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**STATE OF COLORADO
DEPARTMENT OF LAW**

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Natural Resources and
Environment Section

AGENDA

Colorado Natural Resources Trustees Meeting
June 9, 2022
9:00 am to 11:00 am

Location:
Ralph L. Carr Colorado Judicial Center
1300 Broadway, Denver
Room: 1F

Link to Zoom Meeting: <https://us02web.zoom.us/j/83979663450>
Meeting ID: 839 7966 3450

Note: A hyperlink to the meeting will be emailed to Trustees and staff and will be posted on the Trustee website:
<https://coag.gov/office-sections/natural-resources-environment/trustees/whats-new/>

Open Session

1. Approve Agenda – 1 minute
2. Approval of Minutes from March 17, 2022 Meeting – 5 minutes

Action Item:

- (1) Review and approve minutes from March 17, 2022 meeting

Document:

- (1) Draft Minutes from March 17, 2022 meeting

3. Budgets Update – (Jennifer Talbert) – 5 minutes

Action Items: None

Document:

- (1) Budget Spreadsheet

4. Survey of NRD Programs Nationwide – (David Kreutzer) – 5 minutes

Action Items: None

Documents: None

5. Standard Metals – (David Kreutzer) – 5 minutes

Action Item: None

Documents: None

6. Suncor – (David Banas, Susan Newton) – 5 minutes

Action Item:

- (1) Consider resolution granting Ducks Unlimited the remaining funds

Documents:

- (1) Memo from David Banas
- (2) Ducks Unlimited Suncor Remediation Proposal
- (3) Draft resolution

7. Uravan – (Doug Jamison) – 5 minutes

Action Items: None

Document:

- (1) Memo from CDPHE

8. Idarado – (Doug Jamison) – 5 minutes

Action Item: None

Documents: None

9. California Gulch – (Ed Perkins, David Banas, Susan Newton) – 5 minutes

Action Items: None

Documents: None

10. Rocky Mountain Arsenal – (David Banas) – 5 minutes

Action Items: None

Documents: None

11. Lowry Landfill – (Emily Splitek, Jennifer Talbert) – 5 minutes

Action Items: None

Documents: None

12. Rocky Flats – (Emily Splitek, Susan Newton) – 5 minutes

Action Items: None

Documents: None

13. Vail / Mill Creek – (Melynda May) – 5 minutes

Action Items: None

Documents: None

Executive Session

14. North Saint Vrain – (Melynda May) – 5 minutes

Action Items: None

Documents: None

15. Bonita Peak Mining District – (Emily Splitek) – 10 minutes

Action Items: None

Documents: None

Open Session

16. Report from Executive Session – 1 minute

Action Item: None

ITEM #1

NO DOCUMENT

ITEM #2

Colorado Natural Resource Damages Trustees
Meeting Minutes
March 17, 2022
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General
Dan Gibbs, Executive Director, Colorado Department of Natural Resources (DNR)
Shaun McGrath, Director of Environmental Programs, Colorado Department of Public Health and Environment (CDPHE)

TRUSTEE STAFF

Amy Beatie, Deputy Attorney General, Natural Resources and Environment Section (NRE)
David Kreutzer, First Assistant Attorney General, NRE
David Banas, Senior Assistant Attorney General, NRE
Jason King, Senior Assistant Attorney General, NRE
Emily Splitek, Assistant Attorney General, NRE
Tracie White, CDPHE
Doug Jamison, CDPHE
Jennifer Talbert, CDPHE
Susan Newton, CDPHE
Melody Mascarenez, CDPHE
Ed Perkins, Colorado Parks and Wildlife, DNR (CPW)
Robert Harris, CPW
Mindi May, CPW

OTHER STATE STAFF

Laura Kelly, Senior Paralegal, NRE
Dan Graeve, Administrative Assistant, NRE
Rebecca Glenn, Intern/Law Clerk, NRE

PUBLIC AND GOVERNMENT PROPONENTS

Cincere Eades, City and County of Denver
Jonathan Paklaian, Arkansas River Watershed Collaborative (ARWC)
Jason Willis, Trout Unlimited
Sarah Mudge, Lake County Commissioner
Michael Irwin, Lake County Public Works Director
Andy Lerch, ARWC
Lisa Corbin, U.S. Fish and Wildlife Service (USFWS)
David Lucas, USFWS
Carol Ekarius, ARWC
Carrie Adair, ARWC
Ian Schillinger, City and County of Denver

Open Session

Trustee Weiser called the meeting (held remotely via Zoom) to order at approximately 9:05 a.m. on March 17, 2022. The meeting's purpose was to brief the Trustees on the current status of issues relating to Natural Resource Damages (NRD) projects, and to request direction and/or approval for various actions.

1. Agenda

Trustee Gibbs moved to approve the Agenda. Trustee McGrath seconded the motion, and the motion was unanimously approved.

2. Minutes

Trustee Weiser presented the minutes from the December 10, 2021 Trustee Meeting. Trustee McGrath moved to approve the December 10, 2021 minutes. Trustee Gibbs seconded the motion, and the motion was unanimously approved.

3. Rescheduling Summer Trustee Meeting

The Trustees discussed the possibility of a July 2022 Trustee meeting in the San Luis Valley in place of the June 9, 2022, meeting in Denver. [At time of writing, it was decided the June 9, 2022, meeting in Denver would remain scheduled.]

4. Budget Update

Jennifer Talbert reported that she revised the budget structure to also track remaining funds available that have not been awarded by the Trustees through resolution. For example, the Suncor Fund has approximately \$35,000 remaining, primarily due to accrued interest. In order to close out the account, Trustee staff will contact possible project proponents.

5. Shattuck Chemical Company

David Banas reported that approximately \$23,000 remains in the Shattuck Fund. He introduced Cincere Eades of Denver Parks and Recreation who presented Denver's Grant Frontier Restoration Project proposal. Ms. Eades explained the need for more riparian and wetland restoration work along the South Platte River, specifically in Grant Frontier Park. Trustee McGrath put forth an amendment to the proposed resolution to increase the upper limit of the award to \$30,000 in the event more interest than expected is accrued by the end of the project. Trustee McGrath moved to approve the resolution as amended to award up to \$30,000 for the *Grant Frontier Restoration Project proposed by the City and County of Denver*. Trustee Gibbs seconded the motion, and the motion was unanimously approved.

6. California Gulch

David Kreutzer reported that Trustee staff worked with the Trustee Council and ARWC to modify their project proposal to improve the Upper Arkansas riparian habitat injured by historic mining practices. Johnathan Paklaian of ARWC provided a project overview noting ARWC's role in the "Overarching" components of engagement, monitoring, and project management. Second, Jason Willis of Trout Unlimited explained the "Mines and Habitat" component which will amend, treat, and revegetate fluvial tailings; construct and re-establish drainage channels; and improve water quality. Third, Lake County Commissioner Sarah Mudge and Public Works

Director Michael Irwin explained the “Crossings” component which will replace five existing culverts with aluminum box culverts to provide natural riverbed and fish passage. Finally, Andy Lerch of ARWC and Lisa Corbin of USFWS explained the “Upland Watershed Protection” component which will protect forest health through fuel mitigation and fire prevention.

Trustee Gibbs thanked Trustee staff who worked extremely hard with the proponents to make this project a reality. Trustee McGrath also expressed appreciation for this project which will address the impacts of mining, restore and protect natural resources, and help transition to a more-sustainable economy. Trustee Gibbs moved to approve the resolution to award \$3,953,875 for the *Upper Arkansas Comprehensive Watershed Restoration Project proposed by the Arkansas River Watershed Collaborative, Lake County, and Trout Unlimited (with additional partners)*. Trustee McGrath seconded the motion, and the motion was unanimously approved.

7. Suncor

David Lucas of USFWS updated the Trustees on the conclusion of maintenance work done with Suncor funds at the Rocky Flats National Wildlife Refuge. Youth programs removed a large amount of non-native plant species and planted native seeds in riparian corridors. Mr. Lucas thanked the Trustees for supporting this maintenance responsibility which aids in long-term conservation of fish and wildlife.

8. Lowry Landfill

Emily Splitek updated the Trustees about remaining Lowry Landfill funds that cannot be awarded because of limitations in the Consent Decree with the City of Denver, Waste Management of Colorado (WM), and WM’s parent company. The Trustees previously authorized Trustee staff to amend the Consent Decree so the funds can be spent. Ms. Splitek noted that the City of Denver is supportive of such an amendment, but WM has indicated it is unwilling to cooperate with the State in this matter. Ms. Splitek explained that Trustee staff will proceed to amend the Consent Decree unilaterally.

9. Rocky Mountain Arsenal

David Banas updated the Trustees about how the RMA Consent Decree with Shell Oil Company also limits how the Trustees can spend a portion of the funds, specifically requiring funds be spent on Northwest Greenway Corridor (NGC) projects. Because the NGC essentially no longer exists, the Trustees previously authorized Trustee staff to amend the Consent Decree to remove that limitation. Unlike in the Lowry Landfill situation, all parties to the RMA lawsuit are amenable to amending the Consent Decree. Trustee staff requested the Trustees sign the Amendment to Consent Decree which already had Shell’s approval. Trustee McGrath moved to authorize Trustee signatures on the Amendment to Consent Decree with Shell. Trustee Gibbs seconded the motion, and the motion was unanimously approved.

10. Vail Resorts Release

Jason King updated the Trustees about Vail Resorts’ spill of snowmaking water containing an algaecide in September 2021 which caused injuries in Mill Creek/Gore Creek. Task Orders were solicited from two consultants to conduct a habitat equivalency analysis and Trustee staff will be reviewing those submissions. Mr. King added that the Water Quality Control Division (WQCD)

issued a compliance advisory shortly after the illegal discharge under the Clean Water Act. Mr. King will continue to monitor the WQCD enforcement action.

11. North Saint Vrain

Jason King updated the Trustees about a tanker truck rollover in April 2021 spilling gasoline into the North St. Vrain River which impacted aquatic resources. The NRDs consultant is working on a preliminary estimate of injuries and damages, and a draft report is expected in April 2022. The Trustees authorized Trustee staff to reach out to the trucking company after they receive the consultant's report. Mr. King added that the WQCD issued an administrative order against the trucking company assessing the full penalty of \$47,000/day for an illegal discharge, but there has been no response from the trucking company.

12. Bonita Peak Mining District

Emily Splitek stated that time has been reserved in Executive Session for the Trustees to receive legal advice regarding the Bonita Peak Mining District. She reported that Colorado's Consent Decree with Sunnyside Gold Corporation for NRDs claims was entered as an Order of the Court in February 2022, and the \$1.6 million in settlement funds will soon be transferred. Ms. Splitek also noted that New Mexico and the Navajo Nation sought and received a 90-day stay (until mid-May 2022) in their litigation against EPA and EPA's contractors so they can negotiate settlement.

Executive Session

Deputy AG Beatie recommended the Trustees make a motion to go into Executive Session to consider Agenda Item #13 on the Trustee Meeting agenda. She stated the Executive Session is authorized pursuant to section 24-6-402(3)(a)(II) and (III), C.R.S. and other laws that allow the Trustees to enter Executive Session for specific purposes. At approximately 10:10 a.m., Trustee Gibbs moved to begin an Executive Session to discuss Agenda Item #13. Trustee McGrath seconded the motion, and the motion was unanimously approved. The Executive Session was digitally recorded.

At approximately 11:05 a.m., Trustee McGrath moved to end the Executive Session. Trustee Gibbs seconded the motion, and the motion was unanimously approved, whereupon Executive Session was ended.

Open Session

14. Report from Executive Session

Deputy AG Beatie stated that pursuant to statute, the Trustees went into Executive Session to consider Agenda Item No. 13. The discussion during Executive Session was limited to that item and no formal action was taken.

15. Bonita Peak Mining District

Trustee Weiser moved that the Trustees authorize Trustee staff to have discussions with the U.S. Department of Justice (DOJ) and, if appropriate, send a formal demand letter for NRDs damages caused by the federal government in the Bonita Peak Mining District. Trustee McGrath seconded

the motion for purposes of discussion and inquired about the process for writing such a demand letter. Trustee Weiser responded that his motion foresees AG staff drafting such a letter with input and sign-off from subject matter experts at CDPHE and DNR. David Kreutzer confirmed that he would first engage in discussions with DOJ with the understanding that technical, legal and other considerations could change Trustee staff recommendations in the future. Following discussion, the motion was unanimously approved.

16. Quick Updates

a. West Creek - Jennifer Talbert reported that approximately \$97,000 was received from a NRDs settlement involving an oil spill near Gateway two years ago. She noted that projects are being completed through federal partners including: 1) a Dolores River restoration project to remove non-native species followed by maintenance and revegetation; and 2) a fence installation along certain sections of West Creek. She anticipated both projects would be closed out by the end of summer 2022.

b. Kensington Spill - Mindi May reported an investigation of a potential NRDs claim after a petroleum product was dumped into a storm drain in Longmont which eventually drains into the St. Vrain River. While the NRDs contractor responded quickly to investigate, she indicated this incident will not result in a NRDs claim due to lack of dead animals and an unknown responsible party.

c. NRD Master Task Order Contracting Update – David Kreutzer reported that the AG’s office now has a Master Task Order contract with two leading NRDs contractors who can bid on various investigations, and the process is working as planned.

d. NRD Guidance Update – David Banas reminded the Trustees they had asked Trustee staff to update the NRDs project selection guidance with input from the Environmental Justice Unit at CDPHE. During that process, Trustee staff realized the guidance also needed more general updating and all suggestions will be presented to the Trustees at a future meeting.

e. Infrastructure Bill – Jennifer Talbert reported her preliminary research into the federal Infrastructure, Investment and Jobs Act which has some provisions for restoration grant programs that might be a way to expand the NRDs program. She asked the Trustees if they were interested in Trustee staff continuing this research. Trustee McGrath expressed concern about whether Trustee staff had the capacity to apply for and manage federal funds. Ms. Talbert responded that this research would be only an initial review of the Act for portions that might be relevant to NRDs. David Banas suggested a workgroup be formed to report back at a future Trustee meeting.

At approximately 11:25 a.m., Trustee Gibbs moved to adjourn the meeting. Trustee McGrath seconded the motion, and the motion was unanimously approved.

ITEM #3

Natural Resource Damages Accounts

NRD Matter	Bonita Peak	California Gulch	Fountain Creek	Idarado	Lowry	Rocky Flats
Total Settlement amount	\$1,600,000.00	\$10,000,000.00	\$345,000.00	\$1,000,000.00	\$1,606,930.00	\$10,000,000.00
Total NRD dollars spent	\$0.00	\$8,050,786.84	\$0.00	\$1,561,412.98	\$1,257,894.52	\$10,000,000.00
Account Balance as of 2/28/22	\$1,600,000.00	CDPHE DOI \$6,233,335.25 \$1,200,000	\$357,967.06	\$199,252.53	\$671,764.03	\$11,359.13
Trustee Resolution Date	NONE	12/10/2021 & 3/17/2022	4/23/2019	6/24/2019	NONE	10/9/2018
Current Trustee awarded amount	\$0.00	\$6,306,119.00	\$357,967.06	\$287,000.00	\$0.00	\$11,359.13
Current Contract Encumbrances	\$0.00	\$76,216.67	\$0.00	\$168,200.00	\$0.00	\$11,261.00
Remaining available funds	\$1,600,000.00	\$6,157,118.58 \$1,200,000	\$357,967.06	\$31,052.53	\$671,764.03	\$98.13
Settlement Restrictions	NO	YES	NO	NO	YES	NO
Type of Restriction	None	Funds must be used in accordance with Restoration Plans developed by the State and USFWS	None	None	Lowry has 2 settlements - (1) revolving loan fund which is being amended and (2) groundwater nexus.	National Defense Authorization Act
Interest and explanations		Segregated Funds. Interest not earmarked for site.	Interest goes to CPW to include in Chilcott Diversion Project, no remaining funds available	Interest goes to the Governor's Basin Restoration Project, no remaining funds available	\$259,415.26 was returned by DURA. Revolving loan fund balance is \$459,415.26. remaining balance available for new projects	Interest awarded to Rocky Mountain Youth Corps, no remaining funds available

Natural Resource Damages Accounts

NRD Matter	RMA Recovery Fund	RMA Foundation Fund	Shattuck	Standard Metals	Summitville	Suncor	Uravan
Total Settlement amount	\$17,400,000.00	\$10,000,000.00	\$1,250,000.00	\$415,368.00	\$5,000,000.00	\$1,230,000.00	\$1,000,000.00
Total NRD dollars spent	\$12,037,249.70	\$8,697,832.00	\$1,272,904.00	\$0.00	\$5,127,187.39	\$129,738.44	\$1,023,823.62
Account Balance as of 2/28/22	\$8,459,371.38	\$1,470,081.93	\$23,199.18	\$463,338.22	\$261,424.61	\$1,131,351.27	\$345,676.93
Most recent Trustee Resolution Date	3/24/2021	3/28/2018	3/17/2022	NONE	1/21/2021	10/9/2018	3/24/2021
Current Trustee awarded amount	\$5,707,087.93	\$1,388,523.00	\$30,000.00	\$0.00	\$1,171,620.00	\$1,230,000.00	\$270,000.00
Current Contract Encumbrances	\$1,474,393.95	\$550,000.00	\$0.00	\$0.00	\$21,672.22	\$1,093,896.87	\$341,678.00
Remaining available funds	\$6,984,977.43	\$920,081.93	\$23,199.18	\$463,338.22	\$239,752.39	\$37,454.40	\$3,998.93
Settlement Restrictions	NO	NO	NO	NO	YES	NO	NO
Type of Restriction	None	Foundation Fund can only be used with NGC	None	Money received through settlement with insurance company - no NRD requirements	All money must be spent in the Alamosa River Watershed	None	None
Interest and explanations	Recovery Fund- Trustees agreed to work with NGC for restoration projects	Waiting for Amended Consent Decree to reallocate funds to RMA Recovery Fund	No remaining funds available	Reviewing project submittals for Gunnison River Basin	Interest awarded to TU, no remaining funds available	TU interested in using interest not previously awarded	Interest awarded to WEEDC, no remaining available funds

ITEM #4-5

NO DOCUMENTS

ITEM #6

ACTION ITEMS

Consider the draft resolution granting Ducks Unlimited the remaining Suncor NRDs funds, including interest.

ATTACHMENTS

2018 Ducks Unlimited Project Proposal

Hazardous Materials and Waste Management Division

Suncor Natural Resource Damages

Request for Application

Offeror Registration Form

1. Offeror

DUCKS UNLIMITED, INC.

2. Type of Organization (i.e. non-profit, government or private entity)

NON-PROFIT

3. Name and Position of Contact

MATT REDDY, BIOLOGIST (PRIMARY); BILLY GASCOIGNE, BIOLOGIST (ALTERNATE)

4. Address

1825 SHARP POINT DR., SUITE 118, FORT COLLINS, CO 80525

5. Phone number

970-381-2876 (Matt); 970-593-8938 (Billy)

6. Email address

mreddy@ducks.org; bgascoigne@ducks.org

PROJECT NAME: Ducks Unlimited Suncor Remediation Proposal

PROJECT DESCRIPTION: Ducks Unlimited, Inc. (DU) proposes a set of 15 projects across North America to remediate damages to **waterfowl populations, wetland habitats, and groundwater resources** on the South Platte River. The damages to resources resulting from the Suncor incident are not localized. Waterfowl are migratory species whose populations are determined by habitat conditions on continental scales. Impacts to groundwater in one part of the South Platte Basin inevitably impact other parts of the river valley. We present a proposal that integrates habitat development, waterfowl conservation and alluvial groundwater augmentation in important waterfowl landscapes across the continent. To redress damages to waterfowl populations DU proposes a life-cycle approach to restoration planning and delivery. DU will utilize settlement funds to acquire, restore, enhance and establish waterfowl habitats within breeding, migration and wintering habitats known to be occupied by ducks that frequent the Basin. \$229,000 of the available funds to plan, design, permit and deliver a conservation easement and restoration project in the Canadian prairies that will annually produce, on average, 135 hatched ducklings. Additionally, these funds will be used on two habitat conservation projects in Mexico that will annually provide over 20,000 duck use-day equivalents in winter. \$373,000 in wetlands funds are requested to conserve at least 1,443 acres of habitats associated with South Platte populations of waterfowl. Projects include easement acquisition, wetland restoration and enhancement on six tracts located in the South Platte basin, North Park and the San Luis Valley. Restoration of hydrology and plant community function to wetlands maintains forage, thermal cover and roosting sites for migratory birds and for other wildlife. We propose that the Council allocate \$595,000 to DU's groundwater augmentation and storage program within the South Platte basin of Colorado to fund alluvial groundwater augmentation projects benefitting the citizens of the state. In total, our work will conserve 2,679 acres of wetland and associated upland habitats, 425 hatched ducklings per annum on average, nearly 1.1 million duck-use day equivalents on average, and nearly 14,900 acre-feet of alluvial groundwater recharge per year. We will bring over \$4M in cash match to achieve the wetland, waterfowl and groundwater benefits proposed here.

PROJECT PROPONENT:

Matt Reddy, Biologist, Billy Gascoigne, Biologist Ducks Unlimited, Inc., 1825 Sharp Point Dr., #118, Ft. Collins, Colorado 80525; mreddy@ducks.org , (970) 381-2876, bgascoigne@ducks.org , (970) 593-8938

TOTAL PROJECT COST:		\$ 5,242,500	
AMOUNT OF NRD FUNDING REQUESTED:		\$ 1,197,000	
MATCHING FUND SOURCES, TYPE, VALUE, and STATUS:			
Ducks Unlimited, Inc.	Private NGO	\$ 1,307,500	\$1,075,000 secured
Colorado DNR	State Government	\$ 1,730,000	\$1,030,000 secured
S.P.W.R.A.P.	Private NGO	\$ 67,000	\$ 67,000 secured
United States FWS	Federal Government	\$ 393,000	\$ 393,000 secured
Gates Foundation	Private Foundation	\$ 200,000	\$ 200,000 secured
Private Landowners	Private Landowners	\$ 315,000	\$ 150,000 secured
Total		\$4,012,500	\$2,915,000 secured

SIGNATURE of an AUTHORISED REPRESENTATIVE of the PROJECT PROPONENTS

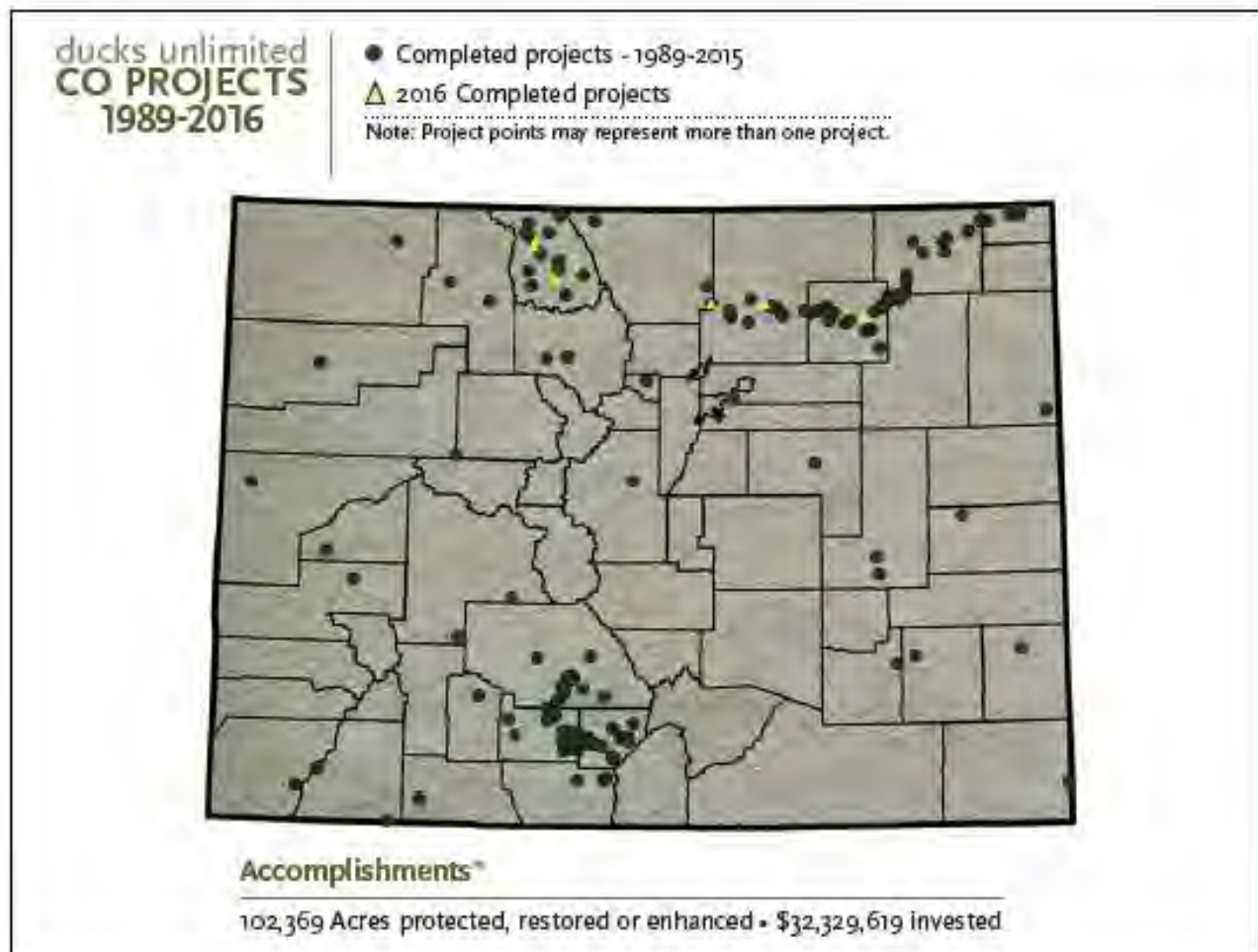

Steve Adair- Director of Operations


6/29/18

Description of Project Proponent Organization:

Ducks Unlimited was founded in 1937 during the Dust Bowl when North America's drought-plagued waterfowl populations had plunged to unprecedented lows. Thanks to more than 80 years of abiding by the single mission of habitat conservation delivery, DU is now the world's largest and most effective private, non-profit wetlands conservation organization [501 (c)(3) documentation attached to proposal]. As of January 1, 2018, DU has conserved more than 14 million acres across North America. DU Inc. (the North American arm of the larger DU), deploys roughly \$225 million dollars in financial resources annually, and has roughly 620,000 supporting organizational members. DU is a volunteer-led organization, guided by science and dedicated to program efficiency. Over the last ten years, more than 80% of DU's expenditures are converted directly to conservation work vital to ducks, geese, and other wetland-dependent wildlife.

As a part of the larger Great Plains Regional Office, DU employs eight staff members located in Fort Collins, CO that are in charge of the state's conservation program and policy initiatives. The location houses all the necessary IT resources, equipment, and vehicles necessary to deliver projects across the state. The small team is diversified in biology, ecology, engineering, hydrology, economics, real estate, land protection, water law, and public policy. DU has conserved more than 102,000 acres across the state since the first project was initiated in the late 1980s.



As observed in the project map inserted, DU has heavily invested in key migratory bird areas, including the South Platte Watershed, North Park, and the San Luis Valley. DU has also become an expert in groundwater augmentation, having built over a dozen functioning recharge sites, with many more being conceptually developed. We pride ourselves on partnerships, which include many public agencies, regional water districts, local irrigation companies, land trusts, other conservation organizations, private sector corporations, and a diverse suite of private landowners. Our proposal seeks funds for wetland habitat, waterfowl, and groundwater projects. In addition to the qualifications noted above, we provide the following project summaries as case examples in **Appendix B**.

Target Natural Resource(s): DU proposes here a set of 15 projects in five focus areas across North America aimed at remediating damages to **waterfowl populations, wetland habitats, and groundwater resources** on the South Platte River of Colorado. As the scoping document rightly points out, the damages to public resources resulting from the incident are not localized. Waterfowl are migratory species whose abundance and recruitment rates are determined by wetland habitat conditions on continental scales. Impacts to groundwater quality and quantity in one part of the South Platte River inevitably impact those same factors in other parts of the river valley. The remediation efforts proposed here take these ecological and geomorphic scales into account. We present a proposal that integrates habitat development, waterfowl conservation and alluvial groundwater augmentation in important waterfowl landscapes across the continent. All of our conservation projects are ‘conjunctive’ use projects where ecosystem services provided by wetlands, like alluvial groundwater recharge, are addressed. This not only allows us to restore high-quality waterfowl habitats in the most important landscapes of North America, but it also allows us to engage a broad range of partners and constituents in support, financial and otherwise, of the wetland conservation work we do. While individual projects are identified for funding under specific injured resource categories, we submit that all our projects will address wetland habitat, waterfowl population and groundwater resource damages simultaneously.

WATERFOWL: To redress damages to waterfowl populations caused by the Suncor incident on Sand Creek and the South Platte River, DU proposes a “life-cycle” approach to restoration planning and delivery. DU will utilize settlement funds to acquire, restore, enhance and establish waterfowl habitats within breeding, migration and wintering habitats across the continent known to be utilized by ducks that frequent the South Platte Basin in northeastern Colorado. We propose to utilize \$229,000 of the available funds to plan, design, permit and deliver a conservation easement and restoration project in the Canadian western Prairie Pothole Region that will annually produce at least, on average, 135 hatched ducklings for recruitment into the population utilizing the Central Flyway. Additionally, these funds will be used to deliver at least two habitat conservation projects on Mexican wintering grounds that will annually provide over at least 20,000 duck use-day equivalents in areas known to be occupied by birds that also use the South Platte River. A significant ecological nexus between the incident site and the targeted project areas is supported by waterfowl band return data presented in maps in Appendix A.

WETLAND HABITAT: We propose utilizing the \$373,000 in available settlement funds for wetland habitat to conserve at least 1,443 acres of wetland habitats in Colorado associated with populations of ducks utilizing the South Platte Basin. Projects include conservation easement acquisition and wetland restoration/enhancement on six tracts located in the Platte, North Park and the San Luis Valley. Projects will focus on restoring hydrology and plant community function to shallow-water wetland habitats. We propose funding of projects that will target the food resources, roosting sites, thermal cover, and breeding cover required by the ducks during both their spring and fall migrations through the South Platte watershed and breeding in our intermontane Parks. We know that birds using the emergent

wetlands and riparian habitats conserved by DU's work in Colorado need not expend near as much energy maintaining body condition as birds utilizing lower-quality habitats in the area or birds forced to move more often to find the same preferred habitats. Birds in better body condition are more likely to survive and successfully breed, aiding continental waterfowl managers in achieving population goals.

GROUNDWATER: DU is also poised to address impacts to the South Platte's groundwater resource caused by the incident. For more than 15 years, DU has worked with municipal, agricultural and environmental-oriented water users to augment alluvial groundwater supplies in the basin. Our groundwater recharge sites – while aimed at providing additional migratory bird habitat – ensure that water users in Colorado and in downstream states have ample supplies to meet current and future needs. This means that many farms can continue to farm, it eases administration of water portfolios for many of the largest municipalities along the Front Range, it contributes to Colorado's obligations under the Platte River Recovery Implementation Program and it ensures that ecological function and habitat values provided by groundwater discharge and flow into the Platte's channel are maintained. We propose that the Council allocate \$595,000 to DU's groundwater augmentation program to fund appropriate alluvial groundwater recharge projects benefitting the citizens of the Colorado. Within five years of funding and Notice to Proceed we will establish or enhance recharge wetlands on at least eight sites. Per year, these sites will augment at least 14,900 acre-feet of water on average over the next 30-years.

Project sites were included in the proposal based on their suitability to provide wetland habitat for migratory populations of waterfowl while performing other valuable services for the public. South Platte Basin sites were chosen based on their landscape position, adjacency to other important wetland complexes and publicly-managed wildlife habitats, their suitable topographic and geologic characteristics, their accessibility to stable, decreed water supplies, and the strength of the partnership attendant to the tract. Public access was a priority in including sites with six of the eight tracts currently maintaining or planning for some sort of public access component. Projects in the San Luis Valley and North Park were chosen based on local, state, regional and federal planning efforts identifying these regions as two of the most important wetland habitat complexes in the state of Colorado. These regions are ranked one and two, respectively, for breeding waterbird populations in the state. And restoration work on tracts managed specifically for wetland-dependent wildlife in these areas will subsequently bolster populations of those species as they migrate into the South Platte Basin. Arapaho NWR, Monte Vista NWR and Russell Lakes SWA are properties managed for wetlands and waterfowl and are known to supply birds to the South Platte post-breeding. The Desilets Acquisition tract was chosen based on its potential to recruit migratory waterfowl into the Central Flyway population of birds utilizing the South Platte Basin. Band return data highlighted regions of Alberta and Saskatchewan likely to produce birds found later in the Basin. Ducks Unlimited Canada (DUC) biologists then utilized pair-density models within those regions to further target potential sites. Based on that information and current project opportunity, the Desilets site was chosen as a suitable project for the waterfowl resource concern of this proposal. Similarly, band return data was used to identify regions of Mexico that winter populations of ducks that occupy, at some point in their life cycle, the South Platte Basin. Two regions in Mexico were identified, the Pacific Coast and the south-central highlands. Ducks Unlimited Mexico (DUMAC) has on-going conservation programs operating in these areas focusing on mangrove protection and restoration and lagoon restoration. We will work with the Trustee Council to identify appropriate work in these program areas to address the resource damages.

All DU conservation projects are voluntary endeavors. On private lands, DU requires 30-year Site Conservation Agreements to govern project delivery, financing, management and monitoring. Management of wetlands restored under our programs is required of both public and private landowners. Project site owners are involved from the outset of all our work. They provide the specific goals, objectives and outcomes required of successful wetland habitat conservation work. Only under the FWS' Partners for Wildlife Program do we expect that landowners/managers will be involved in project implementation. DU's bio-engineering team is experienced in delivery of these oft times complex projects and does not rely on owners for that aspect of the program.

Table 1 that follows on the next page describes how each proposed project will provide conservation outcomes redressing natural resource damages as a result of the Suncor incident.

Objectives: Provide clear, measurable, realistic, time-phased, objective(s) for the work proposed.

1. **BOR Narrows: Lantz/Kinnaman:** Four years from Notice to Proceed (NTP), construct at least 40 acres of shallow-water, recharge wetlands on lands owned by the Bureau of Reclamation in Morgan County, Colorado. These wetlands will recharge at least, on average, 1,000 acre-feet of water into the South Platte River alluvial aquifer every year.
2. **Peterson Augmentation Complex:** Two years from NTP, construct at least 15 acres of shallow-water, recharge wetlands on lands owned by Ducks Unlimited in Sedgwick County, Colorado. These wetlands will recharge at least, on average, 700 acre-feet of water into the South Platte River alluvial aquifer every year.
3. **Mowery:** Three years from NTP, construct at least 15 acres of shallow-water, recharge wetlands on privately-owned lands in Sedgwick County, Colorado. These wetlands will recharge at least, on average, 450 acre-feet of water into the South Platte River alluvial aquifer every year.
4. **USFWS Partners for Wildlife Platte Program:** Five years from NTP, construct at least 20 acres of shallow-water emergent wetlands that will recharge at least 200 acre-feet of water into the South Platte River alluvial aquifer every year.
5. **Andrick SWA:** Four years from NTP, enhance at least 60 acres of shallow-emergent and semi-permanent wetlands and 120 acres of associated uplands benefitting migratory waterfowl in Morgan County Colorado. These wetlands will be capable of recharging 1,500 acre-feet of water into the South Platte alluvial aquifer every year.
6. **Tamarack SWA:** One year from NTP, 357 acres of riverine and streambank habitats will be enhanced to improve riparian habitats and protect the Tamarack Recharge site. This will result in the continued recharge of the South Platte River's alluvial aquifer every year of at least 10,000 acre-feet of water.
7. **Bijou Wetlands:** One year from NTP, construct and rehabilitate at least 165 acres of wetland and riparian habitats on a Wetlands Reserve Program (and associated tracts) conservation easement property in Morgan County, Colorado. These wetlands will contribute at least 1,000 acre-feet of recharged water supply to the South Platte River every year.
8. **LaFleur Wetlands:** Within one year of NTP, we will conclude due diligence and close on a 497-acre conservation easement in Logan County, Colorado that will protect in perpetuity the surface, wetlands and water rights of the property. Also within one year of NTP, we will restore more than 20 acres of shallow-water emergent wetlands on the eased property. At least 50 acre-feet of water each year will be recharged into the South Platte River alluvium.
9. **Arapaho NWR:** Within three years of NTP, we will have enhanced the irrigation capability of the Chandler Ditch tract on Arapaho NWR. This will result in 421 acres of short-emergent wetland, wet meadow and associated uplands persisting for the next 30 years.

Table 1. Detailed description of the benefits to impacted natural resources under the projects included in the proposal.

Focus Area	Program	Project	Project Type	Longevity of Benefits (yrs)	Conserved Waterfowl/Wetland Habitat Acres					Waterfowl Metrics		Groundwater Metrics
					Shallow-water Emergent	Semi-permanent	Riparian/ Riverine	Associated Uplands	Total	Annual Duck Production (hatched ducklings)	Annual Duck Use Day Equivalents	Average Acre-Feet per Year Recharged
PROPOSAL TOAL					791	201	406	1,281	2,679	425	1,081,220	14,900
South Platte River					330	55	376	603	1,364	-	1,061,220	14,900
	BOR Narrows	Lantz/Kinnaman	Establishment	30+	30	10		40	80	n/a	106,880	1,000
	DU Lands	Peterson Augmentation Complex	Acquistion/ Establishment	Perpetuity	10	5			15	n/a	40,080	700
	Private Lands Groundwater Augmentation	Mowery	Enhancement	30+	15			15	30	n/a	40,080	450
		USFWS Partners for Wildlife Platte Program	Establishment	10+	20			20	40	n/a	53,440	200
	CPW Groundwater Augmentation	Andrick SWA	Enhancement	30+	20	40		120	180	n/a	160,320	1,500
		Tamarack SWA	Enhancement	30+			325	32	357	n/a	32,500	10,000
	Private Lands Wetland Habitats	Bijou Wetlands	Restoration	30+	130		35		165	n/a	347,360	1,000
		LaFleur Wetlands	Acquistion/ Restoration	Perpetuity	105		16	376	497	n/a	280,560	50
North Park					248	31	30	272	581	130	-	-
	North Platte Valley Refuges	Arapaho NWR	Enhancement	30+	168	31	30	192	421	70	n/a	n/a
	North Platte Valley Wet Meadows	Irrigated Meadows II	Enhancement	30+	80			80	160	60	n/a	n/a
San Luis Valley					120	80	-	-	200	160	-	-
	Monte Vista NWR	Unit 14,15 & 16 Restoration	Restoration	30+	60	40			100	80	n/a	n/a
	SLV State Wildlife Areas	Russell Lakes SWA	Restoration	30+	60	40			100	80	n/a	n/a
Canadian Western Prairie Pothole					88	-	-	386	474	135	-	-
	Alberta PPR	Desilets Acquisition	Acquisition/ Restoration	Perpetuity	88			386	474	135		
Mexico					5	35	-	20	60	-	20,000	-
	Pacific Coast	Sinaloa Mangrove Restoration	Restoration	10+		20		10	30	n/a	10,000	n/a
	Central Highlands	Tecocomulca Lagoon Restoration	Restoration	10+	5	15		10	30	n/a	10,000	n/a

- 10. North Park Irrigated Meadows II:** Within three years of NTP, we will identify, design, permit and construct new diversion and conveyance infrastructure on select irrigated properties producing waterfowl in North Park, Colorado. This will result in the conservation of at least 160 acres of wetland and associated uplands in Jackson County.
- 11. Monte Vista NWR – Unit 14,15,16:** Within four years of NTP, we will have rehabilitated infrastructure such that at least 100 acres of shallow-water wetlands preferred by breeding waterfowl will have been restored. This will be accomplished through the de-commissioning of intervening levees, new conveyance and diversion structures.
- 12. Russell Lakes SWA:** Within four years from NTP, we will have restored functionality to at least 100 acres of shallow-water wetlands preferred by waterfowl in Saguache County, Colorado through the installation of new check boxes, diversion gates and conveyance.
- 13. Desilets Acquisition:** Within three years from NTP, at least 474 acres of highly-productive waterfowl habitat in the prairie pothole region of Alberta will be placed under a conservation easement, regulating land use on the property. Within two years of NTP, 58 acres of wetlands will be restored by plugging drainage ditches and installing at least one water-control structure.
- 14. Sinaloa Mangrove Restoration:** Within five years of NTP, at least 30 acres of wetland and associated uplands in the mangrove forests of Mexico's Pacific Coast will be restored to benefit wintering waterfowl populations there.
- 15. Tecocomulca Lagoon Restoration:** Within five years of NTP, at least 30 acres of the Tecocomulca Lagoon will be restored by treating invasive species that threaten the integrity of the lagoon in supporting populations of wintering waterfowl.

Operational Plan: Submit an operational plan that describes the proposal.

i. Describe in detail how the work described in each category will be implemented: DU's project delivery operational plan follows a regular pattern of Design, Permitting, Bidding, Construction and Evaluation. DU performs all work under each stage of this project delivery pattern: we are a complete design-build firm for wetland habitat conservation. The design phase of our restoration, enhancement and establishment work entails our bio-engineering teams corresponding with land managers and land owners to explicitly state the wetland, waterfowl and water goals of the tract under question. Based on these goals and the habitat and hydrologic objectives developed thereunder our technical team will perform a series of geotechnical surveys to assess the suitability of all or parts of the tract for the desired conditions. These surveys include GPS-assisted topographic surveys to develop a minimum six-inch surface model of the property, bathymetric surveys, soil sampling, hydraulic conductivity testing and flow tests. Plant community characteristics and landscape context will also be assessed to evaluate potential project performance. Our team will assess the water resources available to the site in both physical and legal terms. Database surveys and correspondence with state and local administrators of water supplies provides the information required to determine if water can be used on the site during the preferred times and in the required amounts to achieve the sought-after wetland habitat conditions and functions. Using this material, our team will present the landowner and manager with a conceptual plan for wetland conservation for review and authorization to move forward. It is at this point that DU will execute, on those projects that require it, a 30-year conservation contract (Site Conservation Agreement) that prescribes the roles, responsibilities, financial contributions and long-term commitment under the project. The Design phase is completed by our engineering team when they produce a P.E.-stamped planset for the project. This planset details project components, provides specifications and standards for construction work, and locates work on the project site. We use this planset to complete permitting of our projects. Depending upon the nature and intent of the project different permitting regimes apply, but our team usually handles NEPA, NHPA, ESA and CWA consults

during this phase of project delivery. Because of our close collaboration with many federal and state agencies, the majority of the time we utilize their resources to permit the project. At times, however, DU will perform the work ourselves or sub-contract with specialists in these fields to ensure timely authorization of our project work. All of the DU projects included in this proposal have secured water rights decreed for the wetland habitat uses considered here. At times and in certain places in the South Platte Basin, county and local permits are required on construction sites. Our engineering team secures those permits and manages their administration. When all required permits are secure, DU places the project out to bid. DU uses an online, competitive bid process to select the subcontractor(s) working on the project. Our procurement system is designed to meet the demands of Federal, State and local insurance, bonding, and wage-protection requirements. The lowest bidder for any given amount of work is awarded the contract, which is executed between DU and the winning contractor. These contracts, again, are drafted to meet the requirements of Federal, State and local procurement law, rule, and administrative order. A copy of our template contract is available upon request. Upon execution of all required contracts for the workplan of the project, DU will schedule project construction. DU's engineering team performs daily to weekly construction management, depending on the complexity of the project and the skill of the contractor, on our wetland conservation sites to ensure that all standards, specifications and details contained in the permitted plan are realized during the construction phase. Change orders are evaluated by our bio-engineering team and, if the consequential enough, are submitted to our funding partners for review and authorization. Upon completion of construction, but before demobilization, we perform a project evaluation with the contractor, our engineering team, the land owner or manager and any interested funding party to ensure that the completed work matches the expectations of those parties. Once authorized by those parties, DU will demobilize our contractors from the project site. For one to three years post-project delivery, DU will monitor the performance of the project site to ensure that all constructed infrastructure and other project components are functioning in the required manner.

Our easement acquisition process follows a regular pattern of negotiation, due diligence, closing and easement monitoring. If initial, conceptual discussions of an easement acquisition result in the desire to move forward with a deal, then DU or one of our certified partners will provide the landowner with a base template easement deed from which negotiations can proceed. All easements in Colorado are in perpetuity and require a 'no additional surface disturbance' clause and a clause requiring adequate water supplies (decreed water rights, usually) are encumbered in the deed. Once a final conservation easement deed is negotiated, the due diligence period can begin. In this period, we work with the landowner to get a certified conservation easement appraisal, a baseline documentation report, a minerals remoteness letter from a certified geologist, title insurance and review, a Phase I environmental review, a water rights report as well as various other documents depending upon the details of the property, the landowner and the contents of the deed. When all this documentation is collected, reviewed and dependent authorizations made, we will set a closing date, ready the financial transactions and close the deal. The conservation easement deed is recorded with the property title in the appropriate County office. Plans are made for annual easement compliance monitoring visits which are regularly scheduled and made for the (perpetual) term of the easement. DUC follows a similar model of easement acquisition in their conservation programs.

The workplan for FWS Partners for Wildlife wetland conservation projects closely follows DUs project delivery process, except that they, for the most part, rely upon the private landowner to bid, contract and manage construction of wetland restoration and enhancement projects.

ii. Describe who the Project Proponent will collaborate with to accomplish the scope of work: DU prides itself on its ability to formulate diverse, effective partnerships at a continental scale. The sample resume of projects in Appendix A provides a glimpse of this ability. Our active partnerships include federal agencies, state agencies, local/district entities, private corporations, other NGOs, foundations, and a diverse portfolio of private landowners. The projects put forward in this proposal include the following list of partners, and would expand even further if successful: Bureau of Reclamation, US Fish and Wildlife Service [namely, Partners for Fish and Wildlife (see support letter attached) and the Refuge System], USDA Natural Resources Conservation Service, Colorado Parks and Wildlife (see support letter attached), Colorado Water Conservation Board, South Platte Water-Related Activities Program, Colorado Open Lands, Bijou Irrigation District, Julesburg Irrigation District, Harmony Ditch Company, Gates Family Foundation, Ducks Unlimited Canada, and Ducks Unlimited Mexico. Please see Appendix D for project letters of support.

iii. Describe the type, donors and equivalent dollar amount of matching funds: DU, along with our long-standing partners in wetland habitat conservation, will provide \$4,012,500 in match to the projects contained in this proposal. This represents a 3.3:1 match to Suncor fund ratio. At least nine individual entities will be providing cash match to the work. Four of these funding partners are private landowners, three are private non-governmental organizations, one is a state agency and one is a federal agency. DU will provide more than \$1.3M in cash match to the proposal. Nearly, \$1.1M of these funds are secure, leaving \$232,500 in funding to be allocated in future year's budget requests. These funds represent cash contributions that will pay directly for eligible project expenses. These funds arise from membership and philanthropic contributions to our organization.

The Colorado Department of Natural Resources will provide more than \$1.7M in cash match to the proposal. These funds will have been allocated to DU under two grant programs. Colorado Parks & Wildlife's Wetlands Program and the Colorado Water Conservation Board's Water Plan grants. These funds represent cash contributions that will reimburse eligible project expenses. These funds arise from severance tax revenue and from proceeds of the state lottery allocated to CPW's wildlife habitat programs. Over \$1M of the funds have been allocated under contract to DU. The remaining \$700K must be secured under future grant requests.

The South Platte Water Related Activities Program will provide \$67,000 in cash match to the Tamarack SWA project. These funds represent cash contributions to reimburse project expenses incurred restoring streambank and other riverine wetland features on the property. SPWRAP is an organization dedicated to providing enough streamflow in the South Platte River to meet Colorado's water quantity obligations under the Platte River Recovery Implementation Plan. Funds contributed to the work arise from membership dues supplied by municipalities, landowners and other water-user entities in the basin.

The United States Fish and Wildlife Service will provide \$393K in cash match to program activities. \$343K of these funds will reimburse eligible project expenses under the North American Wetlands Conservation Act program. Phase IV of NAWCA's Platte River Wetlands Partnership is on-going and funds have been allocated to the Tamarack SWA, Bijou Wetlands and LaFleur Wetlands projects. These funds are congressionally allocated federal funds made available under a competitive grant process. The remaining \$50K in FWS funding will be provided to pay for work performed under the Partners for Fish and Wildlife Program in the South Platte Basin.

The Gates Family Foundation will provide \$200K in cash match to reimburse expenses incurred in the delivery of the Bureau of Reclamation Narrows and Bijou Wetlands projects. These funds are secure. The

Gates Family Foundation is a private foundation with an interest in promoting conjunctive use (i.e. agriculture, water & wildlife) projects in the South Platte Basin.

At least four private landowners will provide cash match to project work under this proposal. \$20K of the Mowery family's funds will offset costs delivering water to their augmentation sites. The two landowners involved in the Bijou Wetlands project will provide at least \$95K in cash match reimbursing DU for project expenses. The LaFleur Family will provide at least \$150K in match for the conservation work on their property. \$80K of this represents the appraised value of the donated portion of the perpetual conservation easement placed on their property. \$70K represents their cash payment for expenses incurred during the due diligence phase of the easement transaction (i.e. Easement appraisal, baseline documentation, minerals report, and other fees). At least one remaining landowner will provide at least \$50K in cash match under the PFW program, paying for eligible expenses incurred in constructing wetlands under that program.

iv. Provide construction designs and drawings, if applicable, maps of proposed restoration location(s), and a schedule and/or time line for the completion of major project components: Please see attached appendices for available maps, construction designs and drawings. Please see page 13 for a timeline of major project components.

v. Describe to what degree the proposal described in the operational plan matches the goal of NRD fund expenditure: The Trustee Council reports that **1.4 acres of wetlands** associated with the South Platte River was filled as part of its response to the incident. The work proposed here will conserve **1,398 acres of wetlands**. 761 of these wetland acres are in the South Platte Basin downstream of the site. The remaining acres are in landscapes that support breeding and wintering populations of waterfowl that – at some point in their life cycle – occupy the basin. 136 wetland acres will be protected in perpetuity under acquired conservation easements. 1,513 wetland acres will be restored and enhanced under Site Conservation Agreements with 30-year minimum periods. 80 wetland acres will be restored and/or enhanced under Site Conservation Agreements with 10-year minimum periods. We feel that the large scope and longevity of our work will adequately compensate for the loss of wetlands on the site. The Council also reports the mortality of at least **48 birds** resulting from the incident. The work proposed here will result in an average annual production of at least **425 hatched ducklings** in the Central Flyway of North America. It will also provide enough wetland food to support, on average, 1,061,220 duck use-day equivalents for migratory waterfowl in the Basin. Additionally, at least 40,000 duck use-day equivalents will be provided on wintering grounds in Mexico. Finally, the Council reports that **930 acre-feet** of groundwater tributary to the South Platte River was compromised by the incident. The work proposed here will recharge – through shallow-water wetland habitats preferred by migratory birds – **14,900 acre-feet** of alluvial groundwater on an average annual basis. 12,500 acre-feet of these annual inputs are currently in operation in the program area but our efforts are aimed at securing and enhancing the function of these operating recharge units. All but 200 acre-feet of these annual supplies will be developed under agreements with terms of 30 years or greater.

vi. Describe how the proposal will be coordinated with complimentary, similar existing or other proposed restoration in the area, if any: The projects included in this proposal are all part of on-going wetland conservation partnerships enjoined by DU, DUC, and DUMAC. The projects in the Platte River Basin are either enrolled in the current phase (IV) of the Platte River Wetlands Partnership NAWCA or will be enrolled in the next phase (V). In delivering these projects, DU is also responsive to conservation goals held by the South Platte Basin Roundtable's Platte River Water Plan, the Platte River Recovery Implementation Plan, the South Platte Wetland Focus Area's Strategic Plan amongst others. The project

in Canada is part of a larger effort to protect and restore important wetland/grassland complexes in the highest priority waterfowl landscape identified in the North American Waterfowl Management Plan. That project is the latest in a series of acquisitions and restorations DUC has implemented in that part of their country. In collaboration with the United States Forest Service, DUMAC has recently assessed mangrove and other wetland loss in Mexico. Satellite technology is being used to measure where agriculture and aquaculture have been developed between 1992 and 2003. During that time period, 28,202 acres of mangroves were lost. DUMAC shares these results with state and federal officials and is also conducting a series of training programs for biologists and managers to help them understand and be responsive to the threats that uncontrolled loss of mangrove swamps would cause. Mexico still has some of the most unspoiled mangrove wetlands in the world, and sustaining them is vitally important. The work proposed here would address the collaborative's priority is to protect existing mangrove wetlands.

vii. Describe the Operation, Maintenance and Monitoring (OMM) requirements: Operation and maintenance of our restoration, enhancement and establishment sites are prescribed in each 30-year Site Conservation Agreement. On private lands, it is the landowner's responsibility for the term of the contract to utilize physically and legally available water supplies to inundate wetlands on a schedule beneficial to ducks and other migratory birds and in a sequence that recharges the alluvial aquifers of streams. Outside of warranty issues related to design failures and acts of nature, it is the landowner's responsibility to maintain all infrastructure installed under the Agreement. On public lands, it is the responsibility of the managing agency to perform required operations and maintenance leading to the hydrologic and plant community characteristics targeted by the conservation work. At times, these operations are stipulated under a contract or other agreement between DU and the public agency managing the property.

Monitoring of project outcomes on the included projects will occur in three ways: First, on the two conservation easements included in the proposal compliance, annual monitoring of the terms and restrictions contained in the easement will occur under practices established and maintained by the Land Trust Alliance and the State of Colorado, as well as internal policy established by DU and our conservation partners; Second, performance of habitat restoration, enhancement and establishment projects will be evaluated based upon relating observed habitat/hydrologic response to our work with response estimates (breeding pairs, nest success, groundwater accretion curves and the like) produced by empirical models either authorized or in common use by our collaborating partners. For instance, our estimates of groundwater recharge on the tracts arise from required model outputs included in the State of Colorado's adjudication of augmentation plans utilizing groundwater recharge as water supply. Our estimates of bird response to habitat work are based on long-term, peer reviewed ecological models relating avian life-cycle traits to indices of habitat condition. The estimates of duck-use day equivalents, for instance, included in this proposal arise from a collaborative modelling effort performed by the Playa Lakes Joint Venture. This HABs model identifies important populations of birds' energetic needs in landscapes like the South Platte River and, then, based on habitat condition and availability estimates the number of available bioenergetic days each unit of habitat can provide in fall, winter and spring migration events; and, Finally, monitoring of project outcomes can be achieved through the inclusion of these projects in on-going research efforts performed by Colorado State University's Kennedy Program for Wetlands and Waterfowl Conservation, Colorado Parks & Wildlife Avian Research, and the United States Fish and Wildlife Service. On-going research into habitat-duck population relationships by all three of these groups is allowed and performed on the project tracts included in this proposal. CPW researchers just completed a first phase of assessing food production on conserved wetland projects along the South Platte Basin. Additional work looking at seasonal food resource

availability and the impact of disturbance on foraging ducks is proposed, which will occur on the tracts identified here and inform our performance in meeting the wetland habitat needs of targeted waterfowl. In North Park, we are working with CSU and CPW to institute a two-phase monitoring and research program to evaluate the performance of wetland conservation projects in that landscape. Pair density estimates, nest density, and nest success will all be measured on private working lands and public lands managed for waterfowl production to estimate variation in bird response to conservation work and land management prescriptions. Again, the project tracts included in this proposal will be included in the sampling frame of that work such that habitat condition and bird response to our work can be well estimated. Birds banded and affixed with GPS units under this research will be tracked and the linkage between North Park and the South Platte River made known. The two tracts included in the San Luis Valley are also sites of current research efforts that link habitat/hydrologic condition of areas with waterfowl's life cycle requirements. Bird occupancy, migration counts and the hydrologic dynamics of wetland complexes within the project areas will occur such that project performance can be assessed and bird response estimated.

While the resources to institute a project-wide intensive monitoring program enumerating bird response to habitat conditions and aquifer levels to recharge effort are not available to us, the combination of monitoring, modelling and research presented above will provide us with enough vetted knowledge to evaluate the performance of the conservation work proposed here. We will be as certain as we can be that the significant ecological nexus between our proposed activities and to the resources of the South Platte River will be observed and that the damages will be redressed at appropriate levels.

viii. Permits/Approvals/Certifications: All projects in this proposal, except the projects delivered under the FWS' Partners for Wildlife Program, will be designed by DU's engineering team. Our office employs a professional engineer who can produce and certify with his stamp all the wetland conservation projects proposed here. When required, he and his team can provide as-built plansets upon project completion. All acquisition of conservation easements will be performed by land trusts certified by the Land Trust Alliance and, in Colorado, by the State of Colorado. Each of the 15 projects will bring to bear different permitting requirements, but all are likely – outside of the requirements of the Suncor program – to require federal regulatory review under the National Environmental Protection Act, the Endangered Species Act, the National Historic Preservation Act, and the Clean Water Act amongst others. State-level permits on these projects will likely focus on administration of water under the prior appropriation system in Colorado. On eight of the 15 projects, DU has already gone through federal regulatory review with our FWS and Natural Resources Conservation Service partners. We will perform similar federal regulatory review on the remaining seven projects. Eleven of the twelve projects in Colorado are known to have decreed water rights suitable for the wetland conservation/groundwater augmentation uses anticipated here. We will work with our professional teams at DUC and DUMAC to ensure that federal, state and local permitting regimes in Canada and Mexico are addressed.

ix. Project Schedule:


The  symbol in Table 2 on the next page represents end-of-year, annual review to Trustee Council. This is the period when the annual report will be submitted and reviewed, when final project plans will be approved by the Council, when project amendments and substitutions will be vetted by the Council, and when any additional project components required of the workplan will be authorized by the Council.

Table 2. Schedule of Project Delivery.

Project	-1 year from NTP				+1 year from NTP				+2 year from NTP				+3 year from NTP				+4 year from NTP				+5 year from NTP			
	q1	q2	q3	q4	q1	q2	q3	q4	q1	q2	q3	q4	q1	q2	q3	q4	q1	q2	q3	q4	q1	q2	q3	q4
1 BOR Narrows: Lantz/Kinnaman	project design				permitting				contract				construction				construction				evaluation			
2 Peterson Augmentation Complex	project design								construction				evaluation				evaluation				evaluation			
3 Mowery					design								construction				evaluation				evaluation			
4 USFWS Partners for Wildlife Platte Program																								
5 Andrick SWA					project design								construction				construction				evaluation			
6 Tamarack SWA					construction				evaluation				evaluation				evaluation							
7 Bijou Wetlands					construction				evaluation				evaluation				evaluation							
8 LaFleur Wetlands	due diligence				closing																			
					construction				evaluation				evaluation				evaluation							
9 Arapaho NWR					design								construction				evaluation				evaluation			
10 Irrigated Meadows II					design								construction				evaluation				evaluation			
11 Unit 14,15 & 16 Restoration									design								construction				evaluation			
12 Russell Lakes SWA									design								construction				evaluation			
13 Desilets Acquisition									due diligence				closing				evaluation				evaluation			
	project design								construction				evaluation				evaluation				evaluation			
14 Sinaloa Mangrove Restoration					design				design								construction				evaluation			
15 Tecocomulca Lagoon Restoration					design				design								construction				evaluation			

x. **Monthly Invoice and Status Report:** DU tracks all project expenditures, personnel time, personnel travel and match obligations in electronic databases that are used to document project progress, procure contractors, reimburse for project payables, invoice funding partners, and report project accomplishments. This system is set up to ensure that DU's financial system is responsive to the demands of the laws, policies and administrative rules regarding procurement, contracting and project financing promulgated by the various federal agencies of the United States government. DU usually invoices our funding partners on a quarterly basis with a document specifying the amount of each eligible charge.

xi. **Project Documentation and Deliverables:** The following table summarizes the documentation of project deliverables that will be provided to the Trustee Council for the duration of the project –

Project		Presiding Conservation Agreement	Permit Package	Planset or As-builts as required	Final Implementation Report	Conservation Easement Deed	Annual Monitoring Report
1	BOR Narrows: Lantz/Kinnaman	X	X	X	X		X
2	Peterson Augmentation	X	X	X	X		X
3	Mowery	X	X	X	X		X
4	USFWS PFW	X	X		X		X
5	Andrick SWA	X	X	X	X		X
6	Tamarack SWA	X	X	X	X		X
7	Bijou Wetlands	X	X	X	X		X
8	LaFleur Wetlands	X	X	X	X	X	X

Project		Presiding Conservation Agreement	Permit Package	Plans or As-built as required	Final Implementation Report	Conservation Easement Deed	Annual Monitoring Report
9	Arapaho NWR: Chandler	X	X	X	X		X
10	NP Irrigated Meadows II	X	X	X	X		X
11	MVNR: Units 14,15 & 16 Restoration	X	X	X	X		X
12	Russell Lakes SWA	X	X	X	X		X
13	Desilets Acquisition	X	X		X	X	X
14	Sinaloa Mangrove Restoration	X	X	X	X		X
15	Tecocomulca Lagoon	X	X	X	X		x

Cost/Price Data: We are requesting \$1,197,000 to achieve restoration and replacement of damages to wetland habitats, waterfowl populations, and groundwater resources associated with the South Platte Basin in Colorado. We will match this funding with \$4,012,500 in cash and donated value to deliver 15 projects in five focus areas across the North American continent. Table __ that follows provides a general financial plan for the distribution of these funds by project among resource categories and matching agents.

Cost details for each project are not made available here. Further development of project plans is required for most of the projects and, in the current global trade/commodity environment, estimates of cost for project materials, contracts and other services more than two months out will only result in imprecise financial plans. DU will provide the Trustee Council with project cost bids and allocation of funds for projects at each annual report period during program implementation. This will allow the Council the opportunity to review and authorize expenditure of funds on project components in a more realistic manner than available at this stage of the proposal.

However, DU can provide the following financial guidelines and rates for the proposal to reassure the Council and the interested public that we are allocating and disbursing funds in a fair, efficient and open manner. First, all requests for payment by DU will be on a reimbursement basis alone. DU will charge no more than 15% (\$179,625) of the overall Suncor allocation towards Noncontract Personnel and Travel expenses. Also, DU will charge no more than 10% (\$119,750) towards indirect costs (organizational overhead). All remaining funds will be allocated to funding project contracts, materials, installations, fees, and other incidental payables. The table below presents the hourly rate charges negotiated between DU and the Federal Government establishing eligible cost rates for non-contract personnel and indirect expenses. Project staff from the Colorado/Wyoming Field Office are assigned to the appropriate rate with a brief description of their role in the program.

		Rate (\$/HR) from 10/1/2017 – 9/30/2018		
DU Staff Category	Levels		Project Staff	Project Role
Executive	17+	178		
Supervisory Prof	15 – 16	123	Mr. Martin Grenier	Manager of Programs
Senior Prof	13-14	108	Mr. Kevin Warner, P.E. Mr. Matt Reddy	Regional Engineer Regional Biologist

DU Staff Category	Levels	Rate (\$/HR) from 10/1/2017 – 9/30/2018	Project Staff	Project Role
			Mr. Billy Gascoigne	Regional Biologist
Prof & Senior Tech	12-14	85	Mr. Jason Roudebush	Hydrologist
Specialist		70	Ms. Noelle Smith	Wetland Specialist
Intern		41		
Seasonal		15		
Seasonal 2		20		
Project Technician		59		
Technician	7-11	66		

DU's allowable indirect rate charge (overhead charges) for our conservation work has been established at 14.83% through our negotiations with the U.S. government, but we will only charge – as stated above – a 10% rate.

Martin Grenier, Program Manager, will coordinate the execution of agreements and manage program finances and reporting. Kevin Warner, P.E. will be the engineer responsible for designing, drafting and stamping all plansets required by the proposal. Matt Reddy, Billy Gascoigne and Jason Roudebush will manage specific project technical tasks including permitting, landowner relationships, survey and design and reporting. Noelle Smith will perform required wetland delineations and provide technical support to other staff during project development. Other professional staff from our company and our sister companies in Canada (DUC) and Mexico (DUMAC) may be employed in the delivery of projects.

Table 5. Maximum Allowable Charges by Budget Project and Project.

		Maximum Allowable Charge by Budget Category				
Focus Area	Program	Project	Noncontract Personnel and	Contracts, Materials and Other	Total	
			Travel	Payables		Indirect Costs
Proposal Total			170,450.00	932,250.00	94,300.00	1,197,000.00
South Platte River			94,950.00	499,750.00	63,300.00	658,000.00
	Narrows	Lantz/Kinnaman	19,500.00	97,500.00	13,000.00	130,000.00
	DU Lands	Peterson Augmentation Complex	15,000.00	75,000.00	10,000.00	100,000.00
	Private Lands Groundwater Augmentation	Mowery	15,000.00	75,000.00	10,000.00	100,000.00
		USFWS Partners for Wildlife Platte Program		25,000.00		25,000.00
	CPW Groundwater Augmentation	Andrick SWA	22,500.00	112,500.00	15,000.00	150,000.00
		Tamarack SWA	7,500.00	37,500.00	5,000.00	50,000.00
	Private Lands Wetland Habitats	Bijou Wetlands	7,500.00	37,500.00	5,000.00	50,000.00
		LaFleur Wetlands	7,950.00	39,750.00	5,300.00	53,000.00
North Park			22,500.00	112,500.00	15,000.00	150,000.00
	North Platte Valley Refuges	Arapaho NWR	11,250.00	56,250.00	7,500.00	75,000.00
	North Platte Valley Wet Meadows	Irrigated Meadows II	11,250.00	56,250.00	7,500.00	75,000.00
San Luis Valley			24,000.00	120,000.00	16,000.00	160,000.00
	Monte Vista NWR	Unit 14,15 & 16 Restoration	12,000.00	60,000.00	8,000.00	80,000.00
	SLV State Wildlife Areas	Russell Lakes SWA	12,000.00	60,000.00	8,000.00	80,000.00
Canadian Western Prairie Pothole			14,500.00	100,000.00	-	114,500.00
	Alberta PPR	Desilets Acquisition	14,500.00	100,000.00		114,500.00
Mexican Wintering Grounds			14,500.00	100,000.00	-	114,500.00
	Pacific Coast	Sinaloa Mangrove Restoration	7,250.00	50,000.00		57,250.00
	South-Central Highlands	Tecomulca Lagoon Restoration	7,250.00	50,000.00		57,250.00

Table 6. Financial Plan Summary for Suncor NRD Settlement Funding Presented by Injured Resource and with Matching Funds.

Focus Area		Suncor NRD Settlement Funding Request by Injured Resource					Matching Funds							
		Project	Riparian/ Aquatic Habitat	Wetland Habitat	Waterfowl	Groundwater	Total	Ducks Unlimited	Colorado DNR	S. Platte Water Related Activities Program	USFWS	Gates Family Foundation	Private Landowners	Total
Proposal Total			-	373,000.00	229,000.00	595,000.00	1,197,000.00	1,307,500.00	1,730,000.00	67,000.00	393,000.00	200,000.00	315,000.00	4,012,500.00
South Platte River							-							-
	Narrows	Lantz/Kinnaman				130,000.00	130,000.00	750,000.00	990,000.00			100,000.00		1,840,000.00
	DU Lands	Peterson Augmentation Complex				100,000.00	100,000.00	325,000.00	150,000.00					475,000.00
	Private Lands Groundwater Augmentation	Mowery				100,000.00	100,000.00		100,000.00				20,000.00	120,000.00
		USFWS Partners for Wildlife Platte Program				25,000.00	25,000.00			50,000.00		50,000.00		100,000.00
	CPW Groundwater Augmentation	Andrick SWA				150,000.00	150,000.00		100,000.00					100,000.00
		Tamarack SWA				50,000.00	50,000.00		100,000.00	67,000.00	100,000.00			267,000.00
	Private Lands Wetland Habitats	Bijou Wetlands		30,000.00		20,000.00	50,000.00		85,000.00		30,000.00	100,000.00	95,000.00	310,000.00
		LaFleur Wetlands		33,000.00		20,000.00	53,000.00		55,000.00		213,000.00		150,000.00	418,000.00
North Park							-							-
	North Platte Valley Refuges	Arapaho NWR		75,000.00			75,000.00		75,000.00					75,000.00
	North Platte Valley Wet Meadows	Irrigated Meadows II		75,000.00			75,000.00		75,000.00					75,000.00
San Luis Valley							-							-
	Monte Vista NWR	Unit 14,15 & 16 Restoration		80,000.00			80,000.00	15,000.00						15,000.00
	SLV State Wildlife Areas	Russell Lakes SWA		80,000.00			80,000.00	100,000.00						100,000.00
Canadian Western Prairie Pothole							-							-
	Alberta PPR	Desilets Acquisition			114,500.00		114,500.00	87,500.00						87,500.00
Mexican Wintering Grounds							-							-
	Pacific Coast	Sinaloa Mangrove Restoration			57,250.00		57,250.00	15,000.00						15,000.00
	South-Central Highlands	Tecocomulca Lagoon Restoration			57,250.00		57,250.00	15,000.00						15,000.00

Using the principals of cost allocation outlined above for this proposal we can estimate the general allocation of funds into the personnel and travel, contracts, materials and other payables, and indirect cost categories by project. Table 5 on the previous page provides those estimates. Table 6 above provides a financial plan summary for the work proposed here.

Section iii on page 9 of this proposal provides a detailed breakdown of the sources, amounts and distribution of match funds made available for this proposal.

Public Communication Strategy: As a non-profit conservation organization, DU recognizes the importance of consistent, far-reaching communication at multiple scales (e.g. local, regional, national, and even continental). DU employs communication specialists who will aid in drafting outreach material and distributing it accordingly. Our ability to reach a wide audience is unparalleled. In addition to its national and regional website, DU has over 1 million Facebook followers, 112,000 Twitter followers, and has its own magazine publication that is distributed to over 750,000 subscribers. If successful, DU project proponents will work with the internal communications team to develop outreach material that highlights the partnership and project success.

While up-front public input is inherently challenging with projects that are constrained by engineering and water rights, there will be ample opportunity for constituents to tour project sites and have open dialogue with the project proponents. Specifically, we will orchestrate at least two formal Colorado project tours with community members that were impacted by the spill. DU hosted such a tour in 2014 for community members impacted by the Shattuck Chemical spill southwest of Denver. Local constituents were bussed out to two DU-built wetland projects along the South Platte River that were supported with remediation funds. A DU biologist and engineer were present to talk about project design, construction, and conservation benefits. The tour was orchestrated in the spring to overlap with the waterfowl migration. Attendees were enamored with the visual bird use, breadth of engineering, scale of the wetland projects, and general setting within the larger watershed. One proposed project that will be open to public comment is the BOR Narrows Project. Given that the project is located on land owned by the Bureau of Reclamation, the project will comply with all federal guidelines for public comment (pre-construction), including appropriate response. Lastly, DU's project proponents will remain in close communication with the Trustee Council (and/or appropriate oversight committees) throughout the life of the project. At the request of council members, project proponents will make themselves available for presentations, conference calls, and site showings. This will ensure that public input can be channeled effectively in a centralized manner.

Relationship to Ranking Criteria:

I. THRESHOLD CRITERIA

- a. Consistency with Trustees' Restoration Goals: The Trustee Council reports that **1.4 acres of wetlands** associated with the South Platte River was filled as part of its response to the incident. The work proposed here will conserve **1,398 acres of wetlands**. 761 of these wetland acres are in the South Platte Basin downstream of the site. The remaining acres are in landscapes that support breeding and wintering populations of waterfowl that – at some point in their life cycle – occupy the basin. 136 wetland acres will be protected in perpetuity under acquired conservation easements. 1,513 wetland acres will be restored and enhanced under Site Conservation Agreements with 30-year minimum periods. 80 wetland acres will be restored and/or enhanced under Site Conservation Agreements with 10-year minimum periods. We feel that the large scope and longevity of our work will adequately compensate for the loss of wetlands on the site. The Council also reports the mortality of at least **48 birds** resulting from the incident. The work proposed here will result in an average annual production of at least **425 hatched ducklings** in the Central Flyway of North America. It will also provide enough wetland food to support, on average, 1,061,220 duck use-day equivalents for migratory waterfowl in the Basin. Additionally, at least 40,000 duck use-day equivalents will be provided on wintering grounds in Mexico. Finally, the Council reports that **930 acre-feet** of groundwater tributary to the South Platte River was compromised by the incident. The work proposed here will recharge – through shallow-water wetland habitats preferred by migratory birds – **14,900 acre-feet** of alluvial groundwater on an average annual basis. 12,500 acre-feet of these

annual inputs are currently in operation in the program area but our efforts are aimed at securing and enhancing the function of these operating recharge units. All but 200 acre-feet of these annual supplies will be developed under agreements with terms of 30 years or greater.

- b. Technical Feasibility: All proposed project activities in the proposal are technically feasible within the timeframe scheduled. DU has an 80-year history of implementing wetland acquisition, restoration, enhancement and establishment projects. DU's team charged with implementing the projects under this proposal regularly delivers between eight and twelve restoration projects per year. We and our partners in easement acquisition regularly deliver between two and six conservation easements per year. While project cost uncertainty remains high for the proposed projects, the techniques utilized to achieve project outcomes are not and have been proven over the past two decades of wetland conservation in Colorado and the other regions included in the proposal.
- c. Procedural Viability: All proposed work is procedurally viable utilizing standard practices and techniques authorized by federal, state and local governments.

II. INITIAL SCREENING CRITERIA

- a. Relationship to the Injured Natural Resources and Services and the Area Impacted by the Suncor Spill Incident: Nearly 55% of the Suncor fund allocation proposed here will be spent within the South Platte Basin downstream of the incident site. The wetland habitat and groundwater recharge work allowed by these funds are part of the same ecological and hydrologic system within which the damages occurred. Local and regional populations of people and birds that were impacted by the incident will have access to the resources restored under this proposal. The remaining funds will be allocated to high-priority wetland complexes and waterfowl production regions in Colorado, Canada and Mexico. The conservation work in the intermountain parklands of North Park and the San Luis Valley were chosen because they contain some of the most intact shallow-water wetland complexes in the state. State and federally-managed refuge complexes and their adjacent private working lands are less likely to be impacted by additional land and water developments predicted for the middle reaches of the South Platte River in Colorado. These same refuges in North Park and the San Luis Valley are known – from duck band returns – sources of ducks found in the South Platte. Wetland conservation work in these areas will not only secure larger, more intact, more diverse and higher functioning wetland habitats than those available immediately local to the incident site, but it will also provide critical breeding habitats for ducks who ultimately occupy those portions of the basin at some point in their life cycle. Please refer to the band return maps included in Appendix A for a representation of this nexus.

Projects in Canada and Mexico are similarly situated such that conservation work will positively benefit larger proportions of the Central Flyway population of waterfowl than similar conservation work located more closely to the incident site. Acquisition of wetlands and associated uplands in prairie Canada, while very remote from the Suncor property, are much more likely to provide large, sustained contributions to the populations of waterfowl utilizing the South Platte River than acquisition or restoration of habitat in the immediate vicinity of the site or elsewhere in the metro area. The ecological fact that most of the waterfowl found in any large numbers in the Platte arise on prairie landscapes far to the north is again represented by the band return maps included in Appendix _____. A similar argument pertains to utilizing settlement funds on conservation projects in Mexico. The areas identified in the proposal for conservation work are known wintering areas for populations of ducks occupying the South Platte River Basin for some portion of their life cycle. Band

return maps point the way here too. Maintaining good forage and roosting conditions in these areas has the potential to benefit of millions of waterfowl; far more than a similar amount of work in Commerce City could command. We know from the physical movement of birds that there is an ecological nexus between the non-Platte landscapes included in this proposal. We also know that the work proposed in those landscapes will have a larger positive impact on wetland habitats and waterfowl populations than similar efforts performed in the Basin. It is these facts and our desire to address all aspects of the life cycle of North American waterfowl that encourage us to include these far flung areas in our proposal.

- b. Avoid Adverse Impacts: Adverse impacts on the environment may include temporary damage to wetland plant communities, temporary diversion of water from normal channels, and the permanent removal of some woody riparian vegetation. Disturbance to some wildlife species occupying conservation sites may occur during construction. Most of these impacts are short-term disturbances that have little long-term consequence on the environment or associated natural resources. None of our activities will interfere with ongoing response actions at the site, including monitoring. Impact avoidance will be accomplished through strategic scheduling of project construction, designing around potential hazards and through attentive construction management.
- c. Likelihood of Success: We believe that the scope of work presented under the 15 projects proposed here will ensure that the resource damages incurred because of the incident will be adequately addressed at multiple spatial and temporal scales. The large expanse of work proposed here will diminish the likelihood that local changes in land or water use will subvert the restored resources gained under the proposal.
- d. Benefits to Multiple Injured Natural Resources and Services: As noted above, this is the core theme of our proposal our waterfowl habitat conservation work has proven over the last twenty years to benefit not only other species of wildlife using the South Platte Basin through increasing wetland function, but it also has benefitted the hydrologic resources of the basin that municipalities, agricultural and other users depend upon. Our approach to conjunctive use projects that provide habitat benefits to waterfowl populations while serving the groundwater needs of other water users is the basis of our collaborative approach. Wetland and waterfowl habitat projects provide myriad other ecosystem services, from flood protection to carbon sequestration.
- e. Time to Complete Project: We will complete the broad scope of the proposed work within a five-year implementation timeframe.
- f. Time to Provide Benefits: The positive outcomes resulting from this work will resolve immediately. The shallow-water wetlands and associated uplands protected, restored, enhanced and established by our projects begin to function as forage production and breeding areas immediately upon completion and inundation. Alluvial groundwater recharge also begins immediately upon completion and inundation.
- g. Duration of Benefits: All acquisitions are in perpetuity. All restoration, enhancement and establishment work in Colorado is designed to last for a minimum of 30 years. Work under the Partners for Wildlife Program and that proposed in Mexico is expected to persist for at least ten years.

III. ADDITIONAL SCREENING CRITERIA

- a. The following additional screening criteria shall be used to further evaluate and ultimately select restoration projects for inclusion in the DARP/EA. The selected restoration projects shall be identified in the DARP/EA as the preferred restoration alternative(s).

- b. Compliance with Applicable Federal, State, and Local Laws and Policies: DU always complies with applicable Federal, State, and Local Laws and Policies. This is especially important given the complexities of water rights administration in Colorado, which can trip up many a well-intentioned wetland restoration project.
- c. Public Health and Safety: None of the standard practices, techniques and work proposed here poses a danger to public health and safety.
- d. Protection of Implemented Project: Five of the 15 project sites are situated on lands held by federal or state agencies managed for the wetland habitat, waterfowl population or water resource concerns targeted here. Four of the remaining project sites are on lands protected in perpetuity from additional surface disturbance, subdivision, and transfer of water rights. The draft conservation easement deed for the LaFleur wetlands is included as an attachment in Appendix C. Draft conservation easement deeds for the Peterson Augmentation Complex and the Desilets Acquisition will be submitted to the Council for review at a later date. Restoration, enhancement and establishment work will be performed under a 30-year Site Conservation Agreement on nine of the project sites.
- e. Consider whether the project provides actual resource improvements: We are confident that our understanding of mid-continent waterfowl ecology and wetland science will result in actual habitat improvements benefitting waterfowl and other species across all phases of their life cycle in North America.
- f. Opportunities for Collaboration: The projects proposed here are all part of a coordinated effort to deliver high-quality migratory bird habitats in high priority landscapes in North America. They all enjoy the support of multiple partners.
- g. Cost-Effectiveness: It is in DU's interest to plan, design and deliver our conservation work in the most cost-effective way as possible. However, we are as interested in maintaining the long-term durability of benefits of our projects. Our technical teams have the experience of dozens of project implementation efforts to know when cost savings are worthwhile and when they will likely lead to more issues down the road.
- h. Estimated Total Cost of Proposed Restoration Project and Accuracy of Estimate: Project cost estimates were kept general in this proposal because of our experience with providing cost estimates in today's economic climate can result in imprecise financial planning. We have, instead, provided the Council with principles of fund allocation that we feel establish a fair and open assessment of where program funds will be used.
- i. Comprehensive Range of a Proposed Project: We will utilize a full suite of wetland conservation techniques (including acquisition, restoration, enhancement and establishment) to achieve redress of damaged resources.
- j. Project Consistency with Regional Planning: Our proposed work comports with numerous wetland habitat, bird population and water resources management plans composed by local, regional, state, federal and international groups. The impetus for most of our conservation is derived from the North American Waterfowl Management Plan and its numerous regional sub-plans.
- k. Matching Funds: We have a proven ability to secure matching funds for this work from many different sources. We are providing match at a 3.26:1 ratio. Over 70% of identified match is already secured.

Public Comment: DU welcomes the attention of the public to our wetland and waterfowl conservation efforts along the South Platte, in Colorado and across North America.

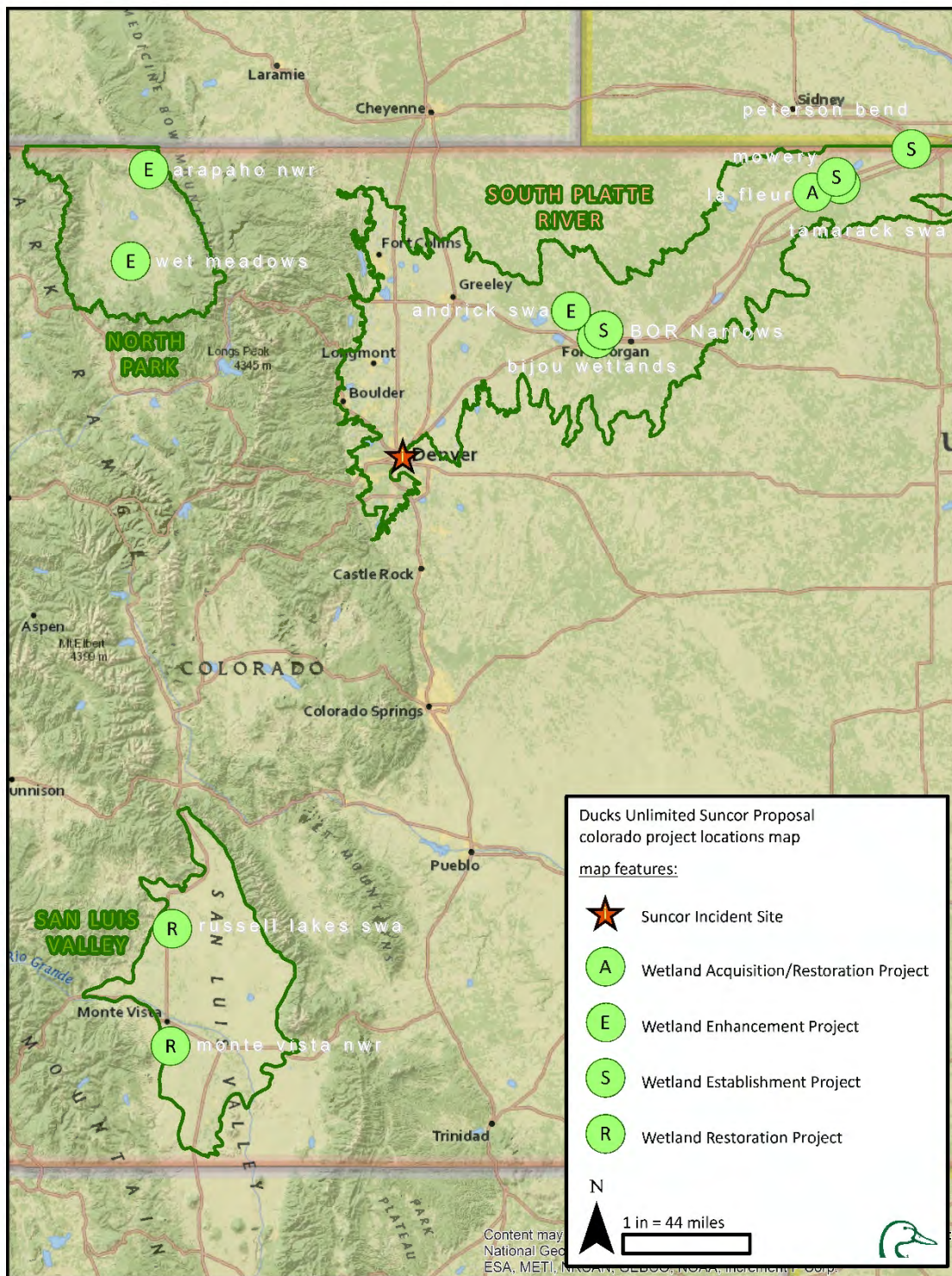
Appendix A: Project Proposal Maps

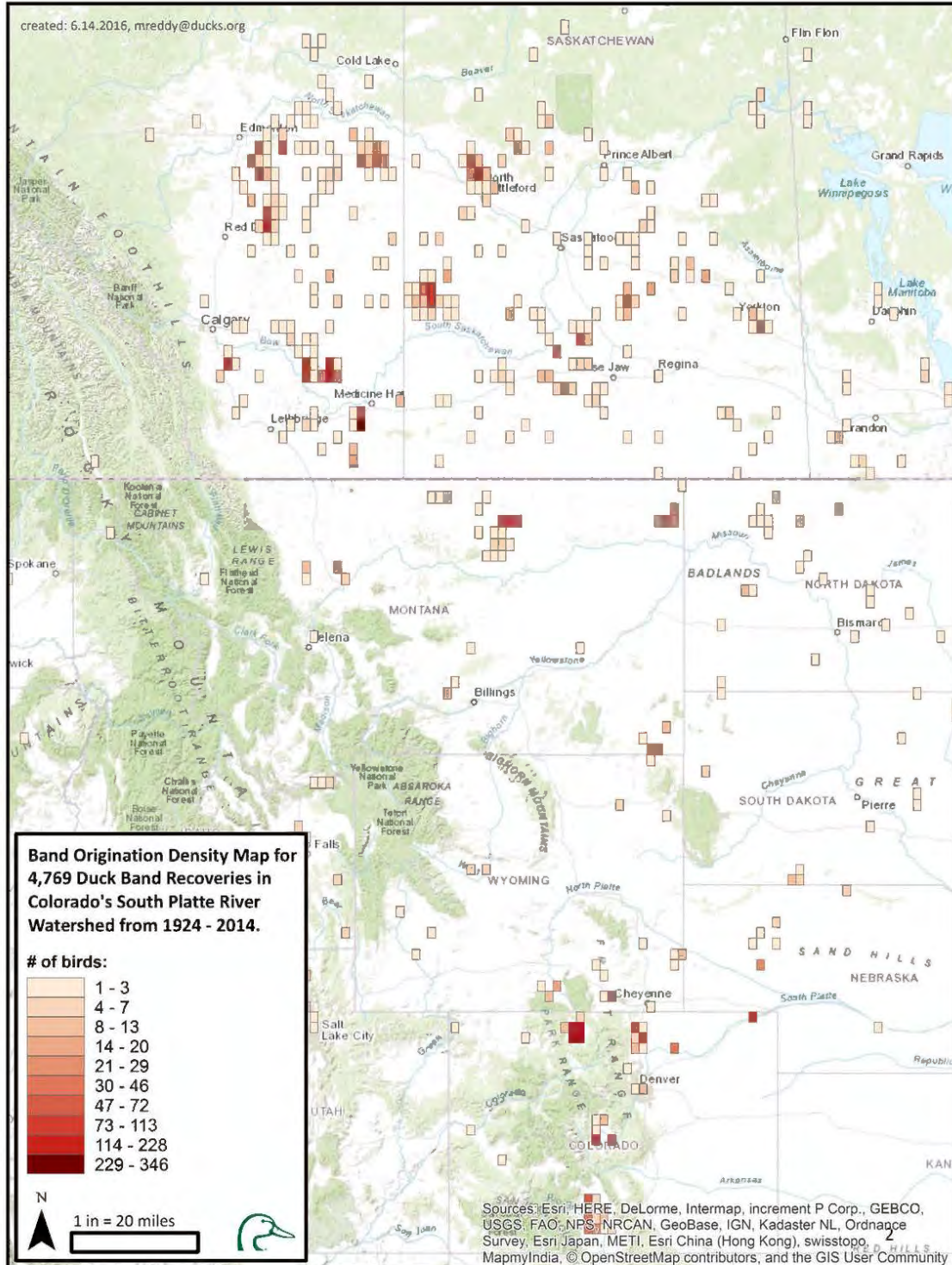
Project Proposal Focus Area Maps











Appendix B: Project Proponent's Resume

PROJECT NAME: WARD DITCH (ARAPAHO NATIONAL WILDLIFE REFUGE)

LOCATION: Walden, CO (North Park)

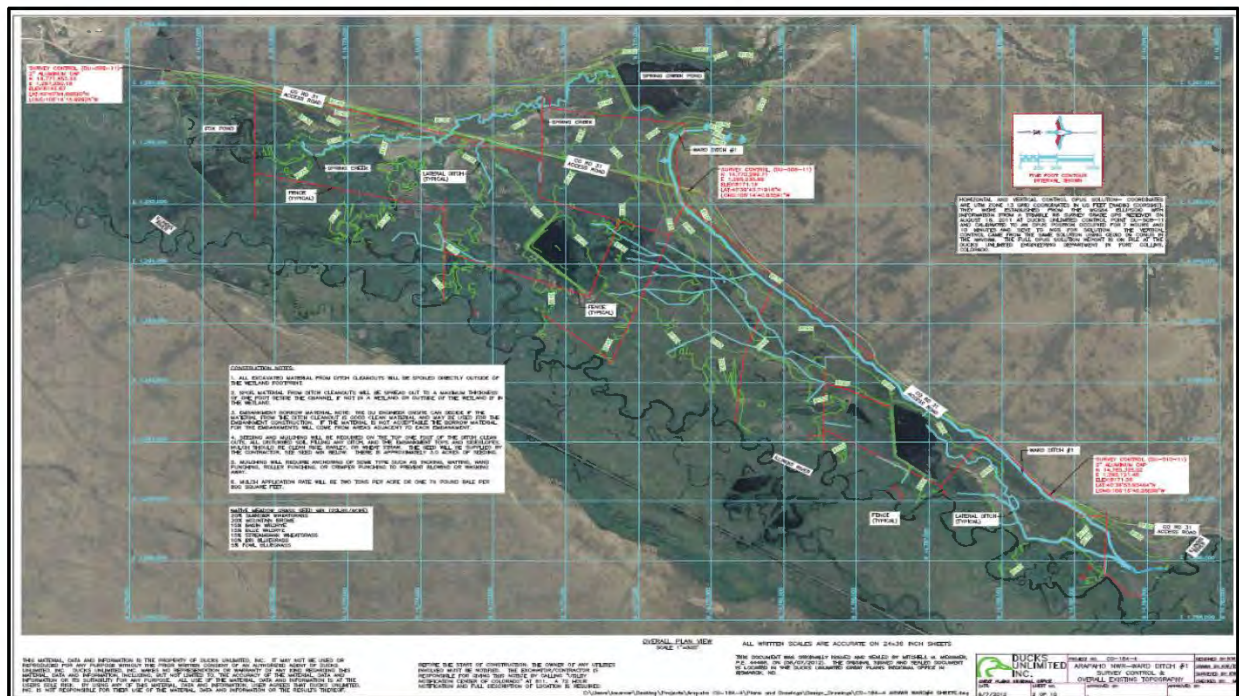
PARTNERS: US Fish and Wildlife Service, North American Wetland Conservation Act, Colorado Parks and Wildlife, Ducks Unlimited

TYPE: **Wetland/Waterfowl** (Breeding/Rearing)

COST: \$115,000

STATUS: Delivered/Completed (2013)

DESCRIPTION: We restored and enhanced 972 acres of wet meadow habitats to benefit breeding waterfowl populations on the Arapaho National Wildlife Refuge in Jackson County, Colorado. Water-control structures, measuring devices, ditches, and other infrastructure were rehabilitated or installed to allow both the expanded use (in space and time) and the more efficient use of decreed water rights. A formal 30-year management agreement was established with the USFWS. The natural weather conditions at this elevation always provide some challenges, especially a property of this size. DU and its contractors have a lot of experience with such obstacles and were able to minimize disturbance from equipment and avoid cost-overages. The engineering plan set below, produced by DU's professional engineers, highlights the extent of the wetland complex and intricacies of the water delivery system.



[Right] A post-construction photo of a portion of the Ward Ditch project. This project was designed to enhance breeding habitat for migratory waterfowl, while also providing habitat benefits to a host of other species, including moose, antelope, and elk.



PROJECT NAME: HEYBORNE RECHARGE

LOCATION: Ovid, CO (South Platte Watershed)

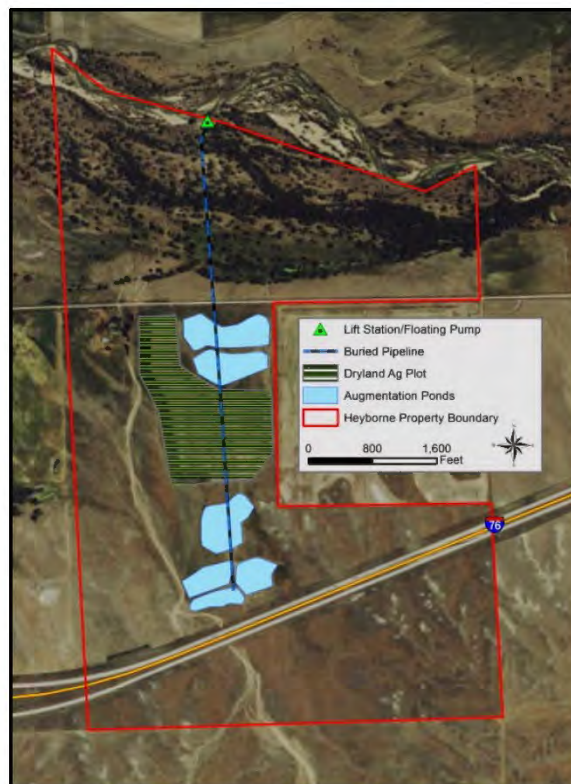
PARTNERS: Private Landowner, South Platte Water-Related Activities Program, Lower South Platte Water Conservancy District, Ducks Unlimited

TYPE: **Groundwater Recharge/Stream-Flow Augmentation Project**

COST: \$350,000

STATUS: Delivered/Completed (2011 & 2015)

DESCRIPTION: This was a private lands project that was developed with partners for groundwater recharge, and the recreational values that ensue. The resulting groundwater recharge credits are used by the state of Colorado to assure agreed-to flows in the South Platte river to Nebraska to aid management for endangered species. The project involved building a pumping bay with a floating pump and over a mile of pipeline. This engineered system allow partners to take advantage of 'free-river' conditions late into the winter months to insure water supply. DU led all aspects of the project, including engineering and construction management. The large flood event in 2013 damaged the site. DU reorganized the partnership, raised additional funds and redesigned and armored the pumping bay. The new design withstood the effects of the 2015 flood on the South Platte.

**PROJECT NAME: BIJOU WETLANDS**

LOCATION: Wiggins, CO (South Platte Watershed)

PARTNERS: Private Landowner, NAWCA, Colorado Parks and Wildlife, Partners for Fish and Wildlife (USFWS), NRCS, and Gates Family Foundation, Ducks Unlimited

TYPE: **Wetland/Waterfowl** (Migratory Habitat)

COSTS: \$336,000 (estimated)

STATUS: On Going

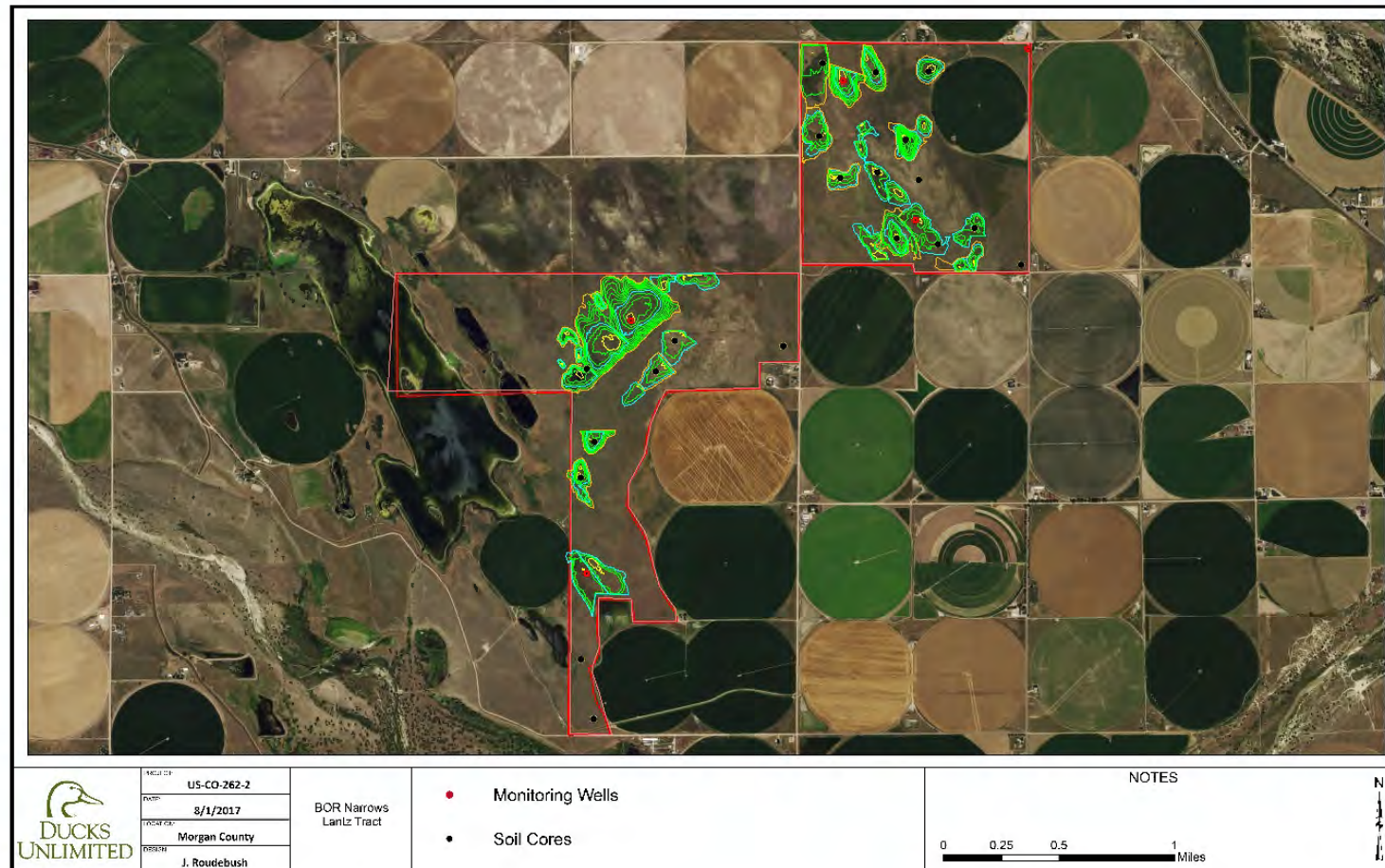
DESCRIPTION: The Little Bijou Project is a multi-faced private lands project along the South Platte River. It incorporates perpetual easements held by DU and NRCS, an extensive

augmentation plan administered by the Bijou Irrigation District, and shallow water wetlands designed by DU for migratory bird habitat. The site has suffered from limited management capacity, in which dominant species such as cattails have inundated many of the basins. DU has begun fundraising, engineering design, and the permit process to complete a large-scale restoration (Phase I) that will provide lasting benefits. The project stands to be a primary example of how groundwater recharge sites along the South Platte River (and beyond) can be co-designed and managed for wildlife benefits.

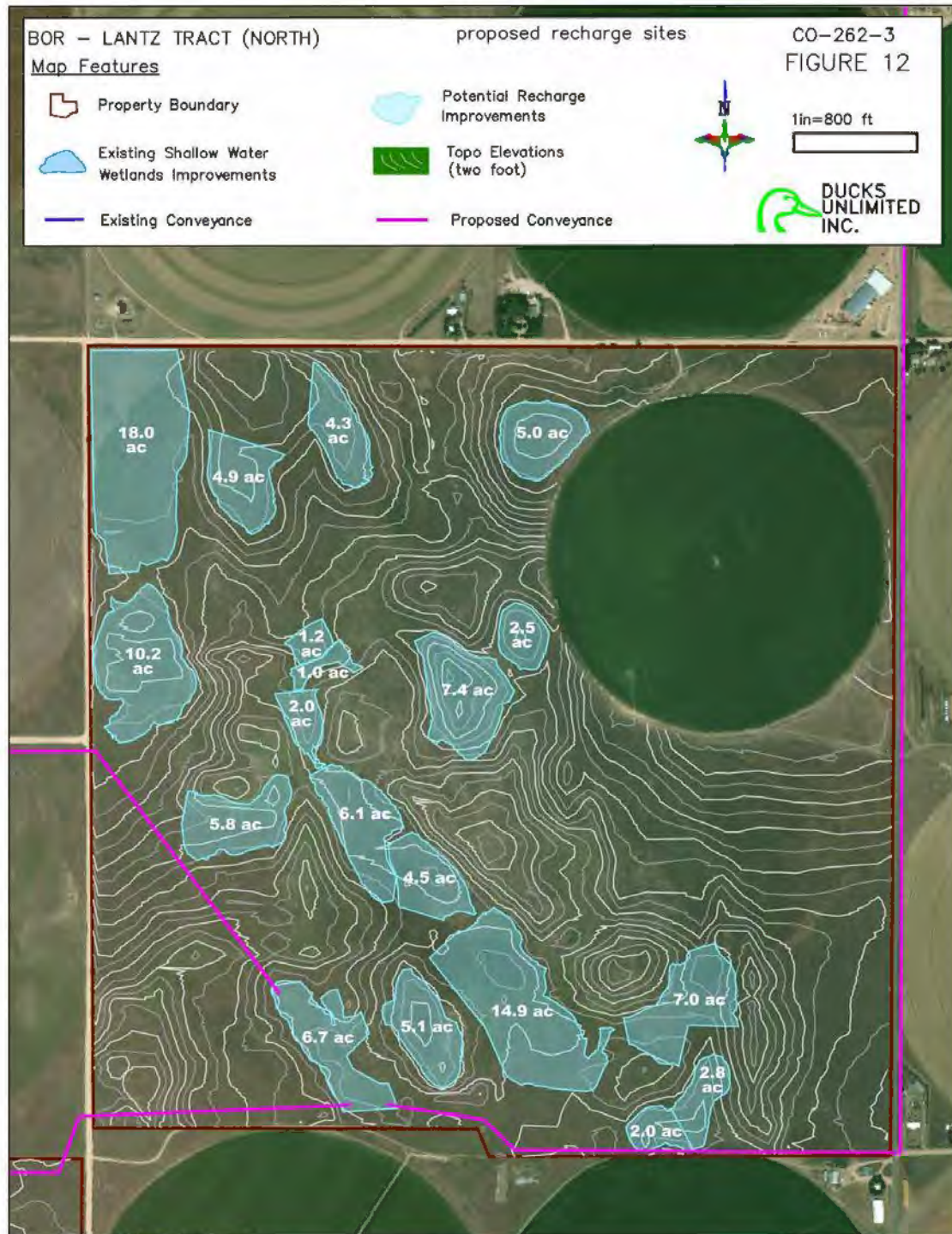
Appendix B: Project Documents *Note: Project documents in this appendix are provided for many of the proposed projects, but not all. Mapping, project design, and engineering plan sets will ensue for all projects if funding is awarded.

Bureau of Reclamation (BOR) Narrows Project):

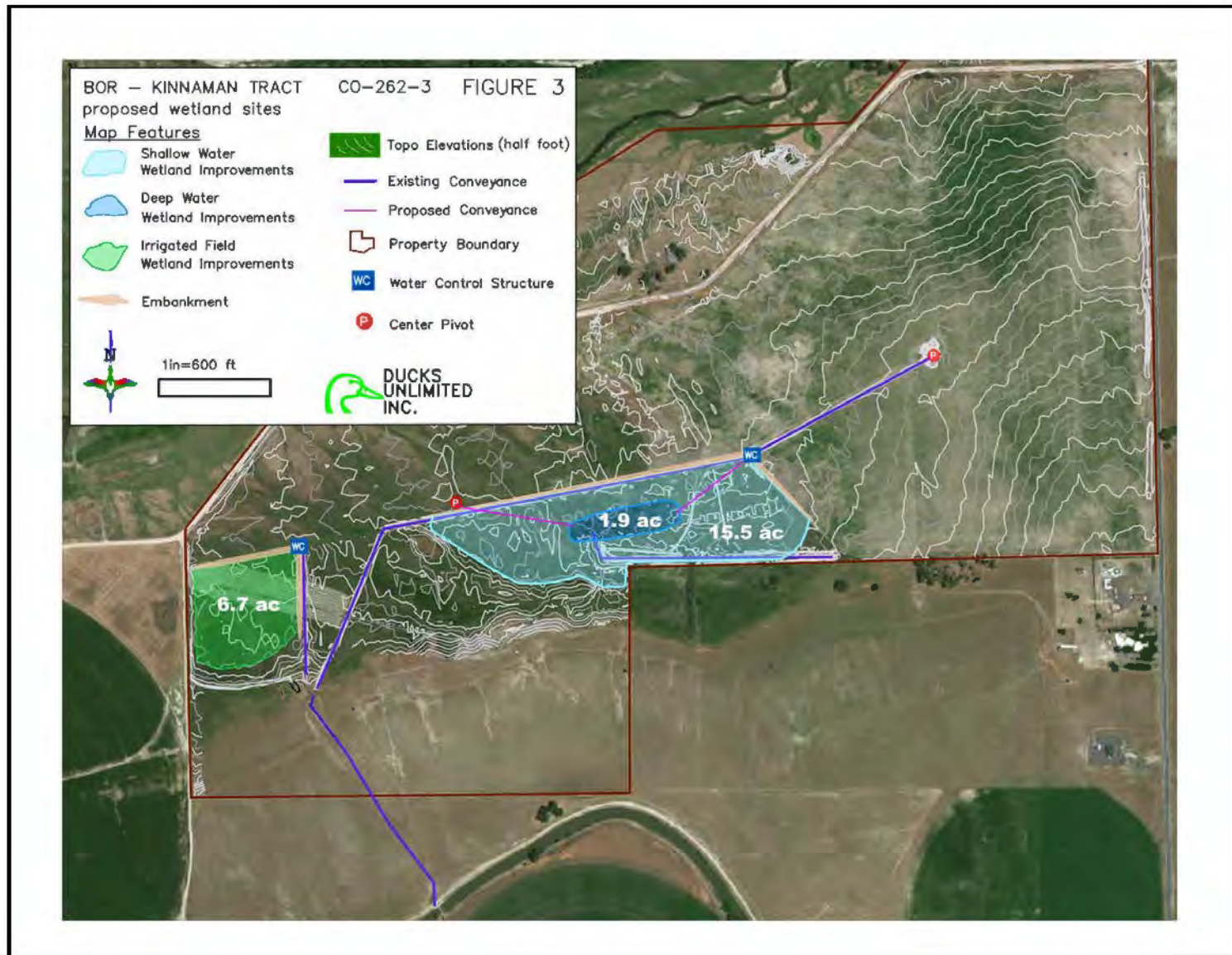
LANTZ TRACT: The figure below shows property boundaries of the Lantz Tract, and soil core locations for the already-completed geotechnical analysis. Such data will provide the required data to understand groundwater dynamics and accurate recharge accounting.



[Below] Topographic map of the Lantz Tract (BOR project) and preliminary pond locations under ideal conditions.

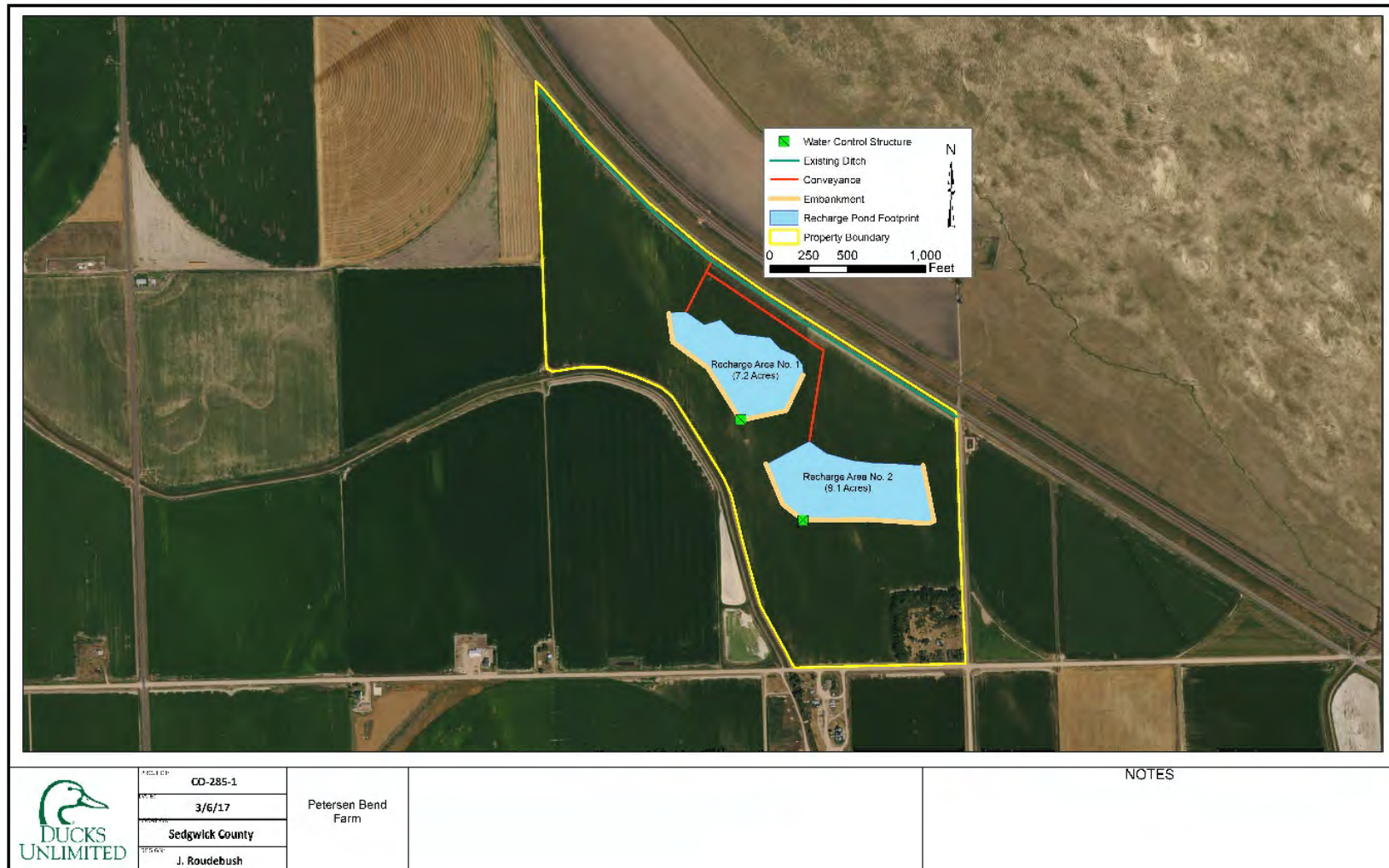


KINNAMAN TRACT: [Below] Topographic map of the Kinneman Tract (BOR project) and preliminary groundwater recharge pond & wetland (waterfowl) locations under ideal conditions.



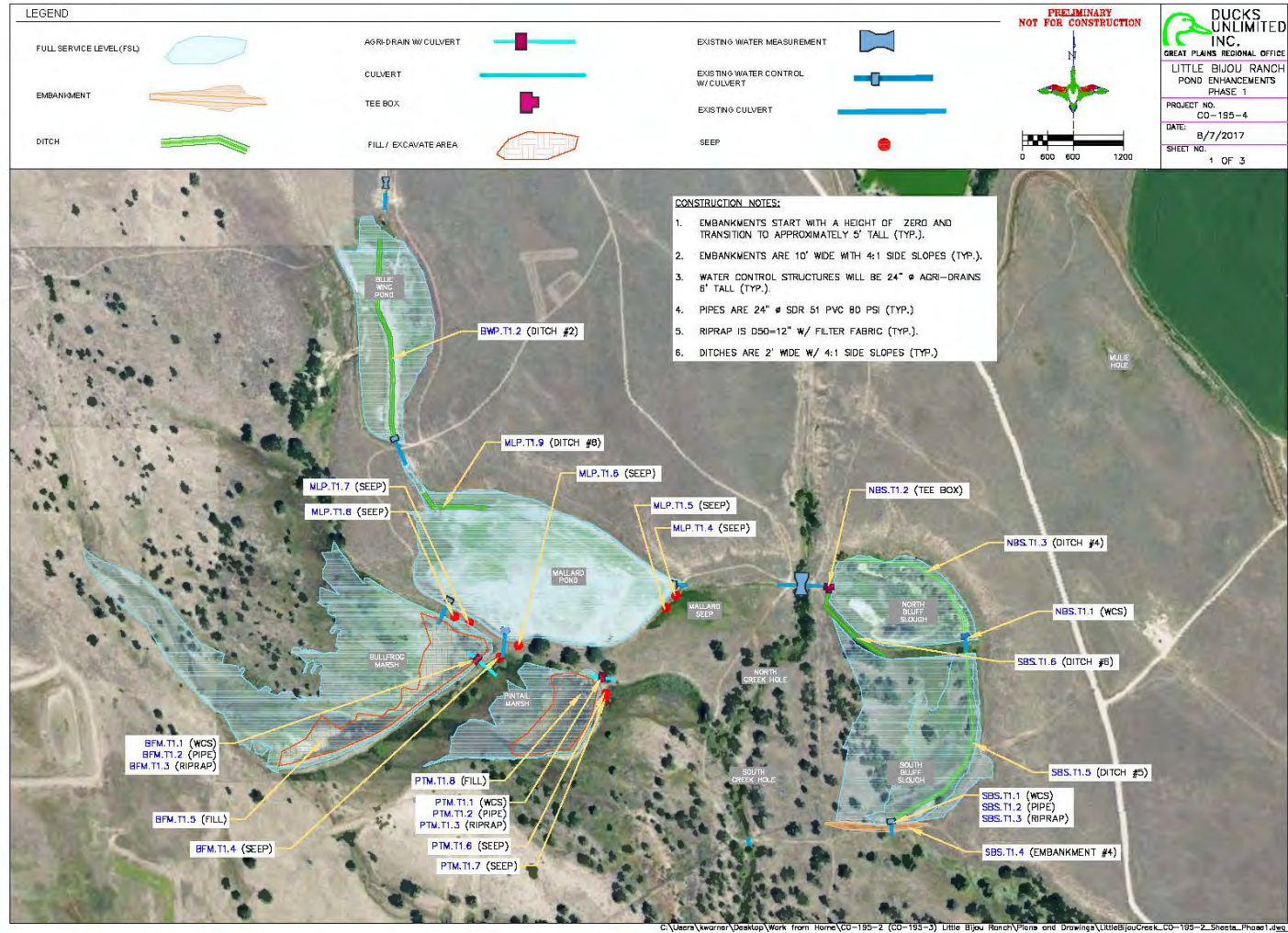
Petersen Bend Farm Augmentation Complex:

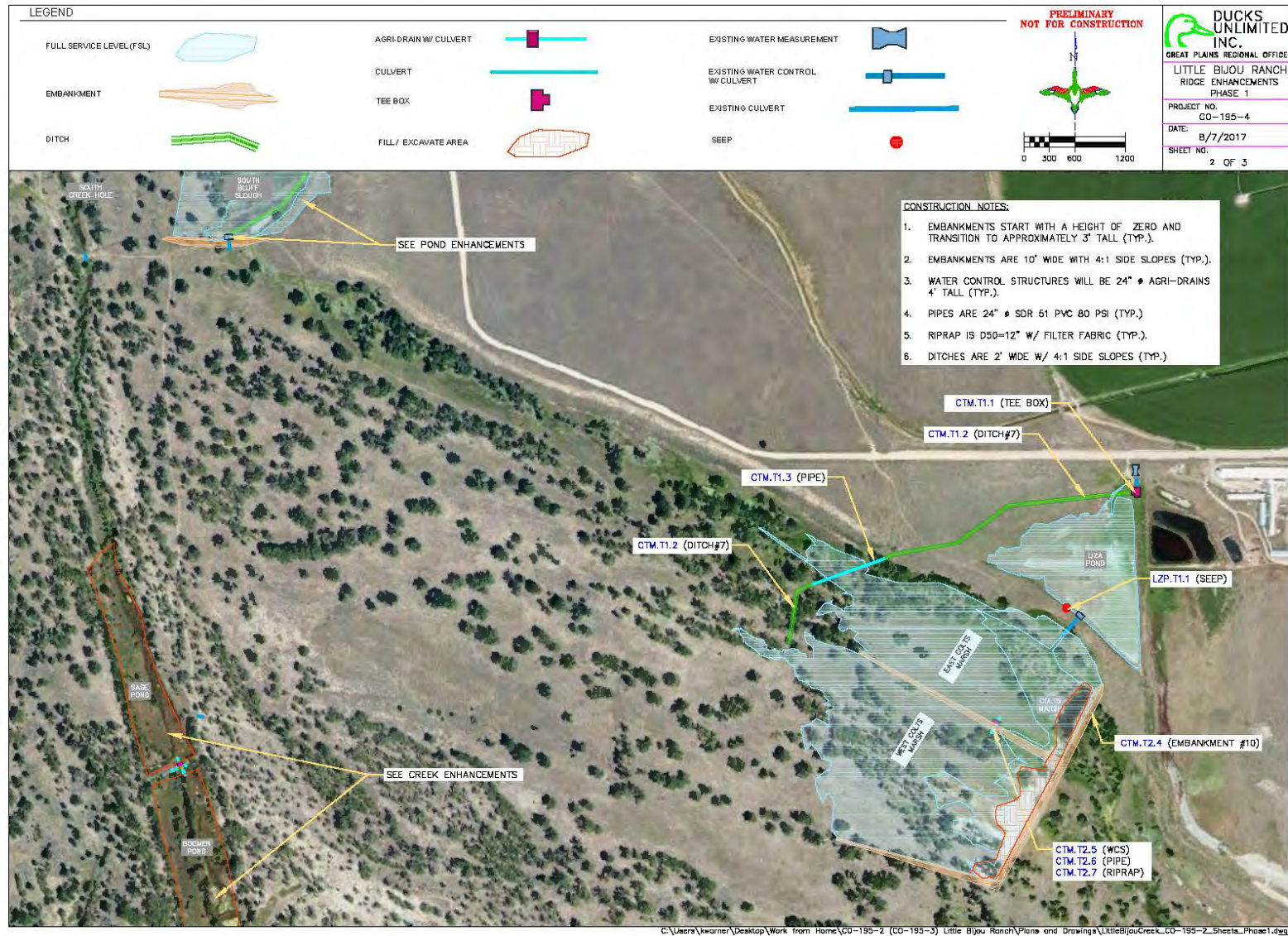
The map below identifies the property boundaries and preliminary location of the proposed groundwater recharge ponds, and associated acres.

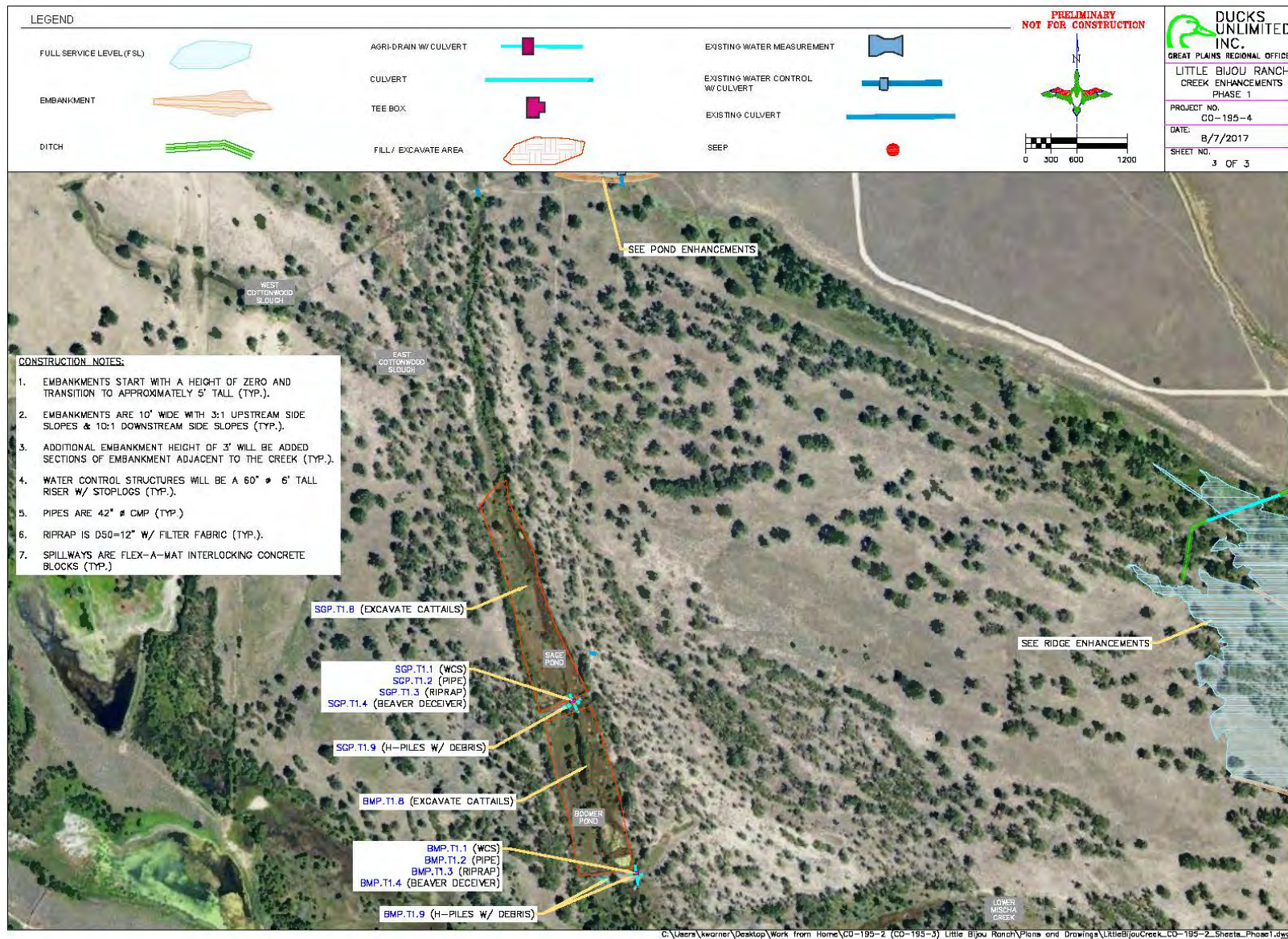


Bijou Wetlands:

Below are three conceptual engineering designs for a component of the Bijou Wetland Project.







Desilets Restoration and Acquisition:

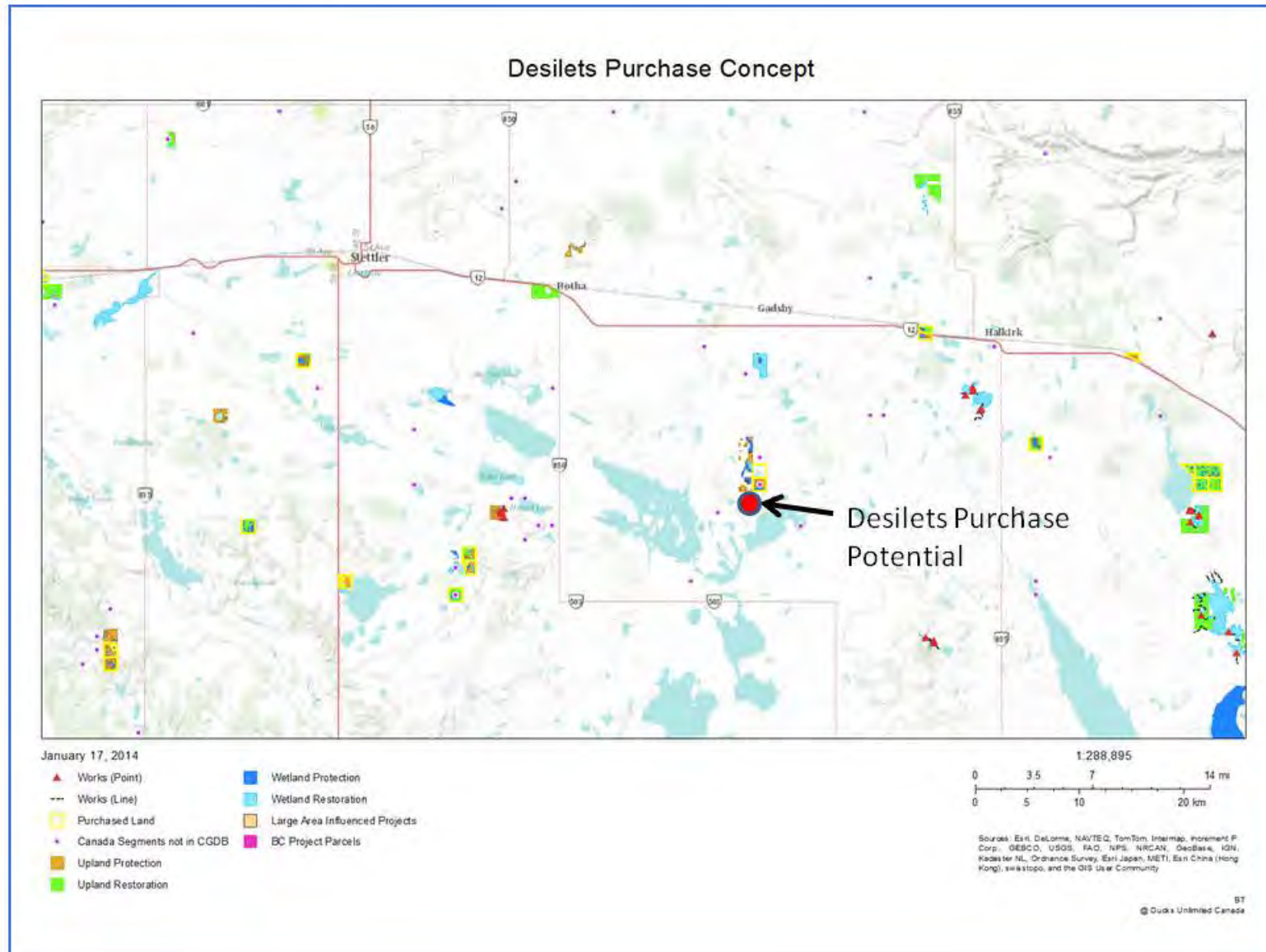
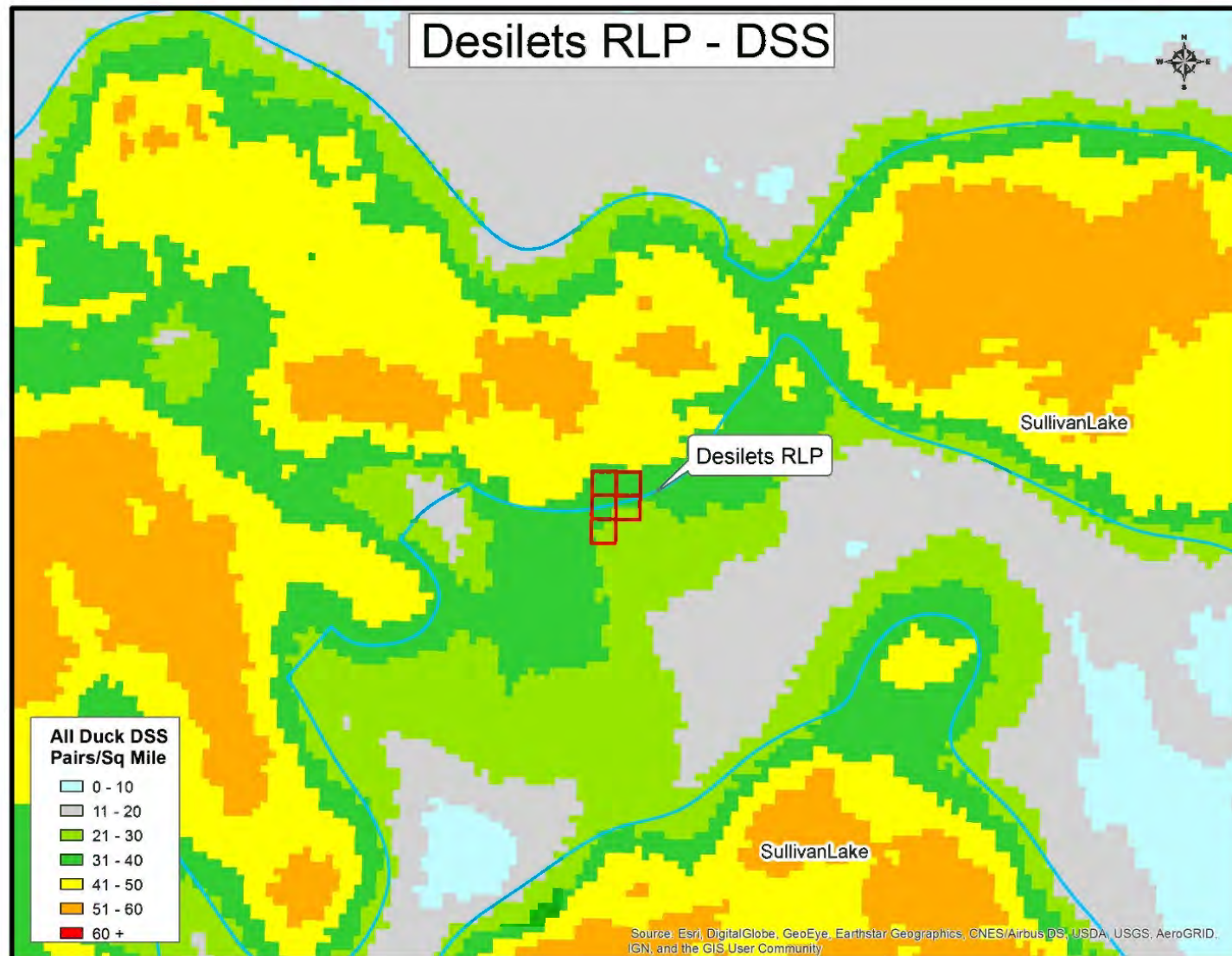
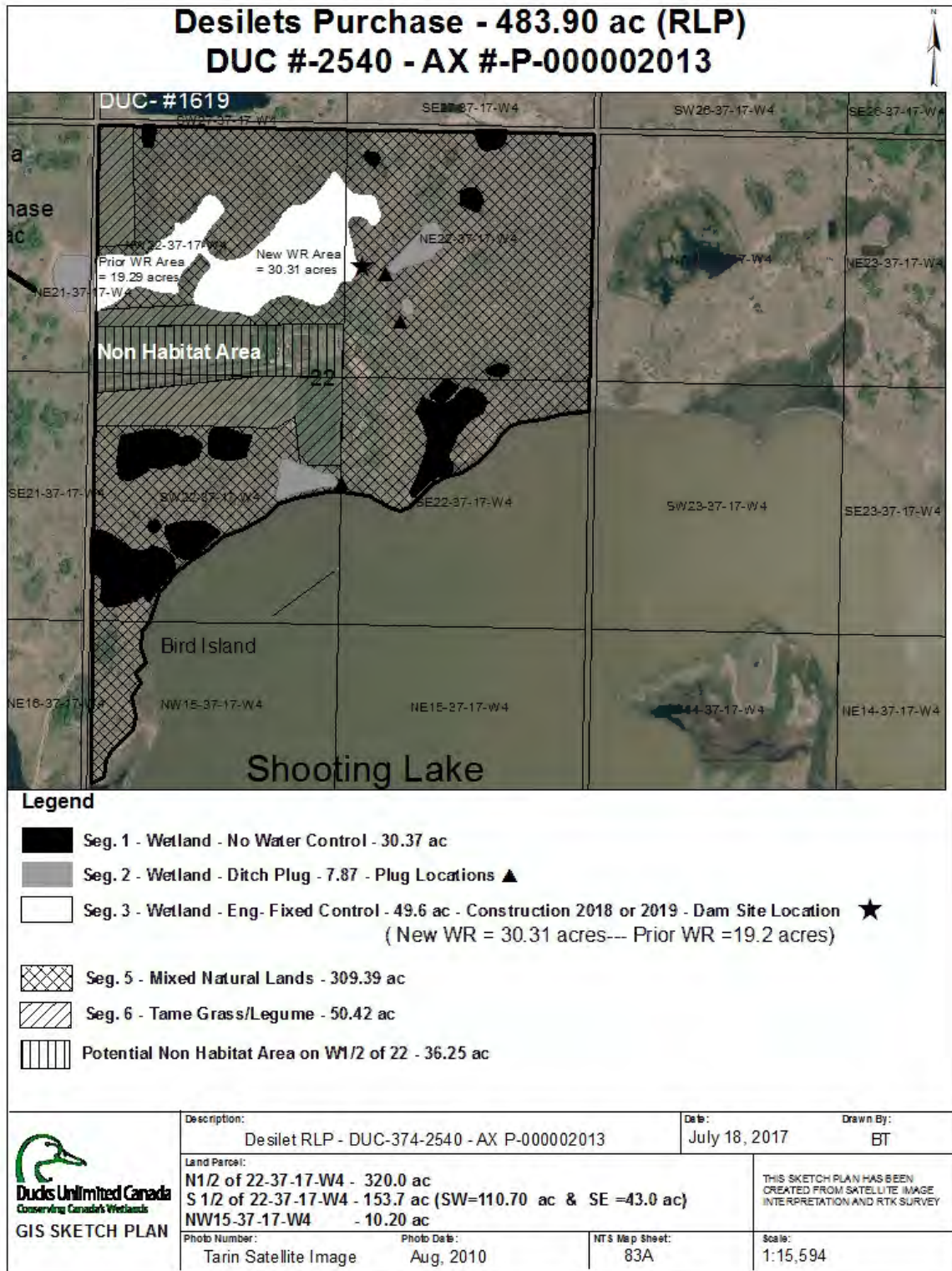


Figure shows the duck density results of the Desilets Decision Support System values for all species, in relation to the proposed site.

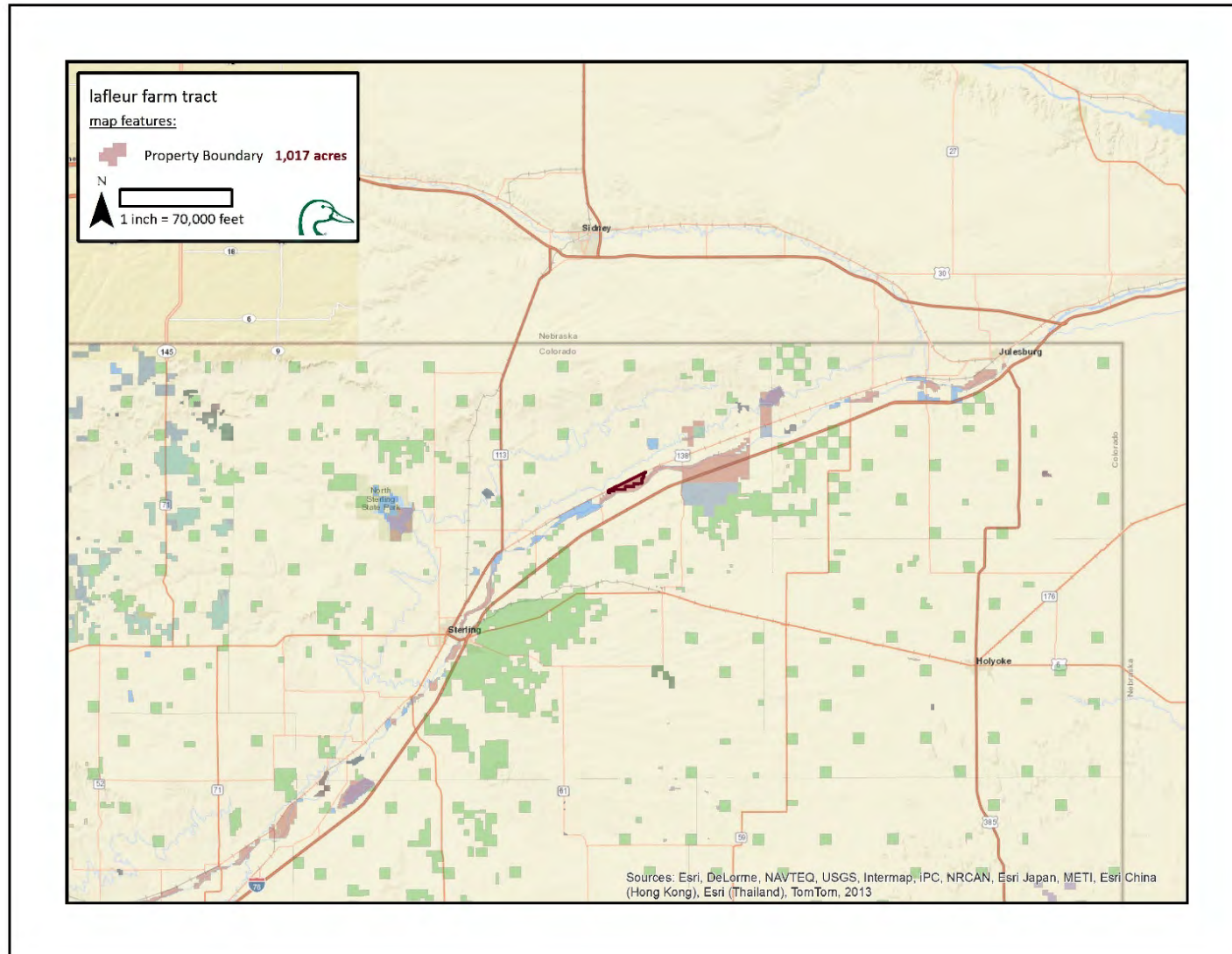


Overview of the Desilets property and preliminary engineering design.

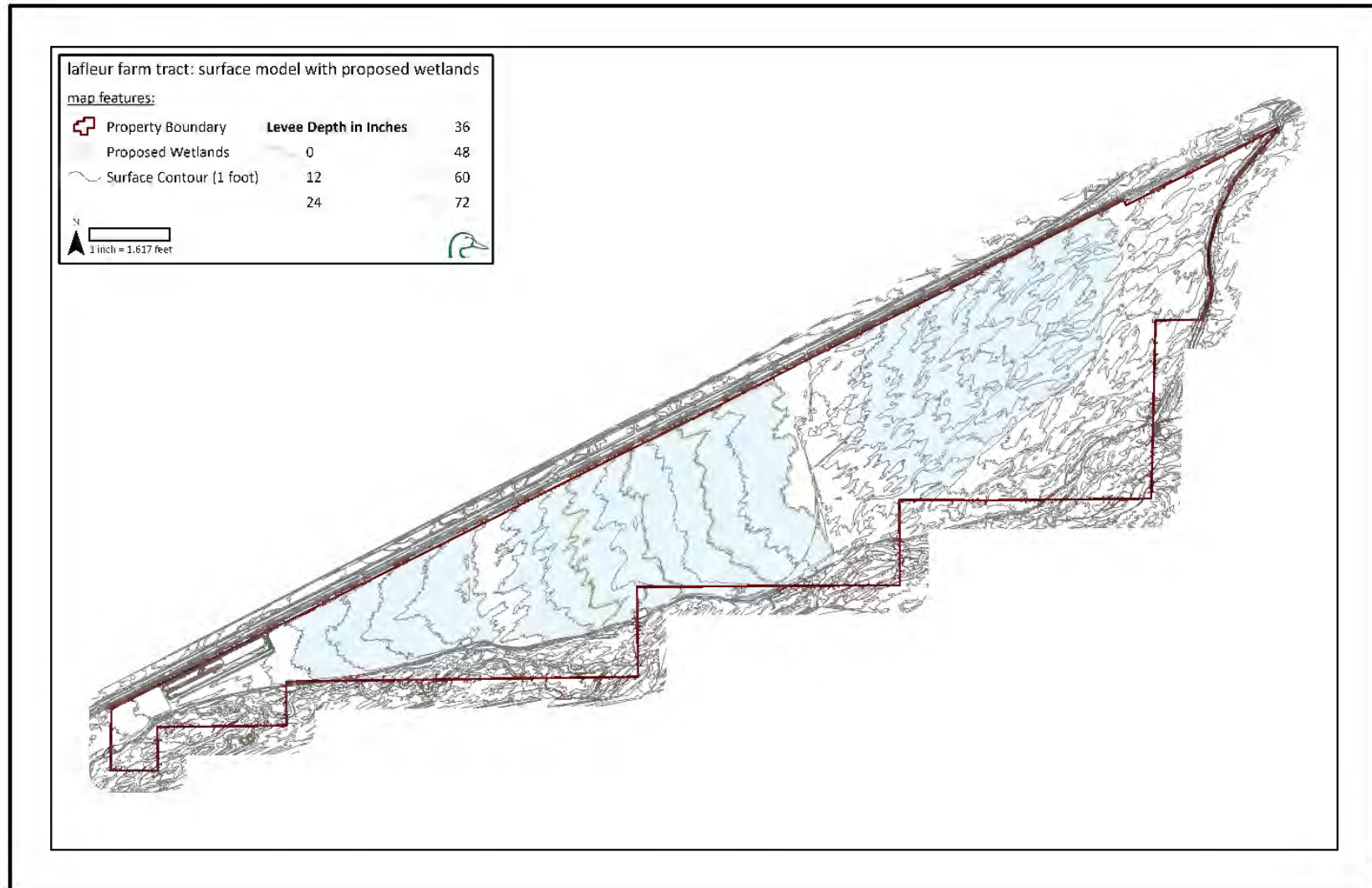


LaFleur Wetlands

Property location map (South Platte River).



Lafleur property, topographic overlay. Proposed wetlands would concentrate on the eastern half.



Appendix C: Conservation Easement Template

DEED OF CONSERVATION EASEMENT

2018

Pursuant to the requirements of Section 13 (Transfer of Property) of this Deed, any time the Property or a permitted portion thereof is transferred by Grantor to any third party, Grantor shall pay a fee of $\frac{1}{4}$ of 1% of the sale price to Grantee and notify Grantee.

NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED USING FUNDS THROUGH THE NORTH AMERICAN WETLANDS CONSERVATION ("NAWCA") PURSUANT TO U.S. FISH AND WILDLIFE SERVICE ("USFWS") ASSISTANCE AWARD #F16AP00998 ("GRANT") TO DUCKS UNLIMITED, INC, A COPY OF WHICH IS KEPT AT THE OFFICES OF USFWS DIVISION OF BIRD HABITAT CONSERVATION, 1849 C ST., NW, WASHINGTON, D.C. 20240, AND AT THE OFFICES OF WETLANDS AMERICA TRUST, ONE WATERFOWL WAY, MEMPHIS, TN 38120. THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY THAT ARE INTENDED TO PROTECT THE CONSERVATION VALUES IDENTIFIED IN RECITAL C.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this ____ day of _____, 2018, by _____ ("Grantor"), whose address is _____, to _____ ("Grantee"), whose address is _____ (individually a "Party" and collectively the "Parties").

The following exhibits are attached hereto and are incorporated by reference:

Exhibit A: Legal Description of the Property

Exhibit B: Map of the Property

Exhibit C: Water Rights

Exhibit D: Sample Notice of Transfer of Property

RECITALS:

- A. *Description of Property.*** Grantor is the owner of the fee simple interest in the subject property legally described in Exhibit A and depicted in Exhibit B, consisting of approximately 497 acres of land, together with existing improvements (as further described in Section 4, Property Improvements of this Deed), water and mineral rights owned by Grantor associated with and

with or appurtenant to the property located in Logan County, State of Colorado (“the Property”).

- B. *Qualified Organization.*** Grantee is a “qualified organization,” as defined in §170(h)(3) of the Internal Revenue Code (I.R.C.) and Treasury Regulation § 1.170A-14(c) and is a charitable organization as required under § 38-30.5-104 (2) of the Colorado Revised Statutes (C.R.S.), is certified to hold conservation easements for which a state tax credit is claimed by the State of Colorado’s Division of Real Estate as outlined in C.R.S. §12-61-724 and in Rule 2.1 of the Code of Colorado Regulations, Qualifications for Certification to Hold Conservation Easements (4 CCR 725-4, Rule 2.1), for the current year. Grantee is also accredited by the Land Trust Accreditation Commission, a national accreditation program sponsored by the Land Trust Alliance, at this time. Further, Grantee’s mission is to preserve the significant open lands and natural heritage of Colorado through private and public partnerships, innovative land conservation techniques and strategic leadership, and it possesses the resources and commitment to protect and defend the conservation purposes of this grant.
- C. *Conservation Purposes.*** Pursuant to I.R.C. § 170(h)(4)(A) and Treasury Regulation § 1.170A-14(d), the conservation purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by or education of the general public; (2) to protect relatively natural habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures.

The conservation purposes of this Easement (“Conservation Purposes”) are as follows:

- C1. *Relatively Natural Habitat*** [§ 1.170A-14(d)(3)]. The Property contains cottonwood forests, marsh wetlands and riparian areas. Together, these habitat types provide plant community and wildlife species diversity on the Property. As such, the Property provides forage, cover, and migration corridors for many wildlife species, including several ranked as “Species of Greatest Conservation Need” by the Colorado Division of Parks and Wildlife, including Cassin’s Sparrow, Brewer’s Sparrow, and ferruginous hawk.
- C2. *Open Space*** [§ 1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved for the scenic enjoyment of the general public and pursuant to a clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit.
- C3. *Scenic Enjoyment.*** The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visible to the general public from U.S. Highway 138 and the Tamarack Ranch State Wildlife Area across the river from the Property. These viewpoints allow the general public to enjoy characteristic landscapes of the eastern plains of Colorado. Preservation of the Property will continue to provide an opportunity for the general public to appreciate the unobstructed scenic views it provides of an open and undeveloped landscape. The terms of this Deed do not permit a degree of intrusion or future development that would interfere with the essential quality of the

land.

- C4. *Agriculture.*** The Property is currently used for agricultural purposes including irrigated crop production. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production. The provisions of this Deed ensure that the Property will be available for agricultural production in accordance with I.R.C. §170(b)(E)(iv)(II).
- C5. *Significant Public Benefit.*** The Property and surrounding area have been identified as a conservation priority by the Colorado Conservation Partnership's, Keep It Colorado Initiative because it lies within the South Platte River Corridor. The Property is located adjacent to the Tamarack Ranch State Wildlife Area, serving as a critical buffer to those public lands. The Property falls within the Colorado Division of Wildlife's High Priority Habitats because it provides a tremendous value to a variety of wildlife species and wetland dependent biota. It is also located within one of The Nature Conservancy's Eco-regional Priority Areas which have the highest probability of ensuring the continued persistence of the full range of an eco-region's biodiversity. Wetlands on the Property provide a variety of ecosystem services including water purification, ground water recharge, floodwater detention, surface flow regulation, wildlife habitat and erosion control.

The Conservation Purposes set forth in this Recital C shall hereafter be referred to as the "Conservation Values." These Conservation Values are of great importance to the Parties, the residents of Logan County, and the State of Colorado.

- D. *State Policy Concerning Conservation Easements.*** C.R.S. § 33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. § 35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." C.R.S. § 38-30.5-102 provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land . . ."
- E. *NAWCA.*** The purposes of the North American Wetlands Conservation Act (NAWCA) are: "to encourage partnership among public agencies and other interests (1) to protect, enhance, restore, and manage, an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries." This Easement is being partially purchased with NAWCA funding in part to further the Act's government policy of protecting diverse ecosystems and migratory bird populations. Grantee submitted a grant

application, that in competition with other applications across the region, NAWCA found to warrant award of a Grant to conserve the wet lands and open space values of the Property.

- F. **Other Supporting Government Policy.** The protection of the Property is supported by the following public policies:

The Logan County Master Plan, Section II, provides support for the conservation of agricultural and natural resources and the preservation of open space within the county. The plan's vision for the future of the county emphasizes protecting the environment, conserving the county's natural resources, and preserving and enhancing open space lands.

The Logan County Master Plan, Section IV, indicates that it is also the policy of the county "to preserve, protect and encourage the development and improvement of agricultural land for food production and other agricultural products."

The Western Governors' Association Policy Resolution 08-21 supports "voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife and other values."

- G. **Documentation of Present Conditions.** Pursuant to Treasury Regulation §1.170A-14(g)(5) and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by _____ and dated _____ ("Present Conditions Report"). The Present Conditions Report documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Report has been provided to the Parties and is acknowledged by the Parties as an accurate representation of the Property at the time of the conveyance. The Present Conditions Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.
- H. **Conservation Easement.** This Deed creates a perpetual conservation easement in gross, as defined by C.R.S. §38-30.5-102 and §38-30.5-103 and of the nature and character described in this Deed ("Easement").
- I. **Charitable Donation.** Insert applicable language, either: "Grantor intends to sell a portion of the property interest conveyed by this Deed to the Grantee, and to donate to the Grantee the remaining property interest conveyed by this Deed, so that it may qualify as a tax deductible gift pursuant to I.R.C. §170(h), Treasury Regulation §1.170A-14, and C.R.S. §38-30.5-101 *et seq.*".

ACKNOWLEDGEMENT OF PURPOSE AND INTENT

As a guide to the interpretation of this Deed and administration of this Easement, the Parties, for themselves, and for their successors and assigns, expressly declare their agreement and dedication to the following purpose and intent:

- I. **Purpose.** The purpose of this Easement is to preserve and protect the Conservation Values in perpetuity in accordance with I.R.C. §170(h), Treasury Regulation § 1.170A-14, and C.R.S. §38-30.5-101 *et seq.* (“Purpose”).
- II. **Intent.** The intent of the Parties is to permit acts on and uses of the Property that are consistent with the Purpose and to restrict or prohibit acts on and uses of the Property that are not consistent with the Purpose (“Intent”). In this Deed, “consistent with the Purpose” shall mean acts on and uses of the Property that do not have significant negative impact or permanent negative impact on the Conservation Values as determined by Grantee in its sole discretion. Nothing in this Deed is intended to compel a specific act on or use of the Property other than the preservation and protection of the Conservation Values.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. **Conveyance of Easement.** Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, this Easement, an immediately vested interest in real property, in perpetuity.
2. **Rights Conveyed to Grantee.** To accomplish the Purpose, the following rights are hereby conveyed to Grantee, its employees and its representatives:
 - 2.1. To preserve and protect the Conservation Values;
 - 2.2. To prevent acts on or uses of the Property that are not consistent with the Purpose and, except as limited by Section 7 (Responsibilities of the Parties Not Affected) of this Deed, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent act or use;
 - 2.3. To enter upon the Property in order to monitor Grantor’s compliance with the terms of this Deed pursuant to Section 8 (Monitoring) of this Deed, and to enforce the terms of this Deed pursuant to Section 9 (Enforcement) of this Deed.
 - 2.4. To have all Development Rights as defined in Section 14 (Development Rights) of this Deed, except as specifically reserved by Grantor herein.

2.5. To have all other rights conveyed by this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act on or use of the Property that is not prohibited or restricted by this Deed, provided that such acts or uses are consistent with the Purpose. Specifically, Grantor retains the right to practice agriculture, subject to the terms of this Deed.

4. **Property Improvements.** Improvements existing as of the date of this Deed are permitted. All other construction or placement of improvements is prohibited except as provided herein.

4.1. **Residential and Nonresidential Structures.** The construction, placement, replacement, enlargement, maintenance and repair of residential and nonresidential structures and improvements is permitted pursuant to the limitations set forth herein. For purposes of this Deed, "Residential Improvements" are defined as covered structures containing habitable space, including homes, cabins, guest houses, and any space attached to a home, cabin or guest house such as a garage, and any other structures intended for full or part-time human habitation. For purposes of this Deed, "Nonresidential Improvements" are defined as covered structures and not intended for human habitation and include, but are not limited to, barns, pole barns, sheds, arenas, and free-standing garages.

4.1.1. **Building Envelope.** There shall be _____ () building envelopes permitted on the Property (individually referred to herein as "Building Envelope X" and "Building Envelope Y" and collectively referred to herein as the "Building Envelopes"). All Residential Improvements and Nonresidential Improvements (with the exception of Nonresidential Improvements permitted by Section 4.1.2 below) constructed after the date of this Deed shall be located within the Building Envelope(s).

4.1.1.1. **Building Envelope X.** Building Envelope X consists of _____ () acres. The location of Building Envelope X is legally described on Exhibit ___ and generally depicted on Exhibit ___. On the date of this Deed, _____ improvements are located within Building Envelope X, a (Residential/Non-residential Improvement) consisting of _____ square feet of Footprint, and [insert as appropriate].

4.1.1.2. **Building Envelope X Limitations.** Grantor may construct, place, replace, or enlarge Residential or Nonresidential Improvements within Building Envelope X subject to the following limitations.

4.1.1.2.1. The maximum number of Residential Improvements (including attached appurtenances) shall not exceed _____.

- 4.1.1.2.2. The maximum Footprint, as defined below, for each Residential Improvement shall not exceed _____ square feet.
- 4.1.1.2.3. The maximum Height, as defined below, for each Residential Improvement shall not exceed 16 feet.
- 4.1.1.2.4. The maximum Footprint for each Nonresidential Improvement shall not exceed _____square feet.
- 4.1.1.2.5. The maximum Height for each Nonresidential Improvement shall not exceed 20 feet.
- 4.1.1.2.6. The total cumulative Footprint for all Residential Improvements shall not exceed _____square feet.
- 4.1.1.2.7. The total cumulative Footprint for all Nonresidential Improvements shall not exceed_____ square feet.
- 4.1.1.2.8. The total cumulative Footprint for all improvements shall not exceed _____square feet.
- 4.1.1.2.9. Improvements in excess of the foregoing require Grantee approval pursuant to Section 21 (Grantee's Approval) of this Deed.
- 4.1.1.2.10. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose and Intent.

4.1.2. ***Outside of the Building Envelope(s).*** On the date of this Deed, the following improvements are located outside of Building Envelope X (or the Building Envelopes):

4.1.2.1. ***Construction Limitations.*** Grantor may construct, place, replace or enlarge Nonresidential Improvements outside of the Building Envelopes subject to the following:

- 4.1.2.1.1. The maximum number of Nonresidential Improvements shall not exceed _____.

- 4.1.2.1.2. The maximum Footprint for each Nonresidential Improvement shall not exceed 300 square feet.
- 4.1.2.1.3. The maximum Height for each Nonresidential Improvement shall not exceed 20 feet.
- 4.1.2.1.4. The total cumulative Footprint for all Nonresidential Improvements shall not exceed_____ square feet.
- 4.1.2.1.5. Improvements in excess of the foregoing require Grantee approval pursuant to Section 21 (Grantee's Approval) of this Deed.
- 4.1.2.1.6. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose and Intent.

4.1.3. ***Repair and Maintenance.*** Grantor may repair and maintain permitted improvements without further consent of Grantee.

4.1.4. ***Notice.*** Prior to the placement, construction, replacement or enlargement of any Residential Improvement or Nonresidential Improvement as permitted by Section 4.1.1, Grantor shall notify Grantee in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. The written notice shall describe the proposed improvement in sufficient detail (i.e. location, size, scope, design, nature) to allow Grantee to evaluate the consistency of the proposed improvement with this Section.

4.1.5. ***Definition of Footprint.*** For purposes of this Deed, Footprint is defined as the total ground area occupied by all Residential Improvements or Nonresidential Improvements, calculated on the basis of the exterior dimensions (whether at or above ground level) including carports or breezeways, but does not include eaves, uncovered decks or patios ("Footprint").

4.1.6. ***Measurement of Height.*** For purposes of this Deed, Height is defined as the vertical distance from the low point of the grade at the structure perimeter to the high point of the structure, ("Height"). For the purposes of this Deed, "Grade at the structure perimeter" means that either the natural grade or the finished grade, whichever is lower in elevation.

4.2. **Other Improvements.**

4.2.1. **Roads.** For purposes of this Deed, Improved Roads shall be defined as any road, driveway or parking area that is graded, drained, or has a surface other than the natural earthen material ("Improved Roads") and Unimproved Roads shall be defined as any track greater than three (3) feet wide where the natural earthen material is the driving surface ("Unimproved Roads").

4.2.1.1. **Within the Building Envelope(s).** Construction, maintenance, paving (e.g. concrete, asphalt, or other impermeable material) or otherwise surfacing of all Improved and Unimproved Roads is permitted within the Building Envelope(s).

4.2.1.2. **Outside of the Building Envelope(s).**

4.2.1.2.1. **Improved Roads.** No Improved Roads shall be constructed or established outside of the Building Envelope(s) except for those permitted Improved Roads depicted on Exhibit B or unless Grantee determines that the proposed road is consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed. Permitted Improved Roads may be relocated provided that the abandoned road shall be promptly revegetated and restored to a condition that is consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed. Improved Roads shall be no wider than physically or legally necessary to provide access.

4.2.1.2.2. **Unimproved Roads.** No Unimproved Roads shall be constructed or established outside of the Building Envelope(s) except for Unimproved Roads that are consistent with the Purpose. No Unimproved Road shall be altered to become an Improved Road unless Grantee determines that the proposed alteration is consistent with the Purpose, determined pursuant to Section 21 (Grantee's Approval) of this Deed.

4.2.2. **Fences.** Existing fences may be maintained, repaired and replaced and new fences may be built anywhere on the Property, provided that the location and design of said fences are consistent with the Purpose.

4.2.3. **Signs.** Existing signs may be maintained, repaired and replaced (with signs similar in character and size) in their current location. New signs may be placed and

maintained on the Property provided that the number and size of the new signs are consistent with the Purpose.

4.2.4. **Utility Improvements.** Existing energy generation or transmission infrastructure and other utility improvements, including but not limited to: (i) electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) domestic water storage and delivery systems; and (v) renewable energy generation systems including, but not limited to, wind, solar, geothermal, or hydroelectric ("Utility Improvements"), may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with Purpose.

4.2.4.1. **Within the Building Envelope(s).** Grantor may enlarge or construct Utility Improvements within the Building Envelope without further permission of Grantee, provided that no Utility Improvements exceed 35 feet in height.

4.2.4.2. **Outside of the Building Envelope(s).** Grantor shall not enlarge or construct Utility Improvements outside of the Building Envelope(s) without permission of Grantee. Prior to the enlargement or construction of Utility Improvements, Grantor shall provide notice so that Grantee can evaluate whether the proposal is consistent with Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed. Any permitted Utility Improvement shall be no more than 35 feet in Height.

4.2.4.3. **Additional Requirements.** Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose. Any easement, right of way or other interest granted to a third party or otherwise reserved, to be used for Utility Improvements is subject to Section 6.9 (Easements, Rights of Way or Other Interests) of this Deed.

4.2.5. **Water Improvements.** The maintenance and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, center pivot sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells is permitted. The construction of new water improvements or enlargement of existing water improvements, excluding ponds and reservoirs, is permitted provided that such activity is consistent with the Purpose. The enlargement of existing ponds or reservoirs, or the construction of new ponds or reservoirs, is permitted provided that Grantee determines that said activities are consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed. Any portion of the Property that is disturbed by the maintenance, repair, construction or enlargement

of water improvements shall be restored to a condition that is consistent with the Purpose promptly after said activity is completed.

- 4.2.6. **Miscellaneous Improvements.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers are prohibited unless Grantee determines that the proposed tower is consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed or as otherwise expressly permitted by this Deed.

5. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below.

If Grantee believes any resource management practice(s) are not consistent with the Purpose, Grantee, in addition to all of its rights under this Deed, may request that the Parties consult with a mutually acceptable resource management professional. This professional will provide written recommendations for said resource management practice(s). The cost of this consultation shall be borne by Grantor. Grantee shall determine whether said recommendations are consistent with the Purpose.

- 5.1. **Agriculture.** All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover. If agricultural acts or uses are no longer practiced on the Property, either Party may request that the Parties develop a mutually acceptable plan to ensure appropriate land cover that is consistent with the Purpose. The expense of developing and implementing said plan shall be borne by Grantor.
- 5.2. **Timber.** On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted improvements. Tree thinning activities are permitted to maintain the character and nature of the wildlife habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor's expense, provided that Grantee determines that said activities and management plan are consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed.
- 5.3. **Relatively Natural Habitat.** Habitat management activities that have the potential to negatively impact the Conservation Values such as chaining juniper or sagebrush, constructing or altering ponds, wetlands, or stream channels, and conducting controlled burns may be permitted provided that Grantee determines that said management activities are consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed.

5.4. **Minerals.** For the purposes of this Deed, minerals shall be defined as soil, sand, gravel, rock, stone, decorative stone, gold and other rare earth elements, oil, natural gas, coalbed methane (including any and all substances produced in association therewith from coalbearing formations), hydrocarbon, fossil fuel, or any other mineral substance, of any kind or description, on, in, under or part of the Property (collectively referred to as “Minerals”).

5.4.1. **Ownership of Minerals.** As of the date of this Deed, Grantor owns all of or a controlling interest in the Minerals and mineral rights located on, under, or in the Property or otherwise associated with the Property. Grantor shall not transfer or otherwise separate any mineral rights from the Property.

5.4.2. **Mineral development.** The exploration, development, mining or other extraction or removal of Minerals, conducted on, under, or in the Property or otherwise associated with the Property by any method is prohibited. Notwithstanding the foregoing, subject to Grantee’s approval Section 21 (Grantee’s Approval), Minerals may be removed from below the surface of the property provided that the location of all equipment, pumps, storage facilities, pipelines, and any other infrastructure, or other activities necessary for extraction, storage, or transportation is located off of the Property, extraction takes place off the Property, and that the method and means of extraction is consistent with the Purpose.

5.4.3. **Notice Related to Minerals.** Grantor agrees that by granting this Easement to Grantee, it has given Grantee a portion of its ownership interest in the Property, and by so doing, given Grantee the same legal rights as Grantor to influence and control impacts to the surface of the Property from exploration or development of Minerals. This ownership interest does not include any right for Grantee to receive any income, royalties or lease payments from exploration or development of Minerals. Grantee’s ownership interest requires that if Grantor is contacted verbally or in writing regarding the Minerals, Grantor shall provide written notice, copy, or description to Grantee of said contact within ten (10) days.

5.4.3.1. For purposes of this Deed, the term “Mineral Document” shall mean any lease, pooling agreement, unitization agreement, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals.

5.4.3.2. Grantor shall not enter into any Mineral Document without Grantee approval pursuant to Section 21 (Grantee’s Approval) to ensure that said document is consistent with the Purpose and this Section, and Grantee shall have the right but not the obligation to be a party to any such agreement, if Grantee chooses, in its sole discretion. Grantee shall have

the right to charge a fee to Grantor for time and costs associated with review of any Mineral Document.

- 5.5. **Geothermal Resources.** Within the Building Envelope, the development and use of geothermal resources is permitted without Grantee's approval, provided that it is consistent with the Purpose. Outside the Building Envelope, the development and use of geothermal resources is prohibited without Grantee approval pursuant to Section 21 (Grantee's Approval).
- 5.6. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, hunting and fishing are permitted, provided they are consistent with the Purpose.
- 5.7. **Weeds.** The Parties recognize the potential negative impact of noxious weeds and invasive plant species on the Conservation Values. Grantor shall manage noxious weeds and invasive plant species in a manner consistent with the Purpose. Grantee has no responsibility for the management of noxious weeds and invasive plant species.
- 5.8. **Water Rights.** Pursuant to C.R.S. § 38-30.5-102, which authorizes the inclusion of "water rights beneficially used upon the land...owned by Grantor" in a conservation easement, the Property subject to this Easement includes any and all right, title and interest in and to the water rights described in Exhibit C ("Water Rights").
- 5.8.1. **Permitted Uses of Water Rights.** The Parties agree that the Water Rights are hereby dedicated and restricted exclusively to be used for the preservation and protection of the Conservation Values ("Permitted Water Uses"), and that Grantor shall continue to maintain their historic beneficial use.
- 5.8.2. **Restrictions on Water Rights.** Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not abandon or allow abandonment of the Water Rights by action or inaction. Grantor shall not change the historic beneficial use of the Water Rights unless Grantee determines that said change is consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed. No change of the point of diversion of the Water Rights shall be submitted for judicial approval unless Grantee determines that the proposed change of point of diversion is consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed.
- 5.8.3. **Protection of Water Rights.** Grantor shall cooperate with Grantee to help assure the continued historical beneficial use of the Water Rights in order to preserve and protect the Conservation Values. Grantee may request that Grantor report to Grantee annually regarding the nature and extent of Grantor's use of the Water Rights during the prior year, which report need not be in writing. Grantor shall also provide Grantee with copies of any reports or correspondence submitted to the State or Division Engineer or Water Commissioner. Grantor shall provide Grantee with a copy of any written notice or pleadings received by Grantor from any state

water official or any other person concerning the possible abandonment of the Water Rights within 30 days of receipt thereof.

- 5.8.4. ***Abandonment of Water Rights.*** If the Water Rights appear on decennial abandonment list, or if Grantee determines that the Water Rights are subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat. Grantor shall also be considered notified if Grantor receives notice from any state water official or any other person concerning the possible abandonment of the Water Rights. Upon notification, the Parties shall work in good faith to develop and implement a mutually acceptable strategy to cure the threat of abandonment. Grantor shall have 90-days from notification to demonstrate action to rebut the presumption of abandonment of the Water Rights. If the Parties cannot reach a mutual agreement, or Grantor has failed to take action to cure the threat of abandonment of the Water Rights within 90 days of notification, Grantee shall, , in addition to any other remedies available to Grantee under this Deed or by law, have the right to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (ii) seek removal of the Water Rights from the abandonment list; (iii) defend the Water Rights against any other claim of abandonment; (iv) seek to change the Water Rights to another Permitted Water Use; and (v) require Grantor to convey all or part of the Water Rights to Grantee for continued use on the Property or elsewhere in the same water district or elsewhere consistent with Grantee's mission. Grantor agrees to cooperate in any manner necessary to accomplish Grantee's election, and at Grantee's request, agrees to authorize and appoint Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.
- 5.8.5. ***Ditch or Reservoir Company.*** C.R.S. §38-30.5-104(5) requires that, when a conservation easement encumbers a water right represented by shares in a mutual ditch or reservoir company, sixty (60) days notice must be given to said company before the conservation easement may be conveyed. This requirement has been fulfilled.

6. ***Restricted Acts and Uses.***

- 6.1. ***Subdivision.*** The Parties agree that the division, partition, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times the Property shall be owned and conveyed as a single unit which shall be subject to the provisions of this Deed. Ownership of the single unit by joint tenancy or tenancy in common is permitted, consistent with Sections 29 (Joint and Several Liability) and 30 (Ownership by Single Entity Consisting of Multiple Parties); provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the single unit.

- 6.2. **Surface Disturbance.** Any alteration of the surface of the land, including without limitation, the movement, excavation, extraction or removal of soil, sand, gravel, rock, peat or sod, is prohibited, unless such alteration is associated with permitted acts on and uses of the Property and is consistent with the Purpose.
- 6.3. **Industrial or Commercial Activity.** Industrial uses of the Property are prohibited. Commercial uses of the Property that are not consistent with the Purpose are prohibited.
- 6.4. **Feedlot.** The establishment or maintenance of a feedlot is prohibited. For purposes of this Deed, “feedlot” is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of finishing or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for feeding or calving, or from leasing pasture for the grazing of livestock owned by others.
- 6.5. **Public Access.** Nothing contained in this Deed shall be construed as affording the public access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as Grantor deems appropriate, provided that such access is consistent with the Purpose.
- 6.6. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is consistent with the Purpose. The storage or accumulation of agricultural products and by-products on the Property is permitted provided that such activity is conducted in accordance with all applicable government laws and regulations and is consistent with the Purpose.
- 6.7. **Hazardous Materials.** For purposes of this Deed, “Hazardous Materials” shall mean any “hazardous substance” as defined in §9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), “pollutant or contaminant” as defined in § 9601(33) of CERCLA, or any hazardous waste as defined in C.R.S. §25-15-101(6). 40 C.F.R. § 302.4 provides a non-exhaustive list of over 600 substances that qualify as hazardous substances under CERCLA. The use, treatment, storage, disposal, or release of Hazardous Materials shall only be permitted in accordance with applicable, federal, state and local law and regulations.
- 6.8. **Motorized Vehicle Operation.** The operation of motorized vehicles for purposes associated with permitted acts on and uses of the Property is permitted provided that such operation is consistent with the Purpose and Intent.
- 6.9. **Easements, Rights of Way or Other Interests.** The conveyance or modification of an easement, right of way, Mineral Document or other similar interest is prohibited unless Grantee determines that the proposed conveyance or modification is consistent with the Purpose and Intent pursuant to Section 21 (Grantee’s Approval) of this Deed.
7. **Responsibilities of the Parties Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing

obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible for and Grantee shall have no obligation for the upkeep and maintenance of the Property, and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

7.1. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

7.2. **Liability.**

7.2.1. **Environmental Liability.**

7.2.1.1. Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) the existence, generation, treatment, storage, use, disposal, deposit or transportation of Hazardous Materials in, on or across the Property; (ii) the release or threatened release of Hazardous Materials on, at, beneath or from the Property; (iii) the existence of any underground storage tanks on the Property; or (iv) a violation or alleged violation of, or other failure to comply with, any federal, state, or local environmental law or regulation by Grantor or any other prior owner of the Property.

7.2.1.1.1. Notwithstanding anything in this Deed to the contrary, this Deed does not impose any liability on Grantee for Hazardous Materials, nor does it make Grantee an owner of the Property, nor does it require Grantee to control any act on or use of the Property that may result in the treatment, storage, disposal or release of Hazardous Materials, all within the meaning of CERCLA or any similar federal, state or local law or regulation.

7.2.1.2. **Grantor's Liability.** Grantor shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless caused

solely by the willful and wanton act or omission [as defined by C.R.S. §13-21-102(1)(b)] of the Indemnified Parties; (ii) the obligations under this Section; or (iii) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property.

7.2.1.3. **Grantee's Liability.** Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

8. **Monitoring.** In order to monitor Grantor's compliance with the terms of this Deed, Grantee shall have the right to enter upon the Property upon reasonable prior notice to Grantor. Said notice need not be in writing. Grantee may engage such experts or consultants that Grantee deems necessary to assist in monitoring, including conducting aerial flyovers of the Property. Such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

9. **Enforcement.**

9.1. **General Provisions.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. If Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of the terms of this Deed, Grantee may enter the Property without advance notice. If such entry occurs, Grantee shall notify Grantor within a reasonable time thereafter. If Grantee determines that a violation has occurred, Grantee shall notify Grantor of the nature of the alleged violation. Said notice need not be in writing. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (i) if necessary, provide a written plan for restoration and remediation of the Property and, once approved, restore or remediate the Property in accordance with the plan; or (ii) provide written documentation demonstrating that the activity is permitted and is not a violation. Grantee's acceptance of Grantor's actions under (i) or (ii) above shall be in Grantee's sole discretion, and shall be confirmed by Grantee in writing. If Grantor is unable or unwilling to immediately cease the alleged violation, and comply with (i) or (ii) above, the Parties agree to resolve the dispute through mediation or judicial process. At any point in time, Grantee may take appropriate legal action, including seeking an injunction, to stop the alleged violation.

9.2. **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs and expenses of suit, attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed, shall be borne by Grantor. If the deciding body determines that Grantee has acted in bad faith in seeking to enforce the terms of this Deed, the Parties shall each be responsible for their own costs. If the Parties agree to mediation, the Parties will equally share the cost of the mediator's fees.

- 9.3. **Grantee's Discretion.** Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.
10. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits hereto), including typographical, spelling, or clerical errors. Such correction shall be by recorded written agreement signed by the Parties, with all associated costs being apportioned as the Parties may mutually agree.
11. **Amendment.** If circumstances arise under which an amendment to this Deed would be appropriate, as determined by the Grantee in its sole discretion, the Parties are free to jointly amend this Deed by mutual written consent. However, no amendment shall be allowed that will (i) confer a private benefit to Grantor or any other individual greater than the benefit to the general public [see Treasury Regulation §1.170A-14(h)(3)(i)]; (ii) result in private inurement for a board member, staff or contract employee of Grantee [see Treasury Regulation §1.501(c)(3)-1(c)(2)]; (iii) affect the qualifications of this Easement under any applicable laws; or (iv) affect the perpetual duration of the Easement. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any amendment must be in writing, signed by the Parties, and recorded in the official records of Logan County, Colorado.
12. **Transfer of Easement.** This Easement is transferable by Grantee, provided that (i) the conservation purposes which the contribution was originally intended to advance continue to be carried out; (ii) the transfer is restricted to an organization that, at the time of the transfer, is a qualified organization under I.R.C. § 170(h) and authorized to hold conservation easements under C.R.S. §§38-30.5-101, et seq. and C.R.S. §12-61-724; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist, a court with jurisdiction is authorized to transfer this Easement pursuant to (i), (ii), and (iii) above.
13. **Transfer of Property.** Any time the Property or a permitted portion thereof is transferred by Grantor to any third party, Grantor shall notify Grantee in writing within five (5) business days after closing using the form in Exhibit D, and shall include a copy of the new ownership deed. The document of conveyance shall expressly refer to this Deed. Grantor shall pay a fee of 1/4 of 1% of the purchase price, including the value of non-cash consideration, to Grantee as holder of the real property interest and right of possession represented by this Deed, excluding transfer to Grantor's direct descendants and family members, as defined by the Internal Revenue code, and excluding transfers for the sole purpose of changing the type of legal entity by which title is held. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this easement by providing Grantee a contribution toward its stewardship, enforcement and defense of this Easement. If a fee is attributable to a transfer of property classified as "residential real property," as defined in C.R.S. Section 38-35-127(2)(e), then the Grantee covenants and agrees that the fee shall be used for the purposes specified in C.R.S. Section 38-35-127(2)(b)(V) in a manner consistent with the Grantee's mission.

14. **Development Rights.** For purposes of this Deed, “Development Rights” are defined as all present or future rights to (i) construct, place, replace, enlarge, maintain or repair any improvements on the Property; or (ii) receive credit for density for development on or off the Property. By this Deed, Grantor conveys to Grantee all Development Rights associated with the Property except those Development Rights specifically reserved by Grantor, which include the right to make Residential Improvements and Nonresidential Improvements pursuant to Section 4.1 (Residential and Nonresidential Structures) of this Deed. Therefore, Grantor does not have the right to use or transfer any Development Rights held by Grantee.
15. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall have the right to participate in any proceedings as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, Grantee shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.
16. **Termination or Extinguishment of Easement.** Except as provided in Section 15 (Condemnation) of this Deed, this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Easement can be terminated or extinguished is the total loss of all Conservation Values. If termination or extinguishment occurs, Grantee shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.
17. **Compensation upon Condemnation, Termination, or Extinguishment.**
- 17.1. The Parties acknowledge that an appraisal of the Property has been completed that indicates that the fair market value of the Easement is thirteen percent (13%) of the full fair market value of the Property unrestricted by this Easement (“Proportionate Value Percentage”), which percentage shall remain constant and shall be applied pursuant to Treasury Regulation §1.170A-14(g)(6)(ii).
- 17.2. If the Property is condemned, in whole or in part, pursuant to Section 15 (Condemnation) or if this Easement is terminated or extinguished pursuant to Section 16 (Termination or Extinguishment of Easement), Grantee shall be entitled to a share of the proceeds of such action at least equal to the Proportionate Value Percentage of the full fair market value of the Property unrestricted by this Easement pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii). Grantor shall not voluntarily accept less than full fair market value of the affected Property unrestricted by this Easement without Grantee’s approval.
- 17.3. Grantee’s use of its share of such proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6).
- 17.4. Grantee’s remedies described in this Section shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to

recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108.

18. **No Merger, Abandonment, Release, or Adverse Possession.** Should Grantee in the future own all or a portion of the fee interest in the Property, Grantee as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Deed. In addition, this Easement shall not merge with the fee title without the prior written approval of Grantor. The Easement shall not be extinguished, in whole or in part, through the legal doctrine of merger in view of the public interest in its enforcement. This Easement cannot be abandoned, released, or affected by adverse possession.
19. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to either Party shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Notwithstanding the foregoing, each party's rights and obligations under the Easement created by this Deed shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.
20. **Change of Circumstance.** Grantor has considered that restricted acts or uses may become more economically valuable than permitted acts or uses. It is the intent of the Parties that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 16 (Termination or Extinguishment of Easement) of this Deed. In addition, the inability to carry on any or all of the permitted acts and uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 16 (Termination or Extinguishment of Easement) of this Deed.
21. **Grantee's Approval.** Where Grantee's approval is required by this Deed, Grantor shall provide written notice to Grantee not less than sixty (60) calendar days prior to the date Grantor intends to undertake the act or use, with sufficient detail (i.e. location, size, scope, design and nature) to allow Grantee to evaluate the consistency of the proposed act or use with the Purpose. Grantee shall approve or deny Grantor's written request, or notify Grantor of a delay in Grantee's decision, in writing within forty-five (45) calendar days of receipt of Grantor's written request. Grantee shall only approve acts or uses consistent with the Purpose. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing.
22. **Written Notices.** Any written notice that either Party is required to give to the other shall be delivered: (i) in person; (ii) via certified mail, with return receipt requested; (iii) via a commercial delivery service that provides proof of delivery; or (iv) via any delivery method mutually agreed to by the Parties, to the following addresses, unless one Party has been notified by the other Party of a change of address or ownership.

Grantor:

Grantee:

If addresses change, Grantor shall provide updated information to Grantee in a timely manner. If a notice mailed to either Party at the last address on file is returned as undeliverable, the sending Party shall provide notice by regular mail to the other Party's last known address on file with the tax assessor's office of the county in which the Property lies, and the mailing of such notice shall be deemed compliance with this Section. Notice given to the designated representative of a trust or business entity shall be deemed notice to the trust or business entity, and notice given to the designated representative of a common or jointly held ownership shall be deemed notice to all owners.

23. *Liens on the Property.*

23.1. ***Current Liens.*** Grantor represents and warrants that the Deed of Trust dated _____ and recorded on _____ at _____ **[recording # or book/page]** in the records of the Clerk and Recorder of _____ County is subordinate to the rights of Grantee under this Deed as evidenced by that certain Subordination Agreement dated _____, between Grantor and **[name of bank]** and recorded on _____, at Reception No. _____ **[or Book ____ Page ____]** in the records of the Clerk and Recorder of _____ County.

23.2. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is and shall remain subordinate to this Easement or any amendments hereto.

24. *Grantor's Representations and Warranties.*

24.1. Except as provided in Section 23.1 (Current Liens) of this Deed, Grantor represents and warrants that Grantor: i) has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year; ii) has the right to grant access to the Property to Grantee for the purposes described in this Deed and has in fact granted said access to Grantee; and iii) shall defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

24.2. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

24.2.1. No Hazardous Materials exist or have been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property; there has been no release or threatened release of any hazardous materials on, at, beneath, or from the Property; and there are no underground storage tanks located on the Property;

24.2.2. Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;

24.2.3. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

24.2.4. No civil or criminal proceedings or investigations have been threatened or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

25. **Acceptance.** Grantee hereby accepts without reservation the rights and obligations created by this Deed for which no goods or services were exchanged or provided.

26. **General Provisions:**

26.1. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

26.2. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

26.3. **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the one-year statute of limitation provided under C.R.S. § 38-41-119 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

26.4. **Controlling Law.** The provisions of this Deed are subject to the laws of the United States and the State of Colorado as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder.

26.5. **Liberal Construction.** The provisions of this Deed are to be liberally construed in favor of the Purpose, and any ambiguities or questions regarding the validity of specific provisions shall be interpreted in favor of maintaining the Purpose. Any decisions resolving such

ambiguities or questions shall be documented in writing.

- 26.6. **Counterparts.** The Parties may execute this Deed in two or more counterparts which shall, in the aggregate, be signed by all parties. All counterparts, when taken together, shall constitute this Deed, and shall be deemed the original instrument as against any party who has signed it.
- 26.7. **Entire Agreement.** This Deed sets forth the entire agreement of the Parties with respect to the terms of this Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Deed, all of which are merged herein.
27. **Recording.** Grantor shall record this Deed in a timely fashion in the official records of Logan County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.
28. **No Third Party Enforcement.** This Deed is entered into by and between the Parties, and does not create rights or responsibilities for the enforcement of its terms in any third parties.
29. **Joint and Several Liability.** If Grantor at any time owns the Property in joint tenancy or tenancy in common, Grantor shall be jointly and severally liable for all obligations set forth in this Deed.
30. **Ownership by Single Entity Consisting of Multiple Parties.** If Grantor at any time is an entity which consists of shareholders, partners or members, such Grantor entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess such shareholders, partners or members for any monetary or other obligations set forth in this Deed. Grantor shall provide a copy of such documentation at any time upon Grantee's request.
31. **Authority to Execute.** Each party represents to the other that such party has full power and authority to execute and deliver this Deed, and perform its obligations under this Easement, that the individual executing this Deed on behalf of said party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

Appendix D: Letters of Support, Proof of Organizational Status, Misc.

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that,
according to the records of this office,

DUCKS UNLIMITED, INC.

is an entity formed or registered under the law of District Of Columbia, has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 19891072746 .

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 09/21/2017 that have been posted, and by documents delivered to this office
electronically through 09/26/2017 @ 14:05:52 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 09/26/2017 @ 14:05:52 in accordance with applicable law.
This certificate is assigned Confirmation Number 10466986 .



A handwritten signature in blue ink, reading 'Wayne W. Williams', is positioned above a horizontal line.

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: September 12, 2017

DUCKS UNLIMITED INC
% EARL GROCHAU
1 WATERFOWL WAY
MEMPHIS TN 38120

Person to Contact:

K. Gleason #0203083

Employer Identification Number:

13-5643799

Group Exemption Number:

9352

Dear Sir or Madam:

This is in response to your request dated August 15, 2017, for information about your tax-exempt status.

Our records indicate we issued a determination letter to you in June 1956, and that you're currently exempt under Internal Revenue Code (IRC) Section 501(c)(3).

We also recognized the subordinates on the list you submitted as exempt from federal income tax under IRC Section 501(c)(3).

For federal income tax purposes, donors can deduct contributions they make to you as provided in IRC Section 170. You're also qualified to receive tax deductible bequests, legacies, devises, transfers, or gifts under IRC Sections 2055, 2106 and 2522.

Because IRC Section 170(c) describes your subordinate organizations, donors can deduct contributions they make to them.

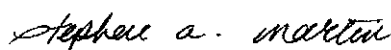
Please refer to www.irs.gov/charities for information about filing requirements. Specifically, IRC Section 6033(j) provides that, if you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked on the filing due date of the third required return or notice.

In addition, each subordinate organization is subject to automatic revocation if it doesn't file a required return or notice for three consecutive years. Subordinate organizations can file required returns or notices individually or as part of a group return.

For tax forms, instructions, and publications, visit www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

If you have questions, call 1-877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).

Sincerely yours,



Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Land Trust Accreditation Commission

An independent program of the Land Trust Alliance

License Agreement

This **License Agreement** is made by and between the Land Trust Accreditation Commission, Inc. (the “Commission”) a District of Columbia corporation with offices at 36 Phila Street, Suite 2, Saratoga Springs, NY 12866, and Ducks Unlimited, Inc. (the “Licensee”) a Tennessee nonprofit corporation with its principal office located at One Waterfowl Way, Memphis, TN 38120. This Agreement supplements the terms of the Accreditation Agreement signed by the Licensee at the time of renewal pre-application in the following respects.

Whereas, the Commission operates a voluntary accreditation program to verify whether or not applicant organizations are meeting specific indicator practices drawn from *Land Trust Standards and Practices*; and,

Whereas, the Licensee applied for renewal of its accredited status through the Commission’s program and, as part of that process, the parties entered into an Accreditation Agreement (the “Accreditation Agreement”) at the time the renewal pre-application for accreditation was submitted; and,

Whereas, the Commission has awarded renewed accredited status to the Licensee through August 9, 2021; and,

Whereas, the Licensee wishes to use certain accreditation trademarks owned by the Commission; and,

Now, therefore, for valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed by and between the Commission and Licensee as follows:

1. **Ownership.**

A. The stylized “Accredited Land Trust Accreditation Commission” seal design shown in Exhibit A (which is attached and incorporated by reference) is the sole and exclusive property of the Commission and is subject to all applicable trademark and other rights of the Commission as owner under the United States intellectual property law and international conventions. (The design is referred to as the “Accreditation Seal.”) The Licensee shall not use the Accreditation Seal, or any other intellectual property owned by the Commission, except as expressly authorized in this License Agreement.

B. The Commission reserves the right to modify the Accreditation Seal in the future. If the Commission adopts any modification following the execution of this License Agreement, the modification will be automatically included in the Accreditation Seal as described in this License Agreement and the Licensee shall update its use of the Accreditation Seal in a timely manner. The requirement to use the modification will only apply from the date of adoption forward.

2. License.

A. For the duration of the Licensee's accredited term or until a Commission decision is made on its next renewal application, the Commission hereby grants to the Licensee a non-exclusive and non-transferable license to use the then-current Accreditation Seal for the purpose of indicating Licensee's accreditation by the Commission. All goodwill associated with the Accreditation Seal as used by the Licensee inures solely to the benefit of the Commission.

B. This License Agreement is personal to the Licensee and may not be assigned by the Licensee. The license rights described in subsection A, above, are granted only to the Licensee. Any related organization, supporting or supported organization, chapter, or other entity affiliated with the Licensee is not permitted to use the Accreditation Seal except as indicated in Section 19.

3. Terms and Conditions.

A. All use of the Accreditation Seal shall conform to the then-current design guidelines issued by the Commission (a current copy of which is attached as Exhibit A), and shall be appropriate and dignified as befits the public image of accredited land trusts and the purposes of accreditation.

B. As indicated in Exhibit A, if the Licensee does not display the Accreditation Seal, the Licensee may alternatively indicate its accredited status with the phrase, "Land Trust Accreditation Commission Accredited" (herein collectively, the "Accreditation Seal").

C. The Licensee shall use only the artwork files provided by the Commission. The Commission will provide access via a password protected website or other means following signature of this License Agreement by both parties. Images captured from public websites, publications and other sources may not be used.

D. All use of the Accreditation Seal must be truthful and not misleading. Specifically, and without limiting the foregoing, the Licensee shall **not**:

- i.** Use the Accreditation Seal in any manner that conflicts with the Commission's policies and procedures;
- ii.** Use the Accreditation Seal in any way that infringes upon any copyright, trademark, or other proprietary right, violates any right of privacy, contains libelous or obscene material, or reflects negatively on the land trust accreditation program;

- iii.** Use the Accreditation Seal (or any word or design that is confusingly similar to it) as part of the Licensee's name, logo, domain name, or product or service name;
- iv.** Use the Accreditation Seal in a way that it is the most prominent visual element on the Licensee's promotional materials (the Licensee's name and/or logo, product or service name, and graphics should be significantly larger than the Accreditation Seal);
- v.** Do or permit to be done any act that will in any way impair the Commission's rights to the Accreditation Seal;
- vi.** Use or attempt to use, directly or indirectly, either by itself or in conjunction with other parties, any name, design, or other mark that the Commission reasonably believes would be confusingly similar to the Accreditation Seal;
- vii.** Register or attempt to register the Accreditation Seal alone or as part of the Licensee's own trademark(s), or register or attempt to register any marks confusingly similar to the Accreditation Seal;
- viii.** Suggest or imply that the Licensee has any relationship with the Commission other than as an accredited land trust;
- ix.** Misrepresent its accredited status or claim an unfair advantage over organizations that have not yet had an opportunity to participate in the accreditation program; or
- x.** Suggest or imply that the Commission is endorsing or guaranteeing any product or service offered by the Licensee.

E. If the Licensee wishes to use the Accreditation Seal in a way that is not expressly authorized in this License Agreement, the Licensee must obtain the Commission's advance written approval.

F. Materials in which the Accreditation Seal appears should, when feasible, contain the following acknowledgement: "Land Trust Accreditation Commission" and the Accreditation Seal are trademarks owned by the Land Trust Accreditation Commission and are used under license.

G. The Licensee shall provide the Commission with any reasonable assistance requested by the Commission in protecting the Accreditation Seal.

i. Upon request, the Licensee shall assist the Commission in obtaining and maintaining any trademark registrations for the Accreditation Seal, including (but not limited to) providing any examples of the Licensee's use of the Accreditation Seal. All registrations will be only in the name of the Commission. The Commission is solely responsible for obtaining and maintaining trademark registrations at its cost.

ii. The Licensee shall promptly notify the Commission if the Licensee becomes aware of any potential infringement of the Accreditation Seal by any third party. However, the Licensee shall not prosecute any infringement claims against third-party infringers. The Commission is solely responsible for prosecuting third party infringement claims at its cost.

4. **Quality Control.** The Commission has the right to control the quality of all materials on which the Accreditation Seal is used. The Licensee, at the Commission's request, shall submit samples of materials on which it displays the Accreditation Seal. Licensee shall provide the Commission with copies of the requested material within ten (10) business days after the request. The Commission is the final judge as to whether any use of the Accreditation Seal is consistent with this License Agreement.

5. **Termination.**

A. The Commission may immediately terminate this License Agreement by written notice to the Licensee if the Licensee fails to perform as required or otherwise violates this License Agreement. The Commission may, but is not required, to allow the Licensee a reasonable amount of time to correct the failure or violation. For the purposes of this License Agreement, default on the part of the Licensee includes but is not limited to the following:

- i. Engaging in the unauthorized use of the Accreditation Seal;
- ii. Failing to maintain accredited status throughout the accreditation period;
- iii. Failing to display the Accreditation Seal only in strict accordance with the then-current design guidelines issued by the Commission (a current copy of which is attached as Exhibit A);
- iv. Challenging the validity of the Accreditation Seal or this License Agreement, or doing any other act contrary to or that could possibly result in diluting or diminishing the Commission's rights to the Accreditation Seal;
- v. Using the Accreditation Seal to suggest or imply that the Licensee's accredited status extends to a related organization, supporting or supported organization, chapter, or other entity; and
- vi. Failing to comply with the Accreditation Agreement.

B. Immediately upon withdrawal, non-renewal, or revocation of the Licensee's accreditation, or for the duration of any probation regarding the Licensee's accreditation during which use of the seal is prohibited, or immediately upon termination of the Accreditation Agreement or the License Agreement after violation of its terms, the Licensee:

- i. Shall cease use of the Accreditation Seal;
- ii. Shall not distribute any materials containing the Accreditation Seal that the Licensee might have already prepared; and
- iii. Shall return or destroy all print and electronic trademark artwork materials provided by the Commission, without retaining copies, except insofar as the copies constitute historical materials and correspondence of the Licensee during its period of accreditation.

C. In addition to the rights of the Commission provided above in subsection A and subsection B, the Licensee understands and agrees that, should the Licensee fail to comply with this License Agreement or the Accreditation Agreement, the Commission may revoke or take other action with regard to the Licensee's accreditation status in accordance with the Commission's published policies.

6. **Notice.** Unless otherwise stated, all notices required under this License Agreement shall be in writing and shall be considered given upon personal delivery of the written notice, within forty eight (48) hours after deposit in the U.S. Mail, certified or registered, upon delivery by overnight or private courier, or upon confirmation of transmission by facsimile transmittal or electronic mail addressed to the parties. The name and contact information for notices under this Agreement are as follows:

Licensee:	Commission:
Notice to the Licensee must be addressed to the name and contact information set forth in the Licensee's pre-application for accreditation or as updated by the Licensee from time to time.	Tammara Van Ryn, Executive Director Land Trust Accreditation Commission 36 Phila Street, Suite 2 Saratoga Springs, NY 12866 P: 518-587-3143 F: 518-587-3183 E: tvanryn@landtrustaccreditation.org

7. **Survival.** The obligations and rights of the parties that by their nature would continue beyond the termination or expiration of this License Agreement shall survive beyond the termination or expiration of this License Agreement and remain in full force and effect. These obligations and rights include (without limitation) those set forth in the Section entitled "Ownership."

8. **Waiver.** The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party to insist upon strict performance of any of the covenants, conditions, or obligations hereunder, or to exercise any right herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment in the future of such covenant, condition, obligation, or right, and the same shall be and remain in full force and effect.

9. **Governing Law.** This License Agreement is governed exclusively by the laws of the District of Columbia.

10. **Remedies.** Any remedy conferred by this License Agreement is not intended to be exclusive of any other remedy. Each remedy is in addition to any other remedy given by this License Agreement or existing in law or in equity. In addition, the parties agree that irreparable damage would occur if certain provisions of this License Agreement are breached. The parties agree that the Commission may seek injunctive relief to enforce its rights with respect to the protection of its name, logo, trademarks, service marks, and other intellectual property.

11. **Attorneys Fees.** In the event the Commission initiates litigation to enforce the terms of this Agreement, the Commission shall be entitled to recover from the Licensee all reasonable costs incurred, including but not limited to, staff time, court costs, attorneys' fees, expert fees, and all other related expenses incurred in such litigation, unless it is determined by the court that the Commission acted frivolously or not in good faith.

12. **Independent Contractors.** The relationship between the parties to this License Agreement is that of independent contractors. This License Agreement is not intended to create any association, partnership, joint venture, or agency relationship between the parties.
13. **Assignability.** The Licensee shall not assign this License Agreement, or any interest in this License Agreement, without the prior written consent of the Commission. These rights may not be assigned, transferred, sublicensed or otherwise exploited by any third party or any affiliate, successor, subordinate or related entity.
14. **Amendment.** No amendment of this License Agreement will be valid unless in writing and signed by both parties.
15. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, the remaining provisions shall be enforced and, if necessary, adjusted rather than voided, if possible, to the least degree necessary to remedy the invalidity.
16. **Counterparts.** This License Agreement may be executed in several counterparts and by telefacsimile signature, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
17. **Entire Agreement.** This document contains the entire agreement between the parties concerning the subject matter of this License Agreement. It supersedes all prior and contemporaneous oral and written understandings. However, this License Agreement does not supersede or replace the Accreditation Agreement. The Accreditation Agreement remains in full force and effect, and is supplemented by this License Agreement.
18. **Term.** This License Agreement shall be effective from the date of signature by the Commission. It will expire upon withdrawal, non-renewal, or revocation of the Licensee's accreditation.
19. **Limited Right to Sublicense to Wetlands America Trust.** Notwithstanding any other provision of this Agreement, upon written notice to the Commission the Licensee may sublicense its rights to use the Accreditation Seal to the Wetlands America Trust ("Affiliated Organization") subject to the following specific requirements:
- A. This right to sublicense is limited to the named Affiliated Organization only and only during such time as the Affiliated Organization's corporate and governance structure and business relationship with the Licensee are substantially the same as existed on the date of, and as described in, the Licensee's and Affiliated Organization's applications.
 - B. The Licensee's right to sublicense the Accreditation Seal is limited to those periods when Licensee is licensed to use the Accreditation Seal. Without limiting the foregoing, the Affiliated Organization's rights to use the Accreditation Seal under any sublicense shall terminate immediately upon the expiration or termination of this License Agreement.
 - C. The Commission may immediately terminate this License Agreement and any authorized sublicense thereunder by written notice to the Licensee if the Affiliated

Organization takes any steps inconsistent with, fails to perform as required, or otherwise violates this License Agreement in any manner that, if done by Licensee, would constitute grounds for termination under Paragraph 5.A. above.

D. All rights and remedies granted by this License Agreement to the Commission with regard to Licensee shall apply with regard to any action by the Commission against the Affiliated Organization.

E. The Affiliated Organization shall agree in writing that its sublicense shall be subject to the terms and conditions of this License Agreement including but not limited to the provisions of this Paragraph 19.

In Witness Whereof, the parties hereto have caused this License Agreement to be executed and delivered as the dates shown below. The undersigned individuals represent and warrant that they are expressly and duly authorized by their respective organizations to execute this License Agreement and to legally bind their respective entities as set forth in this License Agreement.

Ducks Unlimited, Inc.

"LICENSEE"

By: _____

Name: Earl Grochau

Title: Chief Administration Officer

Date: 8/17/16

The Land Trust Accreditation Commission

"COMMISSION"

By: _____

Name: Tammara Van Ryn

Title: Executive Director

Date: 8-10-2016



United States Department of the Interior



FISH AND WILDLIFE SERVICE

COLORADO PARTNERS FOR FISH AND WILDLIFE
134 UNION BLVD.; SUITE 400C
LAKEWOOD, COLORADO 80228
303-236-4341

June 27, 2018

Subject: ***Letter of Support***—Ducks Unlimited Suncor Remediation Proposal

Dear Trustee Council,

I, Dominic Barrett, the Acting State Director for the Colorado Partners for Fish and Wildlife program, am pleased to support Ducks Unlimited's conservation project proposal in response to the Suncor remediation determination. It is my strong belief that the above proposal will enhance, restore, and protect important wetlands in key landscape areas, and the Council's desired remediation will be met in full.

My program and Ducks Unlimited have been working partners for many years. Over which, they have proved themselves as leaders in wetland conservation not just in Colorado, but throughout North America. I have the utmost faith in their ability to develop projects, manage landowner relations, deliver lasting conservation projects, and seek effective long-term projection.

If you have any questions or wish to contact me, please do not hesitate to do so.

Sincerely,

Dominic Barrett
Acting State Coordinator
dominic_barrett@fws.gov



COLORADO
Parks and Wildlife
Department of Natural Resources

Terrestrial Statewide Programs Unit
317 W. Prospect Rd.
Fort Collins, CO 80526

June 28, 2018

Suncor Energy NRD Trustee Council
Colorado Dept. of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Re: Letter of Support—Ducks Unlimited Suncor Remediation Proposal

Dear Trustee Council:

This is to convey Colorado Parks and Wildlife's (CPW) support of Ducks Unlimited's (DU) conservation project proposal in response to the Suncor remediation determination. DU and CPW have worked collaboratively for many years, and I have strong confidence in their ability to deliver high-quality and lasting wetland projects in key waterfowl areas.

With the tireless help of DU, CPW has recently been able to resolve indeterminations within our procurement code, now allowing NGO's like DU to perform work on state-owned public lands. CPW, and I as the Program Coordinator, see DU as a critical partner to enhance and restore public wetland resources from here forward. We fully support their proposal, including their desire to work on public lands. Any of my program funds awarded to DU may be used as match, so long so they meet your eligibility standards.

If you have any questions or wish to contact me, please do not hesitate to do so.

Sincerely,

Brian Sullivan
CPW Wetlands Program Coordinator
Tel. 970-472-4306
brian.sullivan@state.co.us



**COLORADO NATURAL RESOURCES TRUSTEES
JUNE 9, 2022 RESOLUTION
CONCERNING REMAINING SUNCOR NRD FUNDS AND DUCKS
UNLIMITED RESTORATION PROJECT**

WHEREAS, the Colorado Natural Resources Trustees (“Trustees”) are responsible for the management and direction of Colorado’s natural resource damages program;

WHEREAS, the Trustees and staff have coordinated with federal trustee agency counterparts to form a Trustee Council pursuant to a 2020 Memorandum of Understanding;

WHEREAS, the Trustees are responsible for administering State funds to restore, replace, or acquire the equivalent of injured natural resources;

WHEREAS, in 2015, Colorado and the United States Fish and Wildlife Service (USFWS) recovered \$1.23 million from Suncor (Suncor NRD Fund) to compensate the public for injury to natural resources caused by the discharge of oil from its Commerce City refining facility into Sand Creek in 2011;

WHEREAS, in 2018, the Trustees approved two projects, granting \$148,000 to the USFWS and \$1,082,000 to Ducks Unlimited from the Suncor NRD Fund;

WHEREAS, Due to accrual of interest, approximately \$37,454 remains in the Suncor NRD Fund; and

WHEREAS, Ducks Unlimited requests the Trustees grant them this remaining money, plus accrued interest, to further fund their 2018 “Suncor Remediation Proposal” project (Suncor Project), which remediates damages to waterfowl populations, wetland habitats, and groundwater resources on the South Platte River.

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve allocation of \$37,454 and all interest from the Suncor NRD Fund to fund the Suncor Project.

This approval is subject to the following conditions:

Colorado Natural Resources Trustees Resolution #2022-06-09-01

(1) This resolution will expire June 9, 2027, and the funds will no longer be available, unless a contract consistent with this resolution is executed by that date; and

(2) Release of the Funds is contingent on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, and permitting and zoning requirements.

Philip J. Weiser
Colorado Attorney General

Date

Trisha Oeth
Acting Director of Environmental Programs,
CDPHE

Date

Dan Gibbs, Executive Director, DNR

Date

ITEM #7



COLORADO

**Hazardous Materials
& Waste Management Division**

Department of Public Health & Environment

May 26, 2022

Re: Uravan NRD - West End Development Proposal Update - Ball Park Restoration

Dear NRD Trustees,

The purpose of this briefing is to provide the Trustees with a proposal update and request to proceed with the project. Recent, significant increases in costs for materials and services have necessitated changes to the scope of work for the Uravan Ball Park Restoration Project.

Due to increased costs, the project proponent is proposing to eliminate a number of project elements, and reallocate funding to priority activities. The activities that are to be eliminated include installation of a single seat vault toilet at Biscuit Rock, handicap accessible fishing dock, better trail access via Mill Drive, installation of a potable water well at the Ball Park and river access at the confluence of the Dolores and San Miguel Rivers.

The requested funding remains the same, \$216,037. This funding will be used to complete essential activities such as a vault toilet at the Ball Park, interpretive signage at the Ball Park and maintenance for the toilets for two years.

It should be noted, volunteers completed a cleanup of the confluence between the Dolores and San Miguel Rivers. This activity was part of the original scope of work. Furthermore, high water in the San Miguel River resulted in significant bank erosion near the Ball Park. Resources have been diverted to stabilize this section which was completed last year. Finally, emergency telephone service has been installed at the Ball Park. This was also originally part of the overall project scope and is now complete.

A budget comparing the original proposed activities to the reduced activity list is provided below.

Recognizing the difficulties in construction procurement in rural areas of the state, and the progress that West End Development has made to date, staff recommend the Trustees approve the adjusted scope of work and fulfill the concept of providing much needed funding to the area.





COLORADO

**Hazardous Materials
& Waste Management Division**

Department of Public Health & Environment

West End Development - Uravan NRD					
Historic Uravan Ball Park Restoration					
Activity	Description	Original Budget	Original Match	Updated Budget	Updated Match
Vault Toilet at Ball Park	Men/Women, 2-hole vault toilet	\$47,000.00	\$11,643.00	\$113,490.00	\$25,000.00
Vault Toilet at Biscuit Rock	Single seat vault toilet	\$30,000.00	\$6,000.00	NA	NA
San Miguel River Access Points (Ball Park & Dolores/San Miguel confluence)	River access for boats, floatation	\$35,000.00	\$7,000.00	\$65,000.00	\$8,000.00
Confluence Clean Up	Cleanup and restoration of riverbanks; plant fish habitat/native species	\$40,000.00	\$10,000.00	NA	NA
Interpretive Signage	Location for outdoor mining equipment & educational signage. Levelling, concrete & signage	\$11,637.00	\$3,000.00	\$21,800.00	\$5,000.00
Handicap Accessible Fishing Dock	Concrete platform above SM River w/railings	\$35,000.00	\$26,075.00	NA	NA
Better Trail Access via Mill Drive	Fencing along either side of road; provide better access to Y-11 Trail to Paradox	\$5,000.00	\$1,000.00	NA	NA
Potable Water to Ball Park	Well development, pump	\$10,000.00	\$2,000.00	NA	\$104,300.00 ¹
Maintenance for toilets/2 years	\$600 pump out 2x per year	\$2,400.00	\$1,000.00	\$15,747.00	\$3,000.00
Emergency Telephone Service to the Ball Park	Emergency phones located at entrance and at Camp Host location	\$0	\$7,500.00	\$0	\$8,500.00
Total		\$216,037.00	\$75,218.00	\$216,037.00	\$153,800.00

NA = activity has been eliminated

1 = funds diverted to complete bank stabilization of the San Miguel River



ITEM #8-16

NO DOCUMENTS