

WELL INJURY PAYMENT AGREEMENT

This Well Injury Payment Agreement is entered into effect May 1, 20__ between Special Improvement District No. 4 of the Rio Grande Water Conservation District (“Subdistrict No. 4”) and the “ditch right” (“Company”), (collectively “the Parties”).

RECITALS

A. The Company owns and operates the “ditch name” and the water rights decreed thereto. The “ditch name” diverts water from Saguache Creek in the “legal description of diversion”, and has decreed priorities totaling _____ c.f.s.

B. Subdistrict No. 4 is responsible for implementing its Plan of Water Management and Annual Replacement Plan (“Plan”).

C. The quantity of water available for diversion from Saguache Creek by the “ditch name” may be reduced by the stream depletions caused by wells that are covered by the Plan. Without this Well Injury Payment Agreement, Subdistrict No. 4 will make replacement water available as required by the Division Engineer.

D. The Company is willing to enter into this Well Injury Payment Agreement as an agreement of the type contemplated by section 37-92-501(4)(b)(I)(B), C.R.S., pursuant to which injury to the Company’s water rights is remedied by means other than providing water to replace injurious stream depletions.

E. Subdistrict No. 4 desires to enter into this Well Injury Payment Agreement as part of its Annual Replacement Plan for Plan Year(s) _____.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, Subdistrict No. 4 and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from May 1st, _____ through April 30th, _____.

2. **Obligation of the Company.**

2.1. During the term of this Agreement the Company will not require Subdistrict No. 4 to replace [up to _____ acre-feet] [any] [some specific time frame] of the injurious stream depletions to the water rights of the Company diverted from Saguache Creek at

the headgate of the "ditch name" under priority no(s). _____. Subdistrict No. 4 may remedy injurious stream depletions under this agreement or by providing water in its sole discretion.

2.2. This Well Injury Payment Agreement applies on each day during the term of the Agreement that the "ditch name" is the calling water right, except as provided in paragraph 2.4 below. The calling water right each day will be deemed to be the last priority served on that day as identified in the Preliminary Saguache Creek Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, the parties will use the last priority served from the most recent Daily Report until a new Daily Report is issued.

2.3. The number of acre-feet of injurious depletions to the water right of the Company will be calculated each day the "ditch right" is the calling water right and injurious depletions are not remedied by Subdistrict No. 4 providing replacement water, and both the Company and Subdistrict No. 4 will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the "ditch right" would have been able to divert, but for the depletions caused by wells operating under Subdistrict No. 4's Annual Replacement Plan. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to Saguache Creek contained in the Subdistrict's ____ Annual Replacement Plan approved by the State and Division Engineers. The actual amount of injurious depletions to the "ditch right" during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Well Injury Payment Agreement will apply on days when the following priorities decreed to the "ditch right" are the last priority served and the injurious depletions are not remedied by actual water:

Priority No.

On such days the amount of water that must be provided by Subdistrict No. 4 to replace the injurious stream depletions to the "ditch right" is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by Subdistrict No. 4 calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Company to divert the full amount of last priority served on that day.

2.5. [optional] When the total amount of estimated unreplaced depletions to the "ditch right" during the term of this Agreement equals ____ acre-feet, Subdistrict No. 4 will begin replacement of all injurious stream depletions to the "ditch right". For purposes of this paragraph 2.5, the maximum rate of daily depletions caused by wells operating under Subdistrict

No. 4's Annual Replacement Plan will be determined by dividing the number of days in the month into the estimated monthly stream depletions to Saguache Creek contained in the Subdistrict's _____ Annual Replacement Plan approved by the State and Division Engineers.

3. Payment. The Subdistrict will pay the Company _____ per acre-foot of replacement of injurious stream depletions that are not required to be made available for diversion at the "ditch right" pursuant to the terms of this Agreement.

3.1. After the end of each irrigation season, and not later than March 15, of the following calendar year, Subdistrict No. 4 will recalculate the injurious stream depletions in accordance with the requirements of the Plan. Subdistrict No. 4 will then recalculate the amount of water that the "ditch right" would have been able to divert if all unreplaced injurious depletions to the "ditch right" had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

3.2. Subdistrict No. 4 will pay the Company _____ per acre-foot for each acre-foot of injurious stream depletions to the "ditch right" caused by wells operating under the Subdistrict No. 4 Annual Replacement Plan during the term of this Agreement and not replaced with water.

3.3. The payment required by subparagraph 3.2, will be due within 35 days of the date that Subdistrict No. 4 provides the company with an accounting of the un-replaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15, _____.

4. No Subordination or Waiver of Right to Call. The Obligation of the Company under this agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the "ditch right". Under this Well Injury Payment Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require Subdistrict No. 4 to make water available for diversion at the "ditch right" [to off-set the first _____ acre-feet of injurious stream depletions to the _____] that would otherwise have to be replaced by Subdistrict No. 4 under its Plan.

5. Notice. All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by express courier, or by First Class U.S. Mail, postage prepaid. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through U.S. Mail shall be effective three days after deposit in the U.S. Mail. Notice shall be given to the receiving party at the following addresses:

To Company:

To Subdistrict No. 4:

c/o Program Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101

Such addresses may be changed during the term of this Agreement by written notice given in accordance with this paragraph.

6. Remedies. In the event of Company's default in the performance of this Agreement, Subdistrict No. 4's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 4's default hereunder, Company's remedies shall be to retain all payments made by Subdistrict No. 4 prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by Subdistrict No. 4, and to require Subdistrict No. 4 to pay the Company for all un-replaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

7.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. Except for those that are set forth in this Agreement, no representations, warranties, or agreements have been made by the Company or Subdistrict No. 4 to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Well Injury Payment Agreement, or in any document or instrument delivered pursuant to this Well Injury Payment Agreement, must be true and correct in all material respects on the date hereof, and are deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects.

7.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as

such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and Subdistrict No. 4. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

7.5. Waiver. The failure of a party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment, in any future case, of any of the terms of this Agreement.

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 4, which consent shall not be unreasonably withheld. Subdistrict No. 4 may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent shall not be unreasonably withheld.

7.7. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado.

7.8. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.

7.9. Time. Time is of the essence in this Agreement.

7.10. Joint Draft. The parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, draft this Agreement jointly.

“Company Name”

By: _____

_____ Date

ACCEPTED:

**Special Improvement District No. 4
of the Rio Grande Water Conservation District**

By: _____
_____, Program Manager

_____ Date

DRAFT