

SPECIAL IMPROVEMENT DISTRICT NO. 5
OF THE
RIO GRANDE WATER CONSERVATION DISTRICT

**RULES AND REGULATIONS
GOVERNING GROUNDWATER WITHDRAWAL ALLOCATIONS
FOR SUBDISTRICT WELLS**

ADOPTED July 21, 2021

REVISED April 20, 2022

The Rio Grande Water Conservation District (“District”), acting by and for Special Improvement District No. 5 (“Subdistrict No. 5”), hereby adopts the following rules governing the setting and enforcement of a maximum groundwater withdrawal amount for Subdistrict Wells and Contract Wells by the Board of Managers of Subdistrict No. 5.

1. Title. The title of these Rules is “Rule Governing Groundwater Withdrawal Allocations for Subdistrict Wells within Subdistrict No. 5.” The short title for these Rules is “Groundwater Allocation Rules” and they may be referred to herein collectively as “Rules” or individually as “Rule.”
2. Authority. Subdistrict No. 5 is a voluntary opt-in subdistrict and all Subdistrict Members are bound by the contractual terms agreed to in agreeing to join the Subdistrict. The petition each Subdistrict Member or its predecessor signed included the following mandatory provision:

Participation in the Subdistrict is strictly voluntary. By voluntarily petition land into the Subdistrict, (we/I) explicitly authorize, and agree to abide by, any groundwater allocation or limits imposed by the Board of Managers, either by individual Subdistrict well or Farm Unit. (We/I) further understand that the Board of Managers may impose rules, economic disincentives, or penalties, up to and including exclusion of wells from the Subdistrict’s Annual Replacement Plan, deemed reasonably necessary to further the goals of the Plan or to comply with Colorado law. These covenants run with the land and bind both current and future owners of the property described below.

3. Scope and Purpose.
 - 3.1 These Rules apply to all withdrawals of groundwater by Subdistrict Wells and Contract Wells within Subdistrict No. 5 pursuant to the Well’s permit or decree, except as stated in paragraph 3.3, below.
 - 3.2 These Rules have as their objective the maintenance of a sustainable aquifer that complies with the Groundwater Use Rules, as those rules exist now or as they may change in the future, reducing injurious depletions to surface streams, and increasing the availability of sources for the Subdistrict’s remedy of injurious depletions.
 - 3.3 The Rules do not apply to (1) any Wells that withdraw Groundwater for the sole purpose of the mitigation of environmental impacts pursuant to the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley Project; and (2) any Well withdrawals of a decreed surface water right imported into the Subdistrict from the Rio Grande and decreed for recharge, which surface water has been recharged into the aquifer from which the Well withdraws water.

4. Definitions. Any term used in these Rules that is defined in sections 37-90-103 or 37-92-103, C.R.S., 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 Rights (“Groundwater Use Rules”), or the Plan of Water Management for Special Improvement District No. 5 of the Rio Grande Water Conservation District, as any of these exist now or as they may be modified in the future, have the same meaning given therein unless the context requires otherwise.
 - 4.1 Groundwater Allocation means the quantity of groundwater withdrawals, in acre-feet, that may be made by a Subdistrict Farm Unit during a Water Year, from November 1st through October 31st, as a percentage of that Farm Unit’s Historical Groundwater Withdrawals pursuant to the Well’s permit or decree.
 - 4.2 Historical Groundwater Withdrawals means the annual average Net Groundwater Withdrawals made by a Farm Unit from Water Year 2011 up to and including Water Year 2020, except that when calculating the Historical Groundwater Withdrawals, only the 5 years from Water Year 2011 up to and including Water Year 2020 that had the highest diversions will be included when calculating the average, and any years when a well diverted less than 1 acre-foot will not be included in determining the Historical Groundwater Withdrawals. If a well has less than 5 years that diversions were greater than 1 acre-foot, all years with diversions greater than 1 acre foot will be included when determining the Historical Groundwater Withdrawals. Years where diversions were less than 1 acre-foot will not be included in the calculation. As an example, if there were only 7 years when a well diverted more than 1 acre-foot from 2011 through 2020, the Historical Groundwater Withdrawals would be an average of the highest 5 diversions out of the 7 years.
 - 4.3 Withdrawal Credits means a Farm Unit’s amount of Groundwater Withdrawals, in acre-feet, a Farm Unit is permitted to withdraw in a Water Year.
 - 4.4 Surface Water Credit means the amount of water imported into the Subdistrict from the Rio Grande Canal, which surface water has been recharged into the aquifer from which the Well withdraws groundwater. The method for quantification of Surface Water Credit is set forth in the Rules and Regulations for Subdistrict No. 5.
5. Allocation of Groundwater Withdrawals.
 - 5.1 Except in the first year of operation under these Rules, the Board of Managers must set a Groundwater Allocation by January 1 of each year.
 - 5.1.1. The Board of Managers will set the allocation at a properly noticed public meeting.

- 5.1.2. The Subdistrict will provide written notice of the Groundwater Allocation in writing to each Subdistrict Member and Contract Holder by first class mail.
 - 5.2 Allocations will be set based on the anticipated need for groundwater withdrawal restrictions during the upcoming irrigation season.
 - 5.3 Allocations will be set as a percentage reduction on a Farm Unit's Historical Groundwater Withdrawals and the percentage reduction will be the same for all Farm Units.
 - 5.4 Allocations do not consider or limit the withdrawal of Surface Water Credit.
6. Transfer and Carryover of Groundwater Withdrawal Credits.
- 6.1 Subdistrict Members transfer Withdrawal Credits to other Subdistrict Members or Contract Holders upon such terms and at such times as may be mutually agreeable between Subdistrict Members and/or Contract Holders.
 - 6.2 Subdistrict No. 5 will not be a party to any such transfers, but may facilitate such transfers by allowing the advertisement of the availability of Withdrawal Credits on its website or providing other public notice as to the availability of Withdrawal Credits.
 - 6.3 Except under the requirement of paragraph 7.6, below, notice of the transfer of Withdrawal Credits must be provided to Subdistrict No. 5 in writing prior to March 1 on a form provided by the Subdistrict and such form may be changed from time to time. Except that in the first year of operation under these rules the deadline shall be May 1.
 - 6.4 Once the Subdistrict receives the notice of the transfer on the required form, the transferred Withdrawal Credits will be part of the receiving Farm Unit's Withdrawal Credits and will be deducted from the transferring Farm Unit's Withdrawal Credits for the term of the transfer.
 - 6.5 Any Withdrawal Credits not used may carry over into the following Water Year. Withdrawal Credits may only be carried over 1 year and will be extinguished if not used in the second year. Such carryover credit may be leased under the same terms as any other credit.
7. Enforcement.
- 7.1 As part of setting the Groundwater Allocation, the Board of Managers may require a Subdistrict Member to report Well Meter data directly to Subdistrict staff at one or more times during an Irrigation Season. The Subdistrict will use this information to monitor Groundwater Withdrawals for potential non-compliance.
 - 7.2 Any Subdistrict Member that exceeds the applicable Groundwater Allocation by 10 acre-feet or less, or less than 10% of the Farm Unit's Withdrawal Credits,

whichever is greater, will be charged an additional Groundwater Withdrawal Fee of one hundred dollars (\$100.00) per acre-foot of exceedance.

- 7.3 Any Subdistrict Member that exceeds the applicable Groundwater Allocation by more than 10 acre-feet but less than 20 acre-feet, or more than 10% but less than 20% of the Farm Unit's Withdrawal Credits, whichever is greater, will be charged an additional Groundwater Withdrawal Fee of two hundred and fifty dollars (\$250.00) per acre-foot of exceedance.
 - 7.4 Any Subdistrict Member that exceeds the applicable Groundwater Allocation by more than 20 acre-feet or 20% of the Farm Unit's Withdrawal Credits, whichever is greater, will be excluded from the next ARP. If the Subdistrict Member wishes to be included in subsequent ARPs, the Subdistrict Member must make a written request to the Subdistrict to be included and such request must contain a detailed plan on how the Subdistrict Member will not exceed future Groundwater Allocations. The Board of Managers may grant or deny such request in its sole discretion.
 - 7.5 The Subdistrict must inform a Subdistrict Member by February 28 of each year if that Subdistrict Member will be excluded from all subsequent ARPs and the amount of acre-feet of Groundwater Withdrawals made by the Subdistrict Member's Farm Unit above the Groundwater Allocation.
 - 7.6 If, prior to April 1 of the year in which a Subdistrict Member is informed of a violation as provided in paragraph 7.5, the Subdistrict Member obtains current year Withdrawal Credits, whether by purchase or allocation, in an amount equal to or exceeding the acre-feet that the Subdistrict Member's Farm Unit exceeded the previous Withdrawal Allocation, the Subdistrict will withdraw the penalties. The amount of those obtained Withdrawal Credits available to the Subdistrict Member will be reduced by the previous Water Year's overuse and any remaining Withdrawal Credits will remain available to the Subdistrict Member.
 - 7.7 Fees imposed under paragraphs 7.2 or 7.3 will be assessed as part of the subsequent assessment on the Farm Unit and the Subdistrict may only use the funds generated by such additional fees to fund conservation programs or actions designed to reduce groundwater consumptive use and/or improve aquifer levels underlying the Subdistrict.
- 8.0 Hearing and Appeals Procedures Regarding Challenges to Board Action Under these Rules and Regulations.
- 8.1 Application of the Rule. The hearing and appeal procedures established by these rules shall apply to all complaints concerning the decisions and application of those decisions made by the Board of Managers under these Rules and do not apply to any other complaint as to the actions of the Board of Managers.
 - 8.2 Initial Complaint Resolution.

- 8.2.1 Complaints under these Rules 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 January 15th of the year in which the allocation is to be applied or all objections to the allocations assessed fees are deemed waived. All timelines hereafter will run from the receipt of all of the information specified in this paragraph 8.2.1.
 - 8.2.2 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.
 - 8.2.3 The Board of Managers will consider and act 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 or email.
 - 8.2.4 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 or email.
- 8.3 Hearing.
- 8.3.1 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 or emailed to the complainant.
 - 8.3.2 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 a hearing officer appointed by the Board of

Managers, to conduct a hearing at the Subdistrict's convenience. Every effort will be made to conduct the hearing within twenty-eight (28) days after the receipt of the request for a hearing. For good cause shown, the hearing may be later than twenty-eight (28) 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.

8.4 Hearing Notice.

8.4.1 The Subdistrict will notify the Complainant of the time, place, and nature of the hearing at least fourteen (14) days before the hearing. Unless otherwise provided by law, such notice shall be served in person or by U.S. Mail or by email 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.

8.4.2 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.

8.4.3 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.

8.5 Prehearing Submissions. Seven (7) days before the hearing, or at such other time as stated in the hearing notice, each party will 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.

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

8.6.1 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.

- 8.6.2 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.
- 8.6.3 The Hearing Officer may ask questions of any representative or witnesses in order to clarify further an issue relevant to the complaint.
- 8.6.4 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.
- 8.6.5 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.
- 8.6.6 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;
 - i) Closing statement by party upon whom the burden of proof rests;
 - j) Closing statements of all other parties;

- k) 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;
- l) 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.
- m) 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.
- n) 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.
- o) 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.
- p) 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.

8.7 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 or email no later than twenty-one (21) days after the date of the hearing.

8.8 Appeals to the Board of Directors.

8.8.1 In the event the complainant disagrees with the findings and order of the Hearing Officer, the complainant may, within fourteen (14) 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.

8.8.2 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.

8.9 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 fourteen (14) days after the meeting at which the appeal was considered by the Board of Directors. Findings of the Board of Directors are final.

9.0 Variance.

9.1 When the strict application of any provision of these Rules would cause unusual hardship, the Board of Managers may grant a variance if the Board of Managers finds that the request is justifiable. If the Board of Managers grants a variance, it will issue a written order granting the variance and setting forth the terms and conditions on which the variance is granted.

9.2 Any request for a variance must be submitted in writing to the Program Manager for Subdistrict No. 5.

9.3 Except in the first year of these Rules, any request for a variance must be submitted to the Program Manager prior to the close of business on February 15 of the calendar year in which the Allocation will be effective.

9.4 The Board will consider request for variances at the next regular meeting after receiving the request or at such special meeting where the Board of Managers, in its sole discretion, chooses to consider the request.