

PROWERS COUNTY 1041 PERMIT

GP IRRIGATED FARMS, LLC (“GP”); S-D INVESTMENTS, LLC (“S-D”) AND LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”) 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 PERMANENTLY DRY-UP 1,704 ACRES OF PREVIOUSLY-IRRIGATED LAND LOCATED WITHIN PROWERS COUNTY, COLORADO

- A. **Commitments of Record.** GP, S-D, and LAWMA shall comply with all statements made in its 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 permanently dry-up 1,704 acres of previously-irrigated land located within Prowers County (“Application”), and the Power Point presentation and statements made during the August 18, 2022 Hearing on the Application.
- B. **Conditions Applicable to the Permit.** This Permit is issued with the following mandatory conditions:
1. Unless the term is extended by the Board of County Commissioners: (i) GP and S-D shall have ten (10) years from the date of the effective date of this 1041 Permit to convert the subject dry-up lands that are located on the Higbee West Farm, DJC-Koehn Farm, Grasmick Lamar Farm, Gass Farm, Grasmick Granada Farm, and Grasmick XY Farm (the “GP/S-D Dry-Up Lands”) to dry-land farming, revegetation, or a non-agricultural use at GP’s and S-D’s cost, and to obtain a Certificate of Completion for each field of the GP/S-D Dry-Up Lands; and (ii) LAWMA shall have ten (10) years from the date of the effective date of this 1041 Permit to convert the subject dry-up lands that are located on the McMillan Farm (the “LAWMA Dry-Up Lands”) to dry-land farming, revegetation, or a non-agricultural use at LAWMA’s cost, and to obtain a Certificate of Completion for each field of the LAWMA Dry-Up Lands. Consistent with the reclamation terms and conditions of the 15CW3067 Decree, the conversion of the GP/S-D Dry-Up Lands and the LAWMA Dry-Up Lands to dry-land farming, revegetation, or a non-agricultural use shall be done in the manner described in **Exhibit 1**. The general locations of the GP/S-D Dry-Up Lands are shown on the map attached as **Exhibit 2**. The general location of the LAWMA Dry-Up lands is shown on the map attached as **Exhibit 3**. The GP/SD Dry-Up Lands and the LAWMA Dry-Up Lands are referred to collectively in this 1041 Permit as the “Subject Dry-Up Lands.”
 2. GP and S-D are responsible for obtaining Certificates of Completion for the GP/S-D Dry-Up Lands. LAWMA is responsible for obtaining Certificates of Completion for the LAWMA Dry-Up Lands. The process for obtaining a Certificate of Completion is set forth in **Exhibit 1**.

3. Upon obtaining a Certificate of Completion for a field or multiple fields of the Subject Dry-Up Lands, Prowers County shall have no oversight over such field(s), except for Prowers County's zoning, building, health or other applicable regulations and codes.
4. To the extent that the revegetation of any of the GP/S-D Dry-Up Lands may require water for an interim period, GP and S-D shall provide such water at their cost; provided however, if GP and S-D are unable to provide such water, then LAWMA shall provide such water at LAWMA's cost. To the extent that the revegetation of any of the LAWMA Dry-Up Lands may require water for an interim period, LAWMA shall provide such water at its 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 field.
5. Applicants shall grant to Prowers County, its agronomist and its Land Use Administrator, right of entry upon the Subject Dry-Up Lands to inspect, with prior notice to Applicants, the Subject Dry-Up Lands for the purpose of monitoring compliance with the requirements set forth in **Exhibit 1** to this 1041 Permit.
6. Except when expressly imposed on an individual Applicant, this 1041 Permit imposes joint and several responsibilities upon GP, S-D, and LAWMA for compliance with its provisions, duties, terms, and conditions. When any provision, duty, term, and condition of this 1041 Permit is expressly imposed only upon an individual Applicant, such provision, duty, term, or condition is an individual responsibility specific to that Applicant.
7. The 1041 Permit shall be revoked or suspended for failure to comply with its terms.
8. Applicants shall comply with all state, local and federal regulatory requirements, permits, decrees and other approvals applicable to the development and activity and shall provide copies of any such approvals, permits, and decrees to Prowers County. If any such approval, permit, or decree results in a material change to the 1041 Permit, then Prowers County be able to determine whether a 1041 Permit amendment or suspension is required. Requiring the stricter standard be applicable if a conflict between such other requirements, permits, decrees and other approvals and the 1041 Permit.
9. The 1041 Permit shall not constitute an exemption from Prowers County's land use regulations or other applicable regulations and codes, and Applicants as part of their compliance with the 1041 Permit shall be required to comply with all Prowers County regulations applicable to the Subject Farms.
10. Any material change in the construction, use or operation of the Applicants' development and activity, together with the Applicants' commitments of record, shall require a 1041 Permit amendment, and the Applicants are required to notify

Prowers County of any change in the development and activity and Prowers County shall determine whether an amendment or new permit is required.

11. Applicants shall meet the following compliance standards:
 - a. Prowers County staff and/or independent contractors shall review the Subject Dry-Up Lands no more frequently than quarterly to monitor compliance of Applicants with the terms of the 1041 Permit and shall provide a report to Prowers County annually. Reviews shall be to review the monitoring/management plans and compliance with the permit terms, conditions, and commitments of record.
 - b. Applicants shall submit compliance reports annually to Prowers County as set forth in this 1041 Permit. Reviews by Prowers County staff and/or independent contractors shall occur upon receipt of compliance reports from Applicants. At any time Prowers County may require, and Applicants shall provide, interim reviews and reports to review and monitor the management plans and compliance with the 1041 Permit terms, conditions, and commitments of record.
12. Applicants shall take all necessary measures to not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archeological importance.
13. The Prowers County Permit Authority may suspend the 1041 Permit for noncompliance with the terms and conditions of the 1041 Permit.
14. Because any 1041 Permit issues may be based on a determination that the benefits accruing to Prowers County and its citizens from the Applicants' proposed development and activity outweigh the unavoidable impacts and losses of resources within Prowers County, if any term or condition of the 1041 Permit is deemed invalid and unenforceable, then the 1041 Permit shall be rescinded or suspended unless, Prowers County, in its discretion, approves a 1041 Permit amendment.
15. The owners of the Subject Dry-Up Lands shall be required to maintain (including spraying and burning of weeds) drainage ditches on each farm that comprises the Subject Dry-Up Lands until Certificates of Completion have been obtained for all of the Subject Dry-Up Lands on the farm in accordance with **Exhibit 1**.
16. The owners of the Subject Dry-Up Lands shall be required to leave all headgates on each farm that comprises the Subject Dry-Up Lands intact until Certificates of Completion have been obtained for all of the Subject Dry-Up Lands in accordance with **Exhibit 1**.

17. The obligations set forth in **Exhibit 1** of this 1041 Permit shall be covenants and servitudes upon each parcel of the Subject Dry-Up Lands until the parcel has obtained a Certificate of Completion in accordance with **Exhibit 1**. This 1041 Permit shall only be transferred or assigned in whole or in part upon written approval of Prowers County, in its sole discretion.
18. The 1041 Permit and all Exhibits shall be recorded, together with any associated resolution, in the Prowers County Clerk & Recorder real estate records.

C. **Reviews and Periodic Reporting.** The 1041 Permit shall be subject to review by the Prowers County Permit Authority as set forth in this section. GP and S-D shall make reports about their activities on the GP/S-D Dry-Up Lands at the time and in the manner required in this section. LAWMA shall make reports on the LAWMA Dry-Up Lands about its activities at the time and in the manner required in this section. All reports submitted by Applicants shall also include a list of the dates, times and descriptions of all revegetation activities, herbicide applications, mowing activities, tillage activities, and other revegetation activities performed on the Subject Dry-Up Lands to date.

1. The 1041 Permit shall be subject to the following reviews by the Prowers County Permit Authority. All reviews shall be done in a public session of the Board of County Commissioners. Any Staff report or recommendation shall be provided to the Applicants no less than seven (7) days prior to the review.
 - a. **Revegetation reviews.** Prowers County staff and/or independent contractors shall review the status of revegetation on the Subject Dry-Up Lands at a meeting of the Board of County Commissioners set at the discretion of the Board of County Commissioners in February and September of each year.
 - i) In February, the purpose of the review is to consider the December 1 annual report.
 - ii) The June and September reviews shall be to review the matters included in the in- season progress reports as the same are defined Exhibit 1 to this 1041 Permit.
2. GP and S-D shall make reports on the GP/S-D Dry-Up Lands at the time and in the manner set forth as follows:
 - a. **Other Permits or Decree.** GP and S-D shall provide Prowers County with copies of any approvals, permits, and decrees for the GP/S-D Dry-Up Lands issued by any other governmental entities or the Division 2 Water Court within 60 days of issuance.
 - b. **Annual Revegetation Information report.** On or about December 1 of every year GP and S-D shall submit a report ("Annual Report") to Prowers County

that provides information about the GP/S-D Dry-Up Lands. The Annual Report submitted by GP and S-D shall include the following information:

- i) Whether the field is being dry-land farmed or revegetated.
- ii) The total number of acres that were dried-up.
- iii) The approximate annual precipitation that fell on the field, which may be estimated based on the average of published local weather station data.
- iv) The efforts undertaken in each year since dry-up to convert the field 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;

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;

If the crop is a grain crop, the minimum crop residue;

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; and

Other farming-type activities performed on the subject fields to date.

- v) Revegetation stand adequacy, degree of plant rooting, degree of plant top growth, plant frequencies, and size of plant deficiency areas measured in acres.
- vi) 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.
- vii) Whether any other factors occurred that had a negative impact on efforts to convert to dry-land farming or complete revegetation.

- viii) Classification of the fields pursuant to the chart in **Exhibit 1** Section III, if applicable. GP and S-D as to the GP/S-D Dry-Up Lands shall notify Prowers County prior to performing an annual inspection of such lands for the purpose of preparing the Annual Report. An expert retained by Prowers County shall accompany the GP and S-D expert on such annual inspections.
 - ix) Whether the field has been revegetated as far as can reasonably be expected and thus whether such field will be considered Acceptable.
 - x) If an Annual Report has been filed on the field in past years, how the conditions on the field compares to past years.
 - xi) If a field is recommended for a Certificate of Completion, the Annual Report shall also contain representative photographs of the field depicting how the field has been converted to Dry-land Farming or Revegetation.
 - xii) Whether the field is eligible for issuance of a Certificate of Completion.
- c. 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.
- i) In the June in-season progress report GP and S-D shall submit a report identifying the information as set forth in Exhibit 1 to this 1041 Permit.
 - ii) In the September in-season progress report GP and S-D shall report on precipitation over the summer, weed control and dust suppression measures taken during the summer and the status of the revegetation.
 - iii) Prowers County may request additional or specific information be added to the in-season progress report, if they notify GP and S-D in writing of the additional information they seek no later than 14 days prior to the due date of the in-season progress report.
 - iv) 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.

3. LAWMA shall make reports on the LAWMA Dry-Up Lands at the time and in the manner set forth as follows:

- a. Other Permits or Decree. LAWMA shall provide Prowers County with copies of any approvals, permits, and decrees for the LAWMA Dry-Up

Lands issued by any other governmental entities or the Division 2 Water Court within 60 days of issuance.

- b. Annual Revegetation Information report. On or about December 1 of every year LAWMA shall submit a report ("Annual Report") to Prowers County that provides information about the LAWMA Dry-Up Lands. The Annual Report submitted by LAWMA shall include the following information:

- i) Whether the field is being dry-land farmed or revegetated.
- ii) The total number of acres that were dried-up.
- iii) The approximate annual precipitation that fell on the field, which may be estimated based on the average of published local weather station data.
- iv) The efforts undertaken in each year since dry-up to convert the field 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;

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;

If the crop is a grain crop, the minimum crop residue;

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; and

Other farming-type activities performed on the subject fields to date.

- v) Revegetation stand adequacy, degree of plant rooting, degree of plant top growth, plant frequencies, and size of plant deficiency areas measured in acres.

- vi) 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.
 - vii) Whether any other factors occurred that had a negative impact on efforts to convert to dry-land farming or complete revegetation.
 - viii) Classification of the fields pursuant to the chart in **Exhibit 1** Section III, if applicable. LAWMA as to the LAWMA Dry-Up Lands shall notify Prowers County prior to performing an annual inspection of such lands for the purpose of preparing the Annual Report(s). An expert retained by Prowers County shall accompany the LAWMA expert on such annual inspections.
 - ix) Whether the field has been revegetated as far as can reasonably be expected and thus whether such field will be considered Acceptable.
 - x) If an Annual Report has been filed on the field in past years, how the conditions on the field compares to past years.
 - xi) If a field is recommended for a Certificate of Completion, the Annual Report shall also contain representative photographs of the field depicting how the field has been converted to Dry-land Farming or Revegetation.
 - xii) Whether the field is eligible for issuance of a Certificate of Completion.
- c. 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.
- i) In the June in-season progress report LAWMA shall submit a report identifying the information as set forth in Exhibit 1 to this 1041 Permit.
 - ii) In the September in-season progress report LAWMA shall report on precipitation over the summer, weed control and dust suppression measures taken during the summer and the status of the revegetation.
 - iii) Prowers County may request additional or specific information be added to the in-season progress report, if they notify LAWMA in writing of the additional information they seek no later than 14 days prior to the due date of the in-season progress report.
 - iv) 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.

- D. **Compliance with Regulatory Requirements.** GP, S-D and LAWMA shall comply with all state, county, local and federal regulatory requirements, permits, decrees and other approvals applicable to the development and activity.
- E. **Other Prowers County Regulations.** The 1041 Permit does not constitute an exemption from Prowers County's applicable regulations and codes as they exist now or are later amended, and GP, S-D and LAWMA, as part of its compliance with the 1041 Permit, shall comply with all Prowers County regulations applicable to the Subject Dry-Up Lands. Prowers County has not waived the application of any other land use regulations for 1041 permits.
- F. **Scope of Permit and Permit Amendments.** This Permit is limited to the Subject Dry-Up Lands as described in GP, S-D and LAWMA's Application, as amended during the public hearing process orally or in writing, and as approved. The Permit conditions include all agreements and representations of GP, S-D and LAWMA made during the public hearing process. GP, S-D and LAWMA shall notify the Prowers County Permit Authority of any proposed change to the Subject Dry-Up Lands features or operation, and the Prowers County Permit Authority shall determine whether an amendment to this Permit would be required to ensure that the changes will not violate any standards in Prowers County's 1041 Regulations and will not violate the terms and conditions of this Permit.
1. If the Prowers County Permit Authority determines that any material representation made by GP, S-D and LAWMA in the Application or during the public hearing process is false or deliberately misleading, the Prowers County Permit Authority may pursue an enforcement action for violation of this Permit.
 2. Any material change in the use or operation of the Subject Farms, together with GP, S-D and LAWMA's commitments of record, shall require a 1041 Permit amendment. For these purposes, a material change shall be any change in the Subject Dry-Up Lands which significantly changes the nature of impacts considered in approval of the 1041 permit, including changes resulting from permits issued by other governmental organizations or the appropriate courts of law.
- G. **Financial Security.**
1. **GP and S-D Reclamation Letter of Credit.**

No later than one hundred twenty (120) days following the date of this 1041 Permit, GP and S-D shall provide to the County a Letter of Credit issued by a financial institution acceptable to County naming Prowers County as the sole Beneficiary for the GP/S-D Dry-Up Lands ("GP and S-D Reclamation LOC") with any drafts or reductions of the GP and S-D Reclamation LOC to be made pursuant to the 1041 Permit. While the GP and S-D Reclamation LOC shall provide security in the amount of \$210,875.00 (1,687 acres X \$250 per acre X 0.50) to ensure GP and S-D's potential liability for compliance with the terms and conditions of the 1041

Permit, it does not limit such potential liability for an amount greater than that secured by the GP and S-D Reclamation LOC. The GP and S-D Reclamation LOC 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 GP and S-D Reclamation LOC shall be five (5) years; and for one (1) year terms thereafter. GP and S-D shall notify the County, no less than thirty (30) days prior to the end of the current term if the GP and S-D Reclamation LOC will not be renewed. GP and S-D shall provide the County copies of each renewed GP and S-D Reclamation LOC within 30 days of the issue of each renewed LOC. Upon receipt of any notice of non-renewal of the GP and S-D Reclamation LOC, GP and S-D shall deposit with the County funds in the amount of \$125.00 times the number of acres, for which a Certificate of Completion has not been issued, to be held in a Reclamation Cash Security escrow account by the County for use in accordance with this 1041 Permit and the 1041 Regulations. The GP and S-D Reclamation LOC shall be reduced in amount as the GP/S-D Dry-Up Lands achieve Certificates of Completion (as defined in **Exhibit 1**). If the forfeiture of the GP and S-D Reclamation LOC results in inadequate revenues to cover the costs of reclamation of the GP/S-D Dry-Up Lands, then Prowers County may pursue all lawful collection remedies authorized by law against GP and S-D for all damages and losses incurred by Prowers County to fulfill the conditions of the Application and representations made by GP and S-D at the August 18, 2022 Hearing on the Application.

2. LAWMA Reclamation Letter of Credit.

No later than one hundred twenty (120) days following the date of this 1041 Permit, LAWMA shall provide to the County a Letter of Credit issued by a financial institution acceptable to County naming Prowers County as the sole Beneficiary for the LAWMA Dry-Up Lands ("LAWMA Reclamation LOC") with any drafts or reductions of the LAWMA Reclamation LOC to be made pursuant to the 1041 Permit. While the LAWMA Reclamation LOC shall provide security in the amount of \$2,125.00 (17 acres X \$250 per acre X 0.50) to ensure Applicants' potential liability for compliance with the terms and conditions of the 1041 Permit, it does not limit such potential liability for an amount greater than that secured by the LAWMA Reclamation LOC. The LAWMA Reclamation LOC 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 LAWMA Reclamation LOC shall be five (5) years; and for one (1) year terms thereafter. LAWMA shall notify the County, no less than thirty (30) days prior to the end of the current term, if the LAWMA Reclamation LOC will not be renewed. LAWMA shall provide the County copies of each renewed LAWMA Reclamation LOC within 30 days of the issue of each renewed LOC. Upon receipt of any notice of non-renewal of the LAWMA Reclamation LOC, LAWMA shall deposit with the County funds in the amount of \$125.00 times the number of acres, for which a Certificate of Completion has not been issued, to be held in a Reclamation Cash Security escrow account by

the County for use in accordance with this 1041 Permit and the 1041 Regulations. The LAWMA Reclamation LOC shall be reduced in amount as the LAWMA Dry-Up Lands achieve Certificates of Completion (as defined in **Exhibit 1**). If the forfeiture of the LAWMA Reclamation LOC results in inadequate revenues to cover the costs of reclamation of the LAWMA Dry-Up Lands, then Prowers County may pursue all lawful collection remedies authorized by law against LAWMA for all damages and losses incurred by Prowers County to fulfill the conditions of the Application and representations made by LAWMA at the August 18, 2022 Hearing on the Application.

If Applicants have not obtained Certificates of Completion for any of their respective parcels that comprise the Subject Dry-Up Lands that are not being re-irrigated as provided in term H, below, within ten (10) years, Prowers County may withdraw and employ from the financial security such funds as provided above as may be necessary to carry out the revegetation work for such parcels, up to an amount equal to the number of acres not certified as complete times \$125, reserving unto Prowers County all lawful collection remedies authorized by law against Applicants for all damages and losses incurred by Prowers County to fulfill the conditions of the Application and representations made by Applicants at the August 18, 2022 Hearing on the Application

H. Re-Irrigation. In the event that any owner of the Subject Dry-Up Lands desires to re-irrigate a field with ground water or another source of 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 field. Any re-irrigation with is subject to the following additional requirement:

1. The owner of the field of the Subject Dry-Up Lands that will be re-irrigated with groundwater 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. The owner of the field of the Subject Dry-Up Lands that will be re-irrigated with a source other than groundwater must give written notice to Prowers County describing the land to be re-irrigated and providing evidence that the source of water is 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.
2. If any dry-up covenant for the Subject Dry-Up Lands is more restrictive on the owner of the Subject Dry-Up Lands or more protective of LAWMA than the provisions of this term H(1), then the terms and conditions of the dry-up covenant shall control.
3. The requirements to convert the Subject Dry-Up Lands to dry-land farming, revegetation, or a non- agricultural use do not and will not apply to any field of the

Subject Dry-Up Lands during the period such field is being re-irrigated in accordance with terms of paragraph 20.2 of the 15CW3067 Decree When re-irrigation of a field has ceased, GP and S-D or LAWMA, as applicable, shall ensure that such field is dry-land farmed, revegetated, or developed for a non- agricultural use as required by this Permit within ten (10) years of the cessation of the re-irrigation of the field.

- I. **Commencement of Project.** If GP, S-D and LAWMA fail to take substantial steps to commence the activities for which the Permit is issued within one (1) year from the date of issuance of this Permit, then the Permit may be revoked or suspended by the Prowers County Permit Authority following notice and public hearing. The Prowers County Permit Authority may, in its discretion, extend the time period to begin the Permit period upon written request by GP, S-D and LAWMA, following a public hearing.
- J. **Term of Permit.** The 1041 Permit shall be valid indefinitely for the life of the development and activity, provided that Applicants are in compliance with the 1041 Permit. The County may, in its discretion, extend the term of the Permit upon written request of the Applicants, following a public hearing.
- K. **Transfer of Permit.** The 1041 Permit may only be transferred or assigned in whole or in part upon written approval of the Prowers County Permit Authority. Any proposed transferee or assignee to the 1041 Permit shall demonstrate that it can and will comply with all terms and conditions of the 1041 Permit. Any assignment or transfer of the 1041 Permit shall not release the Applicants from the requirements of the 1041 Permit, unless expressly set forth in the Assignment and approved by Prowers County.
- L. **Costs.**
 - 1. **GP and S-D Cost Deposit for the GP/S-D Dry-Up Lands.**

GP and S-D have submitted a cost deposit to Prowers County. The cost of Prowers County Land Use Administrator, staff, attorney and independent contractors for the Permit and various documents and reports in connection with the GP/S-D Dry-Up Lands shall be borne by GP and S-D. GP and S-D shall deposit additional amounts required to maintain at all times the cost deposit at a minimum balance of \$4,000.00 to cover costs incurred by Prowers County. At the written request of Prowers County, if Prowers County does not have the expertise to evaluate an alleged violation of the Permit, GP and S-D shall be responsible for reasonable costs associated with consultants that may be necessary to determine whether a violation has occurred regarding the GP/S-D Dry-Up Lands. GP and S-D shall reimburse Prowers County for all staff and legal costs, attorneys' fees, and expert witness fees incurred by Prowers County associated with any legal action threatened or brought in association with the GP/S-D Dry-Up Lands in which Prowers County may be or is joined or named as a party. In addition, GP and S-D shall reimburse Prowers County for all legal and expert witness expenses incurred in amending,

administering, reviewing or enforcing the Permit and the terms and conditions of the Permit as related to the GP/S-D Dry-Up Lands.

2. LAWMA Cost Deposit for the LAWMA Dry-Up Lands.

LAWMA shall submit a cost deposit of \$2,000.00 to Prowers County. The cost of Prowers County Land Use Administrator, staff, attorney and independent contractors for the Permit and various documents and reports in connection with the LAWMA Dry-Up Lands shall be borne by LAWMA. LAWMA shall deposit additional amounts required to maintain at all times the cost deposit at a minimum balance of \$2,000.00 to cover costs incurred by Prowers County. At the written request of Prowers County, if Prowers County does not have the expertise to evaluate an alleged violation of the Permit, LAWMA shall be responsible for reasonable costs associated with consultants that may be necessary to determine whether a violation has occurred regarding the LAWMA Dry-Up Lands. LAWMA shall reimburse Prowers County for all staff and legal costs, attorneys' fees, and expert witness fees incurred by Prowers County associated with any legal action threatened or brought in association with the LAWMA Dry-Up Lands in which Prowers County may be or is joined or named as a party. In addition, LAWMA shall reimburse Prowers County for all legal and expert witness expenses incurred in amending, administering, reviewing or enforcing the Permit and the terms and conditions of the Permit as related to the LAWMA Dry-Up.

- M. Permit Violation.** Failure to comply with any portion of this Permit is a violation of the Permit and the *Guidelines and Regulations For Areas and Activities of State Interest, County of Prowers, State of Colorado, adopted April 19, 2004, as amended on August 17, 2006 and November 14, 2017*, and is subject to the enforcement provisions therein. In the event that the Prowers County Permit Authority determines that enforcement action is necessary, the Prowers County Permit Authority shall enforce the Permit in accordance with the existing enforcement procedures, and GP, S-D and LAWMA shall reimburse all of Prowers County's costs and expenses incurred in enforcing the Permit.
- N. Non-Waiver.** Failure of the Prowers County Permit Authority to insist upon strict performance of GP, S-D and LAWMA's obligations set forth in this Permit shall not be construed as a waiver of strict performance of GP, S-D and LAWMA required by this Permit.
- O. Entire Permit.** This Permit constitutes the entire Permit and supersedes all representations, written or oral, made by Prowers County, the Prowers County Permit Authority or GP, S-D and LAWMA.

DATE: 12-15-2022

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


Thomas Grasmick, Chair


Ron Cook, Vice-Chair


Wendy Buxton-Andrade, Commissioner

Attest:


Jana Coen, Prowers County Clerk

EXHIBIT 1 TO GP, S-D AND LAWMA 1041 PERMIT

DRY-LAND FARMING CRITERIA, REVEGETATION CRITERIA, DEVELOPED NON-AGRICULTURAL USE CRITERIA, AND CERTIFICATION PROCESS

The Subject Dry-Up Lands must meet the following criteria for dry-land farming, revegetation, or developed non-agricultural use to receive a Certificate of Completion:

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 Subject Dry-Up Lands 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 using 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.

Subject Dry-Up Lands 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 III.A.1. below have been met for that Subject Dry-Up Land.

II. REVEGETATION CRITERIA

- A.** Revegetation means that the Subject Dry-Up Land field meets the criteria for Class VI or Class VII of the Revegetation Classification Methodology in Section IV below, with weeds adequately controlled in a manner consistent with state and local law; or groundcover has been established on the Subject Dry-Up Land field as far as can be reasonably expected and weeds and/or erosion of the soil caused by wind are adequately controlled in a manner consistent with state and local law.
- B.** Revegetation of the Subject Dry-Up Lands 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; and
 9. Controlling weeds in a manner consistent with state and local law on all fields.
- C.** Applicants may also develop the Subject Dry-Up Lands for non-agricultural uses ("Developed Non-Ag Uses") as a means of reclaiming the Subject Dry-Up Lands. Developed Non-Ag Uses include buildings, grain storage facilities, railways or railroad facilities, oil or 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 that will adequately control weeds and/or erosion of the soil caused by

wind; or the Subject Dry-Up Lands have been developed for a non-agricultural use that is allowed under applicable land-use regulations but that precludes establishing Dry Land Farming or Revegetation on the Subject Dry-Up Lands, and weeds and/or erosion of the soil caused by wind are adequately controlled in a manner consistent with state and local law

III. CERTIFICATION OF COMPLETION

A. Criteria for Approving the Certificate of Completion. The criteria for issuing a Certificate of Completion for Subject Dry-Up Lands converted to Dry-land Farming, Revegetation, or Developed Non-Ag Use shall be:

1. Dry-land Farming: Any Subject Dry-Up Land field where the field is Acceptable and was 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. Acceptable for a field of the Subject Dry-Up Lands where Dry-land Farming will occur means:
 - a. the field 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 field 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 field until the field 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 field 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 Subject Dry-Up Land field where the field is Acceptable shall be entitled to a Certificate of Completion. Acceptable for fields where Revegetation will occur means:
 - a. Any field that meets the criteria for Classes VI or VII using the

Revegetation Classification Schedule in Section IV.

- 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 manner 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. Developed Non-Ag Uses: Any Subject Dry-Up Land field that has been developed for non-agricultural uses as described in Section II.C shall be entitled to a Certificate of Completion.

B. Application for Certification of Completion.

- 1. Applicants may apply for a Certificate of Completion for any Subject Dry-Up Lands that are eligible for a Certificate of Completion pursuant to the criteria in Section III.A. above. The County shall approve or deny any application for a Certificate of Completion within sixty (60) days of the date of submission of any application for a Certificate of Completion.
 - 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 field, if applicable.
 - b. If Prowers County does not approve the application for Certificate of Completion, the Applicants' Expert and the County's Expert, no later than March 1, 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 Subject Dry-Up Land field is eligible for a Certificate of Completion, then the application for Certificate of Completion may be withdrawn by the Applicants, or Water Court approval of the Certificate of Completion may be requested, which may be opposed by the

County.

- 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 20% 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.







