellabarger Home Ditch No. 2 is entitled to Priority No. 28, and is owned by Adam Shellabarger.

That the headgate thereof is located on the left bank of Rito Alto Creek, a tributary of San Luis Creek, in Water District No. 25, Saguache Co., Colo., at a point N. 14 degrees W. 500 feet from the SE corner of W $\frac{1}{2}$  of NE $\frac{1}{4}$  of Sec. 24, Twp. 44, N. R. 10 E. N. M. M. The general course is Southwesterly and the length about one-half mile—headgate and ditch all on claimant's land; the width is 4.7 feet at top and 2.3 feet at bottom; the depth is 1.5 feet; the grade is 32.5 feet per mile and the carrying capacity computed at 27.7 cubic feet of water per second of time.

It is used to irrigate 150 acres of the land belonging to claimant, and it is hereby adjudged and decreed that there be allowed to flow in said ditch from said creek for the use and benefit of the party aforesaid and the parties lawfully entitled thereto, under and by virtue of Priority No. 28, 3 cubic feet of water per second of time.

**DITCH**

**PRIORITY**

No. 61 The Tobler Ditch..... No. 29

That the said Tobler Ditch is entitled to Priority No. 29, and is owned by Mrs. Francois Tobler.

That the headgate of the said Tobler Ditch is located on the left bank of a branch of the San Luis Creek—called "Spring Creek"—at a point whence the center of Sec. 20, Twp. 45, N. R. 10 E. N. M. M. bears S. 56° 50' E 559 feet. Its general course is Southerly; it is 34 $\frac{3}{4}$  feet from headgate to land of claimant; it is  $2\frac{1}{4}$  feet wide, 8 inches deep and the grade is 0.29 of a foot per 100 feet and the carrying capacity computed at 4 cubic feet of water per second of time.

It is used to irrigate 20 acres of the land belonging to claimant, and it is hereby adjudged and decreed that there be allowed to flow in said ditch from said creek for the use and benefit of the party aforesaid and the parties lawfully entitled thereto, under and by virtue of Priority No. 29, water sufficient to practically irrigate 20 acres of claimant's land in amount not to exceed 1 cubic foot per second of time.

is owned by George M. Greer.

That the headgate of said Greer Ditch No. 2 is located on the left bank of San Luis Creek, in Water District No. 25, Saguache Co., Colo., at a point S. 57° 47' E. 910 feet from the W½ corner of Sec. 21, Twp. 44, N. R. 10 E. N. M. M. The general course is South-easterly—headgate and ditch all on claimant's land; it is 8 feet wide, 6 inches deep, the grade is 5 feet per mile, and the carrying capacity computed at 6.4 cubic feet of water per second of time.

It is used to irrigate 160 acres of the land belonging to claimant, and it is hereby adjudged and decreed that there be allowed to flow in said ditch from said creek for the use and benefit of the party aforesaid and the parties lawfully entitled thereto, under and by virtue of Priority No. 35, 8.20 cubic feet of water per second of time.

**DITCH**

**PRIORITY**

No. 71 Tobler Rominger Ditch..... No. 36

That said Tobler Rominger Ditch is entitled to Priority No. 36, and is owned by Mrs. Francis Tobler, Charles Kennedy and Mrs. Francis Rominger, the one-third interest each.

That the headgate is located on the left or East bank of San Luis Creek, in Water District No. 25, Saguache Co., Colo., at a point whence the W. quarter corner of Sec. 20, Twp. 45, N. R. 10 E. N. M. M. bears S. 14° 20' W. 422.5 feet; the general course is Southerly, bearing West; length to land of Mrs. Tobler, 349 feet; thence to land of Kennedy 291.4 feet; thence to land of Mrs. Rominger, one mile 566 feet; it is 6 feet wide and 16 inches deep; the grade is 0.2 of a foot per 100 feet, and the carrying capacity computed at 23.8 cubic feet of water per second of time.

It is used to irrigate 140 acres of the land belonging to claimant Mrs. Tobler, and 130 acres of the land belonging to claimant Chas. Kennedy and 230 acres of the land belonging to claimant Mrs. Rominger—in all 500 acres—and it is hereby adjudged and decreed that there be allowed to flow in said ditch from said creek for the use and benefit of the parties aforesaid and the parties lawfully entitled thereto, under and by virtue of Priority No. 36, 10 cubic feet of water per second of time.

**DITCH**

**PRIORITY**

No. 72 San Luis Ditch..... No. 37

That said San Luis Ditch is entitled to Priority No. 37, and is owned by Adam Shellabarger.

That the headgate thereof is located on the left bank of San Luis Creek, in Water District No. 25, Saguache Co., Colo., at a point N. 8 degrees E. 1889 feet South quarter corner of Sec. 33, Twp. 44 N. R. 10 E. N. M. M. The general course is Southwesterly, the length about ½ mile; the width is 6 feet—headgate and ditch all on claimant's land; the depth is 1 foot, the grade is 1 foot per mile and the

**Attachment 2**

**Deed of Conservation Easement**

**DEED OF CONSERVATION EASEMENT  
AQUIFER RECOVERY AND ENHANCEMENT**

**PEACHWOOD FARMS**

Pursuant to the requirements of Section 15 (Transfer of Property) of this Deed, any time the Property or a permitted portion thereof is transferred by Grantor to any third party, Grantor shall pay a fee of  $\frac{1}{4}$  of 1% of the sale price to Grantee and notify Grantee. However this requirement shall be waived for the conveyance of the Property from the original Grantor (**RONALD R. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, and **GAIL J. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014) to the Rio Grande Water Conservation District, as that is the prior intent of all parties involved in this Deed of Conservation Easement.

NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED IN PART WITH A GRANT FROM THE COLORADO WATER CONSERVATION BOARD ("CWCB").

THIS DEED OF CONSERVATION EASEMENT ("**Deed**" or "**Easement**") is granted on this 8 day of November, 2022, by the **RONALD R. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, and the **GAIL J. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014 (together the "**Grantor**"), whose collective address is 704 Cottonwood Circle, Alamosa, CO 81101, to **COLORADO OPEN LANDS**, a Colorado non-profit corporation, whose address is 1546 Cole Boulevard, Suite 200, Lakewood, Colorado 80401 ("**Grantee**") (individually a "**Party**" and collectively the "**Parties**").

The following exhibits are attached hereto and are incorporated by reference:

- Exhibit A: Legal Description of the Property
- Exhibit B: Map of the Property
- Exhibit C: Water Rights
- Exhibit D: Sample Notice of Transfer of Property

**RECITALS:**

- A. Description of Property.** Grantor is the owner of the fee simple interest in the subject property legally described in **Exhibit A** and depicted in **Exhibit B**, consisting of approximately 1,897 acres of land, together with existing improvements (as further described in Section 6, Property Improvements, of this Deed), water and mineral rights owned by Grantor associated with or appurtenant to the property located in Saguache County, State of Colorado (the "**Property**").
- B.** The Property is located within Special Improvement District Number 4 ("**Subdistrict**"), of the Rio Grande Water Conservation District ("**District**"). Members of the Subdistrict, including Grantor, are landowners within the Rio Grande Water Conservation District

who, along with many others, rely on groundwater from wells for all or part of their irrigation water supply.

- B1. The hydrology of the San Luis Valley consists of an “unconfined” or alluvial aquifer and a deeper “confined” aquifer (“**Confined Aquifer**”). The unconfined aquifer extends about 100 feet below the surface and sits on relatively impermeable interbedded layers of clay. The clay layers lie above the Confined Aquifer, although they do not completely isolate the effects of well pumping from either aquifer on the other, or on surface stream flow. Well pumping thus causes injurious stream depletions (“**Injurious Stream Depletions**”) that reduce the amount of water available to senior surface water rights. Well pumping also exceeds the total amount of recharge of the Confined Aquifer, preventing attainment of a Sustainable Water Supply (defined in Recital B2, below) in the two aquifers. This overdevelopment has adversely affected lands within the Subdistrict, resulting in declining water tables, loss of well productivity, and other problems for irrigated agriculture. Unless the total consumption of groundwater in the Subdistrict is reduced, these problems will continue and worsen, threatening the use of the Property for agricultural purposes, the agricultural economy in the Valley, including the Property, open and scenic vistas of the Property, and wildlife habitat on the Property.
- B2. The State Engineer adopted rules governing the withdrawal of groundwater in the Rio Grande Basin and requiring remedy to stream depletions as well as establishing a sustainable water supply in each aquifer; these rules are referred to as Groundwater Use Rules<sup>1</sup>. One of the goals of the Subdistrict is to meet the obligations of its members under the Groundwater Rules for a Sustainable Water Supply (“**Sustainable Water Supply**”).
- B3. This Deed of Conservation Easement encumbers certain water rights and permanently reduces the use of such water rights on the Property for the purpose of ensuring the long-term viability of agriculture in the area through achieving and maintaining a Sustainable Water Supply.
- B4. By execution and recordation of this Deed of Conservation Easement, the water rights that are included in this Easement, enumerated in **Exhibit C**, are considered to be enrolled in the water conservation program established April 19, 2022 through formal action of the Rio Grande Water Conservation District pursuant to § 37-92-103(2)(b)(II) of the Colorado Revised Statutes (“**C.R.S.**”), under which any period of nonuse shall be tolled, and no intent to discontinue permanent use shall be found for the purposes of determining abandonment of the water rights.

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<sup>1</sup> Terms used in this Deed that are the same as, and used in the same context as, terms specifically defined in the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for all Irrigation Water Rights, District Court, in and for Water Division No. 3, Case No. 2015CW3024 (“**Groundwater Use Rules**”), have the same meaning in this Deed.



- C. The Subdistrict seeks to reduce, through groundwater conservation, Injurious Stream Depletions and achieve and maintain a Sustainable Water Supply in both aquifers. Depletion of the aquifers threatens the farming traditions of the area as well as the local ecology. The Rio Grande Water Conservation District has partnered with the San Luis Valley Water Conservancy District, the Conejos Water Conservancy District, the Rio Grande Headwaters Land Trust and Colorado Open Lands to form the River Aquifer Recovery & Enhancement (“**RARE**”) Partnership. This Easement, which has a limitation on groundwater use, is part of RARE’s project to assist the Subdistrict to achieve and maintain a Sustainable Water Supply.
- D. **Conservation Purposes.** Pursuant to Internal Revenue Code (“**I.R.C.**”) § 170(h)(4)(A) and Treasury Regulation § 1.170A-14(d), the conservation purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by, or education of, the general public; (2) to protect relatively natural habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures.

**The conservation purposes of this Easement (“Conservation Purposes”) are as follows:**

- D1. **Relatively Natural Habitat** [§ 1.170A-14(d)(3)]. Prior to large-scale agricultural production on the Property, several naturally occurring contiguous ecosystems spanned the entirety of the Property and occurred broadly throughout the San Luis Valley. Intermontane grassland, riparian, and wetland ecosystems that currently exist in the San Luis Valley on a limited basis, are critical habitat for diverse communities of resident and migratory birds, mammals, and other wildlife. Several of these genera are federally protected species and/or Tier 1 Priority Species protected by the State of Colorado.

A core Conservation Purpose of this Deed is to cultivate and steward Relatively Natural Habitat by implementing the Land Transition Plan (defined in Section 7.7.3) and converting industrial agricultural fields to remediated perennial grasslands. Stewarding these grasslands through the Land Transition and Land Management (defined in Section 7.1) plans will protect and provide important habitat for the species noted herein and qualifies as Relatively Natural Habitat. The Parties recognize the challenges of reestablishing Relatively Natural Habitat due to the arid environment and high degree of disturbance resulting from decades of intensive agricultural production but agree that similar efforts to establish remediated grasslands elsewhere throughout the San Luis Valley are broadly successful.

- D2. **Open Space** [§ 1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved pursuant to clearly delineated government conservation policy, especially preservation of a Sustainable Water Supply, which preserves agriculture in the region, contributes to the agricultural economic security of the community, and will yield a significant public benefit through aquifer recovery and prevention of export of water. Maintaining a Sustainable Water Supply is



critical to maintaining agricultural open space. Additionally, public lands managed by the Bureau of Land Management lie within two miles of the Property and lands managed by the U.S. Forest Service lie within four miles of the Property, so this Property's protection will help to achieve and maintain open space continuity among protected landscapes.

***Clearly Delineated Government Conservation Policy.*** Protection of the Property furthers the specific objectives of clearly delineated government conservation policies, described hereafter:

**U.S. Department of Agriculture/State of Colorado – CREP, 2012**

The Colorado Rio Grande Conservation Reserve Enhancement Program (CREP) partnership, which was entered into between the state of Colorado and the U.S. Department of Agriculture on December 12, 2012, which provides for irrigation water retirement and establishment of native grass to conserve agricultural irrigation water, is a policy furthered by this Property's conservation through this Deed of Conservation Easement, which seeks to fulfill the objectives of the policy by retiring irrigated water use on the Property.

**Colorado Water Conservation Board - Rio Grande Basin Implementation Plan, Adopted January 2022**

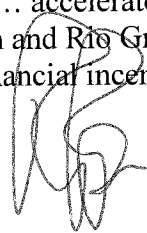
The Rio Grande Basin Implementation Plan, as part of the Colorado Water Plan administered by the Colorado Water Conservation Board of the State of Colorado, directs the Basin to "Implement conservation easements, including groundwater easements" as a strategy to achieve the following outcome: develop and implement land and water management projects and initiatives that support healthy ecosystems and contribute to sustainable aquifer levels. This desired outcome and supporting strategy are identified under Goal 2 of the Basin Implementation Plan: Aquifers with sustainable supplies of groundwater for farmers and ranchers, towns, and wildlife habitat. This Deed of Conservation Easement was specifically approved for Colorado Water Plan funding to support this objective, and as such the Property's conservation is directly furthering the objectives of this policy.

**U.S. Department of Agriculture - Natural Resources Conservation Service Regional Conservation Partnership Program (RCPP), 2021**

Colorado Open Lands was awarded RCPP funding for its Partnership to Preserve Agriculture and Restore Aquifers to place groundwater conservation easements on farmland and facilitate land transition to reduce groundwater consumption to support aquifer recovery.

**Colorado Senate Bill 22-028 – Groundwater Compact Compliance Fund**

In May 2022, SB 22-028 was enacted to "... accelerate the state's progress in retiring irrigated acreage in the Republican and Rio Grande River Basins... a state fund [has been] created to provide financial incentives and assistance for



the buying and retiring of irrigation wells in the basins... [and to] help promote conservation and sustainability of groundwater resources in furtherance of the State Water Plan developed pursuant to (CRS) section 37-60-106.3". The Property's conservation is directly furthering the objectives of this policy.

***State Policy Concerning Conservation Easements.*** C.R.S. § 33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. § 35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." C.R.S. § 38-30.5-102 provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land . . .". The protection of the Property with this Deed of Conservation Easement fulfills the State policy objectives of protecting and enhancing wildlife habitat and maintaining land in its open, undeveloped condition by ensuring the Property will be perpetually protected for conservation purposes.

***Significant Public Benefit.*** There is a risk of continued decline in the artesian pressure of the Confined Aquifer which will harm agriculture on the Property and in the region if groundwater withdrawals continue at their current levels, reducing the ability of the Property to remain in irrigated agriculture. As such, there is a strong likelihood that the water rights associated with the Property would be developed to support a water export proposal if left unprotected, which would in turn lead to or contribute to the degradation of the regional hydrology and further decline of the aquifer. The Property lies just north of the Baca National Wildlife Refuge (NWR) and has a strong hydrological connection to the Baca NWR that will be benefitted by the retirement of irrigated water rights and reductions in groundwater withdrawals. San Luis Creek, which flows into the Baca NWR and supports manmade wetlands, which in turn provide significant habitat for a variety of species, will benefit from a Sustainable Water Supply and replacement of Injurious Stream Depletions that will be achieved as a result of this Deed of Conservation Easement.

**The Conservation Purposes set forth in this Recital D shall hereafter be referred to as the "Conservation Values." These Conservation Values are of great importance to the Parties, the residents of Saguache County, and the State of Colorado.**

- E. ***Qualified Organization.*** Grantee is a "qualified organization," as defined in I.R.C. § 170(h)(3) and Treasury Regulation § 1.170A-14(c) and is a charitable organization as required under C.R.S. § 38-30.5-104(2), is certified to hold conservation easements for which a state tax credit is claimed by the State of Colorado's Division of Conservation as

outlined in C.R.S. § 12-15-104 and in Rule 2.1 of the Code of Colorado Regulations, Qualifications for Certification to Hold Conservation Easements (4 CCR 725-4, Rule 2.1), for the current year. Grantee is also accredited by the Land Trust Accreditation Commission, a national accreditation program sponsored by the Land Trust Alliance, at this time. Further, Grantee's mission is to preserve the significant open lands and natural heritage of Colorado through private and public partnerships, innovative land conservation techniques and strategic leadership, and it possesses the resources and commitment to protect and defend the conservation purposes of this conservation easement.

**F. Conservation Easement.** This Deed creates a perpetual conservation easement in gross, as defined by C.R.S. § 38-30.5-102 and § 38-30.5-103 and of the nature and character described in this Deed ("**Easement**").

**G. Charitable Donation.** Grantor intends to sell a portion of the property interest conveyed by this Deed to the Grantee, which is defined as a sale to Grantee at a price less than the fair market value of the conservation easement interest. Grantor intends to donate to the Grantee the difference between the fair market value of the conservation easement interest and the consideration paid by Grantee, as a charitable donation of a qualified conservation pursuant to I.R.C. § 170(h), Treasury Regulation § 1.170A-14, and C.R.S. § 38-30.5-101 *et seq.* No goods or services shall be provided by Grantee to Grantor in exchange for this contribution.

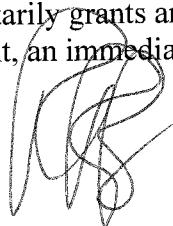
**NOW, THEREFORE,** in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. **Acknowledgement of Purpose and Intent.** As a guide to the interpretation of this Deed and administration of this Easement, the Parties, for themselves, and for their successors and assigns, expressly declare their agreement and dedication to the following purpose and intent:

1.1. **Purpose.** The purpose of this Easement is to preserve and protect the Conservation Values in perpetuity in accordance with I.R.C. § 170(h), Treasury Regulation § 1.170A-14, and C.R.S. § 38-30.5-101 *et seq.* ("**Purpose**").

1.2. **Intent.** The intent of the Parties is to permit acts on and uses of the Property that are consistent with the Purpose and to restrict or prohibit acts on and uses of the Property that are not consistent with the Purpose ("**Intent**"). In this Deed, "consistent with the Purpose" shall mean acts on and uses of the Property that have a positive impact, net neutral impact, or no impact on the Conservation Values as determined by Grantee in its sole discretion. Nothing in this Deed is intended to compel a specific act on or use of the Property other than the preservation and protection of the Conservation Values.

2. **Conveyance of Easement.** Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, this Easement, an immediately vested interest in real property, in perpetuity.



3. ***Rights Conveyed to Grantee.*** To accomplish the Purpose, the following rights are hereby conveyed to Grantee, its employees, and its representatives:

- 3.1. To preserve and protect the Conservation Values;
- 3.2. To prevent acts on or uses of the Property that are not consistent with the Purpose and, except as limited by Section 9 (Responsibilities of the Parties Not Affected) of this Deed, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent act or use;
- 3.3. To enter upon the Property in order to monitor Grantor's compliance with the terms of this Deed pursuant to Section 10 (Monitoring) of this Deed, and to enforce the terms of this Deed pursuant to Section 11 (Enforcement) of this Deed.
- 3.4. To have all Development Rights as defined in Section 16 (Development Rights) of this Deed, except as specifically reserved by Grantor herein.
- 3.5. To have all other rights conveyed by this Deed.

4. ***Rights Retained by Grantor.*** Grantor retains the right to perform any act on or use of the Property that is not prohibited or restricted by this Deed, provided that such acts or uses are consistent with the Purpose. Specifically, Grantor and their successors in interest retains the right to practice agriculture, including but not limited to domestic stock grazing, and to utilize the Water Rights (defined below) subject to the terms of this Deed.

5. ***Documentation of Present Conditions.*** Pursuant to Treasury Regulation § 1.170A-14(g)(5) and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by Ben Lenth of Colorado Open Lands and dated August 29, 2022 ("**Present Conditions Report**"). The Present Conditions Report documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Report has been provided to the Parties and is acknowledged by the Parties as an accurate representation of the Property at the time of the conveyance. The Present Conditions Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

6. ***Property Improvements.*** Improvements existing as of the date of this Deed are permitted. All other construction or placement of improvements is prohibited except as provided herein.

- 6.1. ***Residential and Nonresidential Improvements.*** The construction, placement, replacement, enlargement, maintenance, and repair of residential and nonresidential structures, whether temporary or permanent, is permitted pursuant to the limitations set forth herein. For purposes of this Deed, "**Residential Improvements**" are defined as covered structures containing habitable space, including homes, cabins, guest

houses, mobile homes, tiny homes, and any space attached to a home, cabin or guest house such as a garage, and any other structures intended for full or part-time human habitation. For purposes of this Deed, “**Nonresidential Improvements**” are defined as covered structures and not intended for human habitation and include, but are not limited to, barns, pole barns, sheds, arenas, greenhouses, season extenders/hoop houses, and free-standing garages.

- 6.1.1. **Building Envelope.** There shall be one (1) building envelope permitted on the Property (referred to herein as the “**Building Envelope**”). All Residential Improvements and Nonresidential Improvements (with the exception of Nonresidential Improvements permitted by Section 6.1.3 below) constructed after the date of this Deed shall be located within the Building Envelope.
- 6.1.2. **Within the Building Envelope.** The Building Envelope consists of ten (10) acres. The location of the Building Envelope is generally depicted on **Exhibit B**. On the date of this Deed, there is one Nonresidential Improvement located within the Building Envelope. Grantor may construct, place, replace, or enlarge Nonresidential Improvements within Building Envelope and may construct one (1) Residential Improvement.
- 6.1.3. **Outside of the Building Envelope.** Grantor may maintain, construct, place, replace, or enlarge Nonresidential Improvements outside of the Building Envelope subject to the following: The maximum number of Nonresidential Improvements shall not exceed four; and the maximum Footprint for each Nonresidential Improvement shall not exceed 300 square feet, and the total cumulative Footprint for all Nonresidential Improvements shall not exceed 1,200 square feet. Notwithstanding the foregoing, on the date of this Deed, there is one existing Nonresidential Improvement: a Quonset hut of 5,600 square feet of Footprint in the location shown on the attached **Exhibit B**, which may be repaired, but not replaced.
- 6.1.4. **Repair and Maintenance.** Grantor may repair and maintain permitted improvements without further consent of Grantee.
- 6.1.5. **Notice.** Prior to the placement, construction, replacement or enlargement of the single Residential Improvement or any Nonresidential Improvement as permitted by Section 6.1, Grantor shall notify Grantee in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. The written notice shall describe the location and, if outside the Building Envelope, the Footprint of the proposed improvement in sufficient detail to allow Grantee to evaluate the consistency of the proposed improvement with this Section.
- 6.1.6. **Definition of Footprint.** For purposes of this Deed, Footprint is defined as the total ground area occupied by the Residential Improvement or Nonresidential Improvements, calculated on the basis of the exterior



dimensions (whether at or above ground level) including carports or breezeways, but does not include eaves, uncovered decks, or patios (“**Footprint**”).

6.2. ***Other Improvements.***

6.2.1. ***Utility Improvements.*** Existing energy generation or transmission infrastructure and other utility improvements, including but not limited to: (i) electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) domestic water storage and delivery systems; and (v) renewable energy generation systems and storage including, but not limited to, wind, solar, geothermal, or hydroelectric (“**Utility Improvements**”), may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with Purpose.

6.2.1.1. ***Within the Building Envelope.*** Grantor may enlarge or construct Utility Improvements within the Building Envelope without further permission of Grantee.

6.2.1.2. ***Outside of the Building Envelope.*** Grantor shall not enlarge or construct Utility Improvements outside of the Building Envelope without permission of Grantee. Prior to the enlargement or construction of Utility Improvements, Grantor shall provide notice so that Grantee can evaluate whether the proposal is consistent with Purpose, pursuant to Section 23 (Grantee’s Approval) of this Deed.

6.2.1.3. ***Additional Requirements.*** Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose. Any easement, right of way or other interest granted to a third party or otherwise reserved, to be used for Utility Improvements is subject to Section 8.9 (Easements, Rights of Way or Other Interests) of this Deed.

6.2.1.4. ***Renewable Energy Generation Systems.*** Renewable energy generation systems are permitted for limited use on the Property which shall mean such use is primarily for the purpose of allowing Grantor to offset its energy consumption, subject to the restrictions above. Any such limited renewable energy generated on the Property in accordance with this paragraph that incidentally is in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

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6.2.2. **Water Improvements.** The maintenance, replacement, and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, center pivot sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells, together with the enlargement or construction of the same, is permitted provided that Grantee determines that said activities are consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed and is consistent with or authorized by a decree of the water court or administrative approval by the Colorado Division of Water Resources. Any portion of the Property that is disturbed by the maintenance, replacement, repair, construction, or enlargement of water improvements shall be restored to a condition that is consistent with the Purpose promptly after said activity is completed.

6.2.3. **Miscellaneous Improvements.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited.

7. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below.

If Grantee believes any resource management practice(s) are not consistent with the Purpose, Grantee, in addition to all of its rights under this Deed, may request that the Parties consult with a mutually acceptable resource management professional. This professional will provide written recommendations for said resource management practice(s). The cost of this consultation shall be borne by Grantor. Grantee shall determine whether said recommendations are consistent with the Purpose.

7.1. **Land Resources.** The Parties recognize that the cessation of groundwater withdrawals described in Section 7.7.2 (Water Conservation Program Restrictions) necessitates a transition from agricultural use, which shall be done in accordance with the Land Transition Plan (defined in Section 7.7.3) for the first ten (10) years from the date of this Deed. The Parties shall develop a Land Management Plan to guide long-term management of the Property; said Land Management Plan shall overlap with the Land Transition Plan by at least one year. Grantee shall update Land Management Plan uses as needed to ensure continued long-term stewardship and management goals consistent with the Purpose. Long term stewardship and management goals of the Land Management Plan include soil health and maintaining a Sustainable Water Supply. The expense of developing and implementing said Plan shall be borne by Grantor.

7.2. **Habitat Management Activities.** Habitat management activities that have the potential to negatively impact the Conservation Values such as chaining sagebrush, constructing or altering ponds, wetlands, or stream channels, and conducting controlled burns may be permitted provided that Grantee determines that said

management activities are consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed.

7.3. **Minerals.** For the purposes of this Deed, minerals shall be defined as soil, sand, gravel, rock, stone, decorative stone, gold and other rare earth elements, oil, natural gas, coalbed methane (including any and all substances produced in association therewith from coalbearing formations), hydrocarbon, fossil fuel, or any other mineral substance, of any kind or description, on, in, under or part of the Property (collectively referred to as "**Minerals**").

7.3.1. **Ownership of Minerals.** As of the date of this Deed, Grantor does not own all rights and interests in the Minerals and mineral rights located on, under, or in the Property or otherwise associated with the Property. For this reason, a mineral assessment report was completed by Jim Armstrong, Rare Earth Science dated August 9, 2022 ("**Mineral Report**"), in compliance with I.R.C. § 170(h)(5)(B)(ii) and Treasury Regulation § 1.170A-14(g)(4). It is concluded in the Mineral Report that, as of the date of this Deed, the probability of extraction or removal of minerals from the Property by any surface mining method is so remote as to be negligible. Grantor shall not transfer or otherwise separate Grantor's rights or interests in and to any Minerals from the Property.

7.3.2. **Mineral Development.** The exploration, development, mining, or other extraction or removal of Minerals, conducted on, under, or in the Property or otherwise associated with the Property by any method is prohibited, except as set forth herein. Notwithstanding the foregoing, subject to Grantee's approval Section 23 (Grantee's Approval), Grantor may permit subsurface access to Minerals from locations off the Property provided that Grantor shall not permit such subsurface access to disturb the subjacent and lateral support of the Property, and further provided that there is no surface occupancy of the Property, including but not limited to, the location of all equipment, pumps, storage facilities, pipelines, roads, and any other infrastructure, or other activities necessary for extraction, storage, or transportation is located off the Property, extraction takes place off the Property, and that the method and means of extraction is consistent with the Purpose.

7.3.3. **Notice Related to Minerals.** Grantor agrees that by granting this Easement to Grantee, it has given Grantee a portion of its ownership interest in the Property, and by so doing, given Grantee the same legal rights as Grantor to influence and control impacts to the surface of the Property from exploration or development of Minerals. This ownership interest does not include any right for Grantee to receive any income, royalties or lease payments from exploration or development of Minerals. Grantee's ownership interest requires that if Grantor is contacted verbally or in writing regarding the exploration for, lease or severance of Minerals or creation of a Mineral Document (defined below), Grantor shall provide written notice, copy, or description to Grantee of said contact within ten (10) days.



- 7.3.3.1. *Definition of Mineral Document.* For purposes of this Deed, the term “**Mineral Document**” shall mean any lease, pooling agreement, unitization agreement, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals.
- 7.3.3.2. *Approval of Mineral Document Required.* Grantor shall not enter into any Mineral Document, or amend or renew any existing Mineral Document, without Grantee approval pursuant to Section 23 (Grantee’s Approval) to ensure that said document is consistent with the Purpose and this Section, and Grantee shall have the right but not the obligation to be a party to any such agreement, if Grantee chooses, in its sole discretion. Grantee shall have the right to charge a fee to Grantor for time and costs associated with review of any Mineral Document.
- 7.4. **Geothermal Resources.** Within the Building Envelope, the development and use of geothermal resources is permitted without Grantee’s approval, provided that it is consistent with the Purpose. Outside the Building Envelope, the development and use of geothermal resources is prohibited without Grantee approval pursuant to Section 23 (Grantee’s Approval).
- 7.5. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, and hunting are permitted, provided they are consistent with the Purpose.
- 7.6. **Weeds.** The Parties recognize the potential negative impact of noxious weeds and invasive plant species on the Conservation Values. Grantor shall manage noxious weeds and invasive plant species in a manner consistent with the Purpose. Grantee has no responsibility for the management of noxious weeds and invasive plant species.
- 7.7. **Water Rights.** Pursuant to C.R.S. § 38-30.5-102, which authorizes the inclusion of “water rights beneficially used upon the land...owned by Grantor” in a conservation easement, the Property subject to this Easement includes any and all right, title, and interest in and to the water rights dedicated to the Water Conservation Program (defined below) described in Exhibit C (“**Water Rights**”).
- 7.7.1. **Permitted Uses of Water Rights.** The Parties agree that the Water Rights are hereby dedicated and restricted exclusively to be used for the preservation and protection of the Conservation Values (“**Permitted Water Uses**”). By execution and recordation of this Deed of Conservation Easement, the water rights that are included in this Easement, enumerated as Dedicated to the Water Conservation Program in Exhibit C, are considered to be enrolled in the Water Conservation Program established through formal action of the Rio Grande Water Conservation District pursuant to C.R.S. § 37-92-103(2)(b)(II), under which any period of nonuse shall be tolled, and no intent to discontinue permanent use shall be found for the purposes of determining abandonment of the water rights (“Water Conservation Program”). As part of said conservation program, the Water Rights dedicated to the Water Conservation Program are held for non-use for the purpose of achieving and maintaining a Sustainable Water Supply. The retained 50% of the groundwater rights

listed in **Exhibit C** and any surface water rights whether listed or not listed therein may be used by Grantor and their successors in interest for irrigation, including revegetation, or for augmentation, replacement (directly or by exchange), aquifer recharge, or storage, provided that such use is to Remedy Injurious Stream Depletions within Response Areas 4 (San Luis Creek) and 5 (Saguache Creek) for the benefit of Subdistrict 4 and its members, and, with the approval of the Subdistrict 4 Board of Managers, other subdistricts, as limited by paragraph 7.7.2.1, below.

**7.7.2. Water Conservation Program Restrictions.** Grantor has certain groundwater rights that have been historically used on the Property. As of the date of this Deed, Grantor's decreed use of the encumbered well(s) has been 180 acre-feet per year for each well. The Parties agree that this Deed permanently restricts groundwater withdrawals from the encumbered wells as set forth in Exhibit C, following implementation of a Land Transition Plan, defined below.

**7.7.2.1.** If the Water Rights are used as a source of water for augmentation, replacement (directly or indirectly), substitution, or exchange for another water right, such other water right must be diverted within Water Division 3 for a beneficial use located within Water Division No. 3. The Water Rights cannot be used as a source of water to be exported outside of Water Division No. 3, or to facilitate the export of other sources of water to locations outside of Water Division No. 3.

**7.7.3. Land Transition Plan.** The Parties agree that due to the arid environment in which the Property is located, an immediate cessation of groundwater pumping would have detrimental effects on the vegetation and soil resources of the Property. Consequently, pumping shall be gradually reduced over a period of up to ten (10) years, during which time, management of the Property will be conducted according to the Land Transition Plan, created by Colorado Open Lands and dated October 26, 2022. The Land Transition Plan shall specify irrigation amount and timing across the Property and shall guide remediation activities in order to encourage soil stability and health, minimize invasive species, and maximize approved vegetative cover. The Parties acknowledge and agree that adaptability is essential, given the innovative nature of this work, and may, upon mutual agreement, update the Land Transition Plan as needed based on field evaluations during its 10-year lifespan.

**7.7.4. Restrictions on Water Rights.** Grantor shall not transfer, encumber, sell, or otherwise permanently separate the Water Rights from the Property. Grantor shall not abandon or allow abandonment of the Water Rights by action or inaction. Grantor shall not change the historic beneficial use of the Water Rights unless Grantee determines that said change is consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed. No change of the point of diversion of the Water Rights shall be submitted for judicial approval unless Grantee determines that the proposed change of point of diversion is consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed.

**7.7.4.1.** Notwithstanding paragraph 7.7.4, in the event that the Rio Grande Water Conservation District, acting on behalf of the Subdistrict, becomes a successor in interest to Grantor, the District may separate the Water Rights from the Property

in whole or in part (“**Severed Water Rights**”), provided that the District retains ownership of the Severed Water Rights. The use of the Severed Water Rights shall be forever limited to irrigation, including revegetation, augmentation, replacement (directly or by exchange), aquifer recharge, or storage within Water Division No. 3 for the benefit of the subdistricts of the District and their members, which limitation shall be enforceable by the Grantee against the District pursuant to CRS §§ 38-30.5-101 *et seq.* In the alternative, the Parties intend and desire that the obligations set forth in this Paragraph be enforceable as a restrictive covenant or equitable servitude benefitting the Property, and this Deed, including the Conservation Purposes of this Deed, and supporting a Sustainable Water Supply.

8. ***Restricted Acts and Uses.***

- 8.1. ***Division of the Property.*** At the time of conveyance, the Property may consist of more than one (1) parcel for purposes of county tax assessment or may have been conveyed to Grantor by one (1) or more separate deeds. Notwithstanding the number of separate parcels conveying the Property, the Property may be granted, sold, exchanged, devised, gifted, transferred, encumbered or otherwise conveyed in unified title as one (1) parcel only, subject to the provisions of this Deed. The division, subdivision, or de facto subdivision of the Property by legal or physical process (including, but not limited to, platting, testamentary division, or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property are held by different owners), into two or more parcels of land, or partial or separate interests (including, but not limited to, condominium interests, interval or time-share interests or the partition in kind of undivided interests) is prohibited. Ownership of the single unit by joint tenancy or tenancy in common is permitted, consistent with Sections 31 (Joint and Several Liability) and 32 (Ownership by Single Entity Consisting of Multiple Parties); provided, however, that Grantor shall not undertake any legal proceeding to partition in kind, subdivide or divide in any manner such undivided interests in the single unit.
- 8.2. ***Surface Disturbance.*** Any alteration of the surface of the land, including without limitation, the movement, excavation, extraction or removal of soil, sand, gravel, rock, peat or sod, is prohibited, unless such alteration is associated with permitted acts on and uses of the Property and is consistent with the Purpose.
- 8.3. ***Industrial or Commercial Activity.*** Industrial uses of the Property are prohibited. Commercial uses of the Property that are not consistent with the Purpose are prohibited.
- 8.4. ***Feedlot.*** The establishment or maintenance of a feedlot is prohibited. For purposes of this Deed, “feedlot” is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of finishing or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for feeding or calving, or from leasing pasture for the grazing of livestock

owned by others.

- 8.5. **Public Access.** Nothing contained in this Deed shall be construed as affording the public other than visual access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as Grantor deems appropriate, provided that such access is consistent with the Purpose.
- 8.6. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is consistent with the Purpose. The storage or accumulation of agricultural products and by-products on the Property is permitted provided that such activity is conducted in accordance with all applicable government laws and regulations and is consistent with the Purpose.
- 8.7. **Hazardous Materials.** For purposes of this Deed, "Hazardous Materials" shall mean any "hazardous substance" as defined in § 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), "pollutant or contaminant" as defined in § 9601(33) of CERCLA, or any hazardous waste as defined in C.R.S. § 25-15-101(6). 40 C.F.R. § 302.4 provides a non-exhaustive list of over 600 substances that qualify as hazardous substances under CERCLA. The use, treatment, storage, disposal, or release of Hazardous Materials shall only be permitted in accordance with applicable, federal, state and local law and regulations.
- 8.8. **Motorized Vehicle Operation.** The operation of motorized vehicles for purposes associated with permitted acts on and uses of the Property is permitted provided that such operation is consistent with the Purpose.
- 8.9. **Easements, Rights of Way, or Other Interests.** The conveyance or modification of an easement, right of way, Mineral Document or other similar interest is prohibited unless such right preexists the Easement Grantee determines that the proposed conveyance or modification is consistent with the Purpose pursuant to Section 23 (Grantee's Approval) of this Deed.
9. **Responsibilities of the Parties Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee or CWCB, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible for and neither Grantee nor CWCB shall have no obligation for the upkeep and maintenance of the Property, and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:
- 9.1. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes

or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments, or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

9.2. ***Liability.***

9.2.1. ***Environmental Liability.***

9.2.1.1. Grantor shall indemnify, defend, and hold Grantee and CWCB and their respective members, officers, directors, employees, agents, and contractors (collectively, the “**Indemnified Parties**”) harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) the existence, generation, treatment, storage, use, disposal, deposit or transportation of Hazardous Materials in, on or across the Property; (ii) the release or threatened release of Hazardous Materials on, at, beneath or from the Property; (iii) the existence of any underground storage tanks on the Property; or (iv) a violation or alleged violation of, or other failure to comply with, any federal, state, or local environmental law or regulation by Grantor or any other prior owner of the Property.

9.2.1.1.1. Notwithstanding anything in this Deed to the contrary, this Deed does not impose any liability on Grantee or CWCB for Hazardous Materials, nor does it make Grantee or CWCB an owner of the Property, nor does it require Grantee or CWCB to control any act on or use of the Property that may result in the treatment, storage, disposal or release of Hazardous Materials, all within the meaning of CERCLA or any similar federal, state or local law or regulation.

9.2.1.2. ***Grantor's Liability.*** Grantor shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless caused solely by the willful and wanton act or omission [as defined by C.R.S. §13-21-102(1)(b)] of the Indemnified Parties; (ii) the obligations under this Section; or (iii) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement by any person other than any of the Indemnified Parties, in any way affecting, involving,

or relating to the Property.

9.2.1.3. **Grantee's Liability.** Grantee shall indemnify, defend, and hold Grantor and its assigns, successors, and heirs harmless from and against any and all loss, cost, or expense, including reasonable attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

10. **Monitoring.** In order to monitor Grantor's compliance with the terms of this Deed, Grantee shall have the right to enter upon the Property upon reasonable prior notice to Grantor. Said notice need not be in writing. Grantee may engage such experts or consultants that Grantee deems necessary to assist in monitoring, including conducting aerial flyovers of the Property. Such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

11. **Enforcement.**

11.1. **General Provisions.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. If Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of the terms of this Deed, Grantee may enter the Property without advance notice. If such entry occurs, Grantee shall notify Grantor within a reasonable time thereafter. If Grantee determines that a violation has occurred, Grantee shall notify Grantor of the nature of the alleged violation. Said notice need not be in writing. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (i) if necessary, provide a written plan for restoration and remediation of the Property and, once approved, restore, or remediate the Property in accordance with the plan; or (ii) provide written documentation demonstrating that the activity is permitted and is not a violation. Grantee's acceptance of Grantor's actions under (i) or (ii) above shall be in Grantee's sole discretion, and shall be confirmed by Grantee in writing. If Grantor is unable or unwilling to immediately cease the alleged violation, and comply with (i) or (ii) above, the Parties agree to resolve the dispute through mediation or judicial process. At any point in time, Grantee may take appropriate legal action, including seeking an injunction, to stop the alleged violation.

11.2. **District Enforcement.** If Grantor exceeds the groundwater withdrawal limitations in any year, Grantee, in its sole discretion, may require the District, acting by and through the Subdistrict, to exclude Grantor's wells and groundwater rights from any future Annual Replacement Plan submitted to the Colorado Division of Water Resources in conformance with the Groundwater Rules. Such notice must be provided to the District and Subdistrict in writing. If Grantee exercises this remedy, the District and the Subdistrict, by signing as a Party to this Easement, agree to and shall exclude Grantor's wells and groundwater rights from all future Annual Replacement Plans unless Grantee provides written notice that Grantor's violation has been cured to the satisfaction of Grantee.

- 11.3. **Grantee's Discretion.** Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.
- 11.4. **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs and expenses of suit, attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed, shall be borne by Grantor. If the deciding body determines that Grantee has acted in bad faith in seeking to enforce the terms of this Deed, the Parties shall each be responsible for their own costs. If the Parties agree to mediation, the Parties will equally share the cost of the mediator's fees.
12. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits hereto), including typographical, spelling, or clerical errors. Such correction shall be by recorded written agreement signed by the Parties, with all associated costs being apportioned as the Parties may mutually agree.
13. **Amendment.** If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, as determined by Grantee, in its sole discretion, the Parties may jointly amend the terms of the Deed so long as the amendment (a) shall have a positive, or at least a neutral, effect on or impact to the Conservation Values, (b) does not affect the perpetual duration of the restrictions contained in this Easement, (c) complies with all federal, state, and local laws, including C.R.S. § 38-30.5-101, *et seq.*, or any regulations promulgated thereunder, (d) shall be consistent with Grantee's public mission, (e) shall not jeopardize Grantee's tax-exempt status or status as a charitable organization under federal or state law, (f) shall not result in private inurement or confer impermissible private benefit, and (g) complies with Grantee's procedures and standards for amendments (as such procedures and standards may be amended from time to time). Amendment of the Easement shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances. In order to preserve the Easement's priority, Grantee may require that any liens, mortgages, easements, or other encumbrances be subordinated to any proposed amendment. Nothing in this Section shall be construed as requiring Grantee to agree to any particular proposed amendment. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any amendment must be in writing, signed by the Parties, and recorded in the official records of Saguache County, Colorado. If any amendment affects only the Property or only the Severed Water Rights, only the owner of the Property or the Severed Water Waters affected by the amendment is required to execute such amendment. No amendment shall affect the rights and responsibilities of the District and Subdistrict hereunder unless also signed by the District and Subdistrict.



14. **Transfer of Easement.** This Easement is transferable by Grantee, provided that (i) the conservation purposes which the contribution was originally intended to advance continue to be carried out; (ii) the transfer is restricted to an organization that, at the time of the transfer, is a qualified organization under I.R.C. § 170(h) and authorized to hold conservation easements under C.R.S. §§ 38-30.5-101, et seq. and C.R.S. § 12-61-724; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed. Grantee shall notify Grantor in advance of any proposed transfers and consult with Grantor and CWCB as to preferred transferees. If Grantee ever ceases to exist, a court with jurisdiction is authorized to transfer this Easement pursuant to (i), (ii), and (iii) above.
15. **Transfer of Property.** Any time the Property or a permitted portion thereof is transferred by Grantor to any third party, Grantor shall notify Grantee in writing within five (5) business days after closing using the form in **Exhibit D**, and shall include a copy of the new ownership deed. The document of conveyance shall expressly refer to this Deed. However this requirement shall be waived for the conveyance of the Property from the original Grantor (**RONALD R. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, and **GAIL J. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014) to the Rio Grande Water Conservation District, as that is the prior intent of all parties involved in this Deed of Conservation Easement. For any transfer thereafter, Grantor shall pay a fee of 1/4 of 1% of the purchase price, including the value of non-cash consideration, to Grantee as holder of the real property interest and right of possession represented by this Deed, excluding transfer to Grantor's direct descendants and family members, as defined by the Internal Revenue code, and excluding transfers for the sole purpose of changing the type of legal entity by which title is held. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this easement by providing Grantee a contribution toward its stewardship, enforcement, and defense of this Easement. If a fee is attributable to a transfer of property classified as "residential real property," as defined in C.R.S. Section 38-35-127(2)(e), then the Grantee covenants and agrees that the fee shall be used for the purposes specified in C.R.S. Section 38-35-127(2)(b)(V) in a manner consistent with the Grantee's mission.
16. **Development Rights.** For purposes of this Deed, "**Development Rights**" are defined as all present or future rights to (i) construct, place, replace, enlarge, maintain, or repair any improvements on the Property; or (ii) receive credit for density for development on or off the Property. By this Deed, Grantor conveys to Grantee all Development Rights associated with the Property except those Development Rights specifically reserved by Grantor, which include the right to make Residential Improvements and Nonresidential Improvements pursuant to Section 6.1 (Residential and Nonresidential Improvements) of this Deed. Therefore, Grantor does not have the right to use or transfer any Development Rights held by Grantee.
17. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall have the right to participate in any proceedings as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the



condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion in accordance with CRS § 38-30.5-107, Grantee and CWCB shall be entitled to compensation determined as provided in C.R.S. § 38-30.5-107.5, Section 19 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.

18. ***Termination or Extinguishment of Easement.*** Except as provided in Section 17 (Condemnation) of this Deed, this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction in accordance with C.R.S. § 38-30.5-107. The only ground upon which this Easement can be terminated or extinguished is the total loss of all Conservation Values. If termination or extinguishment occurs, Grantee and CWCB shall be entitled to compensation determined as provided in Section 19 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.

19. ***Compensation upon Condemnation, Termination, or Extinguishment.***

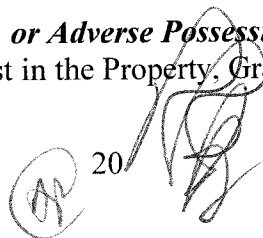
19.1. The Parties acknowledge that an appraisal of the Property has been completed that indicates that the fair market value of the Easement is sixty five percent (65%) of the full fair market value of the Property unrestricted by this Easement ("**Proportionate Value Percentage**"), which percentage shall remain constant and shall be applied pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii).

19.2. If the Property is condemned, in whole or in part, pursuant to Section 17 (Condemnation) or if this Easement is terminated or extinguished pursuant to Section 18 (Termination or Extinguishment of Easement), Grantee shall be entitled to a share of the proceeds of such action at least equal to the Proportionate Value Percentage of the full fair market value of the Property unrestricted by this Easement pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii) and C.R.S. § 38-30.5-107.5. Grantor shall not voluntarily accept less than full fair market value of the affected Property unrestricted by this Easement. The allocation of the Proportionate Share between Grantee and CWCB after proceeds are provided to Grantee will be as follows, in the following order: (a) to Grantee or its designee, 94.5(%) of the Proportionate Share and (b) to CWCB 5.5(%) of the Proportionate Share.

19.3. Grantee's use of its share of such proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6).

19.4. Grantee's remedies described in this Section shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

20. ***No Merger, Abandonment, Release, or Adverse Possession.*** Should Grantee in the future own all or a portion of the fee interest in the Property, Grantee as successor in title to

20. 

Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Deed. Should the District in the future own all or a portion of the fee interest in the Property, the District as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions on the Property (including Severed Water Rights) imposed by this Deed. In addition, this Easement shall not merge with the fee title without the prior written approval of Grantee, Grantor, the District and the Subdistrict. The Easement shall not be extinguished, in whole or in part, through the legal doctrine of merger pursuant to C.R.S. § 38-30.5-107 and in view of the public interest in its enforcement, this Easement cannot be abandoned, released, or affected by adverse possession.

21. ***Perpetual Duration.*** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to either Party shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Notwithstanding the foregoing, each party's rights and obligations under the Easement created by this Deed shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.
22. ***Change of Circumstance.*** Grantor has considered that restricted acts or uses may become more economically valuable than permitted acts or uses. It is the intent of the Parties that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 18 (Termination or Extinguishment of Easement) of this Deed. In addition, the inability to carry on any or all of the permitted acts and uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 18 (Termination or Extinguishment of Easement) of this Deed.
23. ***Grantee's Approval.*** Where Grantee's approval is required by this Deed, Grantor shall provide written notice to Grantee not less than sixty (60) calendar days prior to the date Grantor intends to undertake the act or use, with sufficient detail (i.e. location, size, scope, design and nature) to allow Grantee to evaluate the consistency of the proposed act or use with the Purpose. Grantee shall approve or deny Grantor's written request, or notify Grantor of a delay in Grantee's decision, in writing within forty-five (45) calendar days of receipt of Grantor's written request. Grantee shall only approve acts or uses consistent with the Purpose. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing.
24. ***Written Notices.*** Any written notice that either Party is required to give to the other shall be delivered: (i) in person; (ii) via certified mail, with return receipt requested; (iii) via a commercial delivery service that provides proof of delivery; or (iv) via any delivery method mutually agreed to by the Parties, to the following addresses, unless one Party has been notified by the other Party of a change of address or ownership.



Grantor: Ronald R. Bowman Revocable Trust dated June 4, 1996  
Gail J. Bowman Revocable Trust dated June 4, 1996  
704 Cottonwood Circle  
Alamosa, CO 81101

Grantee: Colorado Open Lands  
1546 Cole Boulevard, Suite 200  
Lakewood, Colorado 80401

Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101

Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203

If above addresses change, the Parties shall provide updated information to one another in a timely manner. If a notice mailed to either Party at the last address on file is returned as undeliverable, the sending Party shall provide notice by regular mail to the other Party's last known address on file with the tax assessor's office of the county in which the Property lies, and the mailing of such notice shall be deemed compliance with this Section. Notice given to the designated representative of a trust or business entity shall be deemed notice to the trust or business entity, and notice given to the designated representative of a common or jointly held ownership shall be deemed notice to all owners.


**25. *Liens on the Property.***

25.1. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is and shall remain subordinate to this Easement or any amendments hereto.

**26. *Grantor's Representations and Warranties.***

26.1. Except as provided in Section 25.1 (Current Liens) of this Deed, Grantor represents and warrants that Grantor: i) has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year; ii) has the right to grant access to the Property to Grantee for the purposes described in this Deed and has in fact granted said access to Grantee; and iii) shall defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

26.2. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's actual knowledge:

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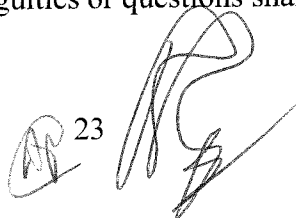
- 26.2.1. No Hazardous Materials exist or have been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property; there has been no release or threatened release of any hazardous materials on, at, beneath, or from the Property; and there are no underground storage tanks located on the Property;
- 26.2.2. Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;
- 26.2.3. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- 26.2.4. No civil or criminal proceedings or investigations have been threatened or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

27. **Acceptance.** Grantee hereby accepts without reservation the rights and obligations created by this Deed for which no goods or services were exchanged or provided.

28. **General Provisions:**

- 28.1. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 28.2. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.
- 28.3. **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription and acknowledges and agrees that the one-year statute of limitation provided under C.R.S. § 38-41-119 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.
- 28.4. **Controlling Law.** The provisions of this Deed are subject to the laws of the United States and the State of Colorado as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder.
- 28.5. **Liberal Construction.** The provisions of this Deed are to be liberally construed in favor of the Purpose, and any ambiguities or questions regarding the validity of specific provisions shall be interpreted in favor of maintaining the Purpose. Any decisions resolving such ambiguities or questions shall be documented in writing.



23



- 28.6. **Counterparts.** The Parties may execute this Deed in two or more counterparts which shall, in the aggregate, be signed by all parties. All counterparts, when taken together, shall constitute this Deed, and shall be deemed the original instrument as against any party who has signed it.
- 28.7. **Recitals, Exhibits, Plans Incorporated into this Deed.** The Recitals, above, the Exhibits attached hereto, the Land Transition Plan and the Land Management Plan are an integral part of this Deed and are incorporated into this Deed.
- 28.8. **Entire Agreement.** This Deed, including the recitals, exhibits and plans described in Section 28.7, sets forth the entire agreement of the Parties with respect to the terms of this Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Deed, all of which are merged herein.
29. **Recording.** Grantor shall record this Deed in a timely fashion in the official records of Saguache County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.
30. **No Third Party Enforcement.** This Deed is entered into by and between the Parties and the District, and does not create rights or responsibilities for the enforcement of its terms in any third parties except as to the Rio Grande Water Conservation District as stated herein.
31. **Joint and Several Liability.** If Grantor at any time owns the Property in joint tenancy or tenancy in common, Grantor shall be jointly and severally liable for all obligations set forth in this Deed.
32. **Ownership by Single Entity Consisting of Multiple Parties.** If Grantor at any time is an entity which consists of shareholders, partners or members, such Grantor entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess such shareholders, partners, or members for any monetary or other obligations set forth in this Deed. Grantor shall provide a copy of such documentation at any time upon Grantee's request.
33. **Authority to Execute.** Each party represents to the other that such party has full power and authority to execute and deliver this Deed, and perform its obligations under this Easement, that the individual executing this Deed on behalf of said party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

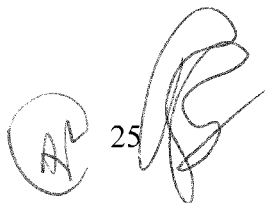
**TO HAVE AND TO HOLD, this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.**

**IN WITNESS WHEREOF, the Parties, intending to legally bind themselves, have set their hands on the date first written above.**

24  

[Signature Pages Follow]


25

A handwritten signature in dark ink is written over a circular stamp. The stamp contains the letters "AC" in a stylized font. The number "25" is printed to the left of the signature.

GRANTOR:

**RONALD R. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014

By:

  
Ronald R. Bowman, Trustee

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF Rio Grande         )

The foregoing instrument was acknowledged before me this 8 day of November, 2022, by Ronald R. Bowman as Trustee of the Ronald R. Bowman Revocable Trust dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, in his/her individual capacity as an owner of the Property.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

  
Notary Public

MARLIN JAMES REED  
Notary Public  
State of Colorado  
Notary ID # 20064011677  
My Commission Expires 03-27-2026



GRANTOR (continued):

**GAIL J. BOWMAN REVOCABLE TRUST** dated June 4, 1996, as amended July 1, 2009 and September 1, 2014

By:

Ronald R. Bowman, Trustee

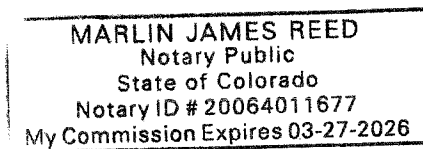
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Rio Grande )

The foregoing instrument was acknowledged before me this 8 day of November, 2022, by Ronald R. Bowman as Trustee of the Gail J. Bowman Revocable Trust dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, in his/her individual capacity as an owner of the Property.

Witness my hand and official seal.

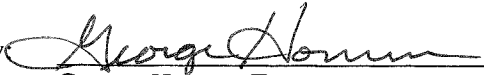
My commission expires: \_\_\_\_\_

Notary Public





**GAIL J. BOWMAN REVOCABLE TRUST dated June 4, 1996, as amended July 1, 2009 and September 1, 2014**

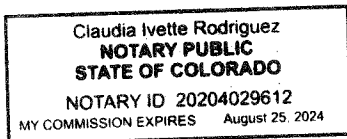
By   
George Homm, Trustee

STATE OF Colorado )  
 ) ss.  
COUNTY OF Kit Carson )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of November, 2022, by George Homm as Trustee of the Gail J. Bowman Revocable Trust dated June 4, 1996, as amended July 1, 2009 and September 1, 2014, in his/her individual capacity as an owner of the Property.

Witness my hand and official seal.

My commission expires: 08/25/2024



  
Notary Public





GRANTEE:

**COLORADO OPEN LANDS,  
a Colorado non-profit corporation**

By Anthony P. Caligiuri  
Anthony P. Caligiuri, President

STATE OF COLORADO )  
COUNTY OF Rio Grande ) ss.  
~~JEFFERSON~~ )  
m

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November 2022, by Anthony P. Caligiuri as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Marlin James Reed  
Notary Public

MARLIN JAMES REED  
Notary Public  
State of Colorado  
Notary ID # 20064011677  
My Commission Expires 03-27-2026

AB

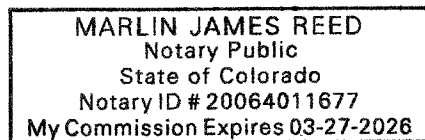
**RIO GRANDE WATER CONSERVATION DISTRICT** acting for and on behalf of the  
Water Activity Enterprise for Special Improvement District No. 4 pf the Rio Grande Water  
Conservation District

By: Gregory Higel  
Gregory Higel, President, Board of Directors

STATE OF COLORADO )  
 )ss.  
COUNTY OF Rio Grande )

The foregoing instrument was acknowledged before me this 8 day of November  
2022, by Gregory Higel, as President of the Board of Directors of Rio Grande Water  
Conservation District, a Colorado non-profit corporation.

Witness my hand and official seal.



Marlin James Reed  
Notary Public

My Commission Expires: \_\_\_\_\_

Gregory Higel

## EXHIBIT A

### Legal Description of the Property

#### SAGUACHE COUNTY, COLORADO

Township 45 North, Range 10 East, N.M.P.M.

Section 17: S1/2S1/2

Section 19: SE1/4

Section 20: All, except the following tract:

Beginning at a point on the east line of the Northeast Quarter of Section 20 from which the Northeast Corner of Section 20 as monumented by a 5/8" rebar set by L.S. #4678 bears N. 00°36' 08" E. a distance of 381.74 feet; thence S. 00°36'08" W along the east line of the said NE1/4 of Section 20 a distance of 1484.61 feet to a point; thence N. 59°45'06" W. a distance of 882.70 feet to a point; thence N. 05°55'07" E a distance of 33.16 feet to a point; thence N. 37°34'30" E. a distance of 1270.43 feet to the Point of Beginning

Section 29: N1/2, N1/2S1/2, S1/2SW1/4

Section 30: NE1/4

Section 32: N1/2NW1/4

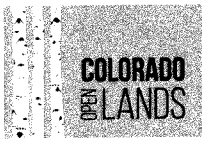
Tract 2, Goodwin Division of Land, the plat of which was filed November 8, 2006, under Reception No. 357151 (being the South Half of the Southeast Quarter of Section 29, less the 8.81 acre Tract 1, and the North Half of the Northeast Quarter of Section 32).

Together with a non-exclusive right-of-way and easement for roadway and utility purposes over, under, and across the South 30 feet of even width of the N1/2NE1/4 and the N1/2NW1/4 of Section 29, Township 45 North, Range 10 East, N.M.P.M.



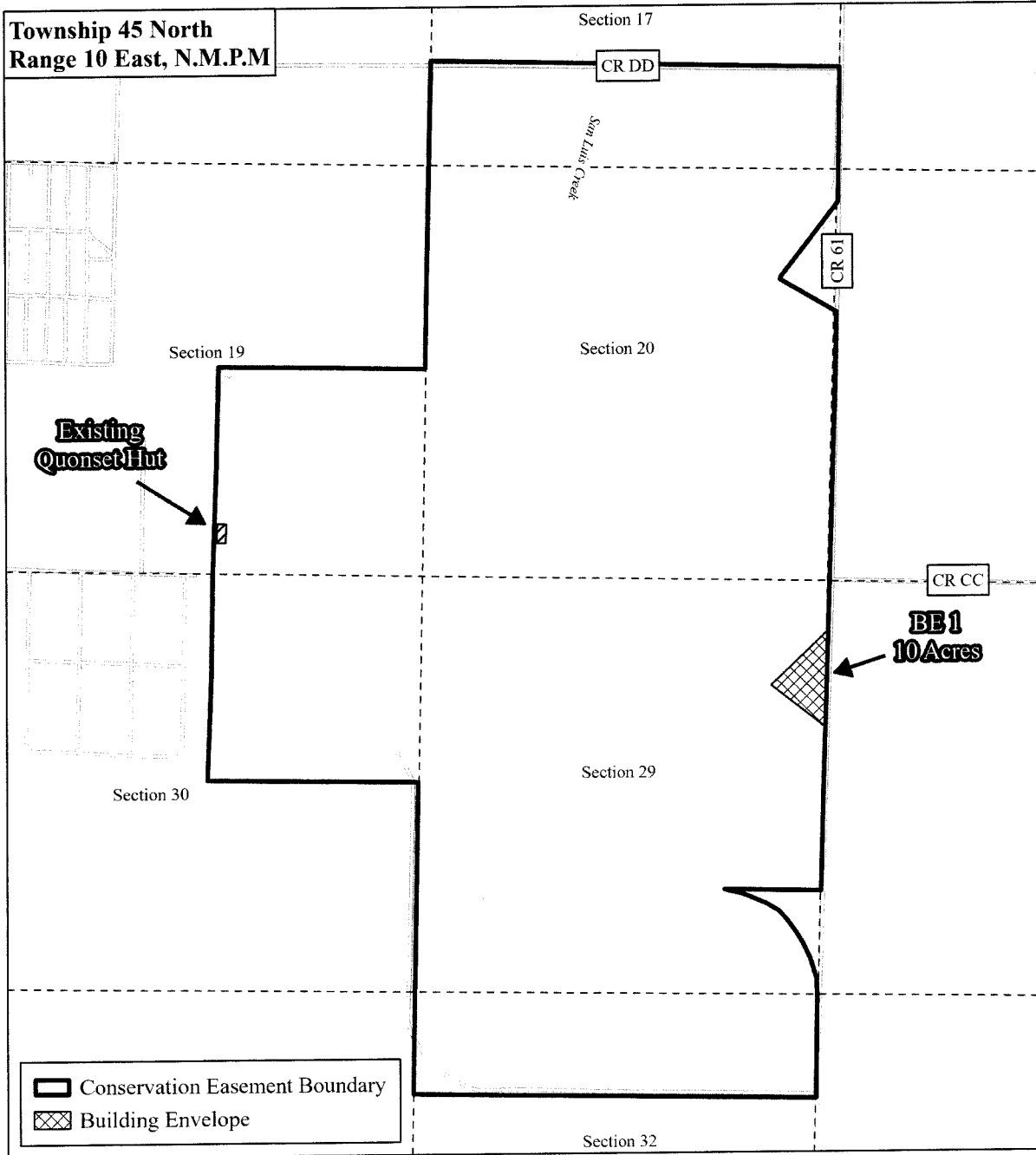
## EXHIBIT B

### Building Envelopes / Map of the Property



## R BOWMAN / PEACHWOOD FARMS CONSERVATION EASEMENT

1,897 ACRES - SAGUACHE COUNTY



Preparer: Colorado Open Lands || Date: 03/21/2022  
Public Access should not be inferred from this map.  
This map is not a survey and should not be construed as one.

0 0.5 1 Miles

32

**EXHIBIT C**  
**Water Rights Encumbered**

**Water Rights Dedicated Exclusively to Water Conservation Program:**

Pivot #	Permit #	WDID	Case #	Appropriation Date
2	174-R-R (R174-RF)	2505061	W3202 and 90CW0037	6/25/1949
4	177-R-R(R177-RF)	2505058	W3202 and 90CW0037	10/10/1949
6	22442-F	2505032	W3202	6/29/1949 for 800 gpm and 2/18/1947 for 100 gpm
7	22445-F	2505036	W3202	2/18/1947
8	173-R-R (R173-RF)	2505030	W3202	6/20/1949
9	22443-F	2505035	W3202	6/25/1949
10	22446-F	2505034	W3202	2/18/1947 for 55 gpm; 6/20/1949 for 505gpm; and 6/25/1949 for 340 gpm

**50% of Decreed Water Rights Dedicated to Water Conservation Program:**

Pivot #	Permit #	WDID	Case #	Appropriation Date
1	12717-RF (replacement well for 12717-F)	2505060	W3202 and 90CW0037	3/3/1968
1 and 3	176-R-R (R176-RF)	2505057	W3203 and 90CW0037	2/18/1947
3	23182-FR (replacement well for 23182-F)	2505059	90CW0037	3/3/1968
5	172-R-R (R172-RF)	2505029	W3202	6/29/1949
14	22441-F	2505031	W3202	8/5/1949 for 450 gpm 2/18/1947 for 450 gpm
15	175-R-R (R175-RF)	2505056	W3202 and 90CW0037	8/5/1949

AV 33

**Surface Water Rights (Not Dedicated to Water Conservation Program)**

Tobler Ditch (including Kennedy #3)

Source: Spring Creek, tributary to San Luis Creek

Priorities: #29, 3/28/1890 adj, 2/15/1873 appr. for 0.4 cfs

#85, 3/28/1890 adj, 5/15/1882 appr. for 1.0 cfs

Tobler Rominger Ditch (historic structure, no longer exists)

Source: San Luis Creek

Priority: #36, 3/28/1890 adj., 6/15/1873 appr. for 10 cfs



**EXHIBIT D**

**Sample Notice of Transfer of Property**

To: Colorado Open Lands ("Grantee")  
From: **[Insert name of fee owner]** ("Grantor")

Pursuant to Section 15 (Transfer of Property) of the Deed of Conservation Easement recorded **[date]** under reception number \_\_\_\_\_, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective **[insert date of closing]** to **[insert name of new Grantor]**, who can be reached at **[insert name, legal address, phone and fax number]**. Also pursuant to Section 15 (Transfer of Property) of the aforementioned Deed of Conservation Easement, a copy of the new ownership deed is attached.

GRANTOR:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_

