

STATE OF COLORADO

BOARD OF LAND COMMISSIONERS

Department of Natural Resources

1313 Sherman Street, Room 621
Denver, Colorado 80203
Phone: (303) 866-3454
Fax: (303) 866-3152



Managing
State Trust Lands
Since 1876

April 22, 2008

Ross Wilkins et al.
446 Meadow Vista Drive
Evergreen, CO 80439

Bill Ritter, Jr.
Governor

Harris D. Sherman
Department of Natural Resources
Executive Director

Britt I. Weygandt
State Board of Land Commissioners
Division Director

RE: State Lease No. AG 45878, Custer County, CO

Dear Mr. Wilkins,

Enclosed is a copy of your signed Agricultural Lease AG 45878 which started on 04/06/2008 and will expire on 04/06/2018.

Of the two original signed copies of the lease, one is kept at the State office and one is being returned to you for your records. A photocopy of the lease will also be on file with your District Office.

If you have any questions, please contact your District Office listed below.

Sincerely,

Mindy Gottsegen, Field Operations Assistant

Encl.
cc. South District Office

State Land Board District Offices

Northwest P.O. Box 1094 Craig, CO 81626 (970) 824-2850	North Central 5312 W. 9 th Street Dr. Suite 130 Greeley, CO 80634 (970) 352-3038	Northeast 301 Poplar, Suite 3 Sterling, CO 80751 (970) 522-0975	South P.O. Box 88 305 Murphy Dr. #A Alamosa, CO 81101 (719) 589-2360	Southeast 4718 N. Elizabeth St. Suite C Pueblo, CO 81008 (719) 543-7403	Front Range 5312 W. 9 th Street Dr. Suite 130 Greeley, CO 80634 (970) 356-2013
---	---	--	--	---	---

STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS
AGRICULTURAL LEASE OF STATE TRUST LANDS

Agricultural Lease No. 45878

THIS LEASE is entered into at Denver, Colorado, on April 6, 2008 by and between the State of Colorado, acting through its State Board of Land Commissioners ("Board"), whose address is 1313 Sherman Street, Room 621, Denver, CO 80203, and **Ross Wilkins, Jan Wilkins and Chris Wilkins** ("Lessee", whether one or more) as Joint Tenants, whose address is 446 Meadow Vista Drive, Evergreen, CO 80439.

1. DESCRIPTION OF THE PREMISES

The Board leases to the Lessee and Lessee leases from the Board, exclusively for the purposes indicated below, the **School** Trust lands, water rights and Board-owned improvements, in the County(s) of **Custer**, Colorado, described in Exhibit A (the "Premises"):

The Premises are leased only for the following purposes by Lessee:

A.	For grazing purposes	636.36	acres
B.	For irrigated agricultural purposes	0.00	acres
C.	For dryland agricultural purposes	0.00	acres
D.	For other purposes*	0.00	acres
E.	For Non-billable purposes**	3.64	acres
Total		640.00	acres

*The other purposes for this lease, if applicable, are as follows: Not Applicable

**The Non-billable purposes for this lease, if applicable, are as follows: ROW

2. LEASE TERM AND RENTAL

The Board and Lessee agree that:

- A. This lease is effective from **April 6, 2008** for the term of 10 years, being until **April 6, 2018** subject to the covenants and agreements herein.
- B. The carrying capacity for the Premises for the first year shall be **125 Animal Unit Months (AUMs)**.
- C. During each year of this Lease, if specified below, Lessee may only use the Premises during the following specific times:

For grazing purposes:	_____	through
For irrigated agricultural purposes:	_____	through
For dryland agricultural purposes:	_____	through
For other purposes:	_____	through

- D. The rental amount for the first year shall be the sum of **One Thousand Nine Hundred Eighty-Five And 44/100 Dollars (\$1,985.44)**.
- E. The rental amount, the carrying capacity and/or productivity, and/or specific time of use of the Premises will be subject to review and change annually by the Board, pursuant to CRS §36-1-114. Lessee shall pay to the Board the rental due each and every year, in advance, as well as any accrued penalty and interest during the term of this Lease at the office of the State Board of Land Commissioners, Denver, Colorado. If the rental amount is increased by the Board and the Lessee does not accept the adjusted rental amount, the Lessee may cancel this Lease, provided that written notice is delivered to the Board by the Lessee within thirty (30) days after the date of the notice of adjustment. If no cancellation notice is received by the Board within 30 days, the Board and Lessee agree that the adjusted rental amount and all rental terms are accepted.

3. CONFLICTS WITH ANY PREVIOUS LEASE

The provisions of this Lease amend, replace and supercede any previous leases.

4. CONDITION OF PREMISES

Lessee represents that Lessee has had an opportunity to inspect the Premises prior to entering into this Lease, and Lessee accepts the Premises in their present condition and acknowledges that the Premises are in all respects suitable for the purposes permitted. The Board disclaims any and all obligation and Lessee waives any claim that the Board has any obligation to provide access to the Premises, to fence, make any repairs to or construct any improvements upon the Premises. The Board does not make any warranties or covenants, express or implied, of habitability, quiet enjoyment or that the Premises are suitable for the permitted purposes.

5. RESERVATIONS TO THE BOARD

This lease is subject to any and all presently existing easements, rights-of-way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this Lease, the Board hereby reserves:

- A. The right to sell, exchange, or otherwise dispose of all or any portion of the Premises during the term of this Lease.
- B. The right to lease all or any portion of the premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources,

the condemnation or damaging of all or any part of the Premises, or Board-owned improvements thereon, shall belong to and become the property of the Board, and the Lessee hereby disclaims any interest therein and assigns to the Board any and all claims to such award. The Board shall not claim any interest in authorized improvements or growing crops of the Lessee, and the Lessee shall only be entitled to compensation for growing crops and authorized improvements as negotiated between the Lessee and the condemning public authority or as determined by the court.

11. IMPROVEMENTS OR ALTERATIONS

- A. No improvement, except standard agricultural fences, shall be placed on the Premises and/or substantial alteration conducted on the Premises by the Lessee or at the Lessee's direction without prior written authorization by the Board. Written authorization can be sought by submitting to the Board an Improvement Application on a form provided by the Board. Improvements placed upon the Premises by the Lessee with the Board's prior written authorization shall be referred to herein as "authorized improvements". Any improvement or alteration that has not received prior written authorization shall be "unauthorized improvements".
- B. Upon the termination of this Lease, and provided Lessee is not then in breach of or in default under this Lease, all authorized improvements shall, at the Lessee's option, either be:
 - 1. removed by Lessee without damage to the Premises; or
 - 2. sold by Lessee to a subsequent lessee pursuant to CRS §36-1-119.
- C. All authorized improvements not so removed or sold within sixty (60) days after termination of this Lease shall be deemed abandoned and may, at the Board's option, be removed by the Board at the Lessee's expense, retained by the Board for use by subsequent lessees, or sold by the Board with all proceeds going to the Board. Lessee shall not be entitled to compensation for, or to sell or remove, any authorized improvements when the lease is terminated by the Board for violation by the Lessee of the lease provisions.
- D. In the event that the new owner or new Lessee and the former Lessee do not agree upon the value of the authorized improvements, the Board shall establish the value of the authorized improvements.
- E. As to all unauthorized improvements, and to all improvements when Lessee is in breach of or in default under this Lease, those improvements shall, at the Board's option:
 - 1. become the property of the Board without cost to the Board or compensation to the Lessee; or
 - 2. be removed by the Lessee at Lessee's expense without damage to the Premises; or
 - 3. be removed by the Board at Lessee's expense.
- F. Lessee shall not suffer or permit to be enforced against the Premises, or any part of the Premises, or any improvements on the Premises, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim of damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand howsoever the same may arise. Lessee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce such liens, claims or demands against the Premises or improvements. Lessee shall provide actual and posted notice of nonliability pursuant to C.R.S. § 38-22-105 notifying all persons who might claim any liens or encumbrances upon the Premises relating to any work, labor, services or materials provided for or improvements to the Premises initiated by or conducted for the benefit of Lessee that the Board's interests are not subject to such liens or encumbrances. Lessee shall indemnify, defend and hold the Board harmless against any claims for any liens or encumbrances upon the Premises relating to any work, labor, services or materials provided for or improvements to the Premises initiated by or conducted for the benefit of Lessee.
- G. Lessee agrees to maintain with the Board a current and complete list of all authorized improvements on the Premises on a form provided by the Board. Lessee shall keep and maintain the Premises and all Lessee- and/or Board-owned improvements, whether new or pre-existing, in good repair and safe condition. In the event of violation of the foregoing provision, any authorized or unauthorized improvements may be removed by the Board at the Lessee's expense and shall be grounds for immediate cancellation of this Lease at the election of the Board and shall subject the Lessee to sanctions, penalties and fees in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated herein by reference.

12. WATER

- A. No water, ditch, reservoir, well, spring, seepage or other right, permit, or use of any kind, ("water right") may be initiated, established, appropriated or adjudicated (for use on or off the Premises) by the Lessee for which the point of diversion, withdrawal, use or storage is on the Premises, without the prior written approval of the Board. All applications and documents pertaining to any such water right shall be made in the name of the Board, and the Board reserves the right to make or convert any related applications or documents in or to its own name. Any such water right, approved or unapproved, is the sole and absolute property of the Board without cost to the Board.
- B. Improvements made or constructed by the Lessee in connection with such water right, apart from any such water right, shall be subject to the preceding section entitled "Improvements". The water right itself, however, shall belong to the Board without cost.
- C. Any proposal by the Lessee to apply and/or use on the Premises an existing water right which is not diverted, withdrawn or stored on the Premises, and which is not the property of the Board, shall first be approved in writing by the Board. Such approval and application shall be in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated herein by reference. Once an application of such water right is approved the Board shall have the option, at the termination of this Lease, to:
 - 1. require that the water right (and/or related improvements), or any portion thereof, be sold to the Board or its subsequent lessee at its fair market value; or
 - 2. permit the water right (and related improvements) to be removed from the Premises, but only under a reclamation/restoration plan approved by the Board and completed by the Lessee. If the reclamation/restoration is not completed by the Lessee within the time set forth in the approved plan, the water right shall remain attached to and available for use on the Premises and become the property of the Board without cost.
- D. If any water right (and/or related improvements) owned by the Board is leased to the Lessee by this Lease, it shall be described in the paragraph entitled "Description of the Premises" and in that event will be considered part of the Premises.

planting of a crop, not actually planted at the time of service of demand for possession, will be deemed an authorized improvement and treated as such by the Board in the same manner as provided for in the paragraph entitled "Improvements".

20. **PENALTY, INTEREST AND FEES**

Both a penalty and interest shall be imposed for, but not limited to, late payments, improper or partial payments, violation of any covenant of this Lease, or false statements made to the Board. Penalty and interest and fee schedules, as adopted by the Board from time to time, shall be deemed effective immediately after public notice and incorporated herein by reference.

21. **BOARD POLICIES**

This Lease is subject to and Lessee shall comply with all applicable policies, directives and schedules, as adopted by the Board from time to time. Such policies, directives and schedules are available for inspection and review at the offices of the Board and online at <http://www.trustlands.state.co.us> and are incorporated herein by reference. Lessee acknowledges that the Board meets publicly on a monthly basis and at such public meetings may amend or change existing policies and/or adopt new policies. Any amendments or changes to existing policies, directives and schedules and any adopted new policies, directives and schedules, shall be deemed effective immediately after public notice and incorporated herein by reference. Lessee shall be responsible to stay fully informed of all applicable policies, directives and schedules. Lack of actual notice or knowledge of applicable policies, directives and schedules shall not provide a defense for any failure to comply.

22. **JOINT & SEVERAL LIABILITY**

All persons signing this Lease as Lessee shall be jointly and severally liable for any and all rental amounts, damages, injuries, penalties, fees and other liabilities arising under this Lease and/or arising from the use, occupation or control of the Premises.

23. **NONWAIVER**

Waiver by the Board of strict performance of any provision of this Lease shall not be a waiver of, nor prejudice the Board's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing by the Board following a breach by the Lessee of any provision of this Lease, shall not constitute a waiver of any right of the Board with respect to such breach. The Board shall be deemed to have waived any right hereunder only if the Board shall expressly do so in writing.

24. **AMENDMENTS**

No waiver, modification, amendment, discharge or change of this Lease shall be valid unless the same is in writing and signed by the Board. The staff of the Board does not have authority, actual or apparent, to waive, modify, amend, discharge or change any provision of this Lease, except in writing.

25. **VENUE**

In the event of a dispute arising out of this Lease, venue shall be in the City and County of Denver, Colorado.

26. **REPORTS**

Lessee shall submit any and all reports on the past uses and the present use and conditions of and any improvements on the premises and current and accurate financial information for the Premises as requested by the Board. Lessee shall submit, as directed by the Board, a Resource Management Plan for the Premises for approval by the Board. The Resource Management Plan must be acceptable to the Board and when approved shall be incorporated as a covenant under this Lease.

27. **SURVIVAL**

All obligations of Lessee to be performed prior to the expiration or termination of this Lease shall not cease upon the termination or expiration of this Lease and shall continue as obligations until fully performed. All clauses of this Lease which require performance beyond the termination or expiration date shall survive the termination or expiration date of this Lease. However, upon expiration or earlier termination of this Lease, the rights of the Lessee and of all persons, firms, corporations, and entities, claiming under Lessee in and to the Premises and all improvements hereon, shall cease.

28. **SEVERABILITY**

If any term or provision of this Lease proves to be invalid, unenforceable, void, or illegal, the remainder of this Lease shall not be affected thereby, and shall be valid and be enforced as written.

29. **BOARD'S DISCRETION**

Whenever the Board's approval, consent or authorization is sought by the Lessee pursuant to this Lease, the Board may withhold such approval, consent or authorization in its sole and absolute discretion.

30. **NOTICES**

Any notice, request or demand required or permitted to be delivered hereunder shall be in writing and shall be deemed to be given and delivered when deposited with the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the party intended at the address stated herein, or to such other address as may hereafter be furnished in writing. In addition, it is the Lessee's responsibility to provide written notification to the Board of any change of address in a timely manner. Failure to do so may result in penalties and interest in accordance with Section 20 of this lease.

Exhibit A

Agricultural Lease No.45878

TOWNSHIP 21 SOUTH - RANGE 71 WEST, 6th P.M.
Custer County

Section 36 All

640.000 acres

Total Acres:

640.000

STATE OF COLORADO

BOARD OF LAND COMMISSIONERS

Department of Natural Resources

1313 Sherman Street, Room 621
Denver, Colorado 80203
Phone: (303) 866-3454
Fax: (303) 866-3152

SOUTH DISTRICT OFFICE

P.O. Box 88 – 305 Murphy Drive, Suite A
Alamosa, CO 81101
(719) 589-2360
(719) 589-2967 (Fax)



Managing
State Trust Lands
Since 1876

August 4, 2003

Ross, Jan and Christopher Wilkins
P.O. Box 1025
Westcliffe, CO 81252

Bill Owens
Governor

Greg E. Walcher
Department of Natural Resources
Executive Director

Christopher J. Castilian
State Board of Land Commissioners
Division Director

**Re: App. No. 02/400A; Custer County
NOTICE OF APPROVAL OF NEW AGRICULTURAL LEASE
RESULTING FROM AUCTION**

Dear Applicant(s)/Lessee(s):

The agricultural lease application submitted by Ross, Jan and Christopher Wilkins, as joint tenants, was approved effective July 25, 2003. Term and conditions are as follows:

- 640.00 acres less 3.64 non-billable acres for total of 636.36 grazing acres
- \$2,000.00 per year
- Five-year term (exp. July 25, 2008)
- Reduction in AUMs from 144 to 125

This is notification of a decision of staff. Any party who believes they have been adversely affected by the decision may request a review of the decision by the State Board of Land Commissioners. To request a review, affected parties must follow the procedures of the Board's Policy Concerning Review of Staff decision, policy #2002-01, which can be found on our website at <http://trustlands.state.co.us>

Sincerely,

Laura A. Gomez
District Assistant

cc: Leasing Unit – Denver Office