

**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, Prowers County

Re: Dry-up of certain farms under the Lamar Canal, Granada Irrigation Company Ditch (a/k/a Granada Lateral), and X-Y Canal, as a matter of state interest.

From: GP Irrigated Farms, LLC  
Doug Geubelle  
Frank Mercurio  
751 SE County Road 36  
Syracuse, KS 67878  
(620) 492-2525  
douglas@syracusedairy.com  
frank@syracusedairy.com

S-D Investments, LLC  
Doug Geubelle  
Frank Mercurio  
751 SE County Road 36  
Syracuse, Kansas 67878  
(620) 492-2525  
douglas@syracusedairy.com  
frank@syracusedairy.com

Lower Arkansas Water Management Association  
Donald F. Higbee, Manager  
310 South 6th Street  
Lamar, Colorado 81052  
(719) 688-9696  
lawma@cminet.net

Date Submitted: December 13, 2021.

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:

Efficient Utilization of Municipal and Industrial Water Projects

Applicants' revegetation consultant inspected the Subject Farms on June 25, 2021, and then again on October 19, 2021, and determined that an additional 298.1 acres of the permanent dry-up lands on the Subject Farms were established in revegetation or developed for a non-

The Water Court approved LAWMA's change of use of the Subject Shares from irrigation use to augmentation and replacement uses by the decree entered in Case No. 15CW3067, Water Division No. 2 ("15CW3067 Decree"). A copy of the 15CW3067 Decree is attached as Exhibit A. The Subject Farms are encumbered by certain dry-up and revegetation covenants that obligate the respective owners of the farms to establish the farms in revegetation or dry-land farming in accordance with the requirements imposed by the 15CW3067 Decree. An excerpt from the 15CW3067 Decree with the revegetation category criteria and groundcover classifications is attached as Exhibit B. When the 15CW3067 Decree was entered, the Water Court determined that approximately 655.8 acres of the 1,704 acres being dried up on the Subject Farms were established in revegetation or developed for a non-agricultural use. An additional 321.1 acres on the Subject Farms are being re-irrigated by center-pivot sprinklers using ground water augmented by shares of LAWMA common stock.

The Lower Arkansas Water Management Association ("LAWMA") acquired and changed for augmentation and replacement uses 897 shares of stock in the Lamar Canal Company, 750.5 shares of stock in the Granada Irrigation Company, and 2.0 cfs decreed to the XY Irrigating Ditch Company's Canal (collectively, "Subject Shares"). The Subject Shares were historically used to irrigate portions of the Higbee West Farm, DJC-Koehn Farm, Grasmick Lamar Farm, Gass Farm, Grasmick Granada Farm, Grasmick XY Farm, and McMillian Farm (collectively, "Subject Farms"). LAWMA acquired the Subject Shares from GP Irrigated Farms, LLC ("GP Irrigated"), S-D Investments, LLC ("S-D"), and Lawrence McMillian in exchange for LAWMA's issuance of 2,069 shares of LAWMA common stock to GP Irrigated; 1,000 shares of LAWMA common stock to S-D; and 16 shares of LAWMA common stock to Mr. McMillian. The purposes of exchanging the Subject Shares for shares of LAWMA common stock were as follows: (i) for GP Irrigated and S-D, to convert water available to the Subject Shares and applied to inefficient flood irrigated farms into LAWMA common shares that are used to augment wells supplying center pivot sprinkler systems on farms in the County that grow crops to feed to the cattle at GP Irrigated's cattle feedlot and dairy operation south of Holly, Colorado ("Holly Dairy"); and (ii) for LAWMA, to add additional augmentation and replacement water supplies to LAWMA's water rights portfolio for the mutual benefit of its shareholders. The Subject Shares have been severed from the Subject Farms and the Subject Farms have been dried-up as part of the subject development.

**I. PROPOSED DEVELOPMENT SUMMARY**

- 2. Proposed Activity or Development.
    - (x) Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance
- General description of the specific activity or development proposed:

agricultural use in accordance with the revegetation category criteria and groundcover classifications in Exhibit B. A copy of the 2021 status report is attached as Exhibit C.

In consideration of the Water Court's role in managing revegetation of the Subject Farms under the 15CW3067 Decree, Applicants propose that the County treat the development as follows:

- For the 655.8 acres on the Subject Farms that the Water Court determined were established in revegetation or developed for a non-agricultural use, the 298.1 acres that LAWMA's expert has determined comply with the revegetation category criteria and groundcover classifications of the 15CW3067 Decree, and the 321.1 acres that are being re-irrigated, Applicants ask that the County require no further action by Applicants for reclamation of those 1,275 acres on the Subject Farms.
- For the 429 acres on the Subject Farms that do not comply with the criteria and standards to be classified as established groundcover, dry-land farming, developed non-agricultural use, or irrigated under the 15CW3067 Decree ("Subject Lands"), Applicants ask that the County incorporate the revegetation category criteria and groundcover classifications from the 15CW3067 Decree, as described in Exhibit B, into the requested 1041 Permit as the standards for reclaiming those portions of the Subject Farms, which would reduce regulatory overlap and conflict. The location of the Subject Lands is shown on the map attached as Exhibit D.

## **II. PROPOSED DEVELOPMENT BENEFITS**

- **Increased Irrigation Efficiency:** GP Irrigated and S-D have dedicated their shares of LAWMA common stock that were acquired from LAWMA in exchange for the Subject Shares to augment wells that supply water to 36 newly installed center pivot sprinkler systems on the Holly Farm, which is a 4,074.4-acre farm south of Holly that supplies feed to the Holly Dairy. The Holly Farm project also included the installation of 20.65 miles of underground pipeline, 16 wells and pumps, and 2 supplemental pumping plants. As part of the total development, GP Irrigated has also installed significant additional irrigation system improvements on the DJC-Koehn Farm, Grasmick Lamar Farm, Grasmick Granada Farm, and Grasmick XY Farm including 11 new storage ponds, 14 new pumping systems, 11.65 miles of underground pipeline, and 36 new center-pivot sprinkler irrigation systems. GP Irrigated and S-D use the shares they acquired from LAWMA in exchange for the Subject Shares to augment pumping of the 41 wells that are used to provide irrigation water to GP Irrigated's farms in Prowers County. As a result, even though the development dried-up some irrigated farms in Prowers County, the development has, overall, resulted in a net increase in the amount of land irrigated by GP Irrigated and S-D in Prowers County. Currently, GP Irrigated and its related entities are irrigating approximately 7,767.3 acres under center pivot sprinkler systems in Prowers County while the development has resulted in the actual dry-up of approximately 1,382.9 acres.

- **Infrastructure Investments:** GP Irrigated spent \$80,000,000 purchasing the land and installing center-pivot sprinkler irrigation systems, underground pipelines, wells, holding ponds, and pump stations that feed the center-pivot sprinkler irrigation systems, augmentation stations to measure deliveries of the Subject Shares to the Arkansas River, electrical power service infrastructure, and other improvements on the Subject Farms and the Holly Farm. Such investments in the County support local business and have increased the tax base.
- **Connection to other developments in Prowers County:** The Holly Farm and the other farms irrigated by GP Irrigated and S-D are integral components of the Holly Dairy because they supply feed to the estimated 38,500 head of cattle that will be housed at the Holly Dairy at full development. The Holly Dairy is expected to incur approximately \$30,000,000 in development costs through the period of project initiation to completion. The Holly Dairy is expected to be completed within the next year. S-D will incur approximately \$20,000,000 in costs to stock the Holly Dairy with cattle. Based on current milk prices, the estimated gross annual income from milk sales at the Holly Dairy is \$18,000,000. The feedlot on the Holly Dairy is estimated to generate approximately \$21,000,000 in annual sales based on current prices. Job creation within Prowers County resulting from this project is significant. GP Irrigated's and S-D's farming operations in Prowers County employ 22 persons, and the Holly Dairy employs 43 persons. Without the Holly Farm and GP Irrigated's and S-D's other farming operations in the County, the Holly Dairy, and the economic benefits it has and will continue to bring to the County, would not be feasible.

### **III. LAWMA BACKGROUND**

LAWMA is a Colorado non-profit corporation organized for the purpose of providing an annual allocation of augmentation and replacement water to its shareholders, which allows them to continue to pump their wells and make diversions from other structures without injuring senior Colorado water rights or violating the Arkansas River Compact. LAWMA is governed by a seven-member elected board of directors ("LAWMA Board") that controls and manages its business and affairs. Currently, all seven directors are connected to the agricultural industry.

LAWMA operates much like a typical share-based mutual ditch company. There are 27,300 shares of LAWMA common stock and 1,109.4 shares of LAWMA preferred stock issued and outstanding. At the ratio of 2.5 common shares to 1 preferred share, the 1,109.4 shares of preferred stock equate to 2,773.5 shares of common stock, for a total of 30,073.5 shares of common stock and common-stock equivalents outstanding. Of the 27,300 shares of common stock, 24,522 are used for agricultural/irrigation uses; 67 are used for municipal uses; 211 are used for commercial uses; and 2,500 will be used for direct use by Colorado Springs Utilities after approval of the decree in Case No. 19CW3036. Of the 1,109.4 shares of preferred stock outstanding, 294.5 are used for agricultural/irrigation uses, and 814.9 are used for non-curtable structures such as gravel pits and bedrock wells. Figure 1 below shows the extent of LAWMA's general service area.

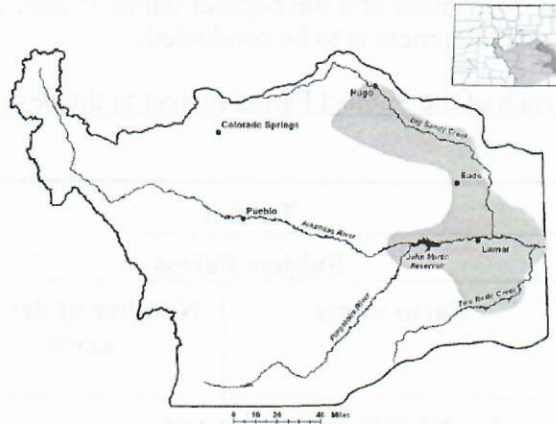


Figure 1. General Location Map Showing LAWMA's Service Area

LAWMA augments its shareholders' depletions from structures under its plan for augmentation decreed by the Water Court in Case No. 02CW181, Water Division No. 2 ("Augmentation Plan"), its administratively-approved annual replacement plan under the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin ("Rule 14 Replacement Plan"), its annually-approved Compact Compliance Plans under Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin, and substitute water supply plans ("SWSP") that rely on LAWMA shares. The vast majority of the structures augmented by LAWMA's plans are located in Prowers County.

LAWMA's current portfolio of augmentation supplies comprises the water rights and other sources of water identified in the decrees entered by the Water Court in Case Nos. 02CW181, 05CW52, 10CW85, 15CW3067, and 17CW3068, all in Water Division No. 2, and 7,487 shares in the Fort Lyon Canal Company that are approved for augmentation under a SWSP. Each year, the LAWMA Board considers the projected yield of LAWMA's replacement supplies and the projected depletions caused by its shareholders' prior and future use and makes a percentage allocation to a LAWMA common share. A 100% allocation means each share of LAWMA common stock will receive 1 acre-foot of augmentation water. Based on the annual allocation percentage and the number of shares they own, LAWMA shareholders may dedicate their shares to specific structures to augment the projected depletions caused by that structure during the plan year.

By pooling its water rights portfolio, LAWMA can provide its shareholders with a more reliable source of augmentation water. As LAWMA continues to develop its water rights portfolio, the value of a LAWMA share continues to increase. For many LAWMA shareholders, a LAWMA common share is a marketable asset that can be sold or transferred with the LAWMA Board's approval. Adding the Subject Shares to LAWMA's water rights portfolio has allowed LAWMA to increase the amount of fully-consumable water that is allocated to each LAWMA common share, and therefore to increase the amount of members' pumping and other diversions for irrigation and other purposes.

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:

Table 1 below lists each of the Subject Farms subject to the development.

<b>Table 1</b>	
<b>Subject Farms</b>	
<b>Farm name</b>	<b>Number of dry-up acres</b>
Higbee West Farm	164
DJC-Koehn Farm	234.5
Grasmick Lamar Farm	431.6
Gass Farm	314.4
Grasmick Granada Farm	466.8
Grasmick XY Farm	75.1
McMillan Farm	17.7
<b>Total</b>	<b>1,704</b>

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):

Please see attached **Exhibit E**.

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 Prowers 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 Owners and Owners of Recorded Legal Interests:**

- GP Irrigated owns the DJC-Koehn Farm, Grasmick Lamar Farm, Grasmick Granada Farm, and Grasmick XY Farm described in paragraphs 3 and 4 above. GP Irrigated is

a Colorado limited liability company and in good standing in the State of Colorado. GP Irrigated's applications and agreements will be signed by Doug Geubelle. Mr. Geubelle and Frank Mercurio will be GP Irrigated's spokesmen and negotiators along with Richard Mehren, counsel for GP Irrigated. The evidence of authority for GP Irrigated's authorized representatives is attached as **Exhibit F**. Contact information is the same as listed on page 1 above.

- S-D owns the Gass Farm described in paragraphs 3 and 4 above. S-D is a Kansas limited liability company in good standing in the State of Kansas. S-D's applications and agreements will be signed by Mr. Geubelle. Mr. Geubelle and Mr. Mercurio will be S-D's spokesmen and negotiators along with Mr. Mehren, counsel for S-D. The evidence of authority for S-D's authorized representatives is attached as **Exhibit G**. Contact information is the same as listed on page 1 above.
- Donald Higbee owns the Higbee West Farm described in paragraphs 3 and 4 above. Mr. Higbee's contact information is the same as listed on page 1 above.
- Mr. McMillan owns the McMillan Farm described in paragraphs 3 and 4 above. Mr. McMillan's contact information is:

Lawrence L. McMillan  
P.O. Box 34  
Granada, Colorado 81041

**Owner of the Subject Shares and holder of dry-up covenants on the Subject Farms:**

LAWMA owns the Subject Shares and holds certain dry-up and revegetation covenants that encumber the Subject Farms. Copies of those covenants are attached as **Exhibit H**. LAWMA is a Colorado non-profit corporation and in good standing in the State of Colorado. LAWMA's applications and agreements will be signed by LAWMA's President, William Grasmick. Mr. Gramick and Mr. Higbee will be LAWMA's spokesmen and negotiators along with Mr. Mehren, counsel for LAWMA. The evidence of authority for LAWMA's authorized representatives is attached as **Exhibit I**. Contact information is the same as listed on page 1 above.

**Beneficiaries of Encumbrances:**

The farms owned by GP Irrigated and S-D are encumbered by a deed of trust for the benefit of Metropolitan Life Insurance Company.

6. Submission Requirements.

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of Prowers 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:

Please see attached **Exhibit J** 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.

Please see attached **Exhibit B** Revegetation Category Criteria and Groundcover Classifications.

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 shall be paid when set by the Permit Authority under Guidelines and Regulations for Areas and Activities of State Interest of Prowers County, Chapter 2, Section 2.202(3).




APPLICANT: GP Irrigated Farms, LLC

By:   
\_\_\_\_\_  
Doug Geubelle, Member

APPLICANT: S-D Investments, LLC

By:   
\_\_\_\_\_  
Doug Geubelle, Member

APPLICANT: Lower Arkansas Water Management Association

By:   
\_\_\_\_\_  
William Grasmick, President

Note: Within fifteen 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 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.