



Cleave Simpson, General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101

**RE: 2020 ANNUAL REPLACEMENT PLAN APPROVAL: SPECIAL
IMPROVEMENT SUBDISTRICT NO. 3 OF THE RIO GRANDE
WATER CONSERVATION DISTRICT**

Dear Mr. Simpson:

Thank you for your April 15, 2020 submission of the Special Improvement District No. 3's proposed Annual Replacement Plan (ARP) for the 2020 Plan Year (**May 1, 2020 through April 30, 2021**).

My staff and I have reviewed the proposed ARP and its appendices. A number of the referenced documents will not be attached to this letter but are available on the DWR website at:

<http://water.state.co.us/DivisionsOffices/Div3RioGrandeRiverBasin/Pages/Subdistrict3ARP.aspx>

All information and data related to this approved ARP are available on our website.

Enclosed, please find my approval of the 2020 ARP.

Kevin Rein, P.E.
State Engineer
Director of Division of Water Resources

cc: Division 3



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Review, Findings, and Approval of Subdistrict No. 3's 2020 Annual Replacement Plan

Background

Special Improvement District No. 3 ("Subdistrict"), a political subdistrict of the Rio Grande Water Conservation District ("RGWCD"), formed through Conejos County District Court in Case 2016CV30021, timely submitted its proposed Annual Replacement Plan ("ARP") pursuant to its Plan of Water Management ("PWM") approved by the State Engineer and noticed through Division No. 3 Water Court in Case No. 2018CW3013.

The 2020 Plan Year ARP and its appendices were available for download through a link on the RGWCD website. The ARP, its appendices, and resolutions were provided to the State and Division Engineers on April 15, 2020. Copies of the ARP were made available for viewing at the State and Division Engineers' offices. The ARP, its appendices, resolutions, the Subdistrict's Response Functions, and this letter are posted on DWR's website. There were no letters, comments, or other objections submitted regarding the 2020 ARP. My staff and I have conducted this review of the ARP and comments thereon in accordance with the operational timelines specified in the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for all Irrigation Water Rights ("Rules"), Case 2015CW3024. The Rules were approved as promulgated and were deemed effective as of March 15, 2019 by the Division No. 3 Water Court.

DWR Review

As set forth in the Rules, I must determine whether the ARP presents "sufficient evidence and engineering analysis to predict where and when Stream Depletions will occur and how the Subdistrict will replace or Remedy Injurious Stream Depletions to avoid injury to senior surface water rights." (Rules 11.3). Also, The ARP will include: a database of Subdistrict and Contract Wells that will be covered by the ARP; a projection of the groundwater withdrawals from Subdistrict and Contract Wells during the current Water Administration Year; a calculation of the projected stream depletions resulting from groundwater withdrawals from Subdistrict and Contract Wells; a forecast of the flows for Division No. 3 streams; detailed information regarding the methods that will be utilized to replace or remedy injurious stream depletions during the ARP Year, including any contractual agreements used for replacement or remedy of injurious stream depletions that will be in place; any information regarding the fallowing of Subdistrict Lands; information to document progress towards achieving and maintaining a Sustainable Water Supply; and, documentation that sufficient funds are or will be available to carry out the operation of the ARP." (Subdistrict PWM, Section 6.1.2). Finally, I must review the ARP pursuant to the statutory mandates,

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constitutional requirements, rules and regulations adopted in Division No. 3, and any letters, comments, or other objections submitted by water users regarding the adequacy of the ARP.

With the foregoing in mind, I turn to a review of the ARP. It would be unwieldy to include in my review every detail of the thorough ARP, so for the purpose of this letter, I incorporate it and its supplements by reference.

11.1.1 Database of All Wells to be Covered by the ARP

Structure Identification Number (WDID) (Section 1 of 11.1.1 of the ARP)

A comprehensive list of wells included in the ARP is necessary in order to allow DWR to verify which wells are authorized to operate in accordance with the ARP. To that end, the Subdistrict submitted the most current tabulation of the structure identification number (WDID) of each well included in the Subdistrict (see Appendix A of the ARP). The Subdistrict also supplied a spreadsheet to DWR of the list of Subdistrict Wells as a supplement to the 2020 ARP. Appendix A lists 158 wells, which includes 17 wells included by participation contract for 2020.

Contract wells were reviewed for the terms of the contracts, associated permits and decrees for each well, and historical meter records. A number of wells will be accepted as contract wells for this ARP approval, but where there are permitted and/or decreed limits that historical records indicate have been exceeded, will only be accepted for ground water withdrawals up to their respective limits. Owners of these wells, including WDIDs 2105401, 2105907, 2206387, and 2205013 will be notified of this conditional acceptance by separate correspondence.

Other Well Identification Information (Section 2 of 11.1.1 of the ARP)

The database of wells the Subdistrict has accepted as part of this ARP was satisfied under 11.1.1.1.

Subdistrict Wells with Plans for Augmentation (Section 3 of 11.1.1 of the ARP)

At the time of the submittal of this ARP, the Subdistrict staff is unaware of any ARP Wells being fully or partially augmented by a plan for augmentation. "The Subdistrict and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded plans for augmentation or other replacement plans without the approval of both the Court and the Subdistrict's Board of Managers." (PWM at 2.4.6)

I have reviewed Appendix A of the ARP and consulted with staff and find it to be an accurate inventory of Subdistrict Wells that meets the requirements of Rule 11.1.1.

Total Combined Projected Annual Diversion for All Subdistrict Wells (Section 4 of

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11.1.1 of the ARP)

For Subdistrict ARP Wells listed in this ARP, DWR total metered groundwater withdrawals as of April 1, 2020, for the 2019 Water Administration Year were 16,204 acre-feet. In 2015, stream flows were very similar to the 2020 forecast and in that year, Subdistrict ARP Wells withdrew 25,645 acre-feet. Using this comparison, the Subdistrict ARP Well groundwater withdrawals in 2020 are projected to be 25,900 acre-feet.

Subdistrict Well Metered Pumping (acre-feet)
from Table 2.1 of the ARP

2011	2012	2013	2014	2015	2016	2017	2018	2019
31,647	40,624	42,691	33,197	25,645	25,149	21,176	35,855	16,204

The majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers, 88.7 percent. Approximately 4.4 percent and 6.9 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

Expected Methods of Irrigation, the Combined Projected Number of Acres Irrigated and the Total Projected Acreage by Each Irrigation Method (Section 5 of 11.1.1 of the ARP)

Subdistrict ARP wells are projected to irrigate approximately 23,800 acres during the Plan Year, including 15,550 acres irrigated by center pivot sprinklers and 8,250 acres irrigated by flood application. The Subdistrict made this projection based on a review of the breakdown of acres within the Conejos Response Area under each irrigation type prepared by DWR for inclusion in the RGDSS Groundwater Model.

Non-Irrigation Subdistrict Wells - Calculation of All Projected Withdrawals and Projected Net Groundwater Consumptive Use (Section 6 of 11.1.1 of the ARP)

Included in the ARP Well List are a number of wells with beneficial uses other than irrigation. The Subdistrict utilized information provided by DWR to calculate the consumptive use rates used in the RGDSS Model to calculate stream impacts and returns. Beneficial uses include potato washing, commercial, domestic (subdivision), lawn irrigation and fish. A spreadsheet was prepared by the Subdistrict to calculate the composite Consumptive Use Ratio that is a necessary input in the Response Functions. A spreadsheet of the calculation prepared for use in the 2020 ARP was submitted as supplement to this ARP.

Other Data Necessary to Support the Projected Stream Depletions (Section 7 of 11.1.1 of the ARP)

No other data was provided.

Other Information Required by the State and Division Engineers and Reasonably

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Necessary to Evaluate the Proposed ARP (Section 8 of 11.1.1 of the ARP)

The supplemental information needed to evaluate the 2020 ARP and provided to the State Engineer included:

1. Resolution from RGWCD approving the Subdistrict 2020 ARP.
2. The list of Subdistrict Wells included in the 2020 ARP in spreadsheet format matching the list presented in Appendix A
3. Resolution from RGWCD to allow the Subdistrict to allocate Closed Basin Project water in the 2020 ARP.
4. Spreadsheet showing the Subdistrict's breakdown of "Other" wells used to calculate the composite Consumptive Use Ratio in the Response Function.
5. Spreadsheet version of the Response Functions used in this ARP.

11.1.2 Projected Stream Depletions from the Wells Covered by the ARP based on the Applicable Response Function or Approved Alternative Method

Section 2 of the ARP presents the data utilized to project stream depletions to the Conejos River, Alamosa River, and Rio Grande as a result of the Plan Year's groundwater withdrawals from Subdistrict ARP Wells. The Response Function outputs identify total projected stream depletions for the Plan Year, a breakdown of the monthly stream depletions for the Alamosa, two reaches on the Conejos, and three reaches on the Rio Grande rivers and a projection of the Post-Plan Stream Depletions calculated as a result of the predicted Plan Year groundwater withdrawals from Subdistrict ARP Wells. The Subdistrict was directed by DWR to use the current 6P98 Response Functions to calculate projected stream depletions for this ARP.

The April through September streamflow forecasts included in the ARP are made by the United States Department of Agriculture's Natural Resources Conservation Service ("NRCS"). The annual streamflow forecasts included in the ARP for the Rio Grande and Conejos River basins are those included in the April 6, 2020 Division Engineer's Rio Grande Compact Ten Day Report (Appendix C of the ARP).

2020 Stream Flow Forecast - Conejos River (Section 1 of 11.1.2 of the ARP)

There was a difference between the NRCS and the Division Engineer's forecasts as shown in the following table. The Subdistrict selected the Division Engineer's Rio Grande Compact Ten-Day Report of the April - September flow for the Conejos of 211,900 acre-feet for use in the Response Functions for 2020.

Conejos Stream Flow Forecast

Conejos Stream Flow Forecast	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
Analysis	(1)	(2)	(3)	

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NRCs April 1 st Forecast (4/6/2020)				
Conejos River near Mogote	143,000	74%		
Los Pinos River near Ortiz	44,000	60%		
San Antonio River at Ortiz	8,300	53%		
TOTAL	195,300			
Division Engineer, Ten Day, 4/6/2020				
Conejos River near Mogote	149,900	77%		
Los Pinos River near Ortiz	53,700	74%		
San Antonio River at Ortiz	8,300	53%		
TOTAL	211,900		28,100	240,000
Rio Grande Stream Flow Forecast Analysis				
	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
NRCs April 1 st Forecast (4/6/2020)	415,000	80%		
Division Engineer, Ten Day, 4/6/2020	454,000	88%	96,000	550,000

- (1) projected 30% exceedance streamflow at the gaging station
- (2) NRCs 30-yr Average Flow: Conejos-194,000, Rio Grande-515,000, Alamosa-68,000, Los Pinos-73,000, San Antonio-15,600
- (3) January through March and October through December

Projected Plan Year Stream Depletions (Section 2 of 11.1.2 of the ARP)

Subdistrict staff was instructed by the State Engineer's Office to predict stream depletions caused by Subdistrict ARP Wells utilizing the response functions developed for the Conejos Response Area under the RGDSS Groundwater Model Phase 6P98. For the Plan Year, stream depletions were calculated using these Response Functions.

The Response Function spreadsheet was built to be used for the whole Response Area. Two instruction sheets were prepared by DWR for additional inputs to the Response Functions when there is a need to use it for individual or group of wells. The instruction sheet, "How to Use the Application Workbook for a Subset (individual/group) of Wells" (9/23/2015), describes how to adjust the spreadsheet inputs to stream reaches that have been modeled with point source returns to streams. The instruction sheet, "How to Adjust the Application Workbook for use with a Subset of Wells" (10/15/2015), describes how to use the "Ratio Method" for Response Areas where it is necessary to apply this method.

The first step in using the current 6P98 Response Function is to input data for the whole Response Area, i.e., historical groundwater withdrawals for sprinkler irrigation, flood irrigation, "other" pumping with corresponding "other" consumptive use ratios for the years 2011 through 2019 and predicted values for 2020.

The Subdistrict has elected to use the Response Function spreadsheet for the subset of wells represented by the Subdistrict ARP Wells. The Conejos Response Area requires adjustments for both point source return flows and the stream ratios, as listed below.

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- Conejos Response Area - Reach 7 (San Antonio River) from the Town of Antonito.
- Conejos: Reach 1 Calculations Ratio, and Reach 6 Calculations Ratio,

Using the whole Response Area results, adjustments are made on appropriate pages of the Response Function spreadsheet. The Subdistrict ARP Wells do include the Town of Antonito point source return flow. Adjustments for the Ratio Method must be made for Reach 1: Conejos above Seledonia/Garcia and Reach 6: Alamosa River.

Once these preliminary steps are completed, the next step in calculating stream depletions using the Response Functions is updating Table 2.1 to derive the annual net groundwater consumptive use. The consumptive use ratios for sprinkler and flood irrigation used in the Model are standard factors of 83% and 60%, respectively. The consumptive use ratio for "other" wells is specific to the uses of those wells and can vary widely. The "Other Consumptive Use Ratio" for the whole Response Area is a composite derived from the individual well withdrawals and consumptive uses.

The Subdistrict provided a spreadsheet of "Other" wells included in the Subdistrict ARP Well list as a supplement to the ARP. The spreadsheet shows the individual well groundwater withdrawals and consumptive use factors to explain how the composite ratios were determined for the subset wells represented in Table 2.1 of the ARP.

Historical ARP Well groundwater withdrawal values were entered in Table 2.1 for years 2011 through 2019. Projected ARP Well groundwater withdrawal values were used for 2020. The Subdistrict has no Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use. The projected Net Groundwater Consumptive Use for the Plan Year is 17,883 acre-feet.

Following determination of the Net Groundwater Consumptive Use, the data was incorporated in the Response Functions Table 2.2 to calculate stream depletions for the Plan Year and projected into the future.

The Response Functions calculated stream depletions to the Conejos River, Rio Grande, Alamosa River, and San Antonio during the Plan Year, due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals. The total depletions are 3,183 acre-feet, which includes negative depletions of 106 acre-feet on the San Antonio. The Response Functions calculated total stream depletions to the Conejos River are 2,766 acre-feet, to the Alamosa River 95 acre-feet, and to the Rio Grande 428 acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.

Post-Plan Stream Depletions are estimated to accrue to impacted streams for approximately 19 years. Based on predictions from the Response Functions, Table 2.4 of the ARP shows there would be a total of 6,827 acre-feet of Post-Plan Stream Depletions. This amounts to 4,942 acre-feet to the Conejos, 1,521 acre-feet to the Rio Grande, and 364 acre-feet to the Alamosa.

11.1.3 Description of How Injurious Stream Depletions from Groundwater Withdrawals by Wells Included in the ARP will be Replaced or Remedied

Amounts and Sources of Replacement Water for 2020 Plan Year (Section 1 of 11.1.3 of the ARP)

The Subdistrict has assembled a portfolio of water supplies for the replacement of Injurious Stream Depletions and remedies other than water. The ARP identifies the water rights, their availability and their amounts in Table 3.1 of the ARP. Applications for renewal for SWSPs 6074 (Taos Valley No. 3) and 6066 (Expo) were submitted by the Subdistrict for replacement sources for the use of water for the purpose of replacing depletions as part of the ARP. SWSP 6074 has been approved and the approval letter is included as an Exhibit to this letter. SWSP 6066 is pending approval May 7, 2020.

The adequacy of replacement sources for the ARP Year are dependent upon contracted amounts the Subdistrict has acquired as well as the availability of the source to pay depletions in place and time. For purposes of review of adequacy of replacement sources, there are three categories defined.

In Storage: Reservoir water in storage under the control of the Subdistrict. This water is available for release at the direction of the Subdistrict.

In Season: Ditch water that will become available to the Subdistrict when in priority during the 2020 irrigation season in the amount of depletion owed to streams daily by the Subdistrict. For some sources, water not used to pay daily depletions may be stored for Subdistrict use later.

On Call: Remedies, such as forbearance, that are available in the amount of depletion owed to streams daily by the Subdistrict, limited to when the forbearance ditch is the calling water right. I note that forbearance depends on climate and actual days when a ditch is the calling water right and the exact yield per year is indeterminate. It is also noted that the amount of forbearance water usable by the Subdistrict is limited by their depletions owed daily to streams. In addition, several Subdistricts are seeking forbearance agreements with the same ditches. This further complicates the availability of a firm supply under these agreements.

This replacement water or remedy will be available to replace Injurious Stream Depletions as directed by the Division Engineer. A summary of the portfolio items is shown in the Replacement Sources tables on the following pages. I will approve up to the full amount itemized in the Replacement Sources tables and stated in the following sections for use in the 2020 ARP.

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Subdistrict No. 3 Replacement Sources Conejos River (acre-feet)

Sect	Water Right Name	Submitted in 2020 ARP	Approved in SWSP's	Remaining 5/1/2020 & Approved for 2020 ARP
	In Storage			
	SWSP 6061- SLVWCD 84CW16 & 94CW62	1046.2	1046.2	1046.2
	SWSP 6061- SLVWCD Bear Creek 05CW13/07CW63	0	34.6	0
	SWSP 6061- SLVWCD BAR Cattle 03CW41	0	61.5	0
	SWSP 6061- SLVWCD Anaconda 09CW34	122.7	122.7	122.7
	SWSP 6056 - BLM Excess Augmentation Credits Stored in 2019	440.3		440.3
	SWSP 6093 Taos Valley No 3 Stored in 2019	107.9		107.9
	Total In Storage	1,717.1		1,717.1
	In Season			
	SWSP 6074- Taos Valley No. 3 (after transit loss)	1,000	Up to 1,000	Up to 1,000
		Submitted in ARP Limit	Expected Yield	Approved for 2020 ARP
	On Call- Forbearance (Expected Yield greater than 0)		Expected Yield	
	Alamo	No limit	99	
	Ball Bros 1 & 2	No limit	13	
	Canon Irrigating Ditch	No limit	20	
	Del Puerticito	No limit	11	
	East Bend Ditch - BLM	No limit	6	
	Ephraim Canal	No limit	13	
	Gabriel Martinez	No limit	43	
	Heads Mill- Alpha Hay & Quinlan	No limit	161	
	JF Chacon D 2	No limit	4	
	La Del Rio	No limit	9	
	Los Ojos 2- BLM	No limit	2	
	Los Sauces	No limit	45	
	Manassa Land & Irrigation	No limit	203	
	Mogote & Northeastern	No limit	18	
	Overflow	No limit	4	
	Richfield	No limit	4	
	Romero	No limit	175	
	Sabine School Section Ditch	No limit	3	
	Salazar	No limit	9	
	San Juan San Rafael	No limit	34	
	Sanford	No limit	2	
	Servietta	No limit	106	
	Williams Stuart Co Irrigation D	No limit	18	
	Total On Call- Forbearance		1,002	Up to 1,002
	CBP Allocation- April 2020	930	930	
	Total On-Call Non-Irrigation Season		930	Up to 930

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Subdistrict No. 3 Replacement Sources Alamosa River (acre-feet)

Sect	Water Right Name	Submitted in 2020 ARP	Approved in SWSP's	Remaining 5/1/2020 & Approved for 2020 ARP
	In Storage			
	SWSP 6066- Expo, LLC - Approval pending	22		
	SWSP 6070- El Viego Ditch Stored in 2019 (approval amount updated)	45.8		38.5
	Total In Storage	67.8		38.5
		Limit	Expected Yield	Approved for 2020 ARP
	On Call- Forbearance (Expected Yield greater than 0)			
	Arroya Ditch	No limit	2	
	Capulin Ditch	No limit	20	
	Flintham	No limit	1	
	Gabino Gallegos	No limit	4	
	Head Overflow No 5 Ditch	No limit	8	
	Lowland Overflow	No limit	2	
	Morganville Forbearance	No limit	1	
	Ortiz Forbearance	No limit	1	
	Scandinavian Forbearance	No limit	1	
	Terrace Irrigation Company Forbearance**	No limit	25	
	Total On Call- Forbearance		65	Up to 65

***Note: All ditch rights of Terrace Irrigation Company are allowed to participate in a forbearance, however, Priority 110 for storage in Terrace Reservoir is excluded from participation. See Section 3.1 of this Approval Letter.*

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Subdistrict No. 3 Replacement Sources Rio Grande (acre-feet)

Sect	Water Right Name	Submitted in 2020 ARP	Approved in SWSP's	Remaining & Approved for 2020 ARP
	In Storage			
	SWSP 6061- SLVWCD 84CW16 & 94CW62	110	200	
	Total In Storage			110
Sect	Water Right Name	Submitted in 2020 ARP	Expected Yield	Remaining & Approved for 2020 ARP
	On Call- Irrigation Season**			
	On Call- Subdistrict No. 1 SMRC			
	Rio Grande Canal		150	
	Farmers Union			
	San Luis Valley Canal			
	Prairie Ditch			
	Billings Ditch			
	Total On Call- Subdistrict No. 1 SMRC	1,500	150	Up to 150
	On Call- Forbearance (Expected Yield greater than 0)	Limit	Expected Yield	Approved for 2020 ARP
	Centennial	No limit	1	
	Commonwealth-Empire Forbearance	500	36	
	Excelsior Ditch	154.47	3	
	Monte Vista Canal Forbearance	300	27	
	Rio Grande Canal	150	none	
	RG Lariat Ditch Forbearance	500	3	
	RG Piedra Valley Ditch Forbearance	No limit	2	
	RG San Luis Ditch	No limit	3	
	San Luis Valley Canal Forbearance	250	none	
	Total On Call- Forbearance		75	
	Total On Call- Irrigation Season			Up to 75
	CBP Allocation- April 2020	200	200	
	Total On Call- Non-Irrigation Season			Up to 200

***Note: The On-Call Irrigation Season contract is for Subdistrict No. 2, Subdistrict No. 3, & Subdistrict No. 6. The expected yield is for Subdistrict No. 3.*

After Acquired Sources of Remedy (Section 2 of 11.1.3 of the ARP)

DWR recognizes the Subdistrict will continue to work to acquire additional sources of remedy and may, with approval from the Division Engineer, use those sources to remedy injury under this ARP.

Operation of the 2020 Annual Replacement Plan (Section 3 of 11.1.3 of the ARP)

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The ARP states that the Subdistrict's replacement water will be released from Platoro Reservoir, located in the Upper Conejos, Terrace Reservoir, located on the Alamosa River, and Rio Grande, Santa Maria, Continental, and Beaver Park Reservoirs, located in the Upper Rio Grande, at the direction of the Division 3 Engineer, to offset injurious stream depletions on the respective rivers during the Plan Year. All Plan Year injurious stream depletions will be replaced in the time, location and amount that they occur, beginning May 1, 2020. The reaches, amounts and time that stream depletions are projected to occur are shown in Table 2.3 in the ARP. These releases of water from storage will be performed under the provisions contained in section 37-87-103, C.R.S.

The ARP notes that Sections 37-80-120, 37-83-104, and 37-83-106, C.R.S., allow for exchanges to occur between reservoirs without a decree and if recognized by the Division Engineer. Appropriate accounting between the Division Engineer's Office and Subdistrict No. 3 will occur on a regular and routine basis if these exchanges do occur. Any reservoir exchanges done in the Plan Year will be documented and reported in the 2020 Annual Report. The Division Engineer's Office will be notified in advance of any reservoir exchanges.

The ARP provides a Memorandum of Understanding that at times when the calling water right is in either the Rio Grande Canal, Farmer's Union Canal, San Luis Valley Canal, Prairie Ditch, or the Billings Ditch, Subdistrict No. 3 will pay Subdistrict No. 1 to release Santa Maria Reservoir Company water it currently has in storage to remedy ARP Well injurious stream depletions, pursuant to the decree issued in case 2013CW3002.

The ARP provided an agreement with San Luis Valley Irrigation Well Owners, Inc. to lease up to 2,000 acre-feet for Subdistrict No. 3 and up to 2,000 acre-feet for Subdistrict No. 6 of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case. The approval of the SWSP regarding this lease was approved for up to 1,500 acre-feet total, quantified at the state line ($\pm 1,622$ acre-feet at the Taos Valley Canal No. 3 headgate) for Subdistrict No. 3 and Subdistrict No. 6. This water will be allowed to flow through the Lobatos Gage and pay the Rio Grande Compact. Water delivered to the Compact will be credited as a depletion bank which may be used throughout the Compact (Calendar) Year to pay back depletions owed to the two reaches on the Conejos River designated by the Response Functions. The Compact curtailment percentage will reflect the actual amount of water delivered to the Compact depletion bank under this scenario to make the timing work throughout the irrigation season. Subdistrict No. 3 expects to yield 1,000 acre-feet from this agreement.

In 2019, the Subdistrict entered into a lease agreement with the owner of water rights on the El Viego Ditch, Priority No. 1 on the Alamosa River to fallow land and generate consumptive use credits that could then be stored or left in the river to remedy stream depletions owed by the Subdistrict to the Alamosa River. A portion of the consumptive use credits generated from this agreement in 2019 are being stored in Terrace Reservoir and may be released during the Plan Year to remedy injurious stream depletions on the Alamosa.

In 2019, the Subdistrict had an agreement with the Bureau of Land Management to lease up to 900 acre-feet of Excess Credits as defined in the 2002CW38A decree for use in the ARP

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SWSP 6056 allowed storage of the Subdistrict's Excess Credits as shown in the table of replacement sources.

The ARP provides documentation that the Subdistrict has implemented Forbearance Agreements with a number of ditches located on the Conejos River, the San Antonio River, the Los Pinos, the Alamosa River, and the Rio Grande for the Plan Year. At times when the Conejos, the San Antonio and the Los Pinos are connected, the calling right can be on the San Antonio or the Los Pinos. The majority of the forbearance agreements allow the Subdistrict to exercise these agreements in its sole discretion.

The ARP provides an agreement with the Centennial Ditch in the Appendix. The resolution suggests an alternative for when replacement water needs to be carried below the Excelsior Ditch, but when the Rio Grande can be dry below the headgate. Instead, replacement water will be carried around that dry reach through the Centennial Ditch. The water will be measured and delivered directly to the Rio Grande at the point the Centennial Ditch can return water directly to the Rio Grande. That point is above any water right that may be injured while in priority. The Centennial Ditch must be adequate to efficiently deliver water around the dry stretch of river to the satisfaction of the Division Engineer prior to this being considered a viable option. The Centennial Ditch Company's water rights are senior enough to accomplish this carriage in any foreseeable situation (Priority Nos. 32 and 173).

The Response Functions did not predict stream depletions to streams other than the Conejos River, Alamosa River, and the Rio Grande in amounts above the minimum threshold to reliably predict injury. Therefore, no replacements to any stream other than the Conejos, Alamosa, and Rio Grande will be made.

The negative depletion amounts that the Response Function output generated on the San Antonio reflect the point-source return flow attributed to the Town of Antonito in the RGDSS Model. This negative depletion represented on the San Antonio affects the Conejos River depletions when both streams are live to their confluence. Should the stream systems become disconnected hydraulically during the ARP Year, aggregation of these negative depletion amounts for purposes of determining depletions owed on the Conejos will not be allowed.

The ARP indicates that at times when there is no requirement to deliver water to the Lobatos Gage to meet the requirements of the Rio Grande Compact, no water will be delivered to the lower reach of the Rio Grande for replacement of Injurious Stream Depletions to the Rio Grande Compact from the Subdistrict. The ARP indicates that the Closed Basin Project may continue to deliver salvaged water to the stream as directed by the CBP Operating Committee or other laws or policies.

In the alternative, the DWR agrees that the Subdistrict may replace these Injurious Stream Depletions after the irrigation season or when Compact deliveries are being made. The only instances where the Subdistrict is not required to replace these Stream Depletions are when there is an excess of 150,000 acre-feet of credit for Colorado or Elephant Butte Reservoir has spilled. In these instances, water passing the Lobatos Gage will not result in Compact

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credit to Colorado. In all other circumstances, the replacement of Injurious Stream Depletions to the Rio Grande Compact will result in credit being given to Colorado, either for the current year or for future years.

The ARP mentions the Subdistrict plans to make potential requests for aggregation of depletions between Stream Reaches as part of the anticipated operation in 2020. The ARP also mentions the Subdistrict may request to aggregate depletions with other Subdistricts during the 2020 ARP year. Further, the Subdistrict describes the situation in which the preliminary annual review of the ARP year, reported March 1, 2021, determines one Subdistrict has underpaid depletions and another Subdistrict has overpaid depletions during the prior months of the ARP Year. The Subdistrict proposes they may make a request to the Division Engineer to aggregate the depletions from prior ARP months between Subdistricts to remedy a Subdistrict's underpayment.

The Subdistrict anticipates a scenario when the depletions owed for all RGWCD Subdistricts combined in any one or more months during the non-irrigation season are greater than the production of the Closed Basin Project production in those months. Should this occur, the Subdistrict may request the Division Engineer allow a portion of the CBP production that is generated during the irrigation season be used to offset the Subdistrict's non-irrigation season depletions.

The Subdistrict may make requests for these types of changes formally to the Division Engineer, providing details of the request and documentation supporting the need to make a change to the approved ARP depletion schedule. The Division Engineer will consider such a request when it is made, under the protocol of DWR and in light of the conditions on the particular stream at the time and, if deemed appropriate, approve the request. The Subdistrict will not adopt any change until after approval by the Division Engineer.

The Rules require remedies sufficient to also remedy total Post-Plan Stream Depletions caused by current and past years' ARP Wells groundwater withdrawals that deplete the streams after the term of this ARP. Section 4.1.5 of the Subdistrict's PWM includes the provision, "the Subdistrict may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied." This allows the Subdistrict to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail or otherwise not be allowed to continue groundwater withdrawals.

If the Subdistrict were to fail, the individual well owners in the Subdistrict would have to obtain plans for augmentation or take other measures to comply with the Rules. Presumably, those plans would be required to replace Post-Plan Injurious Stream Depletions into the future. In the interim, the Subdistrict or the Rio Grande Water Conservation District will remedy Post-Plan Injurious Stream Depletions by supplying water or through agreements pursuant to which injury to water rights is remedied by means other than providing water to replace stream depletions.

Subdistrict No. 3 ARP Approval: Plan Year 2020

Anticipated Funding for Plan Year (Section 4 of 11.1.3 of the ARP)

The Subdistrict submitted sufficient financial information to document the purchase and leases of replacement water for the 2020 Plan Year.

11.1.4 Contractual Arrangements Among Water Users, Water User Associations, Water Conservancy Districts, Subdistricts, and/or the Rio Grande Water Conservation District

Subdistrict No. 1 Santa Maria Reservoir Company (SMRC) Shares (Section 1 of 11.1.4 of the ARP)

As of April 1, 2020, the Subdistrict states that Subdistrict No. 1 has a balance of 15,250 acre-feet of fully consumable water held in Santa Maria and Continental Reservoirs. This water was accumulated from the lease of Santa Maria shares from 2011-2019. Subdistrict No. 3 has reached an agreement with Subdistrict No. 1, whereby Subdistrict No. 1 will release Santa Maria Reservoir Company water currently in storage to remedy injurious stream depletions caused by Subdistrict No. 3 ARP Wells when the calling right is a ditch that primarily serves Subdistrict No. 1 and recharges the Closed Basin unconfined aquifer. Subdistrict No. 3 will then pay Subdistrict No. 1 per acre-foot released. This agreement with Subdistrict No. 1 is projected to account for 150 acre-feet of injurious stream depletion replacement during the Plan Year, based on current hydrologic conditions. The agreement is provided as a Memorandum of Understanding as part of the ARP.

San Luis Valley Irrigation Well Owner's, Inc. (SLVIWO) - Case No. 2015CW3030 (Section 2 of 11.1.4 of the ARP)

On December 30, 2015, the SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange. The SLVIWO is the owner of the water right and corresponding structures associated with the Taos Valley Canal No. 3. The original decree for the water rights decreed to the Taos Valley Canal No. 3 is the Decree of the Court entered in the Matter of the Adjudication of the Priority of Water Rights in the Conejos and San Antonio Rivers (Water District No. 88), District Court, Conejos County, Colorado (October 3, 1890). In 1975, SLVIWO filed an application for a plan for augmentation including exchange and to change the place and type of use of the Taos Valley No. 3 water right in Case No. W-3394 to include augmentation of any depletions caused by well users of the SLVIWO. The Taos Valley No. 3 water right was changed in Case No. W-3394. Of the 245 c.f.s. decreed to the Taos Valley Canal No. 3, 230 c.f.s. ("Middlemist Water") has been left undiverted by SLVIWO and accounted for as an offset to well depletions pursuant to that decree. The remaining 15 c.f.s. ("Zinn Water") was changed in Case No. W-3394 subject to a reservation by Pete E. and Mercedes Middlemist to divert and use up to that amount for irrigation pursuant to certain terms and conditions contained in that decree. The Zinn Water has continued to be used for irrigation up to and including the 2018 irrigation season.

Subdistrict No. 3 ARP Approval: Plan Year 2020

In Case No. 2015CW3030, SLVIWO seeks to utilize the Middlemist Water and the Zinn Water for augmentation by leaving the water in the San Antonio River as decreed in Case No. W-3394, by diverting water at the Taos Valley Canal No. 3 and continuing to store water in Cove Lake Reservoir for subsequent release to the San Antonio River, by recharging the confined and unconfined aquifers via a groundwater recharge project, by delivering water to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year and to divert and store the water in several reservoirs, either directly or via exchange, for later release to the San Antonio River, Conejos River and the Rio Grande for augmentation purposes. On January 25, 2019, SLVIWO filed an Unopposed Motion to Bifurcate Case No. 15CW3030. In that Motion, SLVIWO sought to bifurcate the claimed exchange to the Martinez Ditch and the Recharge Project from the other claims in the application.

Rio Grande Water Conservation District's Excess City of Creede Augmentation Credits Stored in Beaver Reservoir (Section 3 of 11.1.4 of the ARP)

The Rio Grande Water Conservation District leased excess augmentation credits from the City of Creede during the period October 1, 2019-April 30, 2020. A portion of these credits was utilized during the prior ARP year to replace injurious depletions for Subdistrict No. 2. The remainder of the 153.45 acre-feet of credit is being stored in Beaver Reservoir, after applicable transit losses were deducted. Subdistrict No. 3 is allowed to release up to 153.45 acre-feet from Beaver Reservoir to remedy injurious depletions caused by Subdistrict No. 3 ARP Wells. This is not a purchase of water in storage by the Subdistrict, but an agreement to use the water to pay depletions during the ARP Year.

Forbearance Agreements (Section 4 of 11.1.4 of the ARP)

Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., the Subdistrict has reached agreement with a multitude of ditches whereby they accept that, subject to the specific provisions of the forbearance agreement, injury to their water rights resulting from the use of groundwater by ARP Wells may be remedied by means other than providing water to replace stream depletions, when they are the calling right on the Conejos River system, Alamosa River, or Rio Grande.

The projected acre-feet of forbearance was based on an analysis of the number of days each ditch was the calling right in years of similar hydrologic conditions as those predicted in 2020. The average number of days each ditch was the calling right was then multiplied by the average daily acre-feet of injurious stream depletions during the Plan Year, excluding months outside the irrigation season.

A summary of the ditches contracted and the expected yield (for expected yields greater than 0) are found in the table of Replacement Sources above. The Subdistrict may generate additional replacement water during the irrigation season from those ditches that have forbearance agreements but whose expected yield is 0. It is also noted that the majority of these agreements allow the Subdistrict to remedy injurious stream depletions under the

Subdistrict No. 3 ARP Approval: Plan Year 2020

agreement or by providing water at the Subdistrict's sole discretion. Four of the agreements do not allow this flexibility, the Alamo, Ball Bros 1 & 2, Los Sauces, and William Stewart, so are "mandatory" forbearance agreements.

The Subdistrict made an agreement with the Guadalupe and Brazos Del Norte Ditches to store in Platoro Reservoir the amount of depletion owed daily when the Ditches are the calling priority. The stored water is to be released later by the Conejos Water Conservancy District at the discretion of the Ditches. Exercise of this agreement is at the sole discretion of the Subdistrict. As stated in the agreement, any releases of this water will be in compliance with the legal and physical restrictions on such releases.

Closed Basin Project Production (Section 5 of 11.1.4 of the ARP)

According to the information provided in the ARP, the projected production of the Closed Basin Project delivered to the Rio Grande is 8,500 acre-feet during calendar year 2020. The allocation of the Closed Basin Project production in accordance with agreements is 60% to the Rio Grande and 40% to the Conejos River basin over the long term with provision for adjustments in the allocation during individual years. The 2020 allocation of the Closed Basin Project production will be 60% to the Rio Grande and 40% to the Conejos River.

At a meeting of Rio Grande Water Users Association held on March 25, 2020, the Board of Directors passed a motion to specifically allocate 4,000 acre-feet of the Rio Grande's share of the usable yield of the Closed Basin Project to replace the stream depletions under this ARP and in conjunction with Subdistrict No. 1, No. 2 and No. 6. Similarly, the Board of Directors of the San Luis Valley Water Conservancy District agreed to the allocation as stated in their letter to the Rio Grande Water Conservation District on March 24, 2020. 930 acre-feet of water is available to Subdistrict No. 3 under this ARP to remedy the injurious stream depletions on the Rio Grande.

The Conejos Water Conservancy District Board passed a motion in February 2020 to specifically allocate 200 acre-feet of the Conejos River's share of the usable yield of the Closed Basin Project to replace the injurious stream depletions for the Subdistrict's 2020 ARP.

A copy of each letter reporting the approval was provided in Appendix F of the ARP. The resolution from RGWCD allowing the Subdistrict to use Closed Basin Project water in the 2020 ARP was provided as supplemental information.

11.1.5 Documentation of Progress Towards Achieving and Maintaining a Sustainable Water Supply

Water Levels, Pressure Levels, and/or Groundwater Withdrawals (Section 1 of 11.1.5 the ARP)

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Rule 8.1.7 of the Groundwater Rules includes provisions for meeting the requirements for achieving and maintaining a Sustainable Water Supply in the confined aquifer. Per the State Engineer's approval letter for the PWM, dated August 27, 2018, the Conejos Response Area five-year running average groundwater withdrawals are currently below the 1978-2000 average groundwater withdrawals for the Conejos Response Area. The current five-year running average groundwater withdrawals for ARP Wells for the period 2015-2019 is 24,806 acre-feet. The previous five-year running average for ARP wells was 28,204 acre-feet. The Subdistrict anticipates the five-year running average groundwater withdrawals for ARP wells to increase only slightly in 2020 to 24,856 for 2015-2020 based on the 2020 groundwater withdrawal projection.

Based on the trends of both the Conejos Response Area and the Subdistrict's five-year average, the Subdistrict will remain in compliance with the Sustainable Water Supply Requirement of the Rules.

Included in Appendix J is the State Engineer's memo dated June 10, 2019, regarding the Composite Water Head for Confined Aquifer Response Area in Division 3: July 2018 Requirement of Division 3 Groundwater Rules Section 8.1.4. The Composite Water Head for 2019 was -0.38 feet, dropping to the lowest level since the base year of 2015.

The Conejos River System Water Users Association has been collecting hydrostatic pressure data in the Subdistrict No. 3 Response Area and will provide the data to the DWR to continue to improve the understanding of sustainability.

Listing of Irrigated Acres Proposed to be Temporarily or Permanently Fallowed and Associated Water Rights (Section 2 of 11.1.5 the ARP)

The Subdistrict is not currently pursuing fallowing of any irrigated lands within the boundaries of the Subdistrict.

Listing of Water Rights Proposed to be Temporarily or Permanently Retired and Historical Operations of Each Water Right (Section 3 of 11.1.5 the ARP)

No listing of retired water rights was submitted with this ARP.

Other Proposed Actions to be Taken as Applicable (Section 4 of 11.1.5 the ARP)

No listing of other proposed actions was submitted with this ARP

Findings

Based on the information provided in the ARP and discussed above, I make the following findings:

1. The projected groundwater withdrawals are based upon the inventoried Subdistrict Wells, their historical pumping, and projected stream flows. The inventory of wells is consistent with the information in DWR's databases. The historical pumping

Subdistrict No. 3 ARP Approval: Plan Year 2020

associated with the Wells is based on diversion records on file with the DWR. The method implemented by the Subdistrict to project groundwater withdrawals for the ARP Wells for 2020 is consistent with historical pumping information and streamflow forecast from the Division Engineer's projection and the NRCS Forecast.

2. Projected stream depletions are calculated based on Response Functions generated from RGDSS Groundwater Model runs. The Response Functions are based on the RGDSS Model version 6P98, which was approved by the PRT. DWR directed the Subdistrict to utilize the 6P98 Response Functions in determining stream depletions for the Subdistrict.
3. The ARP identifies the sources, availability, and amounts of replacement water and remedies that the Subdistrict will use to remedy Injurious Stream Depletions during the coming year and demonstrates the sufficiency of such water to remedy such Injurious Stream Depletions:

Conejos River

- The Subdistrict depletions are 1,835 acre-feet during the irrigation season on the Conejos. The Subdistrict has 1,717 acre-feet in storage in Platoro Reservoir. Through consultation with Division 3 staff, it is expected the water rights under contract to the Subdistrict from the Taos Valley No. 3 may yield significantly less than the 1,000 acre-feet estimated. The Subdistrict indicates they expect to yield a total of 1,002 acre-feet from forbearance agreements during the 2020 irrigation season. The Subdistrict was able to secure higher than expected yields from the forbearance agreements exercised in 2019 and obtained additional contracts for 2020. The portfolio of water from storage with potentially 120 acre-feet needed from forbearance indicates sufficient water to cover Injurious Stream Depletions for the Plan Year.
- The Subdistrict depletions are 931 acre-feet during the non-irrigation season on the Conejos. The Subdistrict has 930 acre-feet of Closed Basin Project water available to pay non-irrigation season depletions.

Alamosa River

- The Subdistrict depletions are 95 acre-feet during the irrigation season on the Alamosa. Updated information from the Subdistrict adjusted the amount of water in storage in Terrace Reservoir to 39.5 acre-feet because some of this source has been used to pay April 2020 depletions. The Subdistrict indicates they expect to yield a total of 65 acre-feet from forbearance agreements during the 2020 irrigation season. The submitted portfolio of water from storage in the 2020 Plan Year ARP indicates there is a deficit of 55.5 acre-feet of firm water to cover Injurious Stream Depletions in the unlikely event that no forbearance is available. To resolve this concern, my staff reviewed the historical calls on the Alamosa for the ditches expected to generate forbearance amounts during the irrigation season for years similar in stream flow to the projection for 2020. A reasonable figure for potential available water

Subdistrict No. 3 ARP Approval: Plan Year 2020

under these circumstances is between 41.5 acre-feet. The Subdistrict is expecting approval by March 7, 2020 of SWSP 6066, Expo, for 22 acre-feet that is already stored in Platoro Reservoir. The SWSP is a renewal of the same contract from 2019 and is not expected to fail approval for 2020. The portfolio of water from storage, DWR estimate of forbearance agreements, and SWSP 6066 is 103 acre-feet which is enough to cover Injurious Stream Depletions for the Plan Year.

- The Subdistrict depletions are 0 acre-feet during the non-irrigation season on the Alamosa.

Rio Grande

- The Subdistrict depletions are 228 acre-feet during the irrigation season on the Rio Grande. The Subdistrict has 263 acre-feet in storage in Beaver Reservoir. The Subdistrict indicates they expect to yield 150 acre-feet of Subdistrict No. 1 SMRC water deliverable to Subdistrict No. 1 ditches and 75 acre-feet from forbearance agreements during the 2020 irrigation season. The total of On-Call replacement sources is 225 acre-feet. The portfolio of water from storage indicates sufficient water to cover Injurious Stream Depletions for the Plan Year in the unlikely event that no forbearance would be available.
 - The Subdistrict depletions are 200 acre-feet during the non-irrigation season on the Rio Grande. The Subdistrict has 200 acre-feet of Closed Basin Project water available to pay non-irrigation season depletions.
4. Section 4.1.5 of the Subdistrict's PWM includes the provision, "the Subdistrict may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied." This allows the Subdistrict to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail or otherwise not be allowed to continue groundwater withdrawals.
 5. Upon approval of the Subdistrict's PWM, it was concluded the Subdistrict is already operating within the 5-year 1978-2000 average as amended by the CAS stipulation. In all future years the five year running average of metered total withdrawals must not exceed the average annual withdrawals for the period of 1978 through 2000. The Subdistrict is in compliance with this metric.

The Subdistrict has presented sufficient evidence and engineering analysis to predict where and when Injurious Stream Depletions will occur and how they will replace those Injurious Stream Depletions to avoid injury to senior surface water rights under the following Terms and Conditions.

This ARP is hereby approved pursuant to the following Terms and Conditions:

1. This ARP shall be valid for the period of **May 1, 2020 through April 30, 2021**, unless otherwise revoked, modified, or superseded by me, a decree, or order of the court.

Subdistrict No. 3 ARP Approval: Plan Year 2020

2. The Subdistrict must replace or remedy the Injurious Stream Depletions resulting from Subdistrict ARP Well groundwater withdrawals.
3. Contract wells will be covered to the extent of their permitted/decreed uses.
4. Deliveries (including transit losses) of stored water made available for the replacement of Injurious Stream Depletions shall be determined by the Division Engineer pursuant to this ARP and associated decrees.
5. If the limit is reached for any particular forbearance agreement, then the Subdistrict will need to begin replacement of Injurious Stream Depletions to that particular ditch or canal.
6. The Division Engineer shall determine on an ongoing basis whether he can administer the operations under each forbearance agreement. If the Division Engineer cannot, then that operation shall cease. General Forbearance Protocols for the Conejos River System for 2019 were prepared by the Division Engineer. A copy of the protocols is included with this letter.
7. The Subdistrict shall provide daily replacement water accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us), the Water Commissioners (sam.riggenbach@state.co.us), rachel.rilling@state.co.us, tom.stewart@state.co.us, aaron.holman@state.co.us, travis.robinson@state.co.us and the Subdistrict Coordinator (deborah.sarason@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
8. The Subdistrict must adhere to the terms and conditions of the SWSP(s) incorporated as part of the ARP. The use and inclusion of any new replacement water within the ARP is subject to SWSP approval or approved by the Water Division No. 3 Water Court for a change of water right. Prior to the use of any new replacement water, the State Engineer will evaluate for use as an amendment under this ARP.
9. In the unlikely event that SWSP 6066, Expo, for 22 acre-feet is not approved, the Subdistrict will invoke its "After Acquired Sources of Remedy" clause in the ARP and will acquire sufficient additional sources to satisfy the depletion schedule approved under this ARP. If the Subdistrict is unable to acquire sufficient additional sources, the Subdistrict will not be able to continue operation under this ARP.
10. All deliveries of replacement water shall be measured in a manner acceptable to the Division Engineer. The Subdistrict shall install and maintain measuring devices as required by the Division Engineer for operation of this approved ARP.

Subdistrict No. 3 ARP Approval: Plan Year 2020

11. The Subdistrict must submit an Annual Review of its ARP pursuant to Rule 12.
12. The Subdistrict must replace or remedy all Injurious Stream Depletions caused by non-augmented pumping associated with Subdistrict ARP Wells.
13. The Subdistrict must comply with the Rules, the Subdistrict PWM, and this ARP.

Approval of this ARP does not authorize any change, increase, or expanded use of any water right or permit. Any change, increase, or expansion of a water right or permit will need to comply with existing decrees and or permits, the Confined Aquifer New Use Rules, the Measurement Rules, the Rio Grande Basin Groundwater Use Rules, and may require approval of the Water Court.

The approval of this ARP is made with the understanding that if the ARP proves insufficient to remedy Injurious Stream Depletions, the State Engineer has the authority to invoke the retained jurisdiction of the Division No. 3 Water Court.

I want to thank you for your cooperation and compliance with this approved ARP and for your continued cooperation and compliance in the future. Your efforts are greatly appreciated. If you have any questions do not hesitate to contact any of my staff in Denver or Alamosa.

Sincerely,



Kevin G. Rein, P.E.
State Engineer
Director of the Division of Water Resources

Exhibits:

- A: SWSP 6074- SLV Irrigation Well Owners**
- B: General Forbearance Protocols for the San Luis Valley River Systems for 2020**
- C: Table 2.6**

ec: Craig Cotten, Division Engineer
Chad Wallace, Assistant Attorney General
David W. Robbins, Hill & Robbins
Peter Ampe, Hill & Robbins
Allen Davey, Davis Engineering Service, Inc.
DWR electronic notification lists
Division 3 Water Court

Exhibit A



April 27, 2020

Mr. Peter J. Ampe, Esq.
Hill & Robbins, P.C.
1660 Lincoln Street, Suite 2720
Denver, CO 802647

**Re: Special Improvement District No. 3 (“Subdistrict No. 3”) and Special Improvement District No. 6 (“Subdistrict No. 6”) of the Rio Grande Water Conservation District Substitute Water Supply Plan
SLVIWO Taos Valley No. 3 Water Rights
Water Division 3, Water Districts 22 and 20
Case No. 15CW3030A, SWSP ID 6074**

Approval Period: April 27, 2020 to December 31, 2020

Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated February 13, 2020 in which you request approval of a substitute water supply plan (“SWSP”) on behalf of the Special Improvement District Nos. 3 and 6 (“Subdistrict No. 3 and 6” or “Applicants”) of the Rio Grande Water Conservation District pursuant to § 37-92-308(4), C.R.S. Notice was provided to all parties who have subscribed to the Division 3 SWSP Notification List and also to the opposers in Case No. 15CW3030 on February 13, 2020. On March 11, 2019, the court application was bifurcated into Case Nos. 15CW3030A and 15CW3030B. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3696877) has been received.

SUBDISTRICT OPERATION

Subdistrict Nos. 3 and 6 were established by order of the court in Case Nos. 2016CV30021 and 2018CV30014. Members of these Subdistricts are landowners within the Rio Grande Water Conservation District (“RGWCD”) who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos and Alamosa La Jara Response Areas. The principal goals of the Subdistricts are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying the Subdistricts’ boundaries and to avoid unreasonable interference with the state’s ability to fulfill its obligations under the Rio Grande Compact.



This SWSP is being sought in order to meet the requirements of the Plans of Water Management (“Plans”) as approved by the State Engineer in Case No. 18CW3013 and 2019CW3011. The overall objective of the Plans is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict Nos. 3 and 6; that is a system of self-regulation using economic-based incentives that promote responsible groundwater use and management and ensures protection of senior surface water rights. As part of the Plans, Subdistrict Nos. 3 and 6 must each submit an Annual Replacement Plan (“ARP”) for the State Engineer’s review and approval, showing the portfolio of water rights and other actions that Subdistrict Nos. 3 and 6 will take to replace injurious depletions to senior water rights caused by groundwater withdrawal by Subdistrict Wells during the Plan year. This SWSP application is intended to provide a part of the water supplies to be used in the Subdistricts’ ARPs.

SWSP OPERATION

The San Luis Valley Irrigation Well Owners, Inc. (“SLVIWO”) has filed a case in water court for a recharge project and rights of substitution and exchange. The water right that is the subject of the case is the Taos Valley Canal No. 3, which was originally decreed in the District Court of Conejos County on October 3, 1890. In 1975, the SLVIWO filed an application for a plan for augmentation including exchange and to change the place and type of use of the Taos Valley No. 3 water right to augment depletions caused by well users of the SLVIWO, in Case No. W-3394. 245 cfs were decreed to the Taos Valley No. 3, of which 230 cfs have been left undiverted and accounted for as an offset to well depletions pursuant to that decree. This water is referred to as the “Middlemist” water. The remaining 15 cfs were reserved for irrigation and are referred to as the “Zinn” water.

This SWSP request has been submitted for a change of water rights for the Middlemist and Zinn water in compliance with the pending court case to allow augmentation, exchange, storage by exchange in Platoro, Rio Grande, Continental, and Trujillo Meadows Reservoirs, delivery of water to satisfy compact obligations, and substitution of water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year. Storage to any structure other than Cove Lake Reservoir will only occur under the terms of a separate agreement with the reservoir owner. Prior to storing water in another structure, the Applicant must provide a copy of a storage agreement with the reservoir owner to the Division Engineer and Water Commissioner.

When the Taos Valley Canal No. 3 is in priority during the 2020 irrigation season, it will be administered under the conditions of this SWSP (ID #6074) and in conjunction with the conditions of SWSP ID #6093 issued to SLVIWO. Water will be delivered to the Compact only under the conditions of this SWSP (ID #6074).

The lease agreement pursuant to these SWSPs between SLVIWO and Subdistricts No. 3 and 6 limits the amount of Taos Valley Canal No. 3 water available for credit up to 2000 acre-feet for Subdistrict No. 3 and up to an additional 2000 acre-feet for Subdistrict No. 6. These limits apply to water that is available for exchange to storage or available for delivery to the Compact depletion bank. Delivery losses are assessed against all water generated.

Any water available for exchange to storage will be administered under SWSP ID #6093.

CONDITIONS OF APPROVAL

This SWSP is hereby approved pursuant to C.R.S. § 37-92-308(4), subject to the conditions stated below:

1. This SWSP shall be valid for the period of April 27, 2020 through December 31, 2020 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(4)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **January 2, 2021. This is the second year of operation of this SWSP.**
2. Approval of this SWSP is for the purposes stated herein. Additional diversion structures and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional structures/uses. The replacement water, which is the subject of this SWSP, cannot be sold or leased to any other entity during the term of this SWSP without prior approval of the Division Engineer.
3. The Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners Tom.Stewart@state.co.us, Aaron.Holman@state.co.us and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
4. Storage of the subject water in any structure other than Cove Lake Reservoir may only occur under the terms of a separate agreement with the reservoir owner. Prior to storing water in another structure, the Applicant must provide a copy of a storage agreement with the reservoir owner to the Division Engineer and Water Commissioner.
5. When the Taos Valley Canal No. 3 water right is in priority, and it is not entirely available for exchange into reservoir storage, water will be delivered from the Taos Valley No. 3 Canal heading to the Rio Grande compact gages near La Sauses, minus delivery losses of 7.5%. Water delivered to the Compact will be credited as a depletion bank which may be used throughout the Compact (Calendar) Year to pay back depletions owed to the two reaches on the Conejos River designated by the Response Functions. Accordingly, 35% of the flow will be attributed to Subdistrict No. 3 and 65% of the flow will be attributed to Subdistrict No. 6. If either Subdistrict chooses to cease delivery of this SWSP water, then 100% will be delivered to the remaining Subdistrict. The Compact curtailment percentage will reflect the actual amount of water delivered to the Compact depletion bank under this scenario to make the timing work throughout the irrigation season.
6. The applicant will be charged a 7.5% delivery loss from the Taos Valley No. 3 heading

to the Compact gages. This loss is the same as charged by agreement with the Division Engineer staff and was conveyed to the Subdistrict No. 3 and Subdistrict No. 6 staff and the Applicant's engineer. Transit loss is subject to assessment and modification as determined by the Division Engineer.

7. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
8. Each Subdistrict may accrue water delivered to the Compact 'depletion bank' only up to a limit that is reasonable for use as a source of replacement of injurious depletions as projected through their respective 2020 ARPs and limited to the current Compact (Calendar) Year. The total amount of water approved for delivery to the depletion bank under the conditions of this SWSP will not exceed 1,500 acre-feet at the state line, (reflecting $\pm 1,622$ acre-feet at the Taos Valley Canal No. 3 headgate).
9. Each Subdistrict must notify the Water Commissioner when their desired total of water delivered to the depletion bank is reached. Upon notification by one Subdistrict, additional available water delivered to the depletion bank will accrue at 100% to the remaining Subdistrict until their desired total is reached. Once the lesser of the sum of these totals or 1,500 acre-feet has been delivered to the La Sauses gages, no additional water will accrue to the depletion bank under this SWSP.
10. In the situation when the Taos Valley Canal No. 3 water right is in priority, and it is available for exchange, and the limits stated in Condition 8 have not been reached, SLVIWO and the Subdistricts will notify the Water Commissioner whether water will be delivered to the depletion bank or to the reservoir. Condition 8 will be administered until notification is received, after which, the Water Commissioner will adjust deliveries accordingly.
11. The amount of water made available to the depletion bank under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 and 6 ARPs for the term of the Compact (calendar) year. Any water banked under this SWSP and not used under the 2020 Subdistrict 3 and/or 6 ARPs will be relinquished to the Compact by December 31, 2020; end of the Compact year.
12. Prior to the operation of any exchange, the Applicant is required to notify the water commissioner and obtain the Water Commissioner's approval for the operation of the exchange at least 48 hours prior to operation, or less if allowed by the Water Commissioner. The Applicant is required to obtain the Water Commissioner's approval on a daily basis or other interval as required by the Water Commissioner. The proposed exchanges are limited to operating only at times there is a continuous live stream between the exchange from and exchange to points and at times sufficient exchange potential exists to operate the exchange without injury to other water users.
13. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.

14. All deliveries for augmentation, exchange, or storage shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
15. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
16. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights or to the Compact has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
17. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(4), C.R.S., shall be to the Division 3 Water Judge within thirty days of the date of this decision and shall be combined with the pending court case, 15CW3030A.

Should you have any questions, please contact Melissa van der Poel of this office or Craig Cotten, Division Engineer, in our Division 3 office in Alamosa at (719) 589-6683.

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

cc: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Tom Stewart, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 22, & 24
Parties of Record, Case No. 15CW3030A

Exhibit B

General Forbearance Protocols For San Luis Valley River Systems

Subdistricts No. 1 (RA No 1), No. 2 (Rio Grande Alluvium) and No. 3 (Conejos) will begin to replace depletions to their affected streams on May 1st, the beginning of the 2020 ARP year. Along with these replacement of stream depletions, the State and Division Engineer may allow the owners of the calling ditch to 'forbear', or choose to not take the water that otherwise would have been allocated to that ditch in exchange for receiving payment in some other form. This forbearance is authorized under Colorado Revised Statute 37-92-501 (4)(b)(1)(B) which states that the State Engineer shall "Recognize contractual arrangements among water users, water user associations, water conservancy districts, ground water management subdistricts, and the Rio Grande water conservation district, pursuant to which... injury to senior surface water rights resulting from the use of underground water is remedied by means other than providing water to replace stream depletions."

In order to assist the Subdistrict, water users, and Water Commissioners in determining whether a forbearance contract will be allowed, the following are general guidelines regarding those forbearance contracts for the 2020 ARP year:

- A water right must be the calling water right in order to forbear. In other words, the ditch must be legally and physically entitled and able to receive and divert the replacement water that would have been placed into the river or stream reach if that ditch owner would have decided to take the water available instead of forbearing.
- The owner of a ditch that cannot physically divert all of the water under its priorities due to an inadequate ditch size or other physical restrictions cannot forbear for the amount that the ditch is not able to divert. However, this ditch may be able to forbear in the amount that it is physically and legally able to divert.
- The owner of a ditch that physically is not able to divert the replacement water entitled to it at certain times of the year (for instance during low flow periods), due to an inadequate diversion dam or headgate, or other reasons, cannot forbear during that time of year unless and until the ditch or associated structures are repaired and physically able to take water.
- If it is certain that the owner(s) of a ditch would have declined to take water in their ditch on a given day that they were in the priority to take water, for instance if that owner cannot take their full priority due to a break in the ditch bank, or if the owner has not called for that water right in the ditch, etc., the ditch owner cannot forbear for that water right on that day.
- Forbearance will be allowed on water rights that are not large enough to cover the entire daily replacement amount. A ditch may be forbearing only a portion of the total daily replacement amount due to the size of the water right. In such cases there may be several water rights in

various ditches that are forbearing at the same time in order to meet the entire replacement obligation of the Subdistrict.

- A ditch may operate under a partial forbearance contract with the understanding that the ditch company, subdistrict or other appropriate party will manage the partial flow and partial forbearance at the heading and down ditch to the satisfaction of all water rights owner in that ditch that are in priority on that day. The manager of the ditch with partial forbearance must inform the water commissioner, prior to any operations, the manner and the capability in order to be in compliance, otherwise a water delivery will be required.
- Ditch with a forbearance contract must have accurate, reliable and operational measurement devices on the ditch.
- On a day when water could be placed into the river system for replacement of injurious depletions, and a section(s) of the stream is dry such that this replacement water would not have made it to the calling priority ditch, forbearance by that ditch(es) will not be allowed. During times of dry stretch(es) on the river system, each live stretch will be treated as its own calling system. Only the stretch(es) that includes an RGDSS modelled stream reach will have the ditch(es) eligible for forbearance. If water delivery could not make it physically to any structure in a particular RGDSS reach, then no forbearance is allowed and a water delivery will be required
- A forbearance that results in a section of the river drying up, cannot be used to create a futile call. The river must be administered to replicate what conditions would have taken place had a continuous deliverance of water taken place.

Exhibit C

Table 2.6
Conejos Response Area Monthly Net Stream Depletions for Plan Year
 (units of ac-ft)

Stream Reach	Conejos Response Area Total												Total
	2020						2021						
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb		Mar	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Conejos above Seledonia/Garcia	63	79	78	68	60	60	53	50	38	32	35	36	651
Conejos below Seledonia/Garcia	125	169	229	264	262	238	187	162	141	115	118	105	2,115
Rio Grande Del Norte-Excelsior	5	5	5	5	5	5	5	5	5	5	5	5	62
Rio Grande Excelsior-Chicago	7	7	6	6	6	6	6	7	7	7	7	7	78
Rio Grande Chicago-State Line	28	25	21	10	14	23	31	30	27	24	29	26	288
Alamosa River	25	19	12	6	5	4	0	0	0	0	0	23	95
San Antonio River	-10	-9	-11	-11	-8	-7	-9	-8	-8	-8	-9	-10	-106
Total	245	295	341	349	343	329	274	246	210	175	185	191	3,183

Notes for columns:

- (1) Stream reach
- (2)-(13) Monthly Net Stream Depletions in acre-feet
- (14) Total Plan Year Net Stream Depletions in acre-feet