

# **RULES AND REGULATIONS**

## **SPECIAL IMPROVEMENT DISTRICT NO. 1 OF THE RIO GRANDE WATER CONSERVATION DISTRICT**

**REVISED DECEMBER 21, 2022**

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## SECTION 1 SCOPE OF THESE RULES AND REGULATIONS

- 1.1. Authority. These Rules and Regulations are adopted by the Board of Managers of Special Improvement District No. 1 of the Rio Grande Water Conservation District in accordance with section 37-48-112(2), C.R.S. and were approved by the Rio Grande Water Conservation District Board of Directors on \_\_\_\_\_, 2022.
- 1.2. Effectiveness. These Rules and Regulations as amended become effective on and after the date of adoption, and supersede all former Rules and Regulations which are or may be in conflict with these Rules and Regulations.
- 1.3. Amendment. These Rules and Regulations may be amended from time to time in accordance with the law.
- 1.4. Titles. Titles used in these Rules and Regulations are for convenience only and shall not be considered in interpreting their meaning or scope.
- 1.5. Severability. If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application, and to this end, the various provisions of these Rules are declared to be severable.
- 1.6. Definitions. As used in these Rules and Regulations, unless the context otherwise requires, any term used in these rules that is defined in the Plan, has the same meaning as in the Plan:
  - 1.6.1 “Annual Replacement Plan” or “ARP” has the same definition as in the Plan of Water Management.
  - 1.6.2 “Board of Directors” means the Board of Directors of the Rio Grande Water Conservation District.
  - 1.6.3 “Board of Managers” means the Board of Managers of Special Improvement District No. 1 of the Rio Grande Water Conservation District (“Subdistrict No. 1”).
  - 1.6.4 “Contract Administration Fee” means a charge that is assessed by the Subdistrict to an applicant for a contract to permit a non-Subdistrict well to be included in the Subdistrict’s Plan of Water Management that is in addition to the Administrative Fee for the Subdistrict.
  - 1.6.5 “Contract Fee” means the Contract Administration Fee and the Contract Inclusion Fee.
  - 1.6.6 “Contract Inclusion Fee” means a charge that is assessed by the Subdistrict that is in addition to the Administrative Fee, the CREP Fee and the Variable Fee. It may reflect an amount required to cover the cost of future replacement obligations

associated with the Contract Well.

- 1.6.7 “Contract Well” has the same definition as in the Plan of Water Management.
- 1.6.8 “District” means the Rio Grande Water Conservation District.
- 1.6.9 “General Manager” means the General Manager of the Rio Grande Water Conservation District.
- 1.6.10 “Gross Surface Water Credit” or “Gross SWC” means total Surface Water Credit before any deductions as defined in Section 6.2.5 of these Rules.
- 1.6.11 “Imported Water” means surface water, whether from direct flow or storage water rights, diverted into the Closed Basin from its basin of origin, that would have otherwise not flowed into the Closed Basin.
- 1.6.12 “Native Surface Water” means surface water from streams arising in the Closed Basin, i.e., naturally tributary to the Closed Basin.
- 1.6.13 “Plan of Water Management” or “Plan” means the official plan of the Subdistrict, subject to District Court approval, in accordance with section 37-48-126, C.R.S.
- 1.6.14 “Program Manager” means the person employed by the District to manage, among other things, the Subdistrict’s Plan of Water Management, under the direction and supervision of the General Manager.
- 1.6.15 “Study Area” as defined in the Change in Unconfined Aquifer Storage Study prepared by Davis Engineering Service, Inc.
- 1.6.16 “Subdistrict” or “Subdistrict No. 1” means Special Improvement District No. 1 of the Rio Grande Water Conservation District.
- 1.6.17 “Subdistrict No. 1 Response Area” or “RA1” has the same definition as in the Plan of Water Management.
- 1.6.18 “Subdistrict No. 1 Response Functions” has the same definition as the Plan of Water Management.
- 1.6.19 “Subdistrict Territory” has the same definition as the Plan of Water Management.
- 1.6.20 “Subdistrict Well” has the same definition as the Plan of Water Management.
- 1.6.21 The terms “ditch” and “canal” are synonymous and may be used interchangeably in these Rules.

## **SECTION 2: PUBLIC RECORDS**

- 2.1 Enactment. The District and the Subdistrict have adopted this Section 2, pursuant to the

provisions of the Colorado Open Records Act: for the protection of the public records of the District and the Subdistrict; to prevent unnecessary interference with the regular discharge of the duties of the District and the Subdistrict; and, to define the method by which the District and Subdistrict will provide public access to records and how requests for information will be handled.

- 2.2 Official Custodian. The Board of Directors shall designate the Official Custodian of the public records of the District and the Subdistrict. The Official Custodian may make policies with reference to the inspection of the public records of the District and Subdistrict, not inconsistent with the Colorado Open Records Act and these Rules and Regulations, as are reasonably necessary for the protection of such records and to prevent unnecessary interference with the discharge of the duties of the District or Subdistrict.
- 2.3 Inspection of Public Records. All public records of the District shall be open for inspection at the times designated herein, unless prohibited by the Colorado Open Records Act or policies adopted by the Board of Directors in conformance with the Open Records Act.
- 2.4 Records Not Subject to Disclosure. Certain District and Subdistrict records may be privileged or otherwise confidential and protected from disclosure under Colorado law and are not public records. Consequently, records that, in the opinion of the Official Custodian after consultation with the District's general counsel and the District Board, are confidential, privileged, or subject to one or more exemptions set forth in the Open Record Act, will not be disclosed in response to a public records request. Nothing set forth in this Policy shall be construed to abrogate the right of the District or Subdistrict to withhold records that are confidential or protected by the privileges expressly contemplated by the Open Records Act or otherwise established under Colorado law.
- 2.5 Request for Inspection. Request for inspection and for copies of any public records of the District or Subdistrict must be made to the Official Custodian in writing and set forth the particular documents or record desired to be inspected or copied. If such document or record is available for inspection and copying, the Official Custodian will notify the applicant of the date, time, and location where the material can be inspected or copied. If such public record is not available from the Subdistrict, the applicant shall be notified of this fact.
- 2.6 Times for Inspection. Inspection of the Subdistrict's public records shall be made, where permitted by law, at the District's office during normal business hours, Monday through Friday, except on holidays, at an hour specifically set by the Official Custodian for each particular request for inspection.
- 2.7 Copies, Printouts, or Photographs of Public Records. In any case where a person has the right to inspect a public record of the District or Subdistrict under the control of the Official Custodian and requests in writing that the District or Subdistrict furnish copies, printouts or photographs thereof, the Official Custodian shall notify the applicant if such record is available for copying, and may furnish such copies, printouts, or photographs for a fee which shall not exceed the then current rate included in the District's "Policy For Access to Public Records" per standard page (8½" x 11") or the actual cost of

providing a copy, printout, or photograph of a public record in a format other than a standard page, unless a higher fee is permitted by the Open Records Act.

- 2.8 Requests Requiring Research or Retrieval. If an applicant's request for public records of the District or Subdistrict requires research or retrieval, the District or Subdistrict may impose a fee per hour which shall not exceed the then current rate included in the District's "Policy For Access to Public Records" for time expended conducting research and retrieval or such higher fee permitted by the Open Records Act, which shall include attorney review time. The District or Subdistrict will not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. However, where a requesting party has submitted multiple applications for public records within a thirty-day (30) period, the requesting party is only entitled to one (1) hour of free request time within those thirty (30) days.
- 2.9 Additional Fees and Charges. To the extent permitted by the Open Records Act, additional fees and charges will be assessed in the amount of actual costs to the District or Subdistrict of any postage, facsimiles, data manipulation, or similar costs incurred by the District or Subdistrict in responding to a request to copy or inspect public records. This Section 2 will be updated, as necessary, to keep the rules and regulations current with the District's Policy for Access to Public Records.
- 2.10 In the event of a conflict with the District's Open Records Policy, the District's policy will control.

### **SECTION 3: MEETINGS AND NOTICE OF DECISION-MAKING**

- 3.1 **Meeting Location:** The Subdistrict Board of Managers will meet at the principal office of the District unless another location is designated and noticed.
- 3.2 **Regularly Scheduled Meetings:** The Annual Meeting of the Board of Managers will be on the first Tuesday in March. Quarterly meetings will be held on the first Tuesday of March, June, and September and the second Tuesday in December. Whenever the date set for a regular meeting of the Board of Managers shall fall upon a legal holiday, that meeting shall be held on the Wednesday following such holiday at the hour and place specified for the regular meeting. Meetings of the Board of Managers shall be public and proper minutes of the proceedings of said board shall be preserved and shall be open to any elector of the District during business hours. Regularly scheduled meetings shall be advertised by notice published once in a newspaper or newspapers which collectively provide general circulation throughout the District at least ten days before such meeting.
- 3.3 **Special Meetings:** Special Meetings may be called by the President of the Board of Managers or by any three directors. Such meetings shall be considered to be properly held if all members of the Board of Managers shall have received written notice of the time and place of such meeting by regular United States mail at least three (3) days in advance of the meeting. E-mail may also be used if a Board member so specifies in writing.

- 3.4 Notice: Regularly scheduled meetings shall be advertised by notice published once in a newspaper or newspapers which collectively provide general circulation throughout the District and on the District's website at least twenty-four (24) hours before such meeting. Special Meetings shall be advertised once by notice hung outside of the principal office of the District and on the District's website at least twenty-four (24) hours before such meeting.
- 3.5 Notice Regarding ARP Meeting(s): The Subdistrict shall publish notice of a meeting to take action on the terms or the approval of any ARP seven (7) days before the meeting is to be held on the District's website ([www.rgwcd.org](http://www.rgwcd.org)) and in a local newspaper or general circulation. The proposed ARP shall also be posted on the District's website, with the understanding that modifications of the proposal may occur during the meeting. A copy of the proposed ARP and the Notice described above shall be provided either by first class mail or email to everyone on the Division 3 substitute supply plan notification list established pursuant to section 37-92-308(6), C.R.S.
- 3.6 The Subdistrict, at the time it posts notice of each regularly scheduled or special meeting, shall post a draft agenda of the meeting on the District's website ([www.rgwcd.org](http://www.rgwcd.org)) and paper copies of the draft agenda shall be available on request at the District's offices.

#### **SECTION 4: BUDGET AND ACCOUNTING**

- 4.1 On or before August 15<sup>th</sup> of each year, the District's staff will present a detailed preliminary annual budget for the ensuing Calendar Year to the Board of Managers for review and approval. The preliminary annual budget will be reviewed by the Board of Managers during their August quarterly meeting. The Board of Managers may hold additional meetings on the annual budget, if deemed necessary. On or before September 15<sup>th</sup>, the Subdistrict's Board of Managers will submit the annual budget to the District's Board of Directors for their review and approval. The Subdistrict's budget will be included in the District's annual budget which is submitted to the State of Colorado.
- 4.2 The annual budget must contain detailed descriptions, when available, of all anticipated expenditures necessary to meet the goals and objectives of the Plan and to fund the operation of the ARP, which will include: (1) The amount of money allocated to the lease, loan or purchase of water or water rights and/or forbearance agreements to be used for the replacement or remedy of injurious stream depletions resulting from the withdrawal of groundwater from Subdistrict and Contract Wells; (2) The amount of money allocated to any land retirement program; (3) If applicable: (a) identification and description of any works to be constructed; (b) the purpose of the works; (c) the specific location of the works; (d) the estimated capital costs of the works; (e) identification of any construction or modifications of works for which construction has previously commenced; including (b)-(d) above for these works; (4) Identification and description of any activities undertaking to operate the ARP, including the purpose and costs thereof; (5) Itemization administrative costs for the Calendar Year; and, (6) Identification of any other anticipated expenditures, including the purpose and costs thereof. The Subdistrict shall limit expenditures in the amounts and for the purposes specified in the annual

budget unless an amended budget is adopted, in accordance with the provisions of Colorado Law.

- 4.3 The annual budget will specifically describe the revenues required to fund the anticipated expenditures and the nature and amount of each of the specific fees or assessments proposed to generate such revenues. If any specific fees or assessments are planned to be allocated to a specific expenditure, the budget will identify the allocation.
  - 4.3.1 The total Administrative Fee must be limited to the amount shown by specific items in the ensuing annual budget as outlined in paragraph 4.2.2 of the Plan.
  - 4.3.2 The total annual CREP Fee must be limited to the amount shown by specific items in the ensuing annual budget as outlined in paragraph 4.2.3 of the Plan.
  - 4.3.3 The total annual Subdistrict Fee must be limited to the amount shown by specific items in the ensuing annual budget as outlined in paragraph 4.2.4 of the Plan.
  - 4.3.4 The total annual Depletion Fee must be limited to the amount shown by specific items in the ensuing annual budget as outlined in paragraph 4.2.5 of the Plan.
- 4.4 To allow the public to review and comment on the Subdistrict's preliminary annual Budget, notice will be posted at least ten (10) days prior to any Board of Manager's meetings regarding the budget. Notice will be published once in a newspaper or newspapers which collectively provide general circulation throughout the Subdistrict and also on the District's website. Paper copies of the annual budget will be available on request at the District's office. The public will also have the opportunity to comment on the Subdistrict's annual budget during the District's Budget Hearing where the District's Board of Directors will consider the Subdistrict's annual budget for approval.
- 4.5 If the Board of Managers deems it necessary to amend the budget, it will be done in accordance with the provisions of Colorado Law. If an amended budget is prepared, the Subdistrict will post notice in the same manner as for the annual budget and allow for public comment before submitting the amended budget to the District for approval.

**SECTION 5: TIMING AND CALCULATION OF ANNUAL SERVICE AND USER FEE ASSESSMENTS**

- 5.1 The Subdistrict requires sufficient revenues to fund the annual costs of managing and operating the Subdistrict Plan and ARP. The Subdistrict will assess Annual Service and User Fees, comprised of the Administration Fee, CREP Fee, Subdistrict Fee and Depletion Fee, upon all Subdistrict Members in the manner described for in Section 4 of the Plan.
- 5.2 All Annual Service and User Fees will be assessed to the then current owners of the Subdistrict Lands at the time the Annual Service and User Fees are certified to the County Treasurers. The Subdistrict will update ownership information for all Subdistrict Lands on an annual basis by requesting the then current information from the Assessor of



each county which encompasses some portion of the land within the Subdistrict's Boundary. The request for updated ownership information will occur on or before November 1 of each year to allow the Subdistrict time to update the records before the Annual Service and User Fees are certified to the counties.

- 5.3 Annually, the Subdistrict will mail out a request to each Subdistrict Member to update their individual Farm Plan(s). This request will be mailed out by U.S. Mail to each Subdistrict Member, and any designated managers, by April 15<sup>th</sup> of each year. Farm Plan Updates will be due back to the Subdistrict's office no later than July 1<sup>st</sup> to allow sufficient time to update the Subdistrict's records before the Annual Service and User Fees are calculated. Subdistrict Members will be asked to update the following information: Subdistrict Land ownership; Subdistrict Well ownership; Subdistrict Well application types (Sprinkler, Flood, Other); and, any other information that is deemed necessary for the Subdistrict to properly assess the Annual Service and User Fees. If a Farm Plan Update is not returned to the Subdistrict by the deadline of July 1<sup>st</sup> staff will make no changes to the Farm Unit and the owner will be unable to appeal any incorrect assessments due to not fulfilling this requirement.
- 5.4 The Subdistrict's Board of Managers must certify the Annual Service and User Fees, by individual parcel of Subdistrict Land, to each County Treasurer in every county that encompasses Subdistrict Land by December 1<sup>st</sup> of the year preceding collection, or otherwise in accordance with the requirements of the counties. The County Treasurers will add the Annual Service and User Fees to the property tax rolls for collection in the following year.
- 5.5 Calculation of the Annual Administrative Fee.
  - 5.5.1 The Administrative Fee for each year will be assessed per acre of Subdistrict Land as recorded by the County Assessor for the same tax year as the Administrative Fee is calculated.
  - 5.5.2 The Board of Managers will set the rate for the Administrative Fee between \$0 and \$5.00 annually as part of the budget process, described in paragraph 4.2.2 of the Plan.
- 5.6 Calculation of the Annual CREP Fee.
  - 5.6.1 The CREP Fee for each year will be assessed per acre of Subdistrict Land as recorded by the County Assessor for the same tax year as the CREP Fee is calculated.
  - 5.6.2 The Board of Managers will set the rate for the CREP Fee between \$0 and \$12.00 annually as part of the budget process, described in paragraph 4.2.3 of the Plan.
- 5.7 Calculation of the Annual Subdistrict Fee.
  - 5.7.1 The Subdistrict Fee for each year will be assessed per acre of Subdistrict

Land as recorded by the County Assessor for the same tax year as the Subdistrict Fee is calculated.

- 5.7.2 The Board of Managers will set the rate for the Subdistrict Fee between \$0 and \$12.00 annually as part of the budget process, described in paragraph 4.2.4 of the Plan.

5.8 Calculation of the Annual Depletion Fee.

- 5.8.1 The Board of Managers will assess an annual Depletion Fee based on a Water Value per acre-foot of Net Groundwater Withdrawal from Subdistrict Wells to cover expenditures as described above in Section 4 and as described in paragraph 4.2.5 of the Plan. The calculation of the Depletion Fee is described below:

- 5.8.1.1 All groundwater withdrawals for any Water Administration Year are reported by groundwater users to the Colorado Division of Water Resources, Water Division No. 3 in compliance with the Measurement Rules.

- 5.8.1.2 Annually, on or before February 28<sup>th</sup>, the Board of Managers will request final Subdistrict Well diversion records for the prior Water Administration Year from the Colorado Division of Water Resources.

- 5.8.1.3 Annually, by March 15<sup>th</sup>, Subdistrict Staff will provide a SWC summary report detailing the SWC average calculated for the previous Water Administration Year for each Farm Unit plus any SWC carryover from the previous year. The purpose of this report is to provide the Farm Unit Owner and/or Operator the amount of SWC available to the Farm Unit to pump against in the next Water Administration Year. The surface water credit summary report will be provided to the Farm Owner and/or Operator by first-class mail.

- 5.8.1.4 Subdistrict Staff will calculate the Net Groundwater Withdrawals for the previous Water Administration Year for each Farm Unit as described below:

- 5.8.1.4.1 Determine the applicable Surface Water Credit for the Farm Unit to include the SWC calculated for the Farm Unit plus any SWC carryover from the previous year less any deduction to the SWC. Each of these amounts used in the calculation of the applicable SWC is further defined in Section 6 of these Rules.

- 5.8.1.4.2 Subtract the amount of groundwater withdrawn by all Subdistrict Wells included in the Farm Unit a year in arrears based on the previous Water Administration Year records received from the request in 5.8.1.2 above;

5.8.1.5 Determine the Water Value:

5.8.1.5.1 The Water Value will initially be Five-Hundred dollars (\$500.00) per acre-foot of Net Groundwater Withdrawal in the first year following the approval of the Plan.

5.8.1.5.2 The Board of Managers will thereafter adjust the Water Value as required by paragraph 4.2.5 of the Plan and will provide notice of any change to the Water Value by December 1<sup>st</sup> of any year a change is made.

5.8.1.6 Subdistrict Staff will calculate the Depletion Fee as the Water Value multiplied by the Net Groundwater Withdrawals calculated in Section 5.8.1 above.

5.8.1.7 On or before January 31<sup>st</sup> annually, Subdistrict staff will provide a Fee Summary detailing the information used for the Depletion Fee calculation for the Farm Unit. The Fee Summary will be provided to the Farm Owner and/or Operator by first-class mail and will include the Total Groundwater Withdrawals and the total applicable SWC for each Farm Unit. The purpose of the Fee Summary is to provide Subdistrict Members with the information the Subdistrict is relying upon to assess the Depletion Fee and to allow Subdistrict Members sufficient time to contact the Subdistrict to review the information and appeal, if necessary, before the calculated Depletion Fee is certified to the counties on or before December 1<sup>st</sup>. Any complaint as to the numbers included in the notice should be filed with the Subdistrict in the manner described in the Rule 7 below.

5.9 The Subdistrict Board of Managers shall certify the amount of the Annual Service and User Fee which will be assessed against Subdistrict Land to the counties by December 1<sup>st</sup> of the year prior to collection, or in accordance with the requirements of the counties.

5.10 Transition Period under the Plan.

5.10.1 In the first calendar year following the approval of the Plan, Subdistrict Members will be assessed only an Administrative Fee, CREP Fee and Subdistrict Fee. There will be no Depletion Fee assessed in the first calendar year following the approval of the Plan.

5.10.2 The Administrative Fee, CREP Fee and Subdistrict Fee for the transition period will be assessed to Subdistrict Lands based on the information received from the County Assessor's records for the then current calendar year.

5.10.3 Fees calculated for this transition period will be assessed to the then current owner(s) of Subdistrict Land.

## SECTION 6: SURFACE WATER CREDIT CALCULATIONS

6.1. As set forth in the Subdistrict's Plan, Surface Water Credit ("SWC") allocated to each Farm or Farm Unit will be calculated annually by March 15. The method for determining the quantity of SWC for each Farm Unit is shown below. In the event of a conflict between these Rules and the Plan, the provisions of the Plan control.

6.2. Imported Water delivered within RA1.

6.2.1 Imported Water that is legally diverted and introduced into the Unconfined Aquifer within RA1 is eligible for Surface Water Credit.

6.2.2 The following canals and ditches divert and deliver Imported Water into RA1:

Billings Ditch

Butler Irrigation Ditch

Excelsior Ditch

Farmers Union Canal

Kane Callan Ditch

McDonald Ditch

Prairie Ditch

Rio Grande Canal (including Special Water)

Rio Grande Ditch No. 2

San Luis Valley Canal

Schuch Schmidt Ditch

6.2.3 The list of ditches in Section 6.2.2, above, will be changed if another ditch begins diverting and delivering Imported Water or if a ditch ceases diverting and delivering Imported Water into RA1.

6.2.4 Determination of Surface Water Credit for Imported Water.

6.2.4.1 Determine the Farm Unit's proportional ownership interest in the ditch using the method used by the ditch to allocate water among the ditch users.

6.2.4.2 Determine the ditch total headgate diversions from the Division of Water Resource's records for previous five (5) years, not including the then current year and divide by five (5) to calculate the preliminary ditch five-year running average.

6.2.4.3 Reduce the preliminary ditch five-year running average by five percent (5.0%) to estimate ditch loses due to evaporation and evapotranspiration to

calculate final ditch five-year running average.

6.2.4.4 Multiply the Farm Unit's proportional ownership interest by the final ditch five-year running average to generate the Farm Unit's Gross SWC. Gross SWC will be reduced based on the method of direct irrigation application, as shown below.

6.2.5 Reduction of Surface Water Credit.

6.2.5.1 Imported Water that is part of a decreed Plan for Augmentation or approved Substitute Water Supply Plan: Any portion of a surface water right that is also a part of an approved plan for augmentation will be reviewed by Subdistrict staff and the owner of the water rights to calculate an appropriate reduction of SWC based on the specific terms of each plan of augmentation decree.

6.5.2.2 Co-mingled Irrigation Systems: Any irrigation system that is able to apply both Imported Water and groundwater withdrawals must have either approved meters or another measurement calculation approved by the Subdistrict such that the Subdistrict is able to correctly calculate the quantity of Imported Water being applied to irrigation separate from the amount of groundwater being applied. Farm Units with co-mingled systems without adequate measurement devices will not receive any SWC.

6.5.2.3 Surface Water Only Systems: Any center pivot that uses Imported Water as its sole source must have either an approved meter or other measurement device to report total Imported Water that was applied. Any water applied in this manner will be deducted from Gross SWC. Any system that applies Imported Water to flood irrigation should measure the water applied in this manner. Any water delivered to an aquifer recharge facility of seven acres or less per quarter-section will not be deducted from Gross SWC. Any water delivered to a dedicated aquifer recharge facility from which no crop is harvested or grazed, regardless of size, will not be deducted from Gross SWC. Any surface water measured to the application of flood irrigation will be deducted from the Gross SWC in the amount of 60% of the application. Any area that is flood irrigated with surface water within RA1 that does not report a measured amount applied to flood irrigation will have 2 AF/acre deducted from Gross SWC if the area is any crop other than alfalfa. If the crop is alfalfa, the amount deducted shall be 3 AF/acre.

6.2.5.4 Any measurement device used for the measurement of surface water through sprinklers will be certified in accordance with the Measurement Rules.

6.2.6 As part of the fee calculation process outlined in Section 5.8 above, SWC is deducted from a Farm Unit's Total Groundwater Withdrawals to calculate Net

Groundwater Withdrawals. If this calculation results in a negative Net Groundwater Withdrawal, that amount will be carried forward as a SWC carryover and may be used on the Farm Unit that generated the SWC carryover or it may be transferred to another Farm Unit for one year in accordance with the Plan.

6.2.7 Any SWC carryover not used to offset Total Groundwater Withdrawals will be extinguished at the end of the year following the year in which it was generated.

6.3. Native Surface Water delivered into RA1.

6.3.1 The following canal and ditches divert and deliver Native Surface Water:

Biedell Ditch No. 2

Biedell Ditch No. 10

Green Ditch No. 1

Home Ditch No. 1

Johnnie Smith Ditch No. 1

La Magote Ditch No. 2

McLeod Ditch No. 3

McLeod Ditch No. 4 & 5

Moody and Head Ditch

Omnibus Ditch

Rocky Hill Seepage Overflow Ditch

Shown Ditch

White Ditch

Wilson Ditch No. 4

6.3.2 The list provided in Section 6.3.1, above, will be changed if another ditch begins diverting and delivering Native Surface Water or ceases diverting and delivering Native Surface Water.

6.3.3 SWC based on Native Surface Water will be calculated in the same manner as SWC based on Imported Water.

6.3.4 As set forth in the Plan, SWC derived from Native Surface Water in excess of net groundwater withdrawals used to irrigate the lands historically irrigated with Native Water may be carried forward for one year but cannot be transferred to another Farm Unit where the Native Surface Water is not decreed as a lawful place of use.

6.4. Exchange, Trade, Lease or Sale of Surface Water Credit.

- 6.4.1 To the extent allowed by the Plan, SWC calculated by the Subdistrict can be exchanged, traded, leased, or sold to other Subdistrict or Contract Well users.
- 6.4.2 SWC from the current year or carryover credits from the previous year may be exchanged, traded, leased, or sold. The exchange, trade, lease, or sale of SWC are contracts between water users and must be reported to the Subdistrict as part of each of the contracting parties annual Farm Unit Update. This information must be reported by September 1 of each year to ensure accurate accounting by the Subdistrict.
- 6.4.3 Excess SWC from the previous year may also be acquired from another Farm Unit to offset any over pumping from the previous year. Subdistrict staff must be notified of the acquisition and use of such SWC before September 1<sup>st</sup>.

6.5. Examples.

6.5.1 Producer X farms one quarter of land within RA1 in 2024. X uses Imported Water for recharge and irrigates 125 acres under a center pivot sprinkler supplied with groundwater only. X pumped 180 AF in 2024. The remainder of the quarter is not irrigated. Assume the following data:

- Well user owns or controls 10 shares of Ditch A.
- Total shares issued in Ditch A are equal to 1,000.
- Total 5-year rolling average (2019-2023) of headgate diversions for Ditch A total 25,000 AF/yr.

Calculation:

Gross Surface Water Credit =  $(95\% \times 25,000 \text{ AF}) \times 10 \text{ shares} / 1,000 \text{ shares} = 237.5 \text{ AF}$

Total Groundwater Withdrawals = 180 AF

Net Groundwater Withdrawal =  $180 - 237.5 = -57.5 \text{ AF}$  to be sold or carried forward into 2025

6.5.2 Producer Y farms one quarter of land within RA1. Y uses Imported Water for recharge and irrigation. Y irrigates 125 acres under a center pivot sprinkler supplied with both groundwater and Imported Water. The remainder of the quarter is not irrigated. Using Example 1 above and assuming the following additional data:

- A total of 180 AF is pumped through the sprinkler meter (Imported Water and ground water).

- A total of 150 AF of groundwater is pumped through the well meter then through the sprinkler meter.

Calculation:

Gross Surface Water Credit = 237.5 AF (from Example 6.1 above)

Reduction of SWC for Imported Water through Sprinkler =  $180 - 150 = 30$  AF

SWC =  $237.5 - 30 = 207.5$  AF

Total Groundwater Withdrawals = 150 AF

Net Groundwater Withdrawal =  $150 - 207.5 = -57.5$  AF to be sold or carried forward into 2025

6.5.3 Producer Z farms one quarter of land. Z uses surface water for recharge and flood irrigation. Z does not report the amount of water applied to flood irrigation. Z also irrigates 125 acres under a center pivot supplied only by groundwater. The remainder of the quarter is not irrigated. Use Example 1 and assume the following additional data:

- 40 acres of grass being flood irrigated
- Water Value = \$500/AF

Calculation:

Gross Surface Water Credit = 237.5 AF (from Example 6.1 above)

Reduction of SWC for Flood Irrigation =  $(40) \text{ acres} \times 2 \text{ AF/acre} = 80$  AF

SWC =  $237.5 - 80 = 157.5$  AF

Total Groundwater Withdrawals = 180 AF

Net Groundwater Withdrawal =  $180 - 157.5 = 22.5$  AF that will be subject to Depletion Fee at the current Water Value

Depletion Fee =  $22.5 \text{ AF} \times \$500/\text{AF} = \$11,250$

## **SECTION 7: HEARING AND APPEALS PROCEDURES REGARDING CHALLENGES TO CALCULATION OF ANNUAL SERVICE AND USER FEES**

7.1 Application of the Rule. The hearing and appeal procedures established by these rules shall apply to all complaints concerning the calculation of the Annual Service and User Fees as defined by the Plan in paragraph 4.2, as it now exists or may hereafter be amended. The hearing and appeal procedures established by these rules do not apply to the following complaints:



- 7.1.1 Complaints that arise with regard to personnel matters. These complaints are governed by the Rio Grande Water Conservation District; and,
  - 7.1.2 Any other complaint that does not concern the calculation of the Annual Service and User Fee as defined by the Plan.
- 7.2 Initial Complaint Resolution.
- 7.2.1 Complaints concerning the Subdistrict's calculation of the Annual Service and User Fee, as defined by paragraph 4.2 of the Plan, must be presented in writing to the General Manager of the District. The complaint must include a specific statement of the factual claims asserted, copies of any documentation that supports the complaint, a specific request for relief or modification and a mailing address and/or an email address for communications from the Subdistrict. The Complaint must be received on or before October 1<sup>st</sup> of the year in which the Fee is to be assessed or all objections to the assessed fees are deemed waived. All timelines hereafter shall run from the receipt of all of the information specified in this section 7.2.1.
  - 7.2.2 Any complaint as to the individual Subdistrict Well groundwater withdrawal amounts obtained by the Subdistrict from the records of the Division of Water Resources will be allowed as per paragraph 4.10 of the Plan.
  - 7.2.3 Upon receipt of a complaint, the General Manager, or a designated member of the District's staff, will make a full and complete review of the allegations contained in the complaint, along with any supporting documentation provided by the complainant, and will make a recommendation to the Board of Managers to either accept or deny the complaint within twenty-one (21) days of receiving the complaint and all the supporting documentation from the complainant.
  - 7.2.4 The Board of Managers will consider and take action on the recommendation of the General Manager, or designated District staff representative, during a publicly noticed meeting within thirty-five (35) days of receipt of the complaint. The complainant will be notified of the action taken by the Board of Managers within fourteen (14) days of their action. The notification must be in writing and will provide the complainant a summarization of the action taken by the Board of Managers. The notification must be sent via U.S. Mail.
  - 7.2.5 The Board of Managers may extend the timeframe to consider the recommendation of the General Manager, or designated District staff representative, beyond thirty-five (35) days of the receipt of the complaint upon good cause shown. Good cause includes a determination by the General Manager, or designated District staff representative, that the press of other District or Subdistrict business will not allow the complaint to be fully considered and acted upon in the thirty-five (35) day time frame. An extension will not be longer than ninety-one (91) days from the date the complaint is received, and the complainant will be notified in writing of the extension via U.S. Mail.

### 7.3 Hearing.

- 7.3.1 In the event the decision of the Board of Managers is deemed unsatisfactory by the complainant, a written request for hearing may be submitted to the General Manager, or designated District staff representative, within twenty-one (21) days from the date written notice of the Board of Manager's decision was mailed to the complainant.
- 7.3.2 If receipt of the request is timely, and if all other prerequisites prescribed by these rules and regulations have been met, the Board of Managers will direct the General Manager, or an individual appointed by the Board of Managers, to act as a hearing officer and conduct a hearing at the Subdistrict's convenience. Every effort will be made to conduct the hearing within sixty-three (63) days after the receipt of the request for a hearing. For good cause shown, the hearing may be later than sixty-three (63) days after the receipt of the request. The hearing shall be conducted in accordance with and subject to all pertinent provisions of these rules and regulations.

### 7.4 Hearing Notice.

- 7.4.1 The Subdistrict will notify the Complainant of the time, place, and nature of the hearing at least twenty-one (21) days before the hearing. Unless otherwise provided by law, such notice shall be served in person or by U.S. Mail to the address of the person the complainant has designated to receive all notices from the District regarding the complaint. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.
- 7.4.2 An amended hearing notice may be issued by the Subdistrict at any time prior to the hearing without necessitating a continuance of the hearing date, provided the original notice is not substantially altered to the prejudice of any party. If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the Subdistrict.
- 7.4.3 The Subdistrict may continue a hearing to another date by issuing written notice to that effect any time before the date, time, and place of the original hearing.

### 7.5 Prehearing Submissions. Seven (7) days before the hearing, or at such other time as stated in the hearing notice, each party shall present one copy to every other party, including the General Manager, or a hearing officer appointed by the Board of Managers, a prehearing statement which shall contain:

- a) a specific statement of the factual and legal claims asserted;
- b) copies of all exhibits to be introduced or used at the hearing;
- c) a list of witnesses to be called and a brief description of their testimony, or written testimony for each witness if required by the hearing notice; and,

- d) proposed findings of fact and conclusions of law, unless a later date for this submission is specified in the hearing notice.

7.6 Conduct of Hearing. At the hearing, the General Manager, or an individual appointed by the General Manager, shall serve as the Hearing Officer. The complainant and representatives of the District and/or Subdistrict shall be permitted to appear in person, and the complainant may be represented by any person of his choice, including legal counsel.

7.6.1 Every party to the proceeding has the right to present its case or defense by oral and documentary evidence and to submit rebuttal evidence. Where the hearing notice provides, the Hearing Officer may receive all or part of the evidence in written form.

7.6.2 The complainant or his representatives and the District and/or Subdistrict representatives have the right to present evidence and arguments in the form specified in the hearing notice; the right to cross-examine any person; and, the right to oppose any testimony or statement that may be relied upon in support of or in opposition to the matter complained. The Hearing Officer may receive and consider any evidence which has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

7.6.3 The Hearing Officer may ask questions of any representative or witnesses in order to clarify further an issue relevant to the complaint. The Hearing Officer may allow the parties to submit evidence not previously submitted as specified by the hearing notice, but only for good cause shown, such as where necessary for purposes of rebuttal.

7.6.4 The Hearing Officer will cause the hearing to be recorded by a reporter or by an electronic recording device. Any party may request, at their own expense, to have the hearing transcribed. Upon agreement of the parties, parties may agree to split any transcription costs. If the Subdistrict acquires a copy of the proceedings, its copy of the transcription must be made available to any party at reasonable times for inspection and study.

7.6.5 All hearings will be conducted in the following order unless otherwise directed by the hearing notice:

- a) Call to order, introductory remarks, and action on applications for party status;
- b) Presentation of any stipulations or agreements of the parties;
- c) Opening statements by the party upon whom the burden of proof rests;
- d) Opening statements by all other parties;
- e) Presentation of case-in-chief by party upon whom the burden of

proof rests;

- f) Presentation by all other parties wishing to offer evidence in the order to be determined by the Hearing Officer;
- g) Rebuttal by the party upon whom the burden of proof rests;
- h) Surrebuttal by all other parties, upon good cause shown, as determined by the Hearing Officer; Closing statement by party upon whom the burden of proof rests;
- i) Closing statements of all other parties;
- j) At the conclusion of any witness' testimony, or at the conclusion of the party's entire presentation, as may be determined by the Hearing Officer, all of the parties may then cross-examine such witness or witnesses in an order determined by the Hearing Officer;
- k) Any person, not a party to the proceedings, who wishes to present testimony, may do so by indicating his or her desire in writing, including a brief statement as to the nature of the testimony to be given. A sign-up form will be available for this purpose prior to the commencement of the hearing. The Hearing Officer has the discretion to allow or prohibit such testimony. Voluntary testimony not specifically requested per the written form may still be allowed at the discretion of the Hearing Officer. The parties shall be given an opportunity to respond to non-party evidence in a manner deemed appropriate by the Hearing Officer to avoid prejudice;
- l) All briefs and memoranda of law which counsel or the parties choose to file shall be served all parties seven (7) days before the hearing, unless otherwise specified by the hearing notice;
- m) The Hearing Officer, after receipt of the evidence, may allow or require parties to present oral or written summations of the facts and the law, or both, either at the hearing, or subsequent thereto, as deemed appropriate;
- n) The Hearing Officer shall determine whether clear and convincing grounds exist to alter or amend the action taken regarding the calculation of the Annual Service and User Fee that is the subject of the complaint. The decision shall be based upon evidence presented at the hearing; and,
- o) The burden of showing that the required grounds exist to alter or amend the action taken regarding the calculation of the Annual Service and User Fee shall be upon the complainant.

7.7 Findings. Subsequent to the hearing, the Hearing Officer shall make written findings and

an order disposing of the matter and shall mail the findings and order to the complainant by U.S. Mail no later than twenty-one (21) days after the date of the hearing.

7.8 Appeals to the Board of Directors.

7.8.1 In the event the complainant disagrees with the findings and order of the Hearing Officer, the complainant may, within twenty-one (21) days from the date of mailing of the findings and order, file with the District a written request for an appeal to the Board of Directors of the Rio Grande Water Conservation District. The request and appeal shall set forth, with specificity, the facts or exhibits presented at the hearing upon which the complainant relies and shall contain a brief statement of the complainant's reasons for the appeal. In response, the Hearing Officer will compile a written record of the hearing consisting of:

- a) Minutes of the hearing;
- b) All exhibits or other physical evidence offered and reviewed at the hearing; and
- c) A copy of the written findings and order.

The Hearing Officer may submit additional written comments that further clarify the hearing findings and order in response to the request for appeal.

7.8.2 The Board of Directors will consider the complainant's written request for appeal and the written record of the hearing at the next regularly scheduled meeting held not earlier than fourteen (14) days after the filing of the complainant's request for appeal. Such consideration will be limited exclusively to a review of the record of the hearing, any written clarifying comments by the Hearing Officer, and complainant's written request for appeal. No further evidence may be presented by any party to the appeal and there is no right to a hearing de novo before the Board of Directors. The Board of Directors may accept oral argument from complainant and the Hearing Officer or their representatives in the sole discretion of the Board of Directors.

7.9 Board of Directors' Finding. The Board of Directors must make written findings and issue an Order concerning the disposition of the appeal. A notice of the decision shall be sent by U.S. Mail to the complainant within twenty-one (21) days after the meeting at which the appeal was considered by the Board of Directors. Findings of the Board of Directors are final.

**SECTION 8: APPLICATION PROCESS FOR WELLS PURSUANT TO CONTRACT**

8.1 The Subdistrict may include, by contract, wells that are not "Subdistrict Wells" as defined by paragraph 2.3 of the Plan. Wells included by contract are "Contract Wells."

8.2 A Contract Well may be located within or without the exterior boundaries of the

Subdistrict. The impacts of a Contract Well must be capable of being determined using the Subdistrict Response Functions, without altering the location of replacement obligations to the Subdistrict.

- 8.2.1 In unique circumstances, the Subdistrict may enter into a contract with a well that is not within the Subdistrict's Response Area, or any other Response Area within the RGDSS Model Domain, if entering into such contract will not alter the locations of replacement obligations to the Subdistrict or require the Subdistrict to address or be responsible for a new or different sustainability requirement and will withdraw more than twenty-five (25) acre-feet of groundwater per year.
- 8.3 A Contract Well's injurious depletions to streams will be calculated in the same manner that injurious depletions from all Subdistrict Wells are calculated and the Subdistrict will be responsible for replacing injurious depletions from the Contract and Subdistrict Wells.
- 8.4 The owner of a well who desires to be included in the Subdistrict's ARP must file or affirm a Participation Contract with the Subdistrict's Board of Managers for inclusion by December 15th of the preceding year. The well owner must provide the Subdistrict the following information: the Well ID number, permit number, and/or decree number, the well location, well ownership, the legal description of the land the well will be used to irrigate, and aquifer from which the well withdraws water. The well owner will also provide pumping records for the previous 3 calendar years.
- 8.5 Letter of Credit/Security Document. The Subdistrict may require appropriate security to protect against the owners of Contract Wells declaring bankruptcy or otherwise defaulting on their obligations to the Subdistrict for inclusion of the Contract Well. The form of security must be accepted by the General Manager and approved by the Board of Managers.
- 8.6 Contract Fee. See Definitions in sections 1.6.4, 1.6.5., and 1.6.6, above.
- 8.7 Notification by Subdistrict of Approval: The Subdistrict will notify the owner of the proposed Contract Well by March 15, whether the proposed Contract Well is accepted into the Subdistrict's ARP for the following year. The Subdistrict's decision to include or exclude a proposed Contract Well shall not be subject to review. The decision by the Board of Managers shall be made in a public session and reasons for deciding to include the proposed Contract Well shall be stated after the Board of Managers receives advice from the Manager and/or General Manager, its engineers, and its legal counsel.
- 8.8 Lagged Depletions Associated with Contract Well: Because the Subdistrict is obligated to replace lagged depletions associated with Subdistrict Wells and Contract Wells, pumping by a Contract Well for a single year will have up to a twenty-year effect. Accordingly, each annual contract with each Contract Well will require the Subdistrict to replace lagged depletions associated with the Contract Well going forward up to twenty years. The Subdistrict's Contract Fee will so reflect those ongoing depletions obligations.
- 8.9 Contract Fees may be collected by the counties as provided by law if appropriate. The

Subdistrict will certify to the Counties the acreage that the entire fee is to be collected against.

- 8.10 Surface Water Credit. The Board of Managers may consider a contract well owners surface water contribution in determining an individual contract fee.

## **SECTION 9: SURFACE WATER INCLUSION**

- 9.1 The purpose of this Agreement is to allow for the use of, or credit for, certain types of surface water as part of the Plan.

### **9.2 Qualifying Conditions.**

9.2.1 The water rights or shares in a ditch company must be legally authorized for use, and deliverable to, lands within RA1 and will assist in achieving a Sustainable Unconfined Aquifer.

9.2.2 The surface water rights cannot be derived from land located within any other subdistrict or within the response function area attributable to any other subdistrict unless the land located in the other subdistrict is part of the same parcel as land located within RA1. The Board of Managers may consider other surface water right inclusions on a case-by-case basis and after consultation with the other subdistrict's Board of Managers.

9.2.3 The water rights or shares in a ditch company must be incorporated in or used in conjunction with a farm unit or an individual parcel within RA1 and included within the Plan.

9.2.4 The surface water rights will only be entitled to credit for purposes of the Plan if all of the provisions of this Agreement have been compiled with and subject to approval of the Board of Managers of Subdistrict No. 1.

### **9.3 Specific Conditions.**

9.3.1 A one-time inclusion Fee of \$500.00 has been paid prior to inclusion of surface water credit for accounting purposes

9.3.2 The amount of water included shall be determined utilizing the same standard methodologies used for quantifying surface water within Subdistrict Territory.

9.3.3 The ability to use water represented by this inclusion agreement is dependent upon the approval of the Board of Managers of Subdistrict No. 1 and the payment of any fee described in 9.3.1.

## **SECTION 10: OPERATIONAL TIMELINES**

The following list of Subdistrict activities will occur on an annual basis and at a scheduled time

each year:

- 10.1 Farm Plan Updates. Requests for updates to Farm Plans will be sent out by U.S. Mail to each Owner and/or Manager of a Farm Plan on record with the Subdistrict on or before April 15<sup>th</sup> of each year. These updates will be due back to the Subdistrict no later than July 1<sup>st</sup> to allow the Subdistrict sufficient time to make updates before the annual fee calculation process begins.
- 10.2 Annual Subdistrict Fee Calculation Process. The Subdistrict's Annual Service and User Fee calculation process will begin on January 2 and be finalized before December 1 of each year. The Subdistrict's Annual Service and User Fees will be calculated in the manner described in Section 5, above.
- 10.3 Appeal of Subdistrict Calculations. The Subdistrict will mail out a Fee Summary to each Subdistrict Member and contract owner identifying the information the Subdistrict relied upon for their previous year's Annual Service and User Fee calculation in the manner described in Section 5 above. Fee summaries will be mailed out no later than January 31<sup>st</sup> to allow Subdistrict Members and contract owners sufficient time to contact the Subdistrict to review this information and submit an appeal to the Subdistrict, if necessary, before the appeal deadline of September 1<sup>st</sup>. Appeals should be made to the Subdistrict in the manner provided for in Section 7 above.
- 10.4 Certification of the Annual Service and User Fees. The Subdistrict will ask for current ownership records for all Subdistrict Lands from the County Assessor on or before November 1 each year. All Annual Service and User Fees will be assessed to the then current owner of the Subdistrict Land. All Annual Service and User Fees will be certified to each County Treasurer in every County which encompasses Subdistrict Land. Contract Wells will be assessed per the agreement in each individual contract. The Subdistrict will certify the Annual Service and User Fees to the County Treasurers on or before December 1 each year to be added to the tax rolls. Each County Treasurer will collect the Annual Service and User Fees in the following year and remit them to the Subdistrict.
- 10.5 Subdistrict Annual Budget. The planning process for the annual Subdistrict budget will begin on June 1 of every year. The Subdistrict will project all expenditures anticipated for the ensuing Calendar Year to operate the ARP and the Plan, and those revenues necessary to fund the anticipated expenditures. Subdistrict staff will present a preliminary annual budget to the Board of Managers before August 15. The Board of Managers will review and approve the budget at their August quarterly meeting. The Subdistrict's annual budget will then be submitted to the District's Board of Directors as part of the District's overall budget process.
- 10.6 Annual Report. The annual report for the prior ARP Year is due to the State and Division Engineer by March 1. At this time, the Subdistrict will also post the annual report on the District's website.
- 10.7 Annual Replacement Plan. The Subdistrict's ARP is due to the State and Division Engineers by April 15 of every year that the Subdistrict is in operation, including any



year that the Subdistrict does not allow continued groundwater withdrawals from Subdistrict Wells or Contract Wells but does have Post-Plan Injurious Stream Depletions to replace or remedy. The Subdistrict will submit notice to a newspaper or newspapers which collectively provide general circulation throughout the Subdistrict and to the Division No. 3 Substitute Water Supply Plan notification list. The Subdistrict will also provide additional notice if required by the then current laws of Colorado or other then current rules and regulations. Notice will be provided at least seven (7) days prior to the Subdistrict and the District's consideration of any ARP. The ARP will also be posted to the District's website.

- 10.8 Subdistrict Replacement Operations. The Subdistrict will begin replacing and/or remedying injurious stream depletions beginning on May 1 of the year the first ARP is approved and continuing each ARP Year thereafter. The Subdistrict will begin immediately replacing and/or remedying injurious stream depletions for any well added during the ARP Year to the list of Subdistrict Wells or any Contract Wells regardless of if the well was included in the database of Subdistrict Wells or Contract Wells for that ARP Year unless the stream depletions for the subject well were replaced or remedied through a valid plan for augmentation or another subdistrict.

## **SECTION 11: REVIEW OF PROGRESS TOWARDS ACHIEVING AND MAINTAINING A SUSTAINABLE UNCONFINED AQUIFER**

- 11.1. Statement of Purpose. The purpose of these rules is to establish a framework for the continual monitoring of the Subdistrict's progress towards achieving and maintaining a Sustainable Unconfined Aquifer within the Subdistrict Territory and describing the investigations and actions the Subdistrict will take in its effort to ensure the objectives of the Plan are accomplished.
- 11.2. Review of progress toward limiting annual groundwater withdrawals.
- 11.2.1 If after the first two full years of operation following the final approval of this Plan, the average Net Groundwater Withdrawals for all Subdistrict and Contract Wells over the previous two years is more than 2,000 acre-feet, then during the third year of the Plan, and annually thereafter, the Board of Managers must adjust the Water Value used to calculate the Depletion Fee in the amounts set forth in paragraph 4.2.5.3 of the Plan.
- 11.2.2 Following the initial review outlined in 11.2.1, the number of years of Net Groundwater Withdrawals included in the annual review will increase by one year until the average includes the previous five years. Thereafter, the review process will be based on a running five-year average of Net Groundwater Withdrawals.

11.3. Review of progress towards achieving the Unconfined Aquifer Storage Level objective as described in 3.4.3 of the Plan.

11.3.1 Annual review of groundwater level changes in Study Area.

11.3.2 After the fifth full year of operation under the Plan, and at least every fifth year thereafter, determine:

- 11.3.2.1. The annual diversions from the Rio Grande into RA1;
- 11.3.2.2. The running five-year average SWC;
- 11.3.2.3. If the running five-year average of groundwater withdrawals by wells included in the Subdistrict's annual ARPs is equal to the running five-year average of SWC for such wells;
- 11.3.2.4. Changes in groundwater withdrawals in Study Area during the prior five years;
- 11.3.2.5. Changes in irrigated acres in the Subdistrict Territory during the prior five years;
- 11.3.2.6. Reductions in irrigated acreage within RA1 but outside of the Subdistrict Territory resulting from conservation activities by the Subdistrict;
- 11.3.2.7. Changes in cropping patterns within RA1;
- 11.3.2.8. Changes in irrigation methods within RA1 and how those changes may affect consumptive use of irrigation water;
- 11.3.2.9. Whether, on average during the past five years, the Unconfined Aquifer groundwater levels in the study area have stopped declining;
- 11.3.2.10. Whether there has been an increase in the total Unconfined Aquifer Storage;
- 11.3.2.11. Determine, for the existing rate of increases in the Unconfined Aquifer Storage Level, the number of years projected to reach the Plan's Unconfined Aquifer Storage Level objective of 200,000 to 400,000 acre-feet below the storage level that was calculated to exist in the Study Area on January 1, 1976;

- 11.3.2.12. If there are locations within the Study Area where the Unconfined Aquifer groundwater levels have continued to decline, then investigate the likely causes of the continued decline. The investigation may include, but is not limited to:
- 11.3.2.12.1. Whether the area where the Unconfined Aquifer groundwater level decline is within the Subdistrict Territory;
  - 11.3.2.12.2. Whether wells included in the Subdistrict's ARP, and located in or immediately adjacent to the area of the groundwater level decline, are withdrawing more than their SWC on a running five-year average;
  - 11.3.2.12.3. Whether there are wells not included in the Subdistrict's ARP that are withdrawing groundwater in or immediately adjacent to the area of groundwater level declines. If so, determine the basis and amount of such groundwater withdrawals and whether such wells are meeting their sustainability requirement;
  - 11.3.2.12.4. The amount of annual groundwater withdrawals in and adjacent to the area of continued groundwater level declines during the preceding five years and whether there have been material changes in average annual groundwater withdrawals in that area;
  - 11.3.2.12.5. The crops being grown on irrigated lands within and immediately adjacent to the areas of continued groundwater level declines and changes in cropping patterns in that area during the past five years;
  - 11.3.2.12.6. The amount of surface water being delivered to the area where groundwater level declines are continuing to occur within the Subdistrict Territory;
  - 11.3.2.12.7. Whether there has been a change in surface water inflow into the areas of continued groundwater level declines, and the nature and extent of such changes;
  - 11.3.2.12.8. The source aquifer of groundwater being withdrawn by wells in the area of continued groundwater level declines;

- 11.3.2.12.9. Whether there have been changes in irrigation methods in the area of continued groundwater level declines, or adjacent areas;
  - 11.3.2.12.10. Whether the extent of the area of continuing groundwater level declines extends beyond the Study Area, and how that area has changed over the preceding five years.
  - 11.3.2.12.11. The climatological conditions during the preceding five years, including precipitation; stream flows; average, high, and low temperatures; and other relevant climatic conditions;
  - 11.3.2.12.12. Regulatory actions by the Division of Water Resources that affect the amount of groundwater withdrawals by wells not included in the Subdistrict's annual ARPs;
  - 11.3.2.12.13. Actions by the District Court for Water Division No. 3 that affect the amount of groundwater withdrawals by wells not included in the Subdistrict's annual ARPs; and,
  - 11.3.2.12.14. Any other relevant factors that aid in understanding the causes for continued groundwater level declines.
- 11.3.2.13. Prepare a report containing the results of the investigations if the Unconfined Aquifer Storage is continuing to decline, the likely reasons for the continued groundwater level declines, and whether the declines are attributable to wells included in the Subdistrict's annual ARPs withdrawing more groundwater than their SWC on a running five-year average; and
- 11.3.2.14. The Subdistrict Board of Managers will review the report and determine what actions, if any, they can take under the Plan to reverse the identified groundwater level declines to the extent they are attributable to either withdrawals by wells included in the Subdistrict's ARPs or the manner of calculating SWC.
- 11.3.3 Not later than the tenth full year under the Plan, if the Unconfined Aquifer Storage is not recovering and the five-year average of Net Groundwater Withdrawals is equal to or less than zero, the Subdistrict must:
- 11.3.3.1. In consultation with the Division of Water Resources, undertake a comprehensive engineering review of all factors used in the

calculation of SWC and complete the review within twelve months.

- 11.3.3.2. Make any changes to the SWC calculations that are necessary to ensure SWC correctly reflects the quantity of surface water that recharges the Unconfined Aquifer from: direct recharge; canal, ditch, and lateral seepage; and, irrigation return flows that replace groundwater withdrawals. SWC currently does give credit against Depletions Fees for flood irrigation return flows, and the existence of such return flows from waters diverted from the Rio Grande into Response Area No. 1, must be considered when determining whether net groundwater withdrawals exceed SWC. Pursuant to paragraph 5.2.1 of the Plan, when the Unconfined Aquifer Storage Level objective is met, the Subdistrict may include such return flows from other sources in the SWC calculation.
- 11.3.3.3. In cooperation with the Colorado Division of Water Resources, initiate a comprehensive review of the RGDSS groundwater model, the groundwater data used in the groundwater model, sources and amounts of recharge to the Unconfined Aquifer, its hydrologic assumptions about the operation of the aquifer systems of the San Luis Valley, and any other pertinent factors. The goal of the review will be to determine the reasons for any continued decline of groundwater levels in the Study Area caused by wells included in the Subdistrict's ARPs, notwithstanding the fact that the wells do not withdrawal more groundwater than the running five-year average of their SWC.
- 11.3.3.4. Make changes to the Plan within the scope of the Subdistrict's authority to ensure wells included in the Subdistrict's ARPs do not withdraw, on a running five-year average, more than their SWC.

## **SECTION 12: AMENDMENT OF RULES**

- 12.1 No substantive amendments to these rules will be made without prior consultation with the State Engineer and Division Engineer.