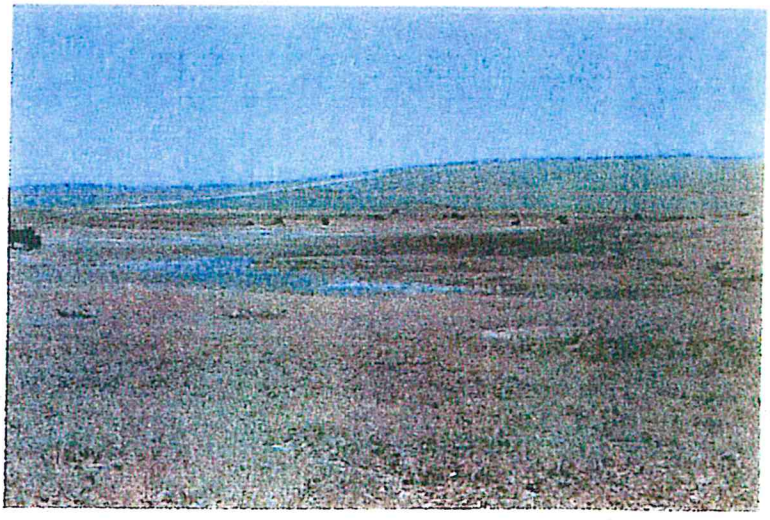
PROSPECTUS FOR CRAMER CREEK MITIGATION BANK

Cramer Creek Mitigation Bank



1.0 Introduction

This prospectus addresses the Cramer Creek Ranch Mitigation Bank in Lincoln County, Colorado. Cramer Creek Ranch Mitigation Bank, (hereafter referred as the Project), managed by Clock Land Corporation, proposes wetland and stream mitigation on the Cramer Creek Ranch. This prospectus is prepared in accordance with U.S. Army Corps of Engineers (USACE) guidance.

2.0. Project Location

The Project is located south of State Highway (SH) 94 and west of Highway 71 in Lincoln County, Colorado (Exhibit 1). The Project is approximately 45 miles southeast of Colorado Springs. Elevations range from 5,065 to 5,105 feet above sea level. The legal description for the approximate Project area center point is Townships 17S, Range 57, Section 17.

The Project is in the Upper Arkansas 6-digit hydrologic unit (110200) and located in the Southwestern Tablelands Ecoregion of Colorado. The Project is located in the Little Horse Creek 8-digit hydrologic unit (HUC 11020008). The surrounding area is mostly rangeland. Grazing and ranching are the predominant land uses. Surface land ownership is mostly private.

3.0. Ecological Conditions

The Cramer Creek Uplands area is characteristic of sand sagebrush interspersed with shortgrass prairie. The prairie is dominated by native grasses and forbs, consisting of side oats grama (*Bouteloua curtipendula*), blue grama (*Bouteloua gracilis*), needle-and-thread grass (*Hesperostipa comata*), sand bluestem (*Andropogon hallii*), three-awn (*Aristida purpurea*), western wheatgrass (*Pascopyrum smithii*), little bluestem (*Schizachyrium scoparium*), and sand dropseed (*Sporobolus cryptandrus*). Two rare plants are found within the site: the plains ambrosia (*Ambrosia linearis*), a member of the daisy family whose global distribution is only in the eastern plains of Colorado, and the sandhill goosefoot (*Chenopodium cycloides*), an annual found sporadically on sandy soils of the Great Plains.

The riparian pond edges of the Project are dominated by bulrushes (*Scirpus acutus*), cattails (*Typha latifolia*), and spike rush (*Eleocharis palustris*). The mesic meadows that surround the ponds consist of saltgrass (*Distichilis spicata*), alkali grass (*Puccinellia airoides*), alkali sacaton (*Sporobulus airoides*), cluster field sedge (*Carex praegracilis*), Nebraska sedge (*Carex nebrascensis*), water parsnip (*Berula erecta*), and Baltic rush (*Juncus balticus*). Additional information on the wetland and biological community can be located in Exhibit 2.

4.0. Land Uses

Existing land uses within and adjacent to the Project area includes grazing and ranching. There are no existing surface or subsurface mineral extraction operations in or adjacent to the Project area. This includes mining and oil and gas exploration and production. The future land uses are expected to remain unchanged.

5. Project Need and Technical Feasibility

At this time, there are no active mitigation banks with credits available within the Arkansas River Basin in Colorado. This creates a fundamental need for mitigation credits within the primary, secondary as well as outside the immediate service area of the Project mitigation bank. Colorado Springs, Pueblo and the surrounding communities are experiencing similar growth as the rest of the Front Range. Given this increase in development and population, there is a need for mitigation credits to be available for the anticipated growth in the region. In addition to growth from population, there has been a recent elevated interest in oil and gas development on the Front Range of Colorado which could contribute to the need for mitigation credits in the Arkansas River Basin.

The Project is located in a unique hydrological area of the State of Colorado. This unique hydrology results in relatively steady stream flows in Cramer Creek on the north end of the property and grows into substantial flows. These flows continue throughout the Project area and then diminish before disappearing near the end of the property. Given this unique hydrology, the Project's water rights are highly reliable which significantly increases the technical feasibility of this Project as compared to those which utilize water which relies upon pumping.

6.0 Project Description

The Project consists of one parcel covering 140 acres. The objective will be to establish wetlands and stream banks by constructing dams along Cramer Creek. See Exhibit 3. Approximately 27 acres of open water (ponds) will be created by these dams. An estimated 14 additional acres of stream bank will be created in the overflow of these ponds, and 66 acres of wetlands will be enhanced in the upper reaches of the area. The area will have a 300 foot buffer zone that will encompass another 38 acres of wetland complex. The overall ecological objective of the project is to create, restore and enhance aquatic resource functions and services.

7.0 Bank Ownership and Operation

The Project is owned by Clock Land Corporation. Clock Land Corporation's President, Patrick Esch, has been an avid conservationist his entire life. Mr. Esch is the Vice President of the Baca County Conservation District and has been a member of the Board of Cooperators for years. Mr. Esch has a long term easement with the Colorado Division of Wildlife covering 6,000 acres of native prairie and riparian areas. Although Mr. Esch has never sponsored a mitigation bank, he has a lifetime of experience with stewardship of the land, conservation matters, and the navigation of regulatory affairs. Mr. Esch will be assisted in the management of the Project by Luke Esch. Luke Esch is a licensed attorney in Colorado and Wyoming and has over 12 years of experience in regulatory affairs, with a focus on environmental and natural resources management.

In addition to the ownership and management provided by Clock Land Corporation and Mr. Esch, consultation for the Project will be provided by Mr. Hank Humphreys, whose resume and qualifications are included in Exhibit 4.

8.0 Long Term Management Strategy

In order to protect and assure proper management of the Project and the mitigation credits in the long term, Clock Land intends to initiate significant changes to the current grazing plan as well as execute and implement a perpetual conservation easement on the property. The grazing management strategy is set forth in Exhibit 5.

The conservation easement and other IRT acceptable mechanisms will enable certification of credits and ensure the preservation of the mitigation bank as wetland and wildlife habitat in perpetuity with sufficient restrictive covenants. The restrictions will ensure minimal disturbance of wildlife and other habitat.

A copy of the conservation easement will be submitted prior to recording with the County. Easement holder qualifications will be included. Upon formal county recording, a copy will be provided to the Army Corps.

9.0 Mitigation Bank Service Area

The service area is the area within which the mitigation bank is authorized to provide compensatory mitigation. The 2008 rule sets the criteria for establishing a mitigation bank service area. Bank service areas are defined using watersheds, ecoregions, physiographic regions and other types of geographic areas deemed appropriate by the Army Corps of Engineers. Larger service areas can be considered when the bank is located in an ecologically suitable area and rural in character. Our proposal used these provisions to define the following service area.

"The service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required by DA permits. The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area..... In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area..... The economic viability of the mitigation bank or in-lieu fee program may also be considered in determining the size of the service area." CFR 332.8(d)(6)(ii)(A) p. 19682

The Project proposes use of the entire Arkansas River Basin east of the Rocky Mountains within the state of Colorado for its primary service area. The Project's primary service area shall include the cities of Colorado Springs and Pueblo and the respective 8-digit HUC areas. While this service area may appear large, the rural nature of the surrounding area, the need to ensure economic viability of the Project, and the need for a mitigation bank within the Arkansas River Basin justify the coverage of the service area.

If determined appropriate, mitigation activities on the Project will compensate for impacts throughout the proposed service area, however, the mitigation activity must replace similar ecologic or hydrologic function. If impacts occur outside of the service area but within similar ecosystems, the Project may provide mitigation only with the approval of the Army Corps.

10. Ecological Suitability

As mentioned above, the Project consists of one parcel covering 140 acres. The Project area is zoned Agricultural. Historic and existing land uses within and adjacent to the Project area includes grazing and ranching. There are no existing surface or subsurface mineral extraction operations in or adjacent to the Project area. This includes mining and oil and gas exploration and production. The future land uses are expected to remain unchanged. The Project area is encumbered by a mortgage held by Hall and Hall, Inc., but there are no known easements, rights-of-way, liens, or other servitudes or encumbrances.

The Project is characteristic of sand sagebrush interspersed with shortgrass prairie. The prairie is dominated by native grasses and forbs, consisting of side oats grama (*Bouteloua curtipendula*), blue grama (*Bouteloua gracilis*), needle-and-thread grass (*Hesperostipa comata*), sand bluestem (*Andropogon hallii*), three-awn (*Aristida purpurea*), western wheatgrass (*Pascopyrum smithii*), little bluestem (*Schizachyrium scoparium*), and sand dropseed (*Sporobolus cryptandrus*).

The Project is located in a unique hydrological area of the State of Colorado. This unique hydrology results in relatively steady stream flows in Cramer Creek on the north end of the property and grows into substantial flows. These flows continue throughout the Project area and then diminish before disappearing near the end of the property. Given this unique hydrology, the Project's water rights are highly reliable which significantly increases the technical feasibility of this Project as compared to those which utilize water which relies upon pumping.

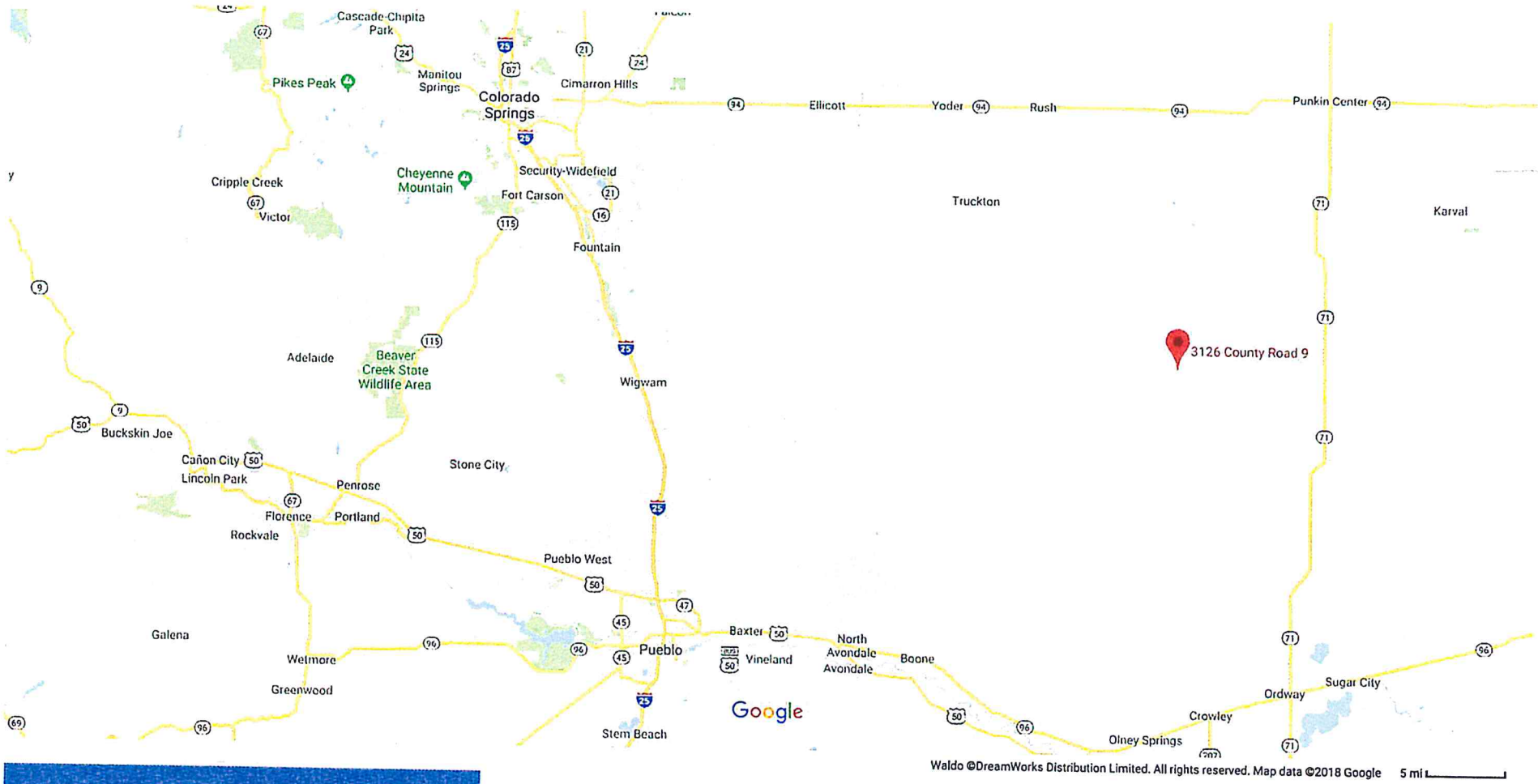
10.0 Water Rights

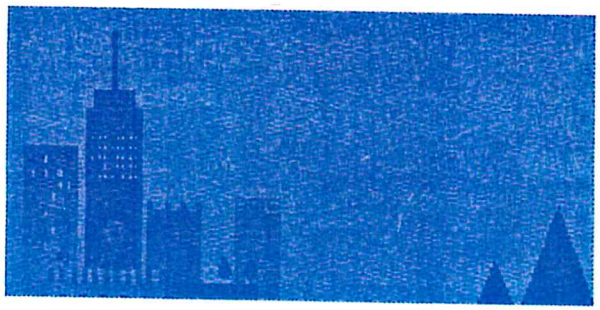
As mentioned above, the Project is located in a unique hydrological area within the State of Colorado. Water flows through the upper reaches of the property and continues throughout the Project area and then diminish before disappearing near the end of the property. Given this unique hydrology, the Project's water rights are highly reliable which significantly increases the technical feasibility of this Project. Given the unique geology, Clock Land initiated an application for the adjudication of surface water rights associated with the Project. These efforts resulted in the receipt of a decree from the Colorado Division 2 Water Court for the right to use waters associated with the Project. As discussed in Exhibit 6, these decreed water rights are highly reliable and will be sufficient for the desired wetlands use.

Cramer Creek Ranch Wetlands

Exhibit 1

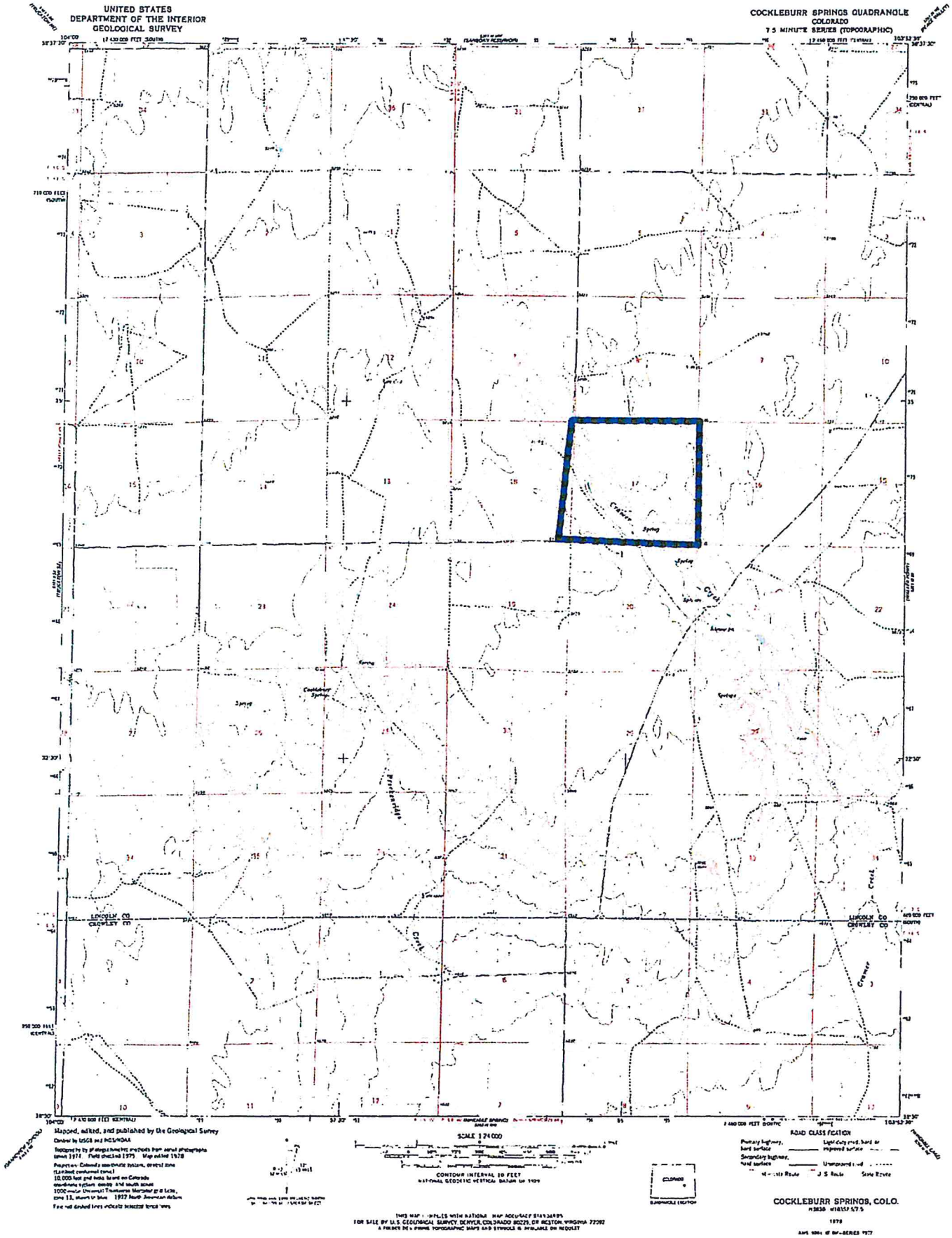
Google Maps 3126 Co Rd 9





3126 Co Rd 9
Ordway, CO 81063

https://www.google.com/maps/place/3126+Co+Rd+9,+Ordway,+CO+81063/@38.5447272,-104.4608484,10z/data=!4m5!3m4!1s0x87128b4e4bc6083b:0xe05d06509f9b16dd!8m2!3d38.55835!4d-103.9059932



'Cockleburr Springs; CO' Scale: 1" = 1.006Mi 1,618Mt 5,309Ft, 1 Mi = 0.994" , 1 cm = 637Mt

Cramer Creek Ranch Wetlands

Exhibit 2

Colorado Natural Heritage Program
Warner College of Natural Resources
Fort Collins, Colorado 80523-6021
(970) 491-1309 FAX: (970) 491-3349
www.cnhp.colostate.edu

October 7, 2009

Patrick Esch
717 Colorado Street
Springfield, CO 81073

Dear Pat:

We have enclosed a CD-Rom of photos, a species list, and the Potential Conservation Area (PCAs) reports for Upper Cramer Creek and Cramer Creek. Upper Cramer Creek is ranked as a site of high biodiversity significance (B3) due to the good occurrences of two globally rare plants, plains ragweed (*Ambrosia linearis*) and sandhill goosefoot (*Chenopodium cyclodies*), and the state sensitive black-tailed prairie dog (*Cynomys ludoviciansus*). The sand sagebrush prairie is in very good condition, not only because the eastern plains had such a wet spring, but due to your good management practices and placement of much of the property into the Conservation Reserve Program, your stewardship is to be commended. I would also suggest that excellent management contributes to the documentation by the Division of Wildlife of several swift fox (*Vulpes velox*) present within your property.

Cramer Creek ranked as a B4 or of moderate biodiversity significance for we documented the large occurrences of both the Northern leopard frog (*Rana pipiens*) and the painted turtle (*Chrysemys picta*). The healthy populations of these amphibians and reptiles is also an indication of good management practice that ensures a constant water supply.

We want to thank you, John, and Tabitha for your hospitality and especially want to thank Tristan for his help. In fact, we have enclosed an official certificate for Tristan, could I trouble you to give it to him next time you go up to the ranch? If you have any questions about the assessment give me a call or send an email.

Sincerely,

Denise R. Culver

Denise R. Culver, Ecologist
(970) 491-2998
Denise.Culver@colostate.edu

Jodie Bell

Jodie Bell, Zoologist
(970) 491-3280
Jodie.Bell@colostate.edu

Colorado State University

Cramer Creek

Biodiversity Rank - B5: General Biodiversity Interest

Protection Urgency Rank - P4: No Threat or Special Opportunity

Management Urgency Rank - M3: Needed within 5 Years to Maintain Quality

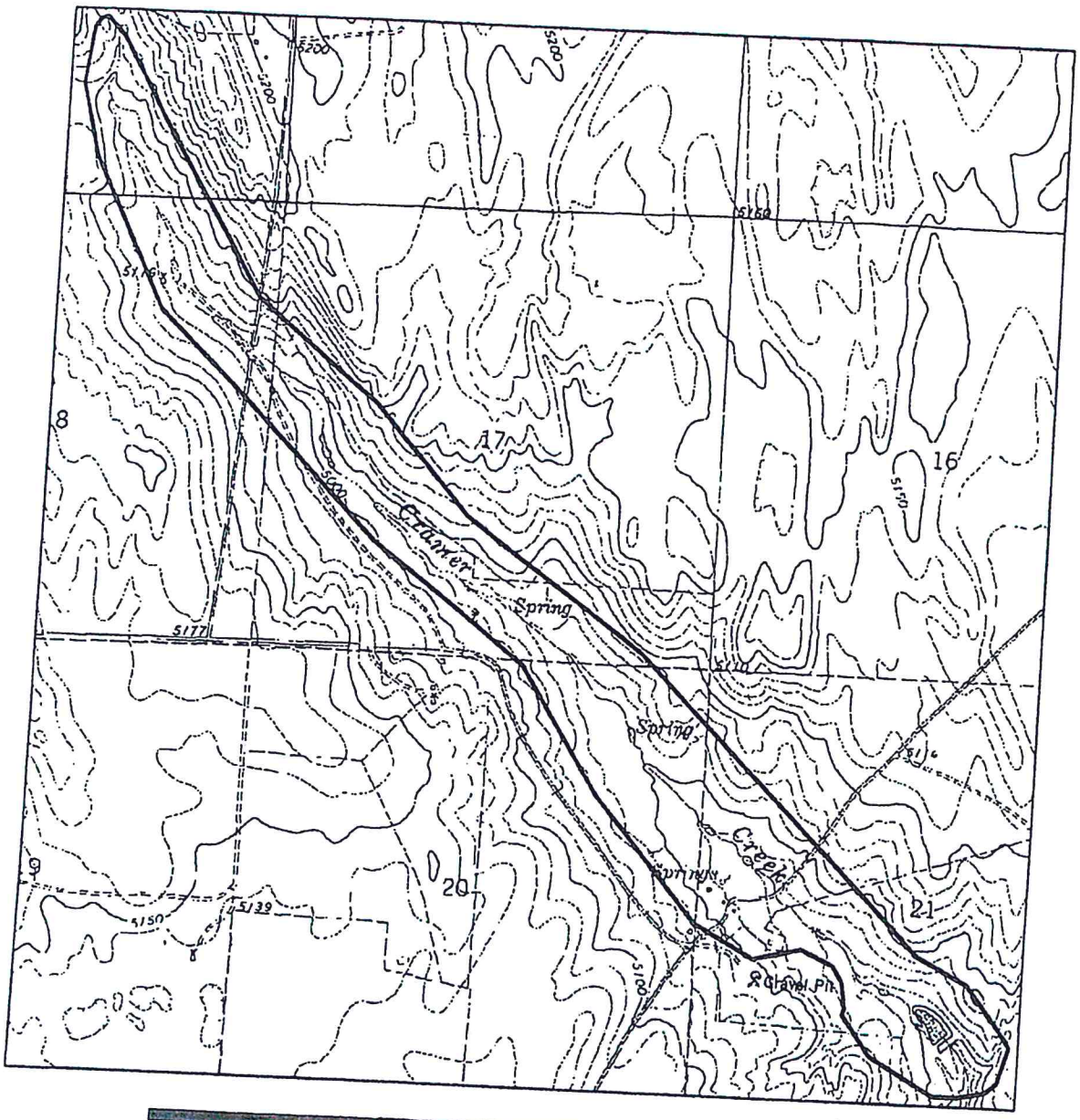
U.S.G.S. 7.5-minute quadrangles: Cockleburr Springs

Size: 414 acres (168 ha) **Elevation:** 5,000 - 5,100 ft. (1,524 - 1,554 m)

General Description: The Cramer Creek Potential Conservation Area is located east of Pueblo and north of Ordway. Cramer Creek is a perennial stream that is fed by numerous springs as it flows south to the Arkansas River. Within the site there are several ponds that support emergent vegetation, amphibians, reptiles, and small fish. The northern leopard frog (*Rana pipiens*) was found throughout the area. The presence of the northern leopard frog is an indicator of a constant water source and the absence of non-native species e.g., the bullfrog (*Rana catesbeiana*). Additionally, a very large population (150- 200) of painted turtles (*Chrysemys picta*) was documented in the ponds. The vegetation consists of bulrushes (*Scirpus acutus, S. pungens*), cattails (*Typha latifolia*) and spike rush (*Eleocharis palustris*) along the pond edges with saltgrass (*Distichilis spicata*), alkali grass (*Puccinellia airoides*), alkali sacaton (*Sporobulus airoides*), cluster field sedge (*Carex praegracilis*), Nebraska sedge (*Carex nebrascensis*), water parsnip (*Berula erecta*), and Baltic rush (*Juncus balticus*) in the mesic meadow that rings the ponds. Non-native plants documented include Canada thistle (*Breea arvensis*), teasel (*Dipsacus fullonum*), and kochia (*Bassia sieversiana*). The gleyed soils next to the pond indicate saturated conditions are consistent throughout the growing season. Above the ponds the soils are mottled indicating periods of saturation then drawdown likely occurring in late summer.

Climate Description: The climate of the eastern plains is comparatively uniform from place to place, with characteristic features of low relative humidity, abundant sunshine, light rainfall, moderate to high wind movement, and a large daily range in temperature. Summer daily maximum temperatures are often 95° F or above, and 100° F temperatures have been observed at all plain stations. Such temperatures are not infrequent at altitudes below 5,000 feet; above that elevation they are comparatively rare. The usual winter extremes in the plains are from zero to 10° F or 15° F below zero (WRCC).

Biodiversity Significance Rank Comments (B5): This site supports a state rare (G5/S3) amphibian, northern leopard frog (*Rana pipiens*). The globally common painted turtle (*Chrysemys picta*) also occurs within the site, but this species is not tracked by CNHP.



Colorado Natural Heritage Program
Colorado State University
254 General Services Building
1474 Campus Delivery
Fort Collins, CO 80523-1474

Ph (970) 491-1309
Fax (970) 491-3349
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Map Date: 10/05/2009

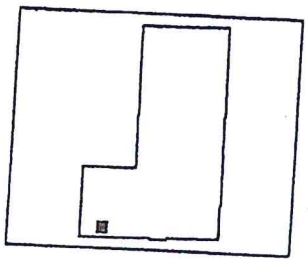
Legend

PCA Boundary

Cockleburr Springs, 38103-E8

7.5 Minute Digital Raster Graphic produced by the U.S. Geological Survey

Location in Lincoln County



Cramer Creek Potential Conservation Area, B5: General Biodiversity Interest

Preliminary Report From The Field Visit on June 19-21,2009

Preformed by

Denise Culver (Ecologist)
and Jodie Bell (Zoologist)

of the

Colorado Natural Heritage
Program

Patrick Esch Ranch—Lincoln and Crowley counties
Preliminary Report from Field Visit on June 19-21, 2009
Colorado Natural Heritage Program
Denise Culver, Ecologist and Jodie Bell, Zoologist

Cramer Creek is a perennial stream that follows north to south along through at the base of sandy outcrops. Cramer Creek is fed by numerous springs that flow from the sandy soil and high water table. Several ponds have been created by dams that support waterfowl, painted turtles, Northern leopard frogs, crayfish, killy fish, and other small minnows. The vegetation is determined by hydrology. Within the creek bottom vegetation is dominated by bulrush (*Scirpus acutus*), cattail (*Typha latifolia*), water parsnip (*Berula erecta*), buttercup (*Hecatonia scelerata*), three square (*Scirpus pungens*), and duckweek (*Lemma turionifera*). The adjacent saturated soils support three square, Baltic rush (*Juncus balticus*), foxtail (*Hordeum jubatum*), meadow sedge (*Carex praegracilis*), rabbit foot grass (*Polypogon monspeliensis*), saltgrass (*Distichilis spicata*) and Canada thistle (*Cirsium arvenis*). Above the saturated soil zone saltgrass dominates with alkali sacaton (*Sporobolus airoides*).

The seeps are easily located due to the green, verdant growth that contrasts with the surrounding sandsage shrubland. All of the seeps are dominated by Canada thistle, however there are many native species, western wheatgrass (*Pascopyrum smithii*), wedgegrass (*Sphenopholis obtusata*), salt grass, alkali sacaton, three square, cattail, wild licorice (Glycyrrhiza lepidota), showy milkweed (*Asclepias speciosa*), Baltic rush, meadow sedge, and spike rush (*Eleocharis palustris*). Other non-native species include: Japanese brome (Bromus japonicas), and teasel (*Dipsacus laciniatus*).

Soils are characterized as sandy loam with the evidence of saturation due to the presence of mottling (e.g., root oxidized channels and Manganese masses). Mottles indicate a fluctuating water table when reduced Fe and Mn are exposed to oxygen; oxidized features (including masses, mottles, nodules, concretions, and oxidized root channels) appear reduction-depletion of oxygen and reduction of iron.

Within the Esch property 11,000 acres are in Conservation Reserve Program (CRP). The sandsage (*Artemisia filifolius*) prairie reflects the lack of disturbance by its diversity of species. Two globally imperiled plants were documented with the prairie, sandhill goosefoot (*Chenopodium cycloides*) (G3G4S1) and plains ragweed (*Ambrosia linearis*) (G3S3). Other associated plants include: rabbitbrush (*Chrysothamnum nauseosus*), gilia beardtongue (*Leiostemon ambiguous*), long leaf phlox (*Phlox longifolia*), painted milkvetch (*Astragalus ceramicus* var. *filifolius*), hog potato (Hoffmanseggia glauca), mountain evening primrose (*Oenothera latifolia*), sand verbena (*Abronia fragrans*), spreading buckwheat (Eriogonum effusum), yellow spine thistle (*Cirsium ochrocentrum*), Rocky Mountain zinnia (*Zinnia grandiflora*), bush morningglory (*Ipomoea leptophylla*), scarlet bee blossom (*Gaura coccinea*), scurf pea (*Psoralidium tenuiflorum*) prickly pear (*Opuntia polyacantha*) blue grama (*Bouteloua gracilis*), three awn (*Aristida purpurea*), needle and thread grass (*Stipa comata*), and sandreed (*Calamovilfa longifolia*).

Walker Point, located east of the Esch Ranch complex is a jutted that is ringed by seeps that flow from the sandy soils into a eroded gully. The seeps are similar to the ones above Cramer Creek, dominated by Canada thistle. The largest spring has a pipe that flows down to the gully. Around the spring, cattails dominate with three square, meadow sedge, scouring rush (*Hippochaete laevigata*), Russian thistle (*Salsola australis*), kochia (*Bassia sieversiana*) sow thistle (*Sonchus asper*), and sunflower (*Helianthus annuua*). The gully located south of Walker Point contains several plains cottonwoods (*Populus deltoides*) and numerous tamarisk (*Tamarix ramosissima*). The understory is dominated by cattails, Canada thistle, meadow sedge, foxtail, three square, Nebraska sedge (*Carex nebrascensis*), curly dock (*Rumex crispus*), showy milkweed, spikerush. Soils are gleyed within the first 4 cm with evidence of mottling down to 7 cm.

The animals documented during the field visit are included in the following table.

Birds:	Scientific Name	CNHP Grank/ Srank	Tracking Status	DOW Tracking
American Crow	*Corvus brachyrhynchos*	G5S5	Do Not Track	
American White Pelican	*Pelecanus erythrorhynchos*	G3S1B	Tracked	
Barn Swallow	*Hirundo rustica*	G5S5	Do Not Track	
Blue-winged Teal	*Anas discors*	G5S5B	Do Not Track	
Brewer's Blackbird	*Euphagus cyanocephalus*	G5S5B	Do Not Track	
Brown-headed Cowbird	*Molothrus ater*	G5S5	Do Not Track	
Burrowing Owl	*Athene cunicularia*	G4S4B	Watchlisted	
Cassin's Sparrow	*Aimophila cassinii*	G4S4B	Watchlisted	
Cinnamon Teal	*Anas cyanoptera*	G5S5B	Do Not Track	
Cliff Swallow	*Petrochelidon pyrrhonota*	G5S5B	Do Not Track	
Common Nighthawk	*Chordeiles minor*	G5S5B	Do Not Track	
Great Blue Heron	*Ardea herodias*	G5S3B	Do Not Track	
Golden Eagle	*Aquila chrysaetos*	G5 S3S4B	Do Not Track	
Horned Lark	*Eremophila alpestris*	G5S5B	Do Not Track	
House Sparrow	*Passer domesticus*	G5SNA	Do Not Track	
Killdeer	*Charadrius*	G5S5	Do Not	

	vociferus		Track	
Birds:	**Scientific Name**	**CNHP Grank/ Srank**	**Tracking Status**	**DOW Tracking**
Lark Bunting	*Calamospiza melanocorys*	G5S4	Do Not Track	
Mallard	*Anas platyrhynchos*	G5S5	Do Not Track	
Mourning Dove	*Zenaida macroura*	G5S5	Do Not Track	
Northern Mockingbird	*Mimus polyglottos*	G5S5	Do Not Track	
Red-tailed Hawk	*Buteo jamaicensis*	G5S5B	Do Not Track	
Red-winged Blackbird	*Agelaius phoeniceus*	G5S5	Do Not Track	
Scaled Quail - plus covey	*Callipepla squamata*	G5S4	Do Not Track	
Swainson's Hawk	*Buteo swwainsoni*	G5S5B	Do Not Track	
Vesper Sparrow	*Pooecetes gramineus*	G5S5	Do Not Track	
Western Kingbird	*Tyrannus verticalis*	G5S5B	Do Not Track	
Western Meadowlark	*Sturnella neglecta*	G5S5	Do Not Track	
Reptiles and Amphibians:				
Lesser Earless Lizard	*Holbrookia maculata*	G5S5	Do Not Track	
Northern Leopard Frog	*Rana pipiens*	G5S3	Watchlisted	Species of Concern
Painted Turtle	*Chrysemys picta*	G5S5	Partial Track	
Plains Garter Snake	*Thamnophis radix*	G5S5	Do Not Track	
Prairie Rattlesnake	*Crotalus viridis*	G5S5	Do Not Track	
Racer	*Coluber constrictor*	G5S5	Do Not Track	
Tiger Salamander-larvae	*Ambystoma tigrinum*	G5S5	Do Not Track	Region 2 Sensitive Species List
Woodhouse's Toad	*Bufo woodhousii*	G5S5	Do Not Track	
Mammals:				
Black-tailed Jackrabbit	*Lepus californicus*	G5S5	Do Not Track	

Black-tailed Prairie Dog	*Cynomys ludovicianus*	G4S3	Partial Track	Species of Concern
Birds:	**Scientific Name**	**CNHP Grank/ Srank**	**Tracking Status**	**DOW Tracking**
E. Cottontail	*Sylvilagus floridanus*	G5S5	Do Not Track	
Coyote	*Canis latrans*	G5S5	Do Not Track	
Mule Deer	*Odocoileus hemionus*	G5S4	Do Not Track	
Pronghorn Antelope	*Antilocapra americana*	G5S4	Do Not Track	
Unidentified mouse	*NA*	NA	NA	

Natural Heritage element occurrences at the Cramer Creek PCA.

Major Group	State Scientific Name	State Common Name	Global Rank	State Rank	Federal Status	State Status	Fed Sens	EO Rank	Last Obs Date
Amphibians	Rana pipiens	Northern Leopard Frog	G5	S3		SC	BLM/ USFS		2009-06-22

** The records above are sorted in the following order 1) Major Group 2) Global Rank and 3) Scientific name.

Boundary Justification: Boundary is drawn to encompass the immediate watershed of Cramer Creek. The boundary provides a small buffer (500 ft) to protect the element from direct impacts.

Protection Urgency Rank Comments (P4): The owner is aware of the amphibian populations and is interested in either a conservation easement or restoration

Management Urgency Rank Comments (M3): Control of non-native plants should be considered and monitor the riparian area for introduction of tamarisk, that is known to occur in adjacent drainages. Monitor for introduction of the non-native bullfrog that would impact the northern leopard frog.

Exotic Species Comments: Canada thistle, teasel, and kochia are documented within site.

References

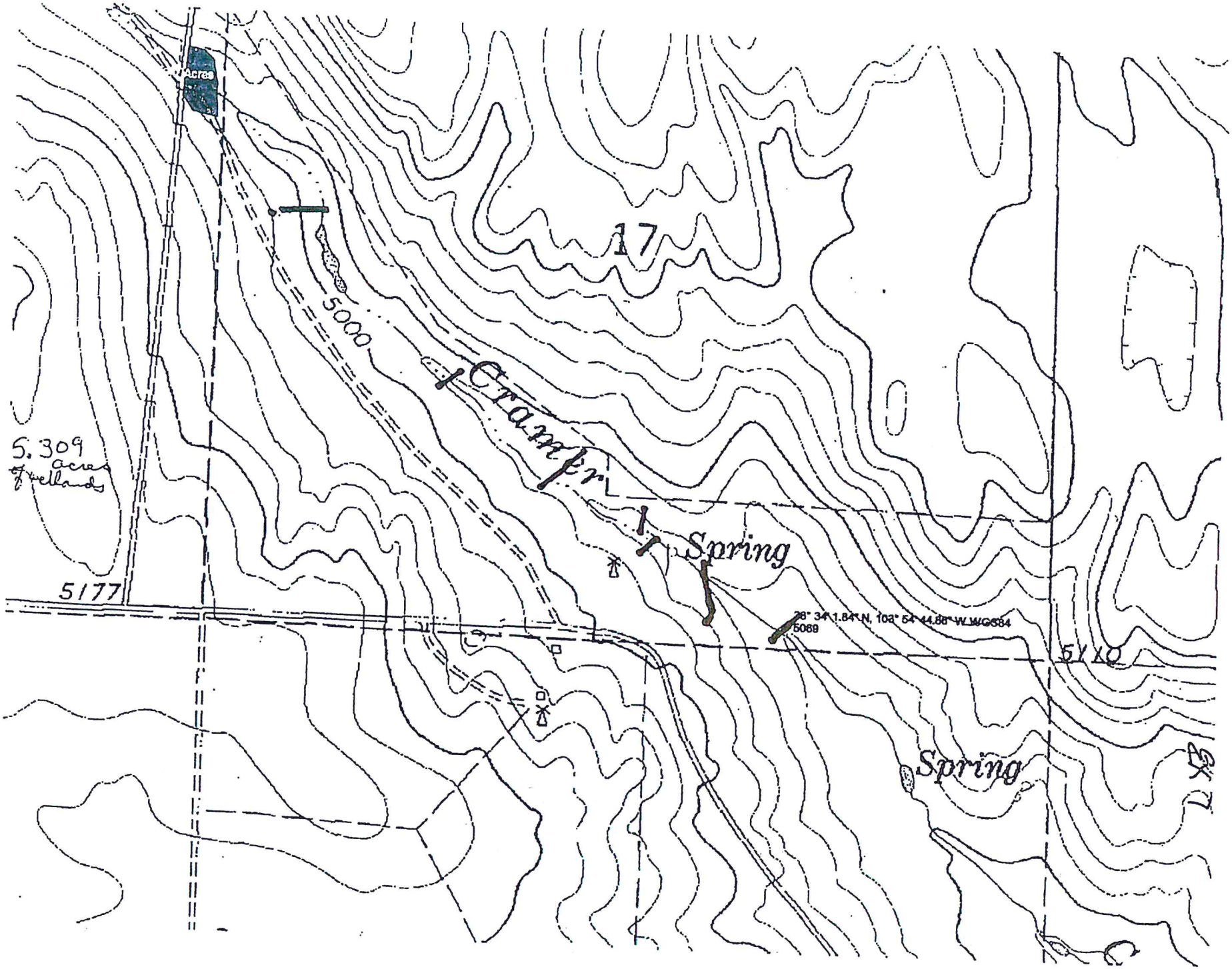
Culver, D.R. 2009. CNHP Final Report: Critical Biological Resources for Cramer Creek, Lincoln and Crowley Counties, CO

Western Regional Climate Center. 2009. Record Climate Summaries. Accessed in 2009. http://www.wrcc.dri.edu/

Version Author: Culver, D.R.
Version Date: 10/01/2009

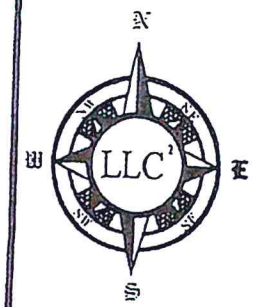
Cramer Creek Ranch Wetlands

Exhibit 3


17
5000
Cramer
Spring
5177
5.309 acres wetlands
28° 34' 1.84" N, 103° 54' 44.88" W WGS84
5089
5110
Spring

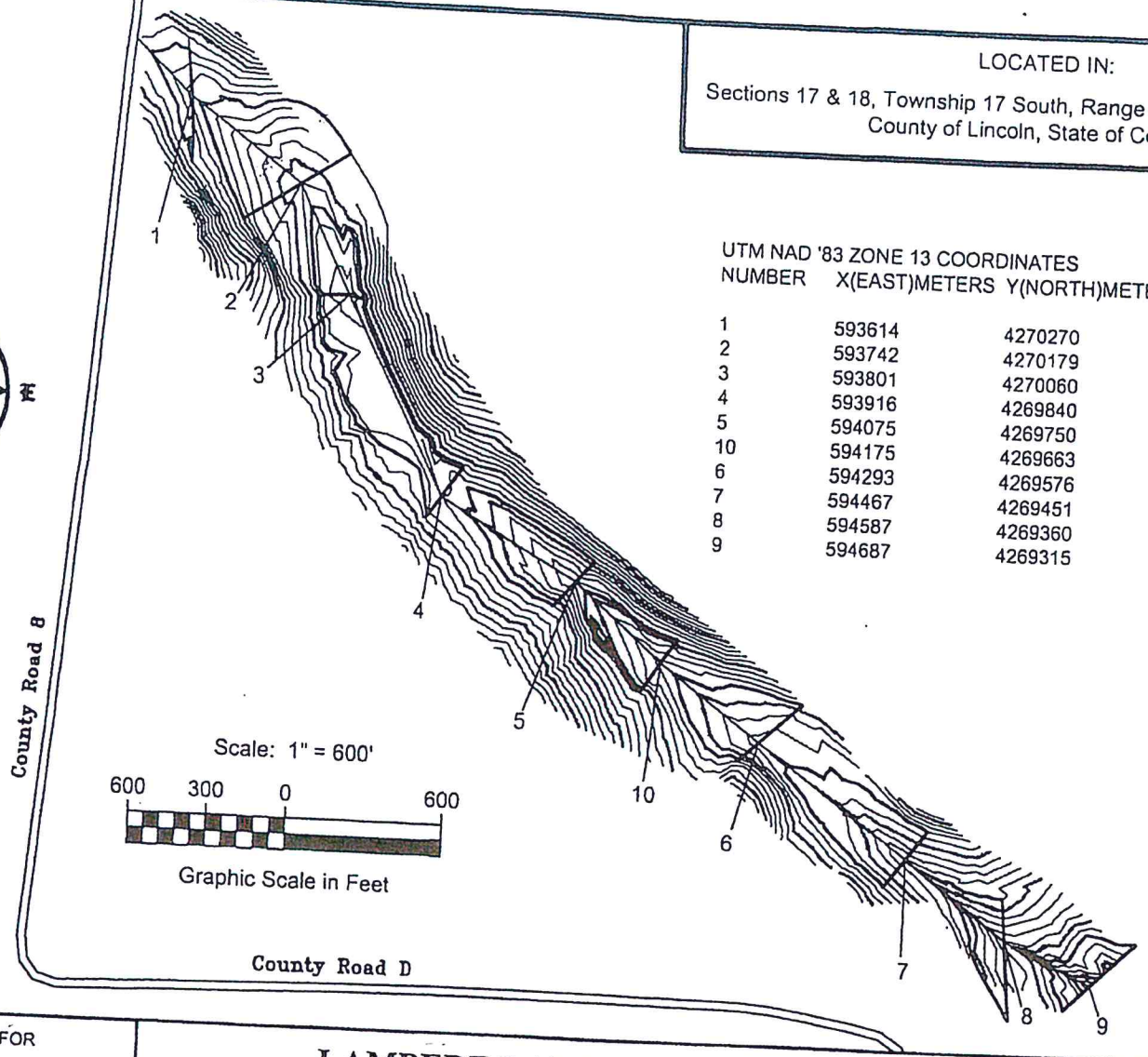
LOCATED IN:

Sections 17 & 18, Township 17 South, Range 58 West of the 6th P.M.
County of Lincoln, State of Colorado



UTM NAD '83 ZONE 13 COORDINATES

NUMBER	X(EAST)METERS	Y(NORTH)METERS	DESCRIPTION
1	593614	4270270	POND 1
2	593742	4270179	POND 2
3	593801	4270060	POND 3
4	593916	4269840	POND 4
5	594075	4269750	POND 5
10	594175	4269663	POND 10
6	594293	4269576	POND 6
7	594467	4269451	POND 7
8	594587	4269360	POND 8
9	594687	4269315	POND 9



Scale: 1" = 600'

600 300 0 600

Graphic Scale in Feet

PREPARED FOR

Patrick Esch

LAMBERT LAND CONSULTING, LLC
417 South Whitcomb Street
Fort Collins, Colorado 80521
PHONE: (970)217-2190 FAX: (970)232-9830 EMAIL: jlambert417@comcast.net

PROJECT NUMBER: L09-27	SURVEYED BY: JSL	DRAWN BY: ARP	CHECKED BY: JSL	DATE: 9/20/2010

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

LAMBERT LAND CONSULTING, LLC

Date: 10/1/2010

ESCH FARMS - Section 17 18, T17N, R58W, 6th PM, Lincoln County, Colorado

POND	CONTOUR EL	AREA SQ FT	VOLUME C FT	TOT VOL YDS	ACRE FEET
1	5105.5	0.0			
	5106.0	788.0	121		
	5107.0	8345.0	3899		
	5108.0	29114.0	17682	804	0.50
2	5099.0	0.0			
	5100.0	8868.0	2926		
	5101.0	28921.0	17935		
	5102.0	58091.0	42667		
	5103.0	88641.0	72830		
	5104.0	116289.0	102153		
	5105.0	145297.0	130524	13668	8.47
3	5096.3	0.0			
	5097.0	6849.0	1667		
	5098.0	30052.0	17083		
	5098.5	45095.0	18660	1386	0.86
4	5096.7	0.0			
	5097.0	8727.0	873		
	5098.0	101504.0	46665		
	5098.5	137361.0	59491	3964	2.46
5	5090.9	0.0			
	5091.0	32.0	1		
	5092.0	4722.0	1714		
	5093.0	17432.0	10409		
	5094.0	37197.0	26698		
	5095.0	62856.0	49469		
	5096.0	95742.0	78725	6186	3.83
10	5086.6	0.0			
	5087.0	588.0	78		
	5088.0	7617.0	3440		
	5089.0	21398.0	13927		
	5090.0	40206.0	30312		
	5090.5	56496.0	24060		
	5089.6	0.0			
	5090.0	2249.0	315	2672	1.66
6	5082.5	0.0			
	5083.0	2381.0	397		
	5084.0	18434.0	9147		
	5085.0	46141.0	31246		
	5086.0	81708.0	63083	3847	2.38

S:\LLC09\L09-27 Esch Farm Ponds\Pond area calculations\Areas by average area of contours heronian

LAMBERT LAND CONSULTING, LLC

Date: 10/1/2010

ESCH FARMS - Section 17 18, T17N, R58W, 6th PM, Lincoln County, Colorado

POND	CONTOUR EL	AREA SQ FT	VOLUME C FT	TOT VOL YDS	ACRE FEET
7	5076.8	0.0			
	5077.0	76.0	5		
	5078.0	3337.0	1306		
	5079.0	11546.0	7030		
	5080.0	26299.0	18424		
	5081.0	49667.0	37369		
	5082.0	104358.0	75340	5166	3.20
8	5070.7	0.0			
	5071.0	64.0	6		
	5072.0	2107.0	846		
	5073.0	10311.0	5693		
	5074.0	23176.0	16315		
	5075.0	38635.0	30578		
	5076.0	53776.0	45997	3683	2.28
9	5063.0	0.0			
	5064.0	798.0	255		
	5065.0	3776.0	2103		
	5066.0	10604.0	6903		
	5067.0	23821.0	16773		
	5068.0	39587.0	31372		
	5064.3	0.0			
	5065.0	601.0	140	2131	1.32
TOTAL OF ALL				Average contours	26.97

Cramer Creek Ranch Wetlands

Exhibit 4

Henry R. 'Hank' Humphreys
8510 Central Avenue
Beulah, Colorado 81023
719-485-0562, Cell 719-252-0949
E-mail: biofolks@socolo.net

Academic Background

Master's of Science Degree in Biology and Education, State University College at Buffalo, New York 1993. Thesis title: 'A Taxonomic Problem Within the Genus Podaxis'. Bachelor's of Arts Degree in Biology, State University of New York at Buffalo, New York 1973. Five years of engineering study between 1963 to 1968 (no degree issued) prior to being drafted into the US Army and serving in Military Intelligence in the Republic of Viet Nom, 1968-1970. **Some certifications specific to wetland science:** Regulatory IV -- Wetland Methods, 1998, and Wetland s Development and Restoration, 1990, both US Army Corps of Engineers, Freshwater Wetland Plant Identification, 1994, Institute for Wetland & Environmental Education and Research, and Erosion Control Supervisor (CDOT).

Employment History

- Employed with US Army Corps of Engineers (Corps), Buffalo District as a biologist, project manager, and field agent/investigator in the Monitoring and Enforcement Section of the Regulatory Branch 1988 - 1999. During which time received training in all Corps regulatory disciplines, wetland delineations (including 'Reg IV' and additional wetland training at the Corps WES facility), plant identification in aquatic, wetland, riparian and upland regimes, design and construction of wetlands and mitigation sites, developing , implementing and/or conducting monitoring of wetland mitigation sites, soil science, and hazardous and toxic materials placarding, among various and numerous certifications. Coordinated all permit actions with other Federal, State, Tribal, and local agencies, and conducted monitoring surveys and reviewed survey reports assuring Corps permit compliance. Lead field agent in the Iroquois Pipeline criminal investigation which led to successful prosecution (and a $28 million dollar fine). Resolved hundreds of '404' permit violations, typically with on-site field determination and immediate wetland mitigation design and construction direction, and issued over 2,000 404 permits. The Corps Buffalo District included parts of the States of New York, Pennsylvania, and Ohio, essentially all the waters which flowed into Lake Erie, the Niagara River, Lake Ontario, and the St. Lawrence River. This area included the Seneca and Iroquois Indian Nations.
- Employed with the Colorado Department of Transportation (CDOT), Region 2 Pueblo, Colorado Office in the Environmental Services Section as a biologist and project manager 1999 -2007. Responsible for the coordinating and/or obtaining the complete suite of environmental permits and associated requirements for State highway projects in Region 2, (the southeast quarter of Colorado), wetland delineations, design and construction of wetland mitigation sites, Corps 404 permits, monitoring reports, and coordination with all stakeholders and involved

Federal, State, and local agencies, and the review of BA's and BO's. Certified by the US Fish and Wildlife Service to survey Ute's Ladies Tresses and the Prairie Gentian.

- CDOT work has included dealing with the entire spectrum of ecosystems in Colorado, necessitated the development of a high degree of expertise in aquatic systems, soil systems, and especially plant systems and identification. Have made modest suggestions to the authors of the plant list and wetland delineation manuals, and have modified and created some Corps 404 permits in both waters and wetland applications.

Selected Project Experience

Recent local wetland construction and monitoring projects have involved CDOT, Pueblo, and Colorado Springs municipalities and utilities, as well as various private-sector projects. In all cited projects, wetland delineation, mitigation site selection, and construction supervision was required. I have frequently had to make field fit design changes and permit modifications or agency coordination as machines were running so that work could continue and results could be maximized considering real-time site conditions, and all permit requirements and compliance issues could be satisified.

- The CDOT reconstruction of the St. Charles bridge, west-bound, along US 50 east of Pueblo, Pueblo County. Wetland delineation , mitigation site selection, planting requirements, and some construction supervision.
- Woodman Road Expansion project with resultant wetland mitigation sites at Cottonwood Meadows, Marksheffel Road, and Falcon Trailhead, El Paso County. Wetland delineation, mitigation site selection, complete construction supervision on an approximately 20 acre site, and planting oversight.
- US 24 at Bluegill in Falcon highway and drainage project. El Paso County. Wetland delineation, mitigation site selection, complete construction supervision, planting oversight.
- CDOT Baptist Road PMJM mitigation site, and a second Baptist Road local authority project wetland mitigation site, wetland delineation, mitigation delineation, construction supervision, planting oversight. El Paso County.
- Reconstruction of approximately 5 miles of SH 67 between Westcreek and Deckers upstream of the confluence with the Platte River, channel and associated wetland and riparian restoration and monitoring, complete construction supervision on environmental work, partial supervision on associated highway work. Douglas County.
- CDOT reconstruction of Luber's (Verhoff) Drainage under US 50 near McClave, Bent County, required wetland delineation, mitigation site selection and construction supervision, and a 600-foot long detour crossing of a cattail marsh. Some construction supervision, all environmental monitoring.

- CDOT reconstruction of the bridge over the North Branch of the St. Charles River in Beulah, Pueblo County. Wetland delineation, channel reconstruction, grade control through bridge structure and channel, restoration of channel and associated meadow, site monitoring.

Cramer Creek Ranch Wetlands

Exhibit 5

Patrick Esch Ranch – Lincoln and Crowley Counties
Cramer Creek Complex

Grazing Plan

The objective of this grazing plan is to reverse the current trend of degradation on the Cramer Creek Complex. This plan will move it toward the Historic Climax Plant Community by utilizing holistic management practices. The plan will provide maximum animal impact during a short period of time in a concentrated area with a 3-5 year recovery period.

Timing of grazing events – March 1st thru May 15th every three (3) to five (5) years
Length of grazing events – Twelve (12) to fourteen (14) days
Stocking rates – Five (5) to ten (10) animal units per acre.
(One (1) animal unit consists of 1,000# of beef, one (1) cow & calf or three (3) 300# yearlings.)

Implementation of Grazing Plan:

***Option one:**

The site will be divided into three segments north to south of approximately the same Size. One of these segments will be grazed each year during the first three years to establish a grazing sequence. During the March 1st thru May 15th window the entire segment will be grazed.

***Option two:**

The site will be divided into two segments north to south of approximately the same size. One of these segments will be grazed each year during the first two years to establish a grazing sequence. During the March 1st thru May 15th window the entire segment will be grazed

***Option three:**

The entire site will be grazed at the above stocking rate during the March 1st thru May 15th window.

Common to each option:

Current fencing with temporary fencing will be used to maintain stocking rates.
Stock water will be provided by using temporary watering facilities to supplement any water sources within the grazing area. Temporary watering facilities and fencing will be removed at the end of each grazing cycle.
After the initial year the segment will be deferred for a minimum of three (3) years, but not more than five (5) years.

Introduction of Tall Grasses:

The current condition of this site does not have several components of the historic climax vegetation. Most notable are missing tall grasses that provide a buffer along the margins. This component historically provided a buffer that slowed surface overflow, reducing the amount of sediment deposited within the wetlands and providing more biodiversity to the site. Because of the absence of a seed source for these grasses, they will have to be reintroduced to the site.

The tall grass seed will be broadcast in the grazing area immediately prior to livestock being introduced.

The seed rate: Prairie Cordgrass – 5 lb. per acre
Switchgrass – 4.5 lb. per acre
Alkali Sacaton – 1.5 lb. per acre

Monitoring, evaluation and reapplication:

The site will be monitored annually to determine progress toward the goal of moving the site closer to the historic climax vegetation. During the third year a determination will be made as to the timing of the next grazing event. Reapplication of a grazing event will not be delayed more than five (5) years after the implementation of the grazing plan.

* Options will be adopted by ownership based upon availability of livestock, equipment and other concerns.

Cramer Creek Ranch Wetlands

Exhibit 6

342357
Page 1 of 11
Lincoln County, Colorado
Corinne M. Lengel, Clerk and Recorder
10-29-2013 02:14 PM Recording Fee $61.00

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 W. 10TH St., #203 Pueblo, CO 81003	DATE FILED: October 29, 2013 1:02 PM CASE NUMBER: 2011CW47
CONCERNING THE APPLICATION FOR SURFACE WATER RIGHTS OF: **LUCAS ESCH FARMS, INC. and CLOCK LAND CORPORATION** **IN LINCOLN COUNTY**	▲ COURT USE ONLY ▲ Case No.: 11CW47
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE	

THIS MATTER comes before the Court on the Application for Surface Water Rights filed by Lucas Esch Farms, Inc. and Clock Land Corporation, and, having reviewed said application and other pleadings on file and stipulation of the parties, and being fully advised on this matter, the following findings and orders have been made:

FINDINGS OF FACT

General Findings

1. The Applicants in this case are Lucas Esch Farms, Inc. and Clock Land Corporation ("Applicants"). This case involves the adjudication of six surface water rights and water storage structures.

2. The water rights Application in this case was filed in Water Division 2 on July 18, 2011.

3. This Case No. 11CW47 was referred to the Water Referee by Order dated July 19, 2011.

4. The Division Engineer's Office for Water Division 2 has filed with the State a Consultation Report dated November 22, 2011. Due consideration has been given to such Consultation Report.

5. The Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether or not they have appeared in this action. The land and water rights involved herein are not included within the boundaries of any designated groundwater basin.

6. Statements of Opposition to the Application were timely filed by R. Wayne Rusher; Lucille Durham and Matt Durham; R Wayne Rusher, Dale Rusher and Edward Rusher; Edward Rusher and Terry Rusher; Charles Hijar and Janet Hijar; the Town of Sugar City; the Colorado Canal Companies; the Town of Ordway; Serenity D. Lewis; Box Springs Canal and Reservoir Company; Ray and Jennifer Hall; and, Ron Bauer and Dean Bauer. A Motion to Intervene was filed by Eleanor Schiro, which was granted and Ms. Schiro's untimely Statement of Opposition thereafter accepted. The time for filing statements of opposition has now expired.

7. Stipulations to this proposed ruling have been entered between Applicants and Colorado Canal Companies (approved by Court Order on September 16, 2013), Town of Ordway, Town of Sugar City, Ray and Jennifer Hall, (approved by Court Order on October 28, 2013), Lucille Durham and Matt Durham, (approved by Court Order on October 23, 2013), Ron Bauer, Dean Bauer and Eleanor Schiro (approved by Court Order on October 25 2013). Withdrawal of Statements of Opposition have been entered by R. Wayne Rusher, Dale Rusher, Edward Rusher, Terry Rusher, Charles I. Hijar and Janet K. Hijar, Serenity D. Lewis, and Box Springs Canal & Reservoir Company.

Conditional Surface Water Rights

8. Applicants have withdrawn their request for adjudication of conditional surface water rights for Esch Pond No. 3.

9. Applicants are granted the adjudication of conditional surface water rights for Esch Pond No. 4, Esch Pond No. 5, Esch Pond No. 6, Esch Pond No. 7, Esch Pond No. 8, and Esch Pond No. 9, all tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River, subject to the terms and conditions of this decree.

10. The following additional findings are made with respect to the conditional surface water rights adjudicated:

A. Esch Pond No. 4

i. Legal Description: In the SW1/4 NW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing: 42_70179 N, Easting: 13_0593742 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to

investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 4 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 8.47 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 4 will have approximately 3.34 acres of surface area, and impound approximately 8.47 acre feet of water. The dam shall be approximately 6 feet in height, and the dam shall be approximately 473 feet in length.

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 4 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

B. Esch Pond No. 5

i. Legal Description: In the NE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69750 N, Easting 13_0594075 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 5 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 3.83 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 5 will have approximately 2.2 acres of surface area, and impound approximately 3.83 acre feet of water. The dam shall be approximately 5.1 feet in height, and approximately 224 feet in length.

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 5 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

C. Esch Pond No. 6

i. Legal Description: In the SE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69576 N, Easting 13_0594293 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 5 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 2.38 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 6 will have approximately 1.88 acres of surface area, and impound approximately 2.38 acre feet of water. The dam shall be approximately 3.5 feet in height, and approximately 311 feet in length.

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 6 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

D. Esch Pond No. 7

i. Legal Description: In the SW1/4 SE1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69451 N, Easting 13_0594467 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 7 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 3.2 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 7 will have approximately 2.4 acres of surface area, and impound approximately 3.20 acre feet of water. The dam shall be approximately 5.2 feet in height, and approximately 270 feet in length

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 7 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

E. Esch Pond No. 8

i. Legal Description: In the SW1/4 SE1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69360 N, Easting 13_0594587 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 8 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 2.28 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 8 will have approximately 1.23 acres of surface area, and impound approximately 2.28 acre feet of water. The dam shall be approximately 5.3 feet in height, and approximately 444 feet in length.

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 8 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

F. Esch Pond No. 9

i. Legal Description: In the NE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69663 N, Easting 13_0594175 E, Zone 13, NAD83 (*See* attached Exhibit A Map).

ii. Source: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River.

iii. Appropriation: The appropriative acts for this conditional water right were initiated by the Applicants through the hiring of a hydrological expert to investigate the feasibility and engineering requirements on or about December 30, 2010, and with the filing of the subject application on July 18, 2011. These acts serve to demonstrate the formation of the intent to appropriate, and the location of the point of

diversion for appropriation, as well as the employment of experts for the preparation of water court filings. Esch Pond No. 9 shall have an appropriation date of December 30, 2011.

iv. Amounts of Water: 1.66 acre feet, conditional.

v. Uses: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants.

vi. Pond Specifications: Esch Pond No. 9 will have approximately 1.3 acres of surface area, and impound approximately 1.66 acre feet of water. The dam shall be approximately 3.9 feet in height, and approximately 228 feet in length.

vii. Remarks: Pursuant to the water rights decreed herein, Esch Pond No. 9 shall be allowed one annual fill, and shall not be refilled or continuously filled to replace seepage, evaporation, or wetlands consumption pursuant to this conditional water right.

11. As to the conditional water rights decreed herein, Applicants have completed all of the elements for the appropriation of a conditional water right, including (a) formation of the non-speculative intent to appropriate water; (b) performance of overt acts coincidentally with this intent to manifest the intention to appropriate water to beneficial use and to demonstrate the taking of a substantial step toward applying water to beneficial use. These acts were of such a nature so as to provide interested third parties with notice of the nature and extent of the proposed diversion and consequent demand upon the river system; and (c) the proposed uses of water can and will be completed with diligence within a reasonable period of time, whereby waters tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River will be diverted or otherwise captured, possessed, or controlled, and will be beneficially used for the uses stated herein.

12. Applicants' consultants have opined that storage in the ponds involves four components of water use: storage, pond surface evaporation, soil moisture storage surrounding each pond, and increased evapotranspiration surrounding each pond. The latter two of these components, while incidental to all storage structures, are in the context of wetlands uses not incidental, but rather designed and considered means of enhancing wetlands, since increased soil moisture storage enhances wetlands surrounding the storage structures, which consequently results in increased evapotranspiration from such wetlands. Accordingly, soil moisture surrounding a pond and resulting increased evapotranspiration comprise beneficial uses of water stored and decreed for wetlands purposes. Together, the four components of storage water described herein could result, if the ponds were refilled or otherwise maintained full, in

annual water use in excess of the amounts decreed herein. No such enlarged amounts of water use are sought or decreed herein.

13. Each of the conditional water rights decreed herein shall be equipped with outlet structures capable of releasing all stored water in each pond in the event of a valid downstream call for water.

14. There was no trial in this matter, and the Findings of Fact, Conclusions of Law, Judgment and Decree herein are the result of substantial discussions, negotiations and compromises by, between and among the Applicants and the Opposers herein. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, *stare decisis*, res judicata, estoppel, laches or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any matter, case or dispute involving water rights other than those decreed herein, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any matter, case or dispute involving water rights other than those decreed herein. All parties stipulate and agree that they do not intend the Findings of Fact, Conclusions of Law, Judgment and Decree to have the effect of precedent or preclusion on any factual or legal issue in any matter involving water rights other than those decreed herein.

CONCLUSIONS OF LAW

15. The subject application was filed with the Water Clerk for Water Division 2 pursuant to C.R.S. §37-92-302(1)(a).

16. The Applicants' request for adjudication of these surface water rights and water storage rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings. C.R.S. §§37-92-302(1)(a), 37-92-203, 37-92-305.

17. The water rights decreed herein are "tributary" to the Arkansas River. The water rights decreed herein are a located within the "Horse Creek Basin" as discussed by the Colorado Supreme Court in State Engineer v. Smith Cattle, Inc., 780 P.2d 546 (Colo. 1989) and as discussed in the "Horse Creek Basin Study" completed by the Office of the State Engineer in 1989. Such findings and studies have determined that limited hydraulic connections may exist between the tributaries of the Horse Creek Basin and downstream water rights on the mainstem of the Arkansas River. "*Horse Creek receives water from these tributaries only in time of flood; there is no significant connection between this basin and the Arkansas River*". Smith Cattle at 548. The SEO Study stated its intent to develop and identify the scope of the Horse Creek Basin "*so that it could be administered without having to consider the impact of rights in the basin*

on the senior water rights of the Arkansas mainstem." Study at 10. Historically, valid calls outside of the Horse Creek Basin upon water rights located therein, have occurred only in times of significant precipitation events, during which times live flows from the Horse Creek Basin have occurred. The water rights decreed herein shall be administered by the State Engineer based upon actual stream conditions and consistently with the administration of other water rights in the Horse Creek Basin. These findings are consistent with this Court's findings in Case No. 08CW91, concerning similarly situated water rights for similar uses.

DECREE

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

18. All the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

19. The Application for Surface Water Rights requested by the Applicants is granted and approved, subject to the terms and conditions of this decree.

20. Pursuant to C.R.S. §37-92-502(5)(a), Applicants shall install and maintain such measuring devices, recorders, flow meters and provide such accountings and supply calculations as may be reasonably required by Statute and the State and Division Engineers for the operation of these water rights.

21. The priorities awarded herein for the decree of the surface water rights and water storage rights are for a filing made in the Water Court in the year of 2011 which shall be administered as being filed in that year and shall be junior to all priorities awarded by this Court in previous years, subject to a valid call. As between all other water rights filed in the same calendar year, priorities shall be administered by historical dates of appropriation and not administered by the date of entry of this ruling and decree.

22. Pursuant to the provisions of C.R.S. §37-92-304(6), these surface water rights decreed herein shall be subject to the perpetual retained jurisdiction of this Court for the purpose of evaluating injury to vested water rights. Any person may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court evaluate injury to vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts to be established, Applicants shall thereupon have the burden of proof to show: (a) that any modification sought by the

Applicants will avoid material injury to other appropriators; or (b) that any modification sought by the petitioner is not required to avoid material injury to other appropriators; or (c) that any term or condition proposed by the Applicants in response to the petition does avoid material injury to other vested water rights.

23. As to the conditional water rights awarded herein, pursuant to C.R.S. §37-92-301(4)(a), the Applicants shall, every sixth year after the calendar year in which these conditional water rights were decreed, or subsequent diligence decreed or issued, if they desire to maintain the same, file an application for a finding of reasonable diligence or this conditional water right shall be considered abandoned. Applicants shall, during the month of October during the year of 2019 file an application for a filing of reasonable diligence herein, unless Applicants have, prior to that time, made application to make absolute the conditional water rights granted herein.

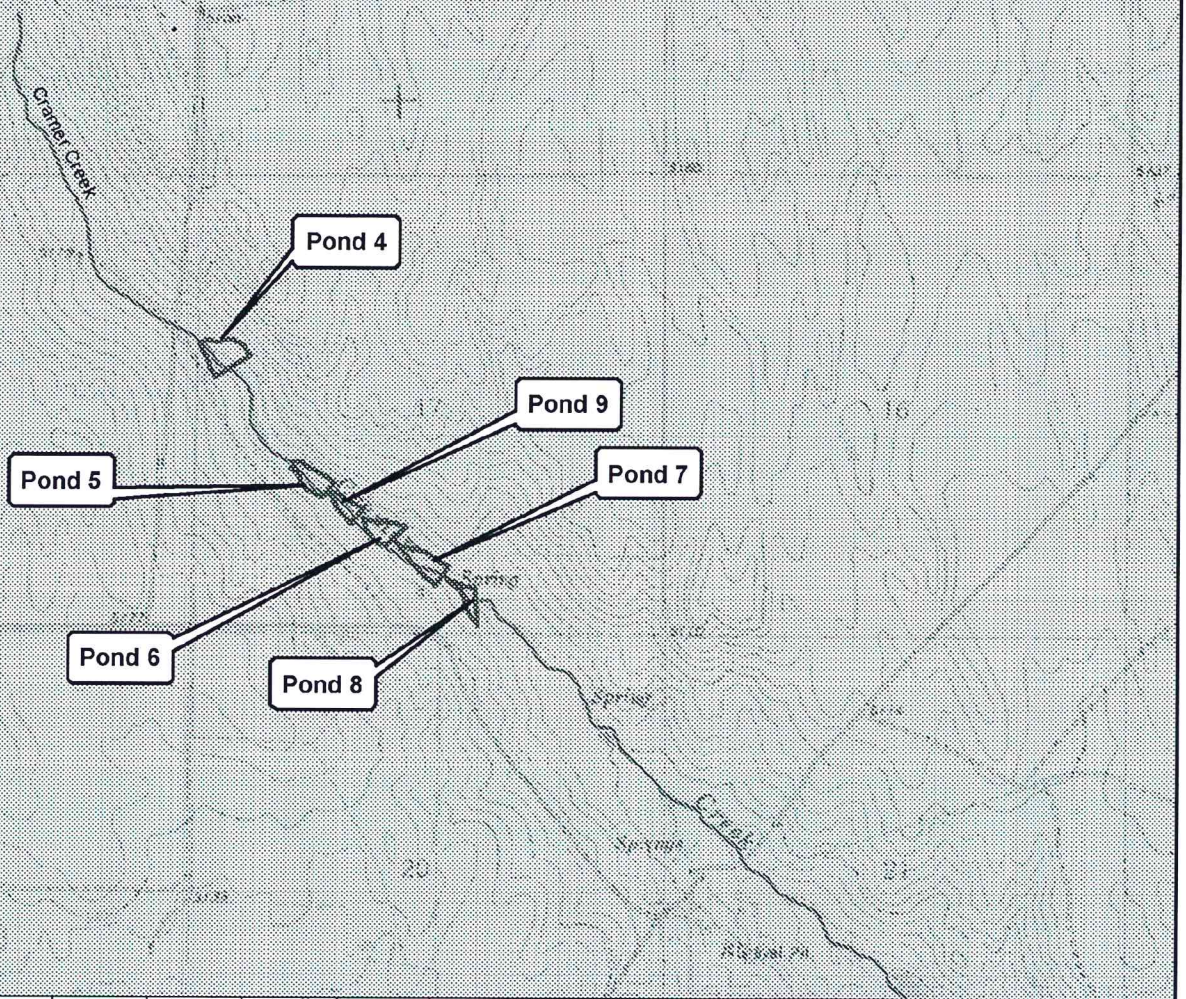
24. Pursuant to Rule 9 of the Uniform Local Rules for all State Water Court Divisions, upon the sale or other transfer of this conditional water right, the transferee shall file with the Clerk of this Court a notice of transfer which shall state: (a) the title and case number of the case under which the conditional decree was issued; (b) the description of the conditional water right transferred; (c) the name of the transferor; (d) the name and address of the transferee; and (e) a copy of the recorded deed. Further, the owner of this conditional water right shall notify the Clerk of this Court of any change of address in this case, and in the case file in which the Court first made a finding of reasonable diligence.

25. This Decree shall be recorded. Copies of this final decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 29th day of October, 2013.

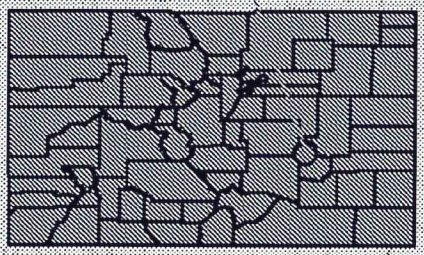
BY THE COURT:

LARRY C. SCHWARTZ, WATER JUDGE
DISTRICT COURT, WATER DIVISION 2



Structure	1/4 40	1/4 160	Section	Twp	Rng	PM	UTM_Northing	UTM_Easting
Esch Pond No. 4	SW	NW	17	17 S	58 W	6th	42_70179N	13_0593742E
Esch Pond No. 5	NE	SW	17	17 S	58 W	6th	42_69750N	13_0594075E
Esch Pond No. 6	SE	SW	17	17 S	58 W	6th	42_69576N	13_0594293E
Esch Pond No. 7	SW	SE	17	17 S	58 W	6th	42_69451N	13_0594467E
Esch Pond No. 8	SW	SE	17	17 S	58 W	6th	42_69360N	13_0594587E
Esch Pond No. 9	NE	SW	17	17 S	58 W	6th	42_69663N	13_0594175E

General Location of Esch Ranch



N

Feet
0 1,250 2,500 5,000

Exhibit A

Patrick Esch		
Proposed Water Rights		
HRS WATER CONSULTANTS, INC.		
August 2013	Job No. 08-08	ExhibitA_2013.mxd