

**DONATION AND ACQUISITION AGREEMENT  
(Gabino Gallegos Water Right)**

This Donation and Acquisition Agreement is between the **COLORADO WATER CONSERVATION BOARD** (“CWCB” or “Board”), and the **VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS®**, an unincorporated nonprofit Colorado association (“ARK”).

WHEREAS, the Board is authorized by section 37-92-102(3), C.R.S. (2009), to acquire from any person, including any governmental entity, such water, water rights or interests in water as the Board determines may be required for instream flows to preserve or improve the natural environment to a reasonable degree and to take whatever action may be needed to ensure such instream flows remain in the river; and

WHEREAS, under section 37-92-102(3), no person or entity other than the Board "shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points ... for any purpose whatsoever"; and

WHEREAS, the Alamosa River Watershed Restoration Master Plan and Environmental Assessment, dated July 2005, identifies the need to improve stream flow in the Alamosa River below Terrace Reservoir as part of an overall restoration plan for the Alamosa River, to be funded, in part, by Natural Resources Damages money (NRD); and

WHEREAS, the Board does not currently hold an instream flow right on the Alamosa River downstream from Terrace Reservoir; and

WHEREAS, from time to time, ARK intends to acquire and donate to the CWCB, and the CWCB expects to accept donation of existing decreed water rights that divert from the Alamosa River or its tributaries below Terrace Reservoir to provide instream flows to preserve or improve the natural environment in the Alamosa River below the Terrace Reservoir; and

WHEREAS, ARK has purchased 2.5 cfs of the 16.0 cfs of water decreed to the Gabino Gallegos Ditch, which was decreed Stream Priority No. 11 by the Conejos County District Court on July 11, 1888, with an appropriation date of April 15, 1870, for irrigation use (the "Gallegos Ditch Right"); and

WHEREAS, the sellers have executed a Dry-Up Covenant certifying that the lands associated with the 2.5 cfs will be permanently removed from irrigation; and

WHEREAS, ARK and the Board have also entered into an agreement with Terrace Reservoir Company allowing storage of the Gallegos Ditch Right in Terrace Reservoir (the “Stored Water”);

WHEREAS, the Board intends to accept the donation of the Gallegos Ditch Right from ARK and to file an application with the Division 3 Water Court for a change of use of such water right to allow storage and subsequent instream flow use by the Board to preserve or improve the natural environment to a reasonable degree in the Alamosa River from the outlet of Terrace Reservoir downstream to the bridge at County Road 10 (the “Instream Flow Reach”);

WHEREAS, the Board's use of the Gallegos Ditch Right for instream flow purposes will require Water Court approval of a change in use of the Gallegos Ditch Right; and

WHEREAS, ARK wishes to assist the Board in obtaining judicial approval of the change in use to storage and subsequent instream flow use;

NOW, THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties agree as follows:

1. Conveyance. Within thirty days of the Effective Date of this Agreement, as described in Paragraph 11 herein, ARK will convey the Gallegos Ditch Right to the Board by Special Warranty Deed in substantially the form as the deed attached hereto as **Exhibit A**. ARK shall record said deed with the Conejos County Clerk and Recorder within ten days of such conveyance, and shall provide a copy of the recorded deed to the Board.

2. Water Court Proceedings. Within one year after receiving title to the Gallegos Ditch Right, the Board shall file an application with the Water Court to change the use for the Gallegos Ditch Right to allow for storage in Terrace Reservoir, and subsequent release for instream flow use exclusively by the Board in the Instream Flow Reach (the "Change Proceeding"). ARK may file a statement of opposition in the Change Proceedings in support of the change application and in order to keep informed of all proceedings in the Change Proceeding. The Board will not enter into stipulations in the Change Proceeding or submit a proposed ruling or decree to the Court without first consulting with and obtaining the approval of ARK, which approval shall not be unreasonably withheld.

3. Assistance. The Board will be responsible for the normal and reasonable costs of the Change Proceeding. ARK shall provide reasonable engineering and other assistance to the Board in the Change Proceeding.

4. Enforcement. If the Board successfully obtains a decree in the Change Proceeding, the Board commits to use the Gallegos Ditch Right, as changed, for instream flow purposes to preserve or improve the natural environment to a reasonable degree, consistent with the terms of the decree, and to take reasonable steps to enforce those rights for instream flow purposes and protect them from injury. If the Board receives a request to consider injury with mitigation for the portion of the Alamosa River benefited by the change of the Gallegos Ditch Right, the Board shall promptly inform ARK of such request, consult with ARK regarding such request, and not take any action that, in the CWCB's and ARK's reasonable judgment, would impair the benefits to the Alamosa River resulting from ARK's donation to the Board of the Gallegos Ditch Right and its change to instream flow uses. Nothing herein shall diminish the Board's right to exercise its discretion regarding enforcement of instream flow water rights; however, the Board acknowledges that the intended use of the Gallegos Ditch Right is to preserve or improve the natural environment of the Alamosa River to a reasonable degree.

5. Effect of Denial. If the Change Proceeding is unsuccessful for any reason, or if the decree entered therein is conditioned in such a manner as to prevent the purposes of this Agreement from being fulfilled, then the parties hereto shall consult on future action regarding the Board's use of the Gallegos Ditch Right.
6. Re-Use Right. Pursuant to section 37-92-102(3) and to the water court decree that will implement this Agreement, the Board or ARK shall have the right to bring about beneficial use of the historical consumptive use of the Gallegos Ditch Right as fully consumable water at any point downstream from County Road 10 (the "Re-Use Right"), subject to such terms and conditions as the Water Court deems necessary to prevent injury to vested water rights or decreed conditional water rights. The Board or ARK shall notify the Division 3 Engineer of any agreement for such beneficial use downstream of the Instream Flow Reach prior to the use. However, given the current hydro-geologic conditions, it is unlikely that the historical consumptive use of water associated with the Gallegos Ditch will be maintained as surface flow through the entire Instream Flow Reach and be available for the Re-Use Right.
7. Releases. All requests for releases of Stored Water from Terrace Reservoir shall be made by CWCB pursuant to the Storage Agreement among Terrace Irrigation Company, CWCB and VALLE DEL SOL COMMUNITY CENTER/ALAMOSA RIVERKEEPERS, attached hereto as Exhibit B. CWCB agrees to request releases of Stored Water in such amounts as may be needed to provide a target instream flow of 10 cfs in the Instream Flow Reach. CWCB and ARK acknowledge that the Alamosa River downstream from Terrace Reservoir is a losing stream, and it may be difficult to meet the target flow until additional water rights are acquired and the aquifer is replenished. Representatives of the CWCB and ARK shall meet at least once a year to develop a mutually agreed plan for release of the Stored Water.
8. Monitoring and Administration of Releases. CWCB and ARK agree to develop a plan for agreeing upon and monitoring releases of Stored Water, including installing, maintaining and funding stream gages, and devising such other measures as may be deemed necessary by the Division Engineer CWCB shall take such action under state law, including requesting administration by the State Engineer and the Division Engineer for Water Division No.3, as may be necessary to put the released water to beneficial use and to prevent the unlawful diversion of the released water at any point downstream of Terrace Reservoir.
9. Remedies. Pursuant to section 37-92-102(3), the terms of this Agreement shall be enforceable by each party as a water matter in the District Court for Water Division 3; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good faith effort to resolve their differences through informal consultation. Specific performance shall be the exclusive remedy for failure of either party to comply with any provision of this Agreement.
10. Miscellaneous. This Agreement shall not be assignable by either party without the written consent of the other. All of the provisions of this Agreement shall survive the conveyance of the Gallegos Ditch Right from ARK to the Board, and shall not merge therewith.

11. Effective Date. The Effective Date of this Agreement shall be the date on which it has been signed by both parties.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

VALLE DEL SOL COMMUNITY CENTER,  
on behalf of the ALAMOSA RIVERKEEPERS

COLORADO WATER  
CONSERVATION BOARD

BY: \_\_\_\_\_  
Julie Gomez-Nuanes, President

BY: \_\_\_\_\_  
Jennifer Gimbel, Director

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

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