

SPECIAL IMPROVEMENT DISTRICT NO. 2 OF THE
RIO GRANDE WATER CONSERVATION DISTRICT

ANNUAL REPLACEMENT PLAN
2024 PLAN YEAR

Prepared

April 11, 2024

By

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2015CW3024 -- Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights

Rule 11 Subdistrict's Proposed ARP

11.1. By April 15th of each year, a Subdistrict with an approved Groundwater Management Plan must submit to the State and Division Engineers a proposed ARP that includes the following:

11.1.1 A database of all Wells to be covered by the ARP, which will be updated annually. The database of Subdistrict Wells will be provided in hard copy or electronic format, at the reasonable discretion of the State and Division Engineers and will include:

11.1.1.1 The structure identification number (WDID)

11.1.1.2 If no structure identification number has been assigned to a Subdistrict Well, the Subdistrict will furnish the following information: (See language in Rules court document).

11.1.1.3 A separate list of Subdistrict Wells with Plans for Augmentation

11.1.1.4 The total combined projected annual diversion for all Subdistrict Wells

11.1.1.5 The expected method(s) of irrigation, the combined projected number of acres irrigated by Wells included in the ARP, and the total projected acreage by each irrigation method

11.1.1.6 For non-irrigation Subdistrict Wells, a calculation of all projected withdrawals and projected Net Groundwater Consumptive Use

11.1.1.7 Any other data the Subdistrict deems necessary to support its projected Stream Depletions

11.1.1.8 Any other information required by the State and Division Engineers and reasonably necessary to evaluate the proposed ARP

11.1.1.9 Operational Requests to the Division No. 3 Division Engineer for the 2022 ARP

11.1.2 The Subdistrict will submit projected Stream Depletions from the Wells covered by an ARP, in time, location, and amount based on the applicable Response Functions under Rule 7.3, along with the Response Functions or approved alternative methodology that complies with Rules 7.5 and 7.6.

11.1.3 The Subdistrict will submit a detailed description of how Injurious Stream Depletions from groundwater withdrawals by Wells included in the ARP will be replaced or Remedied, including:

11.1.3.1 The source, sufficiency, availability, and amounts of replacement water the Subdistrict will use to replace Injurious Stream Depletions during the term of the ARP and the Subdistrict's plan to replace or Remedy Injurious Stream Depletions occurring after the term of the ARP

11.1.4 The Subdistrict will also list and provide copies of any voluntary contractual arrangements among water users, water user associations, water conservancy districts, Subdistricts, and/or the Rio Grande Water Conservation District pursuant to which:

11.1.4.1 Water is added to the stream system to assist in meeting the Rio Grande Compact delivery schedules

11.1.4.2 Water is added to the stream system to replace or Remedy Injurious Stream Depletions resulting from the use of underground water

11.1.4.3 Subject to section 37-92-501(4)(a)(I)-(III), C.R.S., injury to senior surface water rights resulting from the use of underground water is Remedied by means other than by providing water to replace Injurious Stream Depletions

11.1.5 Information to document progress towards achieving and maintaining a Sustainable Water Supply, including:

11.1.5.1 Water levels, pressure levels, and/or groundwater withdrawals as appropriate

11.1.5.2 A listing of any irrigated acres proposed to be fallowed, whether those acres are temporarily or permanently fallowed, and the water rights associated with those proposed fallowed irrigated acres

11.1.5.3 A listing of water rights proposed to be temporarily or permanently retired and historical operations of each water right

11.1.5.4 Other proposed actions to be taken as applicable

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Abbreviations

ARP	Annual Replacement Plan
CBP	Closed Basin Project
DWR	State of Colorado, Division of Water Resources
NRCS	Natural Resources Conservation Service
Plan Year	The period May 1, 2024 through April 30, 2025
PWM	Plan of Water Management
RGAs	Rio Grande Alluvial Response Area
RGDSS	Rio Grande Decision Support System
RGWCD	Rio Grande Water Conservation District
RGWUA	Rio Grande Water User's Association
Rule or Rules	Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights (2015CW3024)
SEO	State Engineer's Office
SLVWCD	San Luis Valley Water Conservancy District

Subdistrict No. 2	Special Improvement District No. 2 of the Rio Grande Water Conservation District
Subdistrict Wells	Wells Benefitting Subdistrict No. 2 lands
SWSP	Substitute Water Supply Plan
USDA	United States Department of Agriculture
URG	Upper Rio Grande Model Domain
WDID	Water District Structure Identification Number

INTRODUCTION

The purpose of this report is to satisfy the requirements for an ARP for the Plan Year under the provisions of the PWM for Subdistrict No. 2, approved without objection on August 9, 2018. Further, the ARP has been prepared in accordance with the requirements of the State Engineer and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights (Groundwater Rules).

As required by the Groundwater Rules, this report includes information necessary for the State Engineer and Subdistrict No. 2 staff to project stream depletions attributable to Subdistrict No. 2 Wells and Contract Wells (ARP Wells), as those terms are defined in the PWM, and information to assess progress toward other PWM objectives. This ARP includes a series of tables prepared by Subdistrict No. 2 staff utilizing the most current version of the Response Functions to tabulate the location and quantities of stream depletions resulting from Subdistrict No. 2 ARP Well groundwater withdrawals.

This ARP describes a plan to replace or otherwise remedy injurious stream depletions caused by the withdrawal of groundwater from Subdistrict No. 2 ARP Wells and includes details of the portfolio to be used to replace or otherwise remedy those injurious stream depletions as identified by the DWR for the Plan Year.

11.1.1 DATABASE OF ALL WELLS TO BE COVERED BY THE ARP

1. STRUCTURE IDENTIFICATION NUMBER (WDID)

A comprehensive ARP Well List identifies the wells the Subdistrict is including in the ARP (“ARP Wells”) which are permitted to continue operating in accordance with the PWM and the Groundwater Rules. This ARP Well List is necessary for DWR to identify which wells the Subdistrict has included. Further, the ARP Well List is a required input into the RGDSS Groundwater Model and Response Functions.

Appendix A is the most current tabulation of the WDID for each well in the ARP Well List and the groundwater withdrawals of each ARP Well for the previous Water Administration Year. Each year, as Subdistrict Members report information for their farm plans, and additional data is accumulated from other sources regarding well use and ownership, the ARP Well List will be updated. Any reported changes are incorporated into the ARP Well List, if appropriate. Following the court’s approval of the Subdistrict, wells have been added, replaced or removed from the Subdistrict’s ARP Well List. A table with further details about each well which has an approved Subdistrict Participation Contract is included as Appendix B.

Appendix A lists **270** ARP Wells for 2024, the majority were included in the Subdistrict by petition when the Subdistrict was formed March 1, 2016. A table with further details about each well which has an approved Subdistrict Participation Contract or Inclusion Contract is included as Appendix B.

2. OTHER WELL IDENTIFICATION INFORMATION

The ARP Well List included with this ARP provides a WDID for all wells the Subdistrict has accepted as part of this ARP and, therefore, no additional well identification information is required by Rule 11.1.1.

3. SUBDISTRICT WELLS WITH PLANS FOR AUGMENTATION

Subdistrict No. 2’s ARP Well List includes wells that are either fully or partially augmented by an approved plan for augmentation which is administered separately from Subdistrict No. 2’s PWM. These plans for augmentation associate surface rights with these Subdistrict Wells and other non-Subdistrict No. 2 wells to remedy some portion or all of each well’s injurious stream depletions. These wells are included in the Subdistrict’s ARP Well List, and if any portion of their legally decreed groundwater withdrawals is not remedied by an individual plan for augmentation, it is subject to Subdistrict No. 2 fees and Subdistrict No. 2 will remedy injurious stream depletions and post-plan injurious stream depletions attributable to the non-augmented portion of a well’s total groundwater withdrawals as part of this ARP.

San Luis Valley Water Conservancy District Augmentation Certificate No. 784

This augmentation certificate provides the participant 1.873 acre-feet of augmentation water annually to replace out-of-priority depletions caused by participant’s water use. The structure is an existing unconfined well, Case No. W-1202, Well No. 1, WDID 2010320. The structure’s

place of use is the NW1/4SW1/4NW1/4, Section 24, Township 39 North, Range 8 East, N.M.P.M. The structure and water diversions covered by this Agreement and Augmentation Certificate shall be used for the purpose of greenhouse operations, including irrigation inside the greenhouse during the non-irrigation season, evaporative cooling and humidification, miscellaneous washing of product and facilities, and an employee bathroom. The source of water shall be in accordance with Court Decrees 84CW16, 94CW62, 03CW41, 05CW13, 07CW63, and any other appropriate decree the SLVWCD may obtain. The certificate requires a separate metering of the period during the irrigation season and the non-irrigation season. The well is being metered, but the non-irrigation season use of this well is not currently being metered separately, and therefore, the Subdistrict will remedy all stream depletions caused by the groundwater withdrawals from this well.

San Luis Valley Water Conservancy District Augmentation Certificate No. 690

This augmentation certificate provides the participant 1.71 acre-feet of augmentation water annually to replace out-of-priority depletions caused by participant’s water use. The structure is an existing unconfined well, well permit # 25274-F, WDID 2009593. The structure’s place of use is two (2) tracts of land located in the SW1/4NW1/4, Section 11, Township 38 North, Range 8 East, N.M.P.M. The structure and water diversions covered by this Agreement and Augmentation Certificate shall be used for the purpose of year-round irrigation in sixty thousand (60,000) square foot greenhouse. The source of water is an Unconfined and/or Alluvial Tributary aquifer to the Rio Grande, in accordance with Court Decrees 84CW16, 94CW62, 03CW41, 05CW13, 07CW63, and any other appropriate decree the SLVWCD may obtain. This well is being fully augmented and does not require any remedy of depletions by the Subdistrict.

Appendix C contains the list of ARP Wells augmented either fully or partially by a plan for augmentation and a map of the lands associated with those plans for augmentation.

4. TOTAL COMBINED PROJECTED ANNUAL DIVERSION FOR ALL SUBDISTRICT ARP WELLS

The 2023 Water Administration Year metered groundwater withdrawals reported to DWR as of April 10, 2024, for all wells included in the ARP Well List are **13,521** acre-feet. Based on projected Subdistrict No. 2 operations, weather predictions and antecedent conditions, it is anticipated the 2024 ARP Well groundwater withdrawals will increase to **13,700** acre-feet.

Table 1.1
Historical Subdistrict ARP Well Metered Groundwater Withdrawals
(units in acre-feet)

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
15,101	15,835	14,758	13,311	12,539	11,191	11,286	15,942	10,844	13,600	13,685	12,643	13,521

The projection of 2024 ARP Well groundwater withdrawals was made by reviewing past years with actual stream flows on the Rio Grande similar to those being forecast for 2024. ARP Well groundwater withdrawals in those years were also reviewed. In 2024, stream flows are forecast to be most similar to the 2021 forecast. Using this information and assuming a similar year for

2024, the Subdistrict ARP Well groundwater withdrawals in 2024 are projected to be **13,700** acre-feet. The majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers, 86 percent. Approximately 5 percent and 9 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

5. EXPECTED METHODS OF IRRIGATION, THE COMBINED PROJECTED NUMBER OF ACRES IRRIGATED AND THE TOTAL PROJECTED ACREAGE BY EACH IRRIGATION METHOD

It is projected that the vast majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers. Approximately 5 percent and 9 percent of groundwater withdrawals from ARP Wells will be applied to flood irrigation and other uses, respectively.

Wells included in the ARP Well List are projected to irrigate approximately 9,200 acres during the Plan Year. Of the total projected irrigated acres, it is anticipated 8,200 acres will be irrigated by center pivot sprinklers and 1,000 acres will be irrigated by flood application in the RGA. This projection is made based on a review of the breakdown of acres within the RGA under each irrigation type prepared by DWR for inclusion in the RGDSS Groundwater Model, a review of any changes in irrigation application type from the previous ARP and a review of the wells being included by Participation Contracts in both the RGA and the URG. All wells being included in the ARP Well List from the URG are used for beneficial uses other than irrigation, and therefore, no additional irrigated acres were accounted for from these wells.

6. NON-IRRIGATION SUBDISTRICT WELLS – CALCULATION OF ALL PROJECTED WITHDRAWALS AND PROJECTED NET GROUNDWATER CONSUMPTIVE USE

Included in the ARP Well List are a number of wells with beneficial uses other than irrigation. The Subdistrict utilized information provided by DWR to calculate the consumptive use rates used in the RGDSS Model to calculate stream impacts and returns. Beneficial uses include potato washing, commercial, municipal, domestic (subdivision), lawn irrigation and fish propagation. A spreadsheet was prepared by the Subdistrict to calculate the composite Consumptive Use Ratio that is a necessary input in the Response Functions. A spreadsheet of the calculation prepared for use in the 2024 ARP will be submitted with this ARP.

7. OTHER DATA NECESSARY TO SUPPORT THE PROJECTED STREAM DEPLETIONS

No additional data is being provided.

8. OTHER INFORMATION REQUIRED BY THE STATE AND DIVISION ENGINEERS AND REASONABLY NECESSARY TO EVALUATE THE PROPOSED ARP

The Subdistrict will provide the DWR with an electronic copy of the Response Functions used in this ARP at the same time they submit the ARP for review and approval.

Additional supplemental information that is generally used by DWR in their evaluation of the ARP is also being included with the submission. The supplemental information being provided to the State Engineer includes:

1. Resolution from RGWCD approving the Subdistrict 2024 ARP.
2. Resolution from RGWCD to act as a financial guarantor for the Subdistrict.
3. The list of Subdistrict Wells included in the 2024 ARP in spreadsheet format matching the list presented in Appendix A.
4. Resolution from RGWCD to allow the Subdistrict to allocate Closed Basin Project water in the 2024 ARP.
5. Spreadsheet of the Subdistrict's breakdown of "Other" wells used to calculate the composite Consumptive Use Ratio in the Response Functions.
6. Spreadsheet of the Subdistrict's analysis of forbearance yield and any available supporting documentation.

9. OPERATIONAL REQUESTS TO THE DIVISION NO. 3 DIVISION ENGINEER FOR THE 2024 ARP

1. The Subdistrict requests that at times when there is a monthly, negative depletion in a stream reach, the Division No. 3 Division Engineer allow Subdistrict No. 2 to aggregate that negative depletion amount in one reach, either upstream or downstream, against a positive depletion in another reach, when the opportunity exists under the protocol of DWR. Subdistrict No. 2 also anticipates they will make a request the Division No. 3 Division Engineer allow Subdistrict No. 2 to aggregate a monthly, positive depletion with a negative depletion of another Subdistrict to offset the positive daily depletions Subdistrict No. 2 would otherwise have to replace or remedy when the opportunity exists under the protocol of DWR. A Memo of Understanding would be required before this offset could be allowed between subdistricts.
2. The Subdistrict requests that the Division No. 3 Division Engineer allow a portion of the production of the CBP during the non-wintertime months (April-October) be used to offset the Subdistrict's wintertime depletions (November-March). It is anticipated this scenario will only occur when the total depletions for all RGWCD Subdistricts combined in any one or more months during the winter are greater than the production of the CBP in those months. The total CBP allocation approved to cover wintertime depletions for the Subdistrict will not be exceeded.

11.1.2 PROJECTED STREAM DEPLETIONS FROM THE WELLS COVERED BY THE ARP BASED ON THE APPLICABLE RESPONSE FUNCTIONS OR APPROVED ALTERNATIVE METHOD

The purpose of this section is to present the data utilized to project stream depletions to the Rio

Grande as a result of the groundwater withdrawals from Subdistrict No. 2 ARP Wells for the Plan Year. The combined outputs from the RGA and URG Response Functions identify total projected stream depletions for the Plan Year, a breakdown of the monthly stream depletions for the Plan Year for each of the three reaches of the Rio Grande and a projection of the Post-Plan Stream Depletions calculated as a result of the groundwater withdrawals from ARP Wells for the Plan Year.

Subdistrict No. 2 utilized the current 6P98 Response Functions to calculate projected stream depletions for wells within the RGA for this ARP. For wells included in the ARP Well List that are within the URG, the Subdistrict received approval from the State Engineer, in a letter dated February 28, 2020, to use the URG Response Functions to calculate the projected stream depletions from those URG wells included in the ARP Well List. The State Engineer’s February 28th letter is included as Appendix J.

The Division Engineer’s April 5, 2024, Rio Grande Compact 10-day report included a forecast of 445,000 acre-feet for the flows of the Rio Grande. The NRCS’s April 1, 2024, forecast also projected 445,000 acre-feet for the Rio Grande. The Division Engineer’s April 5, 2024, Rio Grande Compact 10-day report was used as a basis for estimating groundwater consumption in Subdistrict No. 2 in the 2024 ARP. From this forecast, an estimate of the total 2024 ARP Well groundwater withdrawals was prepared. This information was utilized in the Response Functions to project stream depletions caused by groundwater withdrawals from Subdistrict ARP Wells for the Plan Year.

1. 2024 STREAM FLOW FORECAST – RIO GRANDE

The Division Engineer’s April 5, 2024, Rio Grande Compact forecast for the Rio Grande of 445,000 acre-feet was used to estimate groundwater consumption attributable to ARP Wells based upon hydrologic conditions for the current Plan Year. Data collected from these forecasts is included in Table 1.2. The April 1, 2024, NRCS forecast for Rio Grande stream flows was also reviewed to assist Subdistrict staff in projecting hydrologic conditions for the Rio Grande for the current Plan Year.

**Table 1.2
Rio Grande near Del Norte Estimated Annual Flow**

Forecast Source	Analysis Date	Apr-Sep Forecast (acre-feet)	% of avg.	Estimated Flow outside of Apr-Sept (acre-feet)	Total Annual Estimated Flow (acre-feet)
		(1)	(2)	(3)	
NRCS	April 1, 2024	445,000	93		
DWR	April 5, 2024	445,000	93	85,000	530,000

- (1) projected 50% exceedance streamflow at the gaging station
- (2) NRCS 30-year average of 480,000 acre-feet used for this calculation
- (3) January through March and October through December

A copy of the NRCS’s April 1, 2024, Forecast and the April 5, 2024, Division No. 3 Division Engineer’s Rio Grande Compact Ten-Day Report are attached in Appendix D.

2. PROJECTED PLAN YEAR STREAM DEPLETIONS

2.1 Projected Plan Year Stream Depletions for RGA ARP Wells

Subdistrict No. 2 staff utilized the response functions developed for the RGA under the RGDSS Groundwater Model Phase 6P98 to predict stream depletions to the Rio Grande caused by groundwater withdrawals from ARP Wells within the RGA. For the Plan Year, stream depletions attributable to the groundwater withdrawals from ARP Wells within the RGA were calculated using these RGA Response Functions.

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

The first step in using the current 6P98 RGA Response Functions is to input data for the whole Response Area, i.e., historical groundwater withdrawals for sprinkler irrigation, flood irrigation, “other” groundwater withdrawals with corresponding “other” consumptive use ratios for the years 2011 through 2023 and predicted values for 2024.

The Subdistrict elected to use the RGA Response Functions spreadsheet for the subset of RGA wells which are included in the ARP Well List. The RGA Response Functions require adjustments for point source return flows if the Subdistrict’s subset of wells does not have surface water return flow credits. The Subdistrict removed all return flows attributable to the Town of Del Norte and the City of Monte Vista’s wells from Reach 1 (Rio Grande from Del Norte to Excelsior Ditch) from the appropriate sheets within the RGA Response Function spreadsheet.

The next step was to calculate stream depletions by updating the RGA Response Functions table contained in Table 2.1 to derive the annual net groundwater consumptive use. The consumptive use ratios for sprinkler and flood irrigation used in the RGDSS Model are standard factors of 83% and 60%, respectively. The consumptive use ratio for “other” wells is specific to the uses of those wells and can vary widely. The “Other Consumptive Use Ratio” for the whole RGA is a composite derived from the individual well withdrawals and consumptive uses. The Subdistrict prepared a separate spreadsheet of “other” wells included in the Subdistrict ARP Well List to show the individual well groundwater withdrawals and consumptive use factors used to explain how the composite ratios were determined for the subset of wells represented in Table 2.1.1 of the ARP.

Historical groundwater withdrawal values for RGA wells included in the ARP Well List were entered in Table 2.1.1 for years 2011 through 2023. Projected groundwater withdrawal values

were used for 2024. The Subdistrict has no Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use.

Notes at the bottom of Table 2.1.1 provide a description of the calculations within this table.

Table 2.1.1
Rio Grande Alluvial Response Area Wells
Estimated Net Groundwater Consumptive Use
(Units in acre-feet)

Year	RGA ARP Well Groundwater Withdrawals					Recharge that Offsets Groundwater				Net Groundwater Consumptive Use
	Irrigation Pumping to Center Pivots	Irrigation Pumping to Flood Irrigation	Other Pumping	Other Consumptive Use Ratio	Groundwater Consumption	Recharge Source 1	Recharge Source 2	Other Recharge Offsets	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
2011	12,614	636	1,328	49%	11,504	0	0	0	0	11,504
2012	13,513	619	1,204	49%	12,179	0	0	0	0	12,179
2013	12,531	555	1,238	49%	11,344	0	0	0	0	11,344
2014	11,005	528	1,173	49%	10,027	0	0	0	0	10,027
2015	10,336	576	1,240	49%	9,535	0	0	0	0	9,535
2016	9,067	529	1,184	49%	8,427	0	0	0	0	8,427
2017	8,865	432	1,357	49%	8,285	0	0	0	0	8,285
2018	12,890	762	1,292	49%	11,792	0	0	0	0	11,792
2019	8,109	643	1,485	49%	7,843	0	0	0	0	7,843
2020	10,971	634	1,159	48%	10,048	0	0	0	0	10,048
2021	11,163	636	1,318	49%	10,295	0	0	0	0	10,295
2022	10,510	612	1,215	49%	9,683	0	0	0	0	9,683
2023	11,449	690	1,147	49%	10,482	0	0	0	0	10,482
2024	11,576	685	1,200	49%	10,607	0	0	0	0	10,607
Avg	11,043	610	1,253	49%	10,146	0	0	0	0	10,146

Explanation of Columns

- (1) Calendar Year
- (2) Determined from metered groundwater withdrawals
- (3) Determined from metered groundwater withdrawals
- (4) Determined from metered groundwater withdrawals
- (5) Estimated based on operations metered in Col4
- (6) Calculated as $0.83 \times \text{Col2} + 0.60 \times \text{Col3} + \text{Col4} \times \text{Col5}$
 (0.83 and 0.60 are the consumptive use ratios of total groundwater withdrawals associated with sprinkler and flood irrigation practices, respectively)
- (7) - (9) Not applicable to the Rio Grande Alluvial Response Area
- (10) Calculated as $\text{Col7} + \text{Col8} + \text{Col9}$
- (11) Calculated as $\text{Col6} - \text{Col10}$

Wells that are added or deleted to the ARP Well List affect historical groundwater withdrawals figures as follows:

- Any wells that are added to the ARP will have their historical groundwater withdrawals included
- Any wells that are deleted from the ARP will have their historical groundwater withdrawals included in the groundwater withdrawals until the year that the wells are deleted
- If any wells that were deleted from a previous ARP list are added back in, any historical groundwater withdrawals from the years they were not included will have to be included in the groundwater withdrawals

The projected Net Groundwater Consumptive Use for the Plan Year is **10,607** acre-feet as shown

in Table 2.1.1.

The Net Groundwater Consumptive Use for 2024 derived in Table 2.1.1 above is then input into the Response Function table contained in Table 2.1.2 in Column 3 in the row for 2024 to calculate projected stream depletions for the current Plan Year and into the future. The projected annual stream depletions resulting from the groundwater withdrawals of the wells included in the ARP Well list from the RGA for the respective reaches of the Rio Grande and the total are shown in Columns 4 through 7.

Table 2.1.2
Estimated Historical and Projected Net Stream Depletions from
Rio Grande Alluvial Response Area Wells
Groundwater Withdrawals in Subdistrict No. 2
(Units in acre-feet)

Year	Rio Grande near Del Norte Stream Gage (Jan-Dec)	Net Groundwater Consumptive Use (Jan-Dec)	Annual Net Stream Depletions (May-Apr) a)			
			Rio Grande Del Norte-Excelsior	Rio Grande Excelsior- Chicago	Rio Grande Chicago- State Line	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1970	561,150	11,325	631	97	-45	683
1971	389,397	11,315	1,158	306	-63	1,401
1972	373,031	13,898	1,560	456	-77	1,939
1973	755,509	11,305	1,525	537	-56	2,006
1974	270,942	14,972	2,029	549	-137	2,441
1975	730,848	10,408	1,773	609	-68	2,314
1976	512,997	10,414	1,640	547	-64	2,123
1977	163,635	16,111	2,247	595	-148	2,694
1978	340,660	12,971	2,204	692	-96	2,800
1979	886,617	9,808	1,804	656	-56	2,404
1980	672,668	10,962	1,677	569	-61	2,185
1981	310,945	12,326	1,991	579	-117	2,453
1982	572,474	8,360	1,746	587	-67	2,266
1983	578,510	8,925	1,567	533	-56	2,044
1984	652,637	8,443	1,464	504	-51	1,917
1985	864,564	8,313	1,268	466	-37	1,697
1986	865,371	7,201	1,061	394	-31	1,424
1987	907,650	9,714	1,043	359	-34	1,368
1988	346,087	12,609	1,348	399	-61	1,686
1989	407,389	12,315	1,594	499	-70	2,023
1990	424,033	11,026	1,647	548	-66	2,129
1991	529,567	8,801	1,543	541	-56	2,028
1992	415,482	10,062	1,518	518	-57	1,979
1993	577,831	8,123	1,436	503	-51	1,888
1994	444,629	12,606	1,592	510	-65	2,037
1995	734,492	7,126	1,367	515	-41	1,841
1996	313,441	14,604	1,867	489	-128	2,228
1997	781,596	8,492	1,606	551	-61	2,096

1998	466,821	11,171	1,553	500	-63	1,990
1999	799,489	6,582	1,300	485	-39	1,746
2000	312,094	15,307	1,887	474	-132	2,229
2001	655,233	9,777	1,832	577	-81	2,328
2002	96,717	18,297	2,483	629	-172	2,940
2003	261,300	15,249	2,791	769	-173	3,387
2004	431,675	10,110	2,323	770	-92	3,001
2005	682,540	9,370	1,943	677	-65	2,555
2006	411,656	9,087	1,719	604	-55	2,268
2007	593,239	9,419	1,610	557	-53	2,114
2008	623,333	7,142	1,421	511	-44	1,888
2009	513,058	7,406	1,288	453	-42	1,699
2010	453,063	7,479	1,229	423	-43	1,609
2011	415,287	11,504	1,407	439	-59	1,787
2012	328,465	12,179	1,607	510	-68	2,049
2013	344,522	11,344	1,679	557	-67	2,169
2014	518,731	10,027	1,631	562	-61	2,132
2015	555,832	9,535	1,557	542	-56	2,043
2016	565,968	8,427	1,455	514	-51	1,918
2017	574,029	8,285	1,377	481	-49	1,809
2018	212,225	11,792	1,743	490	-109	2,124
2019	855,755	7,843	1,465	511	-53	1,923
2020	307,808	10,048	1,606	459	-97	1,968
2021	381,197	10,295	1,603	498	-69	2,032
2022	359,222	9,683	1,569	515	-61	2,023
2023	639,603	10,482	1,583	522	-60	2,045
2024	445,000	10,607	1,596	538	-60	2,074
2025			1,034	455	-19	1,470
2026			546	263	-3	806
2027			301	145	1	447
2028			168	80	1	249
2029			87	40	1	128
2030			44	19	1	64
2031			17	7	0	24
2032			0	1	0	1
2033			0	0	0	0
2034			0	0	0	0
2035			0	0	0	0
2036			0	0	0	0
2037			0	0	0	0
2038			0	0	0	0
2039			0	0	0	0
2040			0	0	0	0
Avg 2001-2015	458,977	10,528	1,768	572	-75	2,265
Avg 2001- 2010	472,181	10,334	1,864	597	-82	2,379
Post Plan Depletion			2,197	1,010	-18	3,189

a) Estimated net stream depletions shown in this table are greater than the stream depletions that potentially cause injury to

surface water rights.

Explanation of Columns

- (1) Year
- (2) Rio Grande near Del Norte Gage streamflow in acre-feet for the NRCS streamflow forecast period of April through September 2024.
- (3) Net Groundwater Consumptive Use (NetGWCU) for January through December. NetGWCU values for 2001 through 2010 were taken from the RGDSS Groundwater Model output. NetGWCU values for 2011 through 2023 were calculated using well meter data. NetGWCU data for 2024 was estimated from prior well meter data and projected diversions based on the projected Rio Grande streamflow from the April 5, 2024, Division No. 3 Division Engineer’s Rio Grande Compact Ten-Day Report
- (4) Net Stream Depletions in the Rio Grande Del Norte to Excelsior Ditch reach for the Plan Year (May through April) in ac-ft.
- (5) Net Stream Depletions in the Rio Grande Excelsior Ditch to Chicago Ditch reach for the Plan Year (May through April) in ac-ft.
- (6) Net Stream Depletions in the Rio Grande Chicago Ditch to the State Line reach for the Plan Year (May through April) in ac-ft.
- (7) Total Net Stream Depletions columns (4 + 5 + 6) in ac-ft.

Table 2.1.3 is an output from the RGA Response Functions that calculates the annual total stream depletions and monthly replacement obligations for the three impacted reaches of the Rio Grande. This table lists the Plan Year stream depletions as required under the Groundwater Rules for those wells included in the ARP Well List in the RGA.

Table 2.1.3
Rio Grande Alluvial Response Area Wells
Monthly Stream Depletions for Plan Year
(Units in acre-feet)

Stream Reach	Rio Grande Alluvium Response Area Total												Total
	2024								2025				
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Rio Grande Del Norte-Excelsior	131.8	122.1	121.7	121.8	118.2	131.9	139.7	151.2	152.9	138.4	137.9	128.8	1,596.4
Rio Grande Excelsior-Chicago	52.6	44.8	40.8	28.0	30.3	38.0	44.3	51.5	52.2	49.6	56.6	49.0	537.7
Rio Grande Chicago-State Line	7.6	-1.3	-6.7	-18.9	-12.4	-8.3	-5.3	-1.7	-5.9	-3.5	0.2	-3.5	-59.7
Total	192.0	165.7	155.8	130.9	136.1	161.7	178.7	201.0	199.2	184.4	194.6	174.3	2,074.4

Explanation of Columns

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

As indicated in the lower right-hand corner of Table 2.1.3, the RGA Response Functions calculated total stream depletions to the Rio Grande during the Plan Year due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals are **2,074.4** acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.1.3.

According to the RGDSS Groundwater Model, if the RGA wells included in the Subdistrict’s ARP Well List were shut off today, there would be a continuing depletion to the river for approximately 8 years. This is the calculated time required to recover to conditions that existed before groundwater withdrawals started. The volume of water required to replace stream

depletions during this recovery period is called Post-Plan Stream Depletions. Based on predictions from the RGA Response Functions, Table 2.1.4 shows there would be a total of **3,189** acre-feet of Post-Plan Stream Depletions. The portion of the total Post-Plan Stream Depletions impacting each of the three designated reaches of the river are also included in the table.

Table 2.1.4
Rio Grande Alluvial Response Area Wells
Subdistrict No. 2 Post-Plan Stream Depletions
(Units in acre-feet)

Years (May-Apr)	Rio Grande Del Norte- Excelsior	Rio Grande Excelsior- Chicago	Rio Grande Chicago-State Line	Total
2025-2043	2,197	1,010	-18	3,189

2.2 Projected Plan Year Stream Depletions for URG ARP Wells

The first step to calculate stream depletions was to update the URG Response Functions table contained in Table 2.2.1 to derive the annual net groundwater consumptive use. The consumptive use ratios for sprinkler and flood irrigation used in the URG Model are standard factors of 83% and 60%, respectively. The consumptive use ratio for “other” wells is specific to the uses of those wells and can vary widely. The “Other Consumptive Use Ratio” for the whole URG is a composite derived from the individual well withdrawals and consumptive uses. The Subdistrict prepared a separate spreadsheet of “other” wells included in the Subdistrict ARP Well List to show the individual well groundwater withdrawals and consumptive use factors used to explain how the composite ratios were determined for the subset of wells represented in Table 2.2.1 of the ARP.

Historical groundwater withdrawal values for URG wells included in the ARP Well List were entered in Table 2.2.1 for years 2018 through 2023. Projected groundwater withdrawal values were used for 2024. The Subdistrict has no Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use.

Notes at the bottom of Table 2.2.1 provide a description of the calculations within this table.

The projected URG Net Groundwater Consumptive Use for the Plan Year is **212** acre-feet as shown in Table 2.2.1.

Table 2.2.1
Upper Rio Grande Domain Wells
Estimated Net Groundwater Consumptive Use
(Units in acre-feet)

Year	URG ARP Well Groundwater Withdrawals					Recharge that Offsets Groundwater				Net Groundwater Consumptive Use
	Irrigation Pumping to Center Pivots	Irrigation Pumping to Flood Irrigation	Other Pumping	Other Consumptive Use Ratio	Groundwater Consumption	Recharge Source 1	Recharge Source 2	Other Recharge Offsets	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
2018	641	337	21	40%	743	0	0	0	0	743
2019	525	61	20	41%	480	0	0	0	0	480
2020	664	141	31	40%	648	0	0	0	0	648
2021	530	13	25	40%	458	0	0	0	0	458
2022	278	0	29	40%	242	0	0	0	0	242
2023	204	0	31	40%	182	0	0	0	0	182
2024	240	0	32	40%	212	0	0	0	0	212
Avg	498	97	25	40%	482	0	0	0	0	482

Explanation of Columns

- (1) Calendar Year
- (2) Determined from metered groundwater withdrawals
- (3) Determined from metered groundwater withdrawals
- (4) Determined from metered groundwater withdrawals
- (5) Estimated based on operations metered in Col4
- (6) Calculated as $0.83 \times \text{Col2} + 0.60 \times \text{Col3} + \text{Col4} \times \text{Col5}$
(0.83 and 0.60 are the consumptive use ratios of total pumping associated with sprinkler and flood irrigation practices, respectively)
- (7) - (11) Not applicable in the Upper Rio Grande Model Domain
- (12) Calculated as $\text{Col7} + \text{Col8} + \text{Col9} + \text{Col10} + \text{Col11}$
- (13) Calculated as $\text{Col6} - \text{Col12}$

The Net Groundwater Consumptive Use for 2024 derived in Table 2.2.1 above is then input into the Response Function table contained in Table 2.2.2 in Column 3 in the row for 2024 to calculate projected stream depletions for the current Plan Year and into the future. The projected annual stream depletions resulting from the groundwater withdrawals of the wells included in the ARP Well list from the URG for the respective reaches of the Rio Grande and the total are shown in Columns 4 through 7.

Table 2.2.2
Estimated Historical and Projected Net Stream Depletions from Upper Rio Grande Domain Wells
Groundwater Withdrawals in Subdistrict No. 2
(Units in acre-feet)

Year	Annual Net Stream Depletions (May-Apr) a)					
	Rio Grande near Del Norte Stream Gage (Jan-Dec)	Net Groundwater Consumptive Use (Jan-Dec)	Upper Rio Grande above Del Norte		Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1970	561,291	1,489	601			601
1971	389,495	1,455	802			802
1972	373,125	1,621	938			938
1973	755,700	1,492	909			909
1974	271,010	1,839	1,038			1,038
1975	731,033	1,556	968			968

1976	513,126	1,344	859	859
1977	163,676	2,001	1,079	1,079
1978	340,746	1,925	1,133	1,133
1979	886,840	1,628	1,035	1,035
1980	672,838	1,863	1,082	1,082
1981	311,024	1,522	964	964
1982	572,618	1,691	995	995
1983	578,655	1,424	895	895
1984	652,801	1,723	985	985
1985	864,782	1,672	994	994
1986	865,589	1,541	949	949
1987	907,878	1,848	1,052	1,052
1988	346,174	1,874	1,100	1,100
1989	407,492	1,752	1,069	1,069
1990	424,140	1,397	910	910
1991	529,700	1,566	921	921
1992	415,586	1,398	860	860
1993	577,977	1,352	826	826
1994	444,741	1,759	974	974
1995	734,677	1,256	829	829
1996	313,520	1,827	1,006	1,006
1997	781,793	1,257	834	834
1998	466,938	1,072	705	705
1999	799,691	865	567	567
2000	312,172	1,344	720	720
2001	655,399	1,036	656	656
2002	96,742	1,878	974	974
2003	261,366	1,490	924	924
2004	431,784	1,067	739	739
2005	682,712	1,055	654	654
2006	411,759	1,042	626	626
2007	593,389	1,072	636	636
2008	623,490	1,010	614	614
2009	513,187	963	588	588
2010	453,177	1,100	633	633
2011	415,287	825	540	540
2012	328,465	715	463	463
2013	344,522	843	484	484
2014	518,731	609	403	403
2015	555,832	405	293	293
2016	565,968	409	254	254
2017	574,029	627	332	332
2018	212,225	743	410	410
2019	855,755	480	332	332
2020	307,808	648	368	368
2021	381,197	458	302	302
2022	359,222	242	196	196
2023	639,603	182	131	131

2024	445,000	212	124	124
2025		0	40	40
2026		0	11	11
2027		0	0	0
2028		0	0	0
2029		0	0	0
2030		0	0	0
2031		0	0	0
2032		0	0	0
2033		0	0	0
2034		0	0	0
2035		0	0	0
2036		0	0	0
2037		0	0	0
2038		0	0	0
2039		0	0	0
2040		0	0	0
Avg 2001-2017	472,108	950	577	577
Avg 2008- 2017	489,269	751	460	460
Post Plan Depletion			50	50

- b) Estimated net stream depletions shown in this table are greater than the stream depletions that potentially cause injury to surface water rights.

Explanation of Columns

- (1) Year
- (2) Rio Grande near Del Norte Gage streamflow in acre-feet for the NRCS streamflow forecast period of April through September 2023.
- (3) Net Groundwater Consumptive Use (NetGWCU) for January through December. NetGWCU values for 2001 through 2017 were taken from the RGDSS Groundwater Model output. NetGWCU values for 2018 through 2023 were calculated using well meter data. NetGWCU data for 2024 was estimated from prior well meter data and projected diversions based on the projected Rio Grande streamflow from the April 5, 2024, Division No. 3 Division Engineer's Rio Grande Compact Ten-Day Report
- (4) Net Stream Depletions in the Rio Grande Del Norte to Excelsior Ditch reach for the Plan Year (May through April) in ac-ft.
- (7) Total Net Stream Depletions columns (4 + 5 + 6) in ac-ft.

Table 2.2.3 is an output from the URG Response Functions that calculates the annual total stream depletions and monthly replacement obligations for the three impacted reaches of the Rio Grande. This table lists the Plan Year stream depletions as required under the Groundwater Rules for those wells included in the ARP Well List in the URG.

As indicated in the lower right-hand corner of Table 2.2.3, the URG Response Functions calculated total stream depletions to the Rio Grande during the Plan Year due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals are **123.7** acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.2.3.

Table 2.2.3
Upper Rio Grande Domain Wells
Monthly Stream Depletions for Plan Year

(Units in acre-feet)

Stream Reach	Upper Rio Grande Response Area Total												Total
	2024								2025				
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Upper Rio Grande above Del Norte	6.9	8.8	11.8	13.5	13.7	13.7	12.3	11.4	9.7	7.9	7.7	6.5	123.7
Total	6.9	8.8	11.8	13.5	13.7	13.7	12.3	11.4	9.7	7.9	7.7	6.5	123.7

Explanation of Columns

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

According to the RGDSS Groundwater Model, if the URG wells included in the Subdistrict’s ARP Well List were shut off today, there would be a continuing depletion to the river for approximately **2** years. This is the calculated time required to recover to conditions that existed before groundwater withdrawals started. The volume of water required to replace stream depletions during this recovery period is called Post-Plan Stream Depletions. Based on predictions from the URG Response Functions, Table 2.2.4 shows there would be a total of **50** acre-feet of Post-Plan Stream Depletions. The portion of the total Post-Plan Stream Depletions impacting each of the three designated reaches of the river are included in the table.

Table 2.2.4
Upper Rio Grande Domain Wells
Subdistrict No. 2 Post-Plan Stream Depletions
(Units in acre-feet)

Years (May-Apr)	Rio Grande Del Norte-Excelsior	Rio Grande Excelsior-Chicago	Rio Grande Chicago-State Line	Total
2025-2044	50	0.0	0.0	50

2.3 Combined Total Projected Plan Year Stream Depletions for Subdistrict ARP Wells

Table 2.3.3 is the combined output from the RGA and URG Response Functions that calculates the annual total stream depletions and monthly replacement obligations for the three impacted reaches of the Rio Grande. This table lists the Plan Year stream depletions as required under the Groundwater Rules for all wells included in the Subdistrict’s ARP Well List.

As indicated in the lower right-hand corner of Table 2.3.1, the combined RGA and URG Response Functions calculated total stream depletions to the Rio Grande during the Plan Year due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals are **2,198.1** acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.1.

**Table 2.3.1
Combined Total Subdistrict No. 2
Monthly Stream Depletions for Plan Year
(Units in acre-feet)**

Stream Reach	Combined Stream Depletions for RGA and URG Response Functions												Total
	2024								2025				
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Upper Rio Grande above Del Norte	6.9	8.8	11.8	13.5	13.7	13.7	12.3	11.4	9.7	7.9	7.7	6.5	123.7
Rio Grande Del Norte-Excelsior	131.8	122.1	121.7	121.8	118.2	131.9	139.7	151.2	152.9	138.4	137.9	128.8	1,596.4
Rio Grande Excelsior-Chicago	52.6	44.8	40.8	28	30.3	38	44.3	51.5	52.2	49.6	56.6	49	537.7
Rio Grande Chicago-State Line	7.6	-1.3	-6.7	-18.9	-12.4	-8.3	-5.3	-1.7	-5.9	-3.5	0.2	-3.5	-59.7
Total	198.9	174.4	167.6	144.4	149.8	175.3	191.0	212.4	208.9	192.4	202.4	180.8	2,198.1

Based on the predictions from RGA and URG Response Functions, the volume of water required to replace the combined Post-Plan Stream Depletions is 3,239 acre-feet as shown in Table 2.3.2. The portion of the total Post-Plan Stream Depletions impacting each of the three designated reaches of the river are also included in the table.

**Table 2.3.2
Combined Total Subdistrict No. 2 Post-Plan Stream Depletions
(Units in acre-feet)**

Years (May-Apr)	Rio Grande Del Norte-Excelsior	Rio Grande Excelsior-Chicago	Rio Grande Chicago-State Line	Total
2025-2044	2,247	1,010	-18	3,239

11.1.3 DESCRIPTION OF HOW INJURIOUS STREAM DEPLETIONS FROM GROUNDWATER WITHDRAWALS BY WELLS INCLUDED IN THE ARP WILL BE REPLACED OR REMEDIED

1. AMOUNTS AND SOURCES OF REPLACEMENT WATER FOR PLAN YEAR

Table 3.1 shows the amounts and sources of replacement water that will be available to replace injurious stream depletions as directed by the Division Engineer of Water Division No. 3.

Table 3.1
Amounts and Sources of Replacement Water Acquired by Subdistrict No. 2

In Storage					
Water Right	Beginning Balance 4/15/2024	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
Williams Creek Squaw Pass Transbasin Diversion (Case W- 1869-7) and free river diversions	160.5	160.5	Navajo Development Co., Inc.	6182	Rio Grande Reservoir
Santa Maria Reservoir Shares-Monte Vista Canal (remaining from the 150 shares leased in 2019)	110.3	110.3	RGWCD	n/a	Santa Maria Reservoir
Case Nos. 1984CW16 and 1994CW62 (fully consumable water)	0.8	0.8	SLVWCD	6182	Continental Reservoir
B.A.R. Cattle Credit Water (Case Nos. 2003CW41)	17.2	17.2	SLVWCD	6182	Continental Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W- 1869-7) and free river diversions	153.2	153.2	Navajo Development Co., Inc.	6182	Rio Grande Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W- 1869-7) and free river diversions	120.2	120.2	Navajo Development Co., Inc.	6182	Rio Grande Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W- 1869-7) and free river diversions	92.0	92.0	Navajo Development Co., Inc.	6182	Rio Grande Reservoir
Pine River-Weminuche (Forrest)Transmountain Ditch	536.5	536.5	Jan-Rich Grande 2013 Living Trust	9362	Rio Grande Reservoir
Pine River-Weminuche (Forrest)Transmountain Ditch	34.9	34.9	Jan-Rich Grande 2013 Living Trust	Pending SWSP	Beaver Reservoir
Pine River-Weminuche (Forrest)Transmountain Ditch	132.7	132.7	Jan-Rich Grande 2013 Living Trust	Pending SWSP	Rio Grande Reservoir
Lease of Historic Consumptive Use Credits from Rio Grande Ditch No. 1 Shareholders	531.3	415.9	Rio Grande Ditch No. 1 on the Rio Grande	9350	Rio Grande Reservoir
Lease of Historic Consumptive Use Credits from Rio Grande Ditch No. 1 Shareholders	43.2	0	Rio Grande Ditch No. 1 on the Rio Grande	9350	Beaver Reservoir
Santa Maria Reservoir-SD1	815	815	SD 1	n/a	Continental Reservoir
Santa Maria Reservoir-SD1	31.9	31.9	SD 1	n/a	Beaver Reservoir

City of Monte Vista Augmentation Credits	16.0	16.0	City of Monte Vista/RGWCD	6235	Rio Grande Reservoir
Total In Storage		2,436.4			
On Call-Irrigation Season					
Water Right	Contract Amount	Expected Yield	Source of Diversion	SWSP	Contract Limitations
Taos Valley No. 3	500.0	500.0		Pending SWSP 6093 Renewal	Lease is limited to 500 ac-ft
Twin Pines Ranch Water Rights	N/A	70.0	Rio Grande Ditch #1	Pending SWSP	SD 2 will only use this source under an approved SWSP
On Call Water-Irrigation Season		570.0			
On Call-Irrigation Season					
Forbearance Agreements	Agreement Limits (2)	Expected Yield	Source of Diversion	WDID	Special Contract Conditions
Centennial Ditch	No Limit		Rio Grande River	2000566	When in priority 32, Superintendent can request wet water instead of forbearance with 24-hour notice
Commonwealth-Empire Canal	500		Rio Grande River	2000623	
Excelsior Ditch	No limit		Rio Grande River	2000627	Priority 249 and 262 only
Monte Vista Canal	300		Rio Grande River	2000753	
Rio Grande Canal	650		Rio Grande River	2000812, 2000662, 2001094, 2001007, 2000624	Partial forbearance on Priority 178, 197 and 198 as calculated in agreement
Rio Grande Canal, Ellithorpe	No limit		Rio Grande River	2001094, 2000624	Partial forbearance on priorities 178 and 198
Rio Grande Canal, Kruse	No limit		Rio Grande River	2000624	Partial forbearance on priorities 178 and 198
Rio Grande Canal, Toews	No limit		Rio Grande River	2000624	Partial forbearance on priorities 198
Rio Grande Lariat Ditch	500		Rio Grande River	2000816	
Rio Grande Piedra Valley Ditch	no limit		Rio Grande River	2000811	
Rio Grande San Luis Ditch	no limit		Rio Grande River	2000817	
Farmer's Union Canal	No limit		Rio Grande River	2000631	
On Call Water-Irrigation Season *		807.8			
*Description of how the amount for Expected Yield was calculated is in Section 3 below					
On Call Agreements-Non-Irrigation Season					
Water Right	Total RG Allocation (all SDs)	Expected Yield Subdistrict 2	Water Previously Controlled By	Attributable to Depletions On	Current Location
Closed Basin Project	4,100	1,007.1	RGWCD	Rio Grande	Closed Basin Project
On Call Agreements Non-Irrigation Season		1,007.1			

(1) This balance was calculated by assuming a portion of April 2024 depletions would be paid by wet water releases from Beaver Reservoir		
(2) The forbearance agreements limits listed here are written into agreements for each SD individually (para. 2.1 and 2.3 of the agreement)		

2. AFTER ACQUIRED SOURCES OF REMEDY

Although Subdistrict No. 2 acknowledges that DWR cannot consider sources or remedy acquired after the submission of this ARP in evaluating the adequacy of the ARP, the Subdistrict will continue to work to acquire additional sources of remedy and/or forbearance agreements, and may, with approval from the Division Engineer, use those sources to remedy injury under this ARP.

3. OPERATION OF THE 2024 ANNUAL REPLACEMENT PLAN

The Subdistrict’s acquired replacement sources listed in Table 3.1 may require DWR approval for use as replacement water during the ARP Year. SWSPs have been filed for all sources for which it was required that the Subdistrict has acquired and plans to utilize during this ARP Year. The majority of these sources are renewals of previous SWSPs. Table 3.1 provides more detail on the date the SWSP was filed and the expected date the water will be available to the Subdistrict as a replacement source. The Subdistrict understands they will not be allowed to use those sources with pending SWSPs until the State has officially approved them. The Subdistrict has forbearance and other approved sources of water that are sufficient to remedy all sources until the approvals for these additional sources are received.

The Subdistrict’s replacement water will be released from Rio Grande, Beaver Park, Santa Maria or Continental Reservoirs, located in the Upper Rio Grande, at the direction of the Division 3 Division Engineer, to offset injurious stream depletions on the Rio Grande during the Plan Year. All Plan Year injurious stream depletions will be replaced in the time, location and amount that they occur, beginning May 1, 2024. These releases of water will be performed under the provisions of section 37-87-103, C.R.S.

Sections 37-80-120, 37-83-104, and 37-83-106, C.R.S., allow for exchanges to occur between reservoirs without a decree and if recognized by the Division Engineer. Appropriate accounting between the Division Engineer’s Office and Subdistrict No. 2 will occur on a regular and routine basis if these exchanges occur. Any reservoir exchanges done in the Plan Year will be documented and reported in the 2024 Annual Report. The Division Engineer’s Office will be notified in advance of any reservoir exchanges.

As shown above, Subdistrict No. 2 has implemented twelve (12) Forbearance Agreements with major canals located on the main stem of the Rio Grande for the 2024 Plan Year. In its sole discretion, the Subdistrict will exercise these agreements which could conservatively remedy 808 acre-feet of replacements during the 2024 Plan Year allowing the Subdistrict to store water supplies for future needs.

As specified in this ARP, twelve (12) ditches within Stream Reaches 1 and 2 on the Rio Grande have entered into forbearance agreements with Subdistrict No. 2 to remedy injurious stream

depletions during the Plan Year, if needed. Some of these same ditches may be approached to consider permanent forbearance agreements for the future.

Forbearance agreements may be operated at the discretion of the Subdistrict. The projected acre-feet of forbearance included in Table 3.1 above is based on an analysis of the number of days ditches with forbearance were the calling rights in years of similar hydrologic conditions as those predicted for 2024. The years used for the analysis were 2021 and 2022. The number of days these forbearance ditches were the calling right each month was then multiplied by the average daily acre-feet of injurious stream depletions for each month for the Plan Year, excluding months outside the irrigation season, to determine the total projected yield for all forbearance agreements combined. These expected yields listed in Table 3.1 are not intended to be a limit to the number of acre-feet of injurious stream depletions that can be remedied through forbearance, but rather a conservative estimate of their potential yield to show the Subdistrict's ability to remedy injurious stream depletions. The Subdistrict analysis showed a range of between 686 acre-feet and 930 acre-feet in forbearance which could be used by the Subdistrict for replacements in the Plan Year. This estimate only included Priority 198 of the "special water" priorities in the Rio Grande Canal when it was the calling right even though all or a portion of other "special water" priorities in the Rio Grande Canal are included in forbearance agreements with the Subdistrict for the Plan Year and may be utilized at the discretion of the Subdistrict.

Water released to the river for replacement of injurious stream depletions below the Excelsior Ditch, at times when the Rio Grande is dry at that headgate, will be carried around that dry reach through the Centennial Ditch. Those flows will be measured and delivered directly to the Rio Grande at a point approximately ½ mile east of Alamosa CR 105 at the point the Centennial Ditch can return water directly in the Rio Grande. That point is above any water right that may be injured while in priority. The Costilla Ditch is the only structure and water right in this intervening reach of the river and under most conditions, when the Costilla Ditch is in priority (No. 293), there will be water flowing in this reach to serve other downstream senior diverters and the Rio Grande Compact deliveries. In the event the Costilla Ditch is entitled to water in priority and there is no flow at their headgate due to stream depletions from Subdistrict No. 2 groundwater withdrawals, adequate water will be released to replace the injurious stream depletion amount to that stream reach. The Centennial Ditch must be adequate to efficiently deliver water around the dry stretch of river to the satisfaction of the Division Engineer prior to being considered a viable option. The Centennial Ditch Company's water rights are senior enough to accomplish this carriage in any foreseeable situation (Priority Nos. 32 and 173). The agreement to carry water with the Centennial Ditch Company is attached as Appendix I.

The Response Functions did not predict stream depletions caused by the withdrawal of groundwater by ARP Wells to streams other than the Rio Grande in amounts above the minimum threshold to reliably predict injury. Therefore, Subdistrict No. 2 is not required to make replacements to any stream other than the Rio Grande.

At times when there is no requirement to deliver water to the Lobatos Gage to meet the requirements of the Rio Grande Compact, the Subdistrict may submit a request to the DWR to allow the injurious stream depletions to the lower reach of the Rio Grande to be replaced after the irrigation season or when compact deliveries are being made. The only instances where the

Subdistrict would not be required to replace these injurious stream depletions are when there is an excess of 150,000 acre-feet of credit for Colorado or Elephant Butte Reservoir has spilled as any additional water passing the Lobatos Gage will not result in a compact credit to Colorado. The CBP may continue to deliver salvaged water to the stream as directed by the CBP Operating Committee or other laws and policies.

The Groundwater Rules require remedies sufficient to also remedy total Post-Plan Stream Depletions caused by current and past year groundwater withdrawals from ARP Wells that deplete the streams after the term of this ARP. Subdistrict No. 2 will continue to work diligently towards obtaining permanent and/or renewable supplies to remedy future injurious stream depletions caused by present or future groundwater withdrawals by Subdistrict ARP Wells.

The Response Functions utilized in the ARP demonstrate that post-plan impacts from past and present groundwater withdrawals by ARP Wells will fluctuate depending on climatic conditions effecting river flows on the Rio Grande. The Rio Grande Water Conservation District Board of Directors has passed a resolution to act as a financial guarantee for Subdistrict No. 2 to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if Subdistrict No. 2 were to fail or otherwise be unable to replace Post-Plan Injurious Stream Depletions. Subdistrict No. 2 will continue to acquire replacement water for replacing current injurious stream depletions to the Rio Grande and also for Post-Plan Injurious Stream Depletions as calculated by the RGDSS Groundwater Model and deemed necessary by DWR and other long term or permanent remedies, as appropriate.

If Subdistrict No. 2 were to fail, the individual well owners in Subdistrict No. 2 would have to obtain plans for augmentation or take other measures to comply with the Groundwater Rules. Presumably, those plans would be required to replace these Post-Plan Injurious Stream Depletions into the future. In the interim, Subdistrict No. 2 or the Rio Grande Water Conservation District will remedy those Post-Plan Injurious Stream Depletions by supplying water or through agreements of the type contemplated by section 37-92-501(4)(b)(I)(B), C.R.S., pursuant to which injury to water rights is remedied by means other than providing water to replace stream depletions.

Before March 1, 2025, in accordance with Rule 12.1, Subdistrict No.2 will recalculate the injurious stream depletions for the Plan Year using the actual stream flows from April 1- September 30, 2024, and actual metered groundwater withdrawals reported to DWR for the prior Water Administration Year. An analysis will be prepared on a daily basis and by stream reach to calculate any differences between the stream depletions projected in the ARP and the stream depletions calculated with the actual data. If Subdistrict No. 2 has underpaid depletions and an opportunity exists to cover all or a portion of this underpayment by aggregating their underpayment with the overpayment of depletions by another subdistrict, a request to allow this aggregation will be made to the Division No. 3 Division Engineer. Subdistrict No. 2 would also make a request to allow any overpayment of depletions they may have to be aggregated with the underpayment of depletions by another Subdistrict.

4. ANTICIPATED FUNDING FOR PLAN YEAR

Subdistrict No. 2 has approved the creation of a Water Activity Enterprise. The Subdistrict assesses two separate fees to those Subdistrict ARP Well owners that are benefited from the activities of Subdistrict No. 2. These fees are as follows:

- a. **Administrative Fee:** This fee is assessed to offset the cost of administering the PWM and ARP.
- b. **Pumping Fee:** This fee is assessed per acre-foot of groundwater withdrawn from ARP Wells. This fee is set every year by the Board of Managers in an amount necessary to purchase replacement water or other sources of replacement to offset injury to those senior water rights caused by Subdistrict No. 2 ARP Wells groundwater withdrawals and to fund additional programs Subdistrict No. 2 may deem necessary to meet its goals and objectives.

The fees are set by the Board of Managers and certified in December of each year to Alamosa and Rio Grande County treasurers to be included on their tax rolls. The county treasurers collect these fees and remit them to the Subdistrict on a monthly basis in the following calendar year.

For 2023, the Pumping Fee for every acre-foot of groundwater withdrawn by ARP Wells in the RGA for sprinkler application was assessed \$60.00 and every acre-foot of groundwater withdrawn by ARP Wells in the RGA for flood application was assessed \$43.00. The Pumping Fee for every acre-foot of groundwater withdrawn by ARP Wells in the URG for sprinkler application was assessed \$105.00 and every acre-foot of groundwater withdrawn by ARP Wells in the URG for flood application was assessed \$76.00. ARP Wells in both the RGA and the URG that are used for commercial, industrial or municipal applications were assessed a variable Pumping Fee in the range of \$5.78 to \$72.29 per acre-foot. For 2023, the Administrative Fee was set at \$414.02 per active well and \$207.01 per in-active well (or meter when multiple wells are combined through a single meter). The total 2023 Subdistrict No. 2 assessments which were placed on the tax rolls in 2023 to be collected in 2024 are:

**Table 4.1
Subdistrict No. 2 Assessments to Fund ARP Operations**

Fee Type	Amount of 2023 Assessments
Administrative Fees	\$87,358.26
Pumping Fees	\$745,162.71

11.1.4 CONTRACTUAL ARRANGEMENTS AMONG WATER USERS, WATER USER ASSOCIATIONS, WATER CONSERVANCY DISTRICTS, SUBDISTRICTS, AND/OR THE RIO GRANDE WATER CONSERVATION DISTRICT

- 1. **SAN LUIS VALLEY IRRIGATION WELL OWNER’S INC. (SLVIWO)-CASE NO. 2015CW3030**

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

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

Subdistrict No. 2 entered an agreement with the SLVIWO to lease up to 500 acre-feet for use in the 2024 ARP as shown above in the table of replacement sources. See Appendix F for documentation of the lease. An SWSP was filed pursuant to section 37-92-308(4), C.R.S., for the purpose of approving the change of the water rights listed above to include requested uses in Case No. 2015CW3030 including. augmentation, exchange, storage by exchange in the Rio Grande, Continental, Beaver Reservoirs and/or other reservoirs within the Rio Grande system, by exchange, and subsequent release, delivery of the water to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year. The Subdistrict expects that this water right may not be able to produce the full 500 acre-feet which was leased for the Plan Year, but reserves the right to utilize up to the full amount, less any applicable losses, for the benefit of the Subdistrict in the current Plan Year or future Plan Years. The SWSP will also approve the use of Taos Valley No. 3 water delivered, above what is stored, for the use by Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 5, Subdistrict No. 6, and the Trinchera Subdistrict for augmentation use for the replacement of depletions.

2. EXCESS CITY OF MONTE VISTA ANDERSON DITCH AUGMENTATION CREDITS – RIO GRANDE WATER CONSERVATION DISTRICT

The Rio Grande Water Conservation District is leasing 160 acre-feet of excess augmentation credits from the City of Monte Vista for the period April 1, 2024-March 31, 2025 which are made available from Monte Vista’s pending augmentation plan decreed in Case No. 16CW3024. 16 acre-feet of these credits were leased from the RGWCD to Subdistrict No. 2 and will be utilized in Subdistrict No. 2’s 2024 ARP Plan to replace injurious depletions. Credits generated from the period May-October 2023, will be credited to Subdistrict No. 2 for use in their 2024 Plan Year or future Plan Years if not released for use in the 2024 Plan Year. The District has leased these excess augmentation credits from Monte Vista for the past three years. This water may be released from storage to replace injurious depletions. See Appendix F for documentation of this agreement. An SWSP has been filed for the use of this water by the Subdistrict and the SWSP is pending approval at the time this report was filed.

3. FORBEARANCE AGREEMENTS

Forbearance agreements have been reached with several ditches, copies of which are included in Appendix G. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., Subdistrict No. 2 has reached agreement with these ditches whereby they accept specific provisions of the forbearance agreement whereby injury to their water rights resulting from the use of groundwater by ARP Wells may be remedied by means other than providing water when they are the calling right on the Rio Grande. The expected yields of these agreements are shown above in Table 3.1. Subdistrict No. 2 would like to note that it has secured a number of long-term forbearance agreements in an effort to increase the consistency of its ability to meet its injurious depletion obligations year in, year out. The Subdistrict will continue to pursue these long-term forbearance agreements with the goal of securing them with as many ditches on the Rio Grande as possible.

4. CLOSED BASIN PROJECT PRODUCTION

According to the Division No. 3 Division Engineer’s Rio Grande Compact Ten-Day Report on April 5, 2024, the projected production of the project delivered to the Rio Grande is 8,500 acre-feet during the 2024 calendar year. The division of the Closed Basin Project production in accordance with agreements with Conejos River and Rio Grande water users’ organizations and special districts is 61% to the Rio Grande and 39% to the Conejos River over the long term, with provisions for adjustments in the division during individual years.

Pursuant to the Resolution Regarding Allocation of the Yield of the Closed Basin Project, the management and allocation of the Rio Grande’s share of the Project’s usable yield is made by the RGWUA and the SLVWCD. At a meeting of the RGWUA’s Board of Directors on March 14, 2024, the Board of Directors passed a motion to specifically allocate 4,100 acre-feet of the Rio Grande’s share of the usable yield of the Closed Basin Project to replace the stream depletions under this ARP and in conjunction with Subdistrict No.1, Subdistrict No. 3, Subdistrict No. 5 and Subdistrict No. 6. The Board of Directors of the SLVWCD approved an allocation of up to the total CBP production allocated to the Rio Grande, or 50% of the total useable CBP yield in 2024, so long as Subdistrict’s use does not affect the allocation of CBP flows to the Rio Grande and

Conejos River’s compact obligations. The projected amount of the CBP production needed by Subdistrict No. 2 under this ARP is shown above in Table 3.1. See Appendix H for a copy of these letters.

11.1.5 WATER RIGHTS OWNED BY THE RIO GRANDE WATER CONSERVATION DISTRICT ON BEHALF OF SUBDISTRICT NO. 2

1. 10% OF THE TWIN PINES RANCH WATER RIGHTS

Subdistrict No. 2 purchased 10% of Rocky Mountain High LLC’s ownership of the Twin Pines Ranch water rights on August 2, 2023, which is projected to generate 70 acre-feet of consumptive use and will be utilized in Subdistrict No. 2’s 2024 ARP Plan to replace injurious depletions. Unused consumptive use generated from the period May-October 2024, will be stored in a reservoir on the Rio Grande system for use in their 2024 Plan Year or future Plan Years if not released for use in the 2024 Plan Year. The Subdistrict expects that this water right may not be able to produce the full 70 acre-feet which was purchased for the Plan Year, but reserves the right to utilize up to the full amount, less any applicable losses, for the benefit of the Subdistrict in the current Plan Year or future Plan Years. An SWSP has yet to be filed pursuant to section 37-92-308(4), C.R.S., for the purpose of approving the change of the water rights listed above to include requested uses for augmentation, exchange, storage by exchange in the Rio Grande, Continental, Beaver Reservoirs and/or other reservoirs within the Rio Grande system, by exchange, and subsequent release. Subdistrict No. 2 will only use this water source under an approved SWSP. See Appendix F for documentation of this purchase.

11.1.6 DOCUMENTATION OF PROGRESS TOWARDS ACHIEVING AND MAINTAINING A SUSTAINABLE WATER SUPPLY

Per Rule 8.4 of the Groundwater Rules, there is no Sustainable Water Supply requirement of the wells that withdraw groundwater from the alluvium of the Rio Grande within the Rio Grande Alluvium Response Area. Subdistrict No. 2 is not currently pursuing the fallowing of any irrigated lands within the boundaries of the Subdistrict. It is anticipated that the imposition of a Pumping Fee will naturally reduce the amount of groundwater withdrawn by ARP Wells in the future. Although there is no specific sustainability requirement, the Board of Managers continues to recognize the importance of conservation and wise and efficient use of water and will continue to work with and educate its well owners and develop conservation programs.

As noted in the letter from the State Engineer regarding the Upper Rio Grande Model Domain, on February 28, 2020, “the aquifer in the area represented in the URG is an alluvial aquifer that has little to no storage capacity for use of the aquifer as a reservoir. The URG meets the presumption of Rule 8.5 and, therefore, a plan to achieve a Sustainable Water Supply for the wells within the URG will not be required as part of any Annual Replacement Plan(s).”

1. WATER LEVELS, PRESSURE LEVELS, AND/OR GROUNDWATER WITHDRAWALS

Requirements of this Rule are satisfied per Rule 8.4.

2. LISTING OF IRRIGATED ACRES PROPOSED TO BE TEMPORARILY OR PERMANENTLY FALLOWED AND ASSOCIATED WATER RIGHTS

No listing of fallowed irrigated acres was submitted with this ARP.

3. LISTING OF WATER RIGHTS PROPOSED TO BE TEMPORARILY OR PERMANENTLY RETIRED AND HISTORICAL OPERATIONS OF EACH WATER RIGHT

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

4. OTHER PROPOSED ACTIONS TO BE TAKEN AS APPLICABLE

No listing of other proposed actions was submitted with this ARP.

SPECIAL IMPROVEMENT DISTRICT NO. 2 OF THE
RIO GRANDE WATER CONSERVATION DISTRICT

ANNUAL REPLACEMENT PLAN
2024 PLAN YEAR
APPENDICES

Prepared

April 11, 2024

By

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APPENDIX A

Tabulation of Subdistrict ARP Wells

ARP Wells (WDIDs)	2023 Metered Diversions (in ac.-ft.)	WDID Included in ARP List By
2005009	51.216	Petition
2005060	51.216	Petition
2005063	20.254	Petition
2005087	136.125	Petition
2005100	149.454	Petition
2005101	36.252	Petition
2005111	24.598	Petition
2005557	199.260	Petition
2005564	0.000	Petition
2005565	50.781	Petition
2005566	50.781	Petition
2005607	0.000	Petition
2005615	142.650	Petition
2005616	142.650	Petition
2005618	113.080	Petition
2005619	113.080	Petition
2005620	0.000	Petition
2005861	12.360	Petition
2005880	0.000	Petition
2005881	44.815	Petition
2005882	44.815	Petition
2005945	0.000	Petition
2005946	0.000	Petition
2006001	0.000	Petition
2006002	0.000	Petition
2006267	0.000	Petition
2006268	38.245	Petition
2006295	0.000	Petition
2006400	134.450	Petition
2006432	38.020	Petition
2006433	0.000	Petition
2006442	0.000	Petition
2006443	188.440	Petition
2006505	308.930	Petition
2006506	0.000	Petition
2006507	0.000	Petition
2006508	59.691	Petition
2006510	123.850	Petition
2006550	0.000	Petition
2006552	0.000	Petition
2006639	19.350	Contract in 2021
2008010	113.365	Petition
2008019	3.368	Petition

2008138	8.740	Petition
2008353	0.000	Petition
2008354	0.000	Petition
2008372	21.053	Petition
2008373	28.760	Petition
2008374	141.200	Petition
2008395	0.120	Petition
2008509	70.210	Petition
2008511	0.000	Petition
2008513	0.000	Petition
2008514	0.000	Petition
2008585	114.690	Petition
2008586	3.184	Petition
2008647	4.170	Petition
2008653	85.410	Petition
2008693	0.000	Petition
2008698	166.804	Petition
2008712	0.000	Petition
2008726	0.000	Petition
2008756	0.000	Petition
2008797	65.698	Petition
2008853	84.117	Petition
2008878	54.857	Petition
2008900	0.000	Petition
2008901	250.100	Petition
2008930	0.000	Petition
2008931	0.000	Petition
2008957	0.500	Petition
2008958	68.432	Contract 2022
2008999	0.000	Petition
2009000	105.347	Petition
2009064	132.310	Petition
2009079	139.770	Petition
2009080	81.550	Petition
2009109	12.143	Petition
2009124	0.000	Petition
2009125	0.325	Petition
2009149	6.470	Petition
2009156	132.260	Petition
2009201	233.545	Contract in 2019
2009202	398.775	Contract in 2019
2009203	0.000	Petition
2009238	47.760	Petition
2009287	8.099	Petition
2009288	49.590	Petition
2009289	149.560	Petition
2009290	38.245	Petition

2009291	25.410	Petition
2009349	1.060	Petition
2009351	0.000	Petition
2009370	0.000	Petition
2009407	205.963	Petition
2009474	26.477	Petition
2009562	2.138	Contract in 2019
2009586	0.000	Petition
2009590	45.495	Petition
2009592	158.880	Petition
2009593	2.292	Petition
2009594	23.290	Petition
2009639	0.362	Contract in 2021
2009680	3.785	Petition
2009752	0.000	Contract in 2021
2009753	0.000	Contract in 2021
2009791	0.000	Petition
2009792	62.270	Petition
2009807	1.961	Contract in 2023
2010021	0.000	Petition
2010022	92.200	Petition
2010023	68.530	Petition
2010024	65.440	Petition
2010157	9.070	Contract in 2018
2010320	2.590	Petition
2010325	135.430	Petition
2010326	176.650	Petition
2010327	0.000	Petition
2010367	0.000	Petition
2010487	0.000	Petition
2010505	0.000	Petition
2010506	0.000	Petition
2010552	0.000	Contract in 2023
2010553	0.550	Contract in 2023
2010554	0.000	Petition
2010555	35.355	Petition
2010556	43.420	Petition
2010557	41.730	Petition
2010581	0.000	Petition
2010607	0.000	Petition
2010742	123.401	Petition
2010743	72.401	Petition
2010744	107.340	Petition
2010778	0.000	Contract in 2019
2010783	0.000	Contract 2022
2010784	0.000	Contract 2022
2010842	208.270	Petition

2010950	73.015	Petition
2010951	0.000	Petition
2010952	121.585	Petition
2010953	73.015	Petition
2010954	52.768	Petition
2010955	44.530	Petition
2010956	44.530	Petition
2011015	11.297	Petition
2011089	0.000	Petition
2011237	4.311	Contract in 2019
2011263	0.000	Petition
2011301	0.000	Petition
2011317	0.012	Petition
2011375	1.131	Petition
2011392	0.000	Petition
2011469	42.827	Petition
2011661	0.000	Petition
2011763	5.530	Petition
2011905	0.000	Petition
2011938	1.723	Petition
2011988	0.000	Petition
2012073	0.027	Petition
2012179	254.520	Petition
2012182	307.181	Petition
2012191	29.240	Contract in 2019
2012254	0.000	Petition
2012256	12.115	Petition
2012266	16.411	Contract 2022
2012274	75.224	Petition
2012275	77.503	Petition
2012287	0.000	Petition
2012409	3.150	Petition
2012452	0.028	Petition
2012454	0.000	Petition
2012496	0.000	Petition
2012512	4.847	Petition
2012529	39.591	Petition
2012552	0.000	Petition
2012553	0.000	Petition
2012558	91.551	Petition
2012559	0.000	Petition
2012560	100.940	Petition
2012561	0.000	Petition
2012570	0.000	Petition
2012585	0.000	Petition
2012590	75.730	Petition
2012591	78.270	Petition

2012649	0.090	Petition
2012650	0.000	Petition
2012651	0.000	Petition
2012700	43.540	Petition
2012701	59.360	Petition
2012702	47.527	Petition
2012703	15.068	Petition
2012704	101.680	Petition
2012705	135.012	Petition
2012707	0.000	Petition
2012708	59.190	Petition
2012714	0.000	Petition
2012715	0.000	Petition
2013546	149.560	Petition
2013591	0.000	Petition
2013593	0.109	Petition
2013611	42.350	Petition
2013700	164.023	Petition
2013766	32.530	Petition
2013768	22.420	Petition
2013771	0.000	Petition
2013772	50.781	Petition
2013773	50.781	Petition
2013776	30.400	Petition
2013785	82.465	Petition
2013786	82.465	Petition
2013870	54.480	Petition
2013898	38.775	Petition
2013903	5.160	Contract in 2018
2013926	114.675	Petition
2013976	53.659	Petition
2014008	69.510	Petition
2014011	0.000	Petition
2014056	49.323	Contract 2022 ARP in PWR
2014062	42.205	Petition
2014063	75.418	Petition
2014064	134.380	Petition
2014065	245.240	Petition
2014066	136.125	Petition
2014067	76.690	Petition
2014068	149.454	Petition
2014069	83.850	Petition
2014070	86.666	Petition
2014071	84.117	Petition
2014072	57.312	Petition
2014075	327.553	Contract in 2021 for 2020 ARP
2014076	111.430	Contract in 2019

2014077	95.230	Petition
2014095	0.341	Petition
2014096	84.570	Petition
2014097	49.548	Petition
2014098	118.130	Petition
2014099	10.550	Petition
2014104	113.365	Petition
2014108	21.930	Petition
2014109	2.885	Petition
2014171	15.193	Petition
2014221	141.780	Petition
2014246	134.286	Petition
2014340	134.286	Petition
2014349	81.550	Petition
2014356	51.216	Petition
2014362	75.775	Petition
2014376	64.470	Petition
2014443	0.000	Petition
2014471	115.430	Petition
2014482	102.581	Petition
2014510	40.210	Replaced WDID 2012570
2014534	42.690	New Well in 2018
2014553	0.000	Contract in 2019
2014580	112.06	
2005099*	24.30	URG-Contract in 2021
2009508*	0.00	URG-Contract in 2021
2009737*	0.01	URG-Contract in 2021
2009738*	14.79	URG-Contract in 2021
2010437*	0.00	URG-Contract in 2021
2012241*	0.08	URG-Contract in 2021
2012364*	9.28	URG-Contract in 2019
2012365*	0.00	URG-Contract in 2019
2012458*	0.19	URG-Contract in 2021
2012459*	0.12	URG-Contract in 2021
2012460*	0.00	URG-Contract in 2021
2013689*	30.91	URG-Contract in 2021
2013923*	129.00	URG-Contract in 2021
2014331*	21.72	URG-Contract in 2019
2014467*	4.69	URG-Contract in 2021
* Denotes Wells Located in the Upper Rio Grande Model Domain		
There were no new wells added for the 2024 ARP		

APPENDIX B

Contract Wells Documentation

WDID	Structure Name	Associated Permit	Uses Under Contract	Consumptive Use %
2006639	W-0847 Well No. 5	9347-F	sprinkler irrigation	83%
2008958	W-0388 Well No. 1	45-R	sprinkler irrigation	83%
2009201	W-0507 Well No. 1	11153-F-R	fish hatchery	8%
2009202	W-0507 Well No. 2	25311-F-R	fish hatchery	8%
2009562	W-0738 Well No. 1	9293-F-R	flood irrigation	60%
2009639	W-0777 Well No. 1	14719-R	sprinkler irrigation	83%
2009752	W-0847 Well No. 6		sprinkler irrigation	83%
2009753	W-0847 Well No. 7		municipal	40%
2009807	W-0872 Well No. 11	87609-F	sprinkler irrigation	83%
2010157	W-1084	1858-R	sprinkler irrigation	83%
2010552	W-1345 Well No. 1	20548-I	other	100%
2010553	W-1345 Well No. 2	20548-R, 56842-F	other	100%
2010783	W-1459 Well No. 1	8600-R	flood irrigation	60%
2010784	W-1459 Well No. 2	8599-R	flood irrigation	60%
2010778	W-1457-Well No. 4	60467-A	sprinkler irrigation	83%
2011237	W-1717 Well No. 3	25909-F-R	commercial/domestic	40%
2012191	W-2297 Well No. 2		sprinkler irrigation	83%
2012266	W-2349 Well No. 1		sprinkler irrigation	83%
2013903		44605-F	sprinkler irrigation	83%
2014056	20CW0022 WELL NO. 8-RS	85393-F	sprinkler irrigation	83%
2014075	2005CW0017 Well No. 2S	46036-F	fish hatchery	8%
2014076	2005CW0017 Well No. 1S	46037-F	fish hatchery	8%
2014553		16141	sprinkler irrigation	83%
*2005099	W-2469 Well No. 6	15521-R	sprinkler irrigation	83%
*2009508	W-0700 Well No. 1	6519 R-R	flood irrigation	60%
*2009737	W-0839 Well No. Carson 02	5684-F	sprinkler irrigation	83%
*2009738	W-0839 Well No. Carson 03	294-R	sprinkler irrigation	83%
*2010437	W-1267 Well No. 4	10209-R	flood irrigation	60%
*2012241	W-2334 Well No. 6	2236-F	flood irrigation	60%
*2012364	W-2430 Well No 2	24697-A	commercial/domestic	40%
*2012365	W-2430 Well No. 3	21157	commercial/domestic	40%
*2012458	W-2469 Well No. 3	5541-F	flood irrigation	60%
*2012459	W-2469 Well No. 4	6287-F	flood irrigation	60%
*2012460	W-2469 Well No. 5	6378-F	sprinkler irrigation	83%
*2013689	94CW009 Well No. 5A	42294-F	sprinkler irrigation	83%
*2013923		42821-F	sprinkler irrigation	83%
*2014331	05CW18 Well NO. 1 1R	61907-F	commercial/domestic	40%
*2014467		31138	sprinkler irrigation	83%

* Well that is contracted within the Upper Rio Grande Model Domain

APPENDIX C

List of Augmentation Wells and Map

APPENDIX B
Augmentation Wells and Map

ARP Wells Partially or Fully Covered by Plan of Augmentation					
Case No.	Plan Type	Augmentation Decree Owner	Well Owner	WDID	Covered By ARP
SLVWCD has multiple augmentation sources which can be used for augmentation of wells with valid certificates	Augmentation Certificate No. 784	San Luis Valley Water Conservancy District	Robert W. Mertz Trust	2010320	Y
SLVWCD has multiple augmentation sources which can be used for augmentation of wells with valid certificates	Augmentation Certificate No. 690	San Luis Valley Water Conservancy District	Bradley and Lori Catlin	2009593	N

Footnotes: N Well not covered by ARP

Y Well covered by ARP

APPENDIX D

USDA-NRCS Forecasts and DWR Rio Grande Compact 10-day Report

RIO GRANDE COMPACT
April 5, 2024 Analysis (NRCS 50% exceedence)
Closed Basin Project Split: 60/40

RIO GRANDE BASIN

NRCS 4-3-2024 Forecast of
 April - September Index
 Flows = 445,000

J-M & O-D volume 85,000

Obligation = 137,200

Index Supply

January	8,600 *
February	9,600 *
March	13,400 *
April - September	445,000 forecast
October	27,400 estimate
November - December	26,000 estimate
Total	530,000

Deliveries

Delivery Obligation

Req Deliv 69,000 14.6%
 Total Index 472,400

January	10,000 *
February	11,600 *
March	13,700 *
April - October	69,000 needed
Nov - Dec native	27,000 estimate
Total	131,300

Adjustments	Net Carryover Credit in E.B.	(1,000) estimate
to the	Paper Credit	5,000
Delivery	SC Norton Drain Flow	(2,000) estimate
	Remaining CBP Share	3,900 estimate

Delivery Credit 137,200

Expected Dec. 31, 2024 Compact Delivery Status 0

- * = Actual measured flows (Deliveries include Closed Basin Project share)
- All values in acre-feet
- Assumes 60% of the Closed Basin Project flows are creditable to the Rio Grande (Projected delivery of creditable CBP production to the Rio Grande is 8,500 acre-feet)
- Assumes no recharge diversions after November 1, 2024
- Trinchera Creek flow to the Rio Grande will increase delivery

USDA NRCS National Water & Climate Center

* - DATA CURRENT AS OF: April 03, 2024 02:46:45 PM

- Based on April 01, 2024 forecast values

Northwestern Rio Grande in Colorado

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Rio Grande at Thirty Mile Bridge (2)	APR-JUL	104	94	135	117	91	73	111
	APR-SEP	118	98	157	134	102	79	120
Rio Grande at wagon wheel Gap (2)	APR-SEP	320	103	435	365	280	225	310
	APR-SEP	105	94	136	117	94	78	112
SF Rio Grande at South Fork (2)	APR-SEP	445	93	605	505	385	310	480
	APR-SEP	41	146	58	48	35	27	28
Rio Grande nr Del Norte (2)	APR-SEP	60	98	78	67	53	44	61
	APR-SEP	6.8	88	10.5	8.2	5.5	4.0	7.7
Saguache Ck nr Saguache (2)	MAR-JUL	6.3	93	10.0	7.7	5.1	3.5	6.8
	APR-JUL	48	94	62	53	43	36	51
Alamosa Ck ab Terrace Reservoir	APR-JUL	53	93	69	59	47	39	57
	APR-SEP	158	94	205	176	141	118	168
La Jara Ck nr Capulin	APR-SEP	9.5	99	13.9	11.2	8.0	6.0	9.6
	APR-SEP	56	92	75	63	49	40	61
Platoro Reservoir Inflow (2)	APR-JUL	110	92	178	137	83	42	119
	APR-SEP	9.5	84	13.8	11.1	8.0	6.0	11.3
Conejos R nr Mogote (2)	APR-SEP	10.5	96	18.3	13.4	7.9	4.8	10.9
	APR-SEP	9.2	89	13.6	10.9	7.7	5.6	10.3
San Antonio R at Ortiz	APR-SEP	16.3	98	27	20	12.6	8.1	16.7
	APR-SEP	8.1	79	12.5	9.8	6.6	4.7	10.3
Los Pinos R nr Ortiz	MAR-JUL	7.2	75	11.6	8.9	5.7	3.8	9.6
	APR-JUL	15.7	71	27	19.8	12.1	7.7	22
Rio Grande nr Lobatos	MAR-JUL	15.7	71	27	19.8	12.1	7.7	22
	APR-JUL	15.7	71	27	19.8	12.1	7.7	22

Northeastern Rio Grande in Colorado

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Ute Ck nr Fort Garland	APR-SEP	9.5	84	13.8	11.1	8.0	6.0	11.3
	APR-SEP	10.5	96	18.3	13.4	7.9	4.8	10.9
Sangre de Cristo Ck (2)	APR-SEP	9.2	89	13.6	10.9	7.7	5.6	10.3
	APR-SEP	16.3	98	27	20	12.6	8.1	16.7
Trinchera Ck ab Turners Ranch	MAR-JUL	8.1	79	12.5	9.8	6.6	4.7	10.3
	APR-JUL	7.2	75	11.6	8.9	5.7	3.8	9.6
Culebra Ck at San Luis (2)	MAR-JUL	15.7	71	27	19.8	12.1	7.7	22
	APR-JUL	15.7	71	27	19.8	12.1	7.7	22
Costilla Reservoir Inflow (2)	MAR-JUL	15.7	71	27	19.8	12.1	7.7	22
	APR-JUL	15.7	71	27	19.8	12.1	7.7	22
Costilla Ck nr Costilla (2)	MAR-JUL	15.7	71	27	19.8	12.1	7.7	22
	APR-JUL	15.7	71	27	19.8	12.1	7.7	22

APR-JUL 14.7 67 26 18.8 11.1 6.7 22

Middle Sangre Mtns in New Mexico

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Red R b1 Fish Hatchery nr Questa	MAR-JUL	24	77	34	28	20	16.0	31
	APR-JUL	21	75	31	25	17.5	13.0	28
Rio Hondo nr Valdez	MAR-JUL	16.7	111	24	19.3	14.4	11.2	15.1
	APR-JUL	16.0	113	23	18.6	13.6	10.5	14.2
Rio Lucero nr Arroyo Seco	MAR-JUL	9.8	97	13.8	11.4	8.4	6.5	10.1
	APR-JUL	9.4	101	13.4	10.9	8.0	6.1	9.3
Rio Pueblo de Taos nr Taos	MAR-JUL	15.9	127	22	18.4	13.6	10.6	12.5
	APR-JUL	14.6	125	21	17.1	12.3	9.3	11.7
Rio Pueblo de Taos b1 Los Cordovas	MAR-JUL	29	138	52	38	22	13.0	21
	APR-JUL	27	153	50	35	19.7	11.0	17.7
Embudo Ck at Dixon	MAR-JUL	60	188	87	70	50	38	32
	APR-JUL	58	200	85	68	48	36	29
Santa Cruz R at Cundiyo	MAR-JUL	15.2	92	21	17.5	13.2	10.4	16.6
	APR-JUL	14.0	100	19.8	16.2	11.9	9.2	14.0
Nambe Falls Reservoir Inflow (2)	MAR-JUL	5.4	96	7.6	6.2	4.6	3.5	5.6
	APR-JUL	5.1	104	7.3	6.0	4.3	3.3	4.9
Tesuque Ck ab diversions	MAR-JUL	1.17	104	1.88	1.43	0.93	0.63	1.13
	APR-JUL	1.09	115	1.81	1.36	0.85	0.55	0.95
Santa Fe R nr Santa Fe (2)	MAR-JUL	3.9	118	5.3	4.4	3.3	2.7	3.3
	APR-JUL	3.6	124	5.1	4.2	3.1	2.4	2.9

El Vado, Jemez

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
El Vado Reservoir Inflow (2)	MAR-JUL	150	81	211	174	128	99	186
	APR-JUL	144	87	205	168	122	93	166
Jemez R nr Jemez	MAR-JUL	39	134	51	44	34	28	29
	APR-JUL	36	150	48	41	32	26	24
Jemez R b1 Jemez Canyon Dam	MAR-JUL	30	136	44	35	25	18.3	22

APR-JUL 28 162 43 34 23 16.2 17.3

Mainstem Routings

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Rio Grande at Otowi Bridge (2)	MAR-JUL	400	71	577	467	337	257	565
	APR-JUL	355	76	530	420	295	215	470
Rio Grande at San Marcial	MAR-JUL	220	64	409	299	144	31	345
	APR-JUL	186	66	375	265	109	-3.4	280

Pecos

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Pecos R nr Pecos	MAR-JUL	52	98	74	60	44	33	53
	APR-JUL	49	100	72	58	41	31	49
Pecos R nr Anton Chico	MAR-JUL	51	96	87	64	39	25	53
	APR-JUL	47	107	84	61	35	21	44
Gallinas Ck nr Montezuma	MAR-JUL	7.6	95	13.5	9.8	5.8	3.6	8.0
	APR-JUL	6.4	98	12.3	8.6	4.5	2.4	6.5
Pecos R ab Santa Rosa Lk	MAR-JUL	38	93	70	50	28	16.0	41
	APR-JUL	38	109	70	50	28	15.8	35

Ruidoso and Mimbres

Forecast Point	period	50% (KAF)	% of med	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr med
Rio Ruidoso at Hollywood	MAR-JUN	2.6	76	4.2	3.2	2.1	1.51	3.4
	APR-JUN	1.81	70	3.4	2.4	1.31	0.72	2.6
Mimbres R at Mimbres	APR-MAY	0.88	77	2.1	1.30	0.54	0.190	1.14

Max (10%), 30%, 50%, 70% and Min (90%) chance that actual volume will exceed forecast.

Medians are for the 1991-2020 period.

All volumes are in thousands of acre-feet.

footnotes:

- 1) Max and Min are 5% and 95% chance that actual volume will exceed forecast
- 2) streamflow is adjusted for upstream storage

APPENDIX E

Instruction Sheets: “How to Use the Application Workbook for a Subset (individual/group) of Wells” 9/23/2015) and “How to Adjust the Application Workbook for use with a Subset of Wells” (10/15/2015)

APPENDIX E

Instruction Sheets: “How to Use the Application Workbook for a Subset (individual/group) of Wells” 9/23/2015) and “How to Adjust the Application Workbook for use with a Subset of Wells” (10/15/2015)

Adjusting the Application Workbook for use with a Subset (individual/group) of Wells

In order to properly use the 'Ratio Method' Application Workbooks for subsets of wells within a Response Area, the rounding functions within the Workbook must be adjusted. The steps below illustrate the adjustments needed to properly calculate the Net Stream Depletions for the individual/group of wells. The Response Area and the reaches that need to be adjusted are:

- Alamosa-La Jara: Reach 1 Calculations Ratio, and Reach 6 Calculations Ratio,
- Conejos: Reach 1 Calculations Ratio, and Reach 6 Calculations Ratio,
- Saguache: Reach 1 Calculations Ratio, and Reach 3 Calculations Ratio ,
- San Luis: Reach 1 Calculations Ratio, and Reach 2 Calculations Ratio,
- Trinchera: Reach 1 Calculations Ratio

Steps to Make the Adjustments

1. To avoid unintended errors use an original version of the Application Workbook built for the Response Area
2. Go to sheet "Projected Depletions Annual" and remove the round functions within the cell formulas
 - a. From the Cells "B43:G44" for Alamosa-La Jara, "B43:H44" for Conejos, "B43:D44" for Saguache, "B43:C44" for San Luis, and "B43:E43" for Trinchera Response Area
 - b. From the column 'Total' ("L8:L44" for Alamosa-La Jara & Conejos, "F8:F44" for Saguache & San Luis, and "G8:G44" for Trinchera Response Area
3. Go to "Table 2.5"
 - a. From Cells "D80:I82" for Alamosa-La Jara, "D80:J82" for Conejos, "D80:F82" for Saguache, "D80:E82" for San Luis, and "D80:G82" for Trinchera
 - b. From the Column 12 or 'Total' (L9:I82 for Alamosa-La Jara & Conejos, "H9:H82" for Saguache, "G9:G82" for San Luis, and "I9:I82" for Trinchera Response Area
4. Go to sheet "Table 2.6" and remove the round functions within the cells formulas for the Cells "B13:M13" and "N9:N13"
5. UNHIDE the appropriate sheet "Reach [X] Calculations Ratio" by right clicking over one of the working tabs and selecting unhide to open the required sheet ("Reach [X] Calculations Ratio") from the list
6. Go to sheet "Reach [X] Calculations Ratio" and COPY Cells "AC185:AG189" and PASTE to the same location ("AC185:AG189") as a VALUE instead of the formula
7. Go to "Net CU Worksheet"
 - a. Input the individuals/group of wells irrigation pumping, other pumping, and consumptive use ratio value for the year 2011 - 2015
 - b. For Details Refer: *Notes-How to Use the Application Workbook With or Without SW Credits, CDWR, September 23, 2015*
8. Go to sheet "Net CU & Streamflow"
 - a. Input the Historical Net Groundwater Consumptive Use (NetGWCU) from 1970-2010 to the individuals/group of wells pumping (NetGWCU) values
 - b. For Details Refer: *Notes-How to Use the Application Workbook With or Without SW Credits, CDWR, September 23, 2015*
9. Reformat "Table 2.6" to one or two decimal digits to see the small decimal values
10. Finally, the net stream depletions caused by individual/group of wells are calculated on sheet "Table 2.6" for the Current Year and on sheet "Table 2.7" for the Post Plan Years.

How to Use the Application Workbook for a Subset (individual/group) of Wells

The Application Workbook is build to be used for the whole Response Area. If there is a need to use it for individual/group of well(s) either with or without Surface Water Return flow Credits, there are few steps that need to be followed.

1. Stream Reaches With Surface Water Return Flow Credits

The five reaches with Surface Water Return Flow Credits are:

- Rio Grande Alluvium Response Area - Reach 1 (Rio Grande from Del Norte to Excelsior Ditch) from the Town of Del Norte and the City of Monte Vista,
- Alamosa/La Jara Response Area - Reach 3 (Rio Grande from Del Norte to Excelsior Ditch) from the City of Monte Vista,
- Alamosa/La Jara Response Area - Reach 5 (Rio Grande from Chicago to State Line) from the City of Alamosa,
- Conejos Response Area - Reach 7 (San Antonio River) from the Town of Antonito.
- San Luis Creek Response Area - Reach 2 (Crestone Creek) from the Town of Crestone and the Baca Water and Sanitation District.

If the individual/group of well(s) **does not** have Surface Water Return Flow Credits but is located in the Response Area where Surface Water Return Flow Credits exist, the following steps should be completed:

1. Modify the worksheet "Net CU Worksheet" as follows:
 - a. Columns 2 & 3 change values to individual/group of well(s) Irrigation Pumping.
 - b. Column 4 change the values to the value of individual/group of well(s) Other Pumping.
 - c. Column 5 change to the appropriate consumptive use ratio for each year based on Other Pumping's actual consumptive use ratios.
2. On the "Net CU & Streamflow" worksheet change the historical Net Groundwater Consumptive Use (Jan-Dec) (Column 12) from 1970 to 2010 to the historical Net Groundwater Consumptive Use estimated for the individual/group of well(s) (consumptive use ratios of 83% - sprinkler, 60% - flood, and appropriate ratio – other).
3. On the "Reach [X] Calculations" worksheet, which will need to be unhidden, ZERO out all of the Surface Water Return Flow Credits in cells H161:H653.
 - a. Note "X" refers to the stream reach number where the Surface Water Return Flow Credits are applied.
4. Finally, the net stream depletions caused by individual/group of well(s) are calculated on sheet "Table 2.6" for the Plan Year and sheet "Table 2.7" for the Post Plan.

If the individual/group of well(s) **does** have Surface Water Return Flow Credits the following steps should be completed:

1. Modify the worksheet "Net CU Worksheet" as follows:
 - a. Columns 2 & 3 change values to individual/group of well(s) Irrigation Pumping.
 - b. Column 4 change the values to the value of individual/group of well(s) Other Pumping.
 - c. Column 5 change to the appropriate consumptive use ratio for each year based on Other Pumping's actual consumptive use ratios for wells that do not generate returns directly to streams and 100% consumptive use ratio for wells that do generate returns directly to streams.

2. On the "Net CU & Streamflow" worksheet change the historical Net Groundwater Consumptive Use (Jan-Dec) (Column 12) from 1970 to 2010 to the historical Net Groundwater Consumptive Use estimated for the individual/group of well(s) (consumptive use ratios of 83% - sprinkler, 60% - flood, appropriate ratio – other for wells that do not generate returns directly to streams, and 100% - other for wells that do generate returns directly to streams).
3. On the "Reach [X] Calculations" worksheet, which will need to be unhidden, change the Surface Water Return Flow Credits in cells H161:H653 to the estimated individual/group of well(s)'s Surface Water Return Flow Credits.
 - b. Note "X" refers to the stream reach number where the Surface Water Return Flow Credits are applied.
4. Finally, the net stream depletions caused by individual/group of well(s) using Surface Water Return Flow Credits are calculated on sheet "Table 2.6" for the Plan Year and on sheet "Table 2.7" for the Post Plan.

2. Stream Reaches without Surface Water Return Flow Credits

If the individual/group of well(s) is to be evaluated using the Application Workbook to estimate their net stream depletions, the following steps should be completed:

1. Modify the worksheet "Net CU Worksheet" as follows:
 - a. Columns 2 & 3 change values to individual/group of well(s) Irrigation Pumping.
 - b. Column 4 change the values to the value of individual/group of well(s) Other Pumping.
 - c. If the individual/group of well(s) ***does not*** generate return flows directly to the stream, then:
 - i. Column 5 change to the appropriate consumptive use ratio for each year based on Other Pumping's actual consumptive use ratios.
 - d. If the individual/group of well(s) ***does*** generate return flows directly to the stream, then:
 - i. Column 5 change to the appropriate consumptive use ratio for each year based on Other Pumping's actual consumptive use ratios for wells that do not generate returns directly to streams and 100% consumptive use ratio for wells that do generate returns directly to streams.
2. On the "Net CU & Streamflow" worksheet change the historical Net Groundwater Consumptive Use (Jan-Dec) (Column 12) from 1970 to 2010 to the historical Net Groundwater Consumptive Use estimated for the individual/group of well(s) (consumptive use ratios of 83% - sprinkler, 60% - flood, appropriate ratio – other for wells that do not generate returns directly to streams, and 100% - other for wells that do generate returns directly to streams).
3. Finally, the net stream depletions caused by individual/group of well(s) are calculated on sheet "Table 2.6" for the Plan Year and sheet "Table 2.7" for the Post Plan.

APPENDIX F

History & Documentation of Purchase and Leases

Appendix F History & Documentation of Purchase

WILLIAMS CREEK SQUAW PASS TRANSBASIN DIVERSION CURRENTLY HELD IN RIO GRANDE RESERVOIR IN THE AMOUNT OF 525.9 ACRE-FEET

Subdistrict No. 2 leased water from Navajo Development Co., Inc., owned by John H. Parker II, to use as a source of remedy for injurious depletions on the Rio Grande. This transbasin water was being stored under the decree held by Navajo Development Company, Inc. in Rio Grande Reservoir. Subdistrict No. 2 purchased 282.5 acre-feet of this Williams Creek Squaw Pass transbasin water in March 2021. In April of 2022, Subdistrict No. 2 leased an additional 153.2 acre-feet of water from Navajo Development, Inc. In 2023, Subdistrict No. 2 leased an additional 120.2 acre-feet. In 2024, Subdistrict No. 2 will lease an additional 92.0 acre-feet. Documentation of these purchases is included. SWSP No. 6182 was approved by the State Engineer for the additional uses of augmentation and recharge for this water for the 2021 lease, 2022 lease, and the 2023 lease. The renewal SWSP is pending for the 2024 lease.

Water Right	Beginning Balance 4/15/2024	Water Previously Controlled By:	Current Location
Williams Creek Squaw Pass Transbasin Diversion (Case W-1869-7) and free river diversions (Leased March 2021)	160.5	Navajo Development Inc.	Rio Grande Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W-1869-7) and free river diversions (Leased 2022)	153.2	Navajo Development Inc.	Rio Grande Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W-1869-7) and free river diversions (Leased 2023)	120.2	Navajo Development Inc.	Rio Grande Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W-1869-7) and free river diversions (Leased 2024)	92.0	Navajo Development Inc.	Rio Grande Reservoir
Total In Storage	525.9		

SANTA MARIA RESERVOIR COMPANY SHARES (2019 LEASES-RGWCD) IN THE AMOUNT OF 291.3 ACRE-FEET

The Rio Grande Water Conservation District leased 150 shares from Santa Maria Reservoir Company owners with shares on the Monte Vista Canal during 2019. A portion of this water was released from the reservoir in 2019 to cover transit and ditch losses and to replace historical return flows as required by the decree in Case No. 2013CW3002. The remainder of 291.3 acre-feet remained in storage in Santa Maria Reservoir and Beaver Reservoir. In 2020, the Rio Grande Water Conservation District allowed Subdistrict No. 2 to lease 291.3 acre-feet of this water to remedy injurious stream depletions on the Rio Grande. A small amount of this water was used to remedy depletions in 2021 and 2022. The balance at April 15, 2023 is 110.3 acre-feet in Santa Maria Reservoir which is available for the remedy of depletions for the 2023 Plan Year.

Water Right	Beginning Balance 4/15/2024	Water Previously Controlled By:	Current Location
Santa Maria Reservoir-2019 (Shares in Monte Vista Canal 150 shares leased @ 2.638 ac-ft.)	110.3	Santa Maria Reservoir Company	Santa Maria Reservoir
Total In Storage	110.3		

SAN LUIS VALLEY WATER CONSERVANCY DISTRICT-LEASED TO THE RIO GRANDE WATER CONSERVATION DISTRICT AND THEN TO SUBDISTRICT NO. 2 IN THE AMOUNT 221.93 ACRE-FEET FROM CASE NOS. 1984CW16, 1994CW62, 14CW301, 09CW34, 2003CW41, 2005CW13, AND 2007CW63

This fully consumable water was decreed in Case Nos. 1984CW16, 1994CW62, 14CW301, 09CW34, 2003CW41, 2005CW13, and 2007CW63 for storage and augmentation purposes. The RGWCD leased 572.87 acre-feet of this fully consumable water under these decrees for use in Subdistrict ARPs. In 2021, Subdistrict No. 2 leased 221.93 acre-feet of this water for use in its 2021 ARP or future ARPs. Of the amount leased, 18.01 acre-feet is stored in Continental Reservoir. Details of the amounts and location of this leased water are in the following table.

San Luis Valley Water Conservancy District Case Nos. 1984CW16, 1994CW62, 14CW301, 09CW34, 2003CW41, 2005CW13, AND 2007CW63 SWSP Pending							
Date	1984CW16 and 1994CW62	2003CW41	2005CW13 and 2007CW63	2003CW41	2009CW34	TOTAL	Storage Location
4/15/2022	0.83	17.18				18.01	Continental Reservoir
TOTAL						18.01	

SANTA MARIA RESERVOIR COMPANY SHARES LEASED FROM SUBDISTRICT NO. 1 IN THE AMOUNT OF 846.9 ACRE-FEET

In March 2023, Subdistrict No. 1's Board of Managers accepted a Memorandum of Understanding to sell 1,000.0 acre-feet of water they had stored in Continental Reservoir to Subdistrict No. 2 to be used in the Subdistrict's ARP. This water is currently held in Continental Reservoir.

Water Right	Beginning Balance 4/15/2024	Water Previously Controlled By:	Current Location
Santa Maria Reservoir Company water-2023 lease from Subdistrict No. 1	815.0	Subdistrict No. 1	Continental Reservoir
Santa Maria Reservoir Company water-2023 lease from Subdistrict No. 1	31.9	Subdistrict No. 1	Beaver Reservoir
Total In Storage	846.9		

WATER LEASE AGREEMENT

This WATER LEASE AGREEMENT ("Agreement") is entered into this 25th day of January, 2024, between the Rio Grande Water Conservation District ("District") and the City of Monte Vista, Colorado ("City") (together, "the Parties" or individually as "Party").

RECITALS

A. City owns a total of 31.92 percent of Anderson Ditch Priorities 90 and 143, a pro-rata interest that amounts to 4.23 cfs;

B. City has filed a water court application that is currently pending as Case No. 16CW3024, District Court, Water Division 3, seeking approval of changes of water rights, conditional appropriative rights of exchange, and a plan for augmentation;

C. One of City's claims in Case No. 16CW3024 is to change 3.23 cfs of its 4.23 cfs interest in Anderson Ditch Priorities 90 and 143 from irrigation use to other uses that include exchange, replacement, and augmentation;

D. Under the plan for augmentation sought by City in Case No. 16CW3024, City seeks to use its changed Anderson Ditch water rights for replacement and augmentation of injurious stream depletions caused by the pumping of certain of the City's confined and unconfined wells by returning the fully consumable historical depletions of its changed Anderson Ditch water rights to the Rio Grande, by either leaving its pro-rata portion in the Rio Grande or returning the historical depletion amounts of those water rights to the Rio Grande using future augmentation stations or measurement structures;

E. City also seeks approval in Case No. 16CW3024 to exchange the changed Anderson Ditch water rights upstream to storage in Rio Grande Reservoir for later release for replacement on the Rio Grande and/or other decreed uses;

F. Since May 1, 2021, during the pendency of Case No. 16CW3024, City has operated a substitute water supply plan ("SWSP") approved by the Colorado Division of Water Resources ("DWR") that has included City's storage of exchanged Anderson Ditch credits in Rio Grande Reservoir;

G. City currently owns 164.24 acre-feet ("AF") of water stored in Rio Grande Reservoir under the SWSP;

H. Also during the pendency of Case No. 16CW3024, City has contracted with Subdistrict No. 2 and Subdistrict No. 6 for replacement of injurious stream depletions ("Subdistrict Contracts");

I. Because the Subdistrict Contracts cover the majority of City's injurious stream depletions during the time period before the court enters a final decree in Case No. 16CW3024, City does not have an immediate need for all of its water currently stored in Rio Grande Reservoir, and now seeks to lease 160 AF of that water to others on a temporary basis ("Excess Stored Water");

J. District, through its six subdistricts, has a need to remedy injurious depletions to senior surface water rights due to depletions to stream flow caused by groundwater withdrawals of wells located throughout the San Luis Valley, and District seeks surface water supplies to use in its subdistricts' annual replacement plans as available sources to remedy injurious depletions; and

K. District therefore desires to purchase from City, and City desires to lease to the District, Excess Stored Water on the terms set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Lease Term.** The term of this Agreement is from April 1, 2024, through March 31, 2025 ("Lease Term").
2. **Quantity and Source of Leased Water.** Subject to the terms herein, City will lease to District all 160 AF of the Excess Stored Water ("Leased Water") immediately upon both Parties' execution of this Water Lease Agreement, at which time the Parties will book over the Excess Stored Water to District's Rio Grande Reservoir account. City will submit a 2024 Substitute Water Supply Plan (SWSP) request to the Colorado Division of Water Resources (DWR) in late January 2024, which will seek the approval of District's use of the City's Excess Stored Water. Once DWR approves that SWSP, the District may use the Leased Water for its replacement uses.
3. **Availability of Leased Water.**
 - 3.1 **Leased Water Supplied to District.** Once the Leased Water is booked over to District's Rio Grande Reservoir account, such water will become the property of District.
 - 3.2 **Leased Water Limitations.** Once the Leased Water is booked over to District's Rio Grande Reservoir account, District shall bear sole responsibility for coordinating with the San Luis Valley Irrigation District ("SLVID"), which is the owner and operator of Rio Grande Reservoir, and DWR in order to release Leased Water from Rio Grande Reservoir for District's subsequent use. District will also be responsible for its regular DWR accounting requirements for the replacement use of its Leased Water. Notwithstanding any other provision in this Agreement, City's obligation to provide Leased Water to District is expressly conditioned on the legal and physical availability of Excess Stored Water under City's permits, decrees and water rights and shall be subordinate to City's water needs.

3.3 **Force Majeure.** Neither Party is liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement for any failure or delay in fulfilling or performing any term of this Agreement due solely to conditions or events of force majeure, as that term is defined in this section, provided that: (i) the non-performing Party gives the other Party prompt Notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) action of the elements such as flood, fire, drought or other reduction in water supply legally and physically available to City, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, sabotage, or other civil unrest; (d) law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) pandemics, epidemics, or quarantines (either global, national, or local). To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

4. **Location of Delivery.**

4.1 City shall deliver the Leased Water to District in Rio Grande Reservoir (WDID No. 2003554), more particularly described as being located in the NW1/4, SW1/4 of Section 13, Township 40 North, Range 4 West, NMPM, Hinsdale County, Colorado. Further described as 1558 feet from the South section line and 167 feet from the West section line of said Section 13. UTM Zone 13 North NAD83: X – 300,194 Y – 4,177,218 ("Delivery Point").

4.2 Once the Leased Water is delivered to the Delivery Point by booking over the Leased Water into District's Rio Grande Reservoir account, District shall bear all losses, including but not limited to transit losses and/or evaporative losses, associated with the conveyance of the Leased Water from the Delivery Point to District's point(s) of use of the Leased Water.

5. **Accounting.**

5.1 City shall maintain accounting of the delivery of Leased Water to the Delivery Point for District and shall incorporate that accounting into City's SWSP accounting. Upon District's request, City shall supply such.

accounting and other information as District, SLVID, or the Division Engineer for Water Division 3 may require to implement this Agreement for District's use of the Leased Water.

- 5.2 District shall maintain daily accounting of its diversion and use of the Leased Water and shall provide that accounting to DWR, as required by the Division 3 Engineer. Upon request, City may review District's accounting provided to DWR, within 30 days of the end of the month being accounted for.
6. Price. District agrees to pay City the price of two hundred and fifty dollars (\$250.00) per acre-foot of Leased Water delivered by City to District. District's payments to City pursuant to this Agreement are non-refundable and are not contingent upon whether the Leased Water is actually used by District so long as City delivered the Leased Water to the Delivery Point.
7. Payment. District shall make two lump sum payments to City for the Leased Water. The first payment of \$20,000.00 shall be made within 30 days of the full execution of this Agreement. The second payment of \$20,000.00 shall be made within 30 days of City and/or District obtaining an approved SWSP authorizing District's use of the Leased Water.
8. Failure to Pay. If District fails to make the first payment described in Paragraph 7 above, the full amount of Leased Water shall revert to City's ownership and will be booked over to City's storage account in Rio Grande Reservoir. Under that circumstance, this Agreement may be terminated in full by City, City will have no obligation to provide any Leased Water to District, and District will be responsible for any costs, assessments, or other fees incurred by City for storage of the Leased Water in Rio Grande Reservoir for a period of one year. If District makes the first payment described in Paragraph 7 above, but fails to make the second payment, then 80 AF of the Leased Water shall revert to City's ownership and will be booked over to City's storage account in Rio Grande Reservoir. Under that circumstance, this Agreement may be terminated in full by City, City will have no obligation to provide any Leased Water to District other than the 80 AF paid for by District's first payment, and District will be responsible for any costs, assessments, or other fees incurred by City for storage of the remaining 80 AF of Leased Water booked back over to City's storage account for a period of one year.
9. Use of Leased Water.
- 9.1 District Approvals. District is responsible for ensuring that its use of the Leased Water complies with all existing judicial or administrative approvals, or for obtaining new judicial or administrative approvals, as may be necessary to use the Leased Water on a temporary basis. The Parties expressly acknowledge that City will seek approval of District's use under its 2024 SWSP request associated with Division 3, Case No.

16CW3024. However, a separate approved SWSP pursuant to section 37-92-308, C.R.S. may be necessary for the District to put the Leased Water to certain uses. No such plan or approval sought by District for use of the Leased Water may involve a change or review of City's water rights in water court.

- 9.2 City's Role. If District seeks approval of a new SWSP to use the Leased Water, City will reasonably cooperate with District and supply necessary data and other information as District deems necessary to pursue the SWSP. District shall provide any SWSP application or notice to City for review and comment prior to submittal to DWR. City may submit comments to the State Engineer on any such application for a SWSP or a SWSP renewal at City's sole expense.
- 9.3 Termination to Protect City's Water Rights. District agrees that it will use its best efforts not to jeopardize City's water rights by taking any action that causes or potentially could cause a reopening of any of City's water court decrees or the City's prosecution of its claims in Case No. 16CW3024. If a third party seeks review of City's water rights or decrees in water court in connection with District's use of the Leased Water in a SWSP or other approval from DWR, City, in its sole discretion and upon prior notice to District, may terminate this Agreement. District acknowledges that, following the expiration or termination of this Agreement, City has no duties or obligation to lease water for the replacement of depletions, delayed or otherwise, arising from the operation of any such SWSP or other approval from DWR.
- 9.4 Other Permits / Approvals. District is responsible for obtaining all necessary authorizations, approvals, and/or permits from private or governmental agencies required for District to use the Leased Water under this Agreement. Upon City's request, District shall provide copies of any such authorizations, approvals, and/or permits to City.
10. City's Title. City represents that it is the owner of the water subject to this Agreement and that it has full power and authority to enter into this Agreement. City further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.
11. Title to the Water Rights. Nothing herein grants or may be interpreted to grant any legal or equitable title in or to any of City's water rights to District.
12. Untreated Water. The Leased Water delivered to District under this Agreement is derived from untreated water of whatever quality is now or in the future available as Excess Stored Water. Delivery of the Leased Water under this Agreement is on an "as is" basis only. City makes no warranty, express or implied, concerning the quality of the Leased Water. Further, City expressly disclaims any implied

warranties of the Leased Water's merchantability or fitness for a particular purpose.

13. **Responsibility for Use and Indemnification.** District shall bear all responsibility for its use of the Leased Water upon City's delivery of the Leased Water under this Agreement, together with all costs associated with that use. To the extent permitted by law, District must defend, indemnify, and hold City harmless from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising from District's use of the Leased Water after City's delivery of the Leased Water as provided for in this Agreement. In the event that District is obligated to indemnify City, it may terminate this Agreement, subject to its obligations to City for its prior use of the Leased Water.
14. **District's Representations.** This Agreement has been duly authorized and executed by District, is the legal, valid, and binding obligation of District, and is enforceable against District according to its terms. No other consent is required for the execution, delivery, or performance of this Agreement by District. To the best of District's knowledge, there is no pending or threatened litigation or administrative proceeding against District that would prevent it from leasing the Leased Water from City.
15. **Notice.** All Notices and other communications that are required or permitted to be given to the Parties under this Agreement are 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 is effective upon such delivery; notice provided through U.S. Mail is effective three days after deposit in the U.S. Mail. The Parties shall give notice to the receiving Party at the following addresses:

To City:

City Manager
City of Monte Vista
95 West 1st Avenue
Monte Vista, CO 81144
Email: gdennis@ci.monte-vista.co.us

To District:

General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
Email: cleave@rgwcd.org

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

16. **Default and Remedies.** A default occurs if either Party breaches its obligations under this Agreement and fails to cure such breach within 10 days of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default will not be construed as condoning or acquiescing to any continuing or subsequent default. In addition to other legal remedies available to it, the non-breaching Party also will have the right to seek specific performance and damages, provided however, that such Party first must have given the breaching Party written Notice of such noncompliance and an opportunity to cure pursuant to this paragraph 16. The non-breaching Party will also be entitled to its reasonable attorneys' fees and expenses resulting from successful legal action to obtain legal remedies for a default.
17. **No Continuing Duty to Supply Water.** City has no obligation to supply water to District after this Agreement expires or is otherwise terminated.
18. **Miscellaneous Provisions.**
 - 18.1. **Governmental Immunity.** Nothing in this Agreement waives or may be construed to waive either Party's protection from liability or the limitations on its liability based on its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.
 - 18.2. **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 which are set forth in this Agreement, no representations, warranties, or agreements have been made by City or District to one another with respect to this Agreement.
 - 18.3. **Survival.** Each of the representations and warranties made by City and District in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be 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. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this Agreement, shall survive the termination.
 - 18.4. **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 shall not define or limit any of the terms of this 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 Colorado Rules of Civil Procedure, Rule 6, then the relevant date will be extended automatically until the next business day.

- 18.5. Non-Severability - Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of City and District. 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.
- 18.6. 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.
- 18.7. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. City may not assign its rights or delegate its duties hereunder without the prior written consent of District, which consent shall not be unreasonably withheld. District may not assign its rights hereunder to any other person or entity, except to any of its subdistricts, without the prior written consent of City, which consent shall not be unreasonably withheld.
- 18.8. 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 Rio Grande County, State of Colorado.
- 18.9. 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.
- 18.10. Recording. District may record this Agreement or a Memorandum of this Agreement.
- 18.11. Time. Time is of the essence in this Agreement.
- 18.12. Legal Counsel. Each Party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it cannot be construed against any Party on the basis of authorship.
- 18.13. Relationship of Parties. Nothing within this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party

has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

18.14. Recitals. The Recitals set forth above are hereby incorporated in and made a part of this Agreement by reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated in that Party's signature block below.

CITY OF MONTE VISTA

Gigi Dennis 01-31-24
Gigi Dennis, City Manager Date

RIO GRANDE WATER CONSERVATION DISTRICT

Amber Pacheco 1/25/2024
Amber Pacheco, Deputy General Manager Date



April 10, 2024

Mr. Jordan Dimick
SGM Inc.
555 RiverGate Lane, Suite B4-82
Durango, CO 81301

**RE: City of Monte Vista Substitute Water Supply Plan Request
Sec. 36, T39N, R7E, N.M.P.M.
Water Division 3, Water District 20, Rio Grande County
SWSD ID 6235, Case No. 16CW3024**

Approval Period: May 1, 2024 through April 30, 2025

Contact Information for Mr. Dimick: (970) 385-2340; JordanD@sgm-inc.com

Dear Mr. Dimick:

We have reviewed your letter dated February 1, 2024 in which you request approval of a substitute water supply plan (“SWSP”) on behalf of the City of Monte Vista (“City” or “Applicant”) pursuant to section 37-92-308(4), C.R.S. Notice was provided to the opposers in Case No. 16CW3024 on February 1, 2024. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 10034044) has been received.

The City’s SWSP was originally approved on May 5, 2021, and this SWSP request seeks to extend the SWSP past three years from the original date of approval. Pursuant to section 37-92-308(4)(b), C.R.S., “If an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant.”

According to information from the Applicant, the delay in obtaining a water court decree for more than three years after the initial SWSP approval is justifiable because Case No. 16CW3024 involves multiple interrelated claims, including changes of two different ditch water rights, rights of exchange, and a plan for augmentation. Monte Vista has continued to diligently engage in the water court process before the referee, providing opposers with multiple iterations of a proposed ruling and supporting engineering, while receiving and addressing comments on those materials. In addition, Monte Vista amended its water court application in October 2022, which necessitated further revisions to the proposed ruling. Since approval of the first SWSP, Monte Vista has entered into stipulations with six different opposers in Case No. 16CW3024, and continues to work to resolve concerns raised by the remaining active opposers (including the State and Division Engineers) in accordance with the case management deadlines set by the court.



The City filed an application in Division 3, Case No. 16CW3024, in part, to comply with the Division 3 Groundwater Rules promulgated in 2015CW3024. Since the City's application, it has entered into agreements with Subdistrict Nos. 2 and 6, to replace the injurious stream depletions associated with its unconfined aquifer and confined aquifer well pumping, respectively. Once a final decree in Case No. 16CW3024 is entered, the City's contract with Subdistrict No. 2 will be canceled and the City will be responsible for all future replacement of its injurious stream depletions from unconfined well pumping. As such, the City's renewal request of its 2024 SWSP is critical to allow the City to exchange the fully consumable credit associated with its 3.23 cfs Anderson Ditch water rights being changed in Case No. 16CW3024 to Rio Grande Reservoir. Absent an approval for its 2024 SWSP, the City would not be able to store by exchange and subsequently release that water for replacement purposes to comply with the Division 3 Groundwater Rules. Based on this information it was determined that the Applicant has satisfied section 37-92-308(4)(b), C.R.S.

SWSP OPERATION

The City is the owner of a number of municipal wells, including Confined and Unconfined Aquifer wells. The City will offset its injurious stream depletions for these Confined Aquifer wells through its contract with Subdistrict No. 6, and therefore those wells are not a part of this SWSP request. For the purpose of this SWSP, the City is requesting to continue diverting from three Unconfined Aquifer wells for irrigation use in the City's parks, landscaping and golf course (parklands). The City is requesting to replace the net stream depletions to the Rio Grande River using 3.23 cfs of its 4.23 cfs interest in Priority Nos. 90 and 143 carried in the Anderson Ditch. The City is also proposing to lease 160 acre-feet of fully consumable Anderson Ditch water previously stored in Rio Grande Reservoir to the Rio Grande Water Conservation District ("RGWCD") for its subdistricts augmentation, replacement, remedy, including by substitution and exchange, and for use as part of any of the RGWCD's or its Subdistricts' Annual Replacement Plans.

Table 1 below summarizes the City’s underground water rights, including their Confined and Unconfined Aquifer wells.

Table 1. Summary of Monte Vista's Underground Water Rights

Structure	Case Number	Diligence Decrees	Original Decree Date	Appropriation Date	Amount
Confined Aquifer Wells					
Well No. 1 (Batterson Well)	W-847	N/A	7/3/1975	09/30/1950	2.45 cfs absolute
Well No. 2 (Jackson Well)	W-847	N/A	7/3/1975	09/30/1950	4.01 cfs absolute
Well No. 3 (Broadway Well)	W-847	N/A	7/3/1975	04/30/1957	2.67 cfs absolute
Well No. 4 (Sherman Well)	W-847	N/A	7/3/1975	09/23/1968	5.12 cfs absolute
Well No. 8 ¹ (Prospect Well)	88CW13	N/A	4/24/1989	09/30/1950; 04/30/1957; 09/23/1968 &	4.46 cfs absolute
Subtotal (absolute)					14.25 cfs
Unconfined Aquifer Wells					
Well No. 5 (Chapman Park Well)	W-847	N/A	7/3/1975	04/30/1965	1.34 cfs absolute
Well No. 6 (Ball Park Well)	W-847	N/A	7/3/1975	06/30/1949	0.423 cfs absolute
Well No. 7 (Golf Course Well)	W-847	N/A	7/3/1975	01/02/1954	4.23 cfs absolute
Subtotal (absolute)					5.993 cfs
Total (absolute)					20.234 cfs

Notes:

cfs = cubic feet per second

Footnotes:

1. Well 8 is decreed as an alternate point of diversion for Well Nos. 1, 2, 3, and 4 and is therefore not included in the Confined Aquifer Wells subtotal.

The Anderson Ditch water rights for use in this SWSP are summarized below in Table 2:

Table 2. Summary of Monte Vista's Irrigation Water Rights of the Anderson Ditch for Use in Plan Year 2023

Ditch System	Ditch Priorities	Original Case Numbers	Original Decree Date	Appropriation Date	Total Ditch Ownership (cfs)	Monte Vista's Ownership (%)	Monte Vista's Ownership (cfs)
Anderson Ditch	57 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 15, 1874	2.90	0.00%	0.00
	90 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 31, 1875	11.33	24.38%	2.76
	143 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 31, 1877	1.92	24.38%	0.47
	Total					16.15	20.00%

Notes:

⁽¹⁾ Amount remaining in the Anderson Ditch

The City has entered into a contract with Subdistrict No. 2 (attached) to replace all depletions associated with the use of the City’s Unconfined Aquifer wells through inclusion in their Annual Replacement Plan. The contract requires that the City will be responsible for all post-plan depletions as part of its plan for augmentation once the decree in Case No. 16CW3024 has been finalized.

In the approved 2023 SWSP, portions of the Anderson Ditch water right were approved for exchange/storage of historical consumptive use (“HCU”) credits into the Rio Grande Reservoir, along with the associated dry-up of acreage. The City stored approximately 160.2 acre-feet of fully consumable water in the Rio Grande Reservoir under that SWSP, in addition to water stored under prior SWSP approvals. Under this SWSP, the City proposes to make 160 acre-feet of the stored water available to the Rio Grande Water Conservancy District for use under the RGWCD’s Subdistricts’ ARPs.

Upon entry of a final decree in Case No. 16CW3024, the City will exit the contract with Subdistrict No. 2 and will need to begin to replace its net stream depletions on impacted reaches of the Rio Grande River attributable to pumping of the Unconfined Aquifer wells, using the net consumptive use credits associated with the City’s 3.23 cfs ownership in the Anderson Ditch, shown in attached Table 6. The City will use the changed Anderson Ditch water right by leaving the consumptive use credits in the Rio Grande River for direct replacement or by exchange. The City intends to store the consumptive use credits in the Rio Grande Reservoir for subsequent release to the point of depletion on the Rio Grande River.

DEPLETIONS

As described above, the City has entered into a contract with Subdistrict No. 2 to make replacements for the use of its Unconfined Aquifer wells, eliminating the need to make replacements for these depletions under this SWSP. However, the City requests to change the water rights associated with 3.23 cfs in the Anderson Ditch and dry-up a portion of the Trospen Ranch and Valley Choice parcels (Figure 6) in order to store the consumptive use credits in the Rio Grande Reservoir for use upon entry of a final decree in Case No. 16CW3024.

The consumptive use analysis performed by the Applicant’s engineer determined a maximum of 160.37 acre-feet per year of consumptive use credits and associated replacement requirements as outlined in Table 6. This analysis concludes that 1.63 acre-feet of consumptive use credit is attributed to each acre of dry-up achieved. The City will be permitted to exchange the consumptive use credit portion of its 3.23 cfs Anderson Ditch water right into Rio Grande Reservoir, pursuant to the conditions of approval of this SWSP, for subsequent use. The City is required to maintain the non-irrigation season return flows associated with the changed right. The City will use a portion of the HCU credits from the Anderson Ditch to replace the non-irrigation season return flow obligations, and to replace the post-plan depletions resulting from Unconfined Aquifer well pumping once a decree is entered in Case No. 16CW3024. In 2023, the City used its approved SWSP to exchange 217.39 AF of its Anderson Ditch water supply to the Rio Grande Reservoir and will conduct similar operations in 2024.

The Applicant’s engineer, along with the Division 3 Staff, have confirmed that a total of 102.25 acres may potentially be dried-up during the SWSP approval period (Trospen Ranch and Valley Choice Parcels).

CONDITIONS OF APPROVAL

Pursuant to section 37-92-308(4)(a)(IV)(A), C.R.S., the State Engineer has determined that the operation and administration of this SWSP will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120(3), and will not impair compliance with any interstate compacts.

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

1. This SWSP shall be valid for the period of May 1, 2024 through April 30, 2025 unless otherwise revoked or superseded by decree. The initial date of approval for this SWSP was May 5, 2021. Pursuant to section 37-92-308(4)(b), C.R.S., “if an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan, until a decree is entered, will cause undue hardship to the applicant.” This information must be submitted with any SWSP request that seeks a plan approval period that would extend beyond May 5, 2024. Should an additional SWSP be requested, the provisions of section 37-92-308(4)(b), C.R.S., shall apply. Any request for an additional SWSP is subject to the provisions of section 37-92-308(4), C.R.S., and the statutory fee of \$300 will be required pursuant to section 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **February 1, 2025**.
2. The total exchange potential and consumptive use allowed for the City of Monte Vista’s 3.23 cfs portion of the Anderson Ditch allowed under this SWSP is limited to those credits accruing from dry-up, not to exceed 160.37 acre-feet during the term of this SWSP.
3. The consumptive use credits resulting from dry-up of a portion of the Anderson Ditch water right will be stored in the Rio Grande Reservoir. A portion of these credits may be used to replace the post-plan depletions resulting from Unconfined Well pumping. A portion of these credits will be used to replace the non-irrigation season return flow obligations associated with the change of a portion of the Anderson Ditch water right as described herein. In addition, the fully consumable water stored under previous SWSPs will be released to the Rio Grande Water Conservancy District for use in their Subdistricts’ ARPs. No additional uses of the water are allowed unless an additional SWSP is approved.
4. Changes to water rights will be limited to the shares and lands identified in this approval. Changes to include additional shares of the ditch, or changes to include additional ditches, will be allowed only if a new SWSP is approved for those additional shares/ditches and such additional shares/ditches are identified in Case No. 16CW3024.
5. The Applicant must replace all return flows resulting from operations under this SWSP, including those return flows that are owed to the stream after the expiration date of this SWSP. When the exchange is operated, return flows shall be left in the Rio Grande River at the Consolidated Slough headgate; the 25% ditch loss will be diverted at the Consolidated

Slough headgate and subsequently diverted by the Anderson Ditch. Such return flows and transit losses must be included in the Applicant’s accounting and projections. Until such time as a decree is granted in Case No. 16CW3024, the Applicant must maintain a valid SWSP approved under section 37-92-308(4) until all lagged return flow obligations resulting from the change of water rights approved by this SWSP have been fully replaced in time, location, and amount.

6. The fully consumable Anderson Ditch water previously stored in Rio Grande Reservoir can be leased to the Rio Grande Water Conservation District for its subdistricts augmentation, replacement, remedy (including by substitution an exchange), and for use as part of any of the RGWCD’s or its Subdistricts Annual Replacement Plans.
7. The Applicant shall install and maintain such measuring devices as required by the Division Engineer for operation of this SWSP. In order to determine the depletions resulting from Unconfined Well pumping, well pumping must be metered and the meters must be certified according to the Rules Governing the Measurement of Groundwater Diversions in the Rio Grande Basin as promulgated in Case No. 05CW12 and any amendments thereto.
8. Prior to the operation of any exchange, the Applicant is required to notify the water commissioner and obtain the water commissioner’s approval for the operation of the exchange at least 48 hours prior to operation, or less if allowed by the water commissioner. The Applicant is required to obtain the water commissioner’s approval on a daily basis or other interval as required by the water commissioner. The proposed exchanges are limited to operating only at times there is a continuous live stream between the exchange from and exchange to points and at times sufficient exchange potential exists to operate the exchange without injury to other water users.
9. The Colorado Water Conservation Board (CWCB) has instream flow (“ISF”) rights in the Rio Grande River as shown in the table below. If the ISF is not satisfied, CWCB will call for the curtailment of the proposed exchange to the Rio Grande Reservoir.

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
83CW40 (Div. 3)	Rio Grande	confl Squaw Creek	confl Clear Creek	20 (10/1 - 4/30) 55 (5/1 - 9/30)	08/16/1982
83CW49 (Div. 3)	Rio Grande	confl Clear Creek	confl Trout Creek	45 (10/1 - 4/30) 90 (5/1 - 9/30)	08/16/1982
83CW39 (Div. 3)	Rio Grande	confl Trout Creek	confl Goose Creek	65 (10/1 - 4/30) 150 (5/1 - 9/30)	08/16/1982
83CW42 (Div. 3)	Rio Grande	confl Goose Creek	confl S Fork Rio Grande	80 (10/1 - 4/30) 160 (5/1 - 9/30)	08/16/1982

10. Approval of this SWSP is contingent on the dry-up of up to 102.25 acres surrounding the City of Monte Vista, which are portions of the Applicant’s property as shown on the attached Figure 4. The lands to be dried up shall be monumented by the Applicant to the satisfaction of the water commissioner. The Applicant is required to construct tail water and cutoff ditches on the boundaries of the parcel to be dried-up as necessary to ensure that irrigation water is not applied to the lands to be dried-up. Any perennial crop (e.g. alfalfa) that is left growing in the fields to be dried-up will decrease the dry-up credit given to the Applicant.

11. The Applicant shall provide accounting on a **monthly basis**. The accounting must be submitted to the Division Engineer via the online submittal tool. Submission access was established under the previous SWSP approval, please contact Michelle Lanzoni at michelle.lanzoni@state.co.us with any questions related to accounting submission under this SWSP approval. Accounting must be submitted within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
12. The accounting provided shall include at a minimum the following:
 1. The amount in-priority of Monte Vista's Anderson Ditch water rights
 2. The amount of each water right bypassed at the Anderson Ditch headgate.
 3. The total amount of water delivered to the Rio Grande through the Consolidated Slough return channel.
 4. The portion of Monte Vista's Anderson Ditch water in the Consolidated Slough return channel.
 5. The amount of water diverted by the Anderson Ditch, including Monte Vista's portion to cover historical ditch losses.
 6. The farm headgate delivery amount, consumptive use credit, return flow obligations, and ditch losses associated with Monte Vista's changed Anderson Ditch water rights.
13. Regular communication with the Water Commissioner is required for the operation of this SWSP and may be required on a daily basis depending on river administration.
14. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.
15. Should a decree be entered in Case No. 16CW3024 before the SWSP expiration date, the provisions of the decree will supersede this SWSP and this SWSP will be deemed to be no longer in effect, unless continued use during the term of the SWSP is specifically allowed by the decree granted in Case No. 16CW3024. To the extent continued operation under the SWSP is granted by the court, the Applicant must comply with the decree conditions allowing such use in addition to complying with the terms and conditions of this SWSP.
16. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation or change of water right, all use of water under this SWSP must cease immediately.
17. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to section 37-92-308(4), C.R.S., shall be to the

Division 3 Water Judge within thirty days of the date of this decision and shall be consolidated with the application pending in Case No. 16CW3024.

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

Sincerely,



Sarah Brucker, P.E.
Assistant State Engineer

Attachments: Figures: 1,4 & 6
Tables: 6
Participation Contract - Special Improvement District No. 2
Attachment D - Rio Grande Reservoir Storage Lease Agreement
Attachment E - Water Lease Agreement
Attachment F - Trospen Ranch Parcel Dry-up Covenant
Attachment F - Valley Choice Parcel Dry-up Covenant

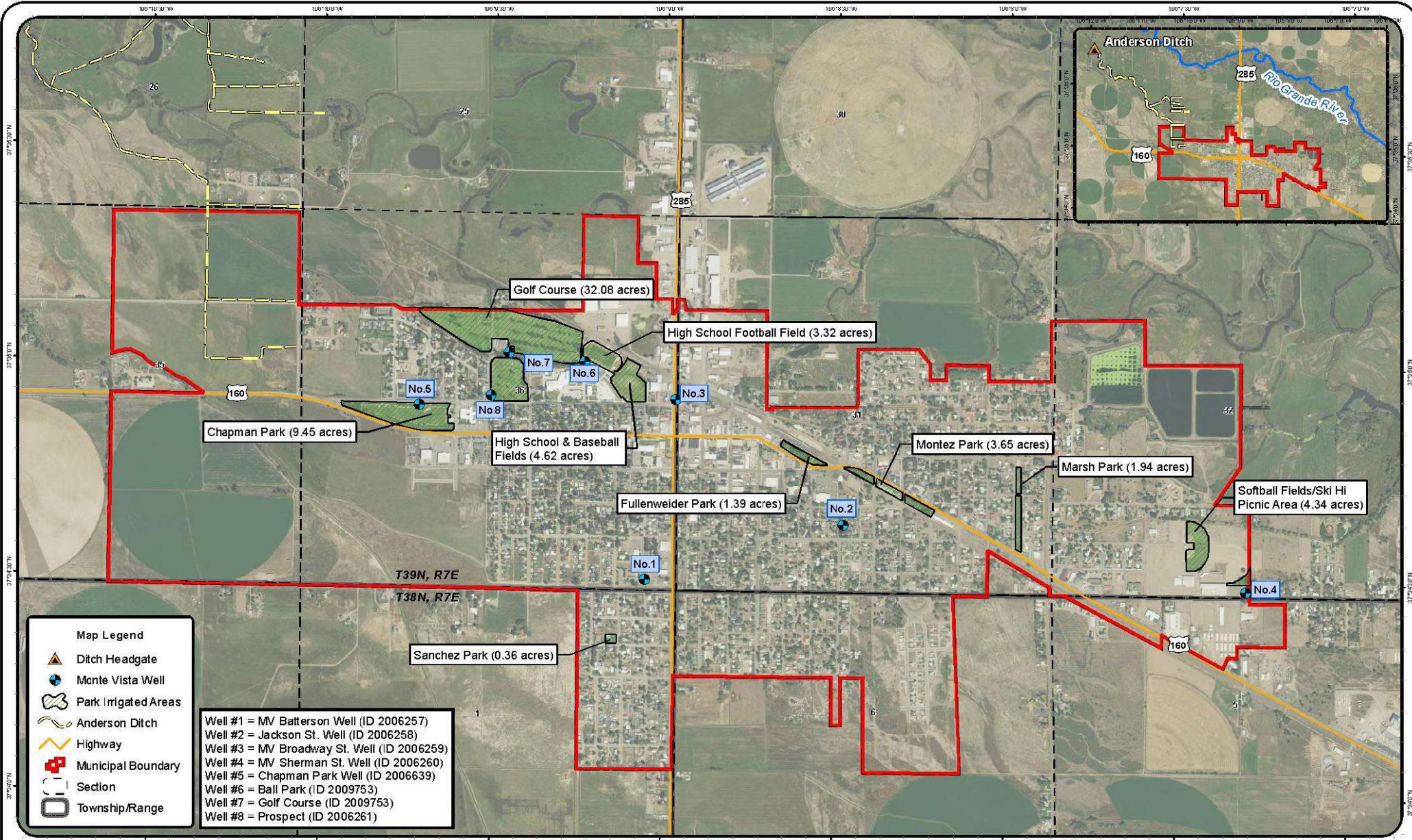
cc: Craig Cotten, Division 3 Engineer
Sam Riegenbach, District 20 Water Commissioner
Luis Heredia, District 20 Water Commissioner
Wayne Peck, District 20 Water Commissioner
Kevin Boyle, Division 3
Counsel of Record in Case No. 16CW3024

Table 6. Anderson Ditch Consumptive Use Analysis and Resulting Water Balance (values in AF)

Month	River Diversions	Farm Headgate Delivery	Potential Consumptive Use	Effect Precip	Net Potential Consumptive Use	Historical Consumptive Use	Average Estimated HCU per Acre	Reduction for Sub-Irrigation of Trospser Ranch Parcels	Resulting Historical Consumptive Use	Resulting Estimated HCU per Acre	Irrigation Return Flow					Net Depletions		Streamflow Return Requirement - Percent of Farm Headgate Delivery
											Historical Irrigation Return Flows	Surface Water Component (60%)	Unlagged Groundwater Component (40%)	Lagged Groundwater Obligations	Total Obligations	Total	Percent of Farm Headgate Diversion	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
January	-	-	-	-	-	-	-	-	-	-	-	-	-	13.72	13.72	(13.72)		
February	-	-	-	-	-	-	-	-	-	-	-	-	-	13.78	13.78	(13.78)		
March	-	-	-	-	-	-	-	-	-	-	-	-	-	13.70	13.70	(13.70)		
April	45.92	34.44	7.12	0.84	6.27	5.94	0.06	1.43	4.51	0.05	28.44	17.06	11.38	13.52	30.60	2.35	6.8%	93.2%
May	141.35	106.02	37.90	4.16	33.75	32.86	0.33	7.93	24.92	0.25	71.31	42.79	28.53	13.30	56.09	40.14	37.9%	62.1%
June	159.24	119.43	58.83	3.40	55.43	52.60	0.55	12.70	39.90	0.41	66.78	40.07	26.71	13.06	53.13	53.55	44.8%	55.2%
July	153.25	114.94	57.69	9.23	48.46	46.01	0.48	11.11	34.90	0.35	68.13	40.88	27.25	12.86	53.76	49.27	42.9%	57.1%
August	124.39	93.30	51.74	9.74	42.00	38.74	0.40	9.35	29.39	0.30	57.56	34.54	23.02	12.84	47.38	39.57	42.4%	57.6%
September	105.33	79.00	32.30	5.67	26.63	24.61	0.26	5.94	18.67	0.19	54.07	32.44	21.63	12.94	45.38	27.36	34.6%	65.4%
October	86.54	64.91	13.39	1.96	11.44	10.64	0.11	2.57	8.07	0.08	53.12	31.87	21.25	13.12	44.99	16.21	25.0%	75.0%
November	-	-	-	-	-	-	-	-	-	-	-	-	-	13.33	13.33	(13.33)		
December	-	-	-	-	-	-	-	-	-	-	-	-	-	13.55	13.55	(13.55)		
Annual	816.03	612.02	258.97	34.59	223.99	211.40	2.19	51.03	160.37	1.63	399.42	239.65	159.77	159.77	399.42	160.37		

Source:
Values generated using a Water Supply Limited Crop Consumptive Use by Structure Analysis in StateCU (Interface Version 7.0, FORTRAN Version 13.0)

- Column Notes:**
- 1) Pro-rata delivery of 3.23 cfs of Priority No. 90 and 143 in the Anderson Ditch used on the Trospser Ranch and Valley Choice Parcel for the period 1968-2010. Beginning in 2011, the pro-rata portion (63.3% or 1.73/2.73 cfs) was used for the Trospser Ranch Parcel and 1.5 cfs was used on the Valley Choice Parcel. Assumed farm headgate delivery from April 1 through October 31.
 - 2) Analysis assumed 75% ditch efficiency.
 - 3) Potential crop consumptive use as calculated by StateCU for 65.1 to 100.9 acres of grass pasture, potatoes, and alfalfa (see Table 12). Analysis used Upper Rio Grande Alt Calibrated Coefficients.
 - 4) Effective precipitation Anderson Ditch Parcels based on the Monte Vista 2W NOAA Climate Stations. Analysis assumes that irrigated fields are located at an average elevation of 7670 ft asl.
 - 5) Column 3 - Column 4.
 - 6) Historical consumptive use for the Anderson Ditch Parcels. Assumed 60 percent irrigation efficiency and utilized an available water capacity of 0.121 in/in (ALAMOSA-LAJARA-VASTINE (CO403)). Analysis assumes 0% of soil moisture capacity initially filled.
 - 7) Equals Column 6 / number of irrigated acres each month.
 - 8) Equals Column 6 reduced for sub-irrigation based upon the 2009 study by Agro Engineering for the Trospser Ranch Parcels. Weighted average reduction was approximately 24.3%. Assumed similar sub-irrigation on the Valley Choice Parcels.
 - 9) Equals Column 6 - Column 8
 - 10) Equals Column 9 / number of irrigated acres each month.
 - 11) Average monthly unconsumed water as calculated by StateCU
 - 12) Equals Column 11 x 60%.
 - 13) Equals Column 11 x 40%.
 - 14) Equals Column 13 lagged using monthly lagged streamflow depletion factors calculated using IDS AWAS. Transmissivity of 66,690 gpd/ft, S = 25%. Trospser Ranch Parcel X = 7,714 feet. Valley Choice Parcel X = 7,059 feet.
 - 15) Equals Column 12 + Column 14.
 - 16) Equals Column 9 + Column 11 - Column 15. Accretions are positive and depletions are shown in red parentheses.
 - 17) Equals positive values from Column 16 / Column 2.
 - 18) Equals 1 - Column 17.



Map Legend

- Ditch Headgate
- Monte Vista Well
- Park Irrigated Areas
- Anderson Ditch
- Highway
- Municipal Boundary
- Section
- Township/Range

- Well #1 = MV Batterson Well (ID 2006257)
- Well #2 = Jackson St. Well (ID 2006258)
- Well #3 = MV Broadway St. Well (ID 2006259)
- Well #4 = MV Sherman St. Well (ID 2006260)
- Well #5 = Chapman Park Well (ID 2006639)
- Well #6 = Ball Park (ID 2009753)
- Well #7 = Golf Course (ID 2009753)
- Well #8 = Prospect (ID 2006261)

Figure 1
Water Supply Map
 City of Monte Vista

SGM
 555 Rivergate Ln, Suite 64-62
 Durango, CO 81301
 970.255.2244
 www.sgm-tc.com

Date: 1/13/2021	Job No: 136-09	Map by: ANW	Checked by: NJD	Scale: 1:100,000
Data Sources: Aerial Photograph - Summer 2015, Roads - Colorado Department of Transportation, Township and Range - US Bureau of Land Management, Town Boundary - Department of Local Affairs, Irrigated Acreage - Davis Engineering Report 2006.				
File: P:\Project Files\136-09 City of Monte Vista\Mapping\ArcMap\2021\Fig1-WtrSupply.mxd				
The information displayed above is intended for general planning purposes. Refer to legal documentation for details and sources for descriptions/locations.				

0 1,200 2,400 Feet
 1 inch = 1,200 feet



106°10'30"W

106°10'0"W

106°9'30"W

37°35'30"N

37°35'00"N

37°35'00"N

37°35'00"N

37°34'30"N

37°34'30"N

13.8 acres

26.1 acres

22 acres

20 acres

18.6 acres

Trosper Ranch Parcel

Valley Choice Parcel

Valley Choice Parcel

Trosper Ranch Parcel

160

Map Legend

-  Anderson Ditch
-  Highway
-  Irrigated Area
-  Anderson Ditch Irrigated Parcel

Figure 4
Anderson Ditch
 September 25, 2017
 City of Monte Vista

Date: 1/28/2021 Job No. 136 U9 U6 Map by: ANW NJD Scale: 1:9,600
 Data Sources: Rio Grande County Assessor, USDA - National Agriculture Imagery Program

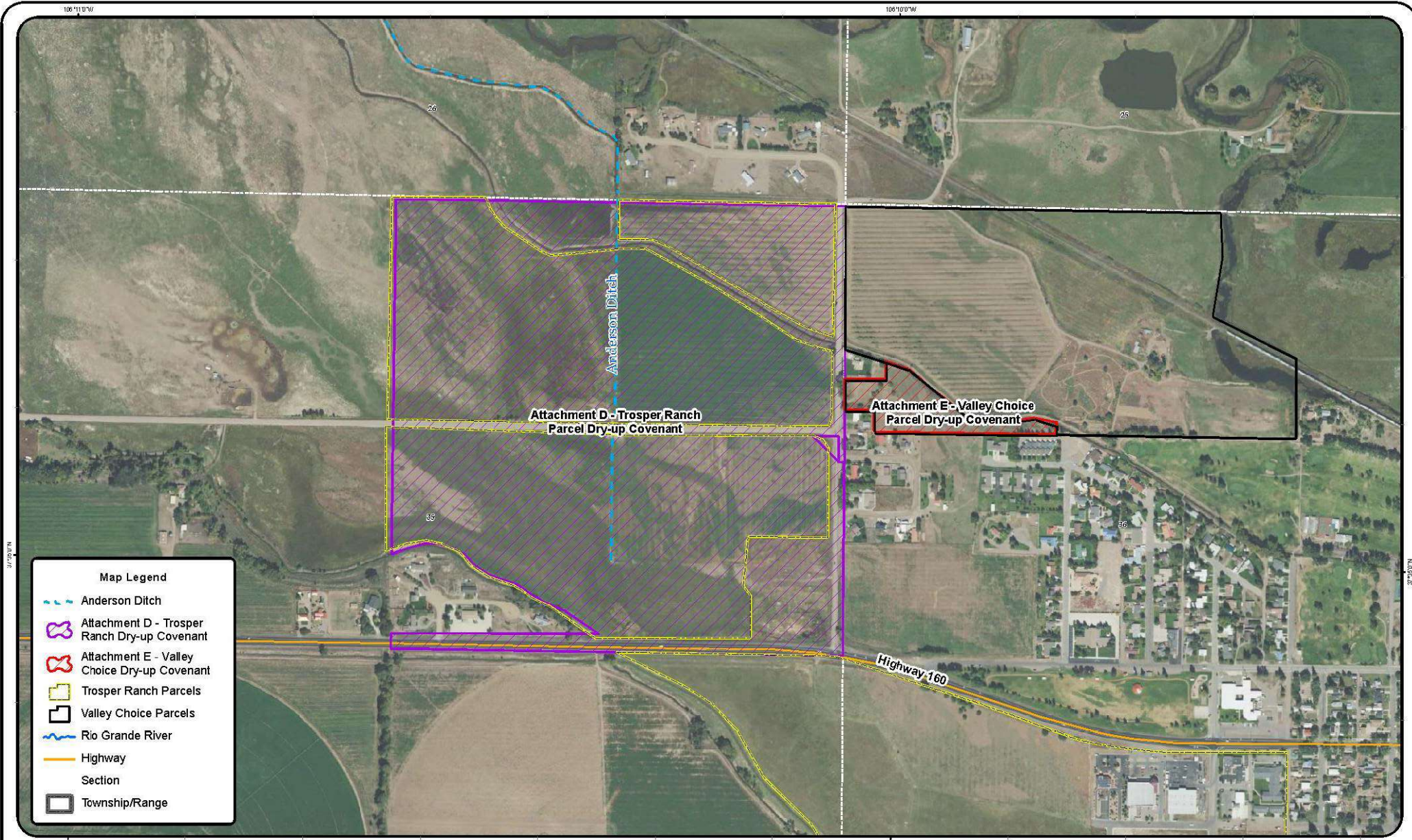
File: P:\Project Files\136-09 City of Monte Vista\Mapping\Arch\ap2021\Fig4 Anderson_2017.mxd

The information displayed above is intended for general planning purposes. Refer to legal documentation on data sources for descriptions/locations.

0 600 Feet
 1 inch = 800 feet



SGM
 555 RiverGate Ln, Suite B4-B2
 Durango, CO 81301
 970.385.2340
 www.sgm-inc.com

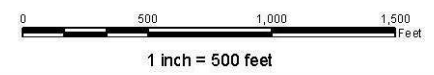


Map Legend

- Anderson Ditch
- Attachment D - Trospers Ranch Dry-up Covenant
- Attachment E - Valley Choice Dry-up Covenant
- Trospers Ranch Parcels
- Valley Choice Parcels
- Rio Grande River
- Highway
- Section
- Township/Range

Figure 6
Monte Vista Dry-Up Covenants
 City of Monte Vista

Date: 1/28/2021	Job No. 136-09	Map by: ANW	Checked by: NJD	Scale: 1:6,000
Data Sources: CDOT, DWR, BLM, USDA NAIP 2017 Imagery				
File: P:\Project Files\136-09 City of Monte Vista\Mapping\ArcMap2021\Fig6_Dry-Up.mxd				
The information displayed above is intended for general planning purposes. Refer to legal document for data sources for descriptions/locations.				



PARTICIPATION CONTRACT

**SPECIAL IMPROVEMENT DISTRICT NO. 6
OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

PURPOSE

THIS CONTRACT is entered into on this 4th day of September, 2020 by and between SPECIAL IMPROVEMENT DISTRICT NO. 6 of the RIO GRANDE WATER CONSERVATION DISTRICT WATER ACTIVITY ENTERPRISE ("Subdistrict No. 6") and the CITY OF MONTE VISTA ("Monte Vista") (sometimes referred to herein jointly as the "Parties" or in the singular as "Party").

The purpose of this Contract is to allow Monte Vista to seek inclusion in the Annual Replacement Plan pursuant to the Plan of Water Management of Subdistrict No. 6 to remedy or replace Monte Vista's injurious depletions, if any, to the Rio Grande, Alamosa River and Conejos River caused by groundwater withdrawals from Monte Vista's groundwater wells, in compliance with the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights ("Groundwater Rules"), as approved in Case No. 15CW3024, Water Division 3.

BACKGROUND INFORMATION

1. Relying upon the Rio Grande Decision Support System ("RGDSS") and its groundwater model, the State Engineer has determined that the withdrawal of groundwater by wells in Water Division 3 will cause injurious depletions to senior water rights if adequate remedies are not made.
2. Well owners and water users in the San Luis Valley, working in conjunction with the Rio Grande Water Conservation District, sought to form a Subdistrict of the Rio Grande Water Conservation District in order to provide a mechanism to finance the acquisition of replacement water or other remedies to ensure that injurious depletions do not occur, and to promote a sustainable groundwater aquifer within subdistrict boundaries.
3. Subdistrict No. 6 was duly formed and is operating under an approved Plan of Water Management effective September 25, 2019 ("POWM"). The POWM will be executed annually through an Annual Replacement Plan ("ARP")

Attachment A - Monte Vista's Contract with Subdistrict No. 6

submitted to and approved by the State Engineer. Among the provisions of the approved POWM is the opportunity for Subdistrict No. 6 to enter into contracts with non-subdistrict well owners to provide replacement supplies for those wells as part of an ARP.

4. Subdistrict No. 6 lands are only the lands within the exterior boundaries of the Subdistrict. Wells serving Subdistrict No. 6 lands are Subdistrict Wells. Other wells may only be included in an ARP if there is a contract that provides for inclusion.
5. In order to calculate the time, location, and amount of injurious depletions, the State Engineer, using the RGDSS Groundwater Model, has developed response function areas, including a response function area that encompasses the lands that comprise Subdistrict No. 6.
6. In the stipulation between Monte Vista and the State Engineer entered in Case No. 15CW3024, and attached hereto as **Exhibit 1**, the State Engineer agreed that pursuant to section 37-92-501(4)(b)(I), C.R.S. and Rule 5.12 of the Groundwater Rules, a well user may enter into contractual agreements with "water users, water user associations, water conservancy districts, ground water management subdistricts, and the Rio Grande Water Conservation District, ["Contracting Entities"] pursuant to which: [w]ater is added to the system to assist in meeting the Rio Grande compact delivery schedules or to replace depletions to stream flows resulting from the use of underground water; or . . . injury to senior surface water rights resulting from the use of underground water is remedied by means other than providing water to replace stream depletions." **Exhibit 1**, ¶ 5 (quoting §§ 37-92-501(4)(b)(I), -(I)(B), C.R.S.) The State Engineer also agreed that "[s]uch contractual agreements may be incorporated into Rule 6.1.1, 6.1.2, and 6.1.3 Plans and Annual Replacement Plans to meet the requirements of the Groundwater Rules in whole or in part." *Id.*
7. Also in the stipulation between Monte Vista and the State Engineer entered in Case No. 15CW3024, the State Engineer further agreed that Rule 6.1 Plans and Annual Replacement Plans "may include one or more contractual agreements pursuant to which one of the Contracting Entities assumes or assigns by contract some or all of the responsibility for replacing or Remediating the Injurious Stream Depletions which otherwise must be replaced or Remedied by another Contracting Entity for compliance with the [Groundwater Rules]. One Contracting Entity may also assume or assign by contract some or all of the responsibility incurred by another Contracting Entity to meet the requirements of Rule 8." *Id.* ¶ 6. The State Engineer also agreed that "Contracting Entities may use consolidated accounting to assign Injurious Stream Depletions

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among the Contracting Entities for replacement or Remedy and to meet the Requirements of Rule 8 in their respective Rule 6.1 Plans and Annual Replacement Plans." *Id.*

8. The Board of Managers of Subdistrict No. 6 has determined that all wells within the Response Area encompassing Subdistrict No. 6 can fairly be included in an ARP in order to remedy their injurious depletions, if any.
9. This contract applies to five wells in the confined aquifer owned by Monte Vista and described below ("Monte Vista Wells").
10. Subdistrict No. 6 desires to enter into this contract in order to assume responsibility for replacing and remedying injurious depletions accruing to the Alamosa and Conejos Rivers caused by the Monte Vista Wells. Subdistrict No. 6 will offset its own calculated injurious depletions to the Rio Grande with effluent return flows from the Monte Vista Wells that accrue to the Rio Grande.
11. Monte Vista desires to enter into this contract in order to assign Monte Vista's responsibility for replacing injurious depletions on the Alamosa and Conejos Rivers, as well as Monte Vista's responsibility to maintain a sustainable aquifer, to Subdistrict No. 6.

Accordingly, the parties agree as follows:

SPECIFIC CONTRACT CONDITIONS

12. This Contract will begin operating on the date remedy of injurious depletions is first required under Subdistrict No. 6's first ARP, and will remain in effect for five additional ARP years, until April 30, 2026. This Contract will automatically renew for subsequent five year terms if all of the conditions herein contained are continuously met. If a party wishes to terminate the Contract, the terminating party will provide written notice of termination to the other party at least two years prior to the date of the next five-year renewal term.
13. Monte Vista provides the following information concerning its wells:
 - 13.1 Owner's name: City of Monte Vista
 - 13.2 Well permit numbers:
 - 13.2.1 Well 1: 4551-R
 - 13.2.2 Well 2: 4552-R
 - 13.2.3 Well 3: 4553-R

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- 13.2.4 Well 4: 13163-F
- 13.2.5 Well 8: 33733-F
- 13.3 Well water right decree number (if applicable):
 - 13.3.1 Wells 1-4: Case No. W-847
 - 13.3.2 Well 8: Case No. 88CW13
- 13.4 Water District Identification Number, WDID:
 - 13.4.1 Well 1: 2006257
 - 13.4.2 Well 2: 2006258
 - 13.4.3 Well 3: 2006259
 - 13.4.4 Well 4: 2006260
 - 13.4.5 Well 8: 2006261
- 13.5 Designated beneficial use:
 - 13.5.1 Well 1: Domestic and municipal
 - 13.5.2 Well 2: Domestic and municipal
 - 13.5.3 Well 3: Domestic
 - 13.5.4 Well 4: Domestic and municipal
 - 13.5.5 Well 8: Domestic and municipal (Alternate point of diversion for Wells 1-4)
- 13.6 Permitted withdrawal capacity:
 - 13.6.1 Well 1: 1,100 gpm (2.45 cfs)
 - 13.6.2 Well 2: 1,800 gpm (4.01 cfs)
 - 13.6.3 Well 3: 1,200 gpm (2.67 cfs)
 - 13.6.4 Well 4: 2,300 gpm (5.12 cfs)
 - 13.6.5 Well 8: 2,000 gpm (4.46 cfs)
- 13.7 Well locations:

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- 13.7.1 Well 1: SE 1/4, SE 1/4, Section 36, Township 39 North, Range 7 East, NMPM at a point 150 feet from the South Section line and 250 feet from East Section line in Rio Grande County, Colorado.
- 13.7.2 Well 2: SE 1/4, SW 1/4, Section 31, Township 39 North, Range 8 East, NMPM at a point 2,420 feet from the West Section line and 900 feet from South Section line in Rio Grande County, Colorado.
- 13.7.3 Well 3: SW 1/4, NW 1/4, Section 31, Township 39 North, Range 8 East, NMPM at a point 2,500 feet from the North Section line and 100 feet from West Section line in Rio Grande County, Colorado.
- 13.7.4 Well 4: SW 1/4, SE 1/4, Section 32, Township 39 North, Range 8 East, NMPM at a point 2,725 feet from the West Section line and 100 feet from South Section line in Rio Grande County, Colorado.
- 13.7.5 Well 8: SW 1/4, NE 1/4, Section 36, Township 39 North, Range 7 East, NMPM at a point 2,550 feet from the North Section line and 2,550 feet from East Section line in Rio Grande County, Colorado.
- 13.8 Description of place of use: City of Monte Vista service area
- 13.9 Description of period of use (year-round, or if seasonal, the specific months of use): year-round
14. The parties hereby agree that in consideration for Subdistrict No. 6 replacing or remedying injurious depletions of the Monte Vista Wells, and for maintaining a sustainable aquifer, Monte Vista will offset Subdistrict No. 6's calculated injurious depletions to the Rio Grande with Monte Vista's wastewater effluent return flows that accrue from Monte Vista's Wells to the Rio Grande.
15. Monte Vista's Further Commitments:
- 15.1 Monte Vista shall, if required by Subdistrict No. 6, submit well meter readings to Subdistrict No. 6 in the manner specified by Subdistrict No. 6 from time to time but in any event no later than December 31 of every year, or by such date as determined by the Board of Managers, this Contract is in force and effect, and to supplement or correct any submitted data as requested by Subdistrict No. 6.

Attachment A - Monte Vista's Contract with Subdistrict No. 6

- 15.2 Monte Vista and Subdistrict No. 6 acknowledge and agree that well depletions from the use of the Monte Vista Wells will continue to create depletions for up to 15 years after groundwater withdrawal occurs, and that Subdistrict No. 6 will replace such delayed injurious depletions.
 - 15.3 Monte Vista recognizes that Subdistrict No. 6 will use its best efforts in acquiring replacement water supplies or other remedies sufficient to permit the use of the Monte Vista Wells in the same manner as all other Subdistrict No. 6 wells, but also recognizes that Subdistrict No. 6 cannot guarantee that adequate replacement supplies will be available in any given year, which may result in restrictions on groundwater withdrawals by the Division Engineer in any particular year. Monte Vista hereby waives any claims against Subdistrict No. 6 and its Board of Managers if sufficient replacement water or remedies cannot be obtained.
 - 15.4 Monte Vista agrees that it has reviewed and understands the POWM and its appendices, as well as the Rules and Regulations of Subdistrict No. 6. Monte Vista agrees to fully comply with the POWM and its appendices, the ARP, and all rules and regulations duly promulgated by the Board of Managers of Subdistrict No. 6, and furthermore agrees not to challenge the same.
16. Subdistrict No. 6 Obligations:
 - 16.1 Subdistrict No. 6 shall use its best efforts in securing replacement supplies or other remedies sufficient to provide replacement for injurious depletions caused by the Monte Vista Wells during every year in which this Contract is in force and effect. Subdistrict No. 6 shall treat the Monte Vista Wells the same as other Subdistrict No. 6 wells for this purpose, and shall promptly notify Monte Vista in the event that Subdistrict No. 6 is unable to acquire sufficient supplies or other remedies in any year.
 - 16.2 Subdistrict No. 6 shall cover injurious depletions to the Alamosa and Conejos Rivers calculated as accruing from the operation of the Monte Vista Wells in the current year and the delayed depletions accruing in the subsequent 15 years.
 - 16.3 Subdistrict No. 6 agrees and commits to use its best efforts to meet the requirement in the Groundwater Rules of a proportional responsibility for achieving and maintaining a Sustainable Water Supply in the Confined Aquifer during every year in which this Contract is in force and effect, to treat the Contract Wells the same

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as other Subdistrict wells for this purpose, and to provide Monte Vista with prompt notification should Subdistrict No. 6 prove unable to meet this requirement in any year.

- 16.4 Subdistrict No. 6 shall undertake all legal and engineering work necessary to ensure that the POWM and ARP receive full and fair consideration by the State Engineer and to seek to have the ARP approved annually by the State Engineer for the Monte Vista Wells and all other wells covered by the POWM and ARP.

GENERAL CONDITIONS

17. **Notices.** All notices and other communications that are required or permitted to be given to the parties under this Contract shall be sufficient in all respects if given in writing and delivered in person, 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:

If to Monte Vista:

City Manager
95 W 1st Avenue
Monte Vista, CO 81144

With copy to:
Berg Hill Greenleaf Ruscitti LLP
1712 Pearl St.
Boulder, CO 80302

If to Subdistrict No. 6:

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

or such other address as such party may have given to the other by notice pursuant to this Paragraph.

18. **Assignment.** This Contract may not be assigned by any Party without the prior written consent of each of the other Parties. Any attempted assignment in violation of this provision shall be void.
19. **No Costs or Attorneys' Fees.** In the event of any litigation or other dispute resolution process arising out of this Contract, the Parties agree that each shall be responsible for its own costs and attorney's or other fees

Attachment A - Monte Vista's Contract with Subdistrict No. 6

associated with any such action.

20. **Entire Agreement; Amendments.** This Contract (together with any exhibits hereto, which constitute parts of this Contract and which are hereby incorporated by this reference) constitutes the entire agreement between the Parties relating to the subject matter hereof. All prior or contemporaneous oral agreements and discussions among all of the Parties or their respective agents or representatives relating to the subject hereof are merged into this Contract. This Contract may be altered, amended, or revoked only by an instrument in writing signed by all of the Parties. Email and all other electronic (including voice) communications from any Party in connection with this Contract are for informational purposes only. No such communication is intended by any Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by any Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
21. **Applicable Law.** This Contract shall be governed by and construed according to Colorado law.
22. **Waiver.** The failure of one of the Parties to insist upon the strict performance of any provision of this Contract or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Contract or limit that Party's, or any other Parties', right thereafter to any provision or to exercise any right.
23. **Captions.** All captions contained in this Contract are for convenience only and shall not be deemed to be part of this Contract.
24. **Counterparts.** This Contract may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
25. **Parties Bound by Agreement.** This Contract is binding upon the Parties hereto and upon their respective, legal representatives and successors.
26. **Construction.** All section, paragraph, and exhibit references used in this Contract are references to this Contract unless otherwise specified.
27. **Authorizations.** The governing bodies of each of the Parties have authorized by resolution the execution of this Contract.
28. **No Third Party Beneficiaries.** This Contract is intended to describe the rights and responsibilities of and between the Parties and is not intended

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to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto.

29. **Force Majeure.** Subject to the terms and conditions in this paragraph, no party to this Contract shall be liable for any delay or failure to perform under this Contract due solely to conditions or events of force majeure, specifically (a) acts of God, (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, (c) sabotage, (d) vandalism beyond that which can be reasonable prevented, (e) terrorism, (f) war, (g) riots, (h) pandemics, epidemics, or quarantines (either global, national, or local), or (i) governmental moratoriums, restrictions, or prohibitions, provided that: (A) the non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the force majeure; (B) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure event or condition; and (C) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing the actions taken to remedy the consequences of the force majeure event or condition. In the event of a change in municipal (or other local governmental entity), state, or federal law or practice that prohibits or delays performance, the obligation to seek a remedy shall extend to making reasonable efforts to reform the Contract in a manner consistent with the change that provides the Parties substantially the same benefits as this Contract, provided, however, that no such reformation shall increase the obligations of any of the Parties. In the event any delay or failure of performance on the part of the party claiming force majeure continues for an uninterrupted period of more than 365 days from its occurrence or inception as noticed pursuant to this Contract, all of the Parties not claiming force majeure may, at any time following the end of such one year period, terminate this Contract upon written notice to the Party claiming force majeure, without further obligation by any of the Parties; provided, however, that any such decision to terminate this Contract shall not be effective unless agreed to by all of the Parties not claiming force majeure.
30. **Non-Business Days.** If any date for any action under this Contract falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Federal Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.
31. **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, drafted this Contract jointly.
32. **Non-Severability.** Each paragraph of this Contract is intertwined with

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the others and is not severable unless by mutual consent of the Parties.

- 33. **Effect of Invalidity.** If any portion of this Contract is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

This Agreement is effective as of the day and year first above written.

**SPECIAL IMPROVEMENT
DISTRICT NO. 6 OF THE RIO
GRANDE WATER
CONSERVATION DISTRICT**

**CITY OF MONTE VISTA,
COLORADO**

By: *Amber Pacheco*
Name: *Amber Pacheco*
Title: *Program Manager*

By: *Forrest H. Neuerburg*
Name: Forrest H. Neuerburg
Title: City Manager

ATTEST:

Name:

Title:

ATTEST:

Unita Vance
Name: Unita Vance

Title: Monte Vista City Clerk

Attachment C - Monte Vista's Contract with Subdistrict No. 2

PARTICIPATION CONTRACT

SPECIAL IMPROVEMENT DISTRICT NO. 2 OF THE RIO GRANDE WATER CONSERVATION DISTRICT

PURPOSE

THIS CONTRACT is entered into on this 26 day of February, 2021 by and between SPECIAL IMPROVEMENT DISTRICT NO. 2 of the RIO GRANDE WATER CONSERVATION DISTRICT WATER ACTIVITY ENTERPRISE ("Subdistrict No. 2") and the CITY OF MONTE VISTA ("Monte Vista") (sometimes referred to herein jointly as the "Parties" or in the singular as "Party").

The purpose of this Contract is to allow Monte Vista to seek inclusion in the Annual Replacement Plan pursuant to the Plan of Water Management of Subdistrict No. 2 to remedy or replace Monte Vista's injurious depletions, if any, to the Rio Grande caused by groundwater withdrawals from certain groundwater wells owned by Monte Vista, in compliance with the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights ("Groundwater Rules"), as approved in Case No. 15CW3024, Water Division 3.

BACKGROUND INFORMATION

1. Relying upon the Rio Grande Decision Support System ("RGDSS") and its groundwater model, the State Engineer has determined that the withdrawal of groundwater by wells in Water Division 3 will cause injurious depletions to senior water rights if adequate remedies are not made.
2. Well owners and water users in the San Luis Valley, working in conjunction with the Rio Grande Water Conservation District, sought to form a Subdistrict of the Rio Grande Water Conservation District in order to provide a mechanism to finance the acquisition of replacement water or other remedies to ensure that injurious depletions to senior surface rights do not occur as a result of groundwater withdrawals from Subdistrict Wells.
3. Subdistrict No. 2 was duly formed and is operating under an approved Plan of Water Management effective August 9, 2018 ("POWM"). The POWM will be executed annually through an Annual Replacement Plan ("ARP")

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submitted to and approved by the State Engineer. Among the provisions of the approved POWM is the opportunity for Subdistrict No. 2 to enter into contracts with non-subdistrict well owners to provide replacement supplies for those wells as part of an ARP.

4. Subdistrict No. 2 lands are only the lands within the exterior boundaries of the Subdistrict. Wells serving Subdistrict No. 2 lands are Subdistrict Wells. Other wells may only be included in an ARP if there is a contract that provides for inclusion.
5. In order to calculate the time, location, and amount of injurious depletions, the State Engineer, using the RGDSS Groundwater Model, has developed response function areas, including a response function area that encompasses the lands that comprise Subdistrict No. 2.
6. In the stipulation between Monte Vista and the State Engineer entered in Case No. 15CW3024, and attached hereto as **Exhibit 1**, the State Engineer agreed that pursuant to section 37-92-501(4)(b)(I), C.R.S. and Rule 5.12 of the Groundwater Rules, a well user may enter into contractual agreements with “water users, water user associations, water conservancy districts, ground water management subdistricts, and the Rio Grande Water Conservation District, [“Contracting Entities”] pursuant to which: [w]ater is added to the system to assist in meeting the Rio Grande compact delivery schedules or to replace depletions to stream flows resulting from the use of underground water; or . . . injury to senior surface water rights resulting from the use of underground water is remedied by means other than providing water to replace stream depletions.” **Exhibit 1**, ¶ 5 (quoting §§ 37-92-501(4)(b)(I), -(I)(B), C.R.S.) The State Engineer also agreed that “[s]uch contractual agreements may be incorporated into Rule 6.1.1, 6.1.2, and 6.1.3 Plans and Annual Replacement Plans to meet the requirements of the Groundwater Rules in whole or in part.” *Id.*
7. Also in the stipulation between Monte Vista and the State Engineer entered in Case No. 15CW3024, the State Engineer further agreed that Rule 6.1 Plans and Annual Replacement Plans “may include one or more contractual agreements pursuant to which one of the Contracting Entities assumes or assigns by contract some or all of the responsibility for replacing or Remedying the Injurious Stream Depletions which otherwise must be replaced or Remedied by another Contracting Entity for compliance with the [Groundwater Rules]. One Contracting Entity may also assume or assign by contract some or all of the responsibility incurred by another Contracting Entity to meet the requirements of Rule 8.” *Id.* ¶ 6. The State Engineer also agreed that “Contracting Entities may use consolidated accounting to assign Injurious Stream Depletions

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among the Contracting Entities for replacement or Remedy and to meet the Requirements of Rule 8 in their respective Rule 6.1 Plans and Annual Replacement Plans.” *Id.*

8. The Board of Managers of Subdistrict No. 2 has determined that all wells within the Response Area encompassing Subdistrict No. 2 can fairly be included in an ARP in order to remedy their injurious depletions, if any.
9. This contract applies to three wells in the unconfined aquifer owned by Monte Vista and described below (“Monte Vista Unconfined Wells”).
10. Subdistrict No. 2 desires to enter into this contract in order to assume responsibility for replacing and remedying injurious depletions accruing to the Rio Grande caused by the Monte Vista Unconfined Wells. Subdistrict No. 2 will offset its own calculated injurious depletions to the Rio Grande with the RGDSS-modeled point source return flows from the Monte Vista Unconfined Wells that accrue to the Rio Grande. The RGDSS-modeled return flows from the Monte Vista Unconfined Wells are altogether separate from its confined aquifer wells used for its treated municipal supply. Monte Vista’s entire confined aquifer wells and resulting return flows are the subject of a separate contract between Monte Vista and Subdistrict No. 6.
11. Monte Vista desires to enter into this contract in order to assign Monte Vista’s responsibility for replacing injurious depletions on the Rio Grande to Subdistrict No. 2.

Accordingly, the parties agree as follows:

SPECIFIC CONTRACT CONDITIONS

12. This Contract will begin operating under Subdistrict No. 2’s 2021 ARP, and will remain in effect for five additional ARP years, until April 30, 2025. This Contract will automatically renew for subsequent five year terms if all of the conditions herein contained are continuously met. If a party wishes to terminate the Contract, the terminating party will provide written notice of termination to the other party at least two years prior to the date of the next five-year renewal term.
13. Monte Vista provides the following information concerning its wells:
 - 13.1 Owner’s name: City of Monte Vista
 - 13.2 Well permit numbers:
 - 13.2.1 Well 5: 9347-F

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- 13.2.2 Well 6: N/A
- 13.2.3 Well 7: N/A
- 13.3 Well water right decree number (if applicable): W-847 for all three wells.
- 13.4 Water District Identification Number, WDID:
 - 13.4.1 Well 5: 2006639
 - 13.4.2 Well 6: 2009752
 - 13.4.3 Well 7: 2009753
- 13.5 Designated beneficial use:
 - 13.5.1 Well 5: Domestic and municipal
 - 13.5.2 Well 6: Irrigation
 - 13.5.3 Well 7: Irrigation
- 13.6 Decreed withdrawal capacity:
 - 13.6.1 Well 5: 600 gpm, being 1.34 cfs and 2.68 acre-feet in 24 hours
 - 13.6.2 Well 6: 190 gpm, being 0.423 cfs and 0.846 acre-feet in 24 hours
 - 13.6.3 Well 7: 1,900 gpm, being 4.23 cfs and 8.46 acre-feet in 24 hours
- 13.7 Well locations:
 - 13.7.1 Well 5: NE1/4, SW1/4, Section 36, Township 39 North, Range 7 East, NMPM, at a point 2,575 feet from the South Section line and 1,550 feet from the West Section line, in Rio Grande County, Colorado.
 - 13.7.2 Well 6: SE1/4, NW1/4, Section 36, Township 39 North, Range 7 East, NMPM, at a point 1,575 feet from the North Section line and 1,700 feet from the West Section line, in Rio Grande County, Colorado
 - 13.7.3 Well 7: SW1/4, NE1/4, Section 36, Township 39 North, Range 7 East, NMPM, at a point 2,575 feet from the North Section

Attachment C - Monte Vista's Contract with Subdistrict No. 2

line and 2,420 feet from the East Section line, in Rio Grande County, Colorado.

- 13.8 Description of place of use: City of Monte Vista service area
- 13.9 Description of period of use (year-round, or if seasonal, the specific months of use): seasonal irrigation (April through October).
14. The parties hereby agree that in consideration for Subdistrict No. 2 replacing or remedying injurious depletions of the Monte Vista Unconfined Wells, Monte Vista will offset Subdistrict No. 2's calculated injurious depletions to the Rio Grande with any RGDSS modeled point flow returns that accrue from the Monte Vista Unconfined Wells to the Rio Grande.
15. Monte Vista's Further Commitments:
 - 15.1 Monte Vista shall, if required by Subdistrict No. 2, submit well meter readings to Subdistrict No. 2 in the manner specified by Subdistrict No. 2 from time to time but in any event no later than December 31 of every year, or by such date as determined by the Board of Managers, this Contract is in force and effect, and to supplement or correct any submitted data as requested by Subdistrict No. 2.
 - 15.2 Monte Vista and Subdistrict No. 2 acknowledge and agree that well depletions from the use of the Monte Vista Unconfined Wells will continue to create depletions for up to 7 years after groundwater withdrawal occurs, and that Subdistrict No. 2 will replace such delayed injurious depletions. Monte Vista will be responsible for all post-plan depletions as part of its plan for augmentation after such decree becomes a final, non-appealable decree of the court.
 - 15.3 Monte Vista recognizes that Subdistrict No. 2 will use its best efforts in acquiring replacement water supplies or other remedies sufficient to permit the use of the Monte Vista Unconfined Wells in the same manner as all other Subdistrict No. 2 wells, but also recognizes that Subdistrict No. 2 cannot guarantee that adequate replacement supplies will be available in any given year, which may result in restrictions on groundwater withdrawals by the Division Engineer in any particular year. Monte Vista hereby waives any claims against Subdistrict No. 2 and its Board of Managers if sufficient replacement water or remedies cannot be obtained.
 - 15.4 Monte Vista agrees that it has reviewed and understands the POWM and its appendices, as well as the Rules and Regulations of

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Subdistrict No. 2. Monte Vista agrees to fully comply with the POWM and its appendices, the ARP, and all rules and regulations duly promulgated by the Board of Managers of Subdistrict No. 2, and furthermore agrees not to challenge the same.

16. Subdistrict No. 2 Obligations:

- 16.1 Subdistrict No. 2 shall use its best efforts in securing replacement supplies or other remedies sufficient to provide replacement for injurious depletions caused by the Monte Vista Unconfined Wells during every year in which this Contract is in force and effect. Subdistrict No. 2 shall treat the Monte Vista Unconfined Wells the same as other Subdistrict No. 2 wells for this purpose, and shall promptly notify Monte Vista in the event that Subdistrict No. 2 is unable to acquire sufficient supplies or other remedies in any year.
- 16.2 Subdistrict No. 2 shall cover injurious depletions to the Rio Grande calculated as accruing from the operation of the Monte Vista Unconfined Wells in the current year and the delayed depletions accruing in the subsequent 7 years. Monte Vista will be responsible for all post-plan depletions as part of its plan for augmentation after such decree becomes a final, non-appealable decree of the court.
- 16.4 Subdistrict No. 2 shall undertake all legal and engineering work necessary to ensure that the POWM and ARP receive full and fair consideration by the State Engineer and to seek to have the ARP approved annually by the State Engineer for the Monte Vista Unconfined Wells and all other wells covered by the POWM and ARP.

GENERAL CONDITIONS

17. **Notices.** All notices and other communications that are required or permitted to be given to the parties under this Contract shall be sufficient in all respects if given in writing and delivered in person, 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:

If to Monte Vista:

City Manager
95 W 1st Avenue
Monte Vista, CO 81144

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With copy to:
Berg Hill Greenleaf Ruscitti LLP
1712 Pearl St.
Boulder, CO 80302

If to Subdistrict No. 2: General Manager
Rio Grande Water Conservation
District
8805 Independence Way
Alamosa, CO 81101

or such other address as such party may have given to the other by notice pursuant to this Paragraph.

18. **Assignment.** This Contract may not be assigned by any Party without the prior written consent of each of the other Parties. Any attempted assignment in violation of this provision shall be void.
19. **No Costs or Attorneys' Fees.** In the event of any litigation or other dispute resolution process arising out of this Contract, the Parties agree that each shall be responsible for its own costs and attorney's or other fees associated with any such action.
20. **Entire Agreement; Amendments.** This Contract (together with any exhibits hereto, which constitute parts of this Contract and which are hereby incorporated by this reference) constitutes the entire agreement between the Parties relating to the subject matter hereof. All prior or contemporaneous oral agreements and discussions among all of the Parties or their respective agents or representatives relating to the subject hereof are merged into this Contract. This Contract may be altered, amended, or revoked only by an instrument in writing signed by all of the Parties. Email and all other electronic (including voice) communications from any Party in connection with this Contract are for informational purposes only. No such communication is intended by any Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by any Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
21. **Applicable Law.** This Contract shall be governed by and construed according to Colorado law.
22. **Waiver.** The failure of one of the Parties to insist upon the strict performance of any provision of this Contract or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Contract or limit that Party's, or any other Parties',

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right thereafter to any provision or to exercise any right.

23. **Captions.** All captions contained in this Contract are for convenience only and shall not be deemed to be part of this Contract.
24. **Counterparts.** This Contract may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
25. **Parties Bound by Agreement.** This Contract is binding upon the Parties hereto and upon their respective, legal representatives and successors.
26. **Construction.** All section, paragraph, and exhibit references used in this Contract are references to this Contract unless otherwise specified.
27. **Authorizations.** The governing bodies of each of the Parties have authorized by resolution the execution of this Contract.
28. **No Third Party Beneficiaries.** This Contract is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto.
29. **Force Majeure.** Subject to the terms and conditions in this paragraph, no party to this Contract shall be liable for any delay or failure to perform under this Contract due solely to conditions or events of force majeure, specifically (a) acts of God, (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, (c) sabotage, (d) vandalism beyond that which can be reasonable prevented, (e) terrorism, (f) war, (g) riots, (h) pandemics, epidemics, or quarantines (either global, national, or local), or (i) governmental moratoriums, restrictions, or prohibitions, provided that: (A) the non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the force majeure; (B) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure event or condition; and (C) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing the actions taken to remedy the consequences of the force majeure event or condition. In the event of a change in municipal (or other local governmental entity), state, or federal law or practice that prohibits or delays performance, the obligation to seek a remedy shall extend to making reasonable efforts to reform the Contract in a manner consistent with the change that provides the Parties substantially the same benefits as this

Attachment C - Monte Vista's Contract with Subdistrict No. 2

Contract, provided, however, that no such reformation shall increase the obligations of any of the Parties. In the event any delay or failure of performance on the part of the party claiming force majeure continues for an uninterrupted period of more than 365 days from its occurrence or inception as noticed pursuant to this Contract, all of the Parties not claiming force majeure may, at any time following the end of such one year period, terminate this Contract upon written notice to the Party claiming force majeure, without further obligation by any of the Parties; provided, however, that any such decision to terminate this Contract shall not be effective unless agreed to by all of the Parties not claiming force majeure.

30. **Non-Business Days.** If any date for any action under this Contract falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Federal Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.
31. **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, drafted this Contract jointly.
32. **Non-Severability.** Each paragraph of this Contract is intertwined with the others and is not severable unless by mutual consent of the Parties.
33. **Effect of Invalidity.** If any portion of this Contract is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

Attachment C - Monte Vista's Contract with Subdistrict No. 2

This Agreement is effective as of the day and year first above written.

**SPECIAL IMPROVEMENT
DISTRICT NO. 2 OF THE RIO
GRANDE WATER
CONSERVATION DISTRICT**

**CITY OF MONTE VISTA,
COLORADO**

By: Amber Pacheco
Name: Amber Pacheco
Title: Program Manager

By: [Signature]
Name: Forrest H. Newberry
Title: City Manager

ATTEST:

ATTEST:

Name:

Name: Wendy Vance

Title:

Title: City Clerk

Attachment D - Rio Grande Reservoir Storage Lease Agreement

STORAGE LEASE AGREEMENT BETWEEN THE SAN LUIS VALLEY IRRIGATION DISTRICT AND THE CITY OF MONTE VISTA, COLORADO

THIS LEASE AGREEMENT, entered into on this 8th day of September, 2010 between the CITY OF MONTE VISTA, COLORADO, whose address is 4 Chico Camino, Monte Vista, Colorado 81144, hereinafter referred to as "Monte Vista," and the SAN LUIS VALLEY IRRIGATION DISTRICT, whose address is P.O. Box 637, Center, Colorado 81125, hereinafter referred to as the "Irrigation District" (collectively referred to herein as the "Parties").

RECITALS

A. The Irrigation District is a Colorado Irrigation District organized and existing under and pursuant to the Irrigation District Law of 1905, Article 41 of Title 37 C.R.S.

B. Monte Vista is a Home Rule City of the State of Colorado organized and existing under and pursuant to Article XX of the Colorado Constitution.

C. Monte Vista is developing an augmentation plan to provide augmentation water necessary to assure its ability to provide municipal water to its residents and others.

D. Monte Vista may use various water rights in its augmentation plan ("Subject Water Rights"), including, but not limited to:

1. Anderson Ditch;
2. Ben Ogle Ditch;
3. McDonald Ditch;
4. Lariat Ditch; and
5. Williams Creek Squaw Pass Ditch.

E. The parties wish to facilitate implementation of Monte Vista's augmentation plan by providing storage space in Rio Grande Reservoir for the Subject Water Rights. The parties acknowledge that some of the Subject Water Rights can be stored in Rio Grande Reservoir only by exchange.

F. The Irrigation District owns Rio Grande Reservoir located on the headwaters of the Rio Grande in Hinsdale County, Colorado, and owns water right priorities to store water therein.

G. This Lease will provide Monte Vista with firm storage space to facilitate operation of its augmentation plan, and provides the Irrigation District with funds to operate, maintain, repair and rehabilitate Rio Grande Reservoir to assure that it remains a safe and fully functioning dam and outlet works.

Attachment D - Rio Grande Reservoir Storage Lease Agreement

H. The Irrigation District is authorized to enter this Lease pursuant to C.R.S. § 37-41-156.

I. Monte Vista is authorized to enter this Lease pursuant to Article I, Section 2 of its Home Rule Charter.

DEFINITION OF TERMS

“Operation And Maintenance Costs” shall mean those costs incurred to operate and maintain Rio Grande Reservoir, including any administrative, overhead, or general expenses incurred by the Irrigation District, either directly or indirectly, in the operation and maintenance of Rio Grande Reservoir and in the administration of this contract.

“Rehabilitation Project” means the Rehabilitation Project or any portion of that Project, as described in the “Rio Grande Reservoir Multi-Use Rehabilitation and Enlargement Study – Phase II,” prepared by CDM (the “Rehabilitation Study”).

“Lease Execution Date” means the date this Lease Agreement is entered as set forth above.

“Firm Storage” means water stored in Rio Grande Reservoir that cannot be spilled or evacuated from the Reservoir, except as provided for in this Lease. Water stored by the Irrigation District pursuant to its water rights is considered “firm storage.”

“Pro-rata Share” means Monte Vista’s acre-feet of leased storage capacity divided by 51,113 acre-feet, the actual storage capacity of the Rio Grande Reservoir, or the restricted storage capacity of the Reservoir, whichever is less.

AGREEMENT

NOW THEREFORE, for and in consideration of the following covenants, terms and conditions, and in full consideration of other conditions as hereinafter set forth, it is hereby agreed by and between Monte Vista and the Irrigation District as follows:

1. Leased Capacity: The Irrigation District agrees to lease to Monte Vista up to a total of two hundred and forty (240) acre-feet of firm storage capacity in Rio Grande Reservoir. Monte Vista may use its firm storage capacity to store the Subject Water Rights for any decreed purpose or as approved by the State or Division Engineer. Monte Vista may carryover any water stored to subsequent water years, if legally permitted to do so, provided such carryover storage shall be counted against Monte Vista’s leased firm storage capacity.

2. Lease Period: This Lease shall be for thirty (30) years, which period shall commence on the Lease Execution Date.

Attachment D - Rio Grande Reservoir Storage Lease Agreement

3. Payment: Monte Vista shall pay the Irrigation District for the Leased Capacity as follows:

a. One hundred thousand dollars (\$100,000) payable within 10 days following receipt of funds from the Colorado Water Conservation Board Construction Fund Loan.

b. Five hundred and thirty thousand dollars (\$530,000) for one hundred and eighty (180) acre-feet of firm storage capacity payable within 10 days following receipt of funds from the Colorado Water Conservation Board Loan Fund and the earlier of:

- i. The effective date of the proposed "Rules Governing the Withdrawal of Ground Water in Water Division No. 3;"
- ii. Four (4) years from the effective date of the contract between Monte Vista and the CWCB; or
- iii. Sixty (60) days following receipt of written notice from the Irrigation District of its needs for such funds to pay for the Rehabilitation Project, or some portion thereof.

c. The payment required under subparagraph 3.b (i) - (iii) above, shall be paid by Monte Vista to the Irrigation District in full regardless of whether Monte Vista's estimate of the firm storage capacity it requires is reduced between the Lease Execution Date and the date it is required to purchase its firm storage capacity pursuant to that subparagraph.

d. At the option of Monte Vista, thirty-five hundred dollars (\$35,000) per acre foot for up to an additional sixty (60) acre-feet of firm storage capacity. This option shall expire three (3) years after payment by Monte Vista to the Irrigation District under subparagraph 3.b. immediately above.

4. Operation, Maintenance and Repair:

a. The Lease Payment shall include Monte Vista's share of all Rio Grande Reservoir annual Operation and Maintenance Costs for five (5) years following the payment described in paragraph 3.b above. Thereafter, Monte Vista shall pay the Irrigation District its pro-rata share of all annual Operation and Maintenance Costs necessary to maintain Rio Grande Reservoir for the preceding twelve months.

b. The Irrigation District shall provide Monte Vista an invoice for its pro-rata share of the annual Operation and Maintenance Costs no later than the 31st day of October of each year, which amount shall be paid by Monte Vista within 30 days of the date of the invoice.

c. The Irrigation District shall be responsible for and furnish all personnel necessary for the annual operation and maintenance of Rio Grande Reservoir,

Attachment D - Rio Grande Reservoir Storage Lease Agreement

including, but not limited to, reading and operating gauges, valves, and gates, maintenance of District property including the caretaker's house, and normal preventative maintenance.

5. Storage and Release of Subject Water Rights: The Irrigation District shall be responsible for all aspects of the operation of Rio Grande Reservoir. Monte Vista shall provide the Irrigation District a proposed monthly release schedule on or before April 1st of each year. The Irrigation District will attempt to store and release the Subject Water Rights as directed by Monte Vista, provided however, that storage, release, and spill of the Subject Water Rights is subject to the terms and conditions of this Lease and the direction of the Division Engineer. The Irrigation District cannot guarantee, but shall make its best efforts to assure that storage or release of the Subject Water Rights is accomplished at the rates of flow requested. Monte Vista shall have a right proportionate to its share of the firm storage capacity to use the Reservoir's inflow and outlet facilities and capacities. The Irrigation District maintains and reserves the right to operate the Reservoir, store, release, or spill water therefrom at such times and in such manner as is required by the State or Division Engineer or as reasonably determined by the District for safe reservoir operation.

6. Augmentation Plan.

a. Monte Vista agrees to keep the Irrigation District fully advised in the adjudication of Monte Vista's augmentation plan and changes of water rights which involve Monte Vista's storage of water in Rio Grande Reservoir, including providing the District with all engineering reports provided to any party, and proposed decrees and stipulations prior to filing with the court.

b. The Irrigation District agrees that it will cooperate with Monte Vista to address any concerns or issues raised by objectors regarding the use of Rio Grande Reservoir in the water court, administrative or other proceedings for approval of the modifications to the Subject Water Rights necessary to obtain Monte Vista's augmentation plan, which may include appropriative rights of exchange, or any applications for substitute water supply plans, interruptible water supply agreements, or other water court or administrative applications involving the Subject Water Rights prior to obtaining an augmentation plan. The Irrigation District further agrees that it will not oppose Monte Vista's applications in water court, administrative or other proceedings pertaining to Monte Vista's augmentation plan unless it has first consulted in good faith with Monte Vista for the purpose of determining whether there are means by which the filing of any such opposition can be avoided. Monte Vista agrees that it will not oppose and will consent to the Irrigation District's intervention in any water court, administrative or other proceeding relating to Monte Vista's augmentation plan following good faith consultation between the District and Monte Vista.

c. The Irrigation District is a member of the Rio Grande Water Users Association (the "Association"). Nothing in this Lease, including this paragraph 6, shall

Attachment D - Rio Grande Reservoir Storage Lease Agreement

restrict in any manner or circumstance any opposition, objections or other actions taken by the Association with respect to any proceeding initiated by Monte Vista.

7. Hold Order or Other Storage Capacity Restriction: If Rio Grande Reservoir's storage capacity is subject to a lawful hold order or is otherwise limited to less than 51,113 acre-feet, the Irrigation District shall stop storing all non-firm water. Monte Vista shall be entitled to use its pro-rata share of the total reduced storage capacity in the Reservoir. The provisions of paragraph 5 of this Lease shall apply to the reduced storage capacity during the period the storage capacity is limited. When all or a portion of the Reservoir's storage capacity is restored, Monte Vista's pro-rata share shall also be restored. Under no circumstances shall Monte Vista be entitled to any refund of any Lease Payment previously paid to the Irrigation District.

8. Emergency Release: If the Irrigation District is required to release water from Rio Grande Reservoir because of an emergency or order of the State or Division Engineer, it will cooperate with Monte Vista and the Division Engineer to plan the release of Monte Vista's stored water in a manner that the Division Engineer agrees will meet Monte Vista's augmentation requirements or other decreed purposes, and then take the following steps:

First: It will release all non-Irrigation District spillable water;

Second: It will release all Irrigation District water that it can legally divert at the Farmers Union Canal headgate or some other location agreed to by the State or Division Engineer;

Third: It will endeavor to exchange stored water to Santa Maria and/or Continental Reservoirs. Any stored water so exchanged will be divided pro-rata between the Irrigation District, Monte Vista, and any other entity with firm storage in Rio Grande Reservoir; and,

Fourth: It will release pro-rata the water stored by the Irrigation District, Monte Vista, and any other entity with water in firm storage in Rio Grande Reservoir.

9. Enlargement: If Rio Grande Reservoir is enlarged and its current storage capacity of 51,113 acre-feet is increased, Monte Vista's pro-rata share used to calculate its share of Reservoir costs and expenses as set forth in this Lease shall be recalculated. Monte Vista shall have the option to obtain additional storage capacity in an enlargement subject to agreement with the Irrigation District.

10. Potential Reservoir Rehabilitation: The Irrigation District is seeking funding for rehabilitating the dam, outlet works, and spillway at Rio Grande Reservoir. To the extent the Rehabilitation Project or a portion of that Project as described in the Rehabilitation Study is funded and is constructed during the Lease term, Monte Vista shall not be charged or assessed any costs or expenses related to the construction of that Project.

Attachment D - Rio Grande Reservoir Storage Lease Agreement

11. Seepage and Evaporation: Monte Vista agrees to a proportionate allocation of the loss of water for seepage and evaporation of water stored in Rio Grande Reservoir. Evaporation losses shall be assessed as determined by the Division Engineer, if such evaporation losses are assessed to Rio Grande Reservoir. If the seepage can be measured, subject to the agreement of the Division Engineer and, if required by the Water Court, Monte Vista may account for the seepage to meet its augmentation requirements and the amount of seepage accounted for in this manner will be deducted from Monte Vista's stored water.

12. Assignment: The right to use storage capacity in Rio Grande Reservoir as provided for in this Lease shall not be separately assigned or sublet by Monte Vista to any other person, firm, or organization unless agreed to in writing by the Irrigation District, which agreement shall not be unreasonably withheld.

13. Accounting: The Irrigation District, after consultation with Monte Vista, shall implement and utilize such reservoir accounting procedures to effectuate this Lease as may reasonably be required by the Division Engineer.

14. No Abandonment: By entering this Lease and storing the Subject Water Rights, the Irrigation District does not and does not intend to abandon, relinquish, or forfeit any amount of water associated with its water rights decreed for storage in Rio Grande Reservoir.

15. Legal Right to Store: Monte Vista is solely responsible for assuring that the Subject Water Rights may be legally stored in Rio Grande Reservoir and can be used for the purposes designated by Monte Vista upon release from the Reservoir.

16. Delivery: Monte Vista shall take delivery of any Subject Water Rights stored in Rio Grande Reservoir at the point the Reservoir outlet works discharge into the Rio Grande. The Irrigation District shall have no obligation or responsibility for delivery of the Subject Water Rights stored in Rio Grande Reservoir downstream of the Reservoir's outlet works.

17. Water Quality: The Irrigation District provides no warranty but shall make reasonable efforts to operate Rio Grande Reservoir in a manner that does not impair the quality of the water stored in the Reservoir, including water stored by Monte Vista.

18. Waiver: Monte Vista waives any loss or claim of loss against the Irrigation District, its employees and agents, for the Irrigation District's operation of Rio Grande Reservoir.

19. Indemnification: To the extent authorized by law, Monte Vista shall indemnify, save, and hold harmless the Irrigation District, its employees and agents, against any and all claims, damages (including, but not limited to, state owned natural resources), liability and court awards including costs, expenses, and attorney fees

Attachment D - Rio Grande Reservoir Storage Lease Agreement

incurred as a result of any act or omission by the Irrigation District, or its employees, agents, subcontractors, or assignees in the operation of Rio Grande Reservoir pursuant to the terms of this Lease.

20. Use of the Reservoir for Recreational Purposes: Notwithstanding any other provision of this Lease to the contrary, none of the Lease's terms or condition shall be construed or interpreted as a waiver, either expressed or implied, of the limitations on the Irrigation District's potential liability that may arise from use of its property by members of the public for public recreational purposes under the provisions of Article 41 of Title 33, C.R.S., as amended or as it may be amended.

21. TABOR. This agreement is subject to annual appropriation of funds for each and every year of the Lease, and nothing herein contained shall be construed in a manner to violate Article 10, Section 20 (TABOR) of the Colorado Constitution.

22. Governmental Immunity: Notwithstanding any other provision of this Lease to the contrary, none of the Lease's terms or conditions shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits, or protections provided to Monte Vista or the Irrigation District under the Colorado Governmental Immunities Act, 24-10-101, *et seq.* C.R.S., as amended or as it may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

23. Option to Renew: Monte Vista shall have the right to renew this Lease for additional terms of thirty (30) years for thirty-five hundred dollars (\$3,500) per acre-foot, adjusted by the change in Bureau of Labor Statistics' Consumer Price Index (CPI) CPI-U (CPI for all urban consumers, U.S. city average, all items) from the date of this Storage Lease Agreement to the effective date of such renewal.

24. Termination: Monte Vista may terminate this Lease on sixty (60) days written notice at any time after it has paid the Irrigation District for up to one hundred eighty (180) acre-feet of firm storage capacity pursuant to paragraph 3.b. above. If Monte Vista exercises its right to terminate under this paragraph, the Irrigation District shall have no obligation to return any funds previously paid by Monte Vista to the District.

25. Default: If Monte Vista defaults in the performance of any of its obligations under this Lease, then (a) the Irrigation District will give Monte Vista written notice of the default; and (b) Monte Vista will have thirty (30) days thereafter to cure the default unless cure of the default will reasonably require more than thirty (30) days, in which case Monte Vista will have thirty (30) days to undertake substantial action to cure the default and thereafter diligently complete the curative actions. If Monte Vista fails to cure the default, then the Irrigation District, in addition to any other remedies that may be available at law or in equity, will have the right to terminate this Lease by written notice to Monte Vista.

Attachment D - Rio Grande Reservoir Storage Lease Agreement

26. Dispute Resolution: The parties agree that should any dispute arise under this Lease, they will submit such dispute to non-binding mediation prior to seeking to enforce such Agreement in court. If the Parties litigate any provision of this Agreement for a breach or default under this Lease, the non-prevailing Party will pay to the prevailing Party all reasonable costs and expenses, including but not limited to, reasonable attorneys' fees and court costs incurred by the prevailing Party in preparation for and at trial, and on any appeal.

27. Force Majeure: If at any time, the Irrigation District is unable to provide storage or release of water at Rio Grande Reservoir pursuant to this Lease, by reason of an act of God or other forces beyond the District's control, state law, rule or order, then for the period of time storage cannot be provided, this Lease shall be held in abeyance and be of no force or effect.

28. Reservoir not a Public Water System: The Parties agree that by providing Monte Vista firm storage capacity in Rio Grande Reservoir, the Irrigation District is neither operating nor including the Reservoir in a "public water system," a community water system," or a "non-community water system" as those terms are defined in the Safe Drinking Water Act, 42 U.S.C. §§ 300f – 300j-26, that the District is not a provider of drinking water within the meaning of the Safe Water Drinking Act, and that the District has no responsibilities to Monte Vista or its citizens under the Safe Water Drinking Act. The Parties further agree that the Irrigation District has no obligation to Monte Vista or its citizens under the Colorado Drinking Water Quality statute, C.R.S. § 25-1-107(x), or under the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1.

29. Authority: Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Lease and has taken all actions required to make this Lease binding on the Party.

30. Notices: Any notice, demand, or election under this Lease must be in writing and must be given in person or mailed by registered or certified mail, addressed as follows:

If to the Irrigation District:

San Luis Valley Irrigation District
Attention: Superintendent
296 Miles Street
PO Box 637
Center, Colorado 81125

Attachment D - Rio Grande Reservoir Storage Lease Agreement

If to Monte Vista:

City of Monte Vista
Attention: City Manager
4 Chico Camino
Monte Vista, Colorado 81144-1016

31. Recording: This Lease shall be recorded by Monte Vista in the real property records of Rio Grande and Hinsdale Counties.

32. Modification: This Lease may be modified as necessary by mutual consent of both parties as set forth in a signed and dated written amendment. Each party assumes all risks, liabilities, and consequences of performing work outside the specified scope of this Lease without a prior approved amendment. This Agreement represents the entire agreement between the Parties and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter of this Lease. No representations, warranties, or agreements have been made by the Irrigation District or Monte Vista to one another with respect to this Lease except those contained herein.

33. No Third Party Beneficiaries: It is expressly understood and agreed that enforcement of the terms and conditions of this Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Lease shall give or allow any such claim or right of action by any other third party on such Lease. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Lease shall be deemed to be an incidental beneficiary only.

34. Assignment: No Party may assign this Lease, parts hereof, nor its rights hereunder without the express written consent of the other Party.

35. Strict Observation of Terms: The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Lease shall not be considered as a waiver or relinquishment in any future case of any of the terms of this Lease.

36. Binding Effect: This Lease shall inure to and be binding on the heirs, executors, administrators, successors and assigns of the Parties hereto.

37. Unenforceable Provisions: If any provision of this Lease is determined to be unenforceable or invalid, then such provision of the Agreement shall be unenforceable and invalid, and the remainder of this Lease shall remain in full force and effect to the extent practicable unless both Parties agree otherwise.

38. Captions: The captions of this Lease are for convenience of reference only, are not part of this Lease, and do not define or limit any of the terms of this Lease.

Attachment D - Rio Grande Reservoir Storage Lease Agreement

Unless the context clearly requires otherwise, the singular includes the plural, and vice versa.

39. Legal Counsel: Each Party to this Lease has engaged legal counsel to negotiate, draft, and/or review this Lease. Therefore, in the construction and interpretation of this Lease, the Parties agree that it will not be construed against either Party on the basis of authorship.

40. Governing Law: This Lease is governed by the laws of the State of Colorado in all respects including matters of validity, construction, performance, and enforcement. Venue for any action arising out of this Lease is proper only in the District Court of Saguache County, State of Colorado.

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Attachment D - Rio Grande Reservoir Storage Lease Agreement

The Parties have signed this Lease effective on the date stated at the beginning of this Lease.

SAN LUIS VALLEY IRRIGATION DISTRICT

THE CITY OF MONTE VISTA

By: Randall Palmgren
Randall Palmgren, President

By: Jose "Art" Medina
Jose "Art" Medina, Mayor

STATE OF COLORADO)
COUNTY OF Saguache) SS

The foregoing instrument was subscribed and sworn before me this 8th day of ~~July~~, September 2010, by Randall Palmgren as President of the Board of Directors of the San Luis Valley Irrigation District.

Witness my hand and official seal.

My commission expires: 6/30/2012

Amy S. Mann
Notary

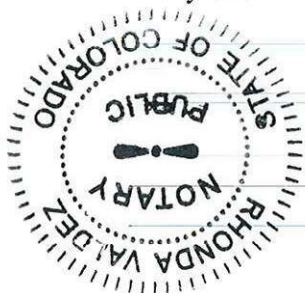
STATE OF COLORADO)
COUNTY OF _____) SS

The foregoing instrument was subscribed and sworn before me this 9th day of September 2010, by Jose "Art" Medina as Mayor of the City of Monte Vista.

Witness my hand and official seal.

My commission expires: 4-27-11

Rhonda Valdez
Notary



WATER LEASE AGREEMENT

This WATER LEASE AGREEMENT ("Agreement") is entered into this th25 day of January, 2024, between the Rio Grande Water Conservation District ("District") and the City of Monte Vista, Colorado ("City") (together, "the Parties" or individually as "Party").

RECITALS

A. City owns a total of 31.92 percent of Anderson Ditch Priorities 90 and 143, a pro-rata interest that amounts to 4.23 cfs;

B. City has filed a water court application that is currently pending as Case No. 16CW3024, District Court, Water Division 3, seeking approval of changes of water rights, conditional appropriative rights of exchange, and a plan for augmentation;

C. One of City's claims in Case No. 16CW3024 is to change 3.23 cfs of its 4.23 cfs interest in Anderson Ditch Priorities 90 and 143 from irrigation use to other uses that include exchange, replacement, and augmentation;

D. Under the plan for augmentation sought by City in Case No. 16CW3024, City seeks to use its changed Anderson Ditch water rights for replacement and augmentation of injurious stream depletions caused by the pumping of certain of the City's confined and unconfined wells by returning the fully consumable historical depletions of its changed Anderson Ditch water rights to the Rio Grande, by either leaving its pro-rata portion in the Rio Grande or returning the historical depletion amounts of those water rights to the Rio Grande using future augmentation stations or measurement structures;

E. City also seeks approval in Case No. 16CW3024 to exchange the changed Anderson Ditch water rights upstream to storage in Rio Grande Reservoir for later release for replacement on the Rio Grande and/or other decreed uses;

F. Since May 1, 2021, during the pendency of Case No. 16CW3024, City has operated a substitute water supply plan ("SWSP") approved by the Colorado Division of Water Resources ("DWR") that has included City's storage of exchanged Anderson Ditch credits in Rio Grande Reservoir;

G. City currently owns 164.24 acre-feet ("AF") of water stored in Rio Grande Reservoir under the SWSP;

H. Also during the pendency of Case No. 16CW3024, City has contracted with Subdistrict No. 2 and Subdistrict No. 6 for replacement of injurious stream depletions ("Subdistrict Contracts");

I. Because the Subdistrict Contracts cover the majority of City's injurious stream depletions during the time period before the court enters a final decree in Case No. 16CW3024, City does not have an immediate need for all of its water currently stored in Rio Grande Reservoir, and now seeks to lease 160 AF of that water to others on a temporary basis ("Excess Stored Water");

J. District, through its six subdistricts, has a need to remedy injurious depletions to senior surface water rights due to depletions to stream flow caused by groundwater withdrawals of wells located throughout the San Luis Valley, and District seeks surface water supplies to use in its subdistricts' annual replacement plans as available sources to remedy injurious depletions; and

K. District therefore desires to purchase from City, and City desires to lease to the District, Excess Stored Water on the terms set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Lease Term. The term of this Agreement is from April 1, 2024, through March 31, 2025 ("Lease Term").
2. Quantity and Source of Leased Water. Subject to the terms herein, City will lease to District all 160 AF of the Excess Stored Water ("Leased Water") immediately upon both Parties' execution of this Water Lease Agreement, at which time the Parties will book over the Excess Stored Water to District's Rio Grande Reservoir account. City will submit a 2024 Substitute Water Supply Plan (SWSP) request to the Colorado Division of Water Resources (DWR) in late January 2024, which will seek the approval of District's use of the City's Excess Stored Water. Once DWR approves that SWSP, the District may use the Leased Water for its replacement uses.
3. Availability of Leased Water.
 - 3.1 Leased Water Supplied to District. Once the Leased Water is booked over to District's Rio Grande Reservoir account, such water will become the property of District.
 - 3.2 Leased Water Limitations. Once the Leased Water is booked over to District's Rio Grande Reservoir account, District shall bear sole responsibility for coordinating with the San Luis Valley Irrigation District ("SLVID"), which is the owner and operator of Rio Grande Reservoir, and DWR in order to release Leased Water from Rio Grande Reservoir for District's subsequent use. District will also be responsible for its regular DWR accounting requirements for the replacement use of its Leased Water. Notwithstanding any other provision in this Agreement, City's obligation to provide Leased Water to District is expressly conditioned on the legal and physical availability of Excess Stored Water under City's permits, decrees and water rights and shall be subordinate to City's water needs.

3.3 **Force Majeure.** Neither Party is liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement for any failure or delay in fulfilling or performing any term of this Agreement due solely to conditions or events of force majeure, as that term is defined in this section, provided that: (i) the non-performing Party gives the other Party prompt Notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) action of the elements such as flood, fire, drought or other reduction in water supply legally and physically available to City, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, sabotage, or other civil unrest; (d) law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) pandemics, epidemics, or quarantines (either global, national, or local). To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

4. **Location of Delivery.**

4.1 City shall deliver the Leased Water to District in Rio Grande Reservoir (WDID No. 2003554), more particularly described as being located in the NW1/4, SW1/4 of Section 13, Township 40 North, Range 4 West, NMPM, Hinsdale County, Colorado. Further described as 1558 feet from the South section line and 167 feet from the West section line of said Section 13. UTM Zone 13 North NAD83: X – 300,194 Y – 4,177,218 ("Delivery Point").

4.2 Once the Leased Water is delivered to the Delivery Point by booking over the Leased Water into District's Rio Grande Reservoir account, District shall bear all losses, including but not limited to transit losses and/or evaporative losses, associated with the conveyance of the Leased Water from the Delivery Point to District's point(s) of use of the Leased Water.

5. **Accounting.**

5.1 City shall maintain accounting of the delivery of Leased Water to the Delivery Point for District and shall incorporate that accounting into City's SWSP accounting. Upon District's request, City shall supply such.

accounting and other information as District, SLVID, or the Division Engineer for Water Division 3 may require to implement this Agreement for District's use of the Leased Water.

- 5.2 District shall maintain daily accounting of its diversion and use of the Leased Water and shall provide that accounting to DWR, as required by the Division 3 Engineer. Upon request, City may review District's accounting provided to DWR, within 30 days of the end of the month being accounted for.
6. Price. District agrees to pay City the price of [REDACTED] per acre-foot of Leased Water delivered by City to District. District's payments to City pursuant to this Agreement are non-refundable and are not contingent upon whether the Leased Water is actually used by District so long as City delivered the Leased Water to the Delivery Point.
7. Payment. District shall make two lump sum payments to City for the Leased Water. The first payment of [REDACTED] shall be made within 30 days of the full execution of this Agreement. The second payment of [REDACTED] shall be made within 30 days of City and/or District obtaining an approved SWSP authorizing District's use of the Leased Water.
8. Failure to Pay. If District fails to make the first payment described in Paragraph 7 above, the full amount of Leased Water shall revert to City's ownership and will be booked over to City's storage account in Rio Grande Reservoir. Under that circumstance, this Agreement may be terminated in full by City, City will have no obligation to provide any Leased Water to District, and District will be responsible for any costs, assessments, or other fees incurred by City for storage of the Leased Water in Rio Grande Reservoir for a period of one year. If District makes the first payment described in Paragraph 7 above, but fails to make the second payment, then 80 AF of the Leased Water shall revert to City's ownership and will be booked over to City's storage account in Rio Grande Reservoir. Under that circumstance, this Agreement may be terminated in full by City, City will have no obligation to provide any Leased Water to District other than the 80 AF paid for by District's first payment, and District will be responsible for any costs, assessments, or other fees incurred by City for storage of the remaining 80 AF of Leased Water booked back over to City's storage account for a period of one year.
9. Use of Leased Water.
- 9.1 District Approvals. District is responsible for ensuring that its use of the Leased Water complies with all existing judicial or administrative approvals, or for obtaining new judicial or administrative approvals, as may be necessary to use the Leased Water on a temporary basis. The Parties expressly acknowledge that City will seek approval of District's use under its 2024 SWSP request associated with Division 3, Case No.

16CW3024. However, a separate approved SWSP pursuant to section 37-92-308, C.R.S. may be necessary for the District to put the Leased Water to certain uses. No such plan or approval sought by District for use of the Leased Water may involve a change or review of City's water rights in water court.

9.2 City's Role. If District seeks approval of a new SWSP to use the Leased Water, City will reasonably cooperate with District and supply necessary data and other information as District deems necessary to pursue the SWSP. District shall provide any SWSP application or notice to City for review and comment prior to submittal to DWR. City may submit comments to the State Engineer on any such application for a SWSP or a SWSP renewal at City's sole expense.

9.3 Termination to Protect City's Water Rights. District agrees that it will use its best efforts not to jeopardize City's water rights by taking any action that causes or potentially could cause a reopening of any of City's water court decrees or the City's prosecution of its claims in Case No. 16CW3024. If a third party seeks review of City's water rights or decrees in water court in connection with District's use of the Leased Water in a SWSP or other approval from DWR, City, in its sole discretion and upon prior notice to District, may terminate this Agreement. District acknowledges that, following the expiration or termination of this Agreement, City has no duties or obligation to lease water for the replacement of depletions, delayed or otherwise, arising from the operation of any such SWSP or other approval from DWR.

9.4 Other Permits / Approvals. District is responsible for obtaining all necessary authorizations, approvals, and/or permits from private or governmental agencies required for District to use the Leased Water under this Agreement. Upon City's request, District shall provide copies of any such authorizations, approvals, and/or permits to City.

10. City's Title. City represents that it is the owner of the water subject to this Agreement and that it has full power and authority to enter into this Agreement. City further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.

11. Title to the Water Rights. Nothing herein grants or may be interpreted to grant any legal or equitable title in or to any of City's water rights to District.

12. Untreated Water. The Leased Water delivered to District under this Agreement is derived from untreated water of whatever quality is now or in the future available as Excess Stored Water. Delivery of the Leased Water under this Agreement is on an "as is" basis only. City makes no warranty, express or implied, concerning the quality of the Leased Water. Further, City expressly disclaims any implied

warranties of the Leased Water's merchantability or fitness for a particular purpose.

13. Responsibility for Use and Indemnification. District shall bear all responsibility for its use of the Leased Water upon City's delivery of the Leased Water under this Agreement, together with all costs associated with that use. To the extent permitted by law, District must defend, indemnify, and hold City harmless from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising from District's use of the Leased Water after City's delivery of the Leased Water as provided for in this Agreement. In the event that District is obligated to indemnify City, it may terminate this Agreement, subject to its obligations to City for its prior use of the Leased Water.
14. District's Representations. This Agreement has been duly authorized and executed by District, is the legal, valid, and binding obligation of District, and is enforceable against District according to its terms. No other consent is required for the execution, delivery, or performance of this Agreement by District. To the best of District's knowledge, there is no pending or threatened litigation or administrative proceeding against District that would prevent it from leasing the Leased Water from City.
15. Notice. All Notices and other communications that are required or permitted to be given to the Parties under this Agreement are 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 is effective upon such delivery; notice provided through U.S. Mail is effective three days after deposit in the U.S. Mail. The Parties shall give notice to the receiving Party at the following addresses:

To City:

City Manager
City of Monte Vista
95 West 1st Avenue
Monte Vista, CO 81144
Email: gdennis@ci.monte-vista.co.us

To District:

General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
Email: cleave@rgwcd.org

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

16. **Default and Remedies.** A default occurs if either Party breaches its obligations under this Agreement and fails to cure such breach within 10 days of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default will not be construed as condoning or acquiescing to any continuing or subsequent default. In addition to other legal remedies available to it, the non-breaching Party also will have the right to seek specific performance and damages, provided however, that such Party first must have given the breaching Party written Notice of such noncompliance and an opportunity to cure pursuant to this paragraph 16. The non-breaching Party will also be entitled to its reasonable attorneys' fees and expenses resulting from successful legal action to obtain legal remedies for a default.
17. **No Continuing Duty to Supply Water.** City has no obligation to supply water to District after this Agreement expires or is otherwise terminated.
18. **Miscellaneous Provisions.**
- 18.1. **Governmental Immunity.** Nothing in this Agreement waives or may be construed to waive either Party's protection from liability or the limitations on its liability based on its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.
- 18.2. **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 which are set forth in this Agreement, no representations, warranties, or agreements have been made by City or District to one another with respect to this Agreement.
- 18.3. **Survival.** Each of the representations and warranties made by City and District in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be 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. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this Agreement, shall survive the termination.
- 18.4. **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 shall not define or limit any of the terms of this 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 Colorado Rules of Civil Procedure, Rule 6, then the relevant date will be extended automatically until the next business day.

- 18.5. Non-Severability - Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of City and District. 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.
- 18.6. 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.
- 18.7. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. City may not assign its rights or delegate its duties hereunder without the prior written consent of District, which consent shall not be unreasonably withheld. District may not assign its rights hereunder to any other person or entity, except to any of its subdistricts, without the prior written consent of City, which consent shall not be unreasonably withheld.
- 18.8. 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 Rio Grande County, State of Colorado.
- 18.9. 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.
- 18.10. Recording. District may record this Agreement or a Memorandum of this Agreement.
- 18.11. Time. Time is of the essence in this Agreement.
- 18.12. Legal Counsel. Each Party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it cannot be construed against any Party on the basis of authorship.
- 18.13. Relationship of Parties. Nothing within this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party

has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

18.14. Recitals. The Recitals set forth above are hereby incorporated in and made a part of this Agreement by reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated in that Party's signature block below.

CITY OF MONTE VISTA

Gigi Dennis 01-31-24
Gigi Dennis, City Manager Date

RIO GRANDE WATER CONSERVATION DISTRICT

Amber Pacheco 1/25/2024
Amber Pacheco, Deputy General Manager Date

Attachment F - Trospen Ranch Parcel Dry-up Covenant

2010000000057 OR 551 1020

01000410057
Filed for Record in
RIO GRANDE
SANDRA J JACKSON, RECORDER
11-01-2010 At 02:40 pm.
DRY-UP CVNT 21.00
OF Book 551 Page 1020 - 1022

DRY-UP COVENANT

THIS COVENANT, is made and entered into this 27TH day of October, 2010, by and between Sun Peaks Land Co., LLC, a Colorado Limited Liability Company ("Grantor"), whose address is 46920 C.R.E, Center, Colorado, 81125, and the City of Monte Vista, Colorado, a Colorado Municipal Corporation ("City" or "Grantee").

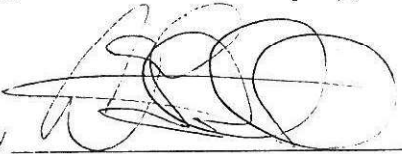
GRANTOR COVENANTS permanently to cease all agricultural irrigation of, and permanently remove from irrigation, the lands historically irrigated by the Anderson Ditch water rights conveyed to City without the express written permission of the City, except, however, that the lands may continue to be irrigated with water provided from a source other than that conveyed to Grantee to the extent allowed by law and not inconsistent with any other provision set forth herein. Such lands are described on Exhibit A attached hereto. Grantor further covenants to do any work to comply with the terms of any order or decree of the District Court, Water Division No. 3, State of Colorado, including, but not by way of limitation, any provisions concerning monumenting or other means of designating the lands or otherwise providing for enforcement of, or prohibiting irrigation of the lands above-referenced, including modification or elimination of structures for irrigation of such lands. Any expense associated with such required modification or elimination of structures will be borne by Grantee. Any court-imposed revegetation obligations shall be the sole responsibility of the Grantor.. The Covenant shall forever burden the land described in Exhibit A, and shall forever be enforceable against and be binding upon Grantor and Grantor's heirs, agents, successors, and assigns, for the benefit of Grantee and Grantee's agents, successors, and assigns, as the owner of the water rights conveyed pursuant to the Option to Purchase Water dated May 20, 2010.

This Dry-Up Covenant shall be recorded in the real property records of Rio Grande County, Colorado.

IN WITNESS WHEREOF, Grantor has executed this Covenant on the date first above written.

Grantor

Sun Peaks Land Company, LLC,

By 

Its PRESIDENT

Attachment F - Trospen Ranch Parcel Dry-up Covenant

Instrument Book Page
201000410057 DR 551 1021

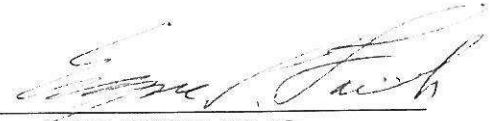
STATE OF COLORADO)
) ss.
COUNTY OF RIO GRANDE)

Subscribed under oath before me this ~~29th~~^{29th} day of ~~June~~^{Oct}, 2010, by Sun Peaks Land Company, LLC by Don Toews, President, as Grantor.

Witness my hand and official seal.

**MY COMMISSION EXPIRES
ON 8/25/2012**

My Commission Expires



NOTARY PUBLIC



Attachment F - Trosper Ranch Parcel Dry-up Covenant

EXHIBIT A

Instrument Book Page
201000410057 DR 551 1027

SUN PEAKS LAND COMPANY, LLC PROPERTY DESCRIPTION

NE ¼, Section 35 Township 39 North, Range 7 East, N.M.P.M. Rio Grande County, Colorado.

The land referred to in Schedule A is situated in the State of Colorado, County of Rio Grande and is described as follows:

The Northeast Quarter of Section THIRTYFIVE, Township THIRTYNINE North, Range SEVEN East, New Mexico Principal Meridian;

LESS a portion of the SE ¼ of the NE ¼ of Section 35, T. 39 N., R. 7#, N.M.P.M., more particularly described as follows: Commencing at a fence corner 30 feet south and 30 feet West of the Northeast corner of said SE ¼ of the NE ¼ of said Section 35, as the place of beginning; thence south along the West side of State Highway No. 10 and parallel to the East side of said 40 acre tract, 150 feet; thence North 45° West to a point on the South side of said Highway No. 10, 150 feet West of the place of beginning; thence East to the Place of beginning.

LESS That fraction of the SW ¼ NE ¼ Section 35, Township 39 North, Range 7 East, N.M.P.M., located North of the right-of-way from U.S. Highway No. 160 and Southerly of the Rio Grande and San Luis canal, more particularly described by metes and bounds as follows, to-wit: Beginning at the Northwest corner of the fraction herein described, which corner is identical with the point of intersection of the West line, as fenced, of said NE ¼ Section 35 and the center of said canal, whence the North Quarter of said Section 35 bears North, 0° 05' 00" East, 2114.74 feet distant; thence along the center of said canal the following courses; North 70° 15' 05" East, 121.16 feet; North 76° 04' 20" East, 79.00 feet; North 89° 51' 45" East, 78.96 feet; South 75° 36' 35" East, 86.10 feet; South 60 33' 40" East, 86.10 feet; South 43° 12' 20" East, 79.63 feet; South 55° 05' 15" East, 107.52 feet; South 71° 48' 50" East, 173.55 feet; South 53° 18' 00" East, 77.80 feet; South 59° 51' 25" East, 102.68 feet; South 66° 52' 45" East, 140.34 feet and South 55° 35' 15" East, 243.43 feet to its point of intersection with the north limit of said highway right-of-way, which point is identical with the Southeast corner of the fraction herein described; thence North 89° 46' 45" West, 1217.37 feet along the north limit of said highway right-of-way to its point of intersection with the projection of the West line, as fenced, of said NE ¼ Section 35, which point is identical with the Southeast corner of the fraction herein described; thence North 0° 05' 00" East, 463.37 feet along the West line, as fenced, and its southerly projection to the place of beginning. From 8:00 A.M., November 1, 1985

Attachment G - Valley Choice Parcel Dry-up Covenant

201200414427
Filed for Record in
RIO GRANDE
CINDY HILL, RECORDER
04-24-2012 At 02:38 pm.
COVENANTS 11.00
OF Book 559 Page 1526 - 1526

Re-record to attach legal description, Exhibit A
DRY-UP COVENANT

THIS COVENANT, is made and entered into this 20th day of April, 2012, by and between Lancaster Investment, LLC, a Colorado Limited Liability Company ("Grantor"), whose address is 1120 Park Avenue, Monte Vista, Co 81144 and the City of Monte Vista, Colorado, a Colorado Municipal Corporation ("City" or "Grantee").

GRANTOR COVENANTS permanently to cease all agricultural irrigation of, and permanently remove from irrigation, the lands historically irrigated by the Anderson Ditch water rights conveyed to City by Grantor, except, however, that the lands may continue to be irrigated with water provided from a source other than that conveyed to Grantee to the extent allowed by law and not inconsistent with any other provision set forth herein and except as the City may allow usage of said water by Grantor (or any Grantee to whom Grantor may convey or lease said land) pursuant to lease pending approval of its plan of augmentation. Such lands are described on Attachment A appended hereto. Grantor covenants to perform any and all work necessary to "dry up" said lands and to bear the expense of the same. Grantor further covenants to allow the Grantee to do any work to comply with the terms of any order or decree of the District Court, Water Division No. 3, State of Colorado, including, but not by way of limitation, any provisions concerning monumenting or other means of designating the lands or otherwise providing for enforcement of, or prohibiting irrigation of the lands above-referenced, including modification or elimination of structures for irrigation of such lands which may be deemed necessary by the Office of the State Engineer (SEO) (and which is not performed by Grantor) at Grantor's expense. Any court-imposed re-vegetation obligations shall be the sole responsibility of the Grantor (as landowner) and Grantor covenants to perform any of such re-vegetation.

This Covenant shall forever burden the land described in Attachment A, and shall forever be enforceable against and be binding upon Grantor and Grantor's heirs, agents, successors, and assigns, for the benefit of Grantee and Grantee's agents, successors, and assigns, as the owner of the water rights conveyed pursuant to the Contract to Purchase Water dated April 20, 2012.

This Dry-Up Covenant shall be recorded in the real property records of Rio Grande County, Colorado.

IN WITNESS WHEREOF, Grantor has executed this Covenant on the date first above written.

Lancaster Investment, LLC

By *Dan Burns*
Operating Manager

Attest:

Melinda N. Allen
Secretary

STATE OF COLORADO)
)ss.
COUNTY OF RIO GRANDE)

I, Notary Public, do hereby certify that the foregoing was subscribed and sworn before me this 20th day of April, 2012, by Lancaster Investment, LLC, by Dan Burns as Operating Manager.

Witness my hand and official seal.



MY COMMISSION EXPIRES
ON 6/25/2012
My Commission Expires

Eugene T. Smith
Notary Public

1/20/11
E 9 H L

EXHIBIT "A"
LEGAL DESCRIPTION

A tract of land located in the NW1/4 NW1/4 Section 36, Township 39 North, Range 7 East, N.M.P.M., Rio Grande County, Colorado, between the center of the Lariat Ditch and the South line of said NW1/4 NW1/4, as fenced, which tract is more particularly described by metes and bounds as follows, to-wit: Beginning at the Southeast corner of the tract herein described, a point on the South line of said NW1/4 NW1/4 Section 36, as fenced, whence the center of said Section 36, Township 39 North, Range 7 East, N.M.P.M. as established by the Northwest corner of the Second West Side Addition to the City of Monte Vista bears South 45° 43' East, 1955.18 feet distant, and also whence the East quarter corner of said Section 36 bears South 71° 19' East, 4265.31 feet distant; thence North 8° 00' East, 70.44 feet to the Northeast corner of the tract herein described a point in the center of the Lariat Ditch; thence following the meanders of the center of the Lariat Ditch to the Northwest corner of the tract herein described as follows: North 79° 25' West, 138.60 feet; South 82° 51' West, 142.71 feet; North 86° 57' West, 237.48 feet; thence North 50° 29' West, 460.59 feet; thence North 72° 23' West, 196.52 feet; thence North 72° 08' West, 203.53 feet to the Northwest corner of the tract herein described, the point of intersection of the center of said Lariat Ditch with the East limit of the County Road between Sections 35 and 36, Township 39 North, Range 7 East, N. M. P.M., as fenced; thence South 0° 05' East, 362.18 feet along the East limit of said County Road, as fenced, to the Southwest corner of the tract herein described, and identical with the Northwest corner of a tract formerly sold to Hubert W. Wyland and Frances F. Wyland; thence South 89° 10' East, 170.00 feet to the Northeast corner of said tract formerly sold to Hubert W. Wyland and Frances F. Wyland; thence South 2° 00' E., 125.00 feet to the Southeast corner of said tract formerly sold to Hubert W. Wyland and Frances F. Wyland; thence South 89° 10' East, 1066.75 feet along the South line of said NW1/4 NW1/4, as fenced, to the place of beginning.

Any and all water rights in the Anderson Ditch including any interest in 1.5 cts of the Anderson Ditch, Priority No. 90 with an appropriation date of May 31, 1875 and Priority No. 143 with an appropriation date of May 31, 1877, as adjudicated in the Matter for the Adjudication of the Priorities of Water Rights in Water District No. 20, Final Decree, Costilla County District Court, May 1, 1896 together with 33.7 shares of the Consolidated Ditch and Headgate Company.

LESS AND EXCEPT

A tract of land located in the Northwest corner of the above larger tract of land hereinabove described and is at the point of intersection of the center of said Lariat Ditch with the East limit of the County Road between Sections 35 and 36, Township 39 North, Range 7 East, N.M.P.M., which point is the Northwest corner of the tract herein conveyed and is the point of beginning; Thence South 0° 05' East 180.00 feet; Thence South 89° 10' East, 240 feet; Thence North 0° 05' West to the center of said Lariat Ditch; Thence in a Westerly direction along the Center line of said Lariat Ditch to the point of beginning.

COPY

E-mail: JordanD@sgm-inc.com
DavidS@sgm-inc.com

February 1, 2024

E-mail address: Melissa.Vanderpoel@state.co.us

Office of the State Engineer
Melissa van der Poel
Team Leader, Divisions 2, 3, 7
1313 Sherman Street, Room 821
Denver, CO 80203

Re: City of Monte Vista - Substitute Water Supply Plan Renewal Request in Case No. 16CW3024

On behalf of the City of Monte Vista (City or Monte Vista), SGM is submitting this Substitute Water Supply Plan (SWSP) renewal request pursuant to Colorado Revised Statutes (C.R.S.) 37-92-308(4) for the 2024 Plan Year of May 1, 2024, through April 30, 2025. In Monte Vista's Division 3 Water Court application in Case No. 16CW3024, the City is seeking a decree for changes of irrigation water rights, conditional appropriative rights of exchange on the Rio Grande, and approval of a plan for augmentation. This SWSP requests a renewal for the temporary approval to use a portion of the pending change of water rights, operation of conditional appropriative rights of exchange on the Rio Grande (through administrative approval), and future augmentation of post-pumping injurious stream depletions associated with its use of the City's unconfined wells in accordance with the Division 3 Groundwater Rules. The SWSP renewal request summarized herein describes depletions associated with the City's groundwater pumping and subsequent replacement plan to the Rio Grande and its tributaries.

As was approved in the City's 2023 SWSP, for the 2024 Plan Year Monte Vista seeks to lease 160 acre-feet (AF) of its fully consumable Anderson Ditch water previously exchanged and stored in Rio Grande Reservoir under the City's 2023 approved SWSP to the Rio Grande Water Conservation District (RGWCD) for its, and/or for its subdistricts (Subdistricts), augmentation, replacement, remedy, including by substitution and exchange, and for use as part of any of the RGWCD's or its Subdistricts' Annual Replacement Plans (ARP) through contract with other entities within Water Division No. 3. The stored water will be released in coordination with the Division Engineer to remedy injurious depletions to the Rio Grande.

A payment for the application fee of \$300 has been made through the Colorado Division of Water Resources (DWR) Online Payment Portal.

Introduction

Monte Vista is located in the eastern portion of Rio Grande County, approximately 30 miles downstream (southeast) from the confluence of the South Fork of the Rio Grande and the Rio Grande. The City provides a year-round potable water supply to its residents and businesses through an integrated water supply system, which consists of five wells completed in the confined aquifer underneath the City. Monte Vista has three wells completed within the unconfined alluvial aquifer of the Rio Grande and has utilized those

supplies for the non-potable irrigation demands at some of its parks, landscaping, and golf course (parklands). The City’s confined and unconfined wells are located within the City’s Service Area and are shown in **Figure 1** along with the City’s irrigated parklands. Monte Vista’s underground water rights are summarized in **Table 1**.

Table 1. Summary of Monte Vista's Underground Water Rights

Structure	Case Number	Diligence Decrees	Original Decree Date	Appropriation Date	Amount
Confined Aquifer Wells					
Well No. 1 (Batterson Well)	W-847	N/A	7/3/1975	09/30/1950	2.45 cfs absolute
Well No. 2 (Jackson Well)	W-847	N/A	7/3/1975	09/30/1950	4.01 cfs absolute
Well No. 3 (Broadway Well)	W-847	N/A	7/3/1975	04/30/1957	2.67 cfs absolute
Well No. 4 (Sherman Well)	W-847	N/A	7/3/1975	09/23/1968	5.12 cfs absolute
Well No. 8 ¹ (Prospect Well)	88CW13	N/A	4/24/1989	09/30/1950; 04/30/1957; 09/23/1968	& 4.46 cfs absolute
Subtotal (absolute)					14.25 cfs
Unconfined Aquifer Wells					
Well No. 5 (Chapman Park Well)	W-847	N/A	7/3/1975	04/30/1965	1.34 cfs absolute
Well No. 6 (Ball Park Well)	W-847	N/A	7/3/1975	06/30/1949	0.423 cfs absolute
Well No. 7 (Golf Course Well)	W-847	N/A	7/3/1975	01/02/1954	4.23 cfs absolute
Subtotal (absolute)					5.993 cfs
Total (absolute)					20.234 cfs

Notes:

cfs = cubic feet per second

Footnotes:

1. Well 8 is decreed as an alternate point of diversion for Well Nos. 1, 2, 3, and 4 and is therefore not included in the Confined Aquifer Wells subtotal.

Table 1 tabulates the various absolute pumping rates for Wells Nos. 1 through 7 decreed in Case No. W-847 which allowed for typical municipal uses, including domestic, municipal, and irrigation uses. In Case No. 88CW13, Monte Vista obtained an alternate point of diversion for its confined wells (Nos. 1 through 4) at Well No. 8. Wells Nos. 1 through 8 are collectively referred to as its “Underground Water Rights.” Wells Nos. 1 through 4 and No. 8 are referred to as the “Confined Wells,” and Wells Nos. 5 through 7 are referred to as the “Unconfined Wells.”

Monte Vista’s Confined Wells are contractually included in the Special Improvement District No. 6 of the Rio Grande Water Conservation District’s (Subdistrict No. 6) 2024 Annual Replacement Plan (ARP), see **Attachment A**. Paragraph 12 in Monte Vista’s contract with Subdistrict No. 6 allows for the operation of the contract through April 30, 2026, and contains an automatic renewal process every subsequent five years. Therefore, Monte Vista’s injurious stream depletions associated with its five confined aquifer wells will be covered through Subdistrict No. 6’s 2024 ARP and are *not* a subject of this SWSP request. This approach is consistent with Paragraph 9.2.3. in Monte Vista’s proposed decree in Case No. 16CW3024 (**Attachment B**), which lists supplies acquired pursuant to the contract or intergovernmental agreement with the Rio Grande Water Conservation District or subdistricts of the Rio Grande Water Conservation District as allowable augmentation supplies in the City’s pending water court case.

Monte Vista’s Unconfined Wells are similarly contractually included in Subdistrict No. 2’s 2024 ARP, see **Attachment C**. Paragraph 12 in Monte Vista’s contract with Subdistrict No. 2 allows for the operation of the contract through April 30, 2025, and contains an automatic renewal process every subsequent five years. However, Paragraph 15.2 requires that Monte Vista will be responsible for all post-plan depletions as part of its plan for augmentation after such decree becomes a final, non-appealable decree of the court. Therefore, the City seeks to renew its SWSP in Case No. 16CW3024 for Plan Year 2024, so that it can meet its future post-plan depletions associated with its unconfined wells once a final decree is entered in Case No. 16CW3024.

Project Description

The Division 3 Groundwater Rules decreed in Case No. 15CW3024 require that all injurious stream depletions associated with groundwater pumping and usage be replaced to the Rio Grande and its tributaries. The Division 3 Groundwater Rules affect the legal and physical replacement requirements for Monte Vista to continue pumping its municipal wells. Since Monte Vista has historically relied on groundwater supplies for its municipal demands, the long-term ability to use those rights is of paramount interest to the City. As such, Monte Vista has filed its water rights application in Case No. 16CW3024 and is currently seeking a SWSP in 2024 to replace a portion of its future post-pumping injurious stream depletions associated with its groundwater pumping to comply with the requirements promulgated in the Division 3 Groundwater Rules.

As previously described, the City will offset its injurious stream depletions for its Confined Wells through its contract with Subdistrict No. 6. For the purpose of this SWSP renewal request, the City intends to continue diverting its Unconfined Wells for irrigation use, while replacing its post-pumping injurious depletions to the Rio Grande using 3.23 cubic feet of water per second (cfs) of its 4.23 cfs interest in Priority Nos. 90 and 143 carried in the Anderson Ditch. This 3.23 cfs Anderson Ditch interest is one of two ditch water rights that the City seeks to change in Case No. 16CW3024 and is also one of the replacement sources sought to be used in the plan for augmentation proposed in that case. The other ditch water right that the City seeks to change in Case No. 16CW3024 is a total of 1.4 cfs of the Priority No. 11 Prairie Ditch water right, but the City is not proposing to use that Prairie Ditch interest as a replacement source in this SWSP. The City only intends to use its historical net depletion credit associated with its 3.23 cfs ownership of the Anderson Ditch water rights in this SWSP. **Table 2** below summarizes Monte Vista’s irrigation water rights for the Anderson Ditch included for use in this SWSP application.

Table 2. Summary of Monte Vista’s Irrigation Water Rights of the Anderson Ditch for Use in Plan Year 2023

Ditch System	Ditch Priorities	Original Case Numbers	Original Decree Date	Appropriation Date	Total Ditch Ownership (cfs)	Monte Vista's Ownership (%)	Monte Vista's Ownership (cfs)
Anderson Ditch	57 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 15, 1874	2.90	0.00%	0.00
	90 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 31, 1875	11.33	24.38%	2.76
	143 ⁽¹⁾	5/1/1896 (W2967)	May 1, 1896	June 31, 1877	1.92	24.38%	0.47
	<i>Total</i>					<i>16.15</i>	<i>20.00%</i>

Notes:

⁽¹⁾ Amount remaining in the Anderson Ditch

The Anderson Ditch water rights were originally decreed for irrigation use. In addition to the decreed use of irrigation, the City has applied to change the use of its fully consumable historical use allocation, as determined in the Case No. 16CW3024 proceedings, to use and reuse the fully consumable portion of its rights directly and after storage for all municipal uses, including but not limited to domestic, irrigation of lawns, gardens, parks, private and municipal facilities, industrial, commercial, fire protection, stock watering, recreation, piscatorial, and storage. In addition, Paragraph 7.4.1. in Monte Vista's most recent proposed decree in Case No. 16CW3024 states that the City will dispose of, by sale, exchange, or otherwise, and use to extinction the fully consumable historical use allocation of its ditch water rights being changed in Case No. 16CW3024.

The City also seeks to use its Anderson Ditch water rights for exchange, replacement, and augmentation to meet replacement, augmentation, or delivery obligations in Water Division No. 3 to comply with the Groundwater Rules. Monte Vista also seeks to exchange the changed ditch water rights upstream to storage in Rio Grande Reservoir for later release and use by Monte Vista for replacement under the decreed plan for augmentation in Case No. 16CW3024. Under this SWSP application, the City seeks the ability to use its Anderson Ditch interest for replacement and augmentation and to exchange its available Anderson Ditch net depletion credits to Rio Grande Reservoir, as approved by the Division Engineer. Monte Vista's storage lease agreement with the San Luis Valley Irrigation District (SLVID) is included in **Attachment D**.

Through the City's operation of its 2023 approved SWSP, the City has stored approximately 160.2 acre-feet (AF) of fully consumable Anderson Ditch water in Rio Grande Reservoir in addition to water stored under prior SWSP approvals. For 2024, the City requests under this SWSP renewal request that 160.0 AF of its previously stored fully consumable Anderson Ditch water be available for use by the RGWCD and/or Subdistricts for replacement uses under the Subdistricts' ARPs. This requested use is consistent with the contemplated uses, including through sale, listed in Paragraph 7.4.1 of the most recent proposed decree. The City has entered into an agreement with RGWCD for the lease of 160.0 AF of water which is included in **Attachment E**. Under the City's 2024 SWSP request, the City is requesting that its supply leased to RGWCD be allowed for use by RGWCD, and/or by its Subdistricts for augmentation, replacement, remedy, including by substitution and exchange, and for use as part of any of the RGWCD's or Subdistricts' Plans of Water Management and ARPs, or contracts of the RGWCD. RGWCD's leased water supply stored in Rio Grande Reservoir will be released in coordination with the Division Engineer to remedy the injurious depletions to the Rio Grande described in the Plans of Water Management and Annual Replacement Plans or contracts of the RGWCD.

Through the execution of the lease agreement, 160.0 AF of the City's previously stored fully consumable Anderson Ditch water will be booked over to the RGWCD's storage account in Rio Grande Reservoir. Both the City and RGWCD acknowledge that the RGWCD and its Subdistricts' use of the City's water booked over to the RGWCD's storage account cannot be used for replacement purposes until approved through this 2024 SWSP request. The execution of the City's lease agreement with the RGWCD results in the City retaining 4.5 AF of fully consumable water in its Rio Grande Reservoir account. Under the City's 2024 SWSP renewal request, it seeks to operate the exchange of its Anderson Ditch water rights from the Consolidated Slough Ditch headgate to Rio Grande Reservoir, as approved in prior SWSP approvals.

The real-time availability of Anderson Ditch net depletion credits can be used to offset the City's net stream depletions associated with its unconfined well pumping through direct replacement once a final decree in Case No. 16CW3024 is entered. The City seeks the ability to exchange excess Anderson Ditch net

depletion credits for subsequent uses on the Rio Grande to Rio Grande Reservoir. **Table 3** shows the developed exchange matrix for Monte Vista’s future exchanges during the term of this SWSP.

Table 3. Summary of Monte Vista’s Exchange Matrix

<i>Exchange Name</i>	<i>Exchange-from Points</i>	<i>Exchange-to Points</i>	
		<i>Rio Grande Reservoir</i>	<i>Top of Reach 1 – Rio Grande River</i>
Rio Grande Ditch Water Rights Exchanges to Storage	Consolidated Slough Ditch River Return Location	2.42 cfs	
Rio Grande Ditch Water Rights and Accretion Stream Reach Exchanges	Consolidated Slough Ditch River Return Location		2.42 cfs

Demands/Depletions

The City provides potable water to its more than 4,200 residents through approximately 2,055 individual taps. Single-family residential customers make up 82.7 percent of the total number of taps, followed by commercial taps (10.3 percent), multi-family residential taps (5.6 percent), and finally City and other non-City governmental facilities (1.4 percent). These potable supplies are met with the City’s Confined Wells, and based on annual diversion data from 2011 through 2023 for the City’s Confined Wells, the average annual diversion is 1,079 AF. Injurious depletions associated with the City’s confined wells will be met through its contract with Subdistrict No. 6 through inclusion in the Subdistrict No. 6 ARP.

Originally, Monte Vista intended to use the Rio Grande Response Function developed by DWR to allocate the City’s portion of RGDSS modeled injurious stream depletions associated with the continued use of Well No. 5. However, DWR staff have advised that the use of its Response Functions for a single well will not accurately calculate Monte Vista’s allocation of the RGDSS modeled injurious stream depletions. Since an alternate methodology is required to assess the City’s depletions to the Rio Grande, SGM has completed a net stream depletion analysis and determined the total lagged net stream depletion to the Rio Grande using a Glover analysis.

The City provides non-potable water to irrigate approximately 9.5 acres of parks and open space at Chapman Park (see **Figure 1**). These demands are met through a raw water supply pumped from the City’s unconfined Well No. 5. Based on the previous 13 years of diversion records (2011- 2023), the average annual diversion for Well No. 5 is equal to 25.4 AF. For this SWSP renewal request, SGM used an annual demand of 25.4 AF for the 2024 Plan Year (see **Table 4**). Historically, Monte Vista relied upon its Unconfined Wells Nos. 6 and 7 for the irrigation of its high school fields and golf course, respectively. Recent use of those wells has not occurred for a number of reasons. Ultimately, Monte Vista intends to construct the necessary infrastructure to tie Wells Nos. 6 and 7 into the City’s current golf course irrigation system. However, the integration of those wells into a raw water irrigation system will not happen in Plan Year 2024. Therefore, Monte Vista’s only unconfined well usage for Plan Year 2024 will be through the use of Well No. 5 for irrigation of its parklands. **Table 4** shows the diversion of the Unconfined Wells and the associated groundwater consumptive use from 2011 through 2023. Because the parks and open space areas are irrigated by sprinklers, an irrigation efficiency of 80 percent was used. For the 2024 Plan Year, there is an estimated 20.3 AF of net groundwater consumptive use associated with the City’s unconfined well pumping.

**Table 4. Monte Vista's Unconfined Aquifer
 Estimated Net Groundwater Consumptive Use to the Rio Grande**
(values in AF)

Year	Well No. 5 Diversions (AF)	Well No. 5 Consumptive Use⁽¹⁾ (AF)
2011	31.4	25.1
2012	30.6	24.5
2013	38.3	30.6
2014	23.1	18.5
2015	31.7	25.4
2016	23.1	18.5
2017	21.8	17.4
2018	19.9	15.9
2019	22.8	18.2
2020	21.6	17.3
2021	29.6	23.7
2022	16.1	12.9
2023	20.3	16.2
Avg	25.4	20.3

Notes:

- 1) Used an irrigation efficiency of 80% for sprinkler irrigation of Chapman Park.

To estimate Monte Vista's current stream depletions associated with the usage of Well No. 5, SGM completed a Glover analysis in the Integrated Decision Support Group (IDS) Alluvial Water Accounting System (AWAS) software (Version 1.5.85) to calculate the delayed depletions associated with pumping Well No. 5. SGM relied upon the average of transmissivity and specific yield values reported in the October 2009 Agro Engineering Letter Report, equal to 66,690 gpd/ft and 25 percent, respectively. Also, SGM completed a Glover analysis to estimate lagged return flows associated with the irrigation of Chapman Park, and assumed that all return flows associated with the irrigation occur as lagged groundwater return flows, given the efficient application of water using sprinklers. Both analyses assumed an infinite aquifer boundary condition.

SGM calculated the centroid of the irrigated area for Chapman Park using GIS and then calculated the distance from Well No. 5 and the centroid to a perpendicular location on the Rio Grande, as shown in **Figure 2**. That distance was 9,509 feet for Well No. 5 and 9,545 feet for the Chapman Park irrigated area. Results from the analysis showed that 90% of the pumping would deplete the Rio Grande within 221 years for Well No. 5 and 90% of the returns would accrue to the Rio Grande within 222 years for the Chapman Park irrigated area. SGM summed and normalized the monthly values to estimate net stream depletions to the Rio Grande.

Table 5 shows the monthly distribution of stream depletions and return flows for the 2024 Plan Year to the Rio Grande. Annual depletions total 25.41 AF and annual return flows total 5.08 AF for a net groundwater consumptive use of 20.33 AF (**Table 5**, Column 7). SGM estimated the monthly demands for the 2024 Plan Year for Well No. 5 by developing a monthly distribution schedule in the StateCU software using a bluegrass irrigation water requirement in Monta Vista (see **Table 5**, Column 2).

Table 5. Monte Vista’s Rio Grande Monthly Stream Depletions for Plan Year
(values in AF)

Year	Month	Bluegrass IWR		Well No. 5		Chapman Park Irrigation Return Flows		Net Groundwater Consumptive Use
		AF	Percent	Projected Demands	Delayed Depletions	Unlagged	Lagged	
		(1)	(2)	(3)	(4)	(5)	(6)	
2024	May	0.35	16%	4.17	2.14	0.83	0.43	1.72
	Jun	0.46	22%	5.57	2.13	1.11	0.43	1.71
	Jul	0.46	22%	5.58	2.12	1.12	0.42	1.70
	Aug	0.38	18%	4.55	2.10	0.91	0.42	1.68
	Sep	0.30	14%	3.62	2.09	0.72	0.42	1.67
	Oct	0.16	8%	1.92	2.09	0.38	0.42	1.67
	Nov	0.00	0%	0.00	2.09	0.00	0.42	1.67
	Dec	0.00	0%	0.00	2.10	0.00	0.42	1.68
2025	Jan	0.00	0%	0.00	2.12	0.00	0.42	1.69
	Feb	0.00	0%	0.00	2.13	0.00	0.43	1.71
	Mar	0.00	0%	0.00	2.14	0.00	0.43	1.72
	Apr	0.00	0%	0.00	2.15	0.00	0.43	1.72
Total		2.11	100%	25.41	25.41	5.08	5.08	20.33

Notes:

- 1) Equals the irrigation water requirement based on modified Blaney-Criddle analysis for Bluegrass (Popchop coef) and the Monte Vista Climate Station (1940-2020).
- 2) Equals monthly value in Column 1 / sum of Column.
- 3) Equals the average annual diversion records estimated in Table 4 distributed monthly based on Column 2.
- 4) Equals delayed groundwater impacts based on a Glover analysis. Infinite aquifer with X = 9,509 ft, T = 66,690 gpd/ft, and S = 25%.
- 5) Equals Column 3 x 0.20 (used a 80% irrigation efficiency for sprinkler irrigation).
- 6) Equals lagged groundwater return flows from irrigation of Chapman Park based on a Glover analysis. Assumed all return flows occur as groundwater due to sprinkler irrigation method. Infinite aquifer with X = 9,545 ft, T = 66,690 gpd/ft, and S = 25%.
- 7) Equals Column 4 - Column 6.

Replacement Sources

In Case No. 16CW3024, Monte Vista is requesting approval of a plan for augmentation. In this SWSP application for Plan Year 2024, the City seeks the ability to pump from Well No. 5 and initially intends to replace its net stream depletions associated with those diversions through its contract with Subdistrict No. 2 to cover the City’s injurious stream through the Subdistrict No. 2, 2024 ARP. However, the City anticipates needing to use the supply stored in Rio Grande Reservoir associated with its 3.23 cfs ownership in the Anderson Ditch to cover its post-pumping injurious stream depletions once a final decree is entered in Case No. 16CW3024.

Change of Anderson Ditch

Monte Vista’s 3.23 cfs ownership of the decreed Anderson Ditch Priorities Nos. 90 and 143 were historically used for irrigation on the Trospen Ranch and Valley Choice Parcels, as shown in **Figures 3 and 4**. These figures illustrate representative amounts of the historical irrigation completed on the parcels between 1955 and 2017, respectively. All of the engineering associated with Monte Vista’s Anderson Ditch water rights

has been documented in SGM's 2018 Preliminary Engineering Report, 2019 Revised Preliminary Engineering Report, 2020 First Supplemental Engineering Letter Report, 2020 Second Supplemental Engineering Letter Report, and 2020 Third Supplemental Engineering Letter Report. All of these reports have been served on opposers and the Division Engineer in Case No. 16CW3024. The information presented in this 2024 SWSP renewal request is generally summarized in SGM's 2020 Third Supplemental Engineering Letter Report, which addresses the comments received by opposers to date.

Historically, Mr. Bill Miller leased both the Trosper Ranch and Valley Choice parcels for cattle grazing and the associated water rights for continued irrigation on those parcels. Once the City purchased its ownership in the Anderson Ditch water rights associated with the Trosper Ranch Parcel and the Valley Choice Parcel in October 2010 and April 2012, respectively, it leased those water rights in subsequent years for continued irrigation back to Mr. Miller.

As such, in Case No. 16CW3024, SGM has completed historical consumptive use analyses for its ownership of 3.23 cfs in the Anderson Ditch. **Table 6** in this SWSP application specifically tabulates the average annual historical consumptive use analysis presented in SGM's 2020 Third Supplemental Engineering Letter Report for Monte Vista's 3.23 cfs ownership in the Anderson Ditch.

In order for the City to use the net depletion credits associated with Monte Vista's Anderson Ditch water rights, the City proposes to forego its diversion of the Anderson Ditch water rights, less a 25 percent ditch loss. More specifically, Monte Vista will coordinate with the Division Engineer, the District 20 Water Commissioner, and the Anderson Ditch personnel to reduce the Anderson Ditch's river headgate diversions by Monte Vista's pro-rata yield, less ditch loss, and will use the existing Consolidated Slough Ditch return channel to the Rio Grande to return the foregone diversions to the Rio Grande. The monthly percentages shown in Column 17 of **Table 6** will be used to determine Monte Vista's daily return flow allocation from its pro-rata amount of the future Anderson Ditch river headgate diversion.

Using the monthly irrigation return flow percentages shown in Column 17 of **Table 6** will satisfy the monthly return flow requirements tabulated in Column 15 of **Table 6** during the irrigation season and will maintain historical irrigation return flow patterns associated with Monte Vista's ownership in the Anderson Ditch.

Table 6. Anderson Ditch Consumptive Use Analysis and Resulting Water Balance (values in AF)

Month	River Diversions (1)	Farm Headgate Delivery (2)	Potential Consumptive Use (3)	Effect Precip (4)	Net Potential Consumptive Use (5)	Historical Consumptive Use (6)	Average Estimated HCU per Acre (7)	Reduction for Sub-Irrigation of Trospier Ranch Parcels (8)	Resulting Historical Consumptive Use (9)	Resulting Estimated HCU per Acre (10)	Irrigation Return Flow			Net Depletions		Streamflow Return Requirement - Percent of Farm Headgate Delivery (18)	
											Historical Irrigation Return Flows (11)	Surface Water Component (60%) (12)	Unlagged Groundwater Component (40%) (13)	Lagged Groundwater Obligations (14)	Total Obligations (15)		Total (16)
January	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
February	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
March	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
April	45.92	34.44	7.12	0.84	6.27	5.94	0.06	1.43	4.51	0.05	28.44	11.38	13.72	13.72	13.72	13.72	6.82%
May	141.35	106.02	37.90	4.16	33.75	32.86	0.33	7.93	24.92	0.25	71.31	42.79	13.30	56.09	40.14	37.9%	62.1%
June	159.24	119.43	69.83	3.40	65.43	62.60	0.65	12.70	39.90	0.41	66.78	40.07	13.06	53.13	49.55	44.8%	55.2%
July	155.23	114.94	57.69	9.23	48.46	46.01	0.48	11.11	34.90	0.35	65.13	40.88	12.86	55.76	49.27	42.9%	57.1%
August	124.39	93.30	51.74	9.74	42.00	38.74	0.40	9.35	29.39	0.30	57.96	32.52	12.84	47.38	39.57	42.4%	57.6%
September	105.33	79.00	32.30	5.67	26.63	24.61	0.26	5.94	18.67	0.19	54.07	21.63	12.94	45.38	27.36	34.6%	65.4%
October	86.54	64.91	13.39	1.95	11.44	10.64	0.11	2.57	8.07	0.08	31.87	21.25	13.12	44.99	16.21	25.0%	75.0%
November	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
December	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Annual	816.03	612.02	256.97	34.99	223.99	211.40	2.19	51.03	160.37	1.63	399.42	239.65	159.77	399.42	160.37	159.77	19.3%

Source: Values generated using a Water Supply Limited Crop Consumptive Use by Structure Analysis in StateCU (Interface Version 7.0, FORTRAN Version 13.0)

Column Notes:

- 1) Pro-rata delivery of 3.23 cfs of Priority No. 90 and 143 in the Anderson Ditch used on the Trospier Ranch and Valley Choice Parcel for the period 1968-2010. Beginning in 2011, the pro-rata portion (63.3% or 1.73/2.73 cfs) was used for the Trospier Ranch Parcel and 1.5 cfs was used on the Valley Choice Parcel. Assumed farm headgate delivery from April 1 through October 31.
- 2) Analysis assumed 75% ditch efficiency.
- 3) Potential crop consumptive use as calculated by StateCU for 65.1 to 100.9 acres of grass pasture, potatoes, and alfalfa (see Table 12). Analysis used Upper Rio Grande All Calibrated Coefficients.
- 4) Effective precipitation Anderson Ditch Parcels based on the Monte Vista 2W NOAA Climate Stations. Analysis assumes that irrigated fields are located at an average elevation of 7670 ft asl.
- 5) Column 3 - Column 4.
- 6) Historical consumptive use for the Anderson Ditch Parcels. Assumed 60 percent irrigation efficiency and utilized an available water capacity of 0.121 in/in (ALAMOS-LAJARA-VASTINE (CO409)). Analysis assumes 0% of soil moisture capacity initially filled.
- 7) Equals Column 6 / number of irrigated acres each month.
- 8) Equals Column 6 reduced for sub-irrigation based upon the 2009 study by Agro Engineering for the Trospier Ranch Parcels. Weighted average reduction was approximately 24.3%. Assumed similar sub-irrigation on the Valley Choice Parcels.
- 9) Equals Column 6 - Column 8
- 10) Equals Column 9 / number of irrigated acres each month.
- 11) Average monthly unconsumed water as calculated by StateCU
- 12) Equals Column 11 x 60%.
- 13) Equals Column 11 x 40%.
- 14) Equals Column 13 lagged using monthly lagged streamflow depletion factors calculated using IDS AWAS. Transmissivity of 66,690 gpd/ft, S = 25%. Trospier Ranch Parcel X = 7,714 feet. Valley Choice Parcel X = 7,059 feet.
- 15) Equals Column 12 + Column 14.
- 16) Equals Column 9 + Column 11 - Column 15. Accretions are positive and depletions are shown in red parentheses.
- 17) Equals positive values from Column 16 / Column 2.
- 18) Equals 1 - Column 17.



During the non-irrigation season, Monte Vista will use its changed ditch water rights stored in Rio Grande Reservoir to meet the lagged non-irrigation season return flow requirements that historically accrued to the Rio Grande, as shown in Column 15 of **Table 6**. The proposed return flow requirements will prevent injury to vested and decreed conditional water rights.

Operation of Plan

Monte Vista proposes to operate its 2024 SWSP in a manner consistent with its prior approved SWSP operations. Monte Vista will initially replace or remedy its net stream depletions on impacted reaches of the Rio Grande attributable to its pumping of Well No. 5, through its contract with Subdistrict No. 2. Once a decree is entered in Case No. 16CW3024, Monte Vista will begin using the net depletion credits associated with the City's 3.23 cfs ownership in the Anderson Ditch, as shown in **Table 6**. Monte Vista will use the changed Anderson Ditch water right by leaving its decreed historical consumptive use interests in the Rio Grande for direct replacement. Monte Vista will also exchange the remaining net depletion credits associated with its Anderson Ditch water right up the Rio Grande to store in Rio Grande Reservoir for subsequent release and replacement of its post-pumping depletions to the Rio Grande. **Table 7** shows the monthly operation and water balance for this plan. Until a final decree is entered in Case No. 16CW3024, Monte Vista has adequate replacement coverage through its contract with Subdistrict No. 2. After a final decree is entered in Case No. 16CW3024, Monte Vista will have sufficient Anderson Ditch credits to cover all irrigation season (May through October) net stream depletions associated with pumping of Well No. 5 and will have sufficient Anderson Ditch credits stored in Rio Grande Reservoir for its post-pumping depletions. In 2023, the City used its approved SWSP to exchange 217.39 AF of its Anderson Ditch water supply to Rio Grande Reservoir and will conduct similar operations in 2024, until it receives a final decree and replaces its injurious depletions associated with Well No. 5 through its augmentation plan. 57.19 AF of the total amount exchanged was associated with the City's non-irrigation season return flow amounts. After accounting for the transit loss assessed by the Division Engineer for the non-irrigation season return flow deliveries between November 2022 and March 2023, the City's resultant storage of fully consumable water in Rio Grande Reservoir will be 164.5 AF. After the execution of the City's lease agreement with the RGWCD, the City's amount remaining in Rio Grande Reservoir will be 4.5 AF of fully consumable water.

Regarding the maintenance of the non-irrigation season return flows associated with Monte Vista's changed Anderson Ditch water rights in this SWSP, the City will coordinate with the Division Engineer and the SLVID to release water from the Rio Grande Reservoir to meet its future obligations (see **Table 7**). Similar to its approved prior SWSP operations, the water released from Rio Grande Reservoir will consist of the City's net stream depletion exchanged, which includes the average annual consumptive use credits and unlagged groundwater return flow allocation associated with the changed Anderson Ditch water rights in the Subject Case. To protect vested water rights in the Rio Grande Basin and ensure that the City can meet its non-irrigation season return flow requirements, Monte Vista will prioritize the exchange of its changed Anderson Ditch water rights to Rio Grande Reservoir for storage and subsequent release to meet the non-irrigation season return flow requirements.

To estimate an annual minimum storage target of Monte Vista's consumptive use credits in Rio Grande Reservoir, SGM considered three factors, including 1) Monte Vista's total annual non-irrigation season return flow obligation for the Anderson Ditch plus the net stream depletions shown in **Table 7**, 2) DWR staff assessed stream losses from Rio Grande Reservoir to the historical parcel specific accrual locations, and 3) the anticipated annual evaporation out of Rio Grande Reservoir. As shown in **Table 7**, Column 2, Monte Vista's annual non-irrigation season return flow obligations for the Anderson Ditch are 68.1 AF per year and

the sum of the net stream depletions is 20.67 AF.

Based on our discussion with DWR staff, the assessed transit loss from Rio Grande Reservoir to Del Norte, Colorado is 10 percent and there is an additional 5 percent loss from Del Norte to the Rio Grande and Alamosa County Line. This assessed loss includes evaporative losses in the Rio Grande Reservoir. The historical return flow accrual locations and point of depletion are shown in **Figures 2 and 5**. The distance from the Rio Grande Reservoir is approximately 92.3 stream miles and 92.5 stream miles for the Trospen Ranch Parcel, and Valley Choice Parcel, respectively. SGM assumed a transit loss of 15 percent from Rio Grande Reservoir to the historical return flow accrual locations and point of depletion. Based on Monte Vista's 8.47 AF of winter injurious Well No. 5 stream depletions and 68.1 AF per year of non-irrigation season return flow obligations, the DWR assessed transit and evaporations losses are estimated to be 13.51 AF. Accordingly, the annual minimum Rio Grande Reservoir storage target should be 90.10 AF, which would allow Monte Vista to meet its entire non-irrigation season net stream depletions and return flow obligations through Rio Grande Reservoir Releases from November through March.

Monte Vista has proposed aggregating releases from Rio Grande Reservoir for its non-irrigation season net stream depletions and return flow obligations. By aggregating its daily net stream depletions and non-irrigation season return flow obligations into two seasonal releases (one at the end of the irrigation season and one towards the end of the non-irrigation season), winter operations at Rio Grande Reservoir will be simplified, and a monthly aggregated release during the winter will reduce the freezing potential of small daily releases. In prior years, SGM communicated with the Division 3 Engineer, Craig Cotten, and the SLVID Superintendent, Robert Phillips, both of which approved aggregating Monte Vista's net stream depletions and non-irrigation season return flow requirements into two seasonal releases from Rio Grande Reservoir. Monte Vista will coordinate directly with the Division Engineer and SLVID regarding Monte Vista's exchanges into and releases from Rio Grande Reservoir for the 2024 Plan Year.

After the lease agreement with the RGWCD, the City will still have 4.5 AF of water in storage and will have met all of its non-irrigation season return flow obligations associated with its prior SWSP operations. This 4.5 AF of water remaining in storage is not included in Column 8 of the water balance shown in **Table 6** to conservatively illustrate that the City can likely meet its minimum Rio Grande Reservoir storage target by the end of June 2023 without the remaining carryover water stored in Rio Grande Reservoir from prior SWSP operations. Before the operation of its sought 2024 SWSP operations, and after accounting for assessed transit losses, the City has 4.5 AF of water stored in Rio Grande Reservoir that can be used for its future stream depletions associated with Well No. 5, once a decree in Case No. 16CW3024 is entered. 4.5 AF is the equivalent of 2.5 months of lagged stream depletions associated with Well No. 5. While the City is hopeful that it will receive a final decree this year in Case No. 16CW3024, the ultimate timeline for its augmentation plan is uncertain. An approval of the City's 2024 SWSP request will allow the City to continue to store additional fully consumable water within its leased capacity in Rio Grande Reservoir, and will also benefit the Rio Grande Basin by allowing the RGWCD and/or the Subdistricts to use the City's previously exchanged fully consumable water for replacement uses under the Subdistricts' ARPs.

Table 7. Operation and Water Balance
(all values in AF)

Year	Month	Net Groundwater Consumptive Use	Anderson Ditch Non-Irrigation Season Obligations	Net Stream Depletions	Anderson Ditch NSD Credits	Anderson Ditch NSD Left in River to Replace Injurious Stream Depletions	NSD Credits Exchanged to Rio Grande Reservoir	Release Needed from Rio Grande Reservoir (Includes Transit Loss)	End of Month Storage in Rio Grande Reservoir
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2024	May	1.72	0.00	1.72	40.14	1.72	38.43	-	38.43
	Jun	1.71	0.00	1.71	53.55	1.71	51.85	-	90.28
	Jul	1.70	0.00	1.70	49.27	1.70	47.57	-	137.85
	Aug	1.68	0.00	1.68	39.57	1.68	37.88	-	175.74
	Sep	1.67	0.00	1.67	27.36	1.67	25.69	-	201.43
	Oct	1.67	0.00	1.67	16.21	1.67	14.54	-	215.97
	Nov	1.67	13.33	15.01	0.00	-	-	17.65	198.31
	Dec	1.68	13.55	15.23	0.00	-	-	17.92	180.39
2025	Jan	1.69	13.72	15.42	0.00	-	-	18.14	162.25
	Feb	1.71	13.78	15.48	0.00	-	-	18.21	144.04
	Mar	1.72	13.70	15.42	0.00	-	-	18.14	125.90
	Apr	1.72	0.00	1.72	2.35	1.72	0.63	-	126.53
Total		20.33	68.09	88.42	228.46	11.86	216.60	90.07	

Notes:

NSD = Net Stream Depletions

1) From Table 5, Column 7.

2) Anderson Ditch non-irrigation season return flow obligations From Table 6, Column 16.

3) Equals the Column 1 + Column 2.

4) Anderson Ditch Nest Stream Depletion credits From Table 6, Column 16.

5) Equals Column 1 if Anderson Ditch NSD credits (Column 4) are available. Assumes no transit loss needs to be applied because the depletion occurs in the same reach as the credit.

6) Equals Column 4 - Column 3, if Anderson Ditch NSD credits are available.

7) Equals Column 3 / 85% if Anderson Ditch Credits are **not** available. Assumes a 15% transit loss from the Rio Grande Reservoir to the downstream point of return flow for the Anderson Ditch and point of depletion for the Well No. 5.

8) Equals previous month storage + Column 6 - Column 7. Assumes no carry over storage at the start of the plan and reservoir evap is included in the transit loss.

Dry-up of Historically Irrigated Parcel

Monte Vista has obtained and recorded dry-up covenants for its Anderson Ditch water rights on the Trospen Ranch and Valley Choice parcels (**Attachments F and G**, respectively) which are shown in **Figure 6**. Monte Vista will work with the landowners and Division Engineer to follow the specific requirements listed in the two separate recorded dry-up covenants in Plan Year 2024. In general, Monte Vista’s intent with its Anderson Ditch dry-up covenants is to dry up the portions of the parcel that were historically irrigated by its Anderson Ditch water rights. During the study period of 1968 through 2016, the average acreage irrigated by the Anderson Ditch water rights on the Trospen Ranch Parcel was 61.0 acres and for the Valley Choice Parcel was 38.0 acres, totaling 99.0 acres. As shown in **Table 7** of this SWSP renewal request, the average historical consumptive use associated with Monte Vista’s Anderson Ditch water rights in the Subject Case is 160.37 AF, or an average of 1.63 AF per acre of historically irrigated land. During Monte Vista’s 2022 SWSP, it was able to achieve a complete dry-up. Monte Vista will continue to work with the Division Engineer who can verify the amount of dry-up achieved for the historically irrigated portions of the parcels in Plan Year 2024. Monte Vista will limit its Plan Year net stream depletion credits to a total of 1.63 AF per acre of achieved dry-up in Plan Year 2024.

For the 2024 Plan year, once Monte Vista’s consumptive use portion of its Anderson Ditch farm headgate delivery reaches its achieved dry-up consumptive use credit allocation, excess farm headgate delivery volumes will be returned and kept in the Rio Grande.

Measurements/Accounting

In 2022, the City purchased and DWR staff installed new digital stream discharge recording equipment for the Anderson Ditch. For the 2024 Plan Year, Monte Vista proposes that its Anderson Ditch operations be recorded on a daily basis and that the City monitor its monthly pumping of Well No. 5. Monte Vista will submit its accounting to DWR staff, as required by the Division Engineer. We understand that the Division Engineer currently requires monthly submission of accounting data. Sample accounting is included with this application as **Attachment H** and is based on Monte Vista's approved 2023 SWSP accounting forms. The accounting will show all diversions and exchanges along with the pertinent supporting information associated with those operations. Such information will include, but is not limited to:

- the amount in-priority of Monte Vista's Anderson Ditch water rights;
- the amount of each water right bypassed at Anderson Ditch headgate;
- the total amount of water delivered to the Rio Grande through the Consolidated Slough return channel;
- the portion of Monte Vista's Anderson Ditch water in the Consolidated Slough return channel;
- the amount of water diverted by the Anderson Ditch, including Monte Vista's portion to cover historical ditch losses;
- and the farm headgate delivery amount, consumptive use credit, return flow obligations, and ditch losses associated with Monte Vista's changed Anderson Ditch water rights.

Similar to its previously approved SWSP operations, Monte Vista will regularly coordinate with DWR staff to obtain administrative approval regarding its exchange operations, so that DWR staff can adjust the Rio Grande at Del Norte indexed gauged streamflow on a daily basis, not after the fact when reviewing accounting.

Sustainability

Pursuant to the directive of the State Engineer in Rule 8 of the promulgated Division 3 Groundwater Rules, Monte Vista will limit its five-year average annual withdrawal from all of its wells used to withdraw groundwater from the confined aquifer to its annual average withdrawals from its confined wells from 1978 through 2000. The limit based on the cumulative historical annual average volume withdrawn from Monte Vista's confined wells during the 1978 through 2000 period is 2,033 acre-feet. This limit establishes Monte Vista's proportionate responsibility for ensuring that its five-year running average for groundwater withdrawals from the Response Areas in which Monte Vista confined aquifer wells are located does not exceed the average annual withdrawals for the period of 1978 through 2000. It is our understanding that the sustainability requirement under the Division 3 Groundwater Rules does not apply to the withdrawal of unconfined wells water supply.

Table 8 shows that during the Sustainable Period, the City's annual diversions of its Confined Wells averaged 2,033.1 AF. The City's average historical Confined Wells diversion of 2,033.1 AF per year is representative of the City's historical usage during the Sustainable Period. We understand that the City's continued use of its Underground Water Rights, up to the average volumetric amount shown in **Table 6**, is considered a sustainable water supply pursuant to Rule 8 of the Division 3 Groundwater Rules.

Table 8. Monte Vista’s Underground Water Rights Diversions, Return Flows, and Consumptive Use During the 1978 Through 2000 Sustainable Period

Month	Monte Vista’s Average Diversions From 1978 Through 2000 (AF)							
	Confined Wells					Subtotal	Unconfined Wells	Total
	Well No. 1	Well No. 2	Well No. 3	Well No. 4	Well No. 8		Well No. 5	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
January	20.0	9.5	10.0	37.4	18.9	95.7	0.0	95.7
February	20.0	9.5	10.0	37.4	18.9	95.7	0.0	95.7
March	35.6	16.9	17.8	66.9	33.8	171.0	3.1	174.1
April	39.0	18.5	19.5	73.1	36.9	186.9	3.8	190.7
May	42.7	20.2	21.3	80.0	40.4	204.6	4.5	209.1
June	45.8	21.7	22.9	85.9	43.4	219.7	5.1	224.8
July	48.4	22.9	24.2	90.7	45.8	232.1	5.6	237.7
August	47.6	22.6	23.8	89.4	45.1	228.5	5.5	234.0
September	44.7	21.2	22.4	83.8	42.3	214.3	4.9	219.2
October	40.3	19.1	20.1	75.5	38.1	193.1	4.0	197.1
November	20.0	9.5	10.0	37.4	18.9	95.7	0.0	95.7
December	20.0	9.5	10.0	37.4	18.9	95.7	0.0	95.7
Total	423.8	200.7	212.0	795.1	401.5	2,033.1	36.4	2,069.5

Column Notes:

- 1) Average monthly distribution of Monte Vista's annual pumping records was based on the RGSS monthly municipal well pumping percentages
- 2) Well No. 1 historical annual diversion records available from 1983 through 1985, and 1991 through 2016
- 3) Well No. 2 historical annual diversion records available from 1983 through 1985, and 1991 through 2016
- 4) Well No. 3 historical annual diversion records available from 1983 through 1985, and 1991 through 2016
- 5) Well No. 4 historical annual diversion records available from 1983 through 1985, and 1991 through 2016
- 6) Well No. 8 historical annual diversion records available from 1983 through 1985, and 1991 through 2016
- 7) Equals Column 2 + Column 3 + Column 4 + Column 5 + Column 6
- 8) Well No. 5 historical annual diversion records available from 2009 through 2017
- 9) Equals Column 7 + Column 8

Proof of Notice

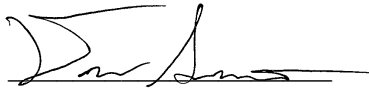
Pursuant to C.R.C. 37-92-308(4), written notice of this request was provided on this same date to all parties in Case No. 16CW3034 via electronic or U.S. postal mail.

Sincerely,

SGM

By 

Jordan Dimick, PE
 Senior Engineer



David Schiowitz, PG
 Senior Water Resources Consultant

Melissa van der Poel
February 1, 2024

Figures:

- Figure 1. Water Supply Map
- Figure 2. Chapman Park Groundwater Return Flow Accretion Location
- Figure 3. Anderson Ditch Irrigated Acreage - 1955
- Figure 4. Anderson Ditch Irrigated Acreage - 2017
- Figure 5. Historically Irrigated Parcels Groundwater Return Flow Accretion Locations
- Figure 6. Monte Vista Dry-Up Covenants

Attachments:

- Attachment A - Contract with Subdistrict No. 6
- Attachment B - Proposed Ruling in Division 3, Case No. 16CW3024 dated 08/18/2023.
- Attachment C - Contract with Subdistrict No. 2
- Attachment D - Rio Grande Reservoir Storage Agreement
- Attachment E - Lease Agreement with the Rio Grande Water Conservation District
- Attachment F - Trosper Ranch Dry-up Covenant
- Attachment G - Valley Choice Dry-up Covenant
- Attachment H - Sample Accounting Worksheets

Cc:

- Gigi Dennis, Monte Vista City Manager
- Rob Vance, Monte Vista Public Works Director
- Amber Pacheco, Rio Grande Water Conservation District, Deputy General Manager
- Angelo Bellah, Rio Grande Water Conservation District, Program Manager for Subdistricts 2, 3, 6
- Wylie Keller, Rio Grande Water Conservation District, Water Resource Specialist
- Robert Phillips, San Luis Valley Irrigation District Superintendent

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Invoice

Date: August 16, 2021

Janrich Grande 2013 Living Trust C/O Rich Forrest

P.O. Box 10

Del Norte, CO 81132

719 580 0218 or 719 580 0661

dg@mtvag.com

Bill To:

Special Improvement District No. 2

8805 Independence Way

Alamosa, CO 81101

(719) 589-6301

amber@rgwcd.org

DESCRIPTION

Lease of 536.5* acre-feet of Vintage Pine_Forrest transmountain water held in Beaver and Rio Grande Reservoirs at a rate of \$120 an acre-foot (portion of total includes reimbursement of 2020 storage costs)

*SD 2 will be responsible for any 2021 storage costs related to this portion of stored water.

Total Due

AMOUNT

\$ 64,380.00

\$ 64,380.00

Prepared By: Dee Greeman 8/17/2021

✓ 79.7 Beaver
✓ 456.8 RG Res

By
Amber
SD #2
Vintage Lease

TO: Subdistrict No. 2 Board of Managers
DATE: December 2020
SUBJECT: Lease of RGWCD Santa Maria Shares currently stored in Santa Maria Reservoir

Dear Board of Managers for Subdistrict No. 2,

The Rio Grande Water Conservation District (RGWCD) has been accumulating a pool of water over the past few years for the purpose of leasing it back to Subdistricts for use in their ARPs as a replacement source to remedy their injurious depletions. Subdistrict No. 2 has made a request to lease 291.3 acre-feet of water the RGWCD currently holds in storage in Santa Maria Reservoir. This water was leased from Santa Maria Shareholders on the Monte Vista Canal in 2019. The Subdistrict will reimburse the RGWCD an amount equal to the costs per acre-foot which the District has paid to lease and store this water.

If Subdistrict No. 2 does not require the total 291.3 acre-feet to cover their injurious depletions during the 2020 ARP Year, any amount that remains in storage will remain under the control of Subdistrict No. 2 in future ARP Years. Any future need to lease some portion of the District's pool of stored water must be made at that time to allow the Board of Director's an opportunity to consider the request.

 *Acting Deputy
General Manager* 7/13/2021
Cleave Simpson Date
General Manager
Rio Grande Water Conservation District

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into between Special Improvement District No. 2 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise ("Subdistrict No. 2") and Navajo Development Co., Inc. ("Seller") as the owner of certain water in storage in the Rio Grande Reservoir.

INTRODUCTORY RECITALS

A. The Seller holds title to an absolute water right for transmountain water in the Williams Creek Squaw Pass Diversion, as set forth in a change decree entered in Case No. W- 1869-78 (Water Division 7) on February 28, 1979 ("Decree"). Seller also diverts in Water Division No. 7 and stores transmountain water in Water Division No. 3 when free-river conditions are in effect in Water Division No. 7.

B. The Seller has diverted water pursuant to his water right in the Williams Creek Squaw Pass Diversion and/or under free-river conditions through the same structure and has placed that water into storage in Water Division No. 3.

C. Subdistrict No. 2 desires to purchase 308.6 acre-feet of said transmountain water previously diverted from Water Division 7, as stated above, into Water Division No. 3 and is currently being held in storage in Rio Grande Reservoir from Seller on the terms set forth below.

AGREEMENT

Therefore, in consideration of the foregoing recitals and the mutual promises contained below, the Parties agree as follows:

1. Purchase Agreement.

- 1.1. Purchase Agreement. Subject to the terms of this Agreement, Subdistrict No. 2 agrees to purchase 308.6 acre-feet of transmountain water transmountain water previously diverted from Water Division 7, under free-river conditions, into Water Division No. 3 currently in storage in Rio Grande Reservoir ("Stored Water").
- 1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Seller and Subdistrict No. 2, which date shall be the "Effective Date." If Subdistrict No. 2 has not made full payment pursuant to this agreement within ten business day after the Effective Date, then the Agreement will terminate as provided in paragraph 1.5.
- 1.3. Purchase Price. The purchase price for the Stored Water is sixty-five dollars (\$65.00) per acre-foot for a total purchase price of twenty thousand, fifty-nine dollars and zero cents (\$20,059.00) with all \$20,059.00 due and payable within ten business days after the Effective Date of this agreement.
- 1.4. Failure to Pay. If Subdistrict No. 2 fails to pay when due the purchase payment required herein, then this Agreement will terminate in full, Seller shall retain title to the Stored Water and the Option Agreement shall be void.
- 1.5. Water Subject to the Agreement. The water subject to this Agreement is the Stored Water. After the Effective Date, the Seller will not be entitled to use or dispose of

the Stored Water and thereafter the Subdistrict No. 2 shall bear all seepage, evaporation, and transit losses on the subject water except as stated in paragraph 4, below.

- 1.6. Approvals. Subdistrict No. 2 is responsible for obtaining any approvals necessary for its proposed use and delivery of the Stored Water.
2. Seller's Obligations and Representations.
 - 2.1. Seller's Title. Seller represents that it is the owner of the Stored Water and that it has full power and authority to enter into this Agreement. Seller further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.
 - 2.2. Evaporation and Seepage Losses. Seller agrees to stand evaporation and seepage losses occurring prior to the transfer of the Stored Water.
 - 2.3. Notice to Reservoir Owner. Upon Subdistrict No. 2's payment as specified in paragraph 1.3, above, Seller will notify the owner of Rio Grande Reservoir of the change in ownership of the Stored Water.
3. Subdistrict No. 2's Representations. This Agreement has been duly authorized and executed by the Subdistrict No. 2, is the legal, valid, and binding obligation of the Subdistrict No. 2, and is enforceable against Subdistrict No. 2 according to its terms. No other consent is required for the execution, delivery, or performance of this contract by the Subdistrict No. 2, except approval of the Rio Grande Water Conservation District's Board of Directors. To the best of the Subdistrict No. 2's knowledge, there is no pending or threatened litigation or administrative proceeding against the Subdistrict No. 2 that would prevent it from purchasing the Stored Water.
4. Option. Before August 1, 2021, Seller will provide Notice to Subdistrict No. 2 if Seller will exercise Seller's rights under this Paragraph 4. Under this Paragraph, Seller retains the right to demand a buy back of a certain amount of the Stored Water for the sole purpose of meeting Seller's obligations as required by the Decree and Sellers' other previously created obligations to supply water to third-parties. If Seller exercises this Option, Subdistrict No. 2 will sell back to Seller sufficient water to meet these obligations from the Stored Water. Seller will pay to Subdistrict No. 2 sixty-five dollars (\$65.00) per acre-foot and any storage or other costs incurred by Subdistrict No. 2 to that portion of the Stored Water sold back to Seller under this Option, including storage costs, and Seller will stand evaporation and seepage losses on the water from the time of transfer of the Stored Water from Seller to Subdistrict No. 2 and all such charges and losses from the exercise of this Option and will have full title to that portion of the Stored Water returned to Seller. This Option applies only to the Stored Water under this Agreement and does not apply to any water previously purchased or leased by the Rio Grande Water Conservation District or any of its Special Improvement Districts.
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 Seller: John H. Parker, II
2043 S. Washington Street
Denver, CO 80210
~~Fax: 720-570-7960~~
E-mail navdev@me.com

To Subdistrict No. 2: Cleave Simpson
General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
Fax: 719-992-2026
Email: cleave@rgwcd.org

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 Seller's default in the performance of this Agreement, Subdistrict No. 2's remedies shall include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict No. 2's default hereunder, Seller's sole and exclusive remedy shall be to retain all payments made by the Subdistrict No. 2 prior to the date of the default, and to retain any water not paid for by the Subdistrict No. 2.
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 which are set forth in this Agreement, no representations, warranties, or agreements have been made by the Seller or Subdistrict No. 2 to one another with respect to this Agreement.
 - 7.2. Survival. Each of the representations and warranties made by Seller and Subdistrict No. 2 in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be 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. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.
 - 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 shall not define or limit any of the terms of this Agreement. Any 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 CRCP 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 Seller and Subdistrict No. 2. 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 shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Seller may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 2, which consent shall not be unreasonably withheld. Subdistrict No. 2 may not assign its rights hereunder to any other person or entity without the prior written consent of the Seller, which consent shall not be unreasonably withheld.
- 7.7. Litigation. If the Seller and/or the Subdistrict No. 2 litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal.
- 7.8. 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.
- 7.9. 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.
- 7.10. Recording. Subdistrict No. 2 may record this Agreement or a Memorandum of this Agreement.
- 7.11. Time. Time is of the essence in this Agreement.
- 7.12. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.
- 7.13. Seller's Acknowledgment. Seller certifies that it has read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made to Seller by Subdistrict No. 2, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Seller except for written amendments or waivers executed by the Parties.

Seller:


Navajo Development Co., Inc.

3/31/21
Date

Title: President

Accepted:

Subdistrict No. 2

By: 
Karla Shriver

3-31-2021
Date

Title: President

PERMANENT LEASE AGREEMENT

THIS PERMANENT LEASE AGREEMENT (this "Agreement") is made this 7th day of April, 2022 (the "Effective Date"), by and between Navajo Development Co., Inc. ("Seller"), and the Rio Grande Water Conservation District, for and on behalf of the Water Activity Enterprise of Special Improvement District No. 2 of the Rio Grande Water Conservation District, a body corporate and politic and a political subdivision of the state of Colorado whose principal address is 8805 Independence Way, Alamosa, Colorado 81101 (the "District"). Seller and the District may be referred to herein, individually as a "Party" or collectively as the "Parties".

RECITALS

A. Seller is the owner in fee-simple of an absolute water right for transmountain water in the Williams Creek Squaw Pass Diversion and the associated ditch rights in the Williams Creek Squaw Pass ditch ("WCSPD Right") as set forth in a change decree entered in Case No. 2-1869-78 (Water Division No. 7) on February 28, 1979. Seller also diverts in Water Division No. 7 and stores transmountain water in Water Division No. 3 when free-river conditions are in effect in Water Division No. 7.

B. Seller currently has 178.2 acre-feet of water from this right (diverted pursuant to the WCSPD Right and/or under free river conditions through the same structure) that is currently stored in Rio Grande Reservoir, of which 153.2 acre-feet has not been committed for sale or lease; and,

C. Seller wishes to lease said 153.2 acre-feet of water to the District and the District wishes to lease said 153.2 acre-feet of water from Seller under the terms set forth herein.

TERMS AND CONDITIONS

The Recitals are hereby incorporated into the Terms and Conditions of this Agreement as if fully set forth herein.

1. Permanent Lease of Stored Water. Subject to the terms of this Agreement, the District agrees to permanently lease 153.2 acre-feet of transmountain WCSPD Right water currently in storage in Rio Grande Reservoir ("Stored Water").
2. Term of Agreement. This Agreement begins on the Effective Date. If the District has not made full payment pursuant to this Agreement within ten business days after the Effective Date, then this Agreement will terminate as provided in paragraph 4.
3. Permanent Lease Agreement Price. The purchase price for the 153.2 acre-feet of Stored Water is Two Hundred and Fifty dollars (\$250.00) per acre-foot, for a total purchase price of Thirty-Eight Thousand Three Hundred dollars (\$38,300.00). The total purchase price of the Stored Water, including any price paid for additional Stored Water in subsequent lease years as provided in paragraph 5.2, shall be applied to the District's purchase price for Seller's remaining interest in the WCSPD Right, as shall be established in the Purchase Agreement that the Parties are negotiating ("WCSPD Purchase Agreement").

4. Failure to Pay. If the District fails to pay the purchase price when due, this Agreement will terminate in full, and Seller will retain title to the Stored Water.

5. Water Subject to this Permanent Lease Agreement. The water subject to the Agreement is 153.2 acre-feet of the WCSPD Right in storage in Rio Grande Reservoir. After the Effective Date Seller will not be entitled to use or dispose of the Stored Water and thereafter the District will bear all seepage, evaporation, and transit losses on the Stored Water. The District is responsible for obtaining any approvals necessary for its proposed use and delivery of the Stored Water.

5.1 Additional Water Available for Lease. As of the Effective Date, Seller has committed to lease or sell 25 acre-feet of Stored Water to a third party. In the event that the third-party lease or sale agreement is not finalized for 2022, then Seller will notify the District as to the availability of additional Stored Water for lease by the District, and the District shall have the option to lease some or all of that additional Stored Water on the same terms set forth herein.

5.2 Subsequent Lease Years. Should the Parties' closing of the transaction contemplated in the Parties' WCSPD Purchase Agreement not occur by March 15, 2023, the District shall have the option to lease additional Stored Water from Seller upon the same terms and conditions herein in subsequent lease years while said Purchase Agreement remains in effect but Closing has not occurred. To exercise this option, the District shall provide notice to Seller of its desire to lease additional Stored Water by March 15 of each successive year, and within seven (7) days of receiving such notice, Seller shall inform the District of the amount of Stored Water available for lease and shall provide, for the District's review and execution, a lease agreement for the additional Stored Water consistent with the terms and conditions set forth herein.

6. Seller's Obligations and Representations.

6.1 Seller's Title. Seller represents that it is the owner of the Stored Water and that it has full power and authority to enter into this Agreement. Seller further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.

6.2 Evaporation and Seepage Losses. Seller agrees to bear evaporation and seepage losses, if any, occurring prior to the transfer of the Stored Water.

6.3 Notice to Reservoir Owner. Upon the District's payment as specified in paragraph 2, Seller will notify the owner of the Rio Grande Reservoir of the change in ownership of the Stored Water.

7. District's Representations. This Agreement has been duly authorized and executed by the District, is the legal valid, and binding obligation of the District, and is enforceable against the District according to its terms. No other consent is required for the execution, delivery, or performance of the Permanent Lease Agreement by the District. To the best of the District's knowledge, there is no pending or threatened litigation or administrative proceeding against the District that would prevent it from purchasing the Stored Water.

8. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to a Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered or mailed to the Party to whom it is addressed in the United States mail, first-class postage prepaid, return receipt requested, addressed to:

If to Seller:

John H. Parker II
2043 S. Washington Street
Denver, CO 80210
Email: navdev@me.com

With a copy to:

Burns, Figa, & Will P.C.
Attn: Stephen H. Leonhardt
6400 S. Fiddler's Green Circle
Greenwood Village, CO 80111

If to the District:

Special Improvement District No. 2
Rio Grande Water Conservation District
Attn: Program Manager
8805 Independence Way
Alamosa, CO 81101

With a copy to:

Hill & Robbins, P.C.
Attn: Peter J. Ampe, Esq.
1660 Lincoln St., Suite 2720
Denver, CO 80264

9. Default and Remedies. In the event of Seller's default in the performance of this Agreement, the District's remedies shall include, but not be limited to, specific performance. In the event of the District's default, Seller's sole and exclusive remedy shall be to retain all payments made by the District prior to the date of the default, and to retain any water not paid for by the District.

10. Compliance with Laws, Ordinances and Regulations. In performing the obligations, covenants and conditions of this Agreement, Seller and the District will comply with all applicable laws, ordinances, and regulations.

11. Assignment. This Agreement will be binding upon and will inure to the benefit of Seller and the District and their respective successors and assigns. The District may not assign this Agreement to any party, in whole or in part, without first obtaining Seller's prior written consent. The District may assign this Agreement to a related or affiliated entity only upon obtaining Seller's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

12. Headings. The headings and captions in the Agreement are intended solely for the convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

13. Controlling Law and Venue. This Agreement is made and performed in Colorado. The laws of the state of Colorado shall be applied in the interpretation, construction, execution, and enforcement of this Agreement. Venue for any dispute arising under this Agreement shall be in the District Court in and for Rio Grande County, Colorado.

14. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

16. Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

17. Severability. The invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of any other portion of this Agreement. Any invalid or unenforceable portion or provision of this Agreement shall be deemed severed from this Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated portion or provision in order to carry out the intent of the Parties in entering into this Agreement.

18. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. Recordation. Either Seller or the District may execute and record this Agreement in the records of the County Clerk and Recorder for Rio Grande County, Colorado.

[The remainder of this page is intentionally left blank]

IN WITNESS HEREOF, the Parties have executed this Lease and Purchase Agreement effective as of the date set forth above.

SELLER

NAVAJO DEVELOPMENT CO., INC.

John A. Parker
By: John Parker

Title: President

RIO GRANDE WATER CONSERVATION DISTRICT
For and on Behalf of

WATER ACTIVITY ENTERPRISE
SPECIAL IMPROVEMENT DISTRICT NO. 2
RIO GRANDE WATER CONSERVATION DISTRICT

Amber Pacheco
By: Amber Pacheco

Title: Program Manager 4/7/2022

PERMANENT LEASE AGREEMENT

THIS PERMANENT LEASE AGREEMENT (this "Agreement") is made this ~~22~~ day of February, 2023 (the "Effective Date"), by and between Navajo Development Co., Inc. ("Navajo"), and the Rio Grande Water Conservation District, for and on behalf of the Water Activity Enterprise of Special Improvement District No. 2 of the Rio Grande Water Conservation District, a body corporate and politic and a political subdivision of the state of Colorado whose principal address is 8805 Independence Way, Alamosa, Colorado 81101 (the "District"). Navajo and the District may be referred to herein, individually as a "Party" or collectively as the "Parties".

RECITALS

A. Navajo is the owner in fee-simple of an absolute water right for transmountain water in the Williams Creek Squaw Pass Diversion and the associated ditch rights in the Williams Creek Squaw Pass ditch ("WCSPD Right") as set forth in a change decree entered in Case No. 2-1869-78 (Water Division No. 7) on February 28, 1979. Navajo also diverts in Water Division No. 7 and stores transmountain water in Water Division No. 3 when free-river conditions are in effect in Water Division No. 7.

B. Pursuant to the Parties' Purchase Agreement ("Purchase Agreement") dated July 19, 2022, the District is under contract to purchase Navajo's remaining uncommitted interest in the WCSPD Right, along with the diversion structure for that water right. As of the Effective Date of this Agreement, the Parties' Purchase Agreement remains in effect, but the transaction contemplated in that Agreement has not closed.

C. Paragraph 5.2 of the Parties' Permanent Lease Agreement dated April 7, 2022 ("2022 Lease Agreement"), grants the District the option to lease from Navajo additional water attributable to the WCSPD Right, upon the same terms and conditions, during any subsequent lease year that the Purchase Agreement remains in effect, but the transaction has not been completed.

D. Pursuant to Paragraph 5.2 of the 2022 Lease Agreement, the District has notified Navajo of its desire to exercise its option to lease water attributable to the WCSPD Water Right during the 2023-24 Lease Year.

E. Navajo currently has 165.2 acre-feet of water from the WCSPD (diverted pursuant to the WCSPD Right and/or under free river conditions through the same structure) that is currently stored in Rio Grande Reservoir, of which 120.2 acre-feet has not been committed for sale or lease.

F. Navajo wishes to lease said 120.2 acre-feet of water to the District and the District wishes to lease said 120.2 acre-feet of water from Navajo under the terms set forth herein, which terms and conditions are consistent with the Parties' 2022 Lease Agreement.

TERMS AND CONDITIONS

The Recitals are hereby incorporated into the Terms and Conditions of this Agreement as if fully set forth herein.

1. Permanent Lease of Stored Water. Subject to the terms of this Agreement, the District agrees to permanently lease 120.2 acre-feet of transmountain WCSPD water currently in storage in Rio Grande Reservoir ("Stored Water").
2. Term of Agreement. This Agreement begins on the Effective Date. If the District has not made full payment pursuant to this Agreement within ten business days after the Effective Date, then this Agreement will terminate as provided in paragraph 4.
3. Permanent Lease Agreement Price. The purchase price for the 120.2 acre-feet of Stored Water is Two Hundred and Fifty dollars (\$250.00) per acre-foot, for a total purchase price of Thirty Thousand Fifty dollars (\$30,050.00). The total purchase shall be applied to the District's purchase price for Navajo's remaining interest in the WCSPD Right, as provided in Paragraph 1 of the Parties' Purchase Agreement.
4. Failure to Pay. If the District fails to pay the purchase price when due, this Agreement will terminate in full, and Navajo will retain title to the Stored Water.
5. Water Subject to this Permanent Lease Agreement. The water subject to the Agreement is 120.2 acre-feet of the WCSPD water in storage in Rio Grande Reservoir. After the Effective Date, Navajo will not be entitled to use or dispose of the Stored Water and thereafter the District will bear all seepage, evaporation, and transit losses on the Stored Water. The District is responsible for obtaining any approvals necessary for its proposed use and delivery of the Stored Water.
 - 5.1 Additional Water Available for Lease. As of the Effective Date, Navajo has committed to lease or sell an additional 25 acre-feet of Stored Water to a third party. In the event that the third-party lease or sale agreement is not finalized for 2023, then Navajo will notify the District as to the availability of additional Stored Water for lease by the District, and the District shall have the option to lease some or all of that additional Stored Water on the same terms set forth herein.
 - 5.2 Subsequent Lease Years. The District shall be entitled to lease additional Stored Water from Navajo during subsequent lease years, consistent with the procedural requirements set forth in the Parties' 2022 Lease Agreement, and upon the same terms and conditions as set forth in the Parties' 2022 Lease Agreement.
6. Navajo's Obligations and Representations.
 - 6.1 Navajo's Title. Navajo represents that it is the owner of the Stored Water and that it has full power and authority to enter into this Agreement. Navajo further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.

6.2 Evaporation and Seepage Losses. Navajo agrees to bear evaporation and seepage losses, if any, occurring prior to the transfer of the Stored Water.

6.3 Notice to Reservoir Owner. Upon the District's payment as specified in paragraph 2, Navajo will notify the owner of the Rio Grande Reservoir of the change in ownership of the Stored Water.

7. District's Representations. This Agreement has been duly authorized and executed by the District, is the legal valid, and binding obligation of the District, and is enforceable against the District according to its terms. No other consent is required for the execution, delivery, or performance of the Permanent Lease Agreement by the District. To the best of the District's knowledge, there is no pending or threatened litigation or administrative proceeding against the District that would prevent it from purchasing the Stored Water.

8. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to a Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered or mailed to the Party to whom it is addressed in the United States mail, first-class postage prepaid, return receipt requested, addressed to:

If to Navajo:

John H. Parker II
2043 S. Washington Street
Denver, CO 80210
Email: navdev@me.com

With a copy to:

Burns, Figa, & Will P.C.
Attn: Stephen H. Leonhardt
6400 S. Fiddler's Green Circle
Greenwood Village, CO 80111

If to the District:

Special Improvement District No. 2
Rio Grande Water Conservation District
Attn: Program Manager
8805 Independence Way
Alamosa, CO 81101

With a copy to:

Hill & Robbins, P.C.
Attn: Peter J. Ampe, Esq.
1660 Lincoln St., Suite 2720
Denver, CO 80264

9. Default and Remedies. In the event of Navajo's default in the performance of this Agreement, the District's remedies shall include, but not be limited to, specific performance. In the event of the District's default, Navajo's sole and exclusive remedy shall be to retain all payments made by the District prior to the date of the default, and to retain any water not paid for by the District.

10. Compliance with Laws, Ordinances and Regulations. In performing the obligations, covenants and conditions of this Agreement, Navajo and the District will comply with all applicable laws, ordinances, and regulations.

11. Assignment. This Agreement will be binding upon and will inure to the benefit of Navajo and the District and their respective successors and assigns. The District may not assign this Agreement to any party, in whole or in part, without first obtaining Navajo's prior written consent. The District may assign this Agreement to a related or affiliated entity only upon obtaining Navajo's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

12. Headings. The headings and captions in the Agreement are intended solely for the convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

13. Controlling Law and Venue. This Agreement is made and performed in Colorado. The laws of the state of Colorado shall be applied in the interpretation, construction, execution, and enforcement of this Agreement. Venue for any dispute arising under this Agreement shall be in the District Court in and for Rio Grande County, Colorado.

14. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

16. Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

17. Severability. The invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of any other portion of this Agreement. Any invalid or unenforceable portion or provision of this Agreement shall be deemed severed from this Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated portion or provision in order to carry out the intent of the Parties in entering into this Agreement.

18. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. Recordation. Either Navajo or the District may execute and record this Agreement in the records of the County Clerk and Recorder for Rio Grande County, Colorado.

[The remainder of this page is intentionally left blank]

IN WITNESS HEREOF, the Parties have executed this Lease and Purchase Agreement effective as of the date set forth above.

NAVAJO DEVELOPMENT CO., INC.

Printed Name: John H. Parker, II
Signature: John H. Parker, II
Title: President

RIO GRANDE WATER CONSERVATION DISTRICT
For and on Behalf of

**WATER ACTIVITY ENTERPRISE
SPECIAL IMPROVEMENT DISTRICT NO. 2
RIO GRANDE WATER CONSERVATION DISTRICT**

Printed Name: Amber Pacheco
Signature: Amber Pacheco
Title: Deputy General Manager



April 15, 2022

Ms. Rachel Kullman, P.E.
Kullman Water Engineering, LLC
PO Box 5464
Santa Fe, NM 87502

**Re: Rio Grande Ditch No. 1 Substitute Water Supply Plan
Secs.33, 34, Twp. 40N, Rng. 6E, N.M.P.M.
Secs.1, 2, 3 Twp. 39N, Rng. 6E, N.M.P.M. Rio Grande County
Water Division 3, Water District 20
SWSP Plan ID 9350**

Approval Period: April 15, 2022 through March 31, 2023

Contact information for Ms.Kullman: (505) 690-1432; Rachel@kullmanwater.com

Dear Ms. Kullman:

We have reviewed your letter of February 14, 2022 requesting a substitute water supply plan (“SWSP”) on the behalf of the Rio Grande Ditch No. 1/Rio Grande Water Conservation District’s Special Improvement District No. 21 (“Applicant”) pursuant to §37-92-308(5), C.R.S. Notice was sent on February 24, 2022 to all subscribers to the Division 3 SWSP Notification List. Timely comments were received from David and Gayana Carr during the statutory 35-day comment period. The statutory \$300 filing fee has been received and given receipt no. 10019304.

An application for approval of a change of water right or plan for augmentation has not been filed with the water court and the depletions associated with the proposed water uses will not exceed five years, therefore this request has been submitted pursuant to §37-92-308(5), C.R.S. In accordance with §37-92-308(5), C.R.S., SWSPs may be approved for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with the water court and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years. **This is the first year of approval of this SWSP.**

SUBDISTRICT OPERATION

Case No. 15CW3024 established the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 by order of the court. The Rules described the formation of Subdistricts in the area defined by the Rio Grande Decision Support System Groundwater Model in District Court, Water Division No. 3. Members of Subdistricts are landowners within the RGWCD who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices. The principal goals of Subdistricts are to protect senior surface water



rights, to support a sustainable water supply in the confined or unconfined aquifer underlying the Subdistricts' boundaries and to avoid unreasonable interference with the state's ability to fulfill its obligations under the Rio Grande Compact.

This SWSP is being sought in order to provide a part of the water supplies to be used by one or more Subdistricts of the RGWCD to meet the requirements of the Subdistricts' Plans of Water Management ("Plans") as approved by the State Engineer. Subdistrict No 1 (2006CV64 & 2007CW52), Subdistrict No 2 (2015CV30050), Subdistrict No 3 (2016CV30021), Subdistrict No 4 (2017CV30005), and Subdistrict No 6 (2018CV30014) have formed and are operating under their respective Plans. Subdistrict No 5 (2017CV30015) has formed and has a Plan approved by the State Engineer, but is not yet operating under their Plan.

The overall objective of each Subdistrict Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within the Subdistrict; that is a system of self-regulation using economic-based incentives that promote responsible groundwater use and management and ensures protection of senior surface water rights. As part of each Plan, Subdistricts must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions the Subdistricts will take to replace injurious depletions to senior water rights caused by groundwater withdrawal by Subdistrict Wells during the plan year. This SWSP application is intended to provide a part of the water supplies to be used in the Subdistricts' ARPs or by separate contract with other entities for use within Division 3, only after prior approval by the Division Engineer.

SWSP OPERATION

The Rio Grande Ditch No. 1 ("Ditch") diverts from the south bank of the Rio Grande east of the Town of Del Norte. The Ditch carries multiple priorities; Priority No. 8, the subject of this SWSP, and 3 more junior water rights transferred from the Rio Grande Ditch No. 4.

A group of shareholders in the Ditch intend to forego irrigation of their lands under the Ditch in order to make available historical consumptive use ("HCU") credit water for use by Subdistrict No. 2 for replacement of depletions. This SWSP is being requested to change the place and purpose of use of the water allocations to include augmentation and replacement of depletions by storage or direct use. The HCU analysis calculated 781.5 acre-feet of HCU water which would be available from the dry-up of 365.58 acres on four farms.

A HCU analysis was performed using State CU version 13.10. The study period used was from 1998 through 2019, and the irrigated acreage was measured from aerial photos from 1998, 2009 and 2017. Crop types included pasture grass and alfalfa. Lands under the Ditch are flood irrigated, and an efficiency of 60% was used. The canal efficiency was 85%. Deep percolation return flows were assumed to return to the river within one month, and were therefore not separated from surface return flows. Since the Ditch carries several water rights, the Priority No. 8 water was calculated by attributing daily flows first to the most senior right (Priority #8) up to the decreed rate. Flows in excess of that decreed rate were subtracted from the total, as they are not part of this SWSP request.

The Applicant is proposing to pump the consumptive use credit at a point downstream of the flume and measure it back to the river. The calculated ditch loss portion will be left in the ditch, to simulate the historical ditch loss, and the return flow portion will be diverted and left in the ditch for delivery to the Rio Grande through a return channel/pipeline as shown in Figure 1 (attached). Comments received from David and Gayane Carr expressed concern as to the reduced flow in the canal possibly injuring their water rights. The Applicant has proposed several solutions, including the installation of check dams to raise the canal water level, should the McClure and Carr properties not receive their full entitlement. The return flow measuring structure is towards the end of the ditch system and at this location there should be equal to or greater flow than historically available throughout the ditch system.

Average irrigated areas and estimated HCU figures are presented in Table 2, below:

Table 2
 Summary of SWSP Participants and Properties

Property Name	Ref. Figure Nos.	Water Rights		Crop Acreage									Average Irrigated Area (acres)
		Prorata Ownership of RGD No. 1 (Priority No. 8) (cfs)	RGD1 as %	1998 Irrigated Area (acres)	Pasture Grass (acres)	Alfalfa (acres)	2009 Irrigated Area (acres)	Pasture Grass (acres)	Alfalfa (acres)	2017 Irrigated Area (acres)	Pasture Grass (acres)	Alfalfa (acres)	
Mortensen	2-4	3.22	29.68%	220.62	113.86	106.74	213.15	213.15	0	215.51	194.62	20.89	216.43
Seger	5	0.51	4.70%	34.12	18.32	15.8	34.12	34.12	0	34.12	34.12	0	34.12
Ramsey & Lusero	6	1.10	10.14%	64.6	64.6	0	64.6	64.6	0	64.6	58.61	5.99	64.60
Montoya & Velasquez	7	0.91	8.39%	51.5	51.5	0	49.9	49.9	0	49.9	49.9	0	50.43
Total		5.74	-	370.84	248.28	122.54	361.77	361.77	0	364.13	337.25	26.88	365.58

- Notes:
- (1) Irrigated areas determined from aerial photos in 1998, 2009 and 2017.
 - (2) Crop types by acreage were determined from Colorado's Decision Support System (CDSS) irrigated area GIS shapefiles for 1998, 2009, and 2015 (2017 was not available).

The volumetric delivery targets for the combined subject parcels as well as the reduction in flow rates should the HCU water be left in the Rio Grande are presented in Table 8.

Table 8
 Volumetric Delivery Targets

Volumetric Targets:	For All Properties												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Consumptive Use Credit, af	0.0	0.0	0.0	45.2	102.5	162.7	152.5	131.1	108.8	77.1	1.7	0.0	781.5
Return Flows, af	0.0	0.0	0.0	86.2	181.2	115.8	110.5	106.4	96.3	102.6	7.0	0.0	806.0
Flow Rate Reduction Targets*:	For All Properties												
Consumptive Use Credit, cfs	0.00	0.00	0.00	0.76	1.67	2.73	2.48	2.13	1.83	1.25	0.03	0.00	

- Notes:
- *These flow rate reduction targets are only applicable if the RGD1 Priority No. 8 water right is diverted each day during the respective month.
 - > For the beginning of the season (if partial month), the flow rate reduction targets should be increased proportional to the number of diversion days remaining in that month.
 - > For the end of the season (if partial month), the flow rate reduction targets should be increased proportional to the number of estimated diversion days remaining in that month.

The subject parcels will not be irrigated during the 2022 irrigation season. Should the anticipated dry-up result in growth due to subirrigation or seepage, the Applicant must notify the Division Engineer, and the Division Engineer will determine if any required adjustments to the HCU credits are necessary, or if other actions are required.

CONDITIONS OF APPROVAL

This SWSP is hereby approved pursuant to §37-92-308(5), C.R.S., subject to the conditions stated below:

1. This SWSP shall be valid for the period of April 15, 2022 through March 31, 2023 unless otherwise revoked. Any request for an additional SWSP is subject to the provisions of §37-92-308(5) (b), C.R.S., and the statutory fee of \$300 will be required pursuant to §37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **January 1, 2023**.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. **This is the first year of approval of this SWSP.**
3. Changes to water rights will be limited to the Rio Grande Ditch No. 1 and the shares/parcels identified in this approval. Changes to include additional parcels/shares for the ditch, or changes to include additional ditches will be allowed only if a new SWSP is approved for those additional shares/ditches. Should a new SWSP be requested, the provisions of C.R.S. § 37-92-308(5)(b) shall apply. The statutory fee of \$300 will be required pursuant to C.R.S. § 37-92-308(8).
4. For the purposes of this SWSP, the Applicant's methodology, claimed historical consumptive use, and StateCU parameters are being accepted. However, as Division 3 staff continue to assess the uses and operations, these values may be subject to modification.
5. The subject parcels will not be irrigated during the 2022 irrigation season. Should the anticipated dry-up result in growth due to subirrigation or seepage, the Applicant must notify the Division Engineer, and the Division Engineer will determine if any required adjustments to the HCU credits are necessary, or if other actions are required.
6. In order to prevent injury to other water rights, the Division Engineer and Water Commissioner must be able to ensure the delivery of the Rio Grande Ditch No. 1 water to non-participating users on the ditch. In the event that delivery past dry-up points is not being achieved, for which a carriage or use agreement with a third party is required, the applicant shall be responsible for securing such agreement. If such a situation arises, until the Applicant provides a copy of the carriage or use agreement to the Division Engineer and Water Commissioner, no credit will be allowed for replacement of depletions to the Rio Grande.
7. All diversions shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain such measuring devices as required by the Division Engineer for operation of this SWSP.
8. The Applicant shall provide accounting of the metered water delivered to the river and flume readings for the return flow obligations on a **monthly** basis. The accounting must show the daily diversions, balance of consumptive use credits that the Applicant has used and has remaining, and the return flow obligations. Frequent, if not daily, contact with the water commissioner is required to ensure daily administration and to prevent injury

to 3rd parties. The accounting must be e-mailed to the following DWR employees, Staff Researcher (Kevin.Boyle@state.co.us), Staff Engineer (Pat.Mcdermott@state.co.us) Water Commissioner, and (Sam.Riggenbach@state.co.us) within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer. An initial reading on any meter must be provided with the accounting.

9. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.
10. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
11. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(5), C.R.S., shall be to the Division 3 Water Judge within thirty days of the date of this decision.

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

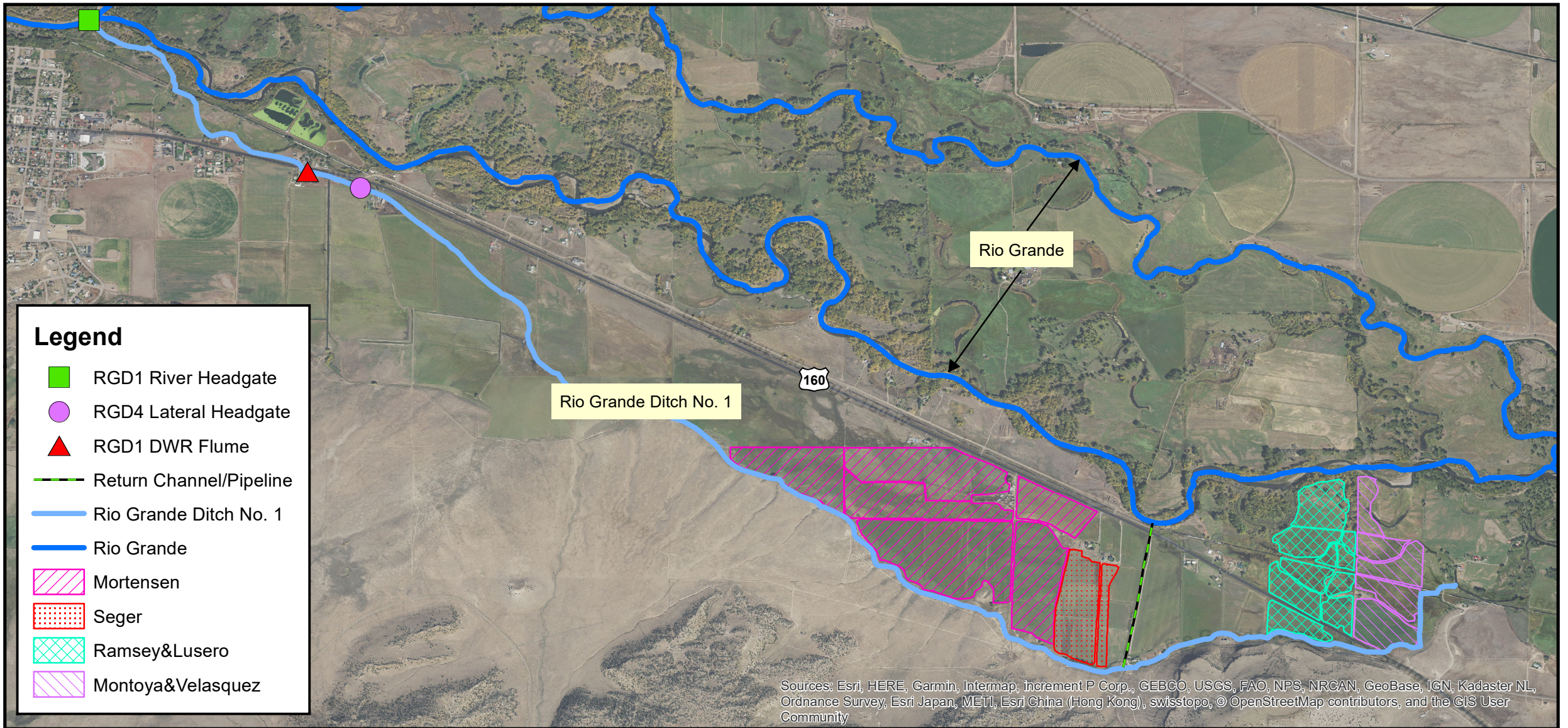
Sincerely,



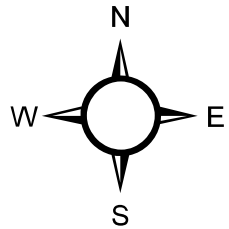
Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Figure 1

cc: Craig Cotten, Division 3 Engineer
Sam Riggenback, District 20 Lead Water Commissioner
Kevin Boyle, Division 3 Staff Researcher
Pat McDermott, Staff Engineer



Aerial photo = 2017



0 0.25 0.5 1 Miles

FIGURE 1
RIO GRANDE DITCH NO. 1 OVERVIEW
PARTICIPATING LANDS
 February 2022



PURCHASE AND SALE AGREEMENT
TWIN PINES RESERVED WATER RIGHTS

THIS PURCHASE SALE AGREEMENT (this “PSA”) is entered into and is effective as of the Effective Date (defined in Section 1.2 below), by and between the **ROCKY MOUNTAIN HIGH DEVELOPMENT, LLC**, a Nevada Limited Liability Company of the County of Bexar, State of Texas (“Seller”) and the **RIO GRANDE WATER CONSERVATION DISTRICT**, for and on behalf of, **THE WATER ACTIVITY ENTERPRISES OF THE SPECIAL IMPROVEMENT DISTRICTS NO. 2 and NO. 6 OF THE RIO GRANDE WATER CONSERVATION DISTRICT**, a body corporate and politic and a political subdivision of the state of Colorado whose address is 8805 Independence Way, Alamosa, Colorado 81101 (the “District”). The Seller and the District may be referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

RECITALS

A. WHEREAS, Seller is the former owner of certain real property in Rio Grande County, Colorado, known as 12628 Highway 160, Del Norte, Colorado 81132 and legally described on Exhibit A hereto (the “Property”).

B. WHEREAS, the Property has been irrigated historically with certain water rights, including, but not limited to, .75 of one cubic foot of water per second time in and from the Rio Grande Ditch Number 1, Appropriation Priority No. 8, as of the date August 1, 1870; an undivided ½ interest in and to the Rio Grande Ditch No. 4 and an undivided ½ interest in and to the water thereunder decreed under and by virtue of Appropriation Priority No. 285 for a total of 12 cubic feet of water per second time; also all interest right and title transferred in J. Otto Krause, Fred Scherzer, and Monroe Wright in and to Priority No. 1916-16 as of the Date of December 31, 1886, heretofore awarded for use through said Rio Grande Ditch No. 4 for 10 cubic feet of water per second time; an Appropriation Priority No. 1934-17 as of the date of October 4, 1928, in Aydelotte Drain Ditch; and also an interest of one and one fourth cubic feet of water per second time in and from Rio Grande Ditch No. 1, Appropriation Priority No. 8 as of the date August 1, 1870, and as more particularly described and mentioned in that certain contract and agreement, dated December 29, 1939, and duly recorded in Book 200 at Page 111 of the records of the County Clerk and Recorder of Rio Grande County, Colorado, and particularly subject to the terms and conditions of said contract under which it was the intention of the parties that said one and one fourth cubic foot of water per second time is equal to .683 shares in and from said Appropriation as provided and set forth in said contract and agreement; TOGETHER WITH all appurtenances and improvements thereon; and TOGETHER WITH an interest in any and all water, water rights, ditches, flumes, headgates, decrees and appropriations to the use of water thereunder belonging, and more in particular, an interest in 2 cubic feet of water per second time, as heretofore awarded and decreed for use in and through the James McCleary Ditch and under and by virtue of Appropriation Priority No. 10, as of the date of May 1, 1872, an interest of 2 cubic feet of water per second time, of that certain twelve original cubic feet of water per second time as heretofore awarded and decreed for use in and through Rio Grande Ditch No. 4 by Appropriation Priority No. 285 as of the date of June 1, 1886; also all the right, title and interest in and to that certain additional priority for 10 cubic feet of water per second of time and heretofore awarded for use in and through Rio Grande

Ditch No. 4 by Appropriation Priority No. 1916-16 as of the date of December 31, 1886, conveyed to J. Otto Krause and Fred Scherzer in deed recorded February 13, 1953, Book 227 at Page 512 of the records of the Clerk and Recorder of Rio Grande County, Colorado; also known as Del Norte Farm, with all its appurtenances (collectively, the “Twin Pines Water Rights”).

C. WHEREAS, by Warranty Deed dated January 6, 2014, recorded on January 7, 2014, at Reception No. 201400420177 in the records of the Clerk and Recorder of Rio Grande County, Colorado, Seller conveyed the Property to Mark Q. Deacon.

D. WHEREAS, by Special Warranty Deed dated January 6, 2014, recorded on January 7, 2014, at Reception No. 201400420179 in the records of the Clerk and Recorder of Rio Grande County, Colorado, Seller conveyed, *inter alia*, an eighty percent (80%) interest in the Twin Pines Water Rights to Mark Q. Deacon (the “80% Interest in the Twin Pines Water Rights”) and Seller retained a twenty percent (20%) interest in the Twin Pines Water Rights (the “20% Interest in the Twin Pines Water Rights”).

E. WHEREAS, whereas from the sale of the Property and the 80% Interest in the Twin Pines Water Rights by Seller to Mark Q. Deacon through the 2022 irrigation season, Mark Q. Deacon irrigated the Property using, *inter alia*, the 80% Interest in the Twin Pines Water Rights and the 20% Interest in the Twin Pines Water Rights pursuant to an agreement with Seller.

F. WHEREAS, Seller is willing to sell the 20% Interest in the Twin Pines Water Rights to the District pursuant and subject to the terms and conditions of this PSA.

G. WHEREAS, the District is willing to purchase from Seller the 20% Interest in the Twin Pines Water Rights pursuant and subject to the terms and conditions of this PSA.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

The above recitals are hereby incorporated into the terms and conditions of this PSA as if fully set forth herein.

1. Definitions. For the purposes of this PSA, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1. “Closing” means those activities described herein that are required to complete the purchase and sale of the Property from Seller to the District.

1.2. “Effective Date” means the last date on which this PSA has been mutually executed by the District and Seller.

1.3. “Effect of Termination” means that, in the event this PSA is terminated by either Party, the Parties are relieved of all obligations hereunder except for those obligations hereunder that are expressly provided to survive the termination of this PSA.

1.4. “Purchase Price” means the price agreed to between the District and Seller in Section 5 of this PSA for the purchase and sale of the Property.

1.5. “Right to Terminate” means a right of either Party to terminate this PSA, or a condition thereof, pursuant to the terms of this PSA as provided in this PSA by providing written notice to the other Party. The Parties agree that if such written notice is not received on or before the applicable deadline specified in this PSA, the Party with the Right to Terminate accepts the specified matter, document, or condition as satisfactory and waives the Right to Terminate under such provision.

1.6. “Title Company” means Allpine Title Company, who will hold funds and documents in escrow pending completion of the conditions set forth in this PSA, in accordance with this PSA. Allpine Title Company shall provide the Parties a closing statement showing the financial details of the transaction contemplated by this PSA.

2. **Sale and Purchase.** Subject to the terms and conditions of this PSA, Seller hereby agrees to sell and the District agrees to purchase the 20% Interest in the Twin Pines Water Rights.

2.1. The Parties acknowledge and agree that no down payment will be made as part of the purchase and sale contemplated by this PSA. All payments due under this PSA shall be made at closing.

3. **Inclusions.** None.

4. **Exclusions.** None. The Parties acknowledge that no land is included in the purchase and sale of the 20% Interest in the Twin Pines Water Rights contemplated by this PSA.

5. **Dates and Deadlines.** The deadlines in this section shall expire at 11:59 p.m., United States Mountain Time. As used in this PSA, the term “day” means the entire day ending at 11:59 p.m., United States Mountain Time. In computing a period of days (e.g., 15 days after the Effective Date), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline in this PSA falls on a Saturday, Sunday or Federal or Colorado state holiday (“Holiday”), such deadline shall automatically be extended until the next day that is not a Saturday, Sunday or Holiday. Any of the deadlines in this section may be extended by mutual agreement of the Parties.

Inspection and Due Diligence

5.1. Water Rights Inspection Deadline: 1 day after Effective Date.

5.2. Inspection Objection Deadline: 1 day after Effective Date.

5.3. Inspection Termination Deadline: 5 days after Inspection Objection Deadline.

5.4. Due Diligence Document Delivery Deadline: Effective Date.

5.5. Due Diligence Document Objection Deadline: 1 day after Effective Date.

5.6. Due Diligence Resolution Deadline: 5 days after Due Diligence Document Objection Deadline.

Closing and Possession

5.7. Closing Date: the Closing Date shall occur no sooner than 10 days after the Effective Date, and no later than 15 days after the Effective Date, on a date and time mutually agreed to in writing by Seller and the District, and acceptable to Allpine Title

5.8. Possession Date: At Closing.

5.9. Possession Time: At time of Closing.

6. Purchase Price.

6.1. Purchase Price. The Purchase Price for the 20% Interest in the Twin Pines Water Rights, including the Seller's covenants and obligations hereunder to be paid at Closing, subject to the terms and conditions of this PSA is one million four-hundred thousand and 00/100 dollars (\$1,400,000.00).

6.2. Broker Fee. In addition to the Purchase Price, the District shall pay eighty-four thousand and 00/100 dollars (\$84,000.00) at Closing as a broker's fee (the "Broker's Fee"). Any compensation agreement regarding the Broker's Fee must be entered into by Seller separately and apart from this PSA. The Parties acknowledge and agree that the District has no relationship with any broker or brokerage firm to be paid with the Broker's Fee, and that this PSA does not create any right of compensation or commission on behalf of any broker or brokerage firm, nor does this Agreement create any obligation of the District to pay compensation or commission to any broker or brokerage firm.

7. **Water Rights Review.** The District has the Right to Terminate if the examination of the 20% Interest in the Twin Pines Water Rights is unsatisfactory to the District for any reason, in its sole, subjective discretion, on or before the Water Rights Inspection Deadline.

8. Disclosures, Inspection and Due Diligence.

8.1. Disclosure of Adverse Material Facts. Seller must disclose to the District any adverse material facts actually known by Seller as of the date of this PSA. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this PSA, Seller must timely disclose such adverse fact to the District. The District has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after the District's receipt of the new disclosure. Except as otherwise provided in this PSA, the District acknowledges that Seller is conveying the 20% Interest in the Twin Pines Water Rights to the District in an "as is" condition, "where is" and "with all faults."

8.2. Inspection. The District shall have the right, at its expense, to inspect (by one or more third parties, personally, or both) the 20% Interest in the Twin Pines Water Rights to determine if there are any structural, mechanical, or other damage, or other

undesirable conditions that are not customary to the locality and/or prohibited by law.

8.3. Inspection Objection, Resolution. If Seller receives the District's written notice objecting to any matter under section 8.1 or 8.2 (each, an "Inspection Objection"), on or before the Inspection Objection Deadline, this PSA will terminate on the Inspection Termination Deadline, unless Seller receives the District's written notice of settlement or waiver of each Inspection Objection before the Inspection Termination Deadline. Prior to the Inspection Termination Deadline, the Seller shall have the right to cure any Inspection Objection. The District may raise an Inspection Objection in its sole, subjective discretion. If the Inspection Objection Deadline is extended pursuant to section 8.1, the Inspection Termination Deadline will be automatically extended to the earlier of Closing or fifteen days after the District's receipt of the applicable documents. If the Seller does not receive an Inspection Objection on or before the Inspection Objection Deadline, and Seller has fulfilled Seller's obligations under sections 8.1 and 8.2, in any, the District waives any right to terminate the PSA under this provision.

8.4. Right to Terminate. The District has the Right to Terminate if any matter revealed by the Seller's disclosures and/or the District's inspection is unsatisfactory to the District for any reason, in its sole, subjective discretion, on or before the Inspection Termination Deadline.

8.5. Document Due Diligence. Seller agrees to deliver to the District, copies of the following documents, to the extent they exist, on or before the Due Diligence Documents Delivery Deadline:

8.5.1. Water Rights. Any documents, decree, studies, engineering studies, etc., in Seller's possession related to the 20% Interest in the Twin Pines Water Rights; copies (front and back) of any ditch share certificates; and copies of any ditch company articles of incorporation, bylaws, rules and/or regulations in Seller's possession.

8.6. Inspection Objection, Resolution. If Seller receives the District's written notice objecting to any matter under section 8.5, (a "Diligence Objection"), on or before the Due Diligence Documents Objection Deadline, this PSA will terminate on the Due Diligence Resolution Deadline, unless Seller receives the District's written notice of settlement or waiver of each Diligence Objection before the Due Diligence Resolution Deadline. Prior to the Diligence Resolution Deadline, the Seller shall have the right to cure any Diligence Objection(s). The District may raise a Diligence Objection in its sole, subjective discretion. If the Seller does not receive an Inspection Objection on or before the Due Diligence Objection Deadline, and Seller has fulfilled Seller's obligations under section 8.5, in any, the District waives any right to terminate the PSA under this provision.

8.7. The District has the Right to Terminate if any matter revealed by the due diligence documents is unsatisfactory to the District for any reason, in its sole, subjective discretion, on or before the Due Diligence Resolution Deadline.

9. Closing.

9.1. Closing Documents. Seller and the District will cooperate with each other to enable Allpine Title Company to prepare and deliver the documents required for Closing to the District and Seller and their designees, including the recording of any required statement of authority to enter into this transaction on the part of Seller. The District and Seller shall furnish additional information or documents required by the Title Company that will be necessary to complete this transaction. The District and the Seller shall sign and complete all customary or reasonably required documents at or before Closing.

9.2. Date and Time. Closing shall be on the Closing Date or other date mutually agreed to by the Parties. The hour and place of the Closing shall be specified by the Title Company.

10. Transfer of Title. Subject to the District's compliance with the terms and conditions of this PSA, including the tender of any payment due at Closing, Seller must execute and deliver to the District a special warranty deed for the Water Rights in the form of Exhibit B attached hereto.

10.1. Affidavit at Closing. Subject to the District's compliance with the terms and conditions of this PSA, including the tender of any payment due at Closing, Seller must execute and deliver an affidavit attesting to the historical irrigation of the Property with the 20% Interest in the Twin Pines Water Rights at Closing in the form of Exhibit C attached hereto.

11. Closing Costs and Fees.

11.1. Closing Costs. The Parties shall split equally all closing costs, including any fee for real estate closing services and any record change fee, recording fee, etc.

11.2. FIRPTA. If withholding is required, Seller authorizes the Title Company to withhold such amount from Seller's proceeds.

11.3. Colorado Withholding. Seller agrees to cooperate with the District and the Title Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes the Title Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

12. Prorations. The following will be prorated to the Closing Date:

12.1. Ditch Company Assessments and Taxes. Ditch Company Assessments, if any.

12.2. Final Settlement. These prorations are final.

13. Possession. Possession of the 20% Interest in the Twin Pines Water Rights will be delivered to the District on the Possession Date at the Possession Time.

14. Damages and Loss. Except as otherwise provided in the PSA, the 20% Interest in the Twin Pines Water Rights, including appurtenances, will be delivered in the condition existing

as of the Effective Date, ordinary wear and tear excepted.

14.1. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the 20% Interest in the Twin Pines Water Rights, including appurtenances, Seller must promptly notify the District, in writing, of such condemnation action. Should the District elect to consummate this PSA despite such diminution of value to the 20% Interest in the Twin Pines Water Rights, including appurtenances, the District is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in value of the 20% Interest in the Twin Pines Water Rights, including appurtenances, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

15. Default and Remedies. Time is of the essence for all dates and deadlines in this PSA. This means that all dates and deadlines are strict and absolute. If any payment due is not paid, honored, or tendered when due, or if any obligation is not performed timely as provided in this PSA or waived, the non-defaulting Party may elect to cancel this PSA and recover such damages as may be proper; or alternatively, the non-defaulting Party may elect to treat this PSA as being in full force and effect and has the right to specific performance, or damages, or both.

15.1. Seller's Failure to Perform. In the event Seller fails to perform Seller's obligations under this PSA, to include, but not limited to, failure to timely disclose any known adverse material facts, Seller remains liable for any such failures to perform under this PSA after Closing. The District's rights to pursue the Seller for Seller's failure to perform under this PSA are reserved and survive Closing.

16. Termination.

16.1. Right to Terminate. If a Party has a Right to Terminate as provided in this PSA, the termination is effective upon the other Party's receipt of a written notice to terminate ("Notice to Terminate"). If the Notice to Terminate is not received on or before the specified deadline, the Party with the Right to Terminate accepts the specific matter, document, or condition as satisfactory and waives the Right to Terminate under such provision.

16.2. Effect of Termination. In the event this PSA is terminated, the Parties are relieved of all obligations hereunder except those that are expressly provided herein to survive the termination of the PSA.

17. Commissions. The District and Seller both represent and warrant to each other that, except as provided for in Section 6.2 of this PSA, they have not entered into other agreements with a broker or other party requiring the payment of fees or commissions with respect to the transaction contemplated by this PSA. Notwithstanding the foregoing, Seller shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Seller and the District shall be responsible for any brokers', finders', or similar fees from any third-party claiming under the District.

18. Notices. Any and all notices, requests, demands, or other communications (collectively, "Notices") under this PSA shall be in writing and given by (1) an established express

delivery service that maintains delivery records requiring a signed receipt; (2) hand delivery; (3) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address that the Parties may designate by Notice in the above manner; or (4) email at the following email address, or at such other email address the Parties may designate by Notice in the above manner:

If to the District:

Rio Grande Water Conservation District
Attn: Cleave Simpson, General Manager
8805 Independence Way
Alamosa, CO 81101
cleave@rgwcd.org

With copies to:

Special Improvement Districts No. 2 and No. 6
Rio Grande Water Conservation District
Attn: Angelo Bellah, Program Manager
8805 Independence Way
Alamosa, CO 81101
angelo@rgwcd.org

Hill & Robbins, P.C.
Attn: Peter J. Ampe, Esq.
Attn: Matthew A. Montgomery, Esq.
3401 Quebec St., Suite 3400
Denver, CO 80207
peterampe@hillandrobbs.com
matthewmontgomery@hillandrobbs.com

If to Seller:

Rocky Mountain High Development, LLC
Attn: Steve Cummings, Manager
755 E. Mulberry Ave., Suite 600
San Antonio, TX 78212

With copies to:

Elk Country Realty
Attn: Dusty Hicks
218 Conifer Dr.
South Fork, CO 81154
dhicks@vanion.com

Holland & Hart LLP
Attn: Susan Ryan

600 East Main Street, Suite 104
Aspen, CO 81611
SMRyan@hollandhart.com

19. **Indebtedness.** No provision, covenant or agreement contained in this PSA, nor any obligations herein, shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

20. **Subject to Annual Budget and Appropriation.** The District does not intend to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever as a product of this PSA. The performance of those obligations of the District requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

21. **No Partnership or Agency.** Notwithstanding any language in this PSA or any representation or warranty to the contrary, neither Party shall be deemed or constitute a partner, joint venture or agent of the other Party.

22. **Amendment.** This PSA may be extended, modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties with the same formality as this PSA.

23. **Governmental Immunity.** Nothing in this PSA or any actions taken by the Parties pursuant to this PSA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time may be amended.

24. **Statutory Liability Protection.** The Parties may rely on, and do not waive or intend to waive, any liability protections or any other rights, immunities, limitations or protections provided by law to the Parties and their respective officers, agents, fiduciaries, representatives, and employees.

25. **No Waiver.** No waiver of any of the provisions of this PSA shall be deemed to constitute a waiver of any other of the provisions of this PSA, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

26. **Survival of Representations.** Each and every representation, warranty, covenant, promise, and payment contained in this PSA shall not merge in any deed, assignment, covenant, escrow agreement, easement, lease or any other document, but shall survive at the Closing, and be binding and obligatory upon each of the Parties hereto.

27. **Entire Agreement.** This PSA represents the entire agreement of the Parties with respect to the purchase and sale of the Property and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this PSA.

28. Representation and Warranties. Seller represents and warrants to District that, as of the Effective Date: Seller is the sole owner in fee-simple of the 20% Interest in the Twin Pines Water Rights; Seller is authorized to and has the full legal power to enter into this PSA; the 20% Interest in the Twin Pines Water Rights is not subject to any known encumbrances or other agreements that could impair or damage the District's rights, in law or equity, under this PSA or prevent Seller from fulfilling its obligations under this PSA; no other person (including any spouse) is required to join in or consent to this PSA in order for the PSA to be fully enforceable by the District; this PSA constitutes a valid and binding obligation of the Seller, and is enforceable in accordance with its terms; Seller is not the subject of any bankruptcy, insolvency or probate proceeding; and to the best of Seller's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings, or any other proceedings affecting or that could affect the 20% Interest in the Twin Pines Water Rights, or any portion thereof, in law or in equity, before any court or governmental agency.

29. Headings for Convenience Only. Section headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this PSA.

30. Binding Effect and Assignability. This PSA and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, heirs, and assigns, if any. Seller may not assign its rights or delegate its duties under this PSA without the prior written consent of the District, which the District may withhold in its sole, subjective discretion. The District shall be entitled to assign its rights and obligations under this PSA without the consent of Seller.

31. Governing Law and Venue. This PSA and its application shall be construed in accordance with the laws of the State of Colorado. Should it be necessary to institute court proceedings concerning this PSA, venue shall be in the District Court for Rio Grande County, Colorado.

32. Multiple Originals. This PSA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

33. Interpretation. Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

34. No Attorney's Fees and Costs. In the event of any litigation, mediation, or other dispute resolution proceeding arising out of or related to this PSA, each Party agrees to be responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

35. Non-Severability; Effect of Invalidity. Each Section of this PSA is intertwined with the others and not severable unless by mutual consent of the District and Seller. If any provision or portion of this PSA or the application thereof to any person or circumstance shall, at

any time or to any extent, be held invalid or unenforceable for any reason by a court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this PSA, or the application of such provisions to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby.

36. Intent of Contract. This PSA is intended to describe the rights and responsibilities of and between the District and Seller and is not intended to, and shall not be deemed to, confer rights upon any person or entities not signatories hereto, or to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of the District or any governmental entity not a party hereto.

37. Confidentiality. Seller acknowledges that the District is a public entity subject to the provisions of the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 *et seq.* Any confidential and/or proprietary information that either Party discloses to the other with respect to this PSA shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure.

38. Exhibits. The exhibits attached to this PSA are hereby incorporated into this PSA.

[the remainder of this page intentionally left blank]

**RIO GRANDE WATER CONSERVATION
DISTRICT, for and on behalf of, THE WATER
ACTIVITY ENTERPRISES of SPECIAL
IMPROVEMENT DISTRICT NO. 2 and NO. 6
of the RIO GRANDE WATER
CONSERVATION DISTRICT**

By: Cleave Simpson, General Manager
Rio Grande Water Conservation District
Date:

**ROCKY MOUNTAIN HIGH DEVELOPMENT,
LLC**



By: Steve Cummings, Manager
Rocky Mountain High Development, LLC
Date:

Exhibit A
Legal Description of Property

W½ and S½ SE¼, Section 33, Township 40 North, Range 6 East, New Mexico Principal Meridian, Rio Grande County, Colorado.

LESS: All that part of the NW¼ of said Section 33, lying North of the South line of highway known as Federal Aid Project 270-E, also the South line of the highway known as Federal Aid Project 270-E, also known as State Highway 160, AND Less all that portion of the NW ¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies 40 feet on the Northside and 60 feet on the Southside of the center line of Federal Aid Project 270-E as surveyed and constructed, which said center line is more particularly described as follows: Beginning at the point of intersection of the said center line with the East boundary of the said NW¼ of Section 33, which point lies approximately 1320 feet Southerly from the North Quarter corner of the said Section 33, thence along the said center line North 60° 25' West 2230 feet, more or less, to a point of intersection; thence continuing along said center line North 74° 20' West 760 feet, more or less, to the West boundary of the said NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M.

LESS: A parcel of land situate in the NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., described as follows, to-wit: Beginning at the point of intersection of the South boundary line of Federal Aid Project 270-E, also known as State Highway 160, as surveyed and constructed, and as described in Warranty Deed appearing in Book 185 at Page 213 of the record; in the office of the County Clerk and Recorder of Rio Grande County, Colorado, with the East boundary line of said NW¼ of said Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies approximately 1380 feet Southerly from the North Quarter corner of said Section 33; thence South 400 feet along the East boundary line of said NW¼ of said Section 33, thence West 218 feet; thence North to the South boundary line of said Federal Aid Project 270-E; thence Easterly 218 feet along the South boundary line of said Federal Aid Project 270-E, to the point of beginning.

AND

NE¼ and E½ NW¼, Section 4, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼, Section 5, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

That Part of the SE¼ SE¼ lying south of the County Road, Section 29, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼; SW¼ NE¼; SE¼, Section 32, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

Exhibit B

SPECIAL WARRANTY DEED
(WATER RIGHTS)

THIS DEED, made this ___ day of _____, 2023, between **ROCKY MOUNTAIN HIGH DEVELOPMENT, LLC**, a Nevada limited liability company of the County of Bexar, State of Texas, Grantor, and the **RIO GRANDE WATER CONSERVATION DISTRICT**, for and on behalf of, the **WATER ACTIVITY ENTERPRISES** of the **SPECIAL IMPROVEMENT DISTRICTS NO. 2** and **NO. 6** of the **RIO GRANDE WATER CONSERVATION DISTRICT**, a body corporate and politic and a political subdivision of the state of Colorado whose address is 8805 Independence Way, Alamosa, Colorado 81101, Grantee.

WITNESSETH, That Grantor, for and in consideration of the sum of one-million four hundred thousand and 00/100 dollars (\$1,400,000.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm, unto Grantee, and Grantee's heirs, successors and assigns forever, the water shares, water rights, and rights to use water, together with all improvements, if any, situate, lying and being in the County of Rio Grande, State of Colorado, described as follows:

SEE EXHIBIT A, attached hereto and by this reference incorporated herein.

TOGETHER WITH all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of Grantors, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto Grantee, and Grantee's heirs, successors and assigns forever. Grantor, for Granter and Grantor's heirs, successors and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of Grantee, and Grantee's heirs, successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

**ROCKY MOUNTAIN HIGH DEVELOPMENT,
LLC**

By: Steve Cummings, Manager

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

The foregoing instrument was acknowledged before me this __ day of _____, 2023,
by Steve Cummings, Manager of Rocky Mountain High Development, LLC.

Witness my hand and official seal.

My Commission Expires _____.

Notary Public

EXHIBIT A
(Water Rights)

A twenty percent interest (20%) interest of all water and water rights, ditch and ditch rights, flumes and headgates thereunto appertaining the Property in EXHIBIT A-1, including but not limited to:

A twenty percent (20%) interest of .75 of one cubic foot of water per second time in and from the Rio Grande Ditch Number 1, Appropriation Priority No. 8, as of the date August 1, 1870; a twenty percent (20%) interest of an undivided ½ interest in and to the Rio Grande Ditch No. 4 and an undivided ½ interest in and to the water thereunder decreed under and by virtue of Appropriation Priority No. 285 for a total of 12 cubic feet of water per second time; also a twenty percent (20%) interest of all interest right and title transferred in J. Otto Krause, Fred Scherzer, and Monroe Wright in and to Priority No. 1916-16 as of the Date of December 31, 1886, heretofore awarded for use through said Rio Grande Ditch No. 4 for 10 cubic feet of water per second time; a twenty percent (20%) of an Appropriation Priority No. 1934-17 as of the date of October 4, 1928, in Aydelotte Drain Ditch; and also a twenty percent (20%) interest of one and one fourth cubic feet of water per second time in and from Rio Grande Ditch No. 1, Appropriation Priority No. 8 as of the date August 1, 1870, and as more particularly described and mentioned in that certain contract and agreement, dated December 29, 1939, and duly recorded in Book 200 at Page 111 of the records of the County Clerk and Recorder of Rio Grande County, Colorado, and particularly subject to the terms and conditions of said contract under which it was the intention of the parties that said one and one fourth cubic foot of water per second time is equal to .683 shares in and from said Appropriation as provided and set forth in said contract and agreement; TOGETHER WITH all appurtenances and improvements thereon.

TOGETHER WITH a twenty percent (20%) interest in any and all water, water rights, ditches, flumes, headgates, decrees and appropriations to the use of water thereunder belonging, and more in particular, a twenty percent (20%) interest in 2 cubic feet of water per second time, as heretofore awarded and decreed for use in and through the James McCleary Ditch and under and by virtue of Appropriation Priority No. 10, as of the date of May 1, 1872, a twenty percent (20%) interest of 2 cubic feet of water per second time, of that certain twelve original cubic feet of water per second time as heretofore awarded and decreed for use in and through Rio Grande Ditch No. 4 by Appropriation Priority No. 285 as of the date of June 1, 1886; also a twenty percent (20%) interest of all the right, title and interest in and to that certain additional priority for 10 cubic feet of water per second of time and heretofore awarded for use in and through Rio Grande Ditch No. 4 by Appropriation Priority No. 1916-16 as of the date of December 31, 1886, conveyed to J. Otto Krause and Fred Scherzer in deed recorded February 13, 1953, Book 227 at Page 512 of the records of the Clerk and Recorder of Rio Grande County, Colorado; also known as Del Norte Farm, with all its appurtenances.

EXHIBIT A-1
(Legal Description of Property)

W½ and S½ SE¼, Section 33, Township 40 North, Range 6 East, New Mexico Principal Meridian, Rio Grande County, Colorado.

LESS: All that part of the NW¼ of said Section 33, lying North of the South line of highway known as Federal Aid Project 270-E, also the South line of the highway known as Federal Aid Project 270-E, also known as State Highway 160, AND Less all that portion of the NW ¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies 40 feet on the Northside and 60 feet on the Southside of the center line of Federal Aid Project 270-E as surveyed and constructed, which said center line is more particularly described as follows: Beginning at the point of intersection of the said center line with the East boundary of the said NW¼ of Section 33, which point lies approximately 1320 feet Southerly from the North Quarter corner of the said Section 33, thence along the said center line North 60° 25' West 2230 feet, more or less, to a point of intersection; thence continuing along said center line North 74° 20' West 760 feet, more or less, to the West boundary of the said NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M.

LESS: A parcel of land situate in the NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., described as follows, to-wit: Beginning at the point of intersection of the South boundary line of Federal Aid Project 270-E, also known as State Highway 160, as surveyed and constructed, and as described in Warranty Deed appearing in Book 185 at Page 213 of the record; in the office of the County Clerk and Recorder of Rio Grande County, Colorado, with the East boundary line of said NW¼ of said Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies approximately 1380 feet Southerly from the North Quarter corner of said Section 33; thence South 400 feet along the East boundary line of said NW¼ of said Section 33, thence West 218 feet; thence North to the South boundary line of said Federal Aid Project 270-E; thence Easterly 218 feet along the South boundary line of said Federal Aid Project 270-E, to the point of beginning.

AND

NE¼ and E½ NW¼, Section 4, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼, Section 5, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

That Part of the SE¼ SE¼ lying south of the County Road, Section 29, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼; SW¼ NE¼; SE¼, Section 32, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

Exhibit C

AFFIDAVIT

STATE OF TEXAS)
)ss.
COUNTY OF BEXAR)

The undersigned, Steve Cummings, Manager of Rocky Mountain High Development, LLC, a Nevada limited liability company of the County of Bexar, State of Texas, being of sound mind and body, and over eighteen years of age, as former owner of the real property described in Exhibit A attached hereto (the "Property") hereby certifies his knowledge of the following matters regarding the historical use of the Property:

1. McCombs Legacy, Ltd. ("MLLTD") acquired the Property on or about February 20, 2007, by a deed dated February 20, 2007, and recorded on February 20, 2007, at Reception No. 396313 in the records of the Clerk and Recorder of Rio Grande County, Colorado. MLLTD transferred the Property to Rocky Mountain High Development, LLC ("RMHD") on or about July 26, 2007, by a deed dated July 26, 2007, and recorded on August 7, 2007, at Reception No. 398527 in the records of the Clerk and Recorder of Rio Grande County, Colorado. MLLTD and RMHD are controlled by the same owner.

2. Certain water rights are appurtenant to the Property, including, but not limited to, .75 of one cubic foot of water per second time in and from the Rio Grande Ditch Number 1, Appropriation Priority No. 8, as of the date August 1, 1870; an undivided ½ interest in and to the Rio Grande Ditch No. 4 and an undivided ½ interest in and to the water thereunder decreed under and by virtue of Appropriation Priority No. 285 for a total of 12 cubic feet of water per second time; also all interest right and title transferred in J. Otto Krause, Fred Scherzer, and Monroe Wright in and to Priority No. 1916-16 as of the Date of December 31, 1886, heretofore awarded for use through said Rio Grande Ditch No. 4 for 10 cubic feet of water per second time; an Appropriation Priority No. 1934-17 as of the date of October 4, 1928, in Aydelotte Drain Ditch; and also an interest of one and one fourth cubic feet of water per second time in and from Rio Grande Ditch No. 1, Appropriation Priority No. 8 as of the date August 1, 1870, and as more particularly described and mentioned in that certain contract and agreement, dated December 29, 1939, and duly recorded in Book 200 at Page 111 of the records of the County Clerk and Recorder of Rio Grande County, Colorado, and particularly subject to the terms and conditions of said contract under which it was the intention of the parties that said one and one fourth cubic foot of water per second time is equal to .683 shares in and from said Appropriation as provided and set forth in said contract and agreement; TOGETHER WITH all appurtenances and improvements thereon; and TOGETHER WITH an interest in any and all water, water rights, ditches, flumes, headgates, decrees and appropriations to the use of water thereunder belonging, and more in particular, an interest in 2 cubic feet of water per second time, as heretofore awarded and decreed for use in and through the James McCleary Ditch and under and by virtue of Appropriation Priority No. 10, as of the date of May 1, 1872, an interest of 2 cubic feet of water per second time, of that certain twelve original cubic feet of water per second time as heretofore awarded and decreed for use in and through Rio Grande Ditch No. 4 by Appropriation Priority No. 285 as of the date of June 1, 1886; also all the right, title and interest in and to that certain

additional priority for 10 cubic feet of water per second of time and heretofore awarded for use in and through Rio Grande Ditch No. 4 by Appropriation Priority No. 1916-16 as of the date of December 31, 1886, conveyed to J. Otto Krause and Fred Scherzer in deed recorded February 13, 1953, Book 227 at Page 512 of the records of the Clerk and Recorder of Rio Grande County, Colorado; also known as Del Norte Farm, with all its appurtenances (collectively, the “Twin Pines Water Rights”).

3. By Warranty Deed dated January 6, 2014, recorded on January 7, 2014, at Reception No. 201400420177 in the records of the Clerk and Recorder of Rio Grande County, Colorado, RMHD conveyed the Property to Mark Q. Deacon.

4. By Special Warranty Deed dated January 6, 2014, recorded on January 7, 2014, at Reception No. 201400420179 in the records of the Clerk and Recorder of Rio Grande County, Colorado, Seller conveyed, *inter alia*, an eighty percent (80%) interest in the Twin Pines Water Rights to Mark Q. Deacon (the “80% Interest in the Twin Pines Water Rights”) and Seller retained a twenty percent (20%) interest in the Twin Pines Water Rights (the “20% Interest in the Twin Pines Water Rights”).

5. While MLLTD owned the property, MLLTD irrigated the Property using, *inter alia*, the Twin Pines Water Rights.

6. While RMDH owned the Property, RMDH irrigated the Property using, *inter alia*, the Twin Pine Water Rights.

7. From the sale of the Property and the 80% Interest in the Twin Pine Water Rights by Seller to Mark Q. Deacon to the 2022 irrigation season, Mark Q. Deacon irrigated the Property using, *inter alia*, the 80% Interest in the Twin Pines Water Rights and the 20% Interest in the Twin Pines Water Rights pursuant to an agreement with RMDH.

8. I have personal knowledge of the facts set forth in this affidavit. If called as a witness, I would testify to these facts under oath.

Further Affiant sayeth not.

Steve Cummings, Manager
Rocky Mountain High Development, LLC

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

The foregoing Affidavit was acknowledged before me this __ day of _____, 2023,
by Steve Cummings, Manager of Rocky Mountain High Development, LLC. Witness my hand
and official seal.

[seal]

Notary Public

My commission expires:

Exhibit A
(Real Property)

W½ and S½ SE¼, Section 33, Township 40 North, Range 6 East, New Mexico Principal Meridian, Rio Grande County, Colorado.

LESS: All that part of the NW¼ of said Section 33, lying North of the South line of highway known as Federal Aid Project 270-E, also the South line of the highway known as Federal Aid Project 270-E, also known as State Highway 160, AND Less all that portion of the NW ¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies 40 feet on the Northside and 60 feet on the Southside of the center line of Federal Aid Project 270-E as surveyed and constructed, which said center line is more particularly described as follows: Beginning at the point of intersection of the said center line with the East boundary of the said NW¼ of Section 33, which point lies approximately 1320 feet Southerly from the North Quarter corner of the said Section 33, thence along the said center line North 60° 25' West 2230 feet, more or less, to a point of intersection; thence continuing along said center line North 74° 20' West 760 feet, more or less, to the West boundary of the said NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M.

LESS: A parcel of land situate in the NW¼ of Section 33, Township 40 North, Range 6 East, N.M.P.M., described as follows, to-wit: Beginning at the point of intersection of the South boundary line of Federal Aid Project 270-E, also known as State Highway 160, as surveyed and constructed, and as described in Warranty Deed appearing in Book 185 at Page 213 of the record; in the office of the County Clerk and Recorder of Rio Grande County, Colorado, with the East boundary line of said NW¼ of said Section 33, Township 40 North, Range 6 East, N.M.P.M., which lies approximately 1380 feet Southerly from the North Quarter corner of said Section 33; thence South 400 feet along the East boundary line of said NW¼ of said Section 33, thence West 218 feet; thence North to the South boundary line of said Federal Aid Project 270-E; thence Easterly 218 feet along the South boundary line of said Federal Aid Project 270-E, to the point of beginning.

AND

NE¼ and E½ NW¼, Section 4, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼, Section 5, Township 39 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

That Part of the SE¼ SE¼ lying south of the County Road, Section 29, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

AND

E½ NE¼; SW¼ NE¼; SE¼, Section 32, Township 40 North, Range 6 East, N.M.P.M., Rio Grande County, Colorado.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
SUBDISTRICT NO. 2 AND SUBDISTRICT NO. 1**

WHEREAS, Special Improvement District No. 1 of the Rio Grande Water Conservation District (Subdistrict No. 1) has water stored in Santa Maria Reservoir that it previously purchased and is in excess of the current needs of Subdistrict No. 1; and

WHEREAS, Subdistrict No. 1 is currently paying a monthly charge to store this excess water; and

WHEREAS, Special Improvement District No. 2 of the Rio Grande Water Conservation District (Subdistrict No. 2) has a current need for water in storage for use as part of its remedy portfolio in future Annual Replacement Plans.

THEREFORE, Subdistrict No. 1 and Subdistrict No. 2 hereby agree as follows:

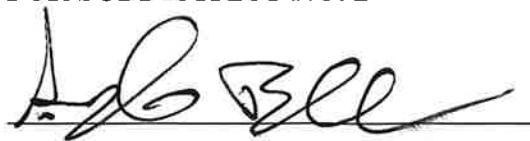
1. Subdistrict No. 1 will sell and Subdistrict No. 2 will purchase 1,000 acre-feet of Santa Maria water currently owned by Subdistrict No. 1 and currently stored in Santa Maria Reservoir.
2. The purchase price for said water in storage is \$250.00 per acre-foot, for a total price of \$250,000.00.
3. Subdistrict No. 2 will take possession of said 1,000 acre-feet as of April 1st, 2023.
4. Subdistrict No. 2 will be responsible for all charges for storage of the 1,000 acre-feet beginning on the date Subdistrict No. 2 takes possession of the water.
5. Subdistrict No. 2 will be responsible for obtaining any administrative or judicial approval of Subdistrict No. 2's use of this water.
6. Subdistrict No. 2 will only use this water to remedy injurious depletions by supplying augmentation water to the Rio Grande Canal, the Farmers Union Canal, the San Luis Valley Canal, the Billings Ditch, or the Prairie Ditch.
7. Payment required under this Agreement will be due to Subdistrict No. 1 on or before July 31st, 2023.
8. This offer is valid up until December 31, 2023.

Dated this 31 day of March 2023

FOR SUBDISTRICT NO. 1



FOR SUBDISTRICT NO. 2



LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into this 3rd day of April, 2024 (the “Effective Date”) by and between Special Improvement District No. 1 of the Rio Grande Water Conservation District, Water Activity Enterprise (“Subdistrict No. 1”), Special Improvement District No. 2 of the Rio Grande Water Conservation District, Water Activity Enterprise (“Subdistrict No. 2”), Special Improvement District No. 3 of the Rio Grande Water Conservation District, Water Activity Enterprise (“Subdistrict No. 3”), Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise (“Subdistrict No. 6”), and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District and/or Subdistrict (“Trinchera”, together with Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3 and Subdistrict No. 6, the “Subdistricts”) and the San Luis Valley Irrigation Well Owners, Inc., a Colorado Corporation (“SLVIWO”) as the owner of certain decreed water rights as stated in Case No. 2015CW3030, District Court, Water Division No. 3 (collectively “Parties” and sometimes singularly “Party”).

INTRODUCTORY RECITALS

A. The SLVIWO holds title to various water rights as decreed in Case No. W-3394 and as pending in Case No. 2015CW3030, both District Court, Water Division No. 3.

B. The water rights held by SLVIWO were originally decreed to the Taos Valley Canal No. 3 in the Matter of the Adjudication of the Priority of Water Rights in the Conejos and San Antonio Rivers (Water District No. 88), District Court, Conejos County, Colorado (October 3, 1890).

C. The Decree in Case No. W-3394 decreed a change of use including augmentation and exchange and changed the place and type of use of the Taos Valley No. 3 water right.

D. In 2015, SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange which was assigned Case No. 2015CW3030. In the 2015CW3030 case, SLVIWO requested the court decree several additional uses for their water rights. At the time of this Agreement, that Application is pending in Water Court.

E. Subdistrict No. 1 wishes to lease up to 2000 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case from SLVIWO and SLVIWO wishes to lease such water to Subdistrict No. 1 for use under Subdistrict No. 1’s 2024/2025 Annual Replacement Plan (“ARP”).

F. Subdistrict No. 2 wishes to lease up to 500 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case from SLVIWO and SLVIWO wishes to lease such water to Subdistrict No. 2 for use under Subdistrict No. 2’s 2024/2025 Annual Replacement Plan (“ARP”).

G. Subdistrict No. 3 wishes to lease up to 2000 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case from SLVIWO and

SLVIWO wishes to lease such water to Subdistrict No. 3 for use under Subdistrict No. 3's 2024/2025 Annual Replacement Plan ("ARP").

H. Subdistrict No. 6 wishes to lease up to 3000 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case from SLVIWO and SLVIWO wishes to lease such water to Subdistrict No. 6 for use under Subdistrict No. 6's 2024/2025 ARP.

I. Trinchera wishes to lease up to 3000 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case from SLVIWO and SLVIWO wishes to lease such water to Trinchera for use under Trinchera's 2024/2025 ARP.

J. Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, Trinchera, and SLVIWO acknowledge that such use will require administrative approval through a Substitute Water Supply Plan ("SWSP") until such time as the Court enters a decree in Case No. 2015CW3030, and agree to cooperate in the prosecution and operation of such a SWSP.

K. Subject to the terms and conditions of this Lease Agreement and in exchange for compensation listed herein from Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera, SLVIWO agrees to provide Subdistrict No. 1 with the right to use up to 2,000 acre-feet of water, Subdistrict No. 2 with the right to use up to 500 acre-feet, Subdistrict No. 3 with the right to use up to 2,000 acre-feet of water, Subdistrict No. 6 with the right to use up to 3,000 acre-feet of water, and Trinchera with the right to use up to 3,000 acre-feet of water, subject to all terms and conditions in a future 2015CW3030 Decree or approved SWSP, to help satisfy the requirements of Subdistrict No. 1's, Subdistrict No. 2's, Subdistrict No. 3's, Subdistrict No. 6's, and Trinchera's respective ARPs.

AGREEMENT

Therefore, in consideration of the foregoing recitals and the mutual promises contained below, the Parties agree as follows:

1. Lease Agreement.

1.1. Lease Agreement Amount.

1.1.1. Subject to the terms of this Agreement, Subdistrict No. 1 agrees to lease up to 2,000 acre-feet of water produced under the 2015CW3030 case or associated approved SWSP. ("SD1 ARP Water")

1.1.2. Subject to the terms of this Agreement, Subdistrict No. 2 agrees to lease up to 500 acre-feet of water produced under the 2015CW3030 case or associated approved SWSP. ("SD2 ARP Water")

1.1.3. Subject to the terms of this Agreement, Subdistrict No. 3 agrees to lease up to 2,000 acre-feet of water produced under the 2015CW3030 case or associated approved SWSP. ("SD3 ARP Water").

- 1.1.4. Subject to the terms of this Agreement, Subdistrict No. 6 agrees to lease up to 3,000 acre-feet of water produced under the 2015CW3030 case or associated approved SWSP. (“SD6 ARP Water”).
- 1.1.5. Subject to the terms of this Agreement, Trinchera agrees to lease up to 3,000 acre-feet of water produced under the 2015CW3030 case or associated approved SWSP. (“Trinchera ARP Water”).

1.2 Division of Leased Water.

- 1.2.1. Any water from the Taos Valley No. 3 water right that is available to be exchanged into storage into Platoro Reservoir shall be divided as follows: 58.4% to the SLVIWO; 16.3% to Subdistrict 3; 25.3% to Subdistrict 6.
- 1.2.2. If it is not possible to exchange the water into Platoro Reservoir, then water from the Taos Valley No. 3 water right will be delivered downstream for substitution or exchange into Rio Grande Reservoir and the water stored in Rio Grande Reservoir shall be split amongst the lessees as follows: 26% to Subdistrict No. 1; 2% to Subdistrict No. 2; 24% to Subdistrict No. 3; 36% to Subdistrict No. 6; and 12% to Trinchera.
- 1.2.3. In the event that the Taos Valley No. 3 water right is not able to be exchanged or substituted to storage into the Platoro or Rio Grande reservoirs, the Taos Valley no. 3 shall be delivered downstream to the Rio Grande River Compact gage for credit on the DWR’s 10-day report and available for use in replacing depletions under an ARP by Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6 or Trinchera or subsequent lease to another party by SLVIWO. The terms of lease for the ARP water is described in paragraph 1.3.
- 1.2.4. If Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera does not request the full quantity of water allowed to that Subdistrict under this Agreement to fulfill the requirements of their respective ARP, upon written notice and agreement between the Subdistricts, the remaining Subdistricts will each be allowed to lease the remaining amount of water allocated to the Subdistrict that did not request the full quantity of water in proportion to their percentages set forth in this Agreement. The Subdistricts benefitting from the use of said water will be responsible for any amount due to SLVIWO for use of this water. If water is available in excess of that leased by Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6 and Trinchera under this Agreement, the SLVIWO may lease that water to other subdistricts based on the ability of those subdistricts to utilize the water and in proportion to the ownership of the SLVIWO members within each of those subdistricts.

- 1.3. Term of Agreement. This Agreement is for a one-year term commencing on the Effective Date and ending April 30, 2025 (the “Term”); however, this Lease

Agreement will only apply to water produced under the 2015CW3030 Case during the 2024 Irrigation Season. This Agreement is for a single term only and is not renewable. If Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and/or Trinchera choose(s) to place the leased water into storage, the ARP water need not be used by the Subdistrict prior to the expiration of the Term of this Agreement and any such unused water will remain under the control of the relevant Subdistrict after expiration of this Agreement.

1.4. Lease Price. The lease price for the ARP Water generated under this Agreement for each Subdistrict and for which each Subdistrict takes delivery of under its 2023/2024 or subsequent years ARP is Fifty dollars (\$50.00) per acre-foot of water (the “Lease Price”).

1.4.1 The Parties will communicate as needed regarding the timing and amount of water available under the 2015CW3030 case and shall cooperate with the Division Engineer as reasonably required to facilitate delivery and accounting of the ARP water to each Subdistrict for storage or other use in its ARP. When Taos Valley No. 3 Water is being delivered to the Subdistricts, the Parties will communicate on a daily basis with each other and the Division Engineer regarding the amount of water: 1) delivered to the Subdistricts; 2) exchanged into storage for SLVIWO, the Subdistricts or others; or, 3) delivered for direct use to replace depletions of other entities. The Parties will work with the Division Engineer to have the Taos Valley No. 3 Water delivered and credited as follows when the Taos Valley No. 3 water is in priority: First, the 15 cfs Zinn water is delivered for irrigation and the 230 cfs Middlemist water is used for augmentation and exchange. Middlemist water delivered for augmentation and exchange shall be done in the following manner and sequence: 1) if Taos Valley No. 3 Water can be exchanged for storage in Platoro Reservoir, it is exchanged and then credited to the correct storage pool based upon the storage water percentages set out pursuant to this Agreement and applicable storage agreements; 2) if Taos Valley No. 3 Water can be exchanged for storage in Rio Grande Reservoir it is exchanged; and then 3) the Taos Valley No. 3 Water is shepherded to the Compact gage at Los Sauces, credited on the DWR 10-Day Report and used as ARP water by the Subdistricts subject to this Agreement or otherwise leased by SLVIWO (if it is water in excess of the ARP water leased by the Subdistricts here).

1.4.2 Within a reasonable amount of time after the Water Division No. 3 Division Engineer’s end of Irrigation Season on the San Antonio River, SLVIWO must provide each Subdistrict a written accounting, including time and location, of all ARP water provided to each Subdistrict. Each Subdistrict will have 30 days from receipt of said accounting to provide Notice that it disagrees with some or all of the accounting or accept such accounting.

1.4.3 If there is a dispute between any of the Parties regarding the accounting required in paragraph 1.4.2, the Parties will attempt in good faith to resolve

the dispute within 30 days. If such dispute is not resolved, each Party retains all rights under this agreement and such other rights as it may have.

1.4.4 Within 60 days of the acceptance or resolution of dispute regarding the accounting required in paragraph 1.4.2, Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera must pay to SLVIWO the respective total amount due to SLVIWO under this agreement, as determined by multiplying the total acre-feet of ARP Water provided to the relevant Subdistrict by the per acre-foot Lease Price.

1.5 Agreement to Lease ARP Water. Subject to the terms and conditions in this Lease Agreement, SLVIWO agrees to provide up to 2,000 acre-feet of water for Subdistrict No. 1's use pursuant to paragraph 1.1.1, up to 500 acre-feet of water for Subdistrict No. 2's use pursuant to paragraph 1.1.2, up to 2,000 acre-feet of water for Subdistrict No. 3's use pursuant to paragraph 1.1.3, up to 3,000 acre-feet of water for Subdistrict No. 6's use pursuant to paragraph 1.1.4, and up to 3,000 acre-feet of water for Trinchera's use pursuant to paragraph 1.1.5. These amounts are contingent on the availability of the Taos Valley No. 3 water right being available and SLVIWO complying with the terms and conditions of its decrees and any approved Substitute Water Supply Plan. Further details regarding this provision are outlined in the following subsections.

1.5.1 Delivery of Excess Credit Water. The ARP water will be 100% of the first 8,800 acre-feet generated under the terms and conditions of the 2015CW3030 Decree or related SWSP; except, for water which is exchanged into storage in Platoro Reservoir for SLVIWO pursuant to the percentages as described in paragraph 1.2.1. For each acre-foot generated from the Taos Valley No. 3 water right in the 2024 Irrigation Season, 26% will be provided for use by Subdistrict No. 1 pursuant to paragraph 1.1.1, 2% will be provided for use by Subdistrict No. 2 pursuant to paragraph 1.1.2, 24% will be provided for use by Subdistrict No. 3 pursuant to paragraph 1.1.3, 37% will be provided for use by Subdistrict 6 pursuant to paragraph 1.1.4 and 12% will be provided for use by Trinchera pursuant to paragraph 1.1.5.

1.5.2 SLVIWO retains the right to the use of its water exchanged into storage in Platoro Reservoir and any additional water generated over the combined 8,800 acre-feet, to be provided to Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera under this Lease and any portion of the 8,800 acre-feet which is not delivered to either Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera following a Notice of Termination of Delivery pursuant to paragraph 1.5.6 of this Agreement.

1.5.3 SLVIWO retains the right to enter into a separate agreement with Trinchera in order to lease Taos Valley No. 3 water stored in the Platoro Reservoir to Trinchera.

1.5.4 The ARP Water will be accounted for as delivered to Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera at a point on the San Antonio River in the reach from the Martinez Ditch headgate to the intersection of the San Antonio River with County Road 18 in the Northeast ¼ of Section 25, Township 33 North, Range 9 East of the New Mexico P.M. Conejos County. The ARP Water will be delivered to each Subdistrict on an as available basis and SLVIWO does not guarantee delivery of any amount of water to either Subdistrict.

1.5.5 Use of ARP Water.

1.5.5.1 Preservation of SLVIWO Water Rights: Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera, will use the ARP water to satisfy a portion of their respective annual obligations to remedy injurious depletions caused by their respective groundwater withdrawals of wells included in each Subdistrict's 2024/2025 ARP, or subsequent years pursuant to paragraph 1.5.1 to 1.5.4, above. Subdistrict 1, Subdistrict 2, Subdistrict No. 3, Subdistrict No. 6, and/or Trinchera may apply for and obtain administrative approval to use the ARP Water leased herein through the filing of a SWSP. Neither Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, nor Trinchera will otherwise take any action that causes or could potentially cause a reopening of the SLVIWO's prior Decrees. Each Subdistrict's use of SLVIWO's water is not intended to, and does not, transfer any legal or equitable title or interest to any part of the water rights decreed to the SLVIWO or any decree to be entered in Case No. 2015CW3030 to Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera, other than the up to the combined 8,800 acre-feet leased between them, herein. Furthermore, the Parties understand and agree that by permitting Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera to use the up to maximum acre-feet of water leased herein, SLVIWO does not intend to abandon, and does not abandon, relinquish, or forfeit any portion of its water rights under any Decree.

1.5.5.2 Future Years Use of ARP Water. To the extent the ARP Water is not consumed or otherwise used by a Subdistrict during the Term of the Agreement, Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera, respectively, will retain all rights to such ARP Water after the expiration of this Agreement. Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and Trinchera, respectively, agree that it shall have no continuing rights in and to SLVIWO's water and represents that it is not entitled to rely on SLVIWO's water for future ARPs unless or until it obtains a subsequent agreement with SLVIWO.

1.5.5.3 Assessment of Evaporation, Seepage, and Transit Losses. Beginning on the Effective Date, each Subdistrict will bear its respective seepage, evaporation, and transit losses on their respective ARP Water leased herein and will be responsible for all storage charges assessed to their respective ARP Water after the use of the ARP Water is transferred to a Subdistrict.

1.5.6 Termination of Delivery. Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and/or Trinchera, may provide Notice to SLVIWO that it will cease accepting any additional ARP water under this agreement. Such Notice will be effective 48 hours after receipt by SLVIWO. Such Notice by one Subdistrict will not affect the rights or obligations of the other Subdistrict. Once provided, such Notice cannot be revoked and will end all future obligations of that Subdistrict under this Agreement and SLVIWO's obligations to that Subdistrict, but will not reduce the Lease Price owed by a Subdistrict to SLVIWO.

1.5.7 Minimum Payment. To the extent the Lease Price owed by a Subdistrict is less than \$1,500, such Subdistrict agrees to pay a minimum of \$1,500 to SLVIWO in order to cover SLVIWO's costs associated with this Agreement. This minimum payment is individually applicable to each Subdistrict and may not be combined.

1.6 Approvals. Each Subdistrict is responsible for obtaining any approvals necessary for their respective Subdistrict's proposed use and delivery of the ARP Water.

1.7 SLVIWO's Obligations and Representations. SLVIWO represents that it is the owner of the water subject to this Agreement and that it has full power and authority to enter into this Agreement. SLVIWO further represents that it is entitled to receive full payment of all sums to be paid under this Agreement, and that no part of payments hereunder are required to be made to any mortgagee, lender, or lien holder.

2. Representations.

2.3. Subdistrict No. 1's Representations. This Agreement has been duly authorized and executed by Subdistrict No. 1, is the legal, valid, and binding obligation of the Subdistrict No. 1, and is enforceable against Subdistrict No. 1 according to its terms. SLVIWO recognizes that consent to this contract is required from the Rio Grande Water Conservation District ("RGWCD") Board of Directors. If such consent is not given, Subdistrict No. 1 will immediately inform SLVIWO. No other consent is required for the execution, delivery, or performance of this contract by Subdistrict No. 1. To the best of Subdistrict No. 1's knowledge, there is no pending or threatened litigation or administrative proceeding against the RGWCD or Subdistrict No. 1 that would prevent Subdistrict No. 1 from leasing up to the maximum amount of water allowed under this Agreement.

2.4. Subdistrict No. 2's Representations. This Agreement has been duly authorized and executed by Subdistrict No. 2 is the legal, valid, and binding obligation of the Subdistrict No. 2, and is enforceable against Subdistrict No. 2 according to its terms. SLVIWO recognizes that consent to this contract is required from the Rio Grande Water Conservation District ("RGWCD") Board of Directors. If such consent is not given, Subdistrict No. 2 will immediately inform SLVIWO. No other consent is required for the execution, delivery, or performance of this contract by Subdistrict No. 2. To the best of Subdistrict No. 2's knowledge, there is no pending or threatened litigation or administrative proceeding against the RGWCD or Subdistrict No. 2 that would prevent Subdistrict No. 2 from leasing up to the maximum amount of water allowed under this Agreement.

2.5. Subdistrict No. 3's Representations. This Agreement has been duly authorized and executed by Subdistrict No. 3, is the legal, valid, and binding obligation of the Subdistrict No. 3, and is enforceable against Subdistrict No. 3 according to its terms. SLVIWO recognizes that consent to this contract is required from the Rio Grande Water Conservation District ("RGWCD") Board of Directors. If such consent is not given, Subdistrict No. 3 will immediately inform SLVIWO. No other consent is required for the execution, delivery, or performance of this contract by Subdistrict No. 3. To the best of Subdistrict No. 3's knowledge, there is no pending or threatened litigation or administrative proceeding against the RGWCD or Subdistrict No. 3 that would prevent Subdistrict No. 3 from leasing up to the maximum amount of water allowed under this Agreement.

2.6. Subdistrict No. 6's Representations. This Agreement has been duly authorized and executed by Subdistrict No. 6, is the legal, valid, and binding obligation of the Subdistrict No. 6, and is enforceable against Subdistrict No. 6 according to its terms. SLVIWO recognizes that consent to this contract is required from the RGWCD Board of Directors. If such consent is not given, Subdistrict No. 6 will immediately inform SLVIWO. No other consent is required for the execution, delivery, or performance of this contract by Subdistrict No. 6. To the best of Subdistrict No. 6's knowledge, there is no pending or threatened litigation or administrative proceeding against the RGWCD or Subdistrict No. 6 that would prevent Subdistrict No. 6 from leasing up to the maximum amount of water allowed under this Agreement.

2.7. Trinchera's Representations. This Agreement has been duly authorized and executed by Trinchera, is the legal, valid, and binding obligation of Trinchera, and is enforceable against Trinchera according to its terms. To the best of Trinchera's knowledge, there is no pending or threatened litigation or administrative proceeding against Trinchera that would prevent Trinchera from leasing up to the maximum amount of water allowed under this Agreement.

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

To SLVIWO: San Luis Valley Irrigation Well Owners, Inc.
C/O: Monty Smith
Lyla Hathaway
P.O. Box 147
La Jara, CO 81140
E-mail: monty265@msn.com; lyla@notes-numbers.com

To Subdistrict 1,
Subdistrict 2, Subdistrict 3
and/or Subdistrict No. 6: Cleave Simpson
General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
Fax: 719-992-2026
Email: cleave@rgwcd.org

To Trinchera: Monty Smith
President
Ground Water Management Subdistrict of
the Trinchera Water Conservancy District
610 Main Street, Blanca, CO
81123
Phone: 719.379.3467
Email: trincerawaterconservancy@gmail.com

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

4. Remedies. In the event of SLVIWO's default in the performance of this Agreement, a Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of Subdistrict's default hereunder, SLVIWO's sole and exclusive remedy will be to receive the greater of: a) all payments due from the defaulting Subdistrict for ARP Water prior to the date of the default; or, b) the minimum payment stated in paragraph 1.5.7 as liquidated damages, and to retain the use of the remaining water not paid for by the defaulting Subdistrict. Default by one Subdistrict will not be considered as a default by the other Subdistrict.

5. Miscellaneous Provisions.

5.3. 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 which are set forth in this Agreement, no representations, warranties, or agreements have been made by the Parties to one another with respect to this Agreement.

5.4. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be 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. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.

5.5. 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 shall not define or limit any of the terms of this Agreement. Any 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.

5.6. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by consent of each of the Parties. 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.

5.7. Waiver. A waiver of a breach of any provision of this Agreement does not waive any subsequent breach of the same or different provision of this Agreement. Any Party’s failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or another remedy for a breach of this Agreement, or to exercise any right herein conferred will not be construed as a waiver or relinquishment of that right or of that Party’s right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

5.8. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The SLVIWO may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera, which consent shall not be unreasonably withheld. No Subdistrict may assign its rights hereunder to any other person or entity without the prior written consent of the SLVIWO, which consent shall not be unreasonably withheld. Any such assignment must be in writing and signed by the other Party.

5.9. Litigation. If the SLVIWO and/or Subdistrict No. 1 and/or Subdistrict No. 2 and/or Subdistrict No. 3 and/or Subdistrict No. 6 and/or Trinchera litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys’ fees and court costs, incurred by the successful litigant at trial and on any appeal.

5.10. 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. Neither SLVIWO nor Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera agree to binding arbitration by any extra-judicial body or person.

5.11. Governmental Immunity. To the extent allowed by law and as otherwise consistent with this Agreement, Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and/or Trinchera agree to indemnify and hold SLVIWO harmless from any and all damage which may result from its operation and use of the ARP Water under this Agreement. No term or condition in this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, sections 24-10-101, *et seq.* C.R.S., as applicable now or hereafter amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act, sections 24-10-101, *et seq.* C.R.S., and the risk management statutes, sections 24-30-1501, *et seq.* C.R.S., as amended.

5.12. 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.

5.13. Force Majeure. No Party will be liable for failure to perform the Party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, tornado, blizzard, extreme hot or cold weather or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, internet or telephone service. No Party is entitled to terminate this Agreement under such circumstances. If a Party asserts Force Majeure as an excuse for failure to perform the Party's obligation, then the nonperforming Party must prove it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Parties were timely notified of likelihood or actual occurrence of the event described herein. Performance shall resume as soon as possible upon removal, resolution, or cessation of the Force Majeure event.

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


5.15. Binding Agreement. This Lease Agreement binds and benefits the Parties and their respective successors and assigns.

5.16. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.

5.17. Acknowledgment. The Parties certify that they have read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made by the Parties to each other, or by their employees, agents, or representatives, and no modifications to this Agreement will be claimed by the Parties except for written amendments or waivers executed by the Parties.

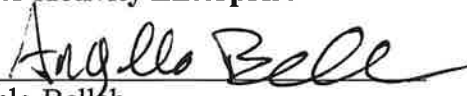
5.18. Captions. The captions and headings in the Lease Agreement are for convenience of reference only and will not be used to interpret, define, or limit its provisions.

SLVIWO

By: 
Monty Smith
San Luis Valley Irrigation Well Owners, Inc.


4/3/24
Date

**Special Improvement District No. 2
Water Activity Enterprise**

By: 
Angelo Bellah
Program Manager
Special Improvement District No. 2 of the
Rio Grande Water Conservation District,
Water Activity Enterprise

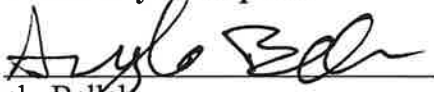
4/2/2024
Date

**Special Improvement District No. 3
Water Activity Enterprise**

By: 
Angelo Bellah
Program Manager
Special Improvement District No. 3 of the
Rio Grande Water Conservation District,
Water Activity Enterprise


4/2/2024
Date

**Special Improvement District Subdistrict No. 6
Water Activity Enterprise**

By: 
Angelo Bellah
Program Manager
Special Improvement District No. 6 of the
Rio Grande Water Conservation District,
Water Activity Enterprise

4/2/2024
Date

**Ground Water Management Subdistrict of
The Trinchera Water Conservancy District**

By: 
Monty Smith
President
Ground Water Management Subdistrict of
The Trinchera Water Conservancy District

4/3/24
Date



AGRO ENGINEERING

“COMPREHENSIVE AGRICULTURAL AND WATER RESOURCE CONSULTING”

0210 ROAD 2 SOUTH, ALAMOSA, CO 81101 PHONE (719) 852-4957 FAX 852-5146

November 14, 2023

Kevin Rein, P.E.
State Engineer
State Engineer's Office
1313 Sherman Street, Room 818
Denver, Colorado 80202

Re: Request for Renewal Substitute Water Supply Plan for the 2024 water year for the purpose of temporarily approving the use of the San Luis Valley Irrigation Well Owners, Inc. Taos Valley No. 3 water right for reservoir storage and use for replacement of depletions by ground water management subdistricts pursuant to section 37-92-308(4), C.R.S.

Dear Mr. Rein,

The San Luis Valley Irrigation Well Owners, Inc. (“SLVIWO”) submit this request to approve a renewal of a Substitute Water Supply Plan (“SWSP”), to run from April 1, 2024 to November 1, 2024. See SWSP ID 6093.

This SWSP requests approval for the operation of the substitutions and exchanges described in the bifurcated Case No. 15CW3030A. The operation of the substitutions and exchanges will allow for storage of water owned by SLVIWO during the 2024 Irrigation Season to be used in future, approved Annual Replacement Plans by parties with whom SLVIWO contracts.

I. Case No. 2015CW3030, District Court, Water Division No. 3.

On December 30, 2015, the SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange. The SLVIWO is the owner of the water right and corresponding structures associated with the Taos Valley Canal No. 3. The original decree for the water rights decreed to the Taos Valley Canal No. 3 is the Decree of the Court entered in the Matter of the Adjudication of the Priority of Water Rights in the Conejos and San Antonio Rivers (Water District No. 88), District Court, Conejos County, Colorado (October 3, 1890). In 1975, SLVIWO filed an application for a plan for augmentation including exchange and to change the place and type of use of the Taos Valley No. 3 water right in Case No. W-3394 to include augmentation of any depletions caused by well users of the SLVIWO. The Taos Valley No. 3 water right was changed in Case No. W-3394.

Of the 245 cfs decreed to the Taos Valley Canal No. 3, 230 cfs (“Middlemist Water”) has been left un-diverted by SLVIWO and accounted for as an offset to well depletions pursuant to that decree. The remaining 15 cfs (“Zinn Water”) was changed in Case No. W-3394 subject to a reservation by Pete E. and Mercedes Middlemist to divert and use up to that amount for irrigation pursuant to certain terms and conditions contained in that decree. The Zinn Water has continued to be used for irrigation up to and including the 2023 irrigation season.

In Case No. 2015CW3030, SLVIWO seeks to utilize the Middlemist Water and the Zinn Water for augmentation by leaving the water in the San Antonio River as decreed in Case No. W-3394, by diverting water at the Taos Valley Canal No. 3 and continuing to store water in Cove Lake Reservoir for subsequent release to the San Antonio River, by recharging the confined and unconfined aquifers via a groundwater recharge project, by delivering water to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year and to divert and store the water in several reservoirs including Platoro Reservoir, either directly or via exchange, for later release to the San Antonio River, Conejos River and the Rio Grande for augmentation purposes.

Cove Lake Reservoir is a reservoir constructed prior to 1929 and is therefore exempt from the restrictions set forth in Article VII of the Rio Grande Compact. At the time of the Compact, Cove Lake had a capacity of 9,710 acre-feet, which amount is claimed in the 2015CW3030 case to be transferrable to other reservoirs free from the aforementioned Compact restrictions.

Various parties timely filed statements of opposition in Case No. 2015CW3030. The matter remains before the referee. On January 25, 2019, SLVIWO filed an Unopposed Motion to Bifurcate Case No. 15CW3030. In that Motion, SLVIWO seeks to bifurcate the claimed exchange to the Martinez Ditch and the Recharge Project from the other claims in the application. Unopposed Motion to Bifurcate at ¶ 3. As of the date of this SWSP request, that Referee has not issued an order on that Motion. No trial date has been set.

II. Project Description.

Case No. W-3394 established a methodology for determining the amount the Taos Valley No. 3 water right is available in the San Antonio River for augmentation purposes. No additional quantification is necessary.

This request for renewal of the previous approval of a SWSP is being submitted pursuant to section 37-92-308(4), C.R.S. for the purpose of approving the change of the water rights listed above to include requested uses in Case No. 2015CW3030 including augmentation, exchange, storage by substitution or exchange in Platoro Reservoir and the other reservoirs described in 15CW3030A. Subsequently, stored water will be released and delivered to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year. This SWSP does not include the claimed exchange to the Martinez Ditch and the Recharge Project described in

bifurcated Case No. 15CW3030B. Storage in Platoro Reservoir will occur pursuant to the terms of a storage agreement between the SLVIWO and the Conejos Water Conservancy District. Storage in any other reservoir, other than in Cove Lake Reservoir will only occur under the terms of a separate agreement with the owner of such reservoir.

III. Change of Water Right.

This SWSP will approve the use of the water right subject of case in 2015CW3030A identified in part II. above for the purpose of storing water available under the Taos Valley No. 3 water right by substitution and exchange in the aforementioned reservoirs during the 2024 Irrigation Season for future use in approved Annual Replacement Plans. This SWSP will also approve the use of Taos Valley No.3 water delivered, above what is stored, for the use by Subdistrict 1, Subdistrict 2, Subdistrict 3, Subdistrict 5, Subdistrict 6 and the Trinchera Subdistrict for augmentation use for the replacement of depletions. When the San Antonio River is in connection with the Conejos River depletions will be replaced on reach 2 of the Conejos and when exchange to reach 1 of the Conejos is possible as determined by the Division of Water Resources replacement of depletions on reach 1 of the Conejos. When the amount of water in priority exceeds storage potential for both the Conejos and Rio Grande Rivers and daily depletions on the Conejos River and when the Conejos River is in connection with reach 3 of the Rio Grande River water will be delivered to reach 3 of the Rio Grande River for replacement of depletions. When exchange to reaches 1 and/or 2 of the Rio Grande River is possible as determined by the Division of Water Resources water may be exchanged for replacement of depletions on these reaches.

IV. Operation of Plan.

SLVIWO will place the portion of the water right to beneficial use as claimed in the Application for Recharge Project and Rights of Substitution and Exchange, Case No. 2015CW3030. Any portion of said water available for substitution, exchange, and subsequent storage shall be stored pursuant to any agreement between SLVIWO and the reservoir owners.

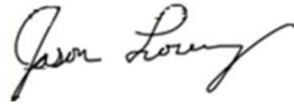
SLVIWO understands that the Division Engineer may impose reasonable losses on the use or exchange of the water under the SWSP due to stream delivery losses, evaporation or other factors.

Future use of this stored water for replacement of well depletions will be pursuant to the terms of one or more annual replacement plans approved by the Engineers in 2021/2022 or future years.

Water not stored will be available to Subdistricts listed above for replacement of depletions, if they have submitted with their Annual Replacement Plans a current contract with SLVIWO for such use.

SLVIWO hereby requests that the State Engineer approve this Substitute Water Supply Plan which is submitted in compliance with section 37-92-308(4), C.R.S.

Kevin Rein, P.E.
November 14, 2023
Page 4

A handwritten signature in cursive script that reads "Jason Lorenz".

SLVIWO Engineer
Jason Lorenz, P.E.

Enclosures
Cc: SLVIWO Board of Directors

Exhibit A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2023 true and correct copies of the foregoing, Substitute Water Supply Plan Request , were duly served via CCE in Division 3, Case No. 15CW3030 upon the following:

Alpha Hay Farms Llc	Opposer	Alan E Curtis (White & Jankowski, LLP) David C Taussig (White & Jankowski, LLP)
City of Alamosa	Opposer	Erich Schwiesow (Erich Schwiesow PC)
Colorado Division of Park And Wildlife	Opposer	Elizabeth M Joyce (CO Attorney General)
Colorado Division of Parks And Wildlife	Opposer	Elizabeth M Joyce (CO Attorney General)
Conejos Water Conservancy District	Opposer	Richard John Mehren (Moses, Wittemyer, Harrison and Woodruff, P.C.)
Division 3 Engineer	Division Engineer	Division 3 Water Engineer (State of Colorado DWR Division 3)
Rio Grande Water Conservation District	Opposer	Peter J Ampe (Hill and Robbins PC)
Rio Grande Water Users Association	Opposer	Mason Hamill Brown (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
San Luis Valley Irrigation District	Opposer	Tod Jay Smith (The Law Office of Tod J Smith)
San Luis Valley Irrigation Well Owners	Applicant	Bradley Charles Grasmick (Lawrence Jones Custer Grasmick LLP) P Andrew Jones (Lawrence Jones Custer Grasmick LLP)
State Engineer	State Engineer	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources)

Trinchera Groundwater Management Subdist	Opposer	John Joseph Cyran (Confluence Water Law LLC)
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**SAN LUIS VALLEY WATER
CONSERVANCY DISTRICT**

623 FOURTH STREET
ALAMOSA, CO 81101
719-589-2230

	Invoice #
12/28/2020	2020-RGWCD

RIO GRANDE WATER CONSERVATION
CLEAVE SIMPSON
8900 INDEPENDENCE WAY
ALAMOSA, CO 81101

Description	Amount
442.87 AF OF WATER IN BEAVER RESERVOIR STORAGE @ \$65/AF	28,786.55
130 AF OF WATER IN CONTINENTAL RESERVOIR STORAGE @ \$65/AF	8,450.00
<p><i>Beaver Water:</i></p> <p>238.95 ac-ft ^{Pine} Case 1984CW116 and 1994CW162 88.19 ac-ft Bear Creek case 2005CW13 and 2007CW163 42.65 ac-ft Bar Cattle Case 2003CW41 73.08 ac-ft Anaconda case 2009CW31 <u>442.87 ac-ft</u></p> <p><i>Continental Water:</i></p> <p>22.89 ac-ft Bear Creek Case 2005CW13 and 2007CW163 17.18 ac-ft Bar Cattle Case 2003CW41 89.10 ac-ft Anaconda case 14CW3011 0.83 ac-ft Pine case 84CW116 <u>130.0</u></p>	
PLEASE INCLUDE CERTIFICATE NUMBER ON CHECK	
Total	\$37,236.55


*AP
12/28/2020*

TO: Subdistrict No. 2 Board of Managers
DATE: April 13, 2021
SUBJECT: Lease of RGWCD SLVWCD Water stored in Beaver and Continental Reservoirs

Dear Board of Managers for Subdistrict No. 2,

The Rio Grande Water Conservation District (RGWCD) has leased a pool of water for the purpose of leasing it back to Subdistricts for use in their ARPs as a replacement source to remedy their injurious depletions. Subdistrict No. 2 has made a request to lease 221.93 acre-feet of water this RGWCD currently holds in storage. Of this total, 18.01 is being held in Continental Reservoir and 203.92 is held in Beaver Reservoir. This water was leased from SLVWCD in 2020. The Subdistrict will reimburse the RGWCD an amount equal to the costs per acre-foot which the District has paid to lease and store this water.

Any amount of water from this lease between Subdistrict No. 2 and the RGWCD that remains in storage will remain under the control of Subdistrict No. 2 and may be used in future ARP Years. Any future need to lease some portion of the District's pool of stored water must be made at that time to allow the Board of Director's an opportunity to consider the request.

 *acting Deputy*
Cleave Simpson
General Manager
Rio Grande Water Conservation District

4/13/2021
Date

General manager

APPENDIX G

Forbearance Agreements

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Centennial Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- JH Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
JH Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
JH Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Centennial Ditch ("Ditch") and the water rights decreed thereto. The Centennial Ditch diverts water from the Rio Grande in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T39N, R8E, N.M.P.M., and has decreed priorities totaling 82.4 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
_____ Three Years (May 1, 2023 through April 30, 2026)
_____ Five Years (May 1, 2023 through April 30, 2028)
JH Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement the Company will agree to forebear from requiring each Subdistrict to replace injurious stream depletions to the water rights of the Company that are diverted from the Rio Grande at the headgate of the Centennial Ditch Company while Priority 173 is the calling water right and ongoing through the irrigation season for Priority 32 with approval by Ditch Superintendent at least 48 hours in advance of Priority 32 approaching on Call status on the Rio Grande. Each Subdistrict may choose to remedy injurious stream depletions under this agreement or by providing water, in its sole discretion.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. 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 the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. At any time while Priority 32 is the calling water right on the Rio Grande and the ditch is in forbearance with one or more Subdistricts, the Ditch Superintendent can request a wet water replacement of estimated injurious depletions to the ditch within 24 hours or such greater time as may be required for transit of water from storage to the ditch headgate during the irrigation season. For purposes of this paragraph 2.5, the maximum rate of daily depletions caused by wells operating under the Subdistricts ARPs will be determined by dividing the number of days in the month into the estimated monthly stream depletions to the Rio Grande contained in each Subdistrict's ARP, as approved by the State and Division Engineers.

2.5. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
32	47.4
173	35.0

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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:

Centennial Ditch Company
118 Washington Street
Monte Vista, CO 81144

To the Subdistricts:

District 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, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced 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 Ditch or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistricts. 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 the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$7,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

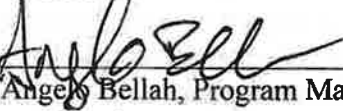
Centennial Ditch Company

By: 

3-16-23
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

3/16/23
Date

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

3/16/23
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

3/16/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Centennial Irrigating Ditch Co.

Address to mail payment to: _____

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Commonwealth Irrigation Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- J.C. Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
J.C. Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
J.C. Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Empire Canal ("Ditch") and the water rights decreed thereto. The Empire Canal diverts water from the Rio Grande in the NW $\frac{1}{4}$ of Section 33, T39N, R8E, N.M.P.M., and has decreed priorities totaling 505.92 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

_____ One Year (May 1, 2024 through April 30, 2025)

_____ Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

L.C. Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring each of the Subdistricts to replace up to 500 acre-feet of injurious stream depletions to the water rights of the Ditch diverted from the Rio Grande River at the headgate of the Ditch under priority nos. 236A, 310A, 335A, 361A and 361B by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the

top of the affected Stream Reach, and both the Company and the Subdistricts will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. 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 the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Empire Canal during the term of this Agreement equals 500 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Empire Canal.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
236A	312.30
310A	6.00
335A	2.30
361A	92.00
361B	93.32

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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:

Commonwealth Irrigation Company
P.O. Box 993
Alamosa, CO 81101

To the Subdistricts:

District 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, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced 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 Ditch or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistricts. 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 the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$7,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

Commonwealth Irrigation Company

By: Lawrence Crowder

3-14-2024
Date

Print Name: Lawrence Crowder

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Commonwealth Irrigation Company

Address to mail payment to: P.O. Box 993
Alamosa, CO 81101

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Excelsior Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- RO Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
- RO Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- RO Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Excelsior Ditch ("Ditch") and the water rights decreed thereto. The Excelsior Ditch diverts water from the Rio Grande in the SE1/4 NW1/4 of Section 6, T38N, R9E, N.M.P.M., and has decreed priorities totaling 89.70 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of their ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- RO One Year (May 1, 2024 through April 30, 2025)
_____ Three Years (May 1, 2024 through April 30, 2027)
_____ Five Years (May 1, 2024 through April 30, 2029)
_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring each of the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. 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 the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
163	45.7
249	6.2
262	29.4

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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:

Excelsior Ditch Company
118 Washington Street
Monte Vista, CO 81144

To the Subdistricts:

District 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, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the

Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced 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 Ditch or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this 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. Any 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 the Subdistricts. 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 the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

Excelsior Ditch Company

By: Roy Oliver

4-3-24
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Excelsior Ditch Company

**Address to mail payment to: 118 Washington Street
Monte Vista, CO 81144**

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023, between the Monte Vista Water Users' Association ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Monte Vista Canal ("Ditch") and the water rights decreed thereto. The Monte Vista Canal diverts water from the Rio Grande in the NE¼ SW¼ of Section 6, T39N, R7E, N.M.P.M., and has decreed priorities totaling 340.77 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP for Plan Years 2022, 2023 and 2024.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 300 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. 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 the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 300 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
224	132.20
358	125.30
1903-24A	13.35
1903-30A	20.58
1903-34A	9.44
1903-37	3.75
1903-41	1.63
1903-45A	10.42
1903-46A	5.21
1903-49B	14.33
1903-52A	4.56

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 3 will pay the Company an amount equal to the per acre-foot fee assessed to sprinkler use in Subdistrict No. 2 annually for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company an amount equal to the per acre-foot fee assessed to sprinkler use in Subdistrict No. 2 annually for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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:

President, Monte Vista Water Users' Association
147 Washington Street
P.O. Box 288
Monte Vista, CO 81144

To the Subdistricts:

District 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, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced 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 Ditch or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistricts. 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 the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 for a total of \$5,000.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

Monte Vista Water Users' Association

By: 

3-22-23

Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 

Angelo Bellah, Program Manager

3/30/23

Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 

Angelo Bellah, Program Manager

3/30/23

Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Monte Vista Water Users

Address to mail payment to: 147 Washington St
Monte Vista, CO 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 2 (Rio Grande Alluvial) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

One Year (May 1, 2024 through April 30, 2025)

Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 650 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 650 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

“Special Water” Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

District 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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

(signatures on following page)

Rio Grande Canal Water Users' Association

By: Clay Casper

3/14/2024
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/20/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grand Canal Water Users

Address to mail payment to: 147 Washington St
Monte Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 3 (Conejos) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

 X One Year (May 1, 2024 through April 30, 2025)

 Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 150 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 150 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

"Special Water" Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

District 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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

(signatures on following page)

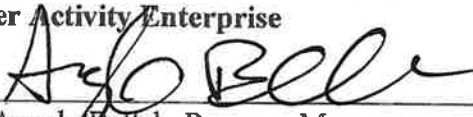
Rio Grande Canal Water Users' Association

By: 

3/16/2024
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

3/20/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Canal Water Users

Address to mail payment to: 1217 Washington St.
Monte Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

X One Year (May 1, 2024 through April 30, 2025)

_____ Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 900 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 900 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

"Special Water" Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

District 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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

(signatures on following page)

Rio Grande Canal Water Users' Association

By: Clay Lague

3/16/2024
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/20/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Canal Water Users

Address to mail payment to: 127 Washington St.
Mante Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between Eric Ellithorpe (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- E.E. Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
E.E. Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
E.E. Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Owner is willing to enter into this 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 Owner’s water rights are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
- Three Years (May 1, 2023 through April 30, 2026)
- Five Years (May 1, 2023 through April 30, 2028)
- Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Owner 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 Rio Grande 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 Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running

total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
178	11.21	17.5%
198	19.59	16.3%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the

payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Owner with an accounting of the unreplaced injurious depletions to the water rights of the Owner and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner 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. Under this Agreement the Owner 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 Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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 Owner:

Eric Ellthorpe
P.O. Box 1108
Center, CO 81125

To the Subdistricts:

District 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 Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to

require the Subdistricts to pay the Owner for all unreplaced 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 Owner or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this 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. Any 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 Owner and the Subdistricts. 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 Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

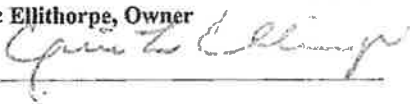
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Owner on or before December 31, of each year for the term of the Agreement.


Eric Ellithorpe, Owner

By: 

4-10-2023
Date

APPROVED:

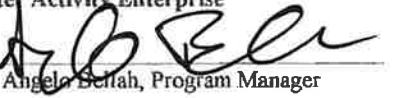
**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

4/11/2023
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

4/11/2023
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

4/11/2023
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Eric Ellithorpe

Address to mail payment to: P.O. Box 1108
Center, CO 81125

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between Mike Kruse (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- MK Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
MK Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
MK Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

- A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.
- B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.
- C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.
- D. The Owner is willing to enter into this 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 Owner’s water rights are remedied by means other than providing water to replace injurious stream depletions.
- E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

_____ One Year (May 1, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

_____ Five Years (May 1, 2023 through April 30, 2028)

MR Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Owner.**

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Owner 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 Rio Grande 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 Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
178	11.21	58.1%
198	19.59	20.0%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Owner with an accounting of the unreplaced injurious depletions to the water rights of the Owner and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner 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. Under this Agreement the Owner 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 Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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 Owner:

To the Subdistricts:

District 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 Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Owner for all unreplaced 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 Owner or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 Owner and the Subdistricts. 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 Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the

length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.


8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Owner on or before December 31, of each year for the term of the Agreement.

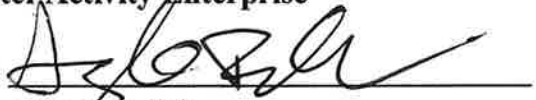
Mike Kruse, Owner

By: 

3/29/23
Date

APPROVED:


**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

3/30/23
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

3/30/23
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angela Bellah, Program Manager

3/30/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: _____

Address to mail payment to: _____

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between David Toews (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- DWT ✓ Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
- DWT ✓ Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
- DWT ✓ Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Owner is willing to enter into this 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 Owner’s water rights are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- DWT Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Owner 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 Rio Grande 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 Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running

total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
198	19.59	6.6%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Owner with an accounting of the unreplaced injurious depletions to the water rights of the Owner and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner 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. Under this Agreement the Owner 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 Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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 Owner:

DAVID W TOEWS
42756 COUNTY RD E
DEL NORTE CO. 81132

To the Subdistricts:

District 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 Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Owner for all unreplaced 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 Owner or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 Owner and the Subdistricts. 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 Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 — If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

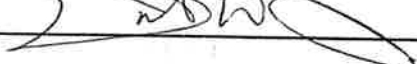
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Owner on or before December 31, of each year for the term of the Agreement.

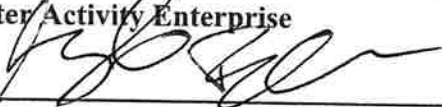
David Toews, Owner

By:  _____

APRIL 11, 2023
Date

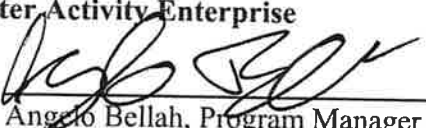
APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date:

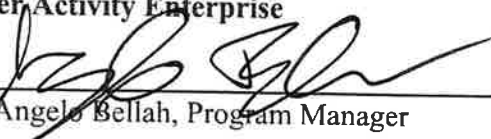
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: DAVID W TOEWS

Address to mail payment to: 42756 COUNTY RD E
DEL NORTE Co. 91132

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Rio Grande Lariat Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande Lariat ("Ditch") and the water rights decreed thereto. The Rio Grande Lariat diverts water from the Rio Grande in the NE¼ SW¼ of Section 22, T39N, R7, N.M.P.M., and has decreed priorities totaling 106.78 c.f.s.

B. The Subdistrict is responsible for implementing the Plan of Water Management ("Plan") through their Annual Replacement Plan ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP for all Plan Years in which this agreement is in effect.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- X Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 500 _____ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in paragraph 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals _____ acre-feet, the Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
217	53.02
1903-12A	2.61
1903-17	3.62
1903-24B	15.76
1903-30B	2.28
1903-34B	10.42
1903-37A	3.981
1903-41A	2.04
1903-45B	3.26
1903-46B	0.65
1903-49C	2.61
1903-52B	.65
1903-22A	5.86

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$35.00 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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: Lariat Ditch Company
118 Washington Street
Monte Vista CO 81444

To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District

8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement

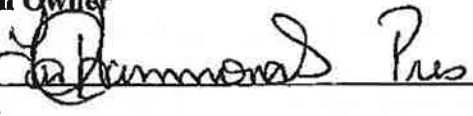
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 for a total of \$5,000.00 paid over the term of the Agreement.

8.01.04 If this agreement is for a term of 10 years, the bonus payment will be \$1,000 for each year of the term of the agreement. The total annual bonus payment will be \$10,000 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.


Ditch Owner

By: 

4/14/2023
Date

APPROVED:

Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:

Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:

Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande
Lariat Ditch Company

Address to mail payment to: 118 Washington Street
Monte Vista Co 8/44

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Rio Grande Piedra Valley Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
- Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande Piedra Valley Ditch and the water rights decreed thereto ("Ditch"). The Ditch diverts water from the Rio Grande River in the SW1/4 SE1/4 of Section 8, Township 39 North, Range 7 East, N.M.P.M. in Rio Grande County, Colorado, and has decreed priorities totaling 94.48 c.f.s.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
146	42.90
241	32.80
1903-24	0.38
1903-30	0.85
1903-34	1.14
1903-45	1.91
1903-46	0.57
1903-49	3.00
1903-52	3.05
1903-57	4.46
1903-61	3.42

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$25.00 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

Rio Grande Valley Ditch CO.
1604 County Rd. 28
Monte Vista, CO 81144

To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement

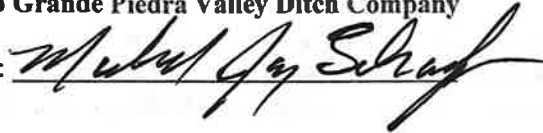
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

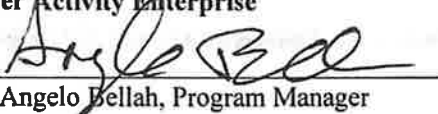
Rio Grande Piedra Valley Ditch Company

By: 

4-13-23
Date

APPROVED:


Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

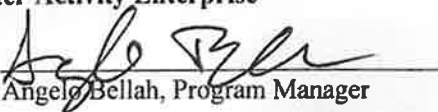
Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Valley Ditch Company

Address to mail payment to: 1604 Cty Rd 28
Monte Vista, CO 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Rio Grande San Luis Ditch ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande San Luis Ditch and the water rights decreed thereto ("Ditch"). The Ditch diverts water from the Rio Grande River in the NE1/4 SW1/4 of Section 22, Township 39 North, Range 7 East, N.M.P.M. in Rio Grande County, Colorado, and has decreed priorities totaling 53.24 c.f.s.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 are remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's 2020 ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
156	1.00
204	14.60
217	0.38
220	5.50
298	9.52
1903-22D	19.06
1903-30E	0.54
1903-34B	2.48
1903-57E	0.16

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate

the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Subdistricts of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date the Subdistricts provide the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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: Rio Grande San Luis Ditch
118 Washington Street
Monte Vista CO 8144

To the Subdistricts:

District 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, the Subdistricts' remedies will include, but not be limited to, the remedy of specific

performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced 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 Ditch or the Subdistricts to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistricts. 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 the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any

other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.


8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$7,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

Rio Grande San Luis Ditch

By: 

4-11-23
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:


**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande San Luis Ditch

Address to mail payment to: 118 Washington Street
Monte Vista CO 8144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District Water Activity Enterprise ("Subdistrict") and the San Luis Valley Irrigation District ("Company"), (sometimes collectively referred to as the "Parties"),

RECITALS

- A. The Company owns and operates the Farmers Union Canal ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio Grande River in the NE¼ SW¼ of Section 36, T40N, R6E, N.M.P.M., and has decreed priorities totaling 801.36 c.f.s.
- B. The Subdistrict is responsible for implementing the Plan of Water Management ("Plan") through their Annual Replacement Plan ("ARP"), as approved by the State Engineer.
- C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.
- D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.
- E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP for all Plan Years in which this agreement is in effect.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2024 through April 30, 2025)
 Three Years (May 1, 2024 through April 30, 2027)
 Five Years (May 1, 2024 through April 30, 2029)
 Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 25 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority Nos. listed in paragraph 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells

operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 25 acre-feet, the Subdistrict will have the option to forbear an additional 500 acre-feet at a cost of \$ 250 per acre-foot or will begin replacement of all injurious stream depletions to the Ditch with wet water.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
314	138.8
328T	0.25
353T	0.95
1903-17B	5.45
1903-22F	105.41
1903-24F	280.47
1903-30F	159.69
1903-34G	110.18

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 0' per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach up to a maximum of 25 acre-feet pursuant to the terms of this Agreement.

With the execution of the Long-Term Storage Agreement in January of 2021 between the Rio Grande Water Conservation District ("District") and the Company at Rio Grande Reservoir ("Reservoir"), the District's Board of Directors have agreed to offer the Subdistrict that is storing water within the District's leased space in the Reservoir a no-cost forbearance agreement. Subdistrict currently has 1,602.2 acre-feet of water stored in the Reservoir.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

No payment for a maximum of 25 acre-feet of unreplaced injurious depletions will be required to the District, however, the accounting of the unreplaced injurious depletions to the water rights of the District needs to be provided.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

San Luis Valley Irrigation District
c/o President
P.O. Box 637
Center, CO 81125



To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are be 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.


8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement.

8.01.04 If this agreement is for a term of 10 years, the bonus payment will be \$1,000 for each year of the term of the agreement. The total annual bonus payment will be \$10,000 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

San Luis Valley Irrigation District

By: 
Robert Phillips

2/22/2024
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

2/22/2024
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: San Luis Valley Irrigation District

Address to mail payment to: P.O. Box 637
Center, CO 81125

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6F, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

D. The Company, acting through its members and/or governing body is willing to enter into this 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 right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

X One Year (May 1, 2024 through April 30, 2025)

_____ Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 900 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Ditch 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 Rio Grande 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 Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. 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 the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 900 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

"Special Water" Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch 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 Ditch; 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. The payment required by paragraph 3 will be due within 35 days of the date the Subdistrict provides the Company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by 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. Under this 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 the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement 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:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

District 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, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced 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 the Subdistrict to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this 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. Any 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 the Subdistrict. 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 the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must 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.

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payments will be paid to the Company on or before December 31, of each year for the term of the Agreement.

(signatures on following page)

Rio Grande Canal Water Users' Association

By: Clay Lague

3/16/2024
Date

APPROVED:

**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/20/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Canal Water Users

Address to mail payment to: 127 Washington St.
Mante Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

1. _____
2. _____
3. _____
4. _____
5. _____

APPENDIX H

Closed Basin Project Allocation Letters

The Rio Grande Water Users Association

147 Washington St.

Monte Vista, CO. 81144

Telephone: (719) 852-3556 * FAX: (719) 852-5958

March 14, 2024

Cleave Simpson, General Manager
Amber Pacheco, Deputy General Manager Rio
Grande Water Conservation District
8805 Independence Way
Alamosa, Colorado 81101

Re: 2024-2025 Allocation of Rio Grande's Share of Closed Basin Project
Production

Dear Cleave and Amber:

I am writing on behalf of the Rio Grande Water Users Association ("Water Users") to advise you how the Water Users have agreed to allocate a portion of its share of Closed Basin Project Production for the period of January 1, 2024 through April 30, 2025. As you know, under the Resolution Regarding Allocation of the Yield of the Closed Basin Project the Rio Grande is entitled to an average of 60% of the annual usable yield of the Closed Basin Project. The Water Users intend to use 60% of the Project's usable yield in 2024.

The Board of Directors of the Water Users has discussed the needs of the Special Improvement Districts of the Rio Grande Water Conservation District ("Subdistricts") for water to replace stream depletions from groundwater pumping under their Annual Replacement Plans. In light of the importance of the Subdistricts being able to meet their replacement requirements in this coming ARP year's operations, the Water Users' Board voted to specifically allocate up to 4,100 acre-feet of the Rio Grande's share of the usable yield of the Closed Basin Project to replace the stream depletions under the Subdistricts 2024 Annual Replacement Plans.

The Water Users anticipate that the vast majority of this Project Water will be used to replace non-irrigation season depletions from November 1 through March 31. If Subdistrict No. 5 has an approved ARP, part of the water will be used to replace year-round depletions to the Rio Grande from Subdistrict No. 5. The Water Users understand that there may be circumstances during the irrigation season when the Subdistricts cannot deliver water to the Rio Grande below the Chicago Ditch due to intervening dry stream

The Rio Grande Water Users Association

Cleave Simpson
Amber Pacheco
March 14, 2024
Page 2


reaches or excessive losses in deliveries. In those circumstances, the Water Users believe Project Water is an appropriate replacement source but intend that the use of the allocation described herein be minimized during the irrigation season.

This allocation to the Subdistricts covers parts of two calendar years. The amount of about 1,800 acre-feet is allocated for replacement by December 31, 2024, and will come from the Rio Grande's 2024 share of the Project's usable yield. The remainder of about 2,300 is allocated for replacements from January 1 through April 30, 2025, the end of the Subdistricts 2024-2025 Annual Replacement Plan Year. The amount of the allocation used during January 1 through April 30, 2025, will come from the Rio Grande's share of Project production in 2025.

The Board of the Water Users wishes to make clear to the Subdistricts and to the members of the Water Users that this allocation is made on a one-time basis and is not a precedent that binds the Water Users, and that the Water Users have no duty to make a similar allocation in the future. The Rio Grande Water Conservation District should understand this as well and should not assume that the Water Users will make a similar allocation in the future.

If you have any questions about this matter, please give me a call.

Sincerely,



Greg Higel, President
Rio Grande Water Users Association

Copy: San Luis Valley Water Conservancy District
Craig Cotten

623 Fourth Street
Alamosa, CO 81101
(719) 589-2230
Heather@slvwcd.org



April 10, 2024

Amber Pacheco, Deputy General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101

Dear Ms. Pacheco,

The Board of the San Luis Valley Water Conservancy District (SLVWCD) has approved the request by the Rio Grande Water Conservation District (RGWCD) to allocate a portion of the Rio Grande's share of 2024 and 2025 Closed Basin Project (CBP) production to Subdistricts' stream depletions for inclusion in Annual Replacement Plans (ARPs).

The allocation of water to ARPs cannot in any way affect the allocation of CBP flows to the Rio Grande and Conejos River's Compact Obligations, which in 2024 is 61%/39%, respectively. Within that constraint, the SLVWCD supports the RGWCD's discretion in allocating production of the Rio Grande's share of CBP production to ARPs as needed.

Sincerely,

Heather R. Dutton

Heather Dutton
Manager, San Luis Valley Water Conservancy District

APPENDIX I

Centennial Ditch Company Resolution

March 29, 2024

**RGWCD SPECIAL IMPROVEMENT DISTRICT NO. 2, 3 AND 6 AND
CENTENNIAL DITCH COMPANY RESOLUTION**

Whereas: Rio Grande Water Conservation District staff have presented the Board of Directors of the Centennial Ditch Company with a request to allow the Centennial Ditch to be used as a carrier for replacement water under Subdistrict Nos. 2, 3 and 6's Annual Replacement Plan.

Whereas: The reason for this request, that there can be times when there is a dry reach in the Rio Grande when the Excelsior Ditch is sweeping the river. This may occur when the Excelsior Ditch is the calling priority on the Rio Grande and there is no Rio Grande Compact call.

Whereas: Under these conditions, the Rio Grande may be dry below the Excelsior Ditch headgate. In this circumstance it would be difficult to meet its replacement obligations under the Annual Replacement Plans to replace injurious depletions below the Excelsior Ditch and extending to the Lobatos gaging station with releases from upstream reservoirs.

Whereas: If the Centennial Ditch allows Subdistrict Nos. 2, 3 and 6 to convey water through the ditch, around the dry reach below the Excelsior and back into the Rio Grande, they can replace injurious depletions without the high losses that would occur trying to force water through the dry reach.

Whereas: The number of days it would be necessary to convey water through the Centennial Ditch during the irrigation season will depend on the calling priority on any given day, the amount of water in the Rio Grande available for diversion and Rio Grande Compact administration.

Whereas: The District, through Subdistrict Nos. 2, 3 and 6, has offered compensation to the Centennial Ditch Company for this occasional use of the Centennial Ditch which the Board of Directors found acceptable.

Whereas: Subdistrict Nos. 2, 3 and 6 shall provide the appropriate measuring devices under the direction of the Division Engineer to make the necessary measurements for the use of the Centennial Ditch in the manner.

Whereas: Subdistrict Nos. 2, 3 and 6 shall provide the water to be carried for replacing depletions to the headgate of the Centennial Ditch as well as all transit losses occurred through evaporation and seepage to this water as it passes through the Centennial Ditch.

Whereas: Subdistrict Nos. 2, 3 and 6 shall provide accounting subject to the reasonable acceptance of the Centennial Ditch Board of Directors and the Division Engineer.

Whereas: The Centennial Ditch Company assumes no liability for actions of Subdistrict Nos. 2, 3 and 6 and by accepting this proposal does not commit or guarantee any future agreements with these subdistricts. Unless extended by mutual agreement of Subdistrict Nos. 2, 3 and 6 and the Centennial Ditch Company, this agreement will end April 30, 2025.

Whereas: The Centennial Ditch Company will make all reasonable efforts to deliver/transfer replacement water for well depletions from Subdistrict Nos. 2, 3 and 6 well pumping through the Centennial Ditch system as efficiently as possible and on a timely basis as required by Subdistrict Nos. 2, 3 and 6 to comply with the Annual Replacement Plans.

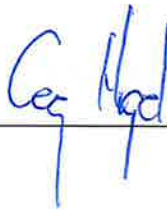
NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Centennial Ditch Company authorizes to allow Subdistrict Nos. 2, 3 and 6 of the Rio Grande Water Conservation District to convey water through the Centennial Ditch to replace injurious depletions under the Annual Replacement Plan and subject to the terms set forth above. The Centennial Ditch Company and Subdistrict Nos. 2, 3 and 6 will work together to accomplish the terms of this agreement.

BE IT FURTHER RESOLVED that President of the Board Jim Higel is hereby authorized and empowered to execute in the name of the Board of Directors of the Centennial Ditch Company approval of this agreement.

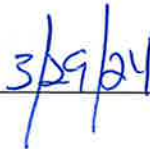
The forgoing resolution was passed by the Board of Directors of the Centennial Ditch Company this 29 day of March, 2024.

ATTEST:

Signed: _____



Date: _____



APPENDIX J

**State Engineer's Approval of the use of the URG Response
Functions dated February 28, 2020**



February 28, 2020

Cleave Simpson
General Manager, RGWCD
cleave@rgwcd.org
8805 Independence Way
Alamosa CO 81101

Subject: Upper Rio Grande Model Approval

Dear Mr. Simpson,

It is our understanding that Subdistrict(s) of the RGWCD may seek to enter into contracts with certain wells located upstream of the Del Norte Gage and include such wells in Annual Replacement Plan(s). These wells are located outside the boundary of the RGDSS Groundwater Water Model Domain.

In case 15CW3014 the court approved the Groundwater Use Rules (Rules). Under Rule 5.9 the court found that the RGDSS Modflow model was the best practical and reliable methodology **inside the Model Domain** and under Rule 7.1, the court found that the RGDSS Model must be used **inside the Model Domain**. Rule 5.10 of the Groundwater Use Rules provides that outside the RGDSS Model Domain, an alternate numerical or analytical model or alternative methodology is presumed to be necessary for determining Stream Depletions to surface streams resulting from groundwater withdrawals. Further, for areas outside the RGDSS Model Domain Rule 7.6 *requires* that the best practical and reliable methodology for determining Stream Depletions must be used.

At the Request of the Rio Grande Water Conservation District on behalf of the Subdistricts, the Colorado Water Conservation Board has contracted for the development of a Modflow groundwater model representing the groundwater system for the alluvium of the Rio Grande below the town of South Fork and above the Del Norte Gage. The model is known as the Upper Rio Grande ("URG") Model. The URG Model was constructed using the same Modflow program, and utilizes similar data inputs, parameters, and calibration standards as the RGDSS Model. Procedures used with the URG Model to determine Stream Depletions are the same procedures used for determining Stream Depletions using the RGDSS Model. The URG Model abuts the RGDSS Model and inputs, parameters, and flows at the boundary are consistent between the calibrated models.



Pursuant to Rule 9.1.2 the developers submitted the URG Model and URG Response Functions to the State Engineer for approval as a proposed alternate methodology for determining the stream depletions due to groundwater use within the URG Model Domain. Rules 9.1.2.1-9.1.2.3 document the information that needs to be provided to the State Engineer so the alternate methodology can be reviewed. That information was provided. In the past, the State Engineer has used a Peer Review Team (PRT) to conduct the review of the RGDSS Model and continued that practice with the URG Model and URG Response Functions.

For the review process the State Engineer considered the information provided pursuant to Rules 9.1.2.1 through 9.1.2.3 and finds:

- The information provided and explanation of the proposed alternate methodology was sufficient to meet the requirements of Rule 9.1.2.1
- Pursuant to Rule 9.1.2.2 the proposed URG Response Functions workbook were an example of how the methodology would be applied and the results of the alternate proposed methodology.
- In accordance with Rule 9.1.2.3 the URG Response Functions workbook included the most recent 20-year historical period and provided a list of projected current and lagged Stream Depletions from groundwater use in the URG Model Domain.

Accordingly the PRT had sufficient information to consider the URG Model and Response Functions as an alternate methodology under Rule 7.6.

On February 25, 2020 our staff, in conjunction with the PRT, formally reviewed the URG Model (version 7U08) and the derived URG Response Functions and URG workbook. The PRT found that:

- The URG Model was appropriately constructed and calibrated, and
- The URG Model would be an appropriate alternative methodology to determine the impact of groundwater use in the URG Model Domain, and
- That the URG Response Functions and URG workbooks were appropriate alternative methodology to apply the results of the URG Model.

Based on the review of the URG Model and URG Response Functions the State Engineer finds:

- That the requirements of Rule 7.6, have been met and that the URG Model, URG Response Functions and URG workbook may be used to determine the impacts of groundwater use in the URG Model Domain, and,

- That results from the URG Response Functions may be included in a Subdistrict's Annual Replacement Plan and Annual Report to predict stream depletions due to groundwater use in the URG Model Domain.
- The aquifer in the area represented in the URG Model Domain is an alluvial aquifer that has little to no storage capacity for use of the aquifer as a reservoir. This area meets the presumption of Rule 8.5 and therefore a plan to achieve a Sustainable Water Supply for the wells within the URG Model Domain will not be required as part of any Annual Replacement Plan(s).

We further suggest, but do not require, that due to the relatively fast response time to the surface water system any wells included in a Subdistrict's Annual Replacement Plan provide meter records to the Subdistrict by Nov. 1 of each year so that the projected groundwater withdrawals may be compared to actual meter readings and adjustments made to the predicted stream depletions if necessary.

Finally, this approval is based on the representation of the current groundwater withdrawals in version 7U08 of the URG Model and the current URG Response Functions. If, in the future, there is a significant change in either the quantity or location of groundwater withdrawals, our office may require a review of the then existing response functions and may require new response functions be developed to reasonably represent the effects of the changed pattern of groundwater withdrawals.

Thank you for your continued efforts on behalf of water users in the Rio Grande Basin.

Sincerely,



Kevin G Rein.
State Engineer and Director
Colorado Division of Water Resources

cc: Division 3
DWR Modeling Group
H&R

Appendix K

Memo from the State Engineer's Office Regarding a Review of the Assignment of Well W0388 No. 1 and the Associated Irrigated Land to the Response Area No. 1 for Depletion and Sustainability Requirements.



Memo

To: Craig Cotton
Division Engineer, Division 3

Cleve Simpson
Manager, RGWCD

From: Michael J. Sullivan
Deputy State Engineer

Date: November 22, 2021

Subject: W0388 Well No. 1 Review Request

Request: Cheryl Santi has requested a review of the current assignment of Well W0388 No. 1 and the associated irrigated land to the Response Area No. 1 for depletion and sustainability requirements.

Findings:

I have reviewed the history, record, the Division 3 Rules, and area hydrogeology, and discussed the request with the modeling and geological team:

1. W0388 Well No 1 (STRID 2008958 - Permit 45R) is legally (by decree) located in the NW SE Section 19 T39N, R8E but physically plots in the NE SW Section 19 T39N R8E. The decree indicates the well is located 2590 feet from the east line of the section. GPS location indicates the well is actually located 2654 feet from the east section line. This causes the legal location to be NW SE and the physical location to be NE SW. With only 64 feet of difference this causes no issue with the decreed location.
2. Review of the permit indicates that the well is 60 feet deep. Review of the location indicates that the well lies only 665 feet from the Rio Grande. Given the depth, well construction and location it appears the well is withdrawing water from an unconfined aquifer tributary to the Rio Grande .
3. Review of the mapping for Alluvial Response Area and Response Area No. 1 boundaries indicates that W0388 Well No. 1 physically lies in the NE SW of Section 19 just to the west of *and outside of* the Response Area No. 1 boundary and within the Alluvial Response Area. Section 8 of the Rules relies on the *location* of the well to determine sustainability requirements. “8.2 Except as provided in Rule 8.6, plans specified in Rule 6.1 that include Wells located in the Response Area No. 1 depicted in Exhibit D...”. W0388 Well No. 1 physically lies



outside of Response Area No. 1 and therefore the well is subject to Rule 8.4 (Alluvial Response Area) rather than Rule 8.2 (Response Area No. 1).

4. The land irrigated by W0388 Well No. 1 is just inside of the Response Area No. 1 boundary (NW SE 19 T39N R8E NMPM).
5. Under the SD#1 POWM the location of the irrigated land is considered pertinent, not necessarily the well location.
6. According to the Records of the Rio Grande County Clerk and Recorder, David Marsh owned land in the NE SE and NW SE of Section 19 up until April 18, 2002. On April 18, 2002 Marsh sold part of the western portion (in the NW SE) of the land to Cheryl Santi and part of the eastern portion (in the NE SE) to Larry Cotten. Ms. Santi received W0388 Well No. 1 to irrigate the purchased land. Mr. Cotten received W0388 Well No. 2. Due to location of Well No. 2 with respect to his purchased land Mr. Cotten legally moved W0388 Well No. 2 onto his portion of the land in the NE SE of Section 19.
 - a. In November 2002 a permit was issued to move W0388 Well No. 2 to a center pivot in the NE SE of Section 19. In May 2003 the new well was drilled (permit # 58599F)
 - b. In January 2004 the change of location and irrigation to the NE SE of Section 19 was confirmed in case 2002CW32.
7. In sum, between 2003 and 2004 Mr. Cotten legally moved W0388 Well No. 2 and its irrigated lands from the NW SE of section 19 to the NE SE of section 19.
8. Petitions to form the RGWCD Subdistrict No. 1 were circulated between 2004 and 2006.
9. Participation petition #212 for Subdistrict #1 included the 40 acres in the NW SE 19 T39N R8E NMPM. That participation petition (undated) was signed by Mr. Cotten and not by Ms. Santi.
10. Review of county land records indicate that Mr. Cotten, did not own land in the NW SE. Rather, Mr. Cotten owned land in the NE SE.
11. It is apparent that the 40 acres in the NW SE of Section 19 were included in the Subdistrict No. 1 by inadvertent error or mistake and that the land petitioned in probably should have been the 40 acres in the NE SE of Section 19.
12. Given that Mr. Cotten owned a well that originally was located in the NW SE where it irrigated portions of the NW SE and NE SE (which well was later moved to the NE SE and the irrigation consolidated into the NE SE) it is understandable that an inadvertent error or mistake in the legal location as listed in petition occurred. I presume that the original decree (W0388 Well No. 2), which located the well in the NW SE, was referred to in filling out the petition.
13. Absent Participation Petition #212 it is unlikely that the Santi irrigated acres in the NW SE of Section 19 would have been included within the Subdistrict No. 1 boundary. The 40 acre parcel is the only 40 acres south of the North River Road in this area within the Subdistrict

No. 1 and Response Area No. 1 boundary. In this area the Response Area boundary was based on the Subdistrict No. 1 boundary.

14. It is noted that the 40 acres in the NE SE of Section 19 is now included in Subdistrict No. 2 (Alluvial Response Area).
15. Review of USGS report HA-381 (Emery) indicates that the well and lands lie south of the hydraulic divide as mapped in 1971. While it is recognized that the hydrologic divide moves, an early goal of the SD#1 POWM was restoration of the hydrologic divide to its historic location.
16. I have discussed the request with the staff of the RGWCD and they have indicated that they will not dispute granting of the request.
17. I have discussed with the modeling and geological team the appropriateness of treating the W0388 Well No. 1 irrigated land in the NW SE of section 19 as if it were in the Alluvial Response Area for determining depletions/impacts. The modelers and geologists agree that under these unique conditions it is appropriate.
18. W0388 Well No. 1, being physically located in the Alluvial Response Area, has no sustainability requirement pursuant to Rule 8.4.

Summary:

W0388 Well No. 1 is physically located in the Alluvial Response Area and is subject to the Sustainability requirements of Rule 8.4. The associated irrigated land is located within the Response Area No. 1 by inadvertent error or mistake. The Modeling team has determined that it is appropriate that the depletions from the use of W0388 Well No. 1 be subject to the Alluvial Response Function.

Conclusion:

After review of the history, record, physical situation, area hydrogeology, and in consideration of the unique circumstances, it is appropriate that W0388 Well No. 1 be subject to the requirements of the Alluvial Response Area for both sustainability and depletion/impact determination. This determination is based on the unique circumstances set out above and establishes no precedent.

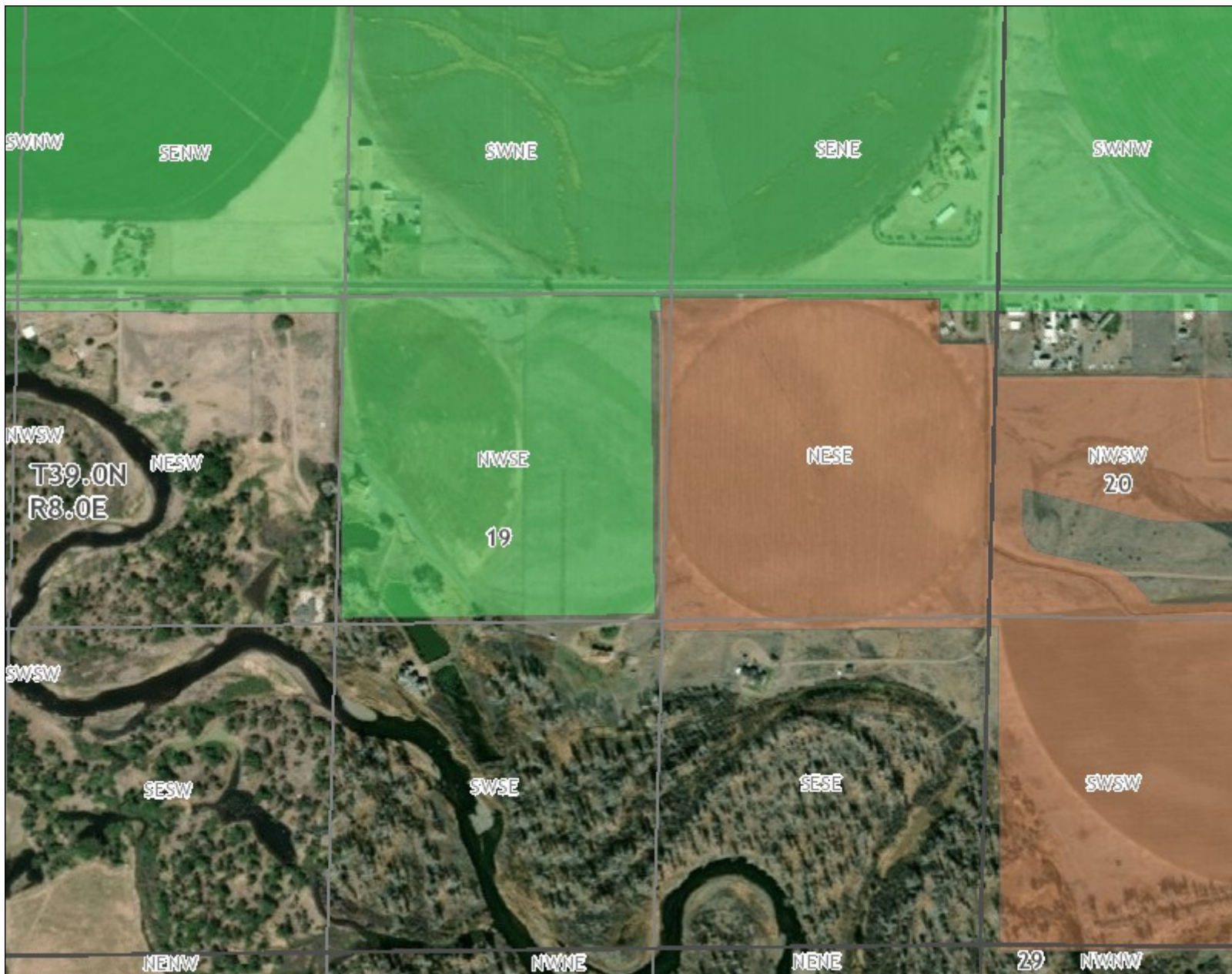
ec H&R
Kuenhold Law

Attachments:

Subdistrict Boundaries
Santi land NW SE 19 T39N R8E
Cotten quarter NE SE 19 T39N R8E
Petition No 212 Cotten NWSE1939n8enmpm
Exhibit A - Lands included in the Special Subdistrict No 1 of the RGWCD



Subdistrict boundaries



Legend

- Township
- Section
- Q40
- County

Div 3 Subdistrict Boundary

- Subdistrict 1
- Subdistrict 2
- Subdistrict 3
- Subdistrict 4
- Subdistrict 5
- Subdistrict 6
- Trinchera

Location

Notes

1,169 0 585 1,169 Feet



1: 7,016



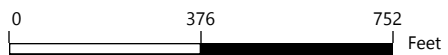
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Date Prepared: 11/4/2021 12:49:13 PM



Santi Land NWSE19T39NR8E

Web Print: 11/04/2021



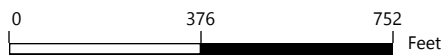
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



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Sege NE cotton quarter NE SW T39N R8E
Web Print: 11/04/2021



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



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PETITION
TO FORM A SPECIAL DISTRICT NO. 1
OF THE RIO GRANDE WATER CONSERVATION DISTRICT

DATE FILED: May 22, 2006 12:10 AM
 VASION DISTRICT V64

We the undersigned by our signatures affixed to this petition do hereby affirm and attest that:

1. (We/I) own real property within the boundaries of the proposed Special District No. 1, or the entity (we/I) represent owns real property within the boundaries of the proposed Special District No. 1, and (we/I) have the proper legal authority to sign this Petition on the entity's behalf.
2. (We/I) support the formation of the Special District No. 1 and request that the District Court to form the Special District pursuant to the attached Petition and preliminary service plan.
3. By our signature hereon we request that the Rio Grande Water Conservation District petition the District Court to form Special District No. 1.

Special District Purpose

The Special District No. 1 (hereinafter "Subdistrict") shall be formed to conserve and stabilize the water supply and groundwater storage in the Closed Basin for existing irrigation, domestic, municipal, and other beneficial uses within the boundaries of the Subdistrict. The Subdistrict will be financed by reasonable service and user fees, and special assessments on the property within the Subdistrict which will be benefited by the stabilization of the water supply within the Subdistrict boundaries. We understand that these service and user fees and mill levies on all taxable irrigated property within the Subdistrict may be required in order to generate sufficient amounts of money to carry out the purposes of the Subdistrict. These methods of financing are authorized by the signatures on this petition and without further election.

The Subdistrict will remain in existence unless dissolved by appropriate legal action, for so long as the Rio Grande Water Conversation District remains in existence.

The Subdistrict will be governed by a Board of Managers appointed by the Board of Directors of the Rio Grande Water Conservation District. All managers be a landowner within the Subdistrict.

The plan of the Subdistrict will be to use the means necessary to reduce the total amount of consumption of water within the exterior boundaries of the Subdistrict so as to prevent the mining of water resulting in the lowering of the groundwater table and to insure the preservation of a stable water supply sufficient to provide a water supply to the irrigated lands within the Subdistrict.

By (our/my) signature hereon, we attest to our/my ownership of the described irrigated land (or to our/my legal authority to represent an entity that has ownership of the described irrigated land), we indicate our understanding of the foregoing intentions and purposes of the Subdistrict, and respectfully request that the same be formed pursuant to applicable statutes by the District Court.

Legal description of all property owned within the proposed Subdistrict:

PARCEL #	COUNTY	LEGAL DESCRIPTION	NUMBER OF WELLS ON PARCEL
1	Rio Grande	NW ¼ SE ¼ Sec. 19, T. 39 N. Range 8 E NMMP. less approx. 1 A in the NE corner deeded to James E. Evrice Burk.	1 (500 gpm)

Petition No. 212

PARCEL #	COUNTY	LEGAL DESCRIPTION	NUMBER OF WELLS ON PARCEL

NOTICE: All of the record owners of the described property must sign this petition. If this petition is signed by a party who is not the record owner it will be invalid.

I/We certify that the foregoing information is true and accurate to the best of our knowledge.

Name(s) Larry L. Cotten

Lorell Rae Cotten

Address 40 Cotten Ln. Monte Vista, CO

40 Cotten Lane Monte Vista, CO

Signature Larry L. Cotten

Lorell Rae Cotten

As the circulator of this petition, I attest that each of the signatories hereon was provided with a copy of the Subdistrict plan describing in greater detail the basis and purpose for the formation of the Subdistrict and that the signatories on this petition were subscribed before me voluntarily and with knowledge of the purposes for the formation of the Subdistrict.

Printed Name of Circulator

Signature

Date

*Petitions on behalf of Corporations, Limited Partnerships, LLC's, LLP's etc. must be executed by the legally authorized representatives.

EXHIBIT A

Lands included in the Special Subdistrict No.1
of the Rio Grande Water Conservation District

DATE FILED: May 12, 2006
CASE NUMBER: 2006CV64

The following portions of Township 42 North Range 7 East (N.M.P.M.):

W $\frac{1}{2}$ Sec. 2
E $\frac{1}{2}$ Sec. 3
SW $\frac{1}{4}$ Sec. 3
E $\frac{1}{2}$ Sec. 9
W $\frac{1}{2}$ Sec. 10
SE $\frac{1}{4}$ Sec. 13
W $\frac{1}{2}$ Sec. 13
Sec. 14, Sec. 15
NE $\frac{1}{4}$ Sec. 16
SE $\frac{1}{4}$ Sec. 21
Sec. 22, Sec. 23
N $\frac{1}{2}$ Sec. 24
NW $\frac{1}{4}$ Sec. 26
Sec. 27
E $\frac{1}{2}$ Sec. 28
SW $\frac{1}{4}$ Sec. 28
E $\frac{1}{2}$ Sec. 33
Sec. 34
S $\frac{1}{2}$ Sec. 35

The following portions of Township 42 North Range 8 East (N.M.P.M.):

S $\frac{1}{2}$ Sec. 24
Sec. 25, Sec. 36

The following portions of Township 42 North Range 9 East (N.M.P.M.):

Sec. 31
E $\frac{1}{2}$ Sec. 35
Sec. 36

The following portions of Township 42 North Range 10 East (N.M.P.M.):

Sec. 31
W $\frac{1}{2}$ Sec. 32

The following portions of Township 41 North Range 7 East (N.M.P.M.):

S $\frac{1}{2}$ Sec. 1
Sec. 2, Sec. 3, Sec. 4
SE $\frac{1}{4}$ Sec. 5
E $\frac{1}{2}$ Sec. 8
Sec. 9, Sec. 10, Sec. 11, Sec. 12, Sec. 13, Sec. 14, Sec. 15, Sec. 16
E $\frac{1}{2}$ Sec. 17

Sec. 20, Sec. 21, Sec. 22, Sec. 23, Sec. 24, Sec. 25, Sec. 26, Sec. 27, Sec. 28
S $\frac{1}{2}$ Sec. 29
SE $\frac{1}{4}$ Sec. 30
S $\frac{1}{2}$ Sec. 31
Sec. 32, Sec. 33, Sec. 34, Sec. 35, Sec. 36

All of Township 41 North Range 8 East (N.M.P.M.) excluding NW $\frac{1}{4}$ Sec. 6 and
excluding property within the Town of Center city limits

All of Township 41 North Range 9 East (N.M.P.M.)

The following portions of Township 41 North Range 10 East (N.M.P.M.):
Sec. 5, Sec. 6, Sec. 7, Sec. 8, Sec. 17, Sec. 18, Sec. 19, Sec. 20, Sec. 29, Sec. 30, Sec. 31,
Sec. 32
SW $\frac{1}{4}$ Sec. 33

The following portions of Township 40 North Range 6 East (N.M.P.M.):
S $\frac{1}{2}$ Sec. 1
SE $\frac{1}{4}$ Sec. 2
SW $\frac{1}{4}$ Sec. 10
E $\frac{1}{2}$ Sec. 10
Sec. 11, Sec. 12
E $\frac{1}{2}$ Sec. 13
SW $\frac{1}{4}$ Sec. 13
S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 14
N $\frac{1}{2}$ Sec. 15
SW $\frac{1}{4}$ Sec. 15
N $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 21
NW $\frac{1}{4}$ Sec. 22
E $\frac{1}{2}$ Sec. 22
Sec. 23, Sec. 24, Sec. 25, Sec. 26
N $\frac{1}{2}$ Sec. 27
N $\frac{1}{2}$ Sec. 36

All of Township 40 North Range 7 East (N.M.P.M.) excluding N $\frac{1}{2}$ Sec. 6

All of Township 40 North Range 8 East (N.M.P.M.) excluding property within the Town
of Center city limits

All of Township 40 North Range 9 East (N.M.P.M.)

The following portions of Township 40 North Range 10 East (N.M.P.M.):
W $\frac{1}{2}$ Sec. 1
Sec. 2, Sec. 3
Sec. 4 excluding property within Town of Hooper city limits
Sec. 5, Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 10, Sec. 11

W½ Sec. 12
SE¼ Sec. 12
Sec. 13, Sec. 14, Sec. 15, Sec. 16, Sec. 17, Sec. 18, Sec. 19, Sec. 20, S 21, Sec. 22, Sec. 23, Sec. 24
Sec. 25, Sec. 26, Sec. 27, Sec. 28, Sec. 29, Sec. 30, Sec. 31, Sec. 32, Sec. 33, Sec. 34, Sec. 35, Sec. 36

The following portions of Township 40 North Range 11 East (N.M.P.M.):
NW¼ Sec. 18
SE¼ Sec. 31

The following portions of Township 39 North Range 7 East (N.M.P.M.):
Sec. 1, Sec. 2, Sec. 3, Sec. 4
N½ Sec. 5
N½ SE¼ Sec. 5
NE¼ Sec. 6
N½ N½ Sec. 8
Portion of NW¼ Sec. 9 north of County Road 4.5 North
NE¼ Sec. 9
Sec. 10, Sec. 11, Sec. 12, Sec. 13, Sec. 14
E½ Sec. 15
NW¼ Sec. 15
NE¼ Sec. 24

The following portions of Township 39 North Range 8 East (N.M.P.M.):
Sec. 1, Sec. 2, Sec. 3, S 4, Sec. 5, Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 10, Sec. 11, Sec. 12
Sec. 13, Sec. 14, Sec. 15, Sec. 16, Sec. 17, Sec. 18
N½ Sec. 19
NW¼ SE¼ Sec. 19
N½ Sec. 20
N½ Sec. 21
Sec. 22, Sec. 23, Sec. 24
N½ Sec. 25

The following portions of Township 39 North Range 9 East (N.M.P.M.):
Sec. 1, Sec. 2, Sec. 3, S 4, Sec. 5, Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 10, Sec. 11, Sec. 12,
Sec. 13, Sec. 14, Sec. 15, Sec. 16
Sec. 17, Sec. 18, Sec. 19, Sec. 20, Sec. 21, Sec. 22, Sec. 23, Sec. 24, Sec. 25, Sec. 26,
Sec. 27, Sec. 28 Sec. 29, Sec. 30
NE¼ Sec. 31
N½ N½ Sec. 32
Sec. 33, Sec. 34, Sec. 35, Sec. 36

The following portions of Township 39 North Range 10 East (N.M.P.M.):
Sec. 1, Sec. 2
Sec. 3 and S 4 excluding property within the Town of Mosca city limits

Sec. 5, Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 10, Sec. 11
N $\frac{1}{2}$ Sec. 12
N $\frac{1}{2}$ Sec. 13
Sec. 14, Sec. 15, Sec. 16, Sec. 17, Sec. 18, Sec. 19, Sec. 20, Sec. 21, Sec. 22
N $\frac{1}{2}$ Sec. 23
Sec. 30
W $\frac{1}{2}$ Sec. 29
Sec. 31

The following portions of Township 39 North Range 11 East (N.M.P.M.):

Sec. 6
N $\frac{1}{2}$ Sec. 7

The following portions of Township 38 North Range 9 East (N.M.P.M.):

NE $\frac{1}{4}$ Sec. 1

The following portions of Township 38 North Range 10 East (N.M.P.M.):

Sec. 5, Sec. 6
N $\frac{1}{2}$ Sec. 8

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

April 15, 2024

**APPROVING 2024 ANNUAL REPLACEMENT PLAN
OF SPECIAL IMPROVEMENT DISTRICT NO. 2
OF THE RIO GRANDE WATER CONSERVATION DISTRICT**

The Board of Directors of the Rio Grande Water Conservation District (“District”) at a special meeting held on April 15, 2024, in Alamosa, Colorado does hereby resolve that:

WHEREAS, Special Improvement District No. 2 of the Rio Grande Water Conservation District (“Subdistrict No. 2”) was created to conserve and stabilize the water supply and groundwater storage for irrigation, domestic, municipal and other beneficial uses for the water users within the boundaries of Subdistrict No. 2 and to remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and


WHEREAS, Subdistrict No. 2 is operating under an approved Plan of Water Management which requires the development of an Annual Replacement Plan showing, among other things, the predicted injurious depletions caused by Subdistrict Well groundwater withdrawals and the manner in which the Subdistrict will remedy those depletions; and


NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District on the 15th day of April, 2024 that:

The District hereby accepts and approves the Subdistrict No. 2 2024 Annual Replacement Plan.

ATTEST:

RIO GRANDE WATER CONSERVATION
DISTRICT

By: 
Zeke Ward
Secretary/Treasurer

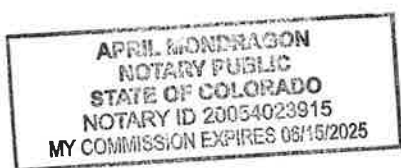
By: 
Greg Higel,
President

COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 15th day of April, 2024, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District

Witness my hand and seal.

My commission expires: 6-15-25



April Mondragon
Notary Public

**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

**TO ALLOW SPECIAL IMPROVEMENT DISTRICT NO. 2 TO USE A PORTION OF
THE PRODUCTION OF THE CLOSED BASIN PROJECT FOR THE REPLACEMENT
OF INJURIOUS DEPLETIONS UNDER ITS 2024 ANNUAL REPLACEMENT PLAN**

The Board of Directors of the Rio Grande Water Conservation District at a special meeting held on April 15, 2024, in Alamosa, Colorado does hereby resolve that:

WHEREAS, Special Improvement District No. 2 of the Rio Grande Water Conservation District (“Subdistrict No. 2”) was created to conserve and stabilize the water supply and groundwater storage for irrigation, domestic, municipal and other beneficial uses for the water users within the boundaries of Subdistrict No. 2 and to remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and

WHEREAS, Subdistrict No. 2 is operating under an approved Plan of Water Management which requires the development of an Annual Replacement Plan (“ARP”) showing, among other things, the predicted injurious depletions caused by Subdistrict Well groundwater withdrawals and the manner in which the Subdistrict will remedy those depletions; and

WHEREAS, the production from the Closed Basin Project can and should be used as a source of water to remedy injurious depletions caused by groundwater withdrawals from wells included in the Subdistrict’s 2024 ARP.

RESOLUTION

NOW, THEREFORE, be it resolved by the Board of Directors of the Rio Grande Water Conservation District that:

1. The District anticipates that the vast majority of this Project Water will be used to replace non-irrigation season depletions from November 1 through March 31. There may be circumstances during the irrigation season when Subdistrict No. 2 cannot deliver water to the Rio Grande below the Chicago Ditch due to intervening dry stream reaches or excessive losses in deliveries. In those circumstances, the District believes Project Water is an appropriate replacement source, but intends that its use during the irrigation season be minimized.

2. The inclusion of 1,007.1 acre-feet of water from the production of the Closed Basin Project as a source of supply in the Subdistrict No. 2 2024 Annual Replacement Plan and the use of said water under the 2024 ARP to remedy injurious stream depletions is approved.

ATTEST:

RIO GRANDE WATER
CONSERVATION DISTRICT

By: *Zeke Ward*
Zeke Ward
Secretary/Treasurer

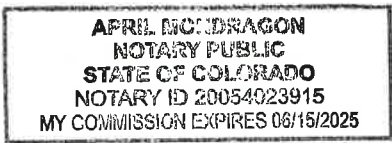
By: *Greg Higel*
Greg Higel
President

COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 15th day of April, 2024, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District.

Witness my hand and seal.

My commission expires: 6-15-25



April McDragon
Notary Public

RIO GRANDE WATER CONSERVATION DISTRICT

April 15, 2024

**RESOLUTION
FOR THE DISTRICT TO ACT AS FINANCIAL GUARANTOR OF THE
REPLACEMENT OBLIGATIONS OF SUBDISTRICT NO. 2**

The Board of Directors of the Rio Grande Water Conservation District (“District”) does hereby resolve that:

WHEREAS, Special Improvement District No. 2 of the Rio Grande Water Conservation District (“Subdistrict No. 2”) was created to ensure remedy of injurious stream depletions to senior water rights resulting from the withdrawal of groundwater from wells in Subdistrict No. 2 and to conserve and stabilize the water supply and amount of groundwater in storage for irrigation and other beneficial uses for the water users within the boundaries of Subdistrict No. 2; and

WHEREAS, Subdistrict No. 2 is operating under an approved Plan of Water Management which requires the development of an Annual Replacement Plan (“ARP”) showing, among other things, the predicted injurious stream depletions caused by Subdistrict Well pumping and the manner in which Subdistrict No. 2 will remedy those stream depletions; and

WHEREAS, Subdistrict No. 2 continues to work diligently to obtain permanent and/or renewable supplies to remedy future stream depletions caused by present or future groundwater withdrawals by Subdistrict No. 2 wells, and

WHEREAS, at the present time it is impossible for Subdistrict No. 2 to acquire a sufficient quantity of water as a permanent supply to cover total post-plan injurious stream depletions after this Plan Year.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District on the 15th day of April, 2024 that:

1. In order to address the issue identified above, the District, which is created by statute and has a mill levee which provides an annual and consistent stream of monies, will act as a financial guarantor itself if Subdistrict No. 2 were to fail or otherwise be unable to replace injurious stream depletions caused by the lagged effects of past and present groundwater withdrawals by Subdistrict No. 2 wells.

2. The District will provide funds to acquire water or compensate parties directly to insure injured parties are kept whole. This mechanism will act as a temporary measure to assure future replacement of injurious stream depletions until Subdistrict No. 2 is able to obtain permanent and/or renewable supplies to remedy future stream depletions caused by present or future groundwater withdrawals.

