

PROWERS COUNTY 1041 PERMIT – AMENDED

AMENDED PERMIT TO CONDUCT A DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST FOR THE AMENDED APPLICATION FILED BY ARKANSAS RIVER FARMS, LLC AND LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION AND NOW AMENDED TO INCLUDE ARKANSAS RIVER FARMS, LLC, *ET AL.*

1. **Commitments of Record For Koellers and LAWMA.** As specified herein, Glen Koeller and Connie S. Koeller (“Koellers”) and/or the Lower Arkansas Water Management Association (“LAWMA”) shall comply with the terms of this Amended 1041 Permit for Farm Nos. 62A, 118 and 141 and shall meet their respective commitments set forth in this section. Koellers and LAWMA are referred to collectively herein as the “Applicants.” LAWMA has acquired the Fort Lyon Shares that were used for irrigation of the dry-up parcels that are subject to this Amended 1041 Permit and the dry-up covenants for said parcels from Arkansas River Farms, LLC (“ARF”) and is now considered a permittee under this Amended 1041 Permit.
 - A. Applicants shall comply with all statements made in the AMENDED APPLICATION FOR A PERMIT TO CONDUCT A DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST; FILED BY ARKANSAS RIVER FARMS, LLC AND LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“Amended Application”), and the Power Point presentation and statements made during the September 4, 2019 Hearing on said Amended Application as applied to Farm Nos. 62A, 118 and 141.
 - B. ARF has transferred 2,500 of its excess LAWMA shares to the Holly Dairy. The Board considers the establishment of the Holly Dairy to fully offset any economic losses to Prowers County caused by ARF’s removal of water from the dry-up parcels that are subject to this Amended 1041 Permit.
 - C. ARF has, at no cost to Alta Vista School (the “School”), granted an easement to the School that allows the School to plant, maintain and replace wind-break vegetation including but not limited to trees, shrubs and other plants on a portion of Farm 62A around the school property; and the initial placement of wind break vegetation, the maintenance of the same and any replacement of the vegetation has been in the sole discretion of the School; and the easement area located on Farm 62A has been released from requirements of this Amended 1041 Permit. Forthwith, the School shall only irrigate the wind-break vegetation with water sources consistent with those in term 6(B), below. A copy of the easement deed shall be delivered by ARF to the Prowers County Land Use Administrator.
 - D. The Farm 62B identified as Prowers County assessors parcels 862173010 (Rohr/Curtis parcel) and 862173020 (Rowan parcel) is removed from the

requirements of this Amended 1041 Permit as water has been returned by ARF to those parcels.

- E. As a result of ARF's reconveyance of Fort Lyon Shares to the owners of Farm 62B as described in term 1(D), above, LAWMA is released from any obligation to obtain a future 1041 permit from Prowers County for its use of the 8 Fort Lyon Shares that were historically used to irrigate portions of Farm 62B and represented by FLCC Share Cert. No. 10945.

- 2. **Commitments of Record for ARF - Recharge Facility on Farm 63.** The Board of County Commissioners acknowledges that Farm 63 is not subject to the Prowers County 1041 regulations because the water from Farm 63 was severed from the land and the historically irrigated lands were dried up prior to the adoption of the Prowers County 1041 regulations on April 19, 2004. ARF has allowed and shall continue to allow the Board of County Commissioners to review and comment on the location, extent and design of the recharge facility located on Farm 63 ("Recharge Facility Property") which encompasses approximately 40 acres of Farm 63. In reviewing and approving the location and design of the recharge facility, the Board of County commissioners shall not propose terms that are inconsistent with the requirements of the Water Court and Division 2 Engineer. All areas of the Recharge Facility Property not holding water shall be subject to the revegetation and weed-control provisions of this Amended 1041 Permit.

- 3. **Term of Permit.**

- A. **Term Applicable to Koellers and LAWMA.** The 1041 Permit, as amended, shall be valid for the life of the permit and any extensions thereto for the dry up and dry up activities to the dry-up parcels on Farm Nos. 62A, 118 and 141 (collectively, the "LAWMA Dry-Up Parcels"). A map of the LAMWA Dry-Up Parcels is attached as Exhibit B. The County may, in its discretion, extend the term of the Amended 1041 Permit upon written request of the Applicants as related to the LAWMA Dry-Up Parcels, following a public hearing.

- B. **Term Applicable to ARF.** The 1041 Permit, as amended, shall be valid indefinitely for the life of the development and activity as to ARF's responsibility for the Recharge Facility Property on Farm No. 63. The County may, in its discretion, extend the term of the Amended 1041 Permit upon written request of ARF as related to the recharge facility on Farm No. 63 following a public hearing.

- 4. **Responsibility of Koellers and LAWMA.** Except when expressly imposed on an individual Applicant, the provisions, duties, and terms and conditions of this Amended 1041 Permit impose joint and several responsibility upon Koellers and LAWMA as to the portions of the Amended 1041 Permit applicable to the LAWMA Dry-Up Parcels, for compliance with the terms and conditions herein. When expressly imposed on an individual Applicant, the provisions, duties, and terms and conditions of this Amended 1041 Permit are an individual responsibility specific to that Applicant.

5. **Responsibility of ARF.** The provisions, duties, and terms and conditions of this Amended 1041 Permit impose individual responsibility upon ARF as to the portions of the Amended 1041 Permit applicable to the Recharge Facility Property on Farm No. 63.

6. **Reclamation of Dry-Up Parcels on Farm Nos. 62A, 118 and 141.**
 - A. Unless the term is extended by the Board of County Commissioners, Koellers shall have ten (10) years from the date of the initial effective date of the original 1041 Permit to convert each LAWMA Dry-Up Parcel to dry-land farming or revegetation at Koellers' cost and to obtain a Certificate of Completion for each LAWMA Dry-Up Parcel. Koellers are responsible for obtaining Certificates of Completion for the LAWMA Dry-Up Parcels.
 - i. The conversion of the LAWMA Dry-Up Parcels to dry-land farming or revegetation by Koellers shall be done in the manner described in Exhibit A. For the dry-land farming parcels, in the event that Koellers forego the conversion of the LAWMA Dry-Up Parcels to dry-land farming or have not completed the conversion of the LAWMA Dry-Up Parcels to dry-land farming by the end of the 2030 irrigation season, this Amended 1041 Permit shall be automatically amended to require Koellers to implement the revegetation requirements as defined in Exhibit A.
 - ii. The process to obtain a Certificate of Completion is set forth in Exhibit A.
 - iii. Until such time as Koellers obtain a Certificate of Completion for all the LAWMA Dry-Up Parcels, Prowers County shall continue to have oversight of all of the farming or land management practices on all parcels, in addition to all other applicable Prowers County zoning, building, health or other applicable regulations and codes.
 - iv. Upon Koellers obtaining Certificates of Completion for all the LAWMA Dry-Up Parcels, Prowers County shall have no oversight of any of the parcels, except for Prowers County's zoning, building, health or other applicable regulations and codes.
 - B. **Re-Irrigation.**
 - i. To the extent that the conversion of any of the LAWMA Dry-Up Parcels to revegetation may require water for an interim period, Koellers shall provide such water at their cost; provided however, if Koellers are unable to provide such water, then LAWMA shall provide such water at LAWMA's cost. Any sources of water shall be consistent with decrees of the Water Court, the Arkansas River Compact with Kansas and any dry-up covenant that encumbers the parcel.

- ii. In the event that the owner of any LAWMA Dry-Up Parcel desires to re-irrigate any LAWMA Dry-Up Parcel with ground water, any sources of ground water shall be consistent with decrees of the Water Court, the Arkansas River Compact with Kansas and any dry-up covenant that encumbers the parcel. Any re-irrigation with ground water is subject to the following additional requirement:
 - a. The owner of the LAWMA Dry-Up Parcel that will be re-irrigated must give written notice to Prowers County describing the land to be re-irrigated and providing evidence that the ground water is sole-source pumping and is fully augmented under LAWMA's augmentation plan or other augmentation plan approved by the Water Court for Water Division No. 2, or any substitute water supply plan or replacement plan approved by the Colorado State Engineer.
- iii. In the event that the owner of any LAWMA Dry-Up Parcel desires to re-irrigate any LAWMA Dry-Up Parcel with FLCC shares not previously used on the LAWMA Dry-Up Parcels proposed to be irrigated ("New FLCC shares"), use of any New FLCC Share shall be consistent with decrees of the Water Court, the Arkansas River Compact with Kansas and any dry-up covenant that encumbers the parcel. Any re-irrigation with New FLCC shares is subject to the following additional requirement:
 - a. The owner of the LAWMA Dry-Up Parcel that will be irrigated must give written notice to Prowers County describing the lands to be re-irrigated and providing evidence that the New FLCC shares have been approved by FLCC if required by the FLCC By-laws and, if applicable, approved by the Water Court.
- iv. If any dry-up covenant for the LAWMA Dry-Up Parcels is more restrictive on the owner of the LAWMA Dry-Up Parcels or more protective of LAWMA than the provisions of this term 6(B), then the terms and conditions of the dry-up covenant shall control.
- v. Except for re-irrigation by Koellers pursuant to term 6(B)(i), any other re-irrigation of a LAWMA Dry-Up Parcel shall nullify the Amended 1041 Permit for all such parcels and shall release Applicants from the Amended 1041 Permit requirements and said parcels shall be treated as if no 1041 permit had been granted by Prowers County.

C. Reclamation Security.

- i. No later than January 17, 2022, Koellers shall provide to the County a bond or other financial security acceptable to the County in the amount of \$145,750.00 which names Prowers County as the sole Beneficiary for

Farms 62A, 118 and 141 (“Prowers Reclamation Letter of Credit”) with any drafts or reductions of the Prowers Reclamation Letter of Credit to be made pursuant to the Amended 1041 Permit.

- iii. While the Prowers Reclamation Letter of Credit shall provide security in the amount of \$145,750 to ensure Applicants’ potential liability for compliance with the terms and conditions of the Amended 1041 Permit, it does not limit such potential liability for an amount greater than that secured by the Prowers Reclamation Letter of Credit.
- iv. The Prowers Reclamation Letter of Credit shall provide clear and specific procedures for the County to request a draw and shall provide for payment to be made to Prowers County no later than five (5) business days following receipt of a draw request. The initial term of the Prowers Reclamation Letter of Credit shall be five (5) years; and for one (1) year terms thereafter, unless other financial security is provided. Koellers shall notify the County, no less than thirty (30) days prior to the end of the current term, if the Prowers Reclamation Letter of Credit will not be renewed. Koellers shall provide the County copies of each renewed Prowers Reclamation Letter of Credit within 30 days of the issue of each renewed Bond.
- v. Upon receipt of any notice of non-renewal of the Prowers Reclamation Letter of Credit, Koellers shall deposit with the County funds in the combined amount of \$145,750 to be held in a Prowers Reclamation Cash Security escrow account by the County for use in accordance with this Amended 1041 Permit and the 1041 Regulations.
- vi. The Prowers Reclamation Letter of Credit shall be maintained by Koellers for the greater of ten (10) years or until all Certificates of Completion (as defined in Exhibit C) have been obtained for all the LAWMA Dry-Up Parcels. If the forfeiture of the Prowers Reclamation Letter of Credit results in inadequate revenues to cover the costs of reclamation of the LAWMA Dry-Up Parcels, then Prowers County may pursue all lawful collection remedies authorized by law against Koellers for all damages and losses incurred by Prowers County to fulfill the conditions of the Amended Application, the representations made at the September 4, 2019 Hearing on the Amended Application, and the Amended 1041 Permit, as they relate to the LAWMA Dry-Up Parcels.
- vii. Subject to the Default provisions contained in term 17, below, if Koellers have not converted the LAWMA Dry-Up Parcels to dry-land farming within the period required in term 3(A), above, Prowers County may withdraw and employ from the security such funds as may be necessary to carry out the revegetation work for such parcel, up to an amount equal to the number of acres not certified as complete times \$250, reserving unto Prowers County all lawful collection remedies authorized by law against Koellers for all

damages and losses incurred by Prowers County to fulfill the conditions of the Amended Application, the representations made at the September 4, 2019 Hearing on the Amended Application, and the Amended 1041 Permit, as they relate to the LAWMA Dry-Up Parcels.

7. **Local Construction Jobs.** To the extent that qualified workers are available in Prowers County, ARF shall use its best faith efforts to contract with local firms or individuals for all construction and land work related the Farm 63 recharge facility. To the extent available in Prowers County, project materials and supplies shall be purchased locally, and future service contracts for facilities and farming on the LAWMA Dry-Up Parcels shall be with local firms. For purposes of this Amended 1041 Permit, local shall mean Prowers County residents, and where qualified workers are not available, workers who reside within a 50-mile radius of the Permit property. “Best faith efforts” means advertising jobs available in local media and/or hiring a local contractor. If the contractor does not hire qualified Prowers County residents, it shall try to hire workers not requiring a professional license that meet the standard published in any request for proposal or job advertisement and are paid no-more than the prevailing local wage for a similar job.
8. **Commencement of Permit, as Amended.** If Applicants fail to continue to take substantial steps to continue the activities for which this Amended 1041 Permit was issued, then the Amended 1041 Permit may be revoked or suspended by Prowers County following notice and public hearing.
9. **Transfer of Permit.** This Amended 1041 Permit may only be transferred or assigned in whole or in part upon written approval of Prowers County which approval shall not be unreasonably withheld. Prowers County shall act on a request to approve a transfer or assignment of the Amended 1041 Permit within thirty (30) days of submission or the request shall be deemed approved, provided, however, that no approval is necessary as to the conveyance of LAWMA Dry-Up Parcel for which a Certificate of Completion has been obtained pursuant to the procedures set forth in Exhibit A. Any proposed transferee or assignee to the Amended 1041 Permit shall demonstrate that it can and will comply with all terms and conditions of the Amended 1041 Permit.
10. **Compliance with Regulatory Requirements.** Applicants (and ARF related solely to the recharge facility on Farm 63) shall comply with all state, county, local and federal regulatory requirements, permits, decrees and other approvals applicable to the development and activity.
11. **Other Prowers County Regulations.** The Amended 1041 Permit does not constitute an exemption from Prowers County’s land use regulations or other applicable regulations and codes, and Koellers, as part of their compliance with the Amended 1041 Permit, shall comply with all Prowers County regulations applicable to the LAWMA Dry-Up Parcels. The Amended 1041 Permit does not constitute an exemption from Prowers County’s land use regulations or other applicable regulations and codes, and ARF, as part of their

compliance with the Amended 1041 Permit, shall comply with all Prowers County regulations applicable to the recharge facility on Farm 63.

12. **Scope of Permit and Permit Amendment.** This Amended 1041 Permit is limited to the Project as described in the Amended Application, as amended in writing during the public hearing process, and as approved hereunder (the “Amended 1041 Permit”). The Amended 1041 Permit conditions shall include all agreements and representations of Applicants made during the public hearing process, which have been reduced to writing. Applicants and/or ARF shall notify Prowers County of any proposed change to the Project features or operation, and Prowers County shall determine whether an amendment to this Amended 1041 Permit would be required to ensure that the changes will not violate any standards in Prowers County’s 1041 Regulations or conditions of this Amended 1041 Permit.

If Prowers County reasonably determines that Applicants and/or ARF made any deliberate misrepresentation of a material fact, meaning a fact of significance to the original 1041 Permit, the Amended 1041 Permit, the Amended Permit Application, or during the noticed public hearing to obtain the original 1041 Permit or the amendment of this Permit effective April 26, 2022, Prowers County may pursue an Enforcement Action for violation of this Amended 1041 Permit.

Any material change in the construction, use or operation of the Applicants’ development and activity related to Farms 62A, 118 and 141 or any material change in the construction, use or operation of ARF’s development and activity related to the Recharge Facility Property on Farm 63, together with the Applicants’ and ARF’s commitments of record, shall require further 1041 Permit amendment. For these purposes, a material change shall be any change in the development and activity which significantly changes the nature of impacts considered in approval of the Amended 1041 Permit, as amended, including changes resulting from permits issued by other governmental organizations or the Division 2 Water Court.

13. **Reviews and Periodic Reporting.** The Amended 1041 Permit shall be subject to reviews by Prowers County as set forth in this section. Koellers as to the LAWMA Dry-Up Parcels shall make reports about their activities at the time and in the manner required in this section.

A. The Amended 1041 Permit shall be subject to the following reviews by Prowers County. All reviews shall be done in public session of the Board of County Commissioners. Any Staff report or recommendation shall be provided to Applicants as to the LAWMA Dry-Up Parcels no less than seven (7) days prior to the review.

- i. **Dry-Up parcel reviews.** Prowers County staff and/or independent contractors shall review the status of the LAWMA Dry-Up Parcels at a meeting of the Board of County Commissioners set at the discretion of the Board of County Commissioners in February, June and September of each year.

- a. In February, the purpose of the review is to consider the December 1 annual report.
 - b. The June and September reviews shall be to review the matters included in the in-season progress reports as the same are defined in below.
- B. Koellers as to the LAWMA Dry-Up Parcels shall make reports at the time and in the manner set forth as follows:
 - i. Other Permits or Decree. Koellers shall provide to Prowers County copies of any approvals, permits, and decrees for their respective LAWMA Dry-Up Parcels issued by any other governmental entities or the Division 2 Water Court within 60 days of issuance.
 - ii. Annual Dry-Up Information report. On or about December 1 of every year Koellers shall submit a combined report for the LAWMA Dry-Up Parcels ("Annual Report(s)") to Prowers County and, if required by any decree applicable to LAWMA, the Water Court that provides information about their respective LAWMA Dry-Up Parcels.
 - iii. For the LAWMA Dry-Up Parcels that are subject to the Amended 1041 Permit, the Annual Report(s) submitted by the Koellers shall also include a list of the following:
 - a. The number of the Farm and the year that irrigation water first was removed.
 - b. Whether the Farm is being Dry-land Farmed or Revegetated.
 - c. The total number of acres that were dried-up.
 - d. The Percentage of Completion for the Farm.
 - e. The approximate annual precipitation that fell on the Farm, which may be estimated based on the average of published local weather station data.
 - f. The efforts undertaken in each year since dry-up to convert the Farm to Dry-land Farming. This section shall include information about:
 - The type of tilling practices used
 - The planting and fallowing rotation used
 - The crops planted, whether the crop is a grain crop or a hay/forage crop and the acres fallowed

- The herbicides or pesticides applied
 - The efforts to control erosion of the soil caused by wind;
 - The type and amount of crops harvested or the number of animal units grazing the land
 - Other farming-type activities performed on the subject Farms to date
- g.** If the crop is a hay/forage crop, the stubble height in inches and the distance, in inches, on which the hay/forage crop was planted.
- h.** If the crop is a grain crop, the minimum crop residue.
- i.** Whether water was used to assist in Revegetation or conversion to Dry-land Farming, and if so, describe the water used in amount and method of application.
- j.** Whether any other factors occurred that had a negative impact on efforts to convert to Dry-land Farming or complete Revegetation.
- k.** Classification of the lands pursuant to the chart in Exhibit A Section III, if applicable. Koellers shall notify Prowers County and FLCC prior to performing an annual inspection of the LAWMA Dry-Up Parcels for the purpose of preparing the Annual Report(s). An expert retained by Prowers County shall accompany the Koellers' Expert on such annual inspections.
- l.** Whether the Farm has been revegetated as far as can reasonably be expected and thus whether such Farm will be considered Acceptable.
- m.** If an Annual Report has been filed on the Farm in past years, how the conditions on the Farm compares to past years.
- n.** If a Farm is recommended for a Certificate of Completion, the Annual Report shall also contain representative photographs of the Farm depicting how the Farm has been converted to Dry-land Farming or Revegetation.
- o.** Whether the Farm is eligible for issuance of a Certificate of Completion.
- iv.** In-Season Progress reports. These reports are contemplated to be short letter style updates to support the reviews in June and September of each year.

- a. In the June in-season progress report(s) the Koellers shall submit a combined report for the LAWMA Dry-Up Parcels identifying the crops planted in the current irrigation season, which fields are intended to be fallow, and weed control measures (e.g., mowing, pesticides) on any dry-land farmed parcels. In the September in-season progress report(s) the Koellers shall submit a combined report for the LAWMA Dry-Up Parcels on precipitation over the summer, weed control and dust suppression measures taken during the summer and the status of the crops planted.
 - b. Prowers County may request additional or specific information be added to the in-season progress report, if they notify the Koellers in writing of the additional information they seek no later than 14 days prior to the due date of the in-season progress report.
 - c. The in-season progress report in advance of the June review is due May 15, the in-season progress report in advance of the September review is due August 15.
- C. Access to Farm Nos. 62A, 118 and 141 Dry-Up parcels. Koellers shall grant to Prowers County, its employees and consultants entry to inspect at any time, upon seven (7) days' notice to Koellers, Farms 62A, 118 and 141 for the purpose of monitoring compliance with the terms of this Amended 1041 Permit. Koellers shall use good faith efforts to make their agronomist or revegetation/dry-land farming consultant/representative available to conduct a joint inspection at the time requested by Prowers County. In the event that the Koellers' agronomist or revegetation-dry-land farming consultant/representative is unavailable, Prowers County may conduct its inspection without the Koellers' representative.
- D. Access to Farm 63 Recharge Facility Property. ARF shall grant to Prowers County, its employees and consultants entry to inspect at any time, upon seven (7) days' notice to ARF, the Recharge Facility Property on Farm 63 for the purpose of monitoring compliance with the terms of this Amended 1041 Permit. ARF shall use good faith efforts to make its representative available to conduct a joint inspection at the time requested by Prowers County. In the event that the ARF representative is unavailable, Prowers County may conduct its inspection without the ARF representative.
- E. Costs. Koellers shall submit the cost deposit to Prowers County. The cost of Prowers County staff, attorney and independent contractors in review of Farm Nos. 62A, 118 and 141, various documents and reports in connection with those Farms as provided in this Amended 1041 Permit shall be borne by the Koellers. The costs to Prowers County which are associated with Farm 63 and the LAWMA requirements shall be borne by ARF and LAWMA. Koellers shall deposit additional amounts required to maintain at all times the cost deposit at a minimum balance of \$6,000 to cover costs incurred by Prowers County associated with the

Koellers' responsibilities as stated herein. At the request of Prowers County, the Koellers shall deposit additional funds to cover costs incurred by Prowers County to issue and monitor Koeller's responsibilities under the Amended 1041 Permit. At the written request of Prowers County, if Prowers County does not have the expertise to evaluate an alleged violation by the Koellers, the Koellers are responsible for reasonable costs associated with consultants that may be necessary to determine whether a violation has occurred.

14. **Substitution Water Supply Plan, Replacement Plan, and Water Court Decree Compliance.** LAWMA shall at all times use the Fort Lyon Shares that have been removed from the LAWMA Dry-up parcels in conformity with the terms and conditions of a State Engineer approved substitute water supply plan ("SWSP") or replacement plan or a water court decree. Prowers County shall have the right to fully participate as an objector in the SWSP, replacement plan and water court proceedings.
15. **Water Litigation and Administration Costs.** The Koellers shall reimburse Prowers County for reasonable attorney fees and costs associated with monitoring LAWMA's application for administrative approval to the State Engineer's Office or water court application for use of the Fort Lyon Shares that have been removed from the LAWMA Dry-Up parcels for augmentation and replacement purposes by LAWMA, subject to a five thousand dollar (\$5,000.00) cap. In the event that Prowers County needs to exceed the fee cap, Koellers will pay additional fees upon a showing of exceptional circumstances causing the exceedance of the fee cap. In the event that LAWMA includes a provision in any proposed decree that incorporates all provisions of this Amended 1041 Permit, as a term and condition of the decree, attorney fees, expert fees and costs to review the final decree for consistency with the Amended 1041 Permit shall be deemed a reasonable fee and/or cost. Attorney fees, expert fees and costs shall include but not be limited to pre-filing review of any application, filing fees, water attorney fees and water engineer fees and costs to review LAWMA's submittal to the State Engineer's Office or water court. In the event of default by the Koellers, the Koellers shall reimburse the County for all legal and engineering expenses incurred in enforcing the Decree or State Engineer administrative approval as to the Koellers' responsibilities.
16. **Permit Violation.** Failure to comply with any portion of this Amended 1041 Permit is a violation of the Prowers County 1041 Regulations and is subject to the enforcement provisions therein.
17. **Default Provisions.** Notwithstanding any contrary provision in this Amended 1041 Permit or other Prowers County Regulations, this term shall provide the exclusive remedies for default under the terms of this Amended 1041 Permit. Disputes concerning Certificates of Completion shall be resolved as follows:
 - A. If at any time, Prowers County determines that Applicants as to the LAWMA Dry-Up Parcels and ARF as to the Recharge Facility Property on Farm 63 have violated any term or condition of this Amended 1041 Permit, other than a violation in which Prowers County as a remedy seeks to withdraw funds from the Prowers

Reclamation Letter of Credit, Prowers County shall mail a written notice of violation by certified mail to Applicants and/or ARF, as applicable, that describes the violation and provides a thirty five (35) day period to cure the violation, which cure period begins to run on the day the written notice of violation is mailed by certified mail. If the violation is one in which Prowers County as a remedy seeks to withdraw funds from the Prowers Reclamation Letter of Credit, or to suspend or revoke the Amended 1041 Permit, Prowers County shall provide a cure period sufficient to allow Applicants and/or ARF, as applicable, to have one complete irrigation season to come into compliance. The term irrigation season means April 1 through September 30.

- B.** Within 14 days of receiving the written notice of violation, Applicants and/or ARF, as applicable, may in writing request a hearing of the Board of County Commissioners to reconsider the notice of violation. If a hearing is requested, the cure period is stayed until the conclusion of the requested hearing. The Board of County Commission shall set a hearing no less than thirty-five (35) days and no more than sixty-three (63) days after receipt of the written request for hearing.
- C.** At the conclusion of the hearing, the Board of County Commissioners may reverse the notice of violation or revoke, suspend or amend the Amended 1041 Permit for failure to comply with its terms in accordance with the Prowers County 1041 Regulations.
- D.** The hearing and any appeal following the hearing shall be conducted pursuant to the provisions of the Colorado Administrative Procedures Act provisions for the revocation of a license in C.R.S. §24-4-104.
- E.** If a dispute arises pertaining to matters covered by this Amended 1041 Permit other than an alleged violation of this Amended 1041 Permit, the Applicants as to the LAWMA Dry-Up Parcels and ARF as to the Recharge Facility Property on Farm 63 shall first meet to attempt to resolve the dispute. If the dispute cannot be satisfactorily resolved, Applicants and/or ARF, as applicable, in conjunction with Prowers County will submit the dispute to nonbinding mediation before filing a complaint in any court of law.
- F.** In the event that Prowers County determines that enforcement action is necessary, Prowers County shall enforce the Amended 1041 Permit in accordance with the existing enforcement procedures, and Koellers as to the LAWMA Dry-Up Parcels and ARF as to the Recharge Facility Property on Farm 63 shall pay all of Prowers County's costs and expenses incurred in enforcing the Amended 1041 Permit.

- 18. Notices.** Any notices required by this Permit shall be in writing and transmitted by e-mail as follows:

A. If to the Board:
Board of County Commissioners
Prowers County, Colorado
301 S. Main Street, Ste. 215
Lamar, CO 81052
Email: jlundy@prowerscounty.net

B. If to ARE:
Aaron Patch
Resource Land Holdings, LLC
1400 16th Street, Suite 320
Denver, CO 80202
Email: aaron.patch@rlholdings.com

And

Karl Nyquist
C&A Companies
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127
Email: Karl@cacompanies.com

C. If to LAWMA:
Donald F. Higbee
Lower Arkansas Water Management Association
P.O. Box 1161, 310 South 6th Street
Lamar, CO 81052
Email: lawma@cminet.net

D. If to Glen and Connie S. Koeller
33999 County Road 8.5
Lamar, CO 81052
Email: _____

DATE: 4-26-2022

**BOARD OF COUNTY COMMISSIONERS OF
PROWERS COUNTY, COLORADO**

By Thomas Grasmick
Thomas Grasmick, Chair

By Ron Cook
Ron Cook, Vice-Chair

By Wendy Buxton-Andrade
Wendy Buxton-Andrade, Commissioner

Attest:

By Jana Coen
Jana Coen, Prowers County Clerk

Exhibit A
PROPOSED ADDITIONAL AMENDED 1041 PERMIT
DRY-LAND FARMING AND REVEGETATION
CRITERIA AND CERTIFICATION PROCESS

Applicants are required to adopt reasonable dry-land farming practices for Farm Nos. 62A, 118 and 141 and convert the LAWMA Dry-Up parcels to dry-land farming in the time set forth in term 3 of this Amended 1041 Permit.

I. DRY-LAND FARMING CRITERIA

- A. Dry-land Farming means the establishment and maintenance of dry-land farming practices with weeds adequately controlled and that controls soil erosion from wind in a manner consistent with state and local law. Dry-land farming practices include No-Till Dry-land Farming and Minimum-tillage Dry-land Farming.
1. Minimum tillage Dry-land Farming means management of farming operations which seeks to minimize impacts from tilling through the use of a sweep plow, strip-till, or similar technology. Additionally, a farmer may rely on herbicides to control weeds. Both contact and residual herbicides may be used. Periodic fallowing and crop rotation may be used to stabilize the crop yields and allow the soil to rest.
 2. No-till Dry-land Farming means a system of planting seeds into untilled soil by opening a narrow slot, trench or band, of sufficient width and depth to obtain proper seed coverage. As no soil tillage is utilized, a farmer must rely on herbicides to control the weeds. Both contact and residual herbicides may be used. Periodic fallowing and crop rotation may be used to stabilize the crop yields and allow the soil to rest.
- B. Recommended best management practices for Farms to be Dry-land Farmed shall include the following.
1. The management of annual precipitation to produce commodities or forage for livestock warranting a reasonable expectation of ongoing profits.
 2. Weed control methods on crop land may include conservation tillage, mowing or chemicals to manage harvested crop residue to reduce evapotranspiration of soil moisture and maintain ground cover to minimize soil erosion by wind or water.
 3. Conservation tillage is achieved by the use of non-inversion tillage equipment such as chisels, field cultivators, sweeps, vertical tillage, no-till

planters or strip till planters to maximize harvested crop residue ground cover of thirty percent (30%) or more over the entire field.

A Farm designated to be Dry-land Farmed will be deemed Acceptable even in the absence of the above-described recommended best management practices, as long as the requirements in section II. A.1. below have been met for that Farm.

- C. If the conversion of a LAWMA Dry-Up parcel to dry-land farming is not successful, Koeller shall revegetate any such LAWMA Dry-Up Parcel in the manner described in section III.A.2. Revegetation means the establishment of native grasses or such other self-sustaining (under the conditions prevailing on the land) suitable dry-land perennial ground cover with weeds adequately controlled.

II. REVEGETATION CRITERIA

- A. Revegetation means the establishment of native grasses or such other self-sustaining (under the conditions prevailing on the land) suitable dry-land ground cover with noxious weeds adequately controlled. Dry-land ground cover does not include alfalfa or other similar deep rooted phreatophytes. Seed blends should be reviewed by Prowers County prior to planting activities. At no time should the cover crop or grasses be mowed or grazed lower than 5 inches. Drilled seeding procedures are recommended, but if seeds are broadcast, the planting rate shall be doubled.
- B. Revegetation of the LAWMA Dry-Up may include, but is not limited to, the following activities:
1. Class I Fields. Seeding, irrigation, and mowing;
 2. Class II Fields. Herbicide application and mowing;
 3. Class III Fields. Spot seeding and irrigation, herbicide application, mowing and controlled grazing;
 4. Class IV-A Fields. Spot seeding and irrigation, herbicide application and mowing;
 5. Class IV-B Fields. Herbicide application, mowing and controlled grazing;
 6. Class V Fields. Spot herbicide application and grazing.
 7. Spot seeding and irrigation of any Class I through V fields if determined to be necessary for revegetation as fields matriculate through the classifications.
 8. Continuation of appropriate revegetation activities.
 9. Controlling weeds in a manner consistent with state and local law on all fields.

III. CERTIFICATION OF COMPLETION

A. **Criteria for Approving the Certificate of Completion.** The criteria for issuing a Certificate of Completion for lands converted to Dry-land Farming or Revegetation shall be:

1. Dry-land Farming: Any Farm where 90% of its Fields are Acceptable and were used for one full crop rotation cycle (two years crop production, and one year fallow with appropriate stubble and weed control, for a total of three years) shall be entitled to a Certificate of Completion. Certificate of Completion may only be issued for an entire Farm. Acceptable for Farms where Dry-land Farming will occur means:
 - a. the farm has been planted to a dry-land crop or is in a fallow period following a dry-land crop; and
 - b. the crop was planted and farmed without irrigation water, such that it is dependent solely upon precipitation to meet crop water requirements; and
 - c. if other dry-land farming in the region is producing crops, the farm also is producing a dry-land crop with weeds adequately controlled and that controls soil erosion from wind in a manner consistent with state and local law; and
 - d. minimum crop residue after harvesting a dry-land crop is left on the parcel until the parcel is prepared for the next rotation of planting; provided, however, that this requirement for crop residue does not prevent a farmer from controlling weeds by mechanical tillage of the parcel or using other acceptable methods of weed control that do not disturb the residue on the surface. For grain crops, such as winter wheat or milo, this shall include a minimum crop residue of at least thirty percent (30%) determined by the step-point method. For hay or forage crops, crop stubble shall measure at least five inches (5") with row spacing no more than thirty inches (30").
2. Revegetation: Any Farm where 90% of its Fields are Acceptable shall be entitled to a Certificate of Completion. Acceptable for Farms where Revegetation will occur means:
 - a. Any field that meets the criteria for Classes VI or VII using the Revegetation Classification Schedule in section III.
 - b. Certain fields may never reach Classes VI or VII, nonetheless, if the field has been revegetated as far as can be reasonably expected,

such field will be Acceptable if weeds and/or erosion of the soil caused by wind is adequately controlled in a manner consistent with state and local law.

- c. Any field upon which buildings, grain storage facilities, railways or railroad facilities, oil and gas facilities, wind power generation facilities, power transmission facilities, pump houses, recharge facilities, augmentation stations, feed yards, roads, reservoirs, drains, impervious surfaces or other facilities or structures on a Farm that will adequately control weeds and/or erosion of the soil caused by wind in a manger consistent with state and local law will be classified as Acceptable.
 - d. Any field that is irrigated as allowed by the 1041 Permit will be classified as Acceptable.
3. Percentage of Completion is the total dry-up acres for a farm classified as Acceptable divided by the total number of dry-up acres for a Farm as shown in the Annual Report, multiplied by 100.

B. Application for Certification of Completion.

1. In their December 1 Annual Report, the Koellers may apply for a Certificate of Completion for any LAWMA Dry-Up Farm that is eligible for a Certificate of Completion pursuant to the criteria in III A above.
 - a. If Prowers County approves the application for Certificate of Completion it shall not oppose Water Court approval of a Certificate of Completion for the same Farm, if applicable.
 - b. If Prowers County does not approve the application for Certificate of Completion, the Koellers' Expert and the County's Expert, no later than February 15, shall consult and attempt to reach a consensus, which consensus may recommend that Prowers County reconsider its denial of the application for Certificate of Completion.
 - c. If the experts do not reach consensus on whether a Farm is eligible for a Certificate of Completion, then the application for Certificate of Completion may be withdrawn by the Koellers.
 - d. The Water Court shall rule upon any contested application for approval of a Certificate of Completion. Any appeal of the Water Court's Process on a request for approval of a Certificate of

Completion shall follow the normal rules and procedures for appeal of a water matter.

IV. REVEGETATION CLASSIFICATION METHODOLOGY

- CLASS I Full seeding and irrigation needed, either first seeding or reapplication of seeding. Desired plants scarce or absent.
- CLASS II Seeding and irrigation completed. Stand undetermined. Usually this will occur at the beginning of the second growing season following seeding.
- CLASS III Stand is variable. Part of the field has an adequate stand and part does not. Plants may be juvenile plants to well-developed mature plants. More than 10% of field with an inadequate stand on areas exceeding one acre in size. Plant frequency of desirable plant on deficient areas is less than 10%. Such deficient areas will require reseeding.
- CLASS IV-A Stand is inadequate, frequency is less than 10% but plants are fairly well distributed over field. Field may need reseeding.
- CLASS IV-B Stand is inadequate; frequency is between 10% to 15%. Plants are uniformly distributed over the field. No further seeding then recommended as the stand is expected to develop.
- CLASS V Stand appears adequate, but root system is undeveloped. There are 10% to 15% or more desired plants per count. Good potential for stand establishment. Generally found after the first growing season but possibly the second growing season.
- CLASS VI Stand adequate. Plants well rooted. Desirable plant frequency range 20% or greater, no deficient areas larger than one acre in size over 90% of the field. This may occur following second growing season but more likely after the third growing season and beyond.
- CLASS VII Stand adequate. Plants well rooted with vigorous top growth. Desirable Plant frequencies are 25% to 30% or more over 90% of the field. No deficient areas larger than one acre in size. Generally occurring the third growing season and beyond.

Exhibit B MAP OF LAWMA DRY-UP PARCELS

