Recharge Pond Approval Protocol

The steps in the Recharge Pond Approval Protocol are as follows:

1. The Division Engineer’s Office must give its written approval of Arkansas River Farms’ ("ARF") installation and calibration of measuring devices, stage-capacity calculations including stage-area-capacity curves for each recharge site, and surveyed locations and area, all in compliance with the Division Engineer’s Functional Standards for Measuring Devices and for Stage-Area-Capacity Data.

2. In selecting and preparing each recharge site, and before running the Infiltration Rate Test and the Operations Test described below, ARF must test for selenium concentrations and report those concentrations in writing to LAWMA and the Division Engineer.

3. In selecting and preparing each recharge pond, and before running the Infiltration Rate Test and the Operations Test described below for each recharge pond, ARF must install one or more monitoring wells at each recharge site. The monitoring wells must be completed to a minimum depth of six feet and must be located down gradient of each recharge pond and within 200 feet of each recharge pond. ARF shall measure and record the depth to water in each monitoring well that is to be used to monitor the depth to water for a particular recharge pond (i) prior to running the Infiltration Rate Test for the recharge pond; and (ii) upon completion of the Infiltration Rate Test for the recharge pond when there is no water visible in the recharge pond. ARF shall also measure and record the depth to water in each monitoring well that is to be used to monitor the depth to water for a particular recharge pond (i) prior to running the Operations Test for the recharge pond; and (ii) upon completion of the Operations Test for the recharge pond.

4. The rate of infiltration for each recharge pond must be tested with a full-pond drawdown test ("Infiltration Rate Test"). A full-pond drawdown test requires that the pond be filled to capacity and then emptied via recharge and evaporation. ARF must submit the results of the Infiltration Rate Test to LAWMA and the Division Engineer’s Office in writing.

5. The Division Engineer’s Office must approve the Infiltration Rate Test in writing.

6. After the Division Engineer’s Office has approved the Infiltration Rate Test, each recharge pond must have an operations test for a period of 60 days, during which all deep percolation return flows, including on-farm lateral losses, must be delivered to recharge along with the historical consumptive use ("HCU") components of the Fort Lyon Shares that will be delivered to the river by means of recharge at the ponds ("Operations Test"). The purpose of the Operations Test is to demonstrate that each recharge site has infiltration rates sufficient for expected recharge operations and maintenance of historical return flows. ARF must submit the results of the Operations Test to LAWMA and the Division Engineer’s Office in writing, to allow the Division Engineer’s Office to give its approval of the Operations Test.
7. The Division Engineer’s Office must approve the Operations Test in writing.

8. The Division Engineer’s Office must give its written approval of the ponds’ design and operation with respect to (i) minimization of seepage through pond berms; and (ii) no exposure of ground water.

9. Following the Infiltration Rate Test and the Operations Test, ARF must give LAWMA and the Division Engineer a written estimate of the increase, if any, in the amount of water lost to (i.e., consumed by) phreatophytes or otherwise as a result of high ground water table conditions. The Division Engineer must give its written confirmation of ARF’s estimate. If operation of the recharge ponds causes LAWMA to lose HCU credit on this basis, LAWMA will have the right to maintain, in perpetuity, Delivery Infrastructure Liens on the LAWMA Shares in the amount necessary to prevent injury to LAWMA from the loss of HCU credits from the Fort Lyon Shares.

10. Based on the as-built locations and configurations of the recharge ponds and the results of the Operations Test and Infiltration Rate Test, LAWMA’s engineer will determine whether any characteristic of the as-built recharge ponds (including without limitation the infiltration rate, the location of recharge accretions, the lagged timing of the recharge accretions, or the rate of delivery of water into the recharge structures) will result in injurious loss to LAWMA of historical consumptive use credit associated with the Fort Lyon Shares as determined by LAWMA in its sole discretion (“Recharge Injury”). If LAWMA determines that the as-built locations and configurations of the recharge ponds will result in such Recharge Injury, LAWMA will have the right to maintain, in perpetuity, Delivery Infrastructure Liens on the LAWMA Shares in the amount necessary to prevent injury to LAWMA from the loss of consumptive use credits from the Fort Lyon Shares.

11. The Recharge Pond Approval Protocol will have been met for a given pond when all of the steps listed above have been completed.