



AGENDA ITEM REQUEST FORM
Communication to Board of County Commissioners

To: Chair Sandy Hollingsworth, Commissioner Web Sill, and Commissioner Linda Isenhart

From: Sarah Baciak
Name

Paralegal, County Attorney's Office
Title

Today's Date: 4/25/2022

BoCC Meeting Date: 5/3/2022

Does this item require a PUBLIC HEARING? No.

Item: 2022 Church Ditch Water Rights Lease

Request or Issue: Approval and signature of 2022 Lease Agreement

Recommended Action / Next Step: Approval of 2022 Lease Agreement

Financial Impact(s): This lease has been ongoing with different County residents since 1999. This year's lease amount was increased due to the increase the County is being charged for our shares of the Church Ditch water rights. Therefore, this increased lease amount will cover all County costs for leasing this resource.

Finance/HR Staff: Reviewed by Finance? Previously. Is this item currently budgeted? Yes.

Background Information: Gilpin County owns 4 shares of the Church Ditch water rights. These water rights need to be used or the County runs the risk of losing them. Leasing out our share of Church Ditch water rights ensures that we are using the rights and allows us to continue to reserve these rights for future County use.

Amount of agenda time needed: 10 mins.

Is this item time sensitive: Somewhat.

Contact for Follow Up: County Attorney Bradford Benning.

CHURCH DITCH WATER RIGHTS LEASE

This Water Rights Lease ("Lease") is entered into between Gilpin County, Lessor ("Gilpin"), whose address is 203 Eureka Street., Central City, CO 80427, and Gary Gambino, Lessee ("Lessee"), whose address is 11950 W. 76th Avenue, Arvada, CO 80005, and collectively referred to as the "Parties" or individually as a "Party".

WHEREAS, Gilpin owns four (4) inches of Church Ditch water rights ("Gilpin's 4 Inches"), which are not needed in 2022 for County purposes.

WHEREAS, Lessee owns land under the Church Ditch with a need for irrigation water and that is legally irrigable with Church Ditch water.

WHEREAS, Lessee is also the contact person for five other owners of land ("Other Landowners") under the Church Ditch with a need for irrigation water and that is legally irrigable with Church Ditch water.

WHEREAS, Lessee and the Other Landowners are in need of Gilpin's 4 Inches for irrigation use on their respective lands ("Land").

WHEREAS, Lessee wishes to lease Gilpin County's 4 Inches for irrigation use on the Land.

WHEREAS, Lessee proposes to take Gilpin County's 4 Inches out of the Church Ditch at headgate number 75 on the Church Ditch for use on the Land.

In consideration of the foregoing and other good and valuable consideration, the Parties agree as follows:

1. Gilpin leases its 4 Inches to Lessee for the 2022 irrigation season, subject to the terms of this Lease.
2. This Lease and its effectiveness are contingent upon Lessee paying Gilpin \$740.00, which amount shall be due and payable upon Gilpin's signing of the Lease. Gilpin will provide Lessee with a signed copy of this Lease when it receives full payment of this amount. If this amount is not paid by Lessee within seven days of notice from Gilpin that the Lease was signed, Gilpin may cancel the Lease.
3. Lessee shall also pay the Church Ditch Water Authority its \$35.00 lease transfer processing fee and any other fees required by the Church Ditch Water Authority.
4. Lessee shall also pay any other charges or assessments related to Gilpin's 4 Inches that become due to the Church Ditch Water Authority during the term of this Lease.
5. The term of this Lease shall be for the 2022 irrigation season only.
6. The Church Ditch Company may rely on this Lease as a request to deliver Gilpin's 4 Inches to Lessee in 2022 at headgate number 75 or at such other lawful headgate within the Church Ditch system as Lessee may direct.

7. Lessee represents and affirms that Gilpin's 4 Inches will be used for irrigation on the Land during the 2022 irrigation season and that the Land is below the Church Ditch and legally irrigable with Church Ditch water rights.
8. Lessee may use Gilpin's 4 Inches for irrigation of the Land and in doing so may provide water available under Gilpin's 4 Inches to the Other Landowners for that purpose. Lessee shall not be allowed to sublease or otherwise provide water available under Gilpin's 4 Inches without Gilpin's express written consent.
9. Lessee represents and agrees that if Church Ditch water is available for irrigation use Gilpin's 4 Inches will be the first water used to irrigate the Land when water is needed.
10. Lessee represents and agrees that Gilpin's 4 Inches will be used during the 2022 irrigation season to the maximum extent of crop needs on the Land.
11. Lessee is responsible for following the Rules and Regulations of the Church Ditch Water Authority.
12. Within 30 days of its execution of this Lease, Lessee shall provide Gilpin with the following information with regard to the use of Gilpin's 4 Inches:
 - a) A map and description of the Land to be irrigated;
 - b) The number of acres to be irrigated;
 - c) A description of what, if any, other water or water rights will be used to irrigate the same acres;
 - d) Description of the types of crops that will be irrigated; and
 - e) The anticipated monthly amount of Gilpin's 4 Inches expected to be needed for this irrigation use.
13. Within 30 days after conclusion of the 2022 irrigation season, Lessee shall provide Gilpin with a summary of the amount of water used for irrigation on the Lands, including the following information:
 - f) A map and description of the acres of Land irrigated;
 - g) The number of acres irrigated;
 - h) If available, measured or recorded water deliveries applied to the Land for irrigation;
 - i) If actual measurements or recordings of deliveries are not available, an estimate of monthly water deliveries of Gilpin's 4 Inches; and
 - j) A description of crops grown and, if available, the actual or an estimate of amount of each crop produced.
14. If Lessee fails to timely perform any of its obligations under this Lease and does not cure the default within fourteen days of receiving notice from Gilpin of the default, Gilpin County may cancel the Lease. If Lessee fails to timely cure any default, Gilpin may cancel this Lease and shall be entitled to keep any monies paid by Lessee as liquidated damages.

15. Lessee agrees to indemnify, save, protect, and hold Gilpin harmless from and against any and all liabilities and costs of defense resulting from claims of the Other Landowners or any other third parties related to Gilpin's 4 Inches or arising from performance under this Lease, including by way of illustration and not by way of limitation, attorneys' fees, expert fees, and damages. Lessee further waives and releases any claim against Gilpin arising from any loss, damage, or personal injury Lessee or anyone else may suffer related to Gilpin's 4 Inches. Lessee shall be solely responsible for the use and resulting consequences of using Gilpin's 4 Inches.
16. By executing this Lease, Gilpin does not in any way, limit or impair any rights, defenses or limitations applicable under the law it has including, but not limited to, Article II, Section I of the Colorado Constitution or pursuant to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq.
17. This Lease represents the entire and integrated agreement between Gilpin and Lessee and it supersedes all prior negotiations, representations, or agreements, either written or oral. This Lease may be amended only by written instrument signed by both Gilpin and Lessee.
18. No Third-Party Beneficiaries. Nothing contained in the Lease shall create a contractual relationship between Gilpin and anyone who is not a party to the Lease, or a cause of action against Gilpin County in favor of anyone who is not a party to the Lease or rights in any third party.
19. Severability and Waiver. In the event that any provision in the Lease is deemed to be null and void as a matter of law, then such provision shall be deemed severed from this Lease and all other provisions shall remain in full force and effect. If the application of any provision of the Lease to a particular circumstance conflicts with any Laws or Regulations and is held to be invalid or unenforceable as so applied, such invalidity or unenforceability shall not affect the application of such provision in other circumstances for which it is valid and enforceable. Where the effect of any severability would deprive a Party of a material benefit of its bargain under the Lease, the invalid or unenforceable provision shall not be severed, and such Party may instead terminate the Lease. The failure of either Party to insist in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease; or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or rights in connection with that occurrence or with respect to future or further performance.
20. Colorado law shall govern the interpretation and enforcement of this Lease and the resolution of any claims and defenses asserted by and between the Parties to this Lease arising out of their acts, errors or omissions in conjunction with the Lease. Venue for any dispute arising under the terms hereof shall lie in the District Court in and for the County of Gilpin, State of Colorado.
21. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be considered an original, and all of which, when taken together shall constitute one and the same instrument.

GILPIN COUNTY

Sandy Hollingsworth
Gilpin County Board of County Commissioners

Date signed: _____

LESSEE

Gary Gambino
11950 W. 76th Avenue, Arvada, CO 80005

Date signed: _____