

EXHIBIT "C"

AGREEMENT OF PURCHASE AND SALE

THIS **AGREEMENT OF PURCHASE AND SALE** ("Agreement") is made as of this ____ day of ____, 2011, by and between the **NEW MEXICO INTERSTATE STREAM COMMISSION** ("Seller") and _____ ("Purchaser(s)").

WITNESSETH:

In consideration of and in reliance upon the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE ONE

INTRODUCTORY MATTERS

1.01 **In General.** The Seller is the owner of the Property (as defined herein) and the Purchaser is desirous of acquiring the same in accordance with the terms and conditions of this Agreement.

1.02 **Agreement to Purchase and Sell.** Purchaser agrees to purchase from Seller, and Seller agrees to sell and convey to Purchaser, the Property, subject to and in accordance with the terms and conditions set forth herein.

1.03 **Definitions.** As used herein, the following words shall have the meanings ascribed:

"**Appraisal**" means the valuation of the Property prepared by an appraiser chosen by Seller and licensed by the State of New Mexico.

"**Closing**" means the consummation of the transaction contemplated herein, which shall occur at the offices of the Closing Company or its successor if any, or if no successor, then such other title company as Seller may designate.

"**Closing Company**" means Currier Abstract Company in Artesia or Carlsbad, New Mexico, or Land America in Roswell, New Mexico or its successor if any, or if no successor, then such other Closing Company as Seller may designate.

"**Closing Date**" means the date set forth in Section 6.01.

"**Deed Restriction**" means a negative easement placed on the Property and recorded on the deed to the Property, which ensures that no new water development or use, including the drilling of domestic wells pursuant to NMSA 1978, §§ 72-12-1.1 to 1.3 (2008), occurs on the land without transfer of valid, existing water rights as required by NMSA 1978, § 72-14-2.6 (2008).

“Escrow Company” means for purposes of receipt of Purchaser’s money under Article Two of this Agreement, Currier Abstract Company in Artesia or Carlsbad, New Mexico, or Land America in Roswell, New Mexico or its successor if any, or if no successor, then such other Escrow Company as Seller may designate.

“Improvements” means the improvements, fences, structures, fixtures, equipment, in, on, over or under the Property, including but not limited to the electrical and utility systems (except to the extent owned by a utility company), if any, (other than any artesian water wells), located at, on, or affixed to the Property, to the full extent such items constitute or are or can be construed as realty under the laws of the State of New Mexico.

“Personalty” means all wells, equipment, machinery, supplies and other personal property, if any, owned by Seller presently located in and used in connection with the ownership or management of the Improvements or the Property, as such items are specifically set forth in Exhibit “A” attached hereto.

“Property” means surface estate only of the lands described in Exhibit “B” attached hereto, but does not include water rights.

“Survey” means a boundary Survey from a licensed New Mexico surveyor certified as of a date acceptable to the Closing Company. The Survey shall meet the Minimum Standards for Boundary Surveying in New Mexico as adopted by the New Mexico Board of Registration for Professional Engineers and Surveyors.

ARTICLE TWO

CONSIDERATION

2.01 Deposit. For the purpose of securing the performance of Purchaser hereunder, Purchaser shall deposit with the Escrow Company, within five (5) days of execution by Purchaser of this Agreement, 5% of the purchase price as earnest money ("Deposit"). The Escrow Company shall pay the Deposit to Seller at and upon the Closing to be applied against the Purchase Price.

2.02 Purchase Price. The purchase price for the Property ("Purchase Price") shall be \$_____. The Purchase Price shall consist of the valuation of the Property as set out in the Appraisal and the cost of the Appraisal subject to such additions or offsets as required under this Agreement. Purchaser shall deposit the Purchase Price on or before the Closing Date with the Escrow Company in immediately available funds.

ARTICLE THREE

REPRESENTATIONS AND CONTINGENCIES

3.01 Disclaimer. The Property is being conveyed to and assigned to and accepted by the Purchaser in an “as is, where is” condition and state of repair and with all faults and defects without any representation, warranty or covenant of any kind or nature, express, implied or statutory,

including but not limited to, warranties of merchantability, quality, condition and/or fitness for a particular purpose, all of which are expressly disclaimed. It is understood and agreed that the Purchaser has inspected the Property, the improvements and the personalty and satisfied itself as to their physical condition and that the Purchaser shall accept all of the same in an “as is, where is” state of repair and with all faults and defects.

3.02 Governmental Contingencies. Before any sale can be closed, (1) this Agreement shall satisfy the requirements of NMSA 1978, § 72-1-2.6 (2008); and (2) this Agreement shall satisfy the requirements of NMSA 1978, §§ 13-6-2 to 2.1 (2008), which require varying levels of approval depending upon the value of the property:

- A. Property valued at less than \$5,000 requires a written determination by the NMISC;
- B. Property valued between \$5,000 and \$25,000 requires the approval of the Budget Division of the Department of Finance;
- C. Property valued between \$25,000 and \$100,000 requires the approval of the State Board of Finance, which requires: (1) a copy of a current appraisal performed by a certified appraiser and (2) a report of review by the Property Tax Division of the Taxation and Revenue Department; or
- D. Property valued over \$100,000 requires the approval of the New Mexico Legislature.

3.03 Contingency Termination. If this Agreement is terminated due to Seller’s inability to satisfy a governmental contingency, Seller will reimburse Purchaser the Deposit. If Seller satisfies all of his requirements under this Agreement to be fulfilled prior to Closing, and Purchaser fails to complete this transaction for any reason other than the inability to obtain commercially reasonable third party financing, Seller shall be entitled to receive the Deposit and terminate this Agreement.

ARTICLE FOUR

CLOSING AND ESCROW COSTS

4.01 Closing and Escrow Costs. The Closing Company and Escrow Company’s fees shall be divided equally between Seller and Purchaser.

4.02 Surveys. The Purchaser will pay for any survey it elects to have performed.

ARTICLE FIVE

ADDITIONAL AGREEMENTS

5.01 Appraisal Reimbursement: Purchaser agrees to reimburse Seller at Closing for the cost of the Appraisal.

5.02 Water Right Reservation: Seller reserves all water rights appurtenant to the Property.

5.03 Deed Restriction: Purchaser agrees to the Deed Restriction placed on the Property, which limits development of water on the Property and shall read as follows:

As additional consideration for the conveyance of lands described above by Grantor to Grantee, Grantee agrees that in compliance with NMSA 1978, § 72-1-2.6 (2008) and Settlement Agreement, dated March 25, 2003 entered in *State of New Mexico ex rel. State Engineer v. L.T. Lewis, et al*, Grantee is subject to restrictions prohibiting new water development or use, including drilling of domestic wells pursuant to NMSA 1978, §§ 72-12-1.1 to 1.3 (2008), on the lands described above, unless a transfer of valid, existing water rights is made to the lands described above in the records of the Office of the State Engineer of the State of New Mexico.

ARTICLE SIX

CLOSING

6.01 Closing Date. Subject to all contingencies referenced in this Agreement, the Closing shall take place at the offices of the Closing Company or any title company associated with the Closing Company at a date to be determined within forty-five (45) days after having satisfied the governmental contingencies stated in 3.02 of this Agreement.

6.02 Title Insurance Policy. Purchaser may obtain at its sole expense a title insurance policy for the title of the lands constituting the Property.

6.03 Closing Procedure. The Closing shall be upon the following terms and conditions:

A. Prior to the Closing Date, Seller shall deliver or cause to be delivered to the Closing Company or any title company associated with the Closing Company the following documents, all of which shall be reasonably acceptable, in form and substance, to Purchaser:

(1) A Quitclaim Deed in form attached hereto as Exhibit "C" executed and acknowledged by Seller, conveying to Purchaser all of its right, title and interest to the Property, subject to the Deed Restriction; and

(2) Any additional documents that Purchaser or the Closing Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

B. Purchaser shall deliver to Closing Company the Purchase Price in immediately available funds.

C. Seller and Purchaser shall execute closing statements consistent with this Agreement in form and substance satisfactory to the parties hereto and such other documents and instruments as required pursuant to the provisions hereof.

D. Upon satisfaction or completion of the foregoing conditions and deliveries and performance by each party, the parties shall direct the Closing Company to record and deliver the

documents described above to the appropriate parties and make the disbursements to the appropriate parties according to the closing statements executed by Seller and Purchaser.

ARTICLE SEVEN

MISCELLANEOUS

7.01 Interpretation. The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope of meaning of the language hereof.

7.02 Severability. If any terms of this Agreement, or their application to any person or circumstance, shall be held illegal, invalid, or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Agreement is still capable of performance in substantial accordance with the original intent of the Parties.

7.03 Applicable Law. This Agreement and any exhibits shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of New Mexico.

7.04 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes and terminates without further rights or obligations thereunder all prior agreements and understandings, relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

7.05 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

7.06 Time. Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

7.07 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to Seller: Interstate Stream Commission
Post Office Box 25102
Santa Fe, NM 87504
Attention: Pecos River Bureau Chief

copy to: Amy Haas
Interstate Stream Commission
Post Office Box 25102
Santa Fe, NM 87504

If to Purchaser: _____

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notices shall be deemed delivered five (5) business days after deposit, postage prepaid in the U.S. Mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered two business days after deposit with such courier; (c) sent by telefax, in which case notice shall be deemed delivered upon confirmation of successful transmission and receipt of such notice; or (d) sent by personal delivery to a responsible person with written confirmation of such delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

7.08 Construction. The parties acknowledge that the parties and their counsel, if any, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

7.09 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designed period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday observed by the State of New Mexico. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Santa Fe, New Mexico time.

Executed effective the date first above written.

SELLER: NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____
Estevan R. Lopez, ISC Director

Approved as to form:

By: _____
Agency Attorney

PURCHASER(S):

By: _____

EXHIBIT A

LIST OF PERSONALTY

**INCLUDED UNDER AGREEMENT OF PURCHASE AND SALE
BETWEEN NEW MEXICO INTERSTATE STREAM COMMISSION and**

None

EXHIBIT B

LEGAL DESCRIPTION OF LANDS

**INCLUDED UNDER AGREEMENT OF PURCHASE AND SALE
BETWEEN NEW MEXICO INTERSTATE STREAM COMMISSION and**

Eddy County, New Mexico

Surface estate only:

Township _____, Range _____, N.M.P.M.

Section __: __ acres of land

[Subject to easements, etc.]

EXHIBIT C

SAMPLE QUITCLAIM DEED

**INCLUDED UNDER AGREEMENT OF PURCHASE AND SALE
BETWEEN NEW MEXICO INTERSTATE STREAM COMMISSION and**

**QUITCLAIM DEED AND
RESTRICTION ON FUTURE DEVELOPMENT OF WATER RIGHTS
(Negative Easement)**

NEW MEXICO INTERSTATE STREAM COMMISSION, (“Grantor”) for consideration paid, quitclaims to _____, (“Grantee”) _____, _____ acres of real property (“Property”), but excluding any appurtenant water rights, in Eddy County, New Mexico and more particularly described as follows:

As additional consideration for the conveyance of lands described above by Grantor to Grantee, Grantee agrees that in compliance with NMSA 1978, § 72-1-2.6 (2008) and the Settlement Agreement, dated March 25, 2003 entered in *State of New Mexico ex rel. State Engineer v. L.T. Lewis, et al*, Grantee is prohibited from developing or using water, including drilling domestic wells pursuant to NMSA 1978, §§ 72-12-1.1 to 1.3 (2008), on the lands described above, without a transfer of valid, existing water rights in accordance with the procedures of the Office of the State Engineer of the State of New Mexico.

This instrument is made further subject to any and all continuing obligations of Grantor or Grantee under that certain Agreement of Purchase and Sale dated _____, 2011 executed by Grantor and Grantee. All defined terms utilized will have the same meaning as those used in the Agreement of Purchase and Sale unless otherwise indicated.

This quitclaim deed is made without warranty of title expressed or implied.

Executed this _____ day of _____, 2011.

NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____
Its: _____

STATE OF NEW MEXICO)

: ss.

COUNTY OF EDDY)

This instrument was acknowledged before me on _____, 2011, by _____, _____, on behalf of the New Mexico Interstate Stream Commission.

My commission expires:

Notary Public