

**APPLICATION FOR A PERMIT TO CONDUCT A
DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN
DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST**

To: Permit Authority, Bent County

Re: Arkansas River Farms 1, 2, 13, 14, 19, 21, 22, 23, 25, 27, 30n, 33, 36, 37, 39n, 41, 42, 53, 54S (54b), 57, 58, 59, 64, 65, 110, 114, 127, and Coen, as a matter of state interest.

From: Arkansas River Farms, LLC (“Arkansas River Farms” or “ARF”), and Lower Arkansas Water Management Association (“LAWMA”) (jointly “Applicants”)

Arkansas River Farms, LLC
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Date Submitted: October 24, 2017

Date Received and Accepted as Complete:

1. Matter of State Interest.

The Applicants request that a permit be issued for each of the items checked below: A permit to conduct one or more of the following matters of state interest:

(X) Efficient Utilization of Municipal and Industrial Water Projects

(X) Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance

2. Proposed Activity or Development.

General description of the specific activity or development proposed:

The application involves both the Arkansas River Farms Project (“Project”) and acquisition of additional augmentation supplies for LAWMA, as each is described below.

I. Arkansas River Farms Project

The Project will involve the conversion of a low intensity, water inefficient, aggregation of flood irrigated farms into a mixed agricultural use, agribusiness-driven project underpinned with a robust and flexible water supply that is reliant on surface water provided through water shares in the Fort Lyon Canal Company (“FLCC Shares”) and now augmented by shares in the Lower Arkansas Water Association (“LAWMA Shares”). This more reliable water source coupled with a consolidation of farming operations onto the most productive and sustainable farmland is the basis for potentially attracting several larger agricultural users to the region including a prospective dairy who is attempting to locate its operations in Bent County and Prowers County and is in the midst of its special use permitting (“Bent Dairy”). The following eight paragraphs and Table 1 pertain to the Project.

- A. In order to have a more robust and flexible water supply for its irrigated farmland, ARF has traded 6,080 shares of Fort Lyon Canal Company (“FLCC Shares”) to LAWMA in exchange for 6,080 LAWMA shares that will enable ARF to irrigate its Bent County farms with fully augmented alluvial wells as well as FLCC water. In 2018, ARF and LAWMA intend to complete a second exchange pursuant to which ARF will trade an additional 1,429 FLCC Shares to LAWMA in exchange for 1,429 LAWMA shares. To facilitate the two trades, LAWMA must seek water court approval to change the water rights associated with the FLCC Shares to add augmentation and replacement uses, and to amend LAWMA’s existing plan for augmentation to allow for use of the FLCC Shares as an augmentation supply. These trades will not only allow for consistent irrigation of the remaining irrigated acres, but will create a block of excess shares that can be used in the Arkansas River valley by other ag users such as the dairy.
- B. On December 14, 2016, The Fort Lyon Canal Company (“Company”) approved Applicants’ request to seek water court approval to add augmentation and replacement uses to the FLCC Shares (“FLCC Approval”). Exhibit U.
- C. For ARF to transfer the FLCC Shares to LAWMA, and for LAWMA to obtain water court approval of the required change of water rights, the FLCC Shares must be severed from the farms historically irrigated with the Shares. Those farms (“dry-up farms”) no longer will be irrigated with the FLCC Shares, but instead will be either revegetated or dry-land farmed as required by the FLCC Approval.
- D. The Arkansas River Farms Project consists of approximately 12,049 total acres in Bent County, of which there were 9,929 flood irrigated acres and 2,120 acres of non-irrigated pasture and waste ground. ARF has designed plans to convert up to 4,300 acres of flood irrigated farmland to water efficient and agriculturally intensive center-pivot irrigation

(flexible water irrigation pivots), 2,300 acres of which will be converted immediately following the approval of the conditional use permit being sought by the Bent Dairy. The remaining 2,000 acres will continue to be flood irrigated until such time as additional demand from the Bent Dairy or other agri-business users being pursued by ARF necessitates conversion. The remaining 4,434 dry-up acres will either be dryland farmed or revegetated to pasture land.

- E. The Company does not have sufficient water and water delivery infrastructure to allow all shareholders to take delivery of their shares at the same time throughout the irrigation season. As a result, the Company delivers water to its shareholders on rotation, meaning that farms normally receive water for two days in each rotation, and then have no water until the Company has completed delivery of that run to shareholders in other divisions of the Company. The time period over which each run of water takes place depends upon hydrological conditions.
- F. ARF is converting the highest quality land from flood irrigated farmland to flexible water farmland and eventually to center-pivot irrigated farmland to consolidate farming operations onto the most productive and sustainable agricultural ground, to increase and stabilize crop production. The goal is to more efficiently utilize all water resources with a broader goal of attracting large agricultural end-users for regionally grown commodities (i.e. the Bent Dairy and others).
- G. The development cost for the Project if all of the designed pivot acres are installed is estimated at approximately \$9,000,000.00 and will likely occur over the next ten years along with the Dairy and other users.
- H. For the dry-up farms, zoning will remain agricultural and the uses will not materially change other than going from irrigated farming to dryland farming or from irrigated farming to grassland. ARF was also required to develop a network of augmentation stations and equipment on certain of the dry-up farms to return the FLCC water that was once used on these farms back to the river. ARF spent approximately \$1,600,000.00 to develop this system, which will stay in place perpetually and is operated on behalf of LAWMA.

A breakdown of the ARF project is summarized in the below Table 1.

Table 1

Future Use of ARF Acreage						
County	Flexible, Augmented Irrigation					Total
	Pivots	Flood	Dry-land	Pasture	Revegetation	
Bent County	4,300	1,195	2,724	2,120	1,710	12,049
Otero County	0	0	113	8	139	260
Prowers County	<u>350</u>	<u>322</u>	<u>569</u>	<u>124</u>	<u>0</u>	<u>1,365</u>
Total	4,650	1,517	3,406	2,252	1,849	13,674

Because 1041 approval is not required for the irrigation improvement part of the Project, we will focus on only the dry-up farms throughout the rest of the application. The acreage for the dry-up farms is the acreage shown in the “Dry-land” and “Reveg” columns in Table 1 above.

II. LAWMA

LAWMA will use the FLCC Shares in accordance with its Bylaws, including without limitation using water available to the FLCC Shares as an augmentation and replacement supply in LAWMA’s decreed plan for augmentation, annual Arkansas River Replacement Plans pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin (“Rule 14 plans”), Compact Compliance Plans pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin (“Rule 10 plans”), and approved substitute water supply plans (“SWSPs”).

LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make groundwater diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime.

LAWMA operates much like a typical share-based mutual ditch company. There are 27,566 shares of LAWMA common stock and 940.15 shares of LAWMA preferred stock issued and outstanding. At the ratio of 2.5 common shares to 1 preferred share, the 940.15 preferred shares equate to 2,350.375 common shares, for a total of 29,916.375 common share and common-share equivalents outstanding. Water available under LAWMA’s purchased and leased water rights and under various operational agreements is pooled into an overall water portfolio that allows LAWMA members to make reliable use of their irrigation wells and other structures while LAWMA shareholders are also developing a marketable asset. ARF owns 3,617 LAWMA common shares. ARF’s 3,617 LAWMA common shares represent a total of 12% of the LAWMA common shares and common-share equivalents outstanding ($3,617/29,916.375 = .12$).

LAWMA is governed by a seven-member elected board of directors (“LAWMA Board”) that controls and manages the business and affairs of LAWMA. Currently all seven LAWMA Board members are farmers. The amount of fully consumable water provided by LAWMA to each member is based on the number of shares of common stock or preferred stock owned or controlled by that member. Shares can be sold and transferred upon approval of the LAWMA Board.

LAWMA augments approximately 684 wells and other structures (“LAWMA structures”) in Lincoln, Otero, Elbert, Baca, Cheyenne, Kiowa, Prowers and Bent Counties. Total estimated diversions by LAWMA structures that will require augmentation in 2017 are 68,988 acre-feet. The vast majority (approximately 94%) of the augmented diversions included in LAWMA’s augmentation plan and Rule 14 plan are for irrigation purposes. Adding the FLCC Shares to its portfolio will allow LAWMA to increase the amount of fully consumable water that is allocated to each LAWMA common share, and therefore to increase the amount of LAWMA members’ pumping and other diversions for irrigation and other purposes. The Fort Lyon shares exchanged

to LAWMA also will make it possible for LAWMA to replace well depletions and make other replacements on the Wiley Drain in Bent County.

The Wiley Drain aka Pleasant Valley Seepage Stream is the name of an ephemeral stream in Bent and Prowers County that arises in the area where the Santana Canal diverts from the Fort Lyon Canal. It runs in a southeasterly direction through the town of Wiley to the Arkansas River west of Lamar. Runoff from irrigation and precipitation flow in this stream. Eleven water rights have decreed points of diversion at various locations on the stream. In addition to surface irrigation, many farms within the Wiley Drain drainage area have installed wells that could be augmented by LAWMA.

A copy of LAWMA’s Bylaws, as amended on August 8, 2017, is attached as **Exhibit Q**.

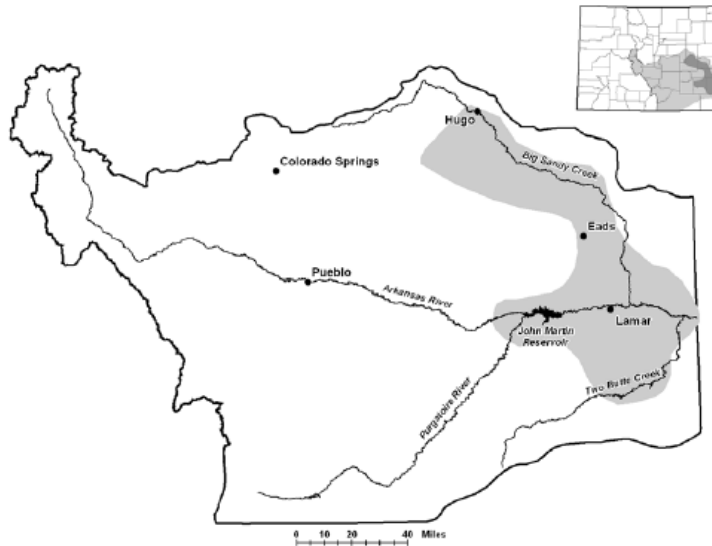


Figure 1. General Location Map Showing LAWMA’s Service Area

3. General Description.

A general, non-legal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted:

Arkansas River Farms 1, 2, 13, 14, 19, 21, 22, 23, 25, 27, 30n, 33, 36, 37, 39n, 41, 42, 53, 54S (54b), 57, 58, 59, 64, 65, 110, 114, 127, and Coen.

4. Legal Description.

The legal description, including the acreage, of the tract of land upon which the development or the activity is to be conducted, by metes and bounds or by government survey description: (attach additional sheets if necessary):

See attached Exhibit A and X.

Applicants own Fort Lyon water rights acquired from farmers that severed their Fort Lyon shares from their land prior to the County's adoption of 1041 regulations. Those lands are not subject of this application. For Bent County's information, however, Applicants have identified the "prior dry-up lands" including the owner of those lands (to the best of Applicants' knowledge) in **Exhibit N.**

5. Owners and Interests:

Set out below the names of those persons holding recorded legal, equitable, contractual, and option interests and any other person known to the applicant having an interest in the property described in paragraph 4, above, as well as the nature and extent of those interests for each person, provided that such recorded interests shall be limited to those which are recorded in the Bent County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State (attach additional sheets if necessary):

Property Owner and Owner of Recorded Legal Interests:

Arkansas River Farms, LLC
Aaron Patsch
1530 16th Street, Suite 300
Denver, CO 80202
aaronpatsch@rlholdings.com
(720) 723-2853

Arkansas River Farms is the owner of the farms described in paragraphs 3 and 4 above. ARF is a Colorado limited liability company whose address is 1530 16th Street, Suite 300, Denver, Colorado 80202. ARF has two members: Resource Land Holdings, LLC and New Arkansas River Farm, LLC. ARF has no affiliates. The evidence of authority is attached in **Exhibit M.**

ARF's applications and agreements will be signed by Aaron Patsch, but Karl Nyquist will be the ARF spokesman and negotiator along with Steve Sims, counsel for ARF.

Contact Information for Karl Nyquist

Karl Nyquist
7991 Shaffer Pkwy, Suite 200
Littleton, CO 80127
karl@acompanies.com
(303) 389-6777

Owner of some Fort Lyon Shares

Lower Arkansas Water Management Association

310 S. 6th Street
Lamar, CO 81052

LAWMA owns recorded dry-up covenants on the farms described in paragraphs 3 and 4 above. LAWMA's applications and agreements will be signed by Bob Wilger. Don Higbee also will speak for LAWMA, along with Richard Mehren and Jennifer DiLalla, counsel for LAWMA.

Encumbrances

ARF has encumbered its interests on all affected properties and water rights shares through a security agreement with Rabo AgriFinance, a wholly owned subsidiary of Rabobank, a global, regulated financial institution that is rated Aa2 by Moody's, A+ by S&P Global, AA- by Fitch, and AA by DBRS. LAWMA's shares in the Fort Lyon Canal Company are not encumbered.

6. Submission Requirements.

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of Bent County for each of the activities or areas checked in paragraph 1 above are attached to this application. Those attachments are identified by letter or number and described by title below:

Exhibit B Chapter 3 Submission Requirements

Exhibit C Chapter 4 Submission Requirements

7. Design and Performance Standards.

The attached analyses show that each of the design and performance standards set forth in the regulations for each of the activities or areas checked in paragraph 1 above will be met. The individual analyses are identified by reference to the appropriate paragraph or section numbers corresponding to each standard in the Regulations.

Exhibit D Chapter 3 Design and Performance Standards

Exhibit E Chapter 4 Design and Performance Standards

8. Additional Information Required.

Attach any additional information required by the Guidelines and Regulations.

No further information is required by the Guidelines and Regulations.

9. Duration of Permit.

The Applicants request a permit for an indefinite term.

10. Application Fee.

The required application fee is submitted herewith.

APPLICANT: Arkansas River Farms LLC

By:

Aaron M. Patsch, authorized representative
Resource Land Fund, IV, LLC, Managing Member

APPLICANT: Lower Arkansas Water Management Association

By:

Robert Wilger, Vice President

Note: Within ten (10) days following receipt of a completed application for a permit, the Permit Authority shall determine and set a fee in an amount necessary to cover the costs incurred in the review and approval of the permit application, including all hearings conducted therefor, and shall notify the applicant in writing of said fee and its amount. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Permit Authority certified funds in the amount as set. Until the fee is paid to the Permit Authority, the application for a permit shall not be further processed.