

RULES AND REGULATIONS

OF

**THE RIO GRANDE WATER
CONSERVATION DISTRICT
SUBDISTRICT NO. 1**

ALAMOSA COUNTY, COLORADO

SECTIONS 1-6 – ADOPTED JANUARY 18, 2011

SECTION 7 – ADOPTED APRIL 19, 2011

SECTION 8 –

SECTION 9 – ADOPTED FEBRUARY 23, 2012

SECTIONS 9 REVISED January 15, 2013

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RULES AND REGULATIONS

SECTION 1 - SCOPE OF THE RULES AND REGULATIONS

- 1.01. **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) of the Colorado Revised Statutes and were approved by the Rio Grande Water Conservation District Board of Directors on January 18, 2011.
- 1.02. **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.
- 1.03. **Amendment.** These Rules and Regulations may be amended from time to time in accordance with the law.
- 1.04. **Titles.** Titles used in these Rules and Regulations are for convenience only and shall not be considered in interpreting their meaning or scope.
- 1.05. **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.
- 1.06. **Definitions.** As used in these Rules and Regulations, unless the context otherwise requires:
 - a. Board of Managers means the Board of Managers of Special Improvement District No. 1 of the Rio Grande Water Conservation District (“Subdistrict No. 1”).
 - b. Board of Directors means the Board of Directors of the Rio Grande Water Conservation District.
 - c. District means the Rio Grande Water Conservation District.
 - d. Subdistrict or Subdistrict No. 1 means Special Improvement District No. 1 of the Rio Grande Water Conservation District.
 - e. Subdistrict Territory means all lands within the exterior boundaries of the Subdistrict as defined in the Petition to form the Subdistrict that were classified as irrigated by the applicable County Treasurers and Assessors as of May 12, 2006 as defined by section I.B. of the Plan.

- f. Subdistrict Well is defined by the Plan of Water Management at section I.C. The Plan states that Subdistrict Wells are “wells and irrigation systems used by each Subdistrict landowner or any other wells included under this Plan by contract as described in Section II.C. Wells included in the Plan and qualified to receive the benefits afforded by the Plan are those wells subject to the Well Measurement Rules adopted by the State Engineer and approved by the Division 3 Water Court in Case No. 05CW12 (August 1, 2006) (“Measurement Rules”). Wells exempt from the Well Measurement Rules include wells not exceeding fifty (50) gallons per minute which were in production as of May 22, 1971 that were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of garden and lawns.
- g. General Manager means the General Manager of the Rio Grande Water Conservation District.
- h. Subdistrict 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.
- i. Plan of Water Management means the official plan of the Subdistrict as approved by the District Court in accordance with section 37-48-126(4), C.R.S. (2010) and section 37-92-501, C.R.S. (2010).
- j. Annual Replacement Plan (ARP) means: The Plan submitted to the State Engineer pursuant to Appendix 1 of the Plan of Water Management which describes the manner in which injurious depletions to surface water streams will be replaced and the data associated.
- k. Contract Well is a well that is included via a formal agreement between the Subdistrict and the well owner to include a groundwater well that is not a Subdistrict Well as defined by the Plan of Water Management within the Annual Replacement Plan of the Subdistrict. A contract shall be required to include every non-Subdistrict well within the scope of the Plan of Water Management’s Annual Replacement Plan. To be included, a Contract Well must not alter the location of the ARP’s replacement obligations and must agree to pay fees assessed by the Subdistrict.
- l. Contract Fee means the Contract Administration Fee and the Contract Inclusion Fee.
- m. 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.

- n. 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.
- o. Meter Reading Fee is the charge the Subdistrict may assess a Subdistrict member, or Contract Well owner, who does not report his or her well meter readings to the Subdistrict by October 1, and represents the actual costs to the Subdistrict of obtaining the well measurement data.
- p. Response Function(s) are derived from the current version of the RGDSS Groundwater Model, as revised and updated.
- q. Response Area means an area where the Response Functions for the wells within the boundaries of the Subdistrict can be applied without altering the magnitude and location of replacement obligations.

SECTION 2 – HEARING AND APPEALS PROCEDURES REGARDING CHALLENGES TO CALCULATION OF ANNUAL SERVICE AND USER FEE - § I.V.I OF THE PLAN OF WATER MANAGEMENT

- 2.01. Application. The hearing and appeal procedures established by these rules shall apply to all complaints concerning the calculation of the Annual Service and User Fee as defined by the Plan of Water Management, as it now exists or may hereafter be amended. The hearing and appeal procedures established by these rules shall not apply to the following complaints:
- 2.01.01. Complaints that arise with regard to personnel matters. These complaints shall be governed by the Rio Grande Water Conservation District’s personnel rules.
 - 2.01.02. Any other complaint which does not concern the calculation of the Annual Service and User Fee as defined by the Plan of Water Management.
- 2.02. Initial Complaint Resolution. Complaints concerning the calculation of the Annual Service and User Fee as defined by section IV-C of the Plan of Water Management governing Subdistrict No. 1 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 support the complaint, and a specific request for relief or modification. The Complaint must be received on or before June 1 of the year in which the Fee is to be paid 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 paragraph.

Upon receipt of a complaint, the General Manager or his designated representative shall make a full and complete review of the allegations contained in the complaint and any supporting documentation,

and will make a recommendation to the Board of Managers regarding the accuracy of the calculation of the Annual Service and User Fee that is the subject of the complaint within twenty-one (21) days.

The Board of Managers will convene to consider the recommendation of the General Manager or representative and will take action within thirty (30) days of receipt of the complaint. The complainant shall be notified of the recommendation and action taken by the Board of Managers within ten (10) days of their action. The notification shall be in writing and shall summarize the action taken by the Board of Managers. The notification shall be sent via U.S. Mail.

The Board of Managers may extend the timeframe to consider the recommendation of the General Manager or representative beyond thirty (30) days of the receipt of the complaint upon good cause shown. Good cause includes a determination by the General Manager or 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 day time frame. An extension will not be longer than ninety (90) days from the date the complaint is received, and the General Manager or representative will notify the complainant in writing of the extension via U.S. Mail.

- 2.03. Hearing. 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 representative within twenty (20) days from the date written notice of the decision was mailed to the complainant.

If receipt of the request is timely, and if all other prerequisites prescribed by these rules and regulations have been met, 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 sixty (60) days after the receipt of the request. For good cause shown, the hearing may be later than sixty (60) 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.

- 2.04. Hearing Notice. The Complainant will be notified of the time, place, nature of the hearing by the Subdistrict. Unless otherwise provided by law, such notice shall be served personally or by mailing by first-class U.S. Mail to the last address furnished to the District by the person to be notified at least twenty (20) days before the hearing. 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.

An amended 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.

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.

- 2.05. Prehearing Submissions. Seven 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 presiding officer, a prehearing statement which shall contain:
- (1) a specific statement of the factual and legal claims asserted;
 - (2) copies of all exhibits to be introduced or used at the hearing;
 - (3) 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
 - (4) proposed findings of fact and conclusions of law, unless a later date for this submission is specified in the hearing notice.
- 2.06. Conduct of Hearing. At the hearing, the General Manager or appointed hearing officer (presiding officer) shall preside. 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.

Every party to the proceeding shall have the right to present its case or defense by oral and documentary evidence and to submit rebuttal evidence. Where the hearing notice provides, a person conducting the hearing may receive all or part of the evidence in written form.

The complainant or his representatives and the District and/or Subdistrict representatives shall 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 presiding officer may receive and consider any evidence which has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

The presiding officer may ask questions of any representative in order to clarify further an issue relevant to the complaint.

The presiding 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.

The presiding officer shall 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 shall be made available to any party at reasonable times for inspection and study.

All hearing shall 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 presiding officer;
- g) Rebuttal by the party upon whom the burden of proof exists
- h) Surrebuttal by all other parties, upon good cause shown, as determined by the presiding 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 presiding officer, all of the parties may then cross-examine such witness or witnesses in an order determined by the presiding 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 presiding 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 presiding officer. The parties shall be given an opportunity to respond to non-party evidence in a manner deemed appropriate by the presiding 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.

The presiding 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.

The presiding 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.

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.

2.07. Findings. Subsequent to the hearing, the presiding officer shall make written findings and an order disposing of the matter and shall mail the findings and order to the complainant no later than twenty (20) days after the date of the hearing.

2.08. Appeals to the Board of Directors. In the event the complainant disagrees with the findings and order of the General Manager or hearing officer, the complainant may, within twenty (20) 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 presiding officer shall 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 presiding officer may submit additional written comments that further clarify the hearing findings and order in response to the request for appeal.

The Board of Directors shall 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 ten (10) days after the filing of the complainant's request for appeal. Such consideration shall be limited exclusively to a review of the record of the hearing, any written clarifying comments by the presiding officer, and complainant's written request for appeal. No further evidence shall be presented by any party to the appeal and there shall not be the right to a hearing de novo before the Board of Directors. The Board of Directors may accept oral argument from complainant and the presiding officer or their representatives.

- 2.09. Board of Directors' Finding. The Board of Directors shall make written findings and issue an Order concerning the disposition of the appeal. A notice of the decision shall be sent by mail to the complainant within twenty (20) days after the meeting at which the appeal was considered by the Board of Directors. Findings of the Board of Directors shall be final.

SECTION 3 - PUBLIC RECORDS

- 3.01. Enactment. This section has been adopted by the District and the Subdistrict, pursuant to the provisions of the Colorado Open Records Act, for the protection of the public records of the District and the Subdistrict and in order to permit their inspection by persons entitled to examine and copy the information therefrom in an orderly fashion and free from unnecessary interference with the regular discharge of the duties of the official custodian of the District and the Subdistrict.
- 3.02. 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 rules with reference to the inspection of the public records of the 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 the prevention of unnecessary interference with the discharge of the duties of the custodian.
- 3.03. Inspection of Public Records. All public records of the District shall be open for inspection at the times designated herein, except as provided in the Colorado Open Records Act.
- 3.04. Request for Inspection. Request for inspection and for copies of any public records of the Subdistrict shall 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.

- 3.05. Times for Inspection. Inspection of the Subdistrict's public records shall be made at the District's office during the hours from 9:00 a. m. to 4:00 p.m., Monday through Friday, except on holidays, at an hour specifically set by the official custodian for each particular request for inspection.
- 3.06. Copies, Printouts, or Photographs of Public Records. In any case where a person has the right to inspect a public record under the control of the official custodian, and requests in writing that the 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 reasonable fee, to be set by the official custodian, which fee shall not exceed One Dollar and Twenty-Five Cents (\$1. 25) per page, unless the actual cost exceeds that amount, in which case the actual cost may be charged. For 8 ½ x 11 paper copies, the fee shall be Fifty Cents (\$.50) per page.
- 3.07. Exemptions. No person shall be permitted to inspect or copy any records of the District if, in the opinion of the official custodian, such inspection or copying would come within the prohibition of one or more exceptions stated in section 24-72-204 of the Colorado Open Records Act.

SECTION 4 – APPLICATION AND INCLUSION PROCESS FOR SUBDISTRICT WELLS PURSUANT TO CONTRACT

- 4.01. The Subdistrict may include, by contract, wells that are not "Subdistrict Wells" as defined by Section I.C. of the Plan of Water Management. Wells included by contract are "Contract Wells."
- 4.02. 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 outlined in Appendix 1 to the Plan of Water Management, without altering the location of replacement obligations to the Subdistrict.
- 4.03. A Contract Well's injurious depletions to surface water sources 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.
- 4.04. The owner of a well who desires to be included in the Subdistrict's Annual Replacement Plan must petition the Subdistrict for inclusion by December 15 of the preceding year. In the

Petition for Inclusion for each proposed Contract Well, the well owner must supply the Subdistrict the following data: 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 supply pumping records for the previous 3 calendar years.

- 4.05. Letter of Credit/Security Document. The Subdistrict will 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. At a minimum it must be sufficient to pay the Contract Fee for the term of the contract plus twenty (20) years.
- 4.06. Contract Fee: See Definitions in 1.06.l, 1.06.m. and 1.06.n.
- 4.07. 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.
- 4.08. 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.
- 4.09. 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.
- 4.10. Surface Water Credit. The Board of Managers may consider a contract well owners surface water contribution in determining a contract fee.

SECTION 5 – TIMING AND CALCULATION OF FEE ASSESSMENTS

- 5.01. The Subdistrict Board of Managers shall certify the amount of the Annual Service and User Fee as well as Contract Fees assessed against Subdistrict Acreage to the counties for

collection by December 1 of the year preceding collection, or in accordance with the requirements of the counties.

5.02. The Annual Service and User Fee will be calculated in the manner described in the Plan of Water Management and the attached appendices.

SECTION 6 – MEETINGS AND NOTICE OF DECISION-MAKING

- 6.01. Meeting Location: The Subdistrict Board of Managers will meet at the principal office of the District unless another location is designated and noticed.
- 6.02. 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 December, March, June and September. 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.
- 6.03. 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.
- 6.04. Notice: Public notice of all regular and special meetings shall be given by posting the same in the manner provided by law at least twenty-four hours before the meeting.
- 6.05. Notice Regarding Annual Replacement Plan Meeting(s): The Subdistrict shall publish notice of a meeting to take action on the terms or the approval of any Annual Replacement Plan seven (7) days before the meeting is to be held on the District's website (www.rgwcd.org) and in a local newspaper or general circulation. The proposed Annual Replacement Plan shall also be posted on the website, with the understanding that modifications of the proposal may occur during the meeting. A copy of the proposed Annual Replacement Plan 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).

- 6.06. Agendas: The Subdistrict, at the time it posts notice of each regularly scheduled or special meeting, shall post a draft agenda of the meeting on its website (www.rgwcd.org) and paper copies of the draft agenda shall be available on request at the District's offices.

SECTION 7 – SURFACE WATER CREDIT CALCULATIONS
(Adopted April 19, 2011)

- 7.01. Purpose. The purpose of this Section of the Rules and Regulations is to provide the manner by which the Board of Managers will determine the surface water credit, which is defined in § I.L of the Plan of Water Management for Special Improvement District No. 1 of the Rio Grande Water Conservation District. The basic premise for the calculation of the variable fee is described in § IV.B and the basic structure of the calculation of the variable fee and the determination of the surface water credit is described in § IV.B.2 of the Plan of Water Management.
- 7.02. Sample Calculations. The actual sample calculations for making the surface water credit calculation are defined in Appendix 2 to the Plan of Water Management for Special Improvement District No. 1 of the Rio Grande Water Conservation District.
- 7.03. Surface Water Irrigation. Only surface water that is used for recharge will be the subject of these regulations. Surface water that has been consumed through direct irrigation will be deducted from any surface water credit. The calculations described in Appendix 2 to the Plan of Water Management will be used in determining those values.
- 7.04. The surface water credit in acre feet, will be derived based upon the information provided by each of the ditch companies defined in § IV.B.2.a of the Plan of Water Management. First, upon receipt of the information concerning of the amount of water allocated to each farm unit within the Subdistrict the Manager will make a determination of the amount of direct irrigation that occurred and the amount consumed in direct irrigation will first be subtracted. Second, the amount of water pumped from wells within the farm unit will be deducted from the surface water credit. If the amount of pumping within a farm unit exceeded the surface water credits, no further steps are taken and the Annual fee will be calculated based on the amount determined using the foregoing calculation.
- 7.05. Election. In the event the calculation described in Appendix 2 and stated generally in 7.04 above results in a surface water credit, the Manager acting on behalf of the Board of Managers will inform the farm unit owner of the amount of the surface water credit. The owner/operator of the farm unit accumulating the surface water credit will then be given two weeks to make an election whether or not to make the surface water credit available for exchange, trade, lease or sale to other well water owners within the

Subdistrict or to carry the credit over until the next year to offset subsequent pumping. If the election is made to offset pumping in a subsequent year the Subdistrict will maintain a credit balance for the farm unit operator on its books. If no election is made, the default position will be that surface water credit will be carried over to offset pumping in the subsequent year. If the surface water credit election is made to exchange, trade, lease or sell to other well water users within the Subdistrict the surface water credit will be tabulated with all other surface water credits available. The Board of Managers will prepare a list or tabulation of all surface water credits available for exchange, trade, lease or sale in the following year. The tabulation will be announced in the manner described in 7.07 below. The announcement will occur no later December 1 of each year.

- 7.06. Market of Credit. Following the report of available surface water credit for exchange, trade, lease or sale, a private transaction will occur between the holder of the excess surface water credits and any other well water users within the Subdistrict interested in purchasing the same on a willing seller-willing buyer basis at prices to be determined by each transaction. The transactions will be the responsibility of the individual sellers and purchasers but must be reported to the Subdistrict as part of each of the purchasing water user's annual farm unit data by April 15 of each Plan Year.
- 7.07. Publication. The publication of the excess surface water credit information will occur by 1) posting the information on the District website; 2) a copy of the information will be provided on request. The information provided will be provided as a courtesy and will be the best available.
- 7.08. Contract Wells. Well owners that have valid contracts with the Subdistrict and which have surface water that is eligible for treatment under these rules shall be treated, for purposes of the calculation described in this Section, the same as a Subdistrict well owner.

SECTION 8 – CONTRACTS

- 8.01. Participation Contract (Adopted September 7, 2011)
- 8.02. Surface Water Inclusion Agreement (Adopted November 13, 2011)
- 8.03. Offer to Fallow (Adopted November 13, 2011)
- 8.04. Fallowing Contract (Adopted March 8, 2012, Revised December 11, 2012)

SECTION 9 – FALLOWING CONTRACTS AND OTHER LAND RETIREMENT PROGRAMS

9.01. Introduction.

9.01.01 Upon final approval, the Board of Managers will cooperate with the State of Colorado acting through the Department of Natural Resources and the U.S. Department of Agriculture acting through the F.S.A., to implement a Conservation Reserve Enhancement Program (“CREP”) within Subdistrict No. 1 pursuant to the requirements of the CREP Program as set forth by the F.S.A. and incorporated within the contracts and agreements which are made a part of these Rules in Section 8.

9.01.02 In order to supplement the CREP Program effort, which is not yet in effect at the time of adoption of this Rule, and to encourage fallowing of lands to reduce groundwater consumption at times or places where CREP is not appropriate, the Board of Managers may initially offer to pay land owners to fallow actively irrigated land for one year. The contract may be extended or an option for additional years may be added as agreed to between the parties that will be based on the current Plan Year’s water criteria regarding water use and Contract payments. This fallowing program is intended to complement the CREP Program. These rules which govern this fallowing program are markedly different than the terms and conditions of the USDA CREP Program and should not be compared. A link to the USDA CREP Rules is posted on the RGWCD website.

9.01.03 The ultimate goal of these programs is to reduce groundwater pumping to sustainable levels within Subdistrict No. 1, to reduce the amount of land being irrigated with groundwater to encourage the recharge of surface water diverted into Subdistrict No. 1, to restore groundwater levels in the aquifer within Subdistrict No. 1 and to prevent land erosion.

9.01.04 Lands eligible for consideration in this fallowing program are lands on which the owner or lessee will apply groundwater irrigation in an amount that is at least 50% less than the average pumped during the highest 3 out of the 4 previous consecutive years, per Division of Water Resource records. To be eligible for a fallow contract, sufficient groundwater must be physically and legally available to grow a crop consistent with the historical use of groundwater on the particular parcel. Determination of physical and legal availability will be made by the Board of Managers after consultation with the Division Engineer for Water Division No. 3. Eligible lands are those under full-turn center pivot and partial-turn center pivot, but not less than half-turn center pivot and lands that are flood irrigated with groundwater. The contract period for lands accepted into the fallowing program shall coincide with the irrigation season for the same year of the contract. Lands which have recently completed a contract with another conservation program will be considered on a case by case basis.

9.01.05 The purpose of these Rules is to ensure that a fair and consistent standard is applied to all fallowing contracts so that Subdistrict No. 1’s purposes, including the reduction in the use of groundwater and the restoration of groundwater levels in the aquifer within Subdistrict No. 1, are achieved.

9.01.06 It is recognized that lands which are offered for a fallowing contract may produce different benefits and the Board of Managers of Subdistrict No. 1 intend to use these Rules to ensure that a fair standard is applied.

9.02. Procedures for an Annual Fallowing Program.

9.02.01 The Board of Managers will announce no later than December 10th of any year that they intend to entertain offers to fallow land, pursuant to these Rules, during the following calendar year. At that time, they will propose the prices that they are willing to offer for fallowing a parcel of ground either in terms of dollars per acre or dollars per acre-inch of groundwater savings.

9.02.02 Land owners interested in proposing to fallow ground shall present their proposal to the Rio Grande Water Conservation District Program Manager no later than February 1st by submitting the form with all information provided as shown in Section 8.03.

9.02.03 The technical staff and management of Subdistrict No. 1 will review all proposed fallowing contract proposals for completeness and prepare a recommendation for each proposal in accordance with the requirements of these Rules.

9.02.04 The Board of Managers will meet during the 1st week of March to act upon the Subdistrict's staff's recommendations to accept, reject, or propose alternate terms for fallowing contracts. The Board's decisions will be promptly transmitted to the individual or entity making the fallowing proposal.

9.02.05 The entity making the fallowing proposal will have one week to accept or reject the Board of Managers' decision and an appropriate fallowing contract in the form contained in Section 8 will be presented for signature. The executed fallowing contracts must be completed no later than March 15th of the year in which they are to take effect.

9.03 Water and Land Valuation.

9.03.01 Each year the Board of Managers will establish a value that will be used in determining appropriate fallowing contract terms. The established value will be announced on the Rio Grande Water Conservation District website at the time of or prior to the request for fallowing proposals.

9.03.02. In every year the Rules are in effect hereafter, these values will be subject to reconsideration and modification by the Board of Managers.

9.03.03. Temporarily fallowed parcels under the fallowing contract will be assessed Administration, CREP and Variable fees according to the Plan of Water Management. Surface Water Credit will be calculated in accordance to Appendix C of the Plan including reductions for surface water that is not recharged, such as flood irrigation, use of surface water through the sprinkler and includes surface water that is dedicated to the fallowing contract.

9.04 Rates for Groundwater Savings.

9.04.01 Contract holders shall be paid based upon the amount of groundwater saved as compared to the average pumped during the highest three out of the four previous consecutive years, per Division of Water Resource records. By December 10th of each year, the Board of Managers will set a rate to be paid to the contract holder for each acre-inch of groundwater saved. The Board of Managers approved 2013 rate is:

0 water use: \$15.00/acre-inch of groundwater savings

1.0 inch water use: \$14.00/acre-inch of groundwater savings

2.0 inches water use: \$13.00/acre-inch of groundwater savings

3.0 inches of water use: \$12.00/acre-inch of groundwater savings

4.0 inches of water use: \$11.00/acre-inch of groundwater savings

5.0 inches of water use: \$10.00/acre-inch of groundwater savings

6.0 inches of water use: \$9.00/acre-inch of groundwater savings

7.0 inches of water use: \$8.00/acre-inch of groundwater savings

The contract holder will specify the maximum amount of groundwater to be applied to the fallowed parcel. The maximum payment to the contract holder will be based upon the difference of the average pumped during the highest three out of the four previous consecutive years and the maximum amount chosen by the contract holder to be applied to the parcel. If the contract holder saves more groundwater than this amount, Subdistrict No. 1 will not pay for such groundwater savings. If the contract holder saves less groundwater than this amount, Subdistrict No. 1 will reduce the amount paid to the contract holder by the acre-inch rate.

9.04.02 During an irrigation season, a fallowing contractor may increase the acre-inches of groundwater applied on the fallow parcel up to the maximum of 7 inches. Prior to such change being made, the fallowing contractor must notify Subdistrict No. 1 and the Board of Managers must approve such modification prior to the end of the contract period. The fallowing contractor's failure to provide advance notice and receive approval will void the contract and the Subdistrict will not pay the fallowing contractor for groundwater savings.

9.05 Limitations and Restrictions.

9.05.01 The contract holder shall install, maintain and monitor such measuring devices deemed necessary by Subdistrict No. 1 to administer the terms of the contract. Any malfunction in the method or devices measuring the pumped ground or surface water must be rectified within 48 hours and the Subdistrict must be notified of such malfunction immediately. If the malfunction cannot be corrected other measurement methods acceptable to Subdistrict No. 1 must be employed to accurately measure the amount of water being used.

9.05.02 The contract holder shall report monthly readings on all the measurement devices used on fallowed lands to Subdistrict No. 1 between the 1st and the 10th of every month during the contract period. If the groundwater irrigation applied to a particular parcel of land under the contract during the contract period is more than 50% (half) of the highest three out of the four previous consecutive years pumping average identified in the Contract and/or more than the maximum allowed use of 7 inches, then the portion of the fallowing contract applicable to that parcel is voided.

9.05.03 The fallowing contract holder shall provide all federal farm program information, preventative planting insurance and any other agreements as to the use of water or permitted cropping associated with the parcel considered for fallowing at the request of Subdistrict No. 1 staff. This information shall include historical planting and production data.

9.05.04 The fallowing contract holder shall be considered, as a condition of the contract, to have given permission to Subdistrict No. 1 personnel to enter upon the property that is the subject of the fallowing contract to check well meter readings and verify other fallowing criteria with prior notification.

9.05.05 During the term of a fallowing contract, grazing, tillage, fall planting and mechanical harvesting may occur on the property during the irrigation season of the contract year. Any groundwater irrigation amounts applied during the contract period are restricted to the limits stated in section 9.04 of this rule. The contract holder shall inform Subdistrict No. 1 personnel if any of the above activities are planned prior to initiating these activities.

9.05.06 The contract holder shall ensure that appropriate erosion control techniques are applied to any parcel that is the subject of a fallowing contract. This may include the planting and irrigation of a cover crop or other appropriate soil stabilization measures or soil treatment.

9.05.07 The final value of a fallowing contract will be determined and adjusted after the end of the irrigation season to take into account the amount of water pumped during the term of the fallowing contract. All fallowing contracts will acknowledge Subdistrict No. 1's ability to make that adjustment based upon the irrigation practices employed by the contract holder during the year. Among the reasons for a reduction in a fallowing contract payment or contract cancellation would be excess irrigation beyond that described in the contract or the conduct of grazing, tillage or planting practices contrary to the terms of the contract.

9.06 Payment Schedule.

9.06.01 The price established for a particular fallowing contract will be paid in one lump sum during December of the year in which fallowing occurred.

9.06.02 If the fallow contract holder violates the terms of the contract or these rules, including without limitation exceeding the irrigation limits set in the contract the contract

is void and no fallow contract payment will be made and a variable fee will be calculated according to the Plan of Management.

9.06.03 A copy of the current fallowing contract is contained in Section 8. The contract may be changed from time-to-time without requiring a modification of these rules and regulations in order to account for the subsequent decisions of the Board of Managers and the need to address newly identified issues. However, at all times, the fallowing contract used in any particular year will be consistent as to all contract holders.

9.06.04 At all times, every fallowing contract holder in a particular year will be treated consistently in accordance with these Rules. The contract price will be determined based upon the groundwater saved at a rate determined for that year by the Board of Managers. The fallowing payment is only available to properties that fully comply with these rules.