

SPECIAL IMPROVEMENT DISTRICT NO. 6 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. 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 2023 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

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**Abbreviations**

ARP	Annual Replacement Plan
CBP	Closed Basin Project
CWCD	Conejos Water Conservancy District
DWR	State of Colorado, Division of Water Resources
NRCS	Natural Resources Conservation Service
Plan Year	The period May1, 2024, through April 30, 2025
PWM	Plan of Water Management
Response Functions	RFAApplication_C_AlamosaLaJara_6P98_V1.1
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. 6	Special Improvement District No. 6 of the Rio Grande Water Conservation District
Subdistrict Wells	Wells Benefitting Subdistrict No. 6 lands
SWSP	Substitute Water Supply Plan
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. 6, approved without objection on September 25<sup>th</sup>, 2019. 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. 6 staff to project stream depletions attributable to Subdistrict No. 6 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. 6 staff utilizing the most current version of the Response Functions to tabulate the location and quantities of stream depletions resulting from Subdistrict No. 6 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. 6 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.

Appendix A lists **541** ARP Wells for 2024, the majority included in the Subdistrict by petition when the Subdistrict was formed October 4, 2018. The ARP Well List has been updated for 2024 to include an additional two (2) wells and the removal of five (5) wells. One of the new wells were added to the Subdistrict ARP Well List by Participation Contract and one was added by Inclusion Agreement. The wells will be used for commercial purposes. The wells that were removed did not receive approved SWSPs during the 2023 Plan Year and therefore cannot currently operate within the Subdistrict. A table with further details about each well which has an approved Subdistrict Participation Contract or Inclusion Agreement 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. 6’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. 6’s PWM. These plans for augmentation associate surface rights with these Subdistrict Wells and other non-Subdistrict No. 6 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. 6 fees and Subdistrict No. 6 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. 773**

This augmentation certificate provides the participant 0.1727 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 a hotel located on a parcel of land in the NE1/4 Section 6. Township 37 North, Range 10 E, N.M.P.M. The structure and water diversions covered by this Agreement and Augmentation Certificate shall be used for the purpose of supplying commercial water for 24 rooms in a hotel and a swimming pool. The source of water is the 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. This well is considered a non-benefitted Subdistrict Well as defined in the Subdistrict’s PWM so it remains on the ARP Well List as petitioned but requires benefits from 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 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 **91,158** acre-feet. Based on projected Subdistrict No. 6 operations, weather predictions and antecedent conditions, it is anticipated the 2024 ARP Well groundwater withdrawals will be **100,000** acre-feet.

**Table 1.1**  
**Historical Subdistrict ARP Well Metered Pumping**  
(units in acre-feet)

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
118,020	113,310	111,239	93,641	86,603	83,097	75,444	116,057	70,227	106,379	101,281	96,953	91,158

The projection of 2024 ARP Well groundwater withdrawals was made by reviewing past years actual stream flows on the Rio Grande and the Alamosa River Systems most comparable to those being forecast for 2024. ARP Well groundwater withdrawals in those years were also reviewed. The Subdistrict also reviewed operational changes reported by Subdistrict Members which will occur during the 2024 ARP. The stream flow forecast on the Rio Grande and the Alamosa River were most comparable to the 2021 actual flows and, in that year, Subdistrict ARP Wells withdrew 101,281 acre-feet. Based on the review of stream flows and Subdistrict Member operational changes it is projected 2024 ARP Well groundwater withdrawals will increase from 2023. Using this comparison, the Subdistrict ARP Well groundwater withdrawals in 2024 are projected to be **100,000** acre-feet.

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

Approximately 70 percent of metered groundwater withdrawals in the Plan Year will be used for



irrigation through center pivot sprinklers. Approximately 5 percent and 25 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

Wells included in the ARP Well List are projected to irrigate approximately 60,000 acres during the Plan Year. Of the total projected irrigated acres, it is estimated 47,200 acres will be irrigated by center pivot sprinklers and 12,800 acres will be irrigated by flood application in the Alamosa-La Jara Response Area. This estimate is made based on a review of the breakdown of acres in the Rio Grande Water Conservation District's annual Irrigated Ag Census and a review of the wells being included by Participation Contracts or Inclusion Agreements.

#### **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 municipal, domestic, commercial, industrial 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 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. The list of Subdistrict Wells included in the 2024 ARP in spreadsheet format matching the list presented in Appendix A.
3. Resolution from RGWCD to allow the Subdistrict to allocate Closed Basin Project water in the 2024 ARP.
4. Spreadsheet of the Subdistrict's breakdown of "Other" wells used to calculate the

composite Consumptive Use Ratio in the Response Functions.

5. 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. 6 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. 6 also anticipates they will make a request to the Division No. 3 Division Engineer to allow Subdistrict No. 6 to aggregate a monthly, positive depletion with a negative depletion of another Subdistrict to offset the positive daily depletion that Subdistrict No. 6 would otherwise have to replace or remedy when the opportunity exists under the protocol of DWR. A Memorandum 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 Conejos River, Alamosa River, and Rio Grande as a result of the groundwater withdrawals from Subdistrict No. 6 ARP Wells for the Plan Year. The Response Function's outputs identify total projected stream depletions for the Plan Year, a breakdown of the monthly stream depletions for the Plan Year for each of the reaches on the Conejos, Alamosa, and Rio Grande and a projection of the Post-Plan Stream Depletions calculated as a result of the predicted Plan Year groundwater withdrawals from Subdistrict No. 6 ARP Wells. Subdistrict No. 6 utilized the current 6P98 Response Functions to calculate projected stream depletions for this ARP.

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, 60,000 acre-feet for the Alamosa River, and 158,000 acre-feet for the Conejos River. The Division Engineer's April 5, 2024, and the NRCS's April 1, 2024, forecast reports were used as a basis for estimating groundwater consumption in Subdistrict No. 6 in the 2024 ARP. From these forecasts, 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 FORECASTS – CONEJOS, RIO GRANDE, AND ALAMOSA RIVERS

The Division Engineer’s March 26, 2024, Rio Grande Compact 10-day report projected annual flow of the Conejos River System was used to estimate groundwater consumption attributable to ARP Wells based upon hydrologic conditions for the current Plan Year. The NRCS’s April 1, 2024, forecast of the annual flow of the Conejos, Los Pinos and San Antonio stream flows were also reviewed to assist Subdistrict staff in projecting hydrologic conditions for the current Plan Year, as was the Division Engineer’s April 5, 2024 forecasted flow for the Rio Grande River System. Data collected from these forecasts is included in Table 1.2.

**Table 1.2  
Stream Flow Forecasts-Conejos, Rio Grande and Alamosa Rivers  
(units in acre-feet)**

<b>Conejos Stream Flow Forecast</b>				
<b>Analysis</b>	<b>Apr-Sept Forecast (acre-feet)</b>	<b>% of Avg.</b>	<b>Estimated Additional (acre-feet)</b>	<b>Annual Estimated Flow (acre-feet)</b>
	(1)	(2)	(3)	
<b>NRCS, 4/1/2024</b>				
Conejos River near Mogote	158,000	94		
Los Pinos River near Ortiz	56,000	56		
San Antonio River at Ortiz	9,500	99		
<b>Total Conejos River System</b>	<b>223,500</b>			
<b>Division Engineer, Ten Day, 3/26/2024</b>				
Conejos River near Mogote	158,600	94		
Los Pinos River near Ortiz	65,300	107		
San Antonio River at Ortiz	7,000	73		
<b>Total Conejos River System</b>	<b>230,900</b>		<b>29,100</b>	<b>260,000</b>
<b>Rio Grande Stream Flow Forecast</b>				
<b>Analysis</b>	<b>Apr-Sept Forecast (acre-feet)</b>	<b>% of Avg.</b>	<b>Estimated Additional (acre-feet)</b>	<b>Annual Estimated Flow (acre-feet)</b>
	(1)	(2)	(3)	
<b>NRCS, 4/1/2024</b>				
	445,000	93		
<b>Division Engineer, Ten Day, 4/5/2024</b>	445,000	93	85,000	530,000
<b>Alamosa Stream Flow Forecast</b>				
<b>Analysis</b>	<b>Apr-Sept Forecast (acre-feet)</b>	<b>% of Avg.</b>	<b>Estimated Additional (acre-feet)</b>	<b>Annual Estimated Flow (acre-feet)</b>
<b>NRCS, 4/1/2024</b>	<b>60,000</b>	<b>98</b>		

- (1) NRCS projected 50% exceedance streamflow at the gaging station
- (2) NRCS 30-yr Average Flow: Conejos-168,000, Rio Grande-480,000, Alamosa-61,000, Los Pinos-61,000, San Antonio-9,600
- (3) January through March and October through December

A copy of the NRCS April 1, 2024, Forecast, the March 26, 2024, Division No. 3 Division Engineer’s Rio Grande Compact Ten-Day Report, 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**

Subdistrict No. 6 staff utilized the response functions developed for the Alamosa-La Jara Response Area under the RGDSS Groundwater Model Phase 6P98 to predict stream depletions to the affected streams caused by groundwater withdrawals from ARP Wells utilizing. For the Plan Year, stream depletions attributable to the groundwater withdrawals from ARP Wells were calculated using these Response Functions.

The Response Functions spreadsheet was built to be used for the whole Response Area. Two instruction sheets were prepared by DWR for additional inputs to the 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 Response Functions is to input data for the whole Response Area, i.e., historical groundwater withdrawals for sprinkler irrigation, flood irrigation, "other" pumping with corresponding "other" consumptive use ratios for the years 2011 through 2023 and predicted values for 2024.

The Subdistrict elected to use the Response Functions spreadsheet for the subset of wells which are included in the ARP Well List. The Alamosa-La Jara Response Area requires adjustments for point source return flows and the stream ratios, as listed below.

- Alamosa-La Jara Response Area - Reach 3 (Rio Grande from Del Norte to Excelsior Ditch) from the City of Monte Vista and Reach 5 (Rio Grande from Chicago to the State Line) from the City of Alamosa,
- Conejos: Reach 1 Calculations Ratio and Reach 6 Calculations Ratio.

Using the whole Response Area results, adjustments are made on appropriate pages of the Response Function spreadsheet. The Subdistrict ARP Wells do include the City of Monte Vista and City of Alamosa point source return flow, therefore, point source return flows were not adjusted in the spreadsheet. Adjustments for the Ratio Method were made for Reach 1: Conejos above Seledonia/Garcia and Reach 6: Alamosa River.

The next step was to calculate stream depletions by updating the 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 Response Area 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 of the ARP.

Historical groundwater withdrawal values for wells included in the ARP Well List were entered in Table 2.1 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 provide a description of the calculations within this table.

**Table 2.1**  
**Estimated Net Groundwater Consumptive Use**  
**(Units in acre-feet)**

Year	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	85,088	6,944	25,988	56%	89,295	0	0	0	0	89,295
2012	82,803	6,261	24,245	56%	86,000	0	0	0	0	86,000
2013	80,706	7,311	23,222	55%	84,255	0	0	0	0	84,255
2014	64,832	5,923	22,886	55%	69,851	0	0	0	0	69,851
2015	56,332	6,885	23,387	53%	63,386	0	0	0	0	63,386
2016	57,107	4,079	21,911	53%	61,551	0	0	0	0	61,551
2017	49,005	4,564	21,875	55%	55,357	0	0	0	0	55,357
2018	86,051	6,759	23,247	56%	88,385	0	0	0	0	88,385
2019	45,933	3,968	20,326	55%	51,586	0	0	0	0	51,586
2020	78,471	5,081	22,826	58%	81,364	0	0	0	0	81,364
2021	71,222	5,315	24,744	57%	76,372	0	0	0	0	76,372
2022	70,570	5,189	21,194	56%	73,586	0	0	0	0	73,586
2023	63,658	4,872	22,629	57%	68,598	0	0	0	0	68,598
<b>2024</b>	<b>70,000</b>	<b>5,000</b>	<b>25,000</b>	<b>57%</b>	<b>75,350</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>75,350</b>
Avg	68,698	5,582	23,106	56%	73,210	0	0	0	0	73,210

Explanation of Columns

- (1) Calendar Year
- (2) Determined from metered groundwater pumping
- (3) Determined from metered groundwater pumping
- (4) Determined from metered groundwater pumping
- (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) - (9) Not applicable to the Alamosa-La Jara 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 **75,350** acre-feet as shown in Table 2.1.

The Net Groundwater Consumptive Use for 2024 derived in Table 2.1 above is then input into the Response Function table contained in Table 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 for the respective reaches and the total are shown in Columns 4 through 7.

**Table 2.2**  
**Estimated Historical and Projected Net Stream Depletions from**  
**Groundwater Withdrawals in Subdistrict No. 6**  
**(Units in acre-feet)**

Year	Rio Grande near Del Norte Stream Gage (Apr-Sep) (2)	Net Groundwater Consumptive Use (Jan-Dec) (3)	Conejos above Seledonia/Garcia (4)	Conejos below Seledonia/Garcia (5)	Rio Grande Del Norte-Excelsior (6)	Rio Grande Excelsior-Chicago (7)	Rio Grande Chicago-State Line (8)	Alamosa River (9)	Total (11)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(11)
1970	561,150	66,877	160	2,396	-227	345	-1,519	514	1,669
1971	389,397	73,564	136	3,348	320	891	-1,178	545	4,063
1972	373,031	88,472	96	4,203	901	1,470	-982	594	6,282
1973	755,509	65,461	176	3,537	1,102	1,675	-802	643	6,332
1974	270,942	93,141	162	4,421	1,151	1,954	-628	605	7,666
1975	730,848	65,439	179	3,695	1,198	2,067	-378	650	7,409
1976	512,997	72,243	144	4,025	1,201	1,952	-367	448	7,403
1977	163,635	100,963	96	4,909	1,363	2,306	-270	268	8,672
1978	340,660	85,721	166	4,814	1,637	2,585	51	619	9,871
1979	886,617	64,046	189	3,874	1,630	2,498	-96	670	8,764
1980	672,668	73,419	174	4,138	1,534	2,305	-144	596	8,603
1981	310,945	88,302	101	4,520	1,555	2,509	-46	622	9,260
1982	572,474	64,258	188	3,979	1,530	2,500	226	689	9,111
1983	578,510	65,132	186	3,842	1,524	2,402	37	681	8,671
1984	652,637	62,386	180	3,695	1,554	2,368	-57	659	8,399
1985	864,564	57,098	177	3,282	1,469	2,280	-290	649	7,568
1986	865,371	52,371	171	2,978	1,252	2,065	-441	628	6,653
1987	907,650	66,191	161	3,337	1,118	1,924	-651	586	6,475
1988	346,087	88,042	141	4,397	1,210	1,970	-554	521	7,685
1989	407,389	88,277	145	4,700	1,512	2,230	-350	536	8,772
1990	424,033	80,296	149	4,508	1,530	2,372	-212	536	8,883
1991	529,567	70,757	165	4,160	1,319	2,330	-311	528	8,191
1992	415,482	71,699	147	4,084	1,519	2,329	-466	551	8,163
1993	577,831	55,600	169	3,527	1,345	2,205	-176	600	7,671
1994	444,629	77,901	171	4,113	1,555	2,301	-669	555	8,027

1995	734,492	47,289	167	3,092	1,321	2,119	-794	610	6,514
1996	313,441	88,394	154	4,202	1,146	2,237	-679	577	7,637
1997	781,596	60,848	172	3,505	1,307	2,237	-602	626	7,244
1998	466,821	75,474	149	4,030	1,404	2,195	-643	535	7,670
1999	799,489	51,779	152	3,178	1,295	2,082	-524	405	6,589
2000	312,094	94,174	85	4,407	1,146	2,210	-900	237	7,186
2001	655,233	73,065	134	4,201	1,248	2,308	-407	416	7,900
2002	96,717	112,680	81	5,327	1,551	2,645	-394	133	9,345
2003	261,300	102,124	96	5,339	1,794	2,977	361	267	10,833
2004	431,675	79,199	167	4,797	1,938	2,960	241	623	10,726
2005	682,540	69,323	191	4,307	1,947	2,784	58	694	9,981
2006	411,656	79,300	164	4,488	2,029	2,714	-232	606	9,768
2007	593,239	69,224	169	4,181	1,995	2,629	-281	632	9,325
2008	623,333	61,973	193	3,844	1,730	2,498	-400	708	8,573
2009	513,058	56,397	188	3,511	1,600	2,332	-420	683	7,893
2010	453,063	74,327	160	4,050	1,482	2,280	-643	593	7,922
2011	415,287	89,295	150	4,683	1,723	2,427	-677	596	8,903
2012	328,465	86,000	82	4,733	1,872	2,559	-546	456	9,155
2013	344,522	84,255	91	4,711	1,978	2,654	-491	253	9,197
2014	518,731	69,851	151	4,213	1,920	2,576	-404	559	9,015
2015	555,832	63,386	149	3,849	1,812	2,462	-457	552	8,368
2016	565,968	61,551	150	3,668	1,696	2,329	-521	561	7,882
2017	574,029	55,357	157	3,404	1,553	2,146	-572	611	7,299
2018	212,225	88,385	93	4,269	1,572	2,387	-695	573	8,200
2019	855,755	51,586	161	3,245	1,436	2,292	-480	625	7,279
2020	307,808	81,364	89	4,035	1,266	2,253	-609	551	7,586
2021	381,197	76,372	146	4,193	1,388	2,358	-444	541	8,182
2022	359,222	73,586	148	4,165	1,525	2,391	-497	552	8,284
2023	639,603	68,598	164	3,998	1,561	2,360	-511	596	8,168
2024	445,000	75,350	139	4,124	1,687	2,440	-589	513	8,314
2025			126	1,552	1,889	1,987	1,490	466	7,510
2026			114	788	1,338	1,414	1,079	421	5,153
2027			101	461	968	1,028	798	372	3,727
2028			85	321	713	761	617	312	2,809
2029			72	186	532	571	492	267	2,120
2030			56	110	400	433	399	206	1,604
2031			41	54	307	334	326	149	1,210
2032			26	7	222	234	267	94	850
2033			11	0	181	192	200	41	625
2034			0	0	116	116	166	0	399
2035			0	0	74	74	116	0	263
2036			0	0	40	40	90	0	170
2037			0	0	11	11	61	0	83
2038			0	0	0	0	36	0	36
2039			0	0	0	0	14	0	14
2040			0	0	0	0	0	0	0
Avg 2001- 2015	458,977	78,027	135	4,140	1,664	2,425	-293	486	9,127

Avg 2001-2010	472,181	77,761	140	4,004	1,574	2,375	-192	487	9,227
Post Plan			631	3,479	6,792	7,194	6,149	2,328	<b>26,573</b>

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 Norts Gage streamflow in acre-feet from the NRCS streamflow forecast period of April through September.
- (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 and Alamosa River streamflow from the NRCS's April 1<sup>st</sup>, 2024, forecast and the April 5<sup>th</sup>, 2024, Division No. 3 Division Engineer's Rio Grande Compact Ten-Day Report.
- (4) Net Stream Depletions in the Conejos above Seledonia/Garcia reach for the Plan Year (May through April) in ac-ft.
- (5) Net Stream Depletions in the Conejos below Seledonia/Garcia reach for the Plan Year (May through April) in ac-ft.
- (6) Net Stream Depletions in the Rio Grande Del Norte to Excelsior Ditch reach for the Plan Year (May through April) in ac-ft.
- (7) Net Stream Depletions in the Rio Grande Excelsior Ditch to Chicago Ditch reach for the Plan Year (May through April) in ac-ft.
- (8) Net Stream Depletions in the Rio Grande Chicago Ditch to the State Line reach for the Plan Year (May through April) in ac-ft.
- (9) Net Stream Depletions in the Alamosa River for the Plan Year (May through April) in ac-ft.
- (10) Net Stream Depletions in the San Antonio River for the Plan Year (May through April) in ac-ft.
- (11) Total Net Stream Depletions columns (4 + 5 + 6 + 7 + 8 + 9 + 10) in ac-ft.

Table 2.3 is an output from the Response Functions that calculates the annual total stream depletions and monthly replacement obligations for the two reaches of the Conejos River, the Alamosa River, and the three reaches of the Rio Grande. This table lists the Plan Year stream depletions as required under the Groundwater Rules.

As indicated in the lower right-hand corner of Table 2.3, the Response Functions calculated total stream depletions to the Conejos River, Alamosa River, and Rio Grande during the Plan Year, due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals, are **8,313.9** acre-feet. The Response Functions calculated total stream depletions to the Conejos River are **4,262.8** acre-feet, to the Alamosa River **513.5** acre-feet, and to the Rio Grande **3,537.6** acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.

**Table 2.3**  
**Subdistrict No. 6 Monthly Stream Depletions for Plan Year**  
**(Units in acre-feet)**

Stream Reach	Alamosa-La Jara 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)
Conejos above Seledonia/Garcia	13.9	17.1	16.1	13.5	11.2	11.4	11.0	11.1	8.7	7.6	8.5	8.9	138.9
Conejos below Seledonia/Garcia	249.0	366.6	486.7	522.8	479.7	419.9	335.5	308.9	279.8	232.3	235.6	207.1	4,123.9
Rio Grande Del Norte-Excelsior	118.7	121.5	124.8	132.6	146.7	155.8	143.6	150.2	158.3	143.8	156.1	134.5	1,686.5
Rio Grande Excelsior-Chicago	188.1	185.8	199.1	206.2	203.9	210.2	204.0	207.8	215.7	200.1	216.2	202.5	2,439.6



<b>Rio Grande Chicago-State Line</b>	7.3	-66.2	-135.2	-172.6	-103.5	-65.5	-41.1	3.3	-6.9	-7.6	19.2	-19.7	-588.5
<b>Alamosa River</b>	145.8	103.9	49.1	26.4	25.0	24.2	3.2	0.9	0.8	0.7	0.9	132.7	513.5
<b>Total</b>	722.8	728.7	740.6	729.0	763.1	756.0	656.0	682.2	656.2	576.8	636.4	665.9	<b>8,313.9</b>

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 wells included in the Subdistrict’s ARP Well List were shut off today, there would be a continuing depletion to the river for approximately **15** 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 Response Functions, Table 2.4 shows there would be a total of **26,573** acre-feet of Post-Plan Stream Depletions. The portion of the total Post-Plan Stream Depletions impacting each of the six designated reaches of the rivers are also included in the table.

**Table 2.4  
Subdistrict No. 6 Post-Plan Stream Depletions  
(Units in acre-feet)**

Years (May-Apr)	Conejos above Seledonia/Garcia	Conejos below Seledonia/Garcia	Rio Grande Del Norte-Excelsior	Rio Grande Excelsior-Chicago	Rio Grande Chicago-State Line	Alamosa River	Total
2025-2044	631	3,479	6,792	7,194	6,149	2,328	<b>26,573</b>

### **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. 6**

<b>Conejos River Replacement Sources</b>					
<b>In Storage</b>					
<b>Water Right</b>	<b>Beginning Balance 4/15/2024</b>	<b>Remaining Balance 5/1/2024</b>	<b>Water Previously Controlled By</b>	<b>SWSP</b>	<b>Current Storage Location</b>
Case No. 84CW16	12.2	12.2	San Luis Valley Water Conservancy District	6182	Platoro Reservoir

Case No. 94CW62	110.7	110.7	San Luis Valley Water Conservancy District	6182	Platoro Reservoir
Case No. 14CW3011	103.8	103.8	San Luis Valley Water Conservancy District	6182	Platoro Reservoir
BLM Lovato Ditch Augmentation Water (Case No. 2002CW38A)	595.5	595.5	Bureau of Land Management	6163	Platoro Reservoir
Richfield Canal Project Allocation Water (assumed 25% loss for release)	150.0	150.0	Richfield Canal Shareholders	Will be filed when engineering is complete	Platoro Reservoir
Taos Valley No. 3	69.1	60.1	San Luis Valley Irrigation Well Owners	6074	Platoro Reservoir
<b>In Storage (acre-feet)</b>		<b>990.3</b>			

<b>On Call-Irrigation Season</b>					
<b>Water Right</b>	<b>Expected Yield</b>	<b>Source of Diversion</b>	<b>SWSP</b>	<b>Current Storage Location</b>	<b>Contract Limitations</b>
Taos Valley No. 3	3,000.0	San Luis Valley Irrigation Well Owners, Inc.	6093	n/a	Lease is limited to 3,000 ac-ft
BLM Lovato Ditch Augmentation Water (Case No. 2002CW38A)	450.0	Bureau of Land Management	SWSP will be filed prior to use	Platoro Reservoir	Lease is limited to 900 ac-ft
<b>On Call Water-Irrigation Season</b>	<b>3,450.0</b>				

<b>On Call-Irrigation Season</b>					
<b>Forbearance Agreements</b>	<b>Agreement Limits (1)</b>	<b>Expected Yield</b>	<b>Source of Diversion</b>	<b>WDID</b>	<b>Special Conditions</b>
AD Archuleta	No limit		Conejos River	2200500	
Alamo Ditch	No limit		Conejos River	2200501	
Antonito Ditch	No Limit		Conejos River	2200502	
AnCon Ditch	No limit		Conejos River	2200504	
Balls Bros 1 and 2 Ditch	No limit		Conejos River	2200509, 2200510	Have to forbear
Bernardo Romero	No Limit		Conejos River	2200513	
Branch Ditch	No limit		Conejos River	2200518	
Canon Irrigating Ditch	No limit		Conejos River	2200524	
Cordova Ditch	No limit		Conejos River	2200531	
Del Puerticito	No limit		Conejos River	2200534	
East Bend Ditch_BLM	No limit		Conejos River	2200535	
El Cerrito	No limit		Conejos River	2200539	
Ephraim Canal	No limit		Conejos River	2200541	
Fuerticitos Ditch	No Limit		Conejos River	2200547	
Gabriel Martinez Ditch	No limit		Conejos River	2200548	
Guadalupe and Brazos Del Norte Ditches	No limit		Conejos River	2200553, 2200519	
JF Chacon 2 Ditch	No limit		Conejos River	2200561	
La Del Rio Ditch	No limit		Conejos River	2200576	
Lopez Ditch	No limit		Conejos River	2200583	

Los Ojos No. 1 Ditch_BLM	No limit		Conejos River	2200584	
Los Ojos No. 2 Ditch_BLM	No limit		Conejos River	2200585	
Los Sauces Ditch	No limit		Conejos River	2200587	Have to forbear
Manassa Land and Irrigation Company	No limit		Conejos River	2200593, 2200595, 2200596	
Martinez Ditch	No Limit		Conejos River	220598	
Mecitos Ditch	No Limit		Conejos River	2200604	
Mill Ditch	No limit		Conejos River	2200605	
Mogote Ditch	No limit		Conejos River	2200591	
New J B Romero Ditch	No Limit		Conejos River	2200608	
Northeastern Consolidated Ditch	No limit		Conejos River	2200609	
Overflow Ditch	No limit		Conejos River	2200611	
Richfield Canal	No limit		Conejos River	2200616	
Romero Ditch	No limit		Conejos River	2200619	
Sabine School Section Ditch	No limit		Conejos River	2200620	
Salazar Ditch	No limit		Conejos River	2200621	
San Juan San Rafael Ditch	No limit		Conejos River	2200624	
Sanford Canal	No limit		Conejos River	2200627	
Seledonia Ditch	No limit		Conejos River	2200630	
Servietta Ditch	No limit		Conejos River	2200631	
Stover Ditch	No Limit		Conejos River	2200636	
William Stuart Company Irrigation Ditch	No limit		Conejos River	2200651	Have to forbear
Broyles Overflow No. 4 Ditch	No limit		Rio San Antonio	2200664	
Eight Mile Ditch	No limit		Rio San Antonio	2200537	
El Coda Ditch	No Limit		Rio San Antonio	2200538	
Florida Ditch	No limit		Rio San Antonio	2200543	
Galvis Ditch	No limit		Rio San Antonio	2200549	
Jaramillo Overflow No 2 Ditch	No limit		Rio San Antonio	2200570	
Lovato Irrigation Ditch	No limit		Rio San Antonio	2200589	
Maes Ditch	No Limit		Rio San Antonio	2200590	
Martinez Ditch	No limit		Rio San Antonio	2200597	
Punche Ditch	No limit		Rio San Antonio	2200615	
Riedel Ditch	No limit		Rio San Antonio	2200617	
Rincones Ditch	No limit		Rio San Antonio	2200618	
Sincero Ditch	No limit		Rio San Antonio	2200632	
Sisneros Ditch	No limit		Rio San Antonio	2200633	
Star Ditch	No limit		Rio San Antonio	2200635	
Taos Valley Canal No. 3	No Limit		Rio San Antonio	2200639	
Teodoro No. 1 Ditch	No limit		Rio San Antonio	2200640	
Llano Ditch	No Limit		Rio De Los Pinos	2200580	
Los Pinos Ditch	No Limit		Rio De Los Pinos	2200586	
<b>On Call Water-Irrigation Season</b>		<b>2,198</b>			

<b>On Call-Non-Irrigation Season</b>					
<b>Water Right</b>	<b>Total Allocation (all SDs)</b>	<b>Expected Yield Subdistrict 6</b>	<b>Water Previously Controlled By</b>	<b>Attributable to Depletions On</b>	<b>Current Location</b>
Closed Basin Project Production	3,198	1,438.8	RGWCD	Conejos	Closed Basin Project
<b>On Call Agreements Non-Irrigation Season</b>		<b>1,438.8</b>			

<b>Rio Grande River Replacement Sources</b>					
<b>In Storage</b>					
<b>Water Right</b>	<b>Beginning Balance 4/15/2024</b>	<b>Remaining Balance 5/1/2024</b>	<b>Water Previously Controlled By</b>	<b>SWSP</b>	<b>Current Storage Location</b>
Santa Maria Reservoir (Shares in Monte Vista Canal 335 shares leased @ 0.873 ac-ft.)	214.3	214.3	Santa Maria Reservoir Company Shareholders	n/a	Santa Maria Reservoir
Santa Maria Reservoir (Shares in Monte Vista Canal 205 shares leased @ 0.85 ac-ft.)	127.7	127.7	Santa Maria Reservoir Company Shareholders	n/a	Santa Maria Reservoir
Santa Maria Reservoir (Shares in Monte Vista Canal 395 shares leased @ 1.036 ac-ft.)	299.8	299.8	Santa Maria Reservoir Company Shareholders	n/a	Santa Maria Reservoir
Santa Maria Reservoir (Shares in Monte Vista Canal 400 shares leased @ 0.982 ac-ft.)	287.8	287.8	Santa Maria Reservoir Company Shareholders	n/a	Santa Maria Reservoir
Williams Creek Squaw Pass Transbasin Diversion (Case W- 1869-7)	426.3	426.3	Navajo Development, Inc.	6182	Rio Grande Reservoir
CPW Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement (Case No. CA6981, Hinsdale County)	302.0	302.0	Colorado Parks and Wildlife	7265	Rio Grande Reservoir
CPW Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement (Case No. CA6981, Hinsdale County)	447.0	447.0	Colorado Parks and Wildlife	SWSP will be filed prior to use	Rio Grande Reservoir
Taos Valley No. 3	539.0	539.0	SLVIWO, Inc.	6074	Rio Grande Reservoir
Case 14CW3011 (SLVWCD)	89.1	89.1	RGWCD	6182	Continental Reservoir
Santa Maria Reservoir-SD 1	825.0	825.0	Subdistrict No. 1	n/a	Continental Reservoir
Santa Maria Reservoir-SD 1	0.6	0.6	Subdistrict No. 1	n/a	Beaver Reservoir
City of Monte Vista Augmentation Credits	404.0	404.0	City of Monte Vista	6235	Rio Grande Reservoir
Bureau of Land Management-Treasure Pass Ditch Transmountain Water	143.7	143.7	Bureau of Land Management	n/a	Beaver Reservoir
Monte Vista Canal ATM Project	37.6	37.6	Monte Vista Canal Shareholders	9377	Rio Grande Reservoir
<b>In Storage (acre-feet)</b>		<b>4,136.7</b>			

<b>On Call-Irrigation Season</b>					
<b>Water Right</b>	<b>Expected Yield</b>	<b>Source of Diversion</b>	<b>SWSP</b>	<b>Current Storage Location</b>	<b>Contract Limitations</b>

Taos Valley No. 3	3,000.0	Rio San Antonio	Pending SWSP 6093 Renewal		Lease is limited to 3,000 ac-ft
Twin Pines Ranch Water Rights	70.0	Rio Grande Ditch #1	Pending SWSP		SD 6 will only use this source under an approved SWSP
Bureau of Land Management-Treasure Pass Ditch Transmountain Water	106.3	Wolf Creek	n/a		Limited to a total of 250 AF between stored and on-call
<b>On Call Water-Irrigation Season</b>	<b>3,176.3</b>				

**On Call-Irrigation Season**

<b>Forbearance Agreements</b>	<b>Agreement Limits (1)</b>	<b>Expected Yield</b>	<b>Source of Diversion</b>	<b>WDID</b>	<b>Special Conditions</b>
Centennial Ditch	No Limit		Rio Grande River	2000566	When in Priority 32, Ditch Superintendent can request wet water instead of forbearance with a 24-hr. notice
Commonwealth-Empire Canal	500		Rio Grande River	2000623	
Excelsior Ditch	No Limit		Rio Grande River	2000627	Only Priority 249 and 262
Monte Vista Canal	300		Rio Grande River	2000753	
Rio Grande Canal	900		Rio Grande River	2000812, 2000662, 2001094, 2001007, 2000624	Partial forbearance on Priority 178, 197 and 198 as calculated in agreement
Rio Grande Canal	No Limit		Rio Grande River	2001094, 2000624	Partial forbearance on priorities 178 and 198
Rio Grande Canal	No Limit		Rio Grande River	2000624	Partial forbearance on priority 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	500		Rio Grande River	2000631	
<b>On Call Water-Irrigation Season</b>		<b>1,248.8</b>			

**On Call-Non-Irrigation Season**

<b>Water Right</b>	<b>Total RG Allocation (all SDs)</b>	<b>Expected Yield Subdistrict</b>	<b>Water Previously Controlled By</b>	<b>Attributable to Depletions On</b>	<b>Current Location</b>
Closed Basin Project Production	<b>4,100</b>	1,762.5	RGWCD	Rio Grande	Closed Basin Project
<b>On Call Agreements Non-Irrigation Season</b>		<b>1,762.5</b>			

**Alamosa River Replacement Sources**

**In Storage**

<b>Water Right</b>	<b>Beginning Balance 4/15/2024</b>	<b>Remaining Balance 5/1/2024</b>	<b>Water Previously Controlled By</b>	<b>SWSP</b>	<b>Current Storage Location</b>
Monte Vista Canal ATM Project-Terrace Main Canal Exchanged Water	91.2	85.0	Monte Vista Canal Shareholders	9377	Terrace Reservoir
Terrace Irrigation Company Excess Augmentation Credits 2022 (Case No. 1982CW97)	18.6	18.6	Terrace Irrigation Company	SWSP 6209	Terrace Reservoir

Terrace Irrigation Company Excess Augmentation Credits 2023 (Case No. 1982CW97)	23.9	23.9	Terrace Irrigation Company	SWSP 6209 Filed 4/1/2024	Terrace Reservoir
Augmentation Water (Case No. 2014CW3027 and Case No. 2016CW3019)	22.0	22.0	EXPO, LLC	SWSP pending approval	Terrace Reservoir
Alamosa Creek Canal SWSP	30.3	30.3	Rodney Reinhardt	9441	Terrace Reservoir
<b>In Storage (acre-feet)</b>		<b>133.9</b>			
<b>On Call-Irrigation Season</b>					
<b>Water Right</b>	<b>Amount Available</b>	<b>Water Previously Controlled By</b>	<b>SWSP</b>	<b>Current Storage Location</b>	<b>Special Conditions</b>
Alamosa Creek Canal SWSP	30.3	Rodney Reinhardt	9441	Terrace Reservoir	This source of water will only be used under approval of an SWSP and the Div. 3 Division Engineer
<b>On Call Water-Irrigation Season</b>	<b>30.3</b>				
<b>On Call-Irrigation Season</b>					
<b>Forbearance Agreements</b>	<b>Agreement Limits (1)</b>	<b>Expected Yield</b>	<b>Source of Diversion</b>	<b>WDID</b>	<b>Special Conditions</b>
Alamosa Spring Creek Ditch	No Limit		Alamosa River	2100505	
Arroya Ditch	No Limit		Alamosa River	2100506	
Capulin Ditch	No Limit		Alamosa River	2100510	
Clark Ditch	No Limit		Alamosa River	2100511	
Cottonwood Ditch	No Limit		Alamosa River	2100513	
Cristobal Rivera Ditch	No Limit		Alamosa River	2100514	
El Viejo Ditch	No Limit		Alamosa River	2100520	
Empire Canal	No Limit		Alamosa River	2100522	
Flintham Ditch	No Limit		Alamosa River	2100525	
Gallegos D3 Ditch	No Limit		Alamosa River	2100529	
Gabino Gallegos Ditch	No Limit		Alamosa River	2100526	
Garcia No. 2 Ditch	No Limit		Alamosa River	2100532	
Head Overflow No. 5 Ditch	No Limit		Alamosa River	2100539	
Lowland Overflow Ditch Company	No Limit		Alamosa River	2100558 2100575	
Miller Ditch	No Limit		Alamosa River	2100561	
Morganville	No Limit		Alamosa River	2100564	
Norland Ditch	No Limit		Alamosa River	2100570	
North Alamosa Ditch	No Limit		Alamosa River	2100571	
Ortiz Ditch	No Limit		Alamosa River	2100572	
Ramona Ditch	No Limit		Alamosa River	2100581	
San Jose Ditch No. 1	No Limit		Alamosa River	2100591	
Scandinavian Canal	No Limit		Alamosa River	2100593	
Terrace Irrigation Company	No Limit		Alamosa River	2100503, 2100601	
TK Walsh Ditch	No Limit		Alamosa River	2100600	

Union Ditch	No Limit		Alamosa River	2100602	
Weist Ditch	No Limit		Alamosa River	2100606	
<b>On Call Water-Irrigation Season</b>		<b>467.4</b>			

## 2. AFTER ACQUIRED SOURCES OF REMEDY

Although Subdistrict No. 6 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 the vast majority of sources for which it was required and that the Subdistrict 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, identified in Table 3.1, will be released from Platoro Reservoir, located in the Upper Conejos, Terrace Reservoir, located on the Alamosa River, and Rio Grande, Santa Maria, Continental Reservoirs, and Beaver Park Reservoir, located in the Upper Rio Grande, at the direction of the Division 3 Engineer, to offset injurious stream depletions on the respective rivers 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 contained in 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. 6 will occur on a regular and routine basis if these exchanges do 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.

Subdistrict No. 6 has signed a lease agreement with San Luis Valley Irrigation Well Owners, Inc. to lease up to 3,000 acre-feet of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case. An SWSP was filed with the State Engineer’s Office to allow the Subdistrict to use the water for augmentation, exchange, and storage by exchange in Platoro, Beaver, Rio Grande and Continental reservoirs, and/or other reservoirs within the Rio Grande or Conejos River systems, 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 of the year. Any storage in any reservoir other than Cove Lake will only occur under the terms of a separate agreement with the owner of such reservoir.

In 2024, the Subdistrict entered into a lease agreement with Terrace Irrigation Company to lease the excess augmentation credits generated in 2023 under a plan for augmentation decreed in Case No. 1982CW97 (Water Division No. 3) for which the Terrace Irrigation Company holds title to a portion of. These excess augmentation credits are being stored in Terrace Reservoir and may be released during the Plan Year to remedy injurious stream depletions on the Alamosa River.

In 2024, the Subdistrict entered into a lease agreement with EXPO, LLC (“EXPO”), to lease 22.0 acre-feet of augmentation water to be stored in 2024 under a plan for augmentation decreed in Case No. 1982CW97 (Water Division No. 3), and later transferred to EXPO under Case No. 2014CW3027 and 2016CW3019, for which EXPO holds title to a portion of. This augmentation water is being stored in Terrace Reservoir and may be released during the Plan Year to remedy injurious stream depletions on the Alamosa River once the Subdistrict has received and approved SWSP from DWR.

As shown in Table 3.1 above, Subdistrict No. 6 has implemented Forbearance Agreements with a number of ditches located on the Conejos River, on the San Antonio River, on the Los Pinos River, on the Alamosa River, and on the Rio Grande for the Plan Year. In its sole discretion, the Subdistrict will exercise these agreements, with the exception of those agreements that require the Subdistrict must forbear if the Ditch is the calling right. The Subdistrict reviewed stream flows on the Rio Grande, Conejos and Alamosa Rivers for the current and past years and used the peak and average flows during April and October to calculate the percent of priorities that have agreed to forbearance for the Plan Year within those stream flow ranges to determine the anticipated acre-feet that will be remedied by forbearance agreements on each river. Subdistrict No. 6 staff estimates, based on this analysis, these agreements will remedy a total of **3,914.2** acre-feet during the Plan Year.

The vast majority of the forbearance agreements may be operated at the discretion of the Subdistrict. The projected acre-feet of forbearance included in Table 3.1 above for the Rio Grande and the Alamosa 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 for the Rio Grande and the Alamosa were 2021 and 2022. The number of days the forbearance ditches were the calling right each month in these years 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 on the Rio Grande of between 1,051 acre-feet and 1,447 acre-feet in forbearance on the which could be used by the Subdistrict for replacements in the Plan Year. This estimate did not include days that “special water” priorities in the Rio Grande Canal were the calling rights even though all or a portion of those rights are included in forbearance agreements with the Subdistrict



for the Plan Year and may be utilized at the discretion of the Subdistrict. The Subdistrict analysis showed a range on the Alamosa of between 461 acre-feet and 474 acre-feet in forbearance on the which could be used by the Subdistrict for replacements in the Plan Year.

For the Conejos, it is much more difficult to determine which forbearance ditches may be calling and at which times of the year they will be calling. Also, it is difficult to predict when during the summer months the stream will dry up at the top of Stream Reach 2. Based on the historical records available, the historic calls have not been tracked in a similar manner to the other 2 rivers to allow an analysis such as the one done for the Rio Grande and the Alamosa. To project the Conejos forbearance potential, the Subdistrict used call records from 2021 and 2022. The justification for this comparison is the soil moisture conditions, streamflow conditions, and long-range temperature outlook are projected to be very similar. The Subdistrict has confidence this is a reasonable way to project the amount of forbearance the Subdistrict anticipates they could conservatively expect to use for the 2024 Plan Year. For these reasons, the Subdistrict believes it is reasonable to estimate 2024 forbearance will look much like 2021 and 2022 in terms of acre-feet forbore on the Conejos River.

After submittal of this ARP, Subdistrict No. 6 staff will work with DWR to establish an understanding as to the hierarchy for the use of individual sources of remedy by stream.

As specified in this ARP, several ditches within Stream Reaches 1 and 2 on the Conejos River, the Alamosa River, the San Antonio River, the Los Pinos River, and nine ditches within Stream Reaches 1 and 2 on the Rio Grande have entered into forbearance agreements with Subdistrict No. 6 to remedy injurious stream depletions during the Plan Year, if needed. Some of these same ditches may be approached to consider long-term or permanent forbearance agreements for the future.

At times when the Conejos, the San Antonio, and the Los Pinos are connected, the calling right can be on the San Antonio or the Los Pinos. When these conditions exist, the injury can occur on the San Antonio or the Los Pinos and forbearance agreements may be utilized to remedy the injurious stream depletions. The projected acre-feet of forbearance are based on an analysis of the number of days each ditch was the calling right in years of similar hydrologic conditions as those predicted in 2024. The average number of days each ditch was estimated to the calling right was then multiplied by the average daily acre-feet of injurious stream depletions during the Plan Year, excluding months outside the irrigation season. These expected yields are not a limit to the number of acre-feet of injurious stream depletions that can be remedied through forbearance, but a conservative estimate of their potential yield to show the Subdistrict's ability to remedy injurious stream depletions

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. 6 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 that 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 Conejos River, Alamosa River, and the Rio Grande in amounts above the minimum threshold to reliably predict injury. Therefore, Subdistrict No. 6 is not required to make replacements to any stream other than the Conejos, Alamosa, and 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, Subdistrict No. 6 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 Subdistrict No. 6 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 years' ARP Wells groundwater withdrawals that deplete the streams after the term of this ARP. Subdistrict No. 6 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, Alamosa, and Conejos Rivers. Section 4.1.5 of Subdistrict No. 6's PWM includes the provision, "the Subdistrict may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied." This allows Subdistrict No. 6 to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if Subdistrict No. 6 were to fail or otherwise not be allowed to continue groundwater withdrawals. Subdistrict No. 6 will continue to acquire replacement water for replacing current injurious stream depletions to the impacted streams 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. 6 were to fail, the individual well owners in Subdistrict No. 6 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. 6 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. 6 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. 6 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. 6 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. 6 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. 6. These fees are as follows:

- a. Administrative Fee: This fee is assessed to offset the cost of administering the PWM and ARP.
- b. Groundwater Withdrawal Fee: This fee is assessed in two parts 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. 6 ARP Wells groundwater withdrawals, to fund programs to comply with the sustainable water supply requirements of the Groundwater Rules, and to fund additional programs Subdistrict No. 6 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, Conejos 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 Groundwater Withdrawal Fee for every acre-foot of groundwater withdrawn by ARP Wells for sprinkler application was assessed \$24.24 and every acre-foot of groundwater withdrawn by ARP Wells for flood application was assessed \$17.52. ARP Wells that are used for

commercial, industrial, municipal and fish propagation applications were assessed a variable Groundwater Withdrawal Fee in the range of \$0.88 to \$29.20 per acre-foot. For 2023, the Administrative Fee was set at \$138.75 per in-active well and \$277.50 per active well (or meter when multiple wells are combined through a single meter). The total 2023 Subdistrict No. 6 assessments which were placed on the tax rolls in 2023 to be collected in 2024 are:

**Table 4.1**  
**Subdistrict No. 6 Assessments to Fund ARP Operations**

Fee Type	Amount of 2022 Assessments
Administrative Fees	\$ 129,731.48
Groundwater Withdrawal Fees	\$ 1,857,641.50

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

#### **1. ALAMOSA CREEK CANAL LEASE FALLOW-SWSP 9441**

During the 2023 Plan Year, Subdistrict No. 6 utilized augmentation credits generated through operation of a lease fallow project with an individual landowner via approved SWSP 9441. The Subdistrict is planning on submitting an SWSP renewal request for this project for the 2024 Plan Year to be used during the 2024 ARP. In the 2023 Plan Year, the fallow provided augmentation credits through temporary removal of irrigation water from lands irrigated through the Alamosa Creek Canal, Terrace Reservoir, and through irrigation wells completed in the confined aquifer. This project includes approximately 20 acres of temporary dry-up and generated 30.3 acre-feet of augmentation credit during the 2023 Plan Year. An SWSP will be filed with the State for approval before this Project will provide any replacement water. The Subdistrict will file a request to the Div. No. 3 Division Engineer for an after-acquired replacement source if an approved SWSP is received.

#### **2. BUREAU OF LAND MANAGEMENT TREASURE PASS DITCH TRANSMOUNTAIN WATER RIGHTS HELD IN BEAVER RESERVOIR**

The Fish and Wildlife Service (FWS) and Bureau of Land Management (BLM) are currently working on inter-agency agreements amongst themselves and other federal agencies to assist each other in meeting the requirements of the both the Groundwater Rules and the Subdistricts. For the 2024 Plan Year, BLM agreed to exchange 250.0 acre-feet of Treasure Pass Diversion Ditch transmountain water rights, currently stored in Beaver Reservoir to be used for the remedy of injurious depletions caused by ARP Wells. At the time of the filing of this report, only 143.7 acre-feet has been transferred to the Subdistrict. The remaining 106.3 acre-feet will be transferred to the Subdistrict once it becomes available. Appendix F includes documentation for this transfer.

### **3. MONTE VISTA CANAL ALTERNATIVE TRANSFER METHOD/LEASE FALLOW PROJECT-SWSP 9377**

During the 2022 Plan Year, Subdistrict No. 6 filed SWSP 9377 to temporarily change the use of water historically diverted from the Rio Grande River through the Monte Vista Canal (MVC) for irrigation of lands lying under said canal, and groundwater diverted through wells historically used to irrigate those same lands. SWSP 9377 was approved on March 31, 2023, with an approval period of March 31-April 20, 2023. The surface water and groundwater that were applied to the changed uses comprised of water supplies historically used for irrigation of certain parcels that were left fallow during the 2022 Plan Year. The filed SWSP is intended to function as an Alternative Transfer Method (ATM) demonstration project which focused on the generation of fully consumable water for replacement of stream depletions associated with Subdistrict No. 6 well pumping, but the consumptive use (CU) credits produced by this and similar projects could be used to replace any depletions to a stream segment to which they can be physically delivered directly or by exchange.

The MVC was selected for this initial demonstration project because of several key factors. First, irrigation deliveries and crop CU under the canal are reasonably consistent year-to-year regardless of hydrological conditions. Second, the canal irrigates a land area sufficiently large enough that rotational fallowing projects can be operated at an economical scale. Third, the canal is located such that replacement water can be delivered to the Rio Grande upstream of many of the typical calling water rights.

Three subject parcels belonging to MVC shareholders who also irrigate with groundwater wells participated in the project. Pumping from the three wells was reduced, and the estimated CU credits were transferred to augmentation wells that were pumped to deliver the CU credits via canal to replace downstream depletions or exchanged upstream into storage.

The Subdistrict obtained agreements to utilize up to eleven existing wells completed in the confined aquifer and up to two existing wells completed in the unconfined aquifer to deliver groundwater CU credit associated with the lands fallowed during the 2022 Plan Year. The eleven confined aquifer wells that were used for augmentation under the SWSP are located within five miles of the two SWSP fallow wells, with the exception of a third well, which is both a fallow well and Confined Aquifer Augmentation Well and is located approximately 5.25 miles from the other closest fallow well.

During April 2023, augmentation wells under the Monte Vista Canal and Terrace Main Canal were pumped either directly into the associated canal or applied to irrigation on the same fields typically served by the well. In either case, each well owner did not divert the same volume of water delivery under their ditch shares, and the river headgate diversion for each ditch was curtailed by the total of such augmentation well pumping under each ditch, thereby leaving that amount of fully consumable water available in the river to replace downstream depletions and/or exchanged to upstream storage. For the Monte Vista Canal and Terrace Main Canal, the maximum diversion rate during the operation of the intra-ditch exchanges was limited to the amount identified on the Division 3 Daily Sheets as available in priority, less the total daily

pumping of CU credit water through the augmentation wells under each ditch. Any pumping of the augmentation wells in excess of the amount of forgone diversion at the river headgate was accounted for as normal irrigation pumping under the Subdistrict ARP.

One augmentation well completed in the unconfined aquifer is located adjacent to the Centennial Ditch near lands irrigated by Colorado Parks & Wildlife (CPW) using their Centennial Ditch shares. The Subdistrict coordinated with CPW to deliver CPW's share deliveries in April 2023 through said unconfined well, with CPW forgoing delivery of that same amount of water under their Centennial Ditch shares. Because Centennial Ditch diversions are not typically call limited and CPW's demand for water during April 2023 was met by well pumping and not by delivery of surface water through the Centennial Ditch, river diversions through the Centennial Ditch headgate were reduced by the amount of well pumping delivered for irrigation on CPW lands.

Augmentation wells completed in the confined aquifer were only used to pump CU credits associated with the confined aquifer fallow wells, and augmentation wells completed in the unconfined aquifer were only used to pump CU credits associated with the unconfined fallow well. Return flows associated with the confined aquifer fallow wells were pumped by WDID 2009239 and delivered directly into the Monte Vista Canals for in-ditch recharge when the Canal was not diverting surface water. The return flow component for WDID 2012705 was left unpumped in the unconfined aquifer, which replicated the historical irrigation return flows to the same aquifer.

This project generated a total of 176.5 acre-feet of CU credits, of which 37.6 acre-feet were exchanged into storage in Rio Grande Reservoir and 138.9 acre-feet were exchanged into storage in Terrace Reservoir. Of these CU credits, all that were stored in Rio Grande Reservoir remain there, and 91.2 acre-feet remain in storage in Terrace Reservoir at the time this report was filed. See Appendix F for documentation of this project.

## **5. FORBEARANCE AGREEMENTS**

Forbearance agreements have been reached with a multitude of ditches, copies of which are included in Appendix G along with a summary of the details of each agreement. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., Subdistrict No. 6 has reached agreements with these ditches whereby they accept that, subject to the specific provisions of the forbearance agreement, injury to their water rights resulting from the use of groundwater by ARP Wells may be remedied by means other than providing water to replace stream depletions, when they are the calling right on the Conejos River, Alamosa River, or Rio Grande Systems. The expected yield of these agreements is as shown above in Table 3.1. See Appendix G for documentation of these Forbearance Agreements.

## **6. CLOSED BASIN PROJECT PRODUCTION**

According to the Division No. 3 Division Engineer's Rio Grande Compact Ten-Day Report on April 5<sup>th</sup>, 2024, the projected production of the project delivered to the Rio Grande is 8,500 acre-feet during the calendar year 2024. 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. 2, Subdistrict No. 3 and Subdistrict No. 5. 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 CWCD Board of Directors allocated the Conejos's 39% share of the usable yield of the Closed Basin Project in 2024 to replace the stream depletions under this ARP. The projected amount of the CBP production needed by Subdistrict No. 6 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. 6**

#### **1. 10% OF THE TWIN PINES RANCH WATER RIGHTS**

Subdistrict No. 6 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. 6'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 during the 2024 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. 6 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**

Rule 8.1.7 of the Groundwater Rules includes provisions for meeting the requirements for achieving and maintaining a Sustainable Water Supply in the confined aquifer. Per the State Engineer's approval letter for the PWM, dated September 25<sup>th</sup>, 2019, the Alamosa-La Jara Response Area five-year running average groundwater withdrawals were below the 1978-2000 average groundwater withdrawals for the Alamosa-La Jara Response Area with a five-year average of 91,903 acre-feet (for the period 2014-2018). Per the July 1, 2023, memo from the

State Engineer, “Five Year Groundwater Withdrawals in Confined Aquifer Response Area in Division 3: July 2023 Requirement of Division 3 Groundwater Rules Section 8.1.5,” the 2018-2022 five-year average groundwater withdrawals for the Alamosa-La Jara Response Area was 97,957 acre-feet. It is anticipated that the five-year average will decrease when the 2018 withdrawals of 116,066 acre-feet are removed and the lower withdrawals for 2023 are included. 2023 was an above-average to average year on the Rio Grande River and, therefore, it is anticipated the State Engineer’s next calculation of the Alamosa-La Jara Response Area five-year average will decrease by approximately 4,700 acre-feet based on the trend in the Subdistrict. The State Engineer’s memo is included in Appendix J.

The current five-year running average groundwater withdrawals for ARP Wells, which includes contract wells, for the period 2019-2023 is 93,200 acre-feet. The previous five-year running average from 2018-2022 for ARP Wells, including contract wells, was 97,148 acre-feet. The five-year running average decreased in 2023 by 4,948 acre-feet for ARP Wells with the 2019-2023 five-year running average. This calculation is based on 2023 groundwater withdrawals downloaded on April 10, 2024, from the records of the Division of Water Resources for ARP wells.

Subdistrict metered groundwater withdrawals account for approximately 99 percent of the total metered groundwater withdrawals annually over the period 2011-2023 in the Alamosa-La Jara Response Area. Based on this calculation and the trends of both the Alamosa-La Jara Response Area and the Subdistrict’s five-year average, the Subdistrict will remain in compliance with the Sustainable Water Supply Requirement of the Rules.

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

Included as Appendix K is a chart which includes the water level measurements obtained in March of each year for the wells used by DWR to calculate the Composite Water Head for the Alamosa-La Jara Response Area. Also included in Appendix K is the State Engineer’s memo dated July 1, 2023, regarding the “Composite Water Head for Confined Aquifer Response Area in Division 3: July 2023 Requirement of Division 3 Groundwater Rules Section 8.1.4.”

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

The Board of Managers included language in the PWM to continue to monitor groundwater withdrawals for the purpose of meeting the Sustainable Water Supply requirements in the Groundwater Rules and to propose remedies, if necessary, as part of the ARP process. For 2024, the Board of Managers will monitor groundwater withdrawal amounts following the continued Subdistrict assessments to determine what, if any, affect they would have on groundwater withdrawal amounts. In addition to monitoring these groundwater withdrawal amounts, Subdistrict No. 6 is pursuing the fallowing of irrigated lands within the boundaries of the Subdistrict via its Pumping Reduction Program (PRP) detailed in paragraph 4 in section 11.1.6. It is anticipated that the PRP, coupled with the imposition of the Groundwater Withdrawal Fees, will reduce the amount of groundwater withdrawn by ARP Wells, and maintain the Subdistrict’s



groundwater withdrawals within the limits set by the Groundwater Rules.

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

At this time, the Subdistrict has not leased or purchased any water rights that are to be temporarily or permanently retired.

### **4. OTHER PROPOSED ACTIONS TO BE TAKEN AS APPLICABLE**

The Subdistrict is implementing a Pumping Reduction Program (PRP) for the 2024 irrigation season. The goal of the PRP is to compensate Subdistrict Members that reduce their groundwater withdrawals on Farm Unit basis to assist in maintaining the sustainability of the Confined Aquifer underlying Subdistrict No 6. At the time of the filing of this report, participating Subdistrict Members have committed to reducing their overall pumping by approximately 1,171 acre-feet. The PRP is being ran as a pilot program for the 2024 irrigation season and will likely only be implemented/utilized during years when the streamflow forecasts predict a well-below average streamflow for the upcoming forecast year.

The Subdistrict has also approved a resolution to incentive the RGWCD's Senate Bill 22-028 well purchase program by adding an additional \$500 per acre-foot payment to Subdistrict Members whose program applications are approved.

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

ANNUAL REPLACEMENT PLAN  
2024 PLAN YEAR  
APPENDICES

Prepared

April 11, 2024

By

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In consultation with

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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
2005002	111.98	Petition
2005003	175.01	Petition
2005004	408.82	Petition
2005011	127.11	Petition
2005014	651.67	Contract in 2020
2005015	0.00	Contract in 2020
2005016	0.00	Contract in 2020
2005017	0.00	Contract in 2020
2005020	226.68	Petition
2005021	0.00	Petition
2005023	0.00	Petition
2005027	65.67	Petition
2005028	0.00	Petition
2005031	755.59	Petition
2005032	103.70	Petition
2005034	136.51	Petition
2005036	122.33	Petition
2005043	135.56	Petition
2005054	338.67	Petition
2005055	332.51	Petition
2005066	542.60	Contract in 2020
2005067	99.44	Contract in 2020
2005070	134.53	Petition
2005073	276.82	Petition
2005074	111.79	Petition
2005075	289.10	Petition
2005076	162.46	Petition
2005083	0.00	Contract in 2020
2005106	251.58	Petition
2005108	338.40	Petition
2005110	178.95	Petition
2005117	113.94	Petition
2005118	313.83	Petition
2005128	243.89	Petition
2005129	163.79	Petition
2005130	376.07	Petition
2005139	156.76	Petition
2005143	272.16	Contract in 2020
2005146	372.33	Petition
2005147	319.56	Petition
2005151	754.24	Petition
2005180	0.00	Petition
2005188	397.79	Petition

2005189	5.02	Petition
2005190	0.00	Petition
2005194	143.17	Petition
2005200	127.00	Petition
2005204	76.70	Petition
2005209	451.18	Petition
2005210	277.17	Petition
2005317	248.84	Petition
2005318	334.87	Petition
2005319	154.91	Petition
2005321	0.00	Petition
2005369	265.78	Petition
2005373	0.00	Replaced WDID 2014624 in 2022 PWR
2005385	205.84	Petition
2005386	562.26	Petition
2005389	164.90	Contract in 2020
2005390	0.00	Contract in 2020
2005395	43.23	Petition
2005414	48.87	Petition
2005415	189.06	Petition
2005419	95.77	Petition
2005420	38.93	Petition
2005441	0.00	Petition
2005442	0.00	Petition
2005486	85.68	Petition
2005600	699.92	Petition
2005667	19.48	Contract in 2020
2005805	0.00	Petition
2005873	223.12	Petition
2005874	312.96	Petition
2005875	291.13	Petition
2005883	0.24	Petition
2005917	151.14	Petition
2005925	126.61	Petition
2006000	1537.87	Contract in 2020
2006071	499.91	Contract in 2020
2006073	1068.03	Contract in 2020
2006101	290.82	Contract in 2020
2006105	1443.51	Contract in 2020
2006122	1217.20	Contract in 2020
2006130	1439.25	Contract in 2020
2006181	356.06	Contract in 2020
2006225	0.00	Contract in 2020
2006228	142.80	Contract in 2020
2006236	0.00	Contract in 2020
2006237	0.00	Contract in 2020
2006257	0.06	Contract in 2020

2006258	13.69	Contract in 2020
2006259	0.02	Contract in 2020
2006260	315.74	Contract in 2020
2006261	679.52	Contract in 2020
2006296	293.82	Petition
2006316	565.17	Contract in 2020
2006317	425.60	Contract in 2020
2006406	90.40	Contract in 2020
2006408	65.40	Contract in 2020
2006641	236.45	Petition
2006680	152.25	Petition
2006690	766.21	Contract in 2020
<b>2008022</b>	<b>0.00</b>	<b>Contract in 2024</b>
2008079	0.00	Contract in 2020
2008081	288.18	Contract in 2020
2008101	56.07	Contract in 2020
2008102	193.90	Contract in 2020
2008104	531.22	Contract in 2020
2008105	0.00	Contract in 2020
2008106	212.44	Contract in 2020
2008112	0.00	Contract in 2020
2008123	262.19	Contract in 2020
2008124	0.01	Contract in 2020
2008312	0.00	Contract in 2020
2008313	0.00	Petition
2008314	0.00	Contract in 2020
2008327	294.94	Petition
2008329	0.00	Petition
2008331	124.19	Petition
2008332	91.18	Petition
2008334	259.08	Petition
2008337	140.54	Petition
2008339	192.55	Petition
2008369	7.00	Contract in 2022
2008393	348.33	Petition
2008394	79.73	Petition
2008487	270.28	Petition
2008488	0.00	Contract in 2020
2008491	0.00	Petition
2008492	126.71	Petition
2008493	0.00	Petition
2008494	0.23	Petition
2008495	0.00	Petition
2008496	330.49	Petition
2008498	285.35	Petition
2008506	26.89	Petition
2008507	0.00	Petition

2008508	296.23	Petition
2008515	293.44	Petition
2008523	128.30	Petition
2008533	0.00	Petition
2008534	7.09	Petition
2008557	148.92	Petition
2008558	0.00	Petition
2008569	449.13	Petition
2008588	318.85	Petition
2008589	12.46	Petition
2008605	0.00	Petition
2008618	6.09	Petition
2008619	0.00	Petition
2008650	33.72	Petition
2008673	0.00	Petition
2008674	155.71	Petition
2008685	724.20	Contract in 2020
2008691	63.94	Petition
2008694	0.00	Contract in 2020
2008695	1287.83	Contract in 2020
2008696	269.95	Petition
2008699	296.22	Contract in 2022
2008700	0.00	Petition
2008701	32.42	Petition
2008702	22.55	Petition
2008713	286.44	Petition
2008714	1.22	Petition
2008755	96.07	Petition
2008758	0.00	Petition
2008759	172.81	Petition
2008762	308.72	Petition
2008785	417.90	Petition
2008831	290.38	Petition
2008832	121.91	Petition
2008850	170.76	Petition
2008856	0.00	Petition
2008857	92.71	Petition
2008881	0.00	Petition
2008926	0.00	Petition
2008927	0.00	Petition
2008970	200.18	Petition
2008971	380.28	Petition
2008976	178.34	Petition
2009024	566.15	Petition
2009081	0.00	Petition
2009126	0.00	Petition
2009128	0.00	Petition



2009129	0.00	Petition
2009160	307.13	Petition
2009161	0.00	Petition
2009162	233.61	Petition
2009225	283.16	Petition
2009226	266.23	Petition
2009232	223.00	Petition
2009239	54.35	Petition
2009240	0.00	Contract in 2021
2009258	23.88	Petition
2009316	204.92	Petition
2009317	36.59	Petition
2009318	152.15	Petition
2009319	291.55	Petition
2009321	0.00	Petition
2009327	0.00	Petition
2009338	0.00	Petition
2009339	245.50	Petition
2009390	89.74	Petition
2009412	169.31	Petition
2009439	226.65	Petition
2009447	133.32	Petition
2009484	159.00	Petition
2009492	88.30	Petition
2009493	0.00	Contract in 2021
2009494	0.00	Contract in 2021
2009495	275.63	Petition
2009496	228.00	Petition
2009516	561.64	Petition
2009558	250.81	Petition
2009560	0.00	Petition
2009561	269.56	Petition
2009612	178.59	Petition
2009638	305.08	Contract in 2020
<b>2009649</b>	<b>0.45</b>	<b>Contract in 2024</b>
2009658	0.00	Petition
2009669	282.51	Petition
2009670	194.12	Petition
2009727	0.00	Petition
2009736	356.28	Petition
2009746	103.62	Petition
2009774	114.03	Petition
2009809	265.90	Petition
2009810	170.38	Petition
2009851	0.00	Petition
2009852	0.00	Petition
2009918	0.00	Petition

2009919	686.99	Petition
2009920	0.00	Petition
2009983	65.57	Petition
2009984	22.88	Petition
2009985	100.10	Petition
2010069	18.18	Petition
2010070	149.79	Petition
2010091	252.13	Petition
2010095	0.00	Petition
2010096	0.00	Petition
2010097	180.93	Petition
2010103	0.00	Petition
2010104	213.18	Petition
2010105	98.91	Petition
2010128	176.46	Petition
2010131	5.00	Contract in 2023
2010158	0.00	Contract in 2023
2010159	0.00	Contract in 2023
2010160	290.50	Petition
2010161	0.00	Petition
2010176	331.92	Petition
2010184	0.00	Contract in 2023
2010185	0.00	Contract in 2023
2010186	0.00	Contract in 2023
2010204	279.99	Petition
2010253	1.78	Petition
2010366	0.00	Petition
2010420	471.11	Petition
2010441	59.78	Petition
2010465	300.09	Petition
2010478	232.24	Contract in 2020
2010479	302.73	Petition
2010484	162.62	Petition
2010486	0.00	Contract in 2020
2010494	11.87	Petition
2010496	0.00	Petition
2010529	0.00	Petition
2010533	0.00	Petition
2010536	0.00	Petition
2010537	116.50	Petition
2010538	0.10	Petition
2010539	0.00	Petition
2010540	0.00	Petition
2010585	269.34	Petition
2010653	330.57	Petition
2010654	0.00	Petition
2010706	93.79	Petition

2010736	3.84	Petition
2010737	1.49	Petition
2010773	0.00	Contract in 2020
2010774	40.94	Contract in 2020
2010775	525.28	Contract in 2020
2010858	66.95	Petition
2010864	461.51	Petition
2010866	0.00	Contract in 2020
2010867	106.31	Contract in 2020
2010868	116.94	Petition
2010869	129.29	Contract in 2020
2010870	231.61	Petition
2010907	181.85	Contract in 2020
2010908	113.28	Petition
2010921	184.44	Petition
2010928	1.51	Petition
2010984	243.21	Petition
2011034	199.04	Petition
2011055	405.39	Petition
2011056	0.00	Petition
2011058	172.19	Petition
2011061	0.00	Petition
2011062	0.00	Petition
2011083	1.36	Contract in 2022
2011085	1.36	Contract in 2022
2011114	667.34	Petition
2011149	0.09	Contract in 2020
2011164	0.00	Petition
2011165	160.29	Petition
2011204	120.93	Corrected by Affirmation
2011205	5.40	Contract in 2022
2011225	0.65	Petition
2011228	0.00	Petition
2011229	0.00	Petition
2011230	0.00	Petition
2011355	54.28	Contract in 2021
2011360	278.38	Petition
2011361	279.31	Petition
2011396	30.63	Petition
2011432	201.56	Petition
2011435	251.28	Petition
2011452	49.77	Petition
2011453	117.80	Petition
2011545	431.99	Petition
2011566	292.12	Petition
2011664	8.00	Contract in 2020
2011684	0.00	Contract in 2020

2011685	0.00	Contract in 2020
2011687	37.05	Petition
2011688	5.26	Petition
2011695	0.00	Petition
2011696	0.00	Petition
2011697	0.00	Petition
2011741	60.68	Petition
2011747	0.00	Petition
2011748	22.43	Petition
2011749	0.00	Petition
2011901	30.56	Contract in 2022
2011904	7.11	Petition
2011907	106.80	Petition
2011909	2.14	Petition
2011973	228.27	Petition
2011987	79.77	Petition
2012068	234.14	Petition
2012069	138.11	Petition
2012077	0.00	Petition
2012079	0.00	Petition
2012081	0.00	Petition
2012086	7.70	Petition
2012088	0.00	Petition
2012096	389.43	Petition
2012097	0.00	Petition
2012118	578.09	Petition
2012119	0.00	Petition
2012120	0.00	Petition
2012121	0.00	Petition
2012190	0.00	Contract in 2020
2012192	0.00	Petition
2012244	271.99	Petition
2012273	75.22	Petition
2012366	0.00	Petition
2012372	0.00	Contract in 2020
2012471	0.00	Petition
2012472	239.92	Petition
2012503	0.00	Petition
2012513	9.33	Contract in 2020
2012535	166.28	Contract in 2020
2012536	0.00	Petition
2012551	53.23	Petition
2012556	123.33	Petition
2012562	1306.93	Petition
2012586	468.64	Petition
2012639	171.72	Petition
2012662	0.00	Petition

2012663	204.32	Petition
2012680	0.00	Petition
2012685	255.75	Petition
2012686	437.17	Petition
2012687	133.16	Petition
2012688	0.00	Contract in 2022
2012689	0.00	Contract in 2022
2012965	0.00	Petition
2013136	254.70	Petition
2013137	0.00	Contract in 2021
2013138	0.00	Contract in 2021
2013139	394.34	Petition
2013257	1.45	Petition
2013284	0.00	Petition
2013409	185.68	Petition
2013560	0.00	Petition
2013589	259.38	Petition
2013691	0.00	Petition
2013707	221.37	Petition
2013718	53.24	Petition
2013763	208.40	Petition
2013764	19.10	Petition
2013825	76.81	Petition
2013846	45.13	Petition
2013869	140.58	Petition
2013872	415.21	Petition
2013889	177.36	Petition
2013940	27.52	Petition
2013963	1.58	Petition
2013984	137.11	Petition
2013985	212.47	Petition
2013990	47.15	Petition
2013991	180.80	Petition
2013992	7.64	Petition
2014159	0.00	Petition
2014186	518.14	Petition
2014260	0.00	Petition-Fully Augmented
2014332	144.69	Petition
2014354	102.50	Petition
2014378	0.00	Petition
2014381	0.00	Petition
2014440	0.00	Petition
2014462	89.50	Petition
2014472	151.82	Petition
2014624	170.87	Replaced WDID 2005373 in 2022 PWR
2105000	126.22	Petition
2105001	0.00	Petition

2105002	200.04	Petition
2105003	484.06	Petition
2105005	733.26	Petition
2105006	148.22	Petition
2105008	0.00	Petition
2105009	300.23	Petition
2105010	2.48	Petition
2105011	297.73	Petition
2105012	123.72	Petition
2105013	156.28	Petition
2105014	99.48	Petition
2105015	62.38	Petition
2105016	228.11	Petition
2105017	89.72	Petition
2105021	0.64	Petition
2105022	228.55	Petition
2105026	275.68	Petition
2105027	0.00	Petition
2105031	313.39	Petition
2105037	463.18	Petition
2105038	0.00	Petition
2105039	0.00	Petition
2105040	81.99	Petition
2105041	393.13	Petition
2105042	104.94	Petition
2105044	238.72	Petition
2105045	461.95	Petition
2105046	154.61	Petition
2105055	259.74	Petition
2105056	111.49	Petition
2105058	10.09	Petition
2105059	0.00	Petition
2105061	0.00	Petition
2105062	199.23	Petition
2105070	0.00	Petition
2105071	0.00	Petition
2105072	220.83	Petition
2105077	206.40	Petition
2105078	186.94	Petition
2105079	105.60	Petition
2105083	241.23	Contract in 2020
2105084	6.60	Contract in 2020
2105087	223.28	Petition
2105088	32.20	Petition
2105089	666.93	Petition
2105090	341.79	Petition
2105091	196.06	Petition

2105131	29.12	Petition
2105132	175.99	Petition
2105133	0.00	Contract in 2020
2105134	294.35	Petition
2105138	160.57	Petition
2105151	212.67	Petition
2105157	228.29	Petition
2105159	602.22	Petition
2105160	0.00	Petition
2105162	288.51	Petition
2105164	89.33	Petition
2105165	0.00	Petition
2105167	531.37	Petition
2105168	49.17	Petition
2105173	106.27	Petition
2105187	348.77	Petition
2105188	96.92	Petition
2105189	0.00	Petition
2105190	7.03	Petition
2105191	221.50	Petition
2105203	674.92	Petition
2105215	74.04	Petition
2105216	24.90	Petition
2105244	248.61	Petition
2105245	0.00	Petition
2105246	0.00	Petition
2105247	550.91	Petition
2105303	201.65	Petition
2105305	0.00	Petition
2105306	241.16	Petition
2105307	0.10	Petition
2105310	323.19	Petition
2105315	0.00	Petition
2105324	0.00	Petition
2105393	91.83	Petition
2105394	0.00	Petition
2105395	0.06	Petition
2105396	46.73	Petition
2105424	358.21	Petition
2105430	0.00	Petition
2105464	159.91	Petition
2105476	102.38	Petition
2105486	210.43	Petition
2105520	30.11	Petition
2105552	106.38	Petition
2105606	0.00	Contract in 2020
2105607	50.02	Contract in 2020

2105617	433.00	Petition
2105618	345.75	Petition
2105653	142.93	Petition
2105668	514.61	Petition
2105882	48.25	Petition
2105883	48.25	Petition
2105885	0.00	Petition
2105886	0.00	Petition
2105887	157.85	Petition
2105892	0.00	Petition
2105897	0.00	Petition
2105900	166.88	Petition
2105901	0.00	Petition
2105902	0.00	Contract in 2020
2105903	50.02	Contract in 2020
2105904	0.00	Petition
2105910	53.68	Petition
2106419	358.43	Petition
2205024	4599.43	Petition
2205025	426.09	Petition
2205111	757.09	Contract in 2020
2205146	156.84	Petition
2205695	0.00	Petition
2205696	0.00	Petition
2205697	0.00	Petition
2205698	0.00	Petition
2205927	530.07	Petition
2206414	0.00	Petition

WDID 2014260 was petitioned to the Subdistrict but is fully augmented by another augmentation plan

\*Diversion in red text above are estimated and were not reported to DWR.

\*\*WDIDs added to 2024 ARP Well List are bold in the list

**WDIDs added to 2024 ARP List:**

**2008022**

**2009649**

**WDIDs deleted from 2024 ARP List:**

**2009672**

**2010109**

**2010287**

**2012431**



## **APPENDIX B**

### **Contract Wells Documentation**

<b>WDID</b>	<b>Structure Name</b>	<b>Associated Permit</b>	<b>Uses Under Contract</b>	<b>Consumptive Use %</b>
2005014	W-0113 WELL NO 1	1294-F	Sprinkler	83%
2005015	W-0113 WELL NO 2	1291-R	Sprinkler	83%
2005016	W-0113 WELL NO 3	1292-R	Sprinkler	83%
2005017	W-0113 WELL NO 4	1293-R	Sprinkler	83%
2005066	ALAMOSA ROSS ST WELL	4567-R	Municipal	100%
2005067	ALAMOSA WEBER ST WELL	16665-F	Municipal	100%
2005083	W-1944 WELL NO 1	10314-R	Sprinkler	83%
2005143	ALAMOSA 21ST ST WELL	16667-F	Municipal	100%
2005389	ALAMOSA HWY 17 WELL	20377-F	Municipal	100%
2005390	ALAMOSA BRUSH LN WELL	20376-F	Municipal	100%
2005667	83CW054 WELL NO1	14324-R	Sprinkler	83%
2006000	80CW100 WELL FWS 28-20A	6420-R	Flood	60%
2006071	80CW116 WELL 18-3-16 A&P	9186-F	Flood	60%
2006073	80CW106 WELL 6-1-16 A&P	12661-F, 8808-F	Flood	60%
2006101	80CW121 WELL 23-6-16 A&P	285-R, 12660-F	Sprinkler	83%
2006105	80CW114 WELL 16-1-16 A&P	2480-F	Flood	60%
2006122	80CW112 WELL NO 14-1-16P	3776F	Flood	60%
2006130	80CW112 WELL 14-10-16 A&P	12658-F, 443-R	Flood	60%
2006181	80CW107 WELL 7-2-16 A&P	2481-F	Flood	60%
2006225	80CW111 WELL NO 19-2-12P	19227-F	Flood	60%
2006228	80CW117 WELL NO 19-6-16P	3896-F	Flood	60%
2006236	80CW117 WELL NO 19-1-12 P	284-R	Flood	60%
2006237	80CW117 WELL FWS 19-2	287-R	Sprinkler	83%
2006257	MV BATTERSON WELL	4551-R-R	Municipal	100%
2006258	W-0847 WELL NO 2	4552-R	Municipal	100%
2006259	MV BROADWAY ST WELL	4553-R	Municipal	100%
2006260	MV SHERMAN ST WELL	13163-F	Municipal	100%
2006261	88CW013 WELL NO 8	24019-F, 33733-F	Municipal	100%
2006316	ALAMOSA 12TH ST WELL	4568-R, 4568-R-R	Municipal	100%
2006317	ALAMOSA COLE PARK WELL	4569-R	Municipal	100%
2006406	ALAMOSA GOLF COURSE WELL	13419-F, 13419-F-R	Sprinkler	83%
2006408	ALAMOSA MURPHY ST WELL	4345-F	Municipal	100%
2006690	W-1929 WELL NO 2		Fish	3%
2008022	79CW66 WELL NO 1	60380	Commercial	100%
2008079	80CW110 WELL FWS 11-1-16P	6153-R, 6153-R-R	Flood	60%
2008081	80CW111 WELL FWS 13-1-16P	11863-F-R, 286-R	Sprinkler	83%
2008101	80CW113 WELL FWS 15-2-16 A&P	444-R, 12657-F	Flood	60%
2008102	80CW113 WELL FWS 15-20-16 AP	283-R, 12659-F-R	Flood	60%
2008104	80CW118 WELL FWS 20-4-16P	442-R	Flood	60%
2008105	80CW118 WELL FWS 20-7-20P	1717-R	Flood	60%
2008106	80CW118 WELL FWS 20-22-16P	20689-R	Sprinkler	83%
2008112	80CW119 WELL FWS 21-49-16P	22402-F	Flood	60%

2008123	80CW120 WELL FWS 22-3-16 A&P	551-R, 12664-F	Sprinkler	83%
2008124	80CW120 WELL FWS 22-8-16A&P	12662, 2479-F	Flood	60%
2008312	W-0010 WELL NO 2	15902-R	Sprinkler	83%
2008314	W-0010 WELL NO 4	505-R-N	Sprinkler	83%
2008369	W- 0066 WELL NO. 1	3276-F	Other	100%
2008488	W-0107 WELL NO 2	3885	Sprinkler	83%
2008685	W-0242 WELL NO 1	2379-F	Flood	60%
2008694	W-0247 WELL NO 1	8632-R	Flood	60%
2008695	W-0247 WELL NO 2	8633-R	Fish, Irrigation	7%
2008699	W-0247 WELL NO. 7	4288-F	Sprinkler	83%
2009240	W-0525 WELL NO. 2	10822-R	Flood	60%
2009493	W-0695 WELL NO 2		Sprinkler	83%
2009494	W-0695 WELL NO 3	11679-R	Sprinkler	83%
2009638	W-0776 WELLNO 1	5473-F, 66769-F	Sprinkler	83%
2009649	W-0787 WELL NO 3	54710-A	Commercial	39%
2009672	W-0804 WELL NO. 3	60605	Commercial	100%
2010109	W-1045 WELL NO. 7	50766	Commercial	100%
2010131	W-1068 WELL NO 04		Fish	100%
2010158	W-1085 WELL NO 01		Sprinkler	83%
2010159	W-1085 WELL NO 02		Sprinkler	83%
2010184	W-1100 WELL NO 04	54600	Irrigation, Stock	83%
2010185	W-1100 WELL NO 05	54599	Irrigation, Stock	83%
2010186	W-1100 WELL NO 06	54598	Irrigation, Stock	83%
2010287	W-1182 WELL NO. 3	59060	Commercial	100%
2010478	W-1294 WELL NO 1	10893-F	Municipal	100%
2010486	W-1300 WELL NO 1	2211-F	Municipal	100%
2010773	W-1456 WELL NO 1	2292-F	Fish	20%
2010774	W-1456 WELL NO 2	14051-R, 59362-F	Fish	20%
2010775	W-1456 WELL NO 3	58894-F, 14052-R-R	Fish	20%
2010866	W-1485 WELL NO 4	4435-R	Sprinkler	83%
2010867	W-1485 WELL NO 5	4436-R	Sprinkler	83%
2010869	W-1485 WELL NO 7	11069-F	Sprinkler	83%
2010907	W-1532 WELL NO 1	20244-R	Sprinkler	83%
2011083	W- 1628 WELL NO. 1	4608-F, 4608-F-R	Commercial	40%
2011085	W- 1628 WELL NO. 3	57490, 59973-F	Commercial	40%
2011149	W-1677 WELL NO 1	9475-F	Commercial	40%
2011205	W - 1708 WELL NO. 1	29070, 68698-F	Commercial	10%
2011355	W-1799 WELL NO. 1	11762-R	Sprinkler	83%
2011664	W-1929 WELL NO 1	277065	Flood	60%
2011684	W-1944 WELL NO 2	8897-F	Sprinkler	83%
2011685	W-1944 WELL NO 3	5873-F	Sprinkler	83%
2011901	W-2068 WELL NO. 1		Sprinkler	83%
2012190	W-2297 WELL NO 1		Sprinkler	83%
2012372	W-2431 WELL NO 11		Sprinkler	83%
2012431	W-2448 WELL NO. 3	50700	Commercial	100%

2012513	W-2522 WELL NO 1		Commercial, Domestic	40%
2012535	W-2537 WELL NO. 1	5426-F	Sprinkler	83%
2012688	W-2592 WELL NO. 4		Flood	60%
2012689	W-2592 WELL NO. 5		Flood	60%
2012287				
2013137	W-3106 WELL NO. 2	7018-R	Sprinkler	83%
2013138	W-3106 WELL NO. 3	7019-R	Sprinkler	83%
2105083	W-0384 WELL NO 1	13971-F	Municipal	40%
2105084	W-0384 WELL NO 2	13928-F	Municipal	40%
2105133	W-0577 WELL NO 01		Sprinkler	83%
2105606	W-2197 Well NO 1	25275-F, 25275-F-R	Municipal	40%
2105607	W-2197 WELL NO 2	25276-F	Municipal	40%
2105902		43420-F	Municipal	40%
2105903		58889-F	Municipal	40%
2205111	W-0392 WELL NO 1	20111-R	Flood	60%

## **APPENDIX C**

### **List of Augmentation Wells**

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. 773	San Luis Valley Water Conservancy District	Skyline Hospitality Inc. (Comfort Inn of Alamosa)	2014260	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**  
**March 26, 2024 Analysis (NWS 50% exceedence)**  
**Closed Basin Project Split: 60/40**

**CONEJOS RIVER BASIN**

NWS 3-21-2024 Forecast of

April - September Index

Flows = 230,900

Index Supply

Conejos = 158,600

Los Pinos = 65,300

San Ant. = 7,000

J-M & O-D volume 29,100

January	2,500	*
February	3,000	*
March	5,000	estimate
April - September	230,900	forecast
October	10,100	estimate
November - December	8,500	estimate

Obligation = 81,800

**Total 260,000**

87% of long term average

Deliveries

Delivery Obligation

Required Delivery      49,200      20.4%  
Native Index              241,000

January	3,400	*
February	4,000	*
March	7,000	estimate
April - October	49,200	needed
Nov - Dec native	8,500	estimate

**Total 72,100**

Adjustments  
to the  
Delivery

Net Carryover Credit in E.B.	-	estimate
Paper Credit	5,000	
SC Norton Drain Flow	2,000	estimate
Remaining CBP Share	2,700	estimate

**Delivery Credit 81,800**

Expected Dec. 31, 2024 Compact Delivery Status                      **0**

- \* = Actual measured flows (Deliveries include Closed Basin Project share)
- All values in acre-feet
- Assumes 40% of the Closed Basin Project flows are creditable to the Conejos  
(Predicted delivery of creditable CBP production to the Rio Grande is 8,500 acre-feet)



**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
<b>Total</b>	<b>530,000</b>

**Deliveries**

**Delivery Obligation**

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

January	10,000 *
February	11,600 *
March	13,700 *
April - October	<span style="border: 1px solid black; padding: 2px;">69,000</span> needed
Nov - Dec native	27,000 estimate
<b>Total</b>	<b>131,300</b>

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
SF Rio Grande at South Fork (2)	APR-SEP	105	94	136	117	94	78	112
Rio Grande nr Del Norte (2)	APR-SEP	445	93	605	505	385	310	480
Saguache Ck nr Saguache (2)	APR-SEP	41	146	58	48	35	27	28
Alamosa Ck ab Terrace Reservoir	APR-SEP	60	98	78	67	53	44	61
La Jara Ck nr Capulin	MAR-JUL	6.8	88	10.5	8.2	5.5	4.0	7.7
	APR-JUL	6.3	93	10.0	7.7	5.1	3.5	6.8
Platoro Reservoir Inflow (2)	APR-JUL	48	94	62	53	43	36	51
	APR-SEP	53	93	69	59	47	39	57
Conejos R nr Mogote (2)	APR-SEP	158	94	205	176	141	118	168
San Antonio R at Ortiz	APR-SEP	9.5	99	13.9	11.2	8.0	6.0	9.6
Los Pinos R nr Ortiz	APR-SEP	56	92	75	63	49	40	61
Rio Grande nr Lobatos	APR-JUL	110	92	178	137	83	42	119

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
Sangre de Cristo Ck (2)	APR-SEP	10.5	96	18.3	13.4	7.9	4.8	10.9
Trinchera Ck ab Turners Ranch	APR-SEP	9.2	89	13.6	10.9	7.7	5.6	10.3
Culebra Ck at San Luis (2)	APR-SEP	16.3	98	27	20	12.6	8.1	16.7
Costilla Reservoir Inflow (2)	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
Costilla Ck nr Costilla (2)	MAR-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)**

### 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 Purchases and Leases

#### UNITED STATES BUREAU OF LAND MANAGEMENT (BLM) EXCESS AUGMENTATION CREDITS – CASE NO 2002CW38A

This water was originally decreed on October 22, 1983, as part of the adjudication of the Conejos and San Antonio Rivers (former Water District No. 22) before the District Court in and for Conejos County. The original decree assigns to the ditch Priority No. 33 for 27.58 c.f.s. for irrigation and domestic uses with an appropriation date of June 14, 1867. The decreed source of water is the San Antonio River. In Case No. 2002CW38, the BLM applied for a change of water right of the portion of the Lovato Ditch owned by the BLM and for a plan for augmentation. The Court bifurcated the case into Case No. 2002CW38A and Case No. 2002CW38B. On December 7, 2014, in Case No. 2002CW38A, the Court decreed a change in type of use to include: irrigation, augmentation, recreation, fisheries, wildlife, and wildlife habitat, including evaporative losses associated with these uses. The first priority of the BLM’s Lovato Ditch is for the replacement of out-of-priority depletions pursuant to the plan of augmentation decreed in Case No. 2002CW38B. Excess Credits, as defined in the 2002CW38A decree, may be used for other decreed purposes and expressly recognizes they can be used as a source of supply in approved plans of water management. Subdistrict No. 6 leased Excess Credits from the BLM in 2020, 2021, 2022, 2023, and will again in 2024. This water is exchanged into storage in Platoro reservoir. The amount remaining in storage in Platoro Reservoir for use in the 2024 ARP is shown in Table 3.1 of the ARP. The Subdistrict lease with BLM continues for the 2024 Plan Year and allows the Subdistrict to use any water that is available under this water right for the 2024 Irrigation Season to replace injurious depletions. The Subdistrict may store and release this water during the Irrigation Season.

Date Leased	AMOUNT STORED IN EACH YEAR (AF)
April 2020	242.19
April 2021	209.47
April 2022	366.52
April 2023	353.46
<b>TOTAL</b>	<b>1,171.64</b>

#### EXCESS AUGMENTATION CREDITS OWNED BY TERRACE IRRIGATION COMAPNY

Terrace Irrigation Company is the owner of certain water originally decreed in Case No. 1982CW97, District Court, Water Division No. 3, District Court, Water Division No. 3. The 1982CW97 Decree changed certain water rights, established a plan for augmentation and recognized that excess water rights, above that needed for the plan for augmentation, were changed as part of the decree. The decree established certain limitations on the use of water in

excess of the needs of the plan for augmentation, but the time limit on those limitations has expired. The 2014CW3027 and 2016CW3019, in part, confirmed the release of certain amounts of water from the 1982CW97 Plan for Augmentation and allowed such water to be put to other uses. In 2020, Pursuant to these Decrees, Terrace Irrigation Company had 23.85 acre-feet of water in storage in Terrace Reservoir. Subdistrict No. 6 entered into a lease with Terrace Irrigation Company to use the 23.85 acre-feet for the purpose of replacing depletions as part of the 2021 ARP. In 2021 and 2022, Terrace Irrigation Company stored another 23.85 acre-feet. The Subdistrict has entered into a lease with Terrace Irrigation Company to lease 23.85 acre-feet currently held in Terrace Reservoir in 2023. To the extent necessary, any return flow obligations under the original use of this water were addressed in the 1982CW97 Decree. An application for an SWSP is pending for the use of this water for the purpose of replacing depletions as part of the 2024 ARP.

<b>Terrace Irrigation Company Excess Augmentation Water SWSP 6209</b>		
<b>Date Leased</b>	<b>AMOUNT (AF)</b>	<b>Current Storage Location</b>
September 2020	23.85	Terrace Reservoir
April 2021	23.85	Terrace Reservoir
April 2022	23.85	Terrace Reservoir
April 2023	23.85	Terrace Reservoir
April 2024	23.85	Terrace Reservoir
<b>TOTAL</b>	<b>119.25</b>	

**SAN LUIS VALLEY WATER CONSERVANCY DISTRICT- CASE NOS. 1984CW16, 1994CW62, 14CW3011 AND 09CW34**

This fully consumable water was decreed in Case Nos. 1984CW16, 1994CW62, 14CW3011 and 09CW34 for storage and augmentation purposes. The RGWCD leased 406.6 acre-feet of fully consumable water under these decrees for use in Subdistrict ARPs. In 2019, 406.6 acre-feet was leased and the water was exchanged from Rio Grande Reservoir on the upper Rio Grande into Platoro Reservoir in the upper Conejos. Of the amount leased, 81.32 acre-feet was used to cover the 20% transit losses for this exchange. The remaining leased amount of 325.28 acre-feet was exchanged into Platoro Reservoir for use on the Conejos River. The amount in Platoro Reservoir was transferred to Subdistrict No. 6 on April 12, 2023. Of this amount, 98.6 acre-feet was used to replace injurious depletions during the 2023 Plan Year. The amount remaining for use by the Subdistrict in the 2024 ARP is 226.7 acre-feet.

<b>San Luis Valley Water Conservancy District 1984CW16, 1994CW62, 14CW3011 and 09CW34 SWSP 6182</b>						
<b>Date</b>	<b>1984CW0016</b>	<b>1994CW0062</b>	<b>2014CW3011</b>	<b>2009CW0034</b>	<b>TOTAL</b>	<b>Storage Location</b>
8/20/2019	110.725	110.725	147.63	37.52	406.6	Rio Grande Reservoir
8/22-8/24/2019			-43.8	-37.52	-81.32	20% Transit Loss
8/24/2019	110.725	110.725	103.83	0	325.28	Platoro Reservoir
<b>TOTAL</b>					<b>226.7</b>	

**WILLIAMS CREEK SQUAW PASS TRANSBASIN DIVERSION CURRENTLY HELD IN RIO GRANDE RESERVOIR**

The RGWCD leased water from Navajo Development Co., Inc., owned by John H. Parker II, to use as a source of remedy for Subdistricts to remedy injurious depletions on the Rio Grande. This transbasin water is being stored in Rio Grande Reservoir. Subdistrict No. 6 entered into an agreement with the RGWCD to lease 426.26 acre-feet of this Williams Creek Squaw Pass transbasin water for use in the 2020 partial ARP. Documentation of this purchase is included. This water remains in storage and is available for the purpose of replacing depletions during the 2024 ARP Plan Year.

<b>Navajo Development Co., Inc.- SWSP 6182</b>		
<b>Date Leased</b>	<b>Amount (AF)</b>	<b>Current Storage Location</b>
March 12, 2019	138.51	Rio Grande Reservoir
December 29, 2019	287.75	Rio Grande Reservoir
<b>Total (acre-feet)</b>	<b>426.26</b>	

**SANTA MARIA RESERVOIR COMPANY SHARES HELD IN SANTA MARIA RESERVOIR**

Subdistrict No. 6 leased 215 shares from Santa Maria Reservoir Company owners with shares on the Monte Vista Canal in 2020, 335 in 2021, 205 shares in 2022, and 385 shares in 2023. A portion of this water was released from the reservoir in in each of these years to cover transit and ditch losses and to replace historical return flows as required by the decree in Case No. 2013CW3002. Subdistrict No. 6 will lease 380 shares from Santa Maria Reservoir Company owners in 2024 and will release a portion of this water from the reservoir to cover transit and ditch losses and to replace historical return flows as required by the decree in Case No. 2013CW3002. The amount of water these shares generated are detailed in the table below. There is currently 929.6 acre-feet of this water being stored in Santa Maria Reservoir.

<b>Santa Maria Reservoir Company Shares (Leases with Monte Vista Canal Shareholders Only)</b>		
<b>Date Leased</b>	<b>Amount (AF)</b>	<b>Current Storage Location</b>
April 2020	140.4	Santa Maria Reservoir
April 2021	214.3	Santa Maria Reservoir
April 2022	127.7	Santa Maria Reservoir
April 2023	299.8	Santa Maria Reservoir
April 2024	287.8	Santa Maria Reservoir
<b>TOTAL</b>	<b>1,070.0</b>	

**SAN LUIS VALLEY WATER CONSERVANCY DISTRICT-LEASED TO THE RIO GRANDE WATER CONSERVATION DISTRICT AND THEN TO SUBDISTRICT NO. 6 IN THE AMOUNT 81.0 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. 6 leased 247.1 acre-feet of this water for use in its 2021 ARP or future ARPs. All but 89.1 acre-feet has been used to replace injurious depletions. This 89.1 acre-feet is currently being stored in Continental Reservoir. Details of the amounts and location of this leased water are in the following table.

<b>San Luis Valley Water Conservancy District</b>				
<b>Case Nos. 1984CW16, 1994CW62, 14CW3011, 09CW34, 2003CW41, 2005CW13, AND 2007CW63</b>				
<b>Date</b>	<b>1984CW16 and 1994CW62</b>	<b>14CW3011</b>	<b>TOTAL</b>	<b>Storage Location</b>
4/15/2024		89.1	89.1	Continental Reservoir
<b>TOTAL</b>			<b>89.1</b>	

**SANTA MARIA RESERVOIR COMPANY SHARES LEASED FROM SUBDISTRICT NO. 1 IN THE AMOUNT OF 1,000 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. 6 to be used in the Subdistrict’s 2023 ARP. 175 acre-feet of this water was transferred to Beaver Reservoir and the vast majority of that transferred water was released during the 2023 Plan Year to replace injurious depletions. 825 acre-feet of this water is currently remains in Continental Reservoir and 0.6 acre-feet is currently held in Beaver Reservoir.

<b>Water Right</b>	<b>Beginning Balance 4/15/2024</b>	<b>Water Previously Controlled By</b>	<b>Current Location</b>
Santa Maria Reservoir Company water-2023 lease from Subdistrict No. 1	825.0	Subdistrict No. 1	Continental Reservoir
Santa Maria Reservoir Company water-2023 lease from Subdistrict No. 1	0.6	Subdistrict No. 1	Beaver Reservoir
<b>Total In Storage</b>	<b>825.6</b>		

**CITY OF MONTE VISTA LEASE OF STORED WATER CURRENTLY HELD IN RIO GRANDE RESERVOIR**

The City of Monte Vista stored 260 acre-feet of Anderson Ditch water during 2022 and 160 acre-feet during 2023 in Rio Grande Reservoir while operating under approved SWSP 6235. The City’s confined wells are currently covered by the Subdistrict, therefore the City did not have to utilize the water it stored in 2022 or 2023. The Rio Grande Water Conservation District entered into separate lease agreements with the City in 2022 and 2023 to allow the use of this water by Subdistricts. Subdistrict No. 6 included the entire 260 acre-feet in its 2023 ARP for use in the

2023 Plan Year. Subdistrict No. 6 has leased 144 acre-feet from the District for its 2024 ARP for use in the 2024 Plan Year. An SWSP has been filed by the City of Monte Vista for the use of the 144 acre-feet of water by the Subdistrict and that SWSP is pending approval at the time this report was filed.

Water Right	Beginning Balance 4/15/2023	Water Previously Controlled By	Current Location
City of Monte Vista Augmentation Water (Anderson Ditch 2022)	260.0	City of Monte Vista	Rio Grande Reservoir
City of Monte Vista Augmentation Water (Anderson Ditch 2023)	144.0	City of Monte Vista	Rio Grande Reservoir
<b>Total In Storage</b>	<b>404.0</b>		

### **COLORADO PARKS AND WILDLIFE TABOR DITCH NO. 2 HELD IN RIO GRANDE RESERVOIR**

The Fish and Wildlife Service (FWS) and Colorado Parks and Wildlife Service (CPW) are currently working on inter-agency agreements amongst themselves and other federal agencies to assist each other in meeting the requirements of the both the Groundwater Rules and the Subdistricts. CPW agreed to exchange **125.0** acre-feet of Tabor Ditch No. 2 water during the 2020 Plan Year, **227.0** acre-feet in 2021, **250.0** acre-feet in 2022, **197.0** acre-feet in 2023, and **248.0** acre-feet in 2024, all being currently stored in Rio Grande Reservoir, into a Subdistrict pool in the reservoir to be used for the remedy of injurious depletions caused by ARP Wells. The total amount of water exchanged by CPW to the Subdistrict is 1,047.0 acre-feet. SWSP 7265 approved the use of 352.0 acre-feet of this water as a replacement source for the Plan Year, of which 50 acre-feet was transferred to Beaver Reservoir during the 2023 Plan Year and subsequently used to replace injurious depletions during said Plan Year. An additional SWSP will be filed for use of the remainder of the 625.0 acre-feet. Appendix F includes documentation for this transfer.

Water Right	Beginning Balance 4/15/2024	Water Previously Controlled By	Current Location
Tabor Ditch No. 2, 2020	75.0	Colorado Parks and Wildlife	Rio Grande Reservoir
Tabor Ditch No. 2, 2021	227.0	Colorado Parks and Wildlife	Rio Grande Reservoir
Tabor Ditch No. 2, 2022	250.0	Colorado Parks and Wildlife	Rio Grande Reservoir
Tabor Ditch No. 2, 2023	197.0	Colorado Parks and Wildlife	Rio Grande Reservoir
Tabor Ditch No. 2, 2024	248.0	Colorado Parks and Wildlife	Rio Grande Reservoir
<b>Total In Storage</b>	<b>997.0</b>		

**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.

For the 2023 Plan Year, Subdistrict No. 6 entered into an agreement with the SLVIWO to lease up to 3,000 acre-feet for use in the 2023 ARP. For the 2024 Plan Year Subdistrict No. 6 entered into an agreement with the SLVIWO to lease up to an additional 3,000 acre-feet for use in the 2024 ARP. See Appendix F for documentation of these leases. 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 Platoro, Rio Grande, Continental, Beaver Reservoirs and/or other reservoirs within the Rio Grande or Conejos River systems, 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 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.

<b>Water Right</b>	<b>Beginning Balance 4/15/2024</b>	<b>Water Previously Controlled By</b>	<b>Current Location</b>
Taos Valley No. 3	579.0	San Luis Valley Irrigation Well Owners	Rio Grande Reservoir
Taos Valley No. 3	29.8	San Luis Valley Irrigation Well Owners	Beaver Reservoir
Taos Valley No. 3	69.1	San Luis Valley Irrigation Well Owners	Platoro Reservoir
<b>Total In Storage</b>	<b>677.9</b>		

**RICHFIELD CANAL PROJECT ALLOCATION WATER STORED IN PLATORO RESERVOIR IN 2019**

Richfield Canal had stored project allocation water in Platoro Reservoir which they made available under lease to Subdistrict No. 6 in 2020. This water remains in storage in Platoro Reservoir. Subdistrict No. 6 is currently completing engineering to determine the amount of CU credit that will be available to the Subdistrict for the replacement of injurious depletions and any required return flow and ditch loss requirements for the use of this water right. The Subdistrict will not use this source of water until an approved SWSP is in place.

<b>Richfield Canal SWSP Pending</b>		
<b>Date Leased</b>	<b>AMOUNT (AF)</b>	<b>Current Storage Location</b>
2020	150.0	Platoro Reservoir
<b>TOTAL</b>	<b>150.0</b>	

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SUBDISTRICT NO. 6 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. 6 of the Rio Grande Water Conservation District (Subdistrict No. 6) 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. 6 hereby agree as follows:

1. Subdistrict No. 1 will sell and Subdistrict No. 6 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. 6 will take possession of said 1,000 acre-feet as of April 1<sup>st</sup>, 2023.
4. Subdistrict No. 6 will be responsible for all charges for storage of the 1,000 acre-feet beginning on the date Subdistrict No. 6 takes possession of the water.
5. Subdistrict No. 6 will be responsible for obtaining any administrative or judicial approval of Subdistrict No. 6's use of water.
6. Subdistrict No. 6 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 31<sup>st</sup> 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. 6

  
\_\_\_\_\_

## LEASE AGREEMENT

### FOR USE OF EXCESS CREDITS UNDER 2002CW38A

This Lease Agreement for Use of Excess Credits derived from the portion of the Lovato Ditch change of water rights as decreed in Case No. 2002CW38A, District Court, Water Division No. 3 (“Excess Credits”) is entered into this 5th day of April, 2022 (“Effective Date”), by and between the United States Department of Interior, Bureau of Land Management (“AGENCY”) and the Water Activity Enterprise of Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise (“Subdistrict No. 6”) (collectively, the “Parties”).

### RECITALS

- A. This AGENCY is the Bureau of Land Management, an agency within the United States Department of the Interior. The AGENCY owns and operates groundwater rights that are used to carry out land and water management functions that are required under federal law, including management of habitat for wildlife species and operation of visitor facilities. The AGENCY water rights that are used to fulfill these management purposes were created and decreed pursuant to provisions of Colorado water law. As such, the AGENCY groundwater rights are subject to administrative requirements of Colorado water law. Specifically, the AGENCY water rights are subject to *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”). The Groundwater Rules require replacement of injurious stream depletions created by the operation of groundwater rights owned by the AGENCY. The purpose of this Lease Agreement is to provide all or a portion of the replacement water required under the Rules.
- B. Subdistrict No. 6 is a political subdivision of the State of Colorado, organized and existing under Article 48 of Title 37, Colorado Revised Statutes and approved by the District Court of Conejos County in Case No. 18CV30014, for among other purposes, carrying out water planning and water management functions within the San Luis Valley. Subdistrict No. 6 has the authority to contract with federal land management agencies to provide replacement water to meet the requirements of the Rules. The Subdistrict provides replacement water as part of an Annual Replacement Plan that is approved by the Colorado State Engineer.
- C. Subdistrict No. 6 seeks up to 900 acre-feet of water in order to help satisfy the requirements of its 2022-2023 Annual Replacement Plan (“Subdistrict No. 6 ARP”) for the Plan of Water Management for Subdistrict No.6 as approved by the Colorado State Engineer.

- D. AGENCY owns the water rights decreed to the United States of America, Department of Interior, Bureau of Land Management in Case No. 2002CW38A, Concerning the Application by the United States of America for Water Rights in Alamosa, Rio Grande, Conejos, Mineral and Hinsdale Counties, Colorado.
- E. Subject to the terms and conditions of this Lease Agreement and in exchange for compensation listed herein from Subdistrict No. 6, AGENCY agrees to provide Subdistrict No. 6 with the right to use up to 900 acre-feet of Excess Credits, subject to all terms and conditions in the 2002CW38A Decree, to help satisfy the requirements of Subdistrict No. 6's ARP.

### **DEFINITIONS**

- A. "Excess Credits" means the number of acre feet generated annually by BLM's Lovato Ditch water right that the AGENCY chooses to not divert and use on AGENCY-managed lands for the beneficial uses authorized in the decree in Case No. 2002CW38A. The availability of "Excess Credits" means that the AGENCY has elected to use the Lovato Ditch water right for alternative purposes authorized under a decree or an annual substitute water supply plan approved by the Colorado Division of Water Resources.
- B. "Remedy Costs" means the total cost to Subdistrict No. 6 for providing augmentation water to offset injurious depletions associated with the operation of AGENCY water rights specified in Appendix B to this lease, including costs associated with meeting the Subdistrict No. 6 sustainability requirements under their respective Plans of Water Management.
- C. "Remedy Credits" means the value assigned by Subdistrict No. 6, respectively, to the Excess Credits generated by the AGENCY'S Lovato Ditch water right. Remedy Credits are calculated by multiplying the yield of the Lovato Ditch water right Excess Credits by the prevailing rate for leasing surface water rights within Subdistrict No. 6.

### **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises and agreements contained herein, and the benefits exchanged, the Parties agree as follows:

- 1. **Consideration:** Subject to the terms and conditions contained in this Lease Agreement, AGENCY grants to Subdistrict No. 6 the right to use up to 900 acre-feet of Excess Credits. In exchange, Subdistrict No. 6 will include well W-392, Well No. 1 (WDID 2205111) in the Subdistrict No. 6 ARP according to the terms of a Participation Contract including that well. If additional wells are added to the Participation Contract, according to its terms, such additional wells will be included under the Subdistrict in this subparagraph by implication. Subdistrict No. 6 will also take such actions as may be

necessary to assure compliance with the sustainability requirements of the individual Subdistrict's Plan of Water Management and ARP. No further payment, monetary or otherwise, is required by either Party. The Parties acknowledge that the mutual promises contained herein and other good and valuable consideration are sufficient and adequate to support this Lease Agreement.

- 1.1. Every acre-foot generated under this Agreement and provided for use by Subdistrict No. 6 will result in the generation of the equivalent of Eighty dollars (\$80.00) in Remedy Credits for the AGENCY.
- 1.2. At the time, through a separate written agreement, AGENCY's well or wells are included in a Subdistrict No. 6 ARP, Subdistrict No. 6 will calculate the Fees incurred by groundwater withdrawals by such well or wells in the same manner as all other Subdistrict Wells included in that same ARP, as stated in Subdistrict No. 6's Plan for Water Management and associated Rules and Regulations.
- 1.3. Except as provided in Paragraph 1.7, below, Subdistrict No. 6 will consider the Fees incurred by AGENCY as determined in paragraph 1.1, above, as Remedy Costs to the AGENCY and will not demand monetary payment for such Fees from AGENCY.
- 1.4. At the same time Subdistrict No. 6 calculates Fees for other Subdistrict Wells, Subdistrict No. 6 will deduct Remedy Costs from Remedy Credits. AGENCY agrees if operation of its Well or Wells exceed Remedy Credits in any ARP Year for which the AGENCY has a valid and operating participation contract, AGENCY will be liable for payment of fees above the amount of Excess Credits to Subdistrict No. 6.
- 1.5. AGENCY may carry over any Remedy Credits attributable to Subdistrict No. 6 from year to year, including after the Term of this Agreement has expired, and Subdistrict No. 6 will continue to deduct Remedy Costs from Remedy Credits at AGENCY's direction, until all such credits are extinguished. AGENCY may, in its sole discretion and with the approval of the Rio Grande Water Conservation District Water Activity Enterprise, which consent will not unreasonably be denied, transfer unused Remedy Credits for use to offset groundwater withdrawals from wells located in other Response Areas. Such credit will be based on the acre-feet of Remedy Credit and applied through other Subdistrict(s) ARP(s). When such Remedy Credits are extinguished, AGENCY's well or wells will no longer be part of Subdistrict No. 6's ARP and AGENCY must comply with the Groundwater Rules in some manner outside of this Agreement.
- 1.6. AGENCY may transfer Remedy Credits to any other governmental agency, entity or person in its sole discretion. However, AGENCY must provide written notice

of such transfer of Remedy Credits at least 90 days prior to the start of the appropriate Subdistrict's ARP year. Upon proper notice, the appropriate Subdistrict will treat the transferred Remedy Credits in the same manner as AGENCY's Remedy Credits herein.

2. **Term of Lease Agreement:** This Lease Agreement is for a one-year term commencing on May 1, 2022 and ending April 30, 2023. This Lease Agreement is for a single term only and is not renewable. If Subdistrict No. 6 chooses to place the leased water into storage, the up to 900 acre-feet need not be used by Subdistrict No. 6 prior to the expiration of the term of this Lease Agreement and any such unused water will remain under the control of Subdistrict No. 6 after expiration of this Lease Agreement.
3. **Agreement to Lease up to 900 Acre-feet of Excess Credits to Subdistrict No. 6:** Subject to the terms and conditions in this Lease Agreement, AGENCY agrees to provide 900 acre-feet of Excess Credits for Subdistrict No. 6's use. Further details regarding this provision are outlined in the following subsections.
  - 3.1. After this 900 acre-feet is under the control of Subdistrict No. 6 pursuant to this contract, AGENCY retains the right to use or dispose of any additional Excess Credits generated.
  - 3.2. **Use of Leased Excess Credits:**
    - 3.2.1 **Preservation of AGENCY's 2002CW38A Water Rights:** Subdistrict No. 6 will use the leased water to satisfy a portion of its annual obligation to remedy injurious depletions caused by groundwater withdrawals of wells included in the 2022-2023 ARP, or subsequent years pursuant to paragraph 1, above. Because AGENCY's Excess Credits are decreed for irrigation, augmentation, recreation, fisheries, wildlife, and wildlife habitat uses, including the replacement of evaporative losses associated with these uses, Subdistrict No. 6 may apply for and obtain an administrative change of the up to 900 acre-feet of Excess Credits leased herein through the filing of a Substitute Water Supply Plan. Subdistrict No. 6 will not otherwise take any action that causes or could potentially cause a reopening of the 2002CW38A Decree, including, but not limited to applying for a judicial change of the up to 900 acre-feet of Excess Credits leased herein. The 2002CW38A decree is that decree entered on November 24, 2014 in Case No. 2002CW38A in the District Court, Water Division No. 3 and attached hereto as **Exhibit A**. Subdistrict No. 6's use of AGENCY's Excess Credits is not intended to, and does not, transfer any legal or equitable title or interest to any part of the Water Rights decreed in Case No. 2002CW38A to Subdistrict No. 6 other than the up to

900 acre-feet leased herein. Furthermore, the Parties understand and agree that by permitting Subdistrict No. 6 to use the 900 acre-feet of Excess Credits leased herein, AGENCY does not intend to abandon, and does not abandon, relinquish, or forfeit any portion of the Water Rights decreed in Case No. 2002CW38A.

3.2.2 Assessment of Evaporation, Seepage, and Transit Losses: Beginning on the Effective Date, Subdistrict No. 6 will bear all seepage, evaporation, and transit losses on the up to 900 acre-feet of Excess Credits leased to Subdistrict No. 6 herein and will be responsible for all storage charges assessed to the up to 900 acre-feet of Excess Credits after the Effective Date.

4. No Effect on Previous Agreement: The Parties acknowledge that AGENCY entered into a lease agreement with Special Improvement District No. 3 of the Rio Grande Water Conservation District in 2019 to lease credits from this water right for the 2021/2022 ARP Year. The Parties further acknowledge that any Remedy Credits accrued under that 2021 agreement are not subject to this Agreement, but remain in place and subject to the 2021 Agreement.

5. Modification and Termination:

5.1. This Lease may be modified only by a written instrument executed by both parties.

5.2. Any party may terminate this Agreement by providing the other party with thirty (30) days advance written notice.

5.2.1 In the event AGENCY terminates the performance of this Lease Agreement, Subdistrict No. 6's sole and exclusive remedy will be specific performance until April 30, 2022.

5.2.2 In the event Subdistrict No. 6 terminates the agreement, AGENCY's sole and exclusive remedy will be the use of the Excess Credits not yet put to beneficial use by Subdistrict No. 6 under the terms of this Lease.

6. Subdistrict No. 6's Representations: This Lease Agreement has been duly authorized and executed by Subdistrict No. 6, respectively, is the legal, valid and binding obligation of Subdistrict No. 6, respectively, and is enforceable against Subdistrict No. 6, respectively, according to its terms. No other consent is required for the execution, delivery, or performance of this Lease Agreement by Subdistrict No. 6.

7. Notices and Representatives: Each individual identified below is a representative of the designating Party. All notices required by this Lease Agreement will be hand-delivered

with receipt required or sent by certified or registered mail to such Party's representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices will be sent. Unless otherwise provided herein, all notices are effective upon receipt.

7.1. AGENCY Representatives and Contact Addresses: Felicia Salazar, Contracting Officer, is authorized to sign the lease agreement and participation contract. Ms. Salazar can be reached by physical mail at: Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215; by telephone at 303-239-3636; and by email at fsalazar@blm.gov. Roy Smith, Water Rights Specialist, is authorized to manage the day-to-day administration of the lease and participation contract. Mr. Smith can be reached by physical mail at: Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215; by telephone at 303-239-3940; and by email at r20smith@blm.gov.

7.2. Subdistrict No. 6 Representative and Contact Addresses: District Manager (Cleave Simpson) is the representative for Subdistrict No. 6 for purposes of this Lease Agreement. Mr. Simpson can be reached by physical mail at: Subdistrict No. 6, 8805 Independence Way, Alamosa, Colorado 81101; by telephone at: (719) 589-6301; and by e-mail at: cleave@rgwcd.org.

## 8. General Provisions

8.1. Assignment: No Party has the right to transfer or sub-lease its rights or obligations under this Lease Agreement without the advanced written consent of the other Party.

8.2. Binding Agreement: This Lease Agreement binds and benefits the Parties and their respective successors and assigns.

8.3. Binding Arbitration Prohibited: Neither AGENCY nor Subdistrict No. 6 agree to binding arbitration by any extra-judicial body or person. Any provision incorporated herein by reference is null and void.

8.4. 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.

8.5. Compliance with Applicable Laws: At all times during the performance of this Lease Agreement, Subdistrict No. 6, will adhere to all applicable Federal and State laws, rules, and regulations then in effect. In addition:

8.5.1. The signatories to this Lease Agreement affirm that they are familiar with C.R.S. § 18-8-301, *et seq.* (Bribery and Corrupt Influences) and C.R.S. § 18-8-401, *et seq.* (Abuse of Public Office), and that no violation of such



provisions has occurred in connection with the negotiation and signing of this Lease Agreement; and

8.5.2. The signatories to this Lease Agreement affirm that to the best of their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

8.6. CORA Disclosure: To the extent not prohibited by Federal law, this Lease Agreement and the performance measures and standards under C.R.S. § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

8.7. Entire Understanding: This Lease Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto will not have any force or effect whatsoever, unless embodied herein.

8.8. Governing Law and Venue: This Lease Agreement will be governed and enforced in accordance with the laws, and rules and regulations issued pursuant thereto, of the State of Colorado and under applicable Federal Law. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations will not be valid, enforceable, or available in any action at law, whether by way of complaint, defense, or otherwise. Venue for any action regarding water matters under this lease agreement will be in either the District Court for Alamosa County, Colorado or Water Court in and for Water Division No. 3, as appropriate. Otherwise, for contract disputes, Federal Law applies. Venue for contract matters will be determined by the Contract Disputes Act of 1978, 41 U.S.C. §§7107-7109.

8.9. Governmental Immunity: No term or condition in this Lease 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, C.R.S. § 24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, 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, C.R.S. § 24-10-101, *et seq.* and the risk management statutes, C.R.S. § 24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Federal Government, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*

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

8.11. Litigation Reporting: Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency related to this Lease Agreement or which may affect a Party's ability to comply with the terms and conditions of this Lease Agreement, the Party who is in receipt of the served pleading will notify the other Party of such action and deliver copies of such pleadings to the other Party, as set forth in paragraph 6 of this Lease Agreement.

8.12. Modification:

8.12.1. By the Parties: Except as specifically provided in the Lease Agreement, modifications hereof will not be effective unless agreed to by the Parties in a written amendment hereto.

8.12.2. By Operation of Law: This Lease Agreement is subject to such modifications as may be required by changes in Federal law or Colorado State law, or their implementing regulations. Any such required modification will be automatically incorporated as part of the Lease Agreement on the effective date of such change, as if fully set forth herein.

8.13. Order of Precedence: The provisions of this Lease Agreement will govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Lease Agreement and its exhibits, such conflicts or inconsistencies will be resolved by reference to the documents in the following order of priority:

8.13.1. The provisions of the main body of this Lease Agreement

8.13.2. Exhibits

8.14. Third Party Enforcement: The terms and conditions of this Lease Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Lease Agreement gives or allows any claim, right, or cause of action whatsoever by any other person not included in this Lease Agreement. Any person or entity, other than the Parties, receiving services or benefits under this Lease Agreement will be deemed an incidental beneficiary only.

8.15. Waiver: A waiver of a breach of any provision of this Lease Agreement does not waive any subsequent breach of the same or different provision of this Lease 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 Lease Agreement or another remedy for a breach of

this Lease 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 Lease Agreement. Any express waiver of a term of this Lease Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement effective as of the Effective Date.

AGENCY,

By: DAVID THOMAS

Digitally signed by DAVID THOMAS  
Date: 2022.04.05 12:02:57 -06'00

David Thomas, Contracting Officer

Date: April 5, 2022

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

By: Cleaveland Pacheco for

Cleaveland Pacheco, General Manager Rio Grande Water Conservation District

Date: 4/5/2022

## LEASE AGREEMENT

### FOR USE OF EXCESS CREDITS UNDER 2002CW38A

This Lease Agreement for Use of Excess Credits derived from the portion of the Lovato Ditch change of water rights as decreed in Case No. 2002CW38A, District Court, Water Division No. 3 (“Excess Credits”) is entered into this 21<sup>st</sup> day of March, 2023 (“Effective Date”), by and between the United States Department of Interior, Bureau of Land Management (“AGENCY”) and the Water Activity Enterprise of Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise (“Subdistrict No. 6”) (collectively, the “Parties”).

### RECITALS

- A. This AGENCY is the Bureau of Land Management, an agency within the United States Department of the Interior. The AGENCY owns and operates groundwater rights that are used to carry out land and water management functions that are required under federal law, including management of habitat for wildlife species and operation of visitor facilities. The AGENCY water rights that are used to fulfill these management purposes were created and decreed pursuant to provisions of Colorado water law. As such, the AGENCY groundwater rights are subject to administrative requirements of Colorado water law. Specifically, the AGENCY water rights are subject to *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”). The Groundwater Rules require replacement of injurious stream depletions created by the operation of groundwater rights owned by the AGENCY. The purpose of this Lease Agreement is to provide all or a portion of the replacement water required under the Rules.
- B. Subdistrict No. 6 is a political subdivision of the State of Colorado, organized and existing under Article 48 of Title 37, Colorado Revised Statutes and approved by the District Court of Conejos County in Case No. 18CV30014, for among other purposes, carrying out water planning and water management functions within the San Luis Valley. Subdistrict No. 6 has the authority to contract with federal land management agencies to provide replacement water to meet the requirements of the Rules. The Subdistrict provides replacement water as part of an Annual Replacement Plan that is approved by the Colorado State Engineer.
- C. Subdistrict No. 6 seeks up to 900 acre-feet of water in order to help satisfy the requirements of its 2023-2024 Annual Replacement Plan (“Subdistrict No. 6 ARP”) for the Plan of Water Management for Subdistrict No.6 as approved by the Colorado State Engineer.

- D. AGENCY owns the water rights decreed to the United States of America, Department of Interior, Bureau of Land Management in Case No. 2002CW38A, Concerning the Application by the United States of America for Water Rights in Alamosa, Rio Grande, Conejos, Mineral and Hinsdale Counties, Colorado.
- E. Subject to the terms and conditions of this Lease Agreement and in exchange for compensation listed herein from Subdistrict No. 6, AGENCY agrees to provide Subdistrict No. 6 with the right to use up to 900 acre-feet of Excess Credits, subject to all terms and conditions in the 2002CW38A Decree, to help satisfy the requirements of Subdistrict No. 6's ARP.

### DEFINITIONS

- A. "Excess Credits" means the number of acre feet generated annually by BLM's Lovato Ditch water right that the AGENCY chooses to not divert and use on AGENCY-managed lands for the beneficial uses authorized in the decree in Case No. 2002CW38A. The availability of "Excess Credits" means that the AGENCY has elected to use the Lovato Ditch water right for alternative purposes authorized under a decree or an annual substitute water supply plan approved by the Colorado Division of Water Resources.
- B. "Remedy Costs" means the total cost to Subdistrict No. 6 for providing augmentation water to offset injurious depletions associated with the operation of AGENCY water rights specified in Appendix B to this lease, including costs associated with meeting the Subdistrict No. 6 sustainability requirements under their respective Plans of Water Management.
- C. "Remedy Credits" means the value assigned by Subdistrict No. 6, respectively, to the Excess Credits generated by the AGENCY'S Lovato Ditch water right. Remedy Credits are calculated by multiplying the yield of the Lovato Ditch water right Excess Credits by the prevailing rate for leasing surface water rights within Subdistrict No. 6.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises and agreements contained herein, and the benefits exchanged, the Parties agree as follows:

1. **Consideration:** Subject to the terms and conditions contained in this Lease Agreement, AGENCY grants to Subdistrict No. 6 the right to use up to 900 acre-feet of Excess Credits. In exchange, Subdistrict No. 6 will include well W-392, Well No. 1 (WDID 2205111) in the Subdistrict No. 6 ARP according to the terms of the Participation Contract including that well. If additional wells are added to the Participation Contract, according to its terms, such additional wells will be included under the Subdistrict in this subparagraph by implication. Subdistrict No. 6 will also take such actions as may be

necessary to assure compliance with the sustainability requirements of the individual Subdistrict's Plan of Water Management and ARP. No further payment, monetary or otherwise, is required by either Party. The Parties acknowledge that the mutual promises contained herein and other good and valuable consideration are sufficient and adequate to support this Lease Agreement.

- 1.1. Every acre-foot generated under this Agreement and provided for use by Subdistrict No. 6 will result in the generation of the equivalent of Eighty dollars (\$80.00) in Remedy Credits for the AGENCY.
- 1.2. At the time, through a separate written agreement, AGENCY's well or wells are included in a Subdistrict No. 6 ARP, Subdistrict No. 6 will calculate the Fees incurred by groundwater withdrawals by such well or wells in the same manner as all other Subdistrict Wells included in that same ARP, as stated in Subdistrict No. 6's Plan for Water Management and associated Rules and Regulations.
- 1.3. Except as provided in Paragraph 1.7, below, Subdistrict No. 6 will consider the Fees incurred by AGENCY as determined in paragraph 1.1, above, as Remedy Costs to the AGENCY and will not demand monetary payment for such Fees from AGENCY.
- 1.4. At the same time Subdistrict No. 6 calculates Fees for other Subdistrict Wells, Subdistrict No. 6 will deduct Remedy Costs from Remedy Credits. AGENCY agrees if operation of its Well or Wells exceed Remedy Credits in any ARP Year for which the AGENCY has a valid and operating participation contract, AGENCY will be liable for payment of fees above the amount of Excess Credits to Subdistrict No. 6.
- 1.5. AGENCY may carry over any Remedy Credits attributable to Subdistrict No. 6 from year to year, including after the Term of this Agreement has expired, and Subdistrict No. 6 will continue to deduct Remedy Costs from Remedy Credits at AGENCY's direction, until all such credits are extinguished. AGENCY may, in its sole discretion and with the approval of the Rio Grande Water Conservation District Water Activity Enterprise, which consent will not unreasonably be denied, transfer unused Remedy Credits for use to offset groundwater withdrawals from wells located in other Response Areas. Such credit will be based on the acre-feet of Remedy Credit and applied through other Subdistrict(s) ARP(s). When such Remedy Credits are extinguished, AGENCY's well or wells will no longer be part of Subdistrict No. 6's ARP and AGENCY must comply with the Groundwater Rules in some manner outside of this Agreement.
- 1.6. AGENCY may transfer Remedy Credits to any other governmental agency, entity or person in its sole discretion. However, AGENCY must provide written notice

of such transfer of Remedy Credits at least 90 days prior to the start of the appropriate Subdistrict's ARP year. Upon proper notice, the appropriate Subdistrict will treat the transferred Remedy Credits in the same manner as AGENCY's Remedy Credits herein.

2. **Term of Lease Agreement:** This Lease Agreement is for a one-year term commencing on May 1, 2023 and ending April 30, 2024. This Lease Agreement is for a single term only and is not renewable. If Subdistrict No. 6 chooses to place the leased water into storage, the up to 900 acre-feet need not be used by Subdistrict No. 6 prior to the expiration of the term of this Lease Agreement and any such unused water will remain under the control of Subdistrict No. 6 after expiration of this Lease Agreement.
3. **Agreement to Lease up to 900 Acre-feet of Excess Credits to Subdistrict No. 6:** Subject to the terms and conditions in this Lease Agreement, AGENCY agrees to provide 900 acre-feet of Excess Credits for Subdistrict No. 6's use. Further details regarding this provision are outlined in the following subsections.
  - 4.1. After this 900 acre-feet is under the control of Subdistrict No. 6 pursuant to this contract, AGENCY retains the right to use or dispose of any additional Excess Credits generated.
  - 4.2. **Use of Leased Excess Credits:**
    - 4.2.1 **Preservation of AGENCY's 2002CW38A Water Rights:** Subdistrict No. 6 will use the leased water to satisfy a portion of its annual obligation to remedy injurious depletions caused by groundwater withdrawals of wells included in the 2023-2024 ARP, or subsequent years pursuant to paragraph 1, above. Because AGENCY's Excess Credits are decreed for irrigation, augmentation, recreation, fisheries, wildlife, and wildlife habitat uses, including the replacement of evaporative losses associated with these uses, Subdistrict No. 6 may apply for and obtain an administrative change of the up to 900 acre-feet of Excess Credits leased herein through the filing of a Substitute Water Supply Plan. Subdistrict No. 6 will not otherwise take any action that causes or could potentially cause a reopening of the 2002CW38A Decree, including, but not limited to applying for a judicial change of the up to 900 acre-feet of Excess Credits leased herein. The 2002CW38A decree is that decree entered on November 24, 2014 in Case No. 2002CW38A in the District Court, Water Division No. 3 and attached hereto as **Exhibit A**. Subdistrict No. 6's use of AGENCY's Excess Credits is not intended to, and does not, transfer any legal or equitable title or interest to any part of the Water Rights decreed in Case No. 2002CW38A to Subdistrict No. 6 other than the up to

900 acre-feet leased herein. Furthermore, the Parties understand and agree that by permitting Subdistrict No. 6 to use the 900 acre-feet of Excess Credits leased herein, AGENCY does not intend to abandon, and does not abandon, relinquish, or forfeit any portion of the Water Rights decreed in Case No. 2002CW38A.

4.2.2 Assessment of Evaporation, Seepage, and Transit Losses: Beginning on the Effective Date, Subdistrict No. 6 will bear all seepage, evaporation, and transit losses on the up to 900 acre-feet of Excess Credits leased to Subdistrict No. 6 herein and will be responsible for all storage charges assessed to the up to 900 acre-feet of Excess Credits after the Effective Date.

4. No Effect on Previous Agreement: The Parties acknowledge that AGENCY entered into a lease agreement with Special Improvement District No. 3 of the Rio Grande Water Conservation District in 2019 to lease credits from this water right for the 2022/2023 ARP Year. The Parties further acknowledge that any Remedy Credits accrued under that 2022 agreement are not subject to this Agreement, but remain in place and subject to the 2022 Agreement.

5. Modification and Termination:

5.1. This Lease may be modified only by a written instrument executed by both parties.

5.2. Any party may terminate this Agreement by providing the other party with thirty (30) days advance written notice.

5.2.1 In the event AGENCY terminates the performance of this Lease Agreement, Subdistrict No. 6's sole and exclusive remedy will be specific performance until April 30, 2023.

5.2.2 In the event Subdistrict No. 6 terminates the agreement, AGENCY's sole and exclusive remedy will be the use of the Excess Credits not yet put to beneficial use by Subdistrict No. 6 under the terms of this Lease.

6. Subdistrict No. 6's Representations: This Lease Agreement has been duly authorized and executed by Subdistrict No. 6, respectively, is the legal, valid and binding obligation of Subdistrict No. 6, respectively, and is enforceable against Subdistrict No. 6, respectively, according to its terms. No other consent is required for the execution, delivery, or performance of this Lease Agreement by Subdistrict No. 6.

7. Notices and Representatives: Each individual identified below is a representative of the designating Party. All notices required by this Lease Agreement will be hand-delivered



with receipt required or sent by certified or registered mail to such Party's representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices will be sent. Unless otherwise provided herein, all notices are effective upon receipt.

- 7.1. AGENCY Representatives and Contact Addresses: David Thomas, Contracting Officer, is authorized to sign the lease agreement and participation contract. Mr. Thomas can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3637; and by email at dethomas@blm.gov. Roy Smith, Water Rights Specialist, is authorized to manage the day-to-day administration of the lease and participation contract. Mr. Smith can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3940; and by email at r20smith@blm.gov.
- 7.2. Subdistrict No. 6 Representative and Contact Addresses: Program Manager Angelo Bellah is the representative for Subdistrict No. 6 for purposes of this Lease Agreement. Mr. Bellah can be reached by physical mail at: Subdistrict No. 6, 8805 Independence Way, Alamosa, Colorado 81101; by telephone at: (719) 589-6301; and by e-mail at: angelo@rgwcd.org.

## 8. General Provisions

- 8.1. Assignment: No Party has the right to transfer or sub-lease its rights or obligations under this Lease Agreement without the advanced written consent of the other Party.
- 8.2. Binding Agreement: This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- 8.3. Binding Arbitration Prohibited: Neither AGENCY nor Subdistrict No. 6 agree to binding arbitration by any extra-judicial body or person. Any provision incorporated herein by reference is null and void.
- 8.4. 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.
- 8.5. Compliance with Applicable Laws: At all times during the performance of this Lease Agreement, Subdistrict No. 6, will adhere to all applicable Federal and State laws, rules, and regulations then in effect. In addition:
  - 8.5.1. The signatories to this Lease Agreement affirm that they are familiar with C.R.S. § 18-8-301, *et seq.* (Bribery and Corrupt Influences) and C.R.S. §

18-8-401, *et seq.* (Abuse of Public Office), and that no violation of such provisions has occurred in connection with the negotiation and signing of this Lease Agreement; and

8.5.2. The signatories to this Lease Agreement affirm that to the best of their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

8.6. CORA Disclosure: To the extent not prohibited by Federal law, this Lease Agreement and the performance measures and standards under C.R.S. § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

8.7. Entire Understanding: This Lease Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto will not have any force or effect whatsoever, unless embodied herein.

8.8. Governing Law and Venue: This Lease Agreement will be governed and enforced in accordance with the laws, and rules and regulations issued pursuant thereto, of the State of Colorado and under applicable Federal Law. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations will not be valid, enforceable, or available in any action at law, whether by way of complaint, defense, or otherwise. Venue for any action regarding water matters under this lease agreement will be in either the District Court for Alamosa County, Colorado or Water Court in and for Water Division No. 3, as appropriate. Otherwise, for contract disputes, Federal Law applies. Venue for contract matters will be determined by the Contract Disputes Act of 1978, 41 U.S.C. §§7107-7109.

8.9. Governmental Immunity: No term or condition in this Lease 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, C.R.S. § 24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, 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, C.R.S. § 24-10-101, *et seq.* and the risk management statutes, C.R.S. § 24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Federal Government, its departments, institutions, agencies, boards, officials, and employees is controlled and

limited by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*

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

8.11. Litigation Reporting: Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency related to this Lease Agreement or which may affect a Party's ability to comply with the terms and conditions of this Lease Agreement, the Party who is in receipt of the served pleading will notify the other Party of such action and deliver copies of such pleadings to the other Party, as set forth in paragraph 6 of this Lease Agreement.

8.12. Modification:

8.12.1. By the Parties: Except as specifically provided in the Lease Agreement, modifications hereof will not be effective unless agreed to by the Parties in a written amendment hereto.

8.12.2. By Operation of Law: This Lease Agreement is subject to such modifications as may be required by changes in Federal law or Colorado State law, or their implementing regulations. Any such required modification will be automatically incorporated as part of the Lease Agreement on the effective date of such change, as if fully set forth herein.

8.13. Order of Precedence: The provisions of this Lease Agreement will govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Lease Agreement and its exhibits, such conflicts or inconsistencies will be resolved by reference to the documents in the following order of priority:

8.13.1. The provisions of the main body of this Lease Agreement

8.13.2. Exhibits

8.14. Third Party Enforcement: The terms and conditions of this Lease Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Lease Agreement gives or allows any claim, right, or cause of action whatsoever by any other person not included in this Lease Agreement. Any person or entity, other than the Parties, receiving services or benefits under this Lease Agreement will be deemed an incidental beneficiary only.

8.15. Waiver: A waiver of a breach of any provision of this Lease Agreement does not waive any subsequent breach of the same or different provision of this Lease 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 Lease Agreement or another remedy for a breach of this Lease 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 Lease Agreement. Any express waiver of a term of this Lease Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement effective as of the Effective Date.

**AGENCY,**

By: DAVID THOMAS Digitally signed by DAVID THOMAS  
Date: 2023.03.23 15:38:49 -06'00'

**David Thomas, Contracting Officer**

Date: 3-23-2023

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

By: 

**Angelo Bellah, Program Manager  
Subdistrict No. 6, Rio Grande Water Conservation District**

Date: 3/27/23



# United States Department of the Interior



IN REPLY REFER TO:  
FWS/R6/

FISH AND WILDLIFE SERVICE  
Mountain-Prairie Region  
San Luis Valley National Wildlife Refuge Complex  
Alamosa, CO 81101

April 5, 2024

Angelo Bellah  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Leased BLM Treasure Ditch Transmountain Water to Subdistrict No. 6 for Use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Mr. Bellah,

The U.S. Fish and Wildlife Service (USFWS) and the Bureau of Land Management (BLM) have negotiated terms and conditions to lease a portion of BLM's annual yield (250 acre-feet) of its Treasure Pass Diversion Ditch transmountain water rights to the USFWS. BLM has stored a portion of Treasure Pass Diversion Ditch water in Beaver Park Reservoir provided by Colorado Parks and Wildlife. Under the agreement between USFWS and the BLM, 250 acre-feet will be transferred to the USFWS to cover USFWS injury from pumping in the Subdistrict's 2021 Annual Replacement Plan.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS but may also be used to cover injurious depletions of all Subdistrict Wells as needed. In the latter instance, the Subdistrict must provide another source of replacement water in an amount sufficient to remedy all injurious depletions resulting from the withdrawal of groundwater by USFWS wells that are included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility for storage of the specified quantity of water following this transfer. This lease between USFWS and BLM will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict should contact BLM staff to administer the transfer of 250 acre-feet of Treasure Pass Diversion Ditch transmountain water to the appropriate Subdistrict account.

Please contact John Hughes ([john\\_hughes@fws.gov](mailto:john_hughes@fws.gov)) or Chris Shaffer ([christopher\\_shaffer@fws.gov](mailto:christopher_shaffer@fws.gov)) with any questions and to administer the transfer of water to the appropriate Subdistrict account.

Best Regards,

A handwritten signature in black ink that reads "John Hughes". The signature is written in a cursive style with a large initial "J" and "H".

John Hughes  
Acting Project Leader  
San Luis Valley National Wildlife Refuge Complex



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT



Colorado State Office  
Denver Federal Center, Building 40  
Lakewood, Colorado 80225  
[www.blm.gov/colorado](http://www.blm.gov/colorado)

In Reply Refer To:  
CO-932 (7250)

In Reply Refer To:  
7250 (CO-923)

Amber Pacheco  
Subdistrict Program Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101

Re: BLM Agreement to Provide Treasure Pass Diversion Ditch Transmountain Water to USFWS for Augmentation Use for Subdistrict 6

Dear Ms. Pacheco,

BLM has Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (USFWS) that allows USFWS to use a portion of the annual yield of BLM's Treasure Pass Diversion Ditch water rights for augmentation purposes. The Treasure Pass Diversion Ditch transmountain water rights are decreed in Civil Action 73 and 308, District Court in and For Archuleta County, Colorado. The water right is decreed for 7.0 cfs and carries an appropriation date of August 1, 1922. The Treasure Pass Diversion Ditch transmountain water rights originate in Water Division 7 and are used in Water Division 3. In addition to the senior water right, BLM also uses the ditch to divert water from Water Division 7 under "free river" conditions. It is BLM's intent to provide "free river" diversions to USFWS under the MOU.

BLM has stored a portion of its Treasure Pass Diversion Ditch diversions in storage space at Beaver Park Reservoir provided by Colorado Parks and Wildlife. Under the MOU, BLM will provide 250 acre-feet of Treasure Pass Diversion Ditch transmountain water rights to the USFWS for the period beginning May 1, 2024 and ending April 30, 2025. It is BLM's understanding that the USFWS will relinquish this same amount to Subdistrict 6 for successive use as replacement water to remedy all injurious depletions caused by USFWS groundwater withdrawals during the 2024 Annual Replacement Plan pursuant to the Plan for Water Management of Subdistrict No.6.

BLM will maintain operational control of and responsibility of storage of the specified quantity of Treasure Pass Diversion Ditch transmountain water until Subdistrict 6 requests release of the water for augmentation purposes. The water provided to USFWS under the MOU will not be considered a transfer or sale of a right in the underlying decree.

Please contact Taylor Applewhite (719) 480-3123 and Tony Aloia (719) 850-6371 (tony.aloia@state.co.us) to administer the transfer of 250 acre-feet of Treasure Pass Diversion Ditch transmountain water to the appropriate Subdistrict account.

Sincerely,

Roy E Smith  
Water Rights Specialist

Cc: Tony Aloia (CPW Area 17 Water Technician), Chris Shaffer (USFWS Hydrologist), Taylor Appliwhite, San Luis Valley Field Office



## WATER LEASE AGREEMENT

This WATER LEASE AGREEMENT ("Agreement") is entered into this 25<sup>th</sup> 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 1<sup>st</sup> Avenue  
Monte Vista, CO 81144  
Email: [gdennis@ci.monte-vista.co.us](mailto: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](mailto: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

## WATER LEASE AGREEMENT

This WATER LEASE AGREEMENT ("Agreement") is entered into this 14 day of March, 2023, 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 282 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 260 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, 2023, through March 30, 2024 ("Lease Term").
2. Quantity and Source of Leased Water. Subject to the terms herein, City will lease to District all 260 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 2023 Substitute Water Supply Plan (SWSP) request to the Colorado Division of Water Resources (DWR) in early March 2023, 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 \$32,500.00 shall be made within 30 days of the full execution of this Agreement. The second payment of \$32,500.00 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 130 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 130 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 130 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 2023 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 1<sup>st</sup> Avenue  
Monte Vista, CO 81144  
Email: [gdennis@ci.monte-vista.co.us](mailto: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](mailto: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 3/14/2023  
Gigi Dennis, City Manager Date

**RIO GRANDE WATER CONSERVATION  
DISTRICT**

Amber Pacheco 3/14/2023  
Amber Pacheco, Deputy General Manager Date



May 24, 2023

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, 2023 through April 30, 2024**

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

Dear Mr. Dimick:

We have reviewed your letter dated March 15, 2023 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 § 37-92-308(4), C.R.S. Notice was provided to the opposers in Case No. 16CW3024 on March 15, 2023. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 10027896) has been received. This is the third year of approval of this SWSP.

#### **SWSP OPERATION**

The City is the owner of a number of municipal wells and will offset its injurious stream depletions for these Confined Aquifer Wells through its contract with Subdistrict No. 6. For the purpose of this SWSP application, 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 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 260 acre-feet of fully consumable Anderson Ditch water previously stored in Rio Grande Reservoir 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.

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



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

Structure	Case Number	Diligence Decrees	Original Decree Date	Appropriation Date	Amount
<b><i>Confined Aquifer Wells</i></b>					
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 <sup>1</sup> (Prospect Well)	88CW13	N/A	4/24/1989	09/30/1950; 04/30/1957; 09/23/1968	& 4.46 cfs absolute
<b>Subtotal (absolute)</b>					14.25 cfs
<b><i>Unconfined Aquifer Wells</i></b>					
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
<b>Subtotal (absolute)</b>					5.993 cfs
<b>Total (absolute)</b>					<b>20.234 cfs</b>

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 City has entered into a contract with Subdistrict No. 2 (attached) to replace all depletions associated with the use of the Unconfined wells. 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 SWSPs from 2021 and 2022, 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 270.7 acre-feet of fully consumable water in the Rio Grande Reservoir under those SWSPs. Under this SWSP, the City proposes to make available 260 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 the 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 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.

## 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 during the SWSP approval period. 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 the 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-pumping depletions resulting from unconfined well pumping in 2023.

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

This SWSP is hereby approved pursuant to §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, 2023 through April 30, 2024 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 § 37-92-308(4)(b), C.R.S., shall apply. Any request for an additional SWSP is subject to the provisions of §37-92-308(4), 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 **February 1, 2024**.
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-pumping depletions resulting from unconfined well pumping in 2022. 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 260 acre-feet of 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 for 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 water 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 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 §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 260 acre-feet of 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 post-pumping depletions resulting from unconfined well pumping in 2023, 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 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](mailto: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. 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.
16. 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(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,



Jeff Deatherage, P.E.  
Water Supply Chief

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

ec: Craig Cotten, Division 3 Engineer  
Sam Riggenbach, 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 (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)	Restoration of 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)	
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	11.38	17.06	13.53	30.60	2.35	6.8%
May	141.35	106.02	37.90	4.16	33.75	32.86	0.33	7.93	24.92	0.25	28.53	42.79	13.30	56.09	40.14	37.9%
June	159.24	119.43	58.83	3.40	55.43	52.60	0.55	12.70	39.90	0.41	26.71	40.07	13.06	53.13	53.55	44.8%
July	153.25	114.94	57.69	9.23	48.46	46.01	0.48	11.11	34.90	0.35	27.25	40.88	12.88	53.76	49.27	43.9%
August	128.39	93.30	51.74	9.74	42.00	38.74	0.40	9.35	29.39	0.30	23.02	34.54	12.84	47.38	39.57	42.4%
September	105.33	79.00	32.30	5.67	26.63	24.61	0.26	5.94	18.67	0.19	21.63	32.44	12.94	45.38	27.36	34.6%
October	86.54	64.91	13.39	1.95	11.44	10.64	0.11	2.57	8.07	0.08	21.25	31.87	13.12	44.99	16.21	25.0%
November	-	-	-	-	-	-	-	-	-	-	-	-	13.33	13.33	(13.33)	-
December	-	-	-	-	-	-	-	-	-	-	-	-	13.55	13.55	(13.55)	-
Annual	816.03	612.02	258.97	34.99	223.99	211.40	2.19	51.03	160.37	1.63	159.77	239.65	159.77	399.42	160.37	39.3%

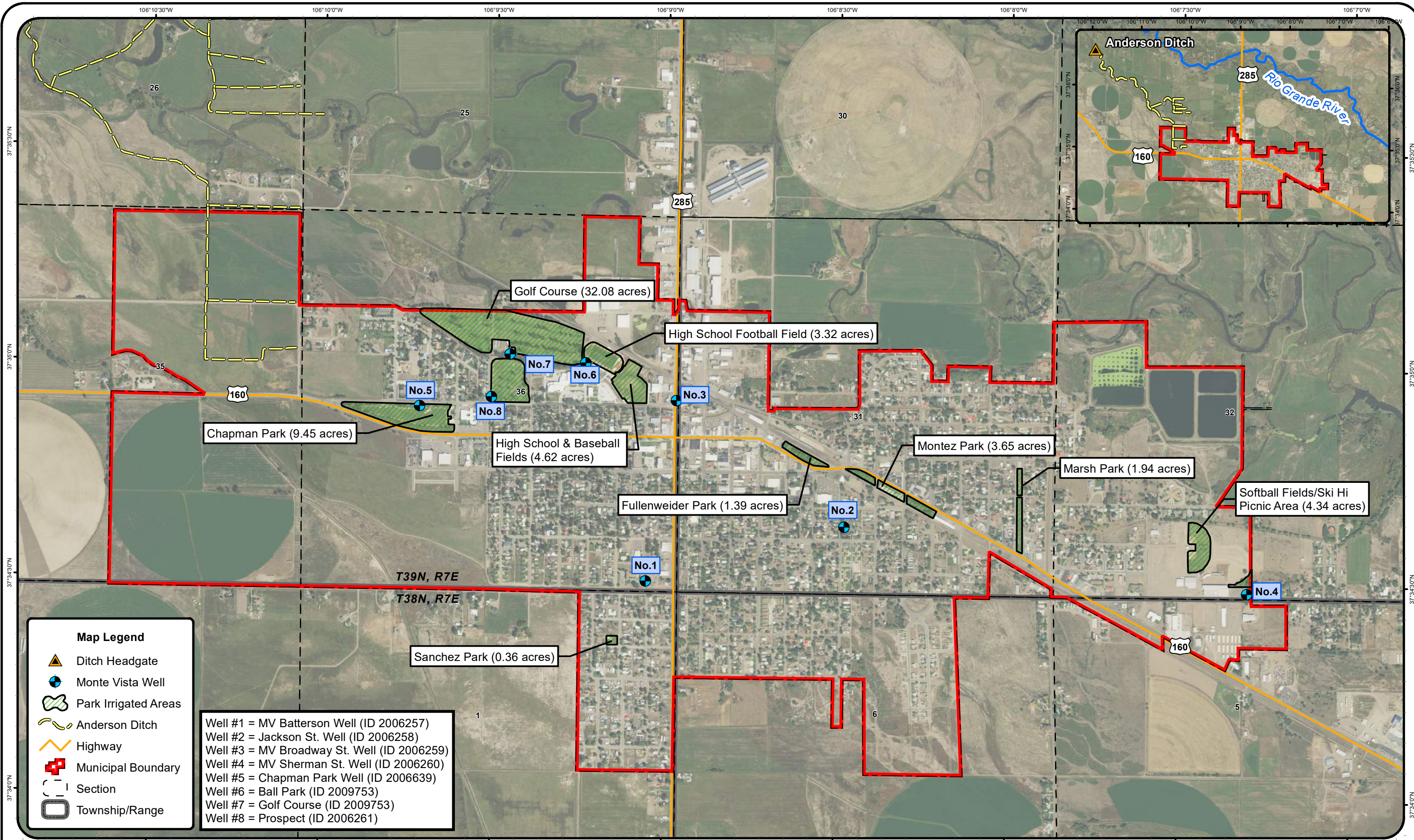
Source: Values generated using a Water Supply Limited Crop Consumptive Use by Structure Analysis in StateCU (Interface Version 7.0, FORTRAN Version 13.0)

**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 (CO-409)). 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.



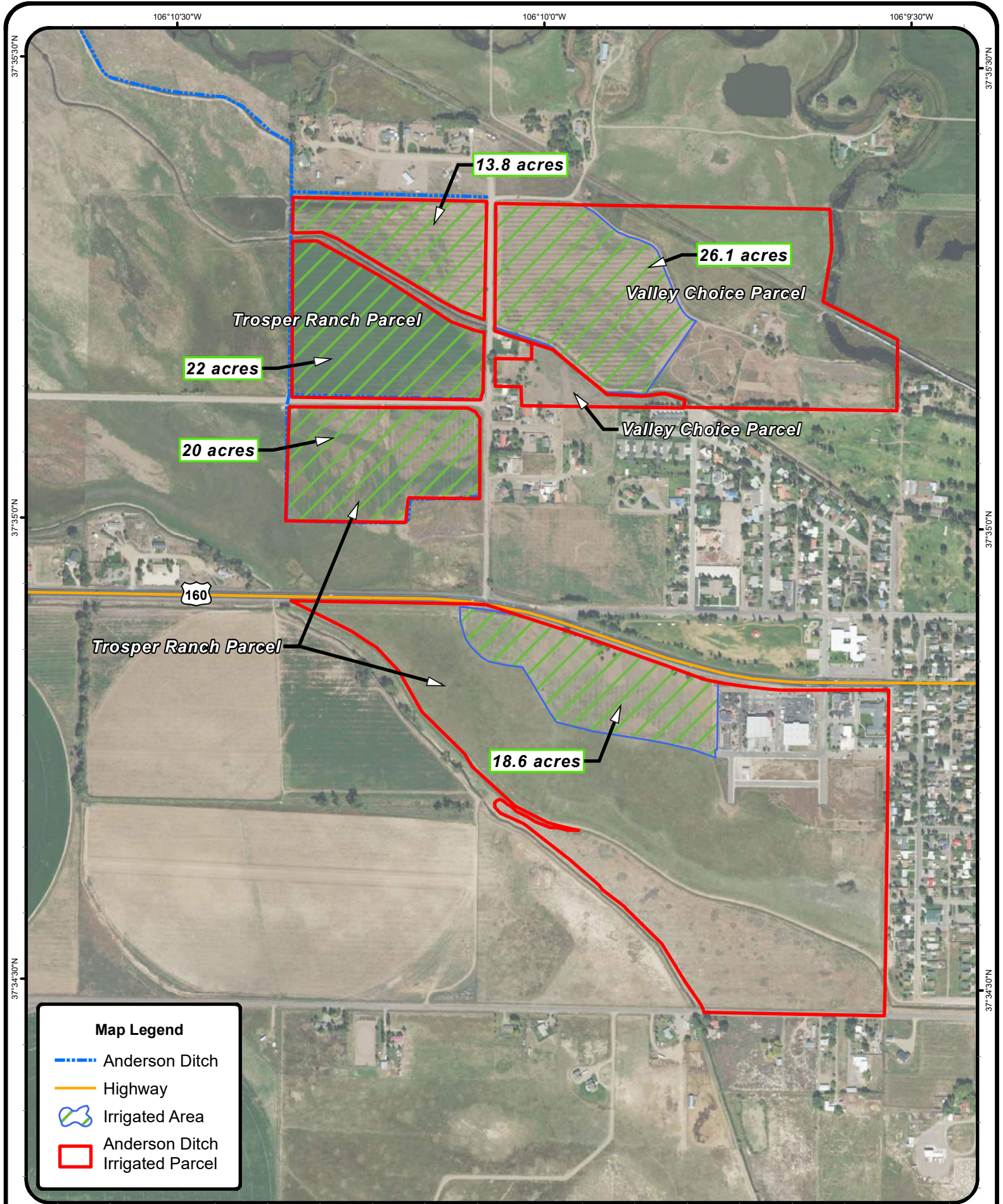




Well #1 = MV Batterson Well (ID 2006257)  
 Well #2 = Jackson St. Well (ID 2006258)  
 Well #3 = MV Broadway St. Well (ID 2006259)  
 Well #4 = MV Sherman St. Well (ID 2006260)  
 Well #5 = Chapman Park Well (ID 2006639)  
 Well #6 = Ball Park (ID 2009753)  
 Well #7 = Golf Course (ID 2009753)  
 Well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

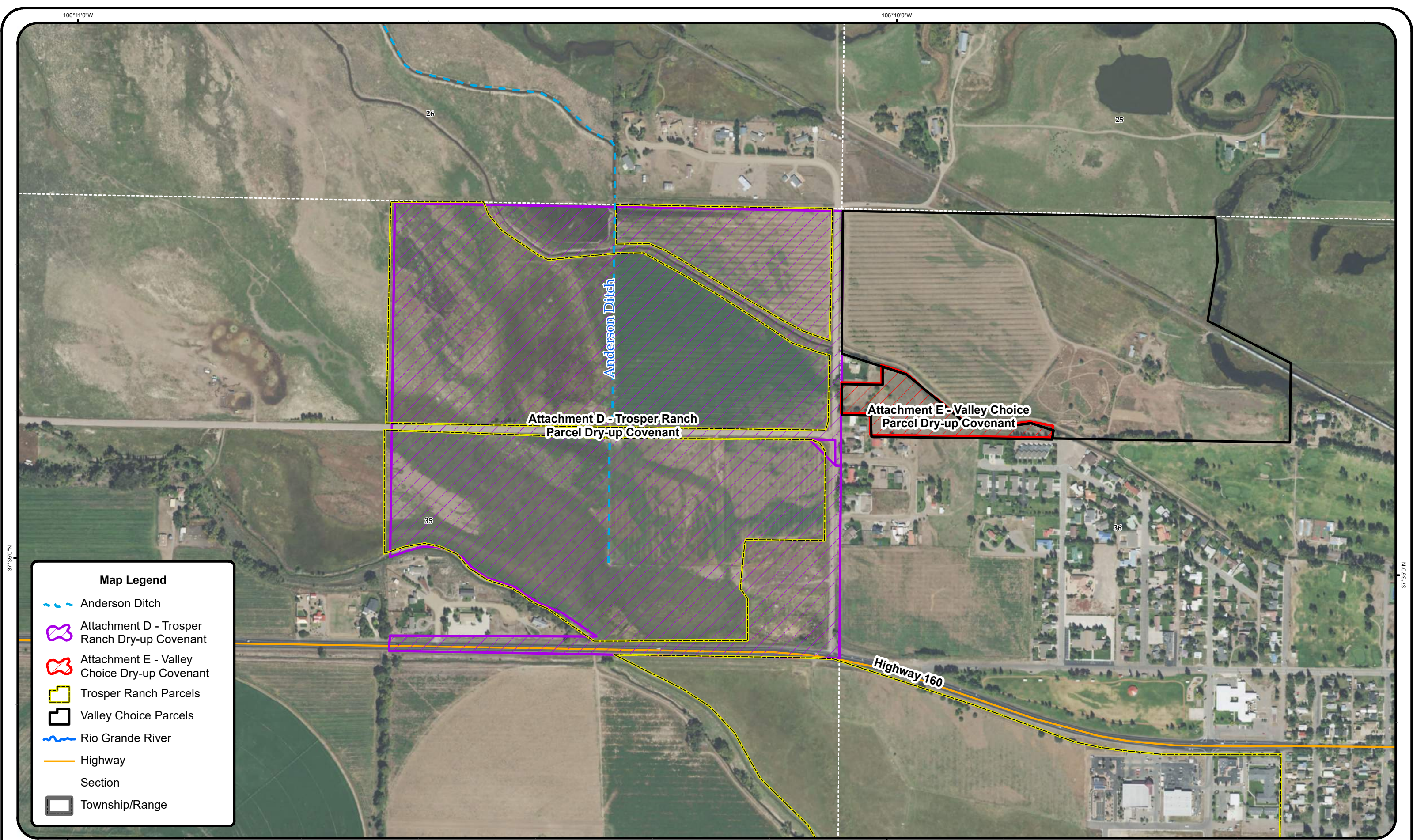






**Figure 4**  
**Anderson Ditch**  
**September 25, 2017**  
 City of Monte Vista





**Map Legend**










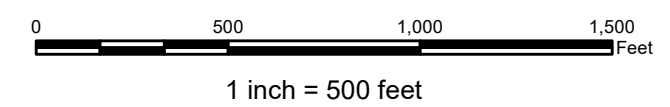
-  Anderson Ditch
-  Attachment D - Trospers Ranch Dry-up Covenant
-  Attachment E - Valley Choice Dry-up Covenant
-  Trospers Ranch Parcels
-  Valley Choice Parcels
-  Rio Grande River
-  Highway
-  Section
-  Township/Range

Figure 6  
**Monte Vista Dry-Up Convenants**  
 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\ArcMap\2021\Fig6.Dry-Up.mxd				
The information displayed above is intended for general planning purposes. Refer to legal documentation/data sources for descriptions/locations.				





# 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")

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

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

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

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

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

- 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

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

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 1<sup>st</sup> Avenue  
Monte Vista, CO 81144

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

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',

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

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 8<sup>th</sup> 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 31<sup>st</sup> 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 1<sup>st</sup> 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 8<sup>th</sup> 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: 4/20/2012

*Amy S. Mann*  
Notary

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) SS

The foregoing instrument was subscribed and sworn before me this 9<sup>th</sup> 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



# Attachment E - Trospen Ranch Parcel Dry-up Covenant

201000 0057 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 E - Trospen Ranch Parcel Dry-up Covenant

Instrument      Book Page  
201000410057 DR      551 1021

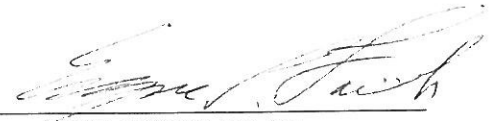
STATE OF COLORADO    )  
  ) ss.  
COUNTY OF RIO GRANDE)

Subscribed under oath before me this ~~27th~~<sup>out</sup> day of ~~June~~<sup>out</sup>, 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 E - Trospen 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

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

THIS COVENANT, is made and entered into this 20<sup>th</sup> 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: [Signature]  
Operating Manager

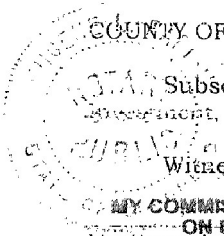
Attest:

[Signature]  
Secretary

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

Subscribed and sworn before me this 20<sup>th</sup> day of April, 2012, by Lancaster Investment, LLC, by Dan Burrows as Operating Manager

Witness my hand and official seal.



MY COMMISSION EXPIRES  
ON 8/25/2012  
My Commission Expires

[Signature]  
Notary Public



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](mailto: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
<b>Confined Aquifer Wells</b>					
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 <sup>1</sup> (Prospect Well)	88CW13	N/A	4/24/1989	09/30/1950; 04/30/1957; 09/23/1968 &	4.46 cfs absolute
<b>Subtotal (absolute)</b>					14.25 cfs
<b>Unconfined Aquifer Wells</b>					
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
<b>Subtotal (absolute)</b>					5.993 cfs
<b>Total (absolute)</b>					<b>20.234 cfs</b>

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 <sup>(1)</sup>	5/1/1896 (W2967)	May 1, 1896	June 15, 1874	2.90	0.00%	0.00
	90 <sup>(1)</sup>	5/1/1896 (W2967)	May 1, 1896	June 31, 1875	11.33	24.38%	2.76
	143 <sup>(1)</sup>	5/1/1896 (W2967)	May 1, 1896	June 31, 1877	1.92	24.38%	0.47
	<b>Total</b>					<b>16.15</b>	<b>20.00%</b>

Notes:

<sup>(1)</sup> 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](mailto: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

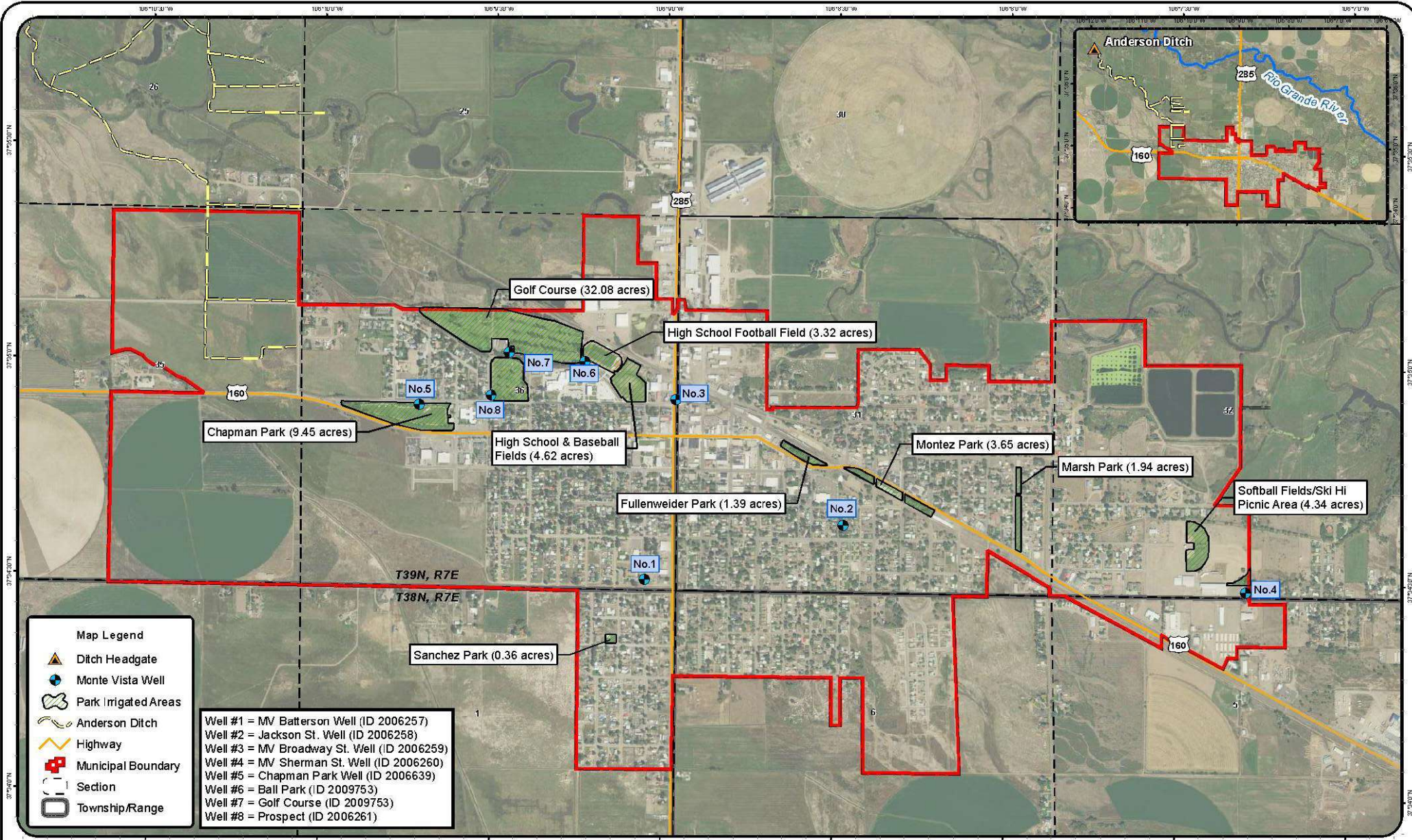
**Table 6. Anderson Ditch Consumptive Use Analysis and Resulting Water Balance (values in AF)**

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)		
<b>Annual</b>	<b>816.03</b>	<b>612.02</b>	<b>258.97</b>	<b>34.59</b>	<b>223.99</b>	<b>211.40</b>	<b>2.19</b>	<b>51.03</b>	<b>160.37</b>	<b>1.63</b>	<b>399.42</b>	<b>239.65</b>	<b>159.77</b>	<b>159.77</b>	<b>399.42</b>	<b>160.37</b>		

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

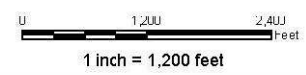
- Column Notes:**
- 1) Pro-rata delivery of 3.23 cfs of Priority No. 90 and 143 in the Anderson Ditch used on the Trospser Ranch and Valley Choice Parcel for the period 1968-2010. Beginning in 2011, the pro-rata portion (63.3% or 1.73/2.73 cfs) was used for the Trospser Ranch Parcel and 1.5 cfs was used 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.





**Figure 1**  
**Water Supply Map**  
 City of Monte Vista

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.





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

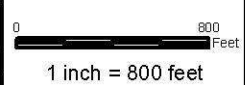
160

**Map Legend**

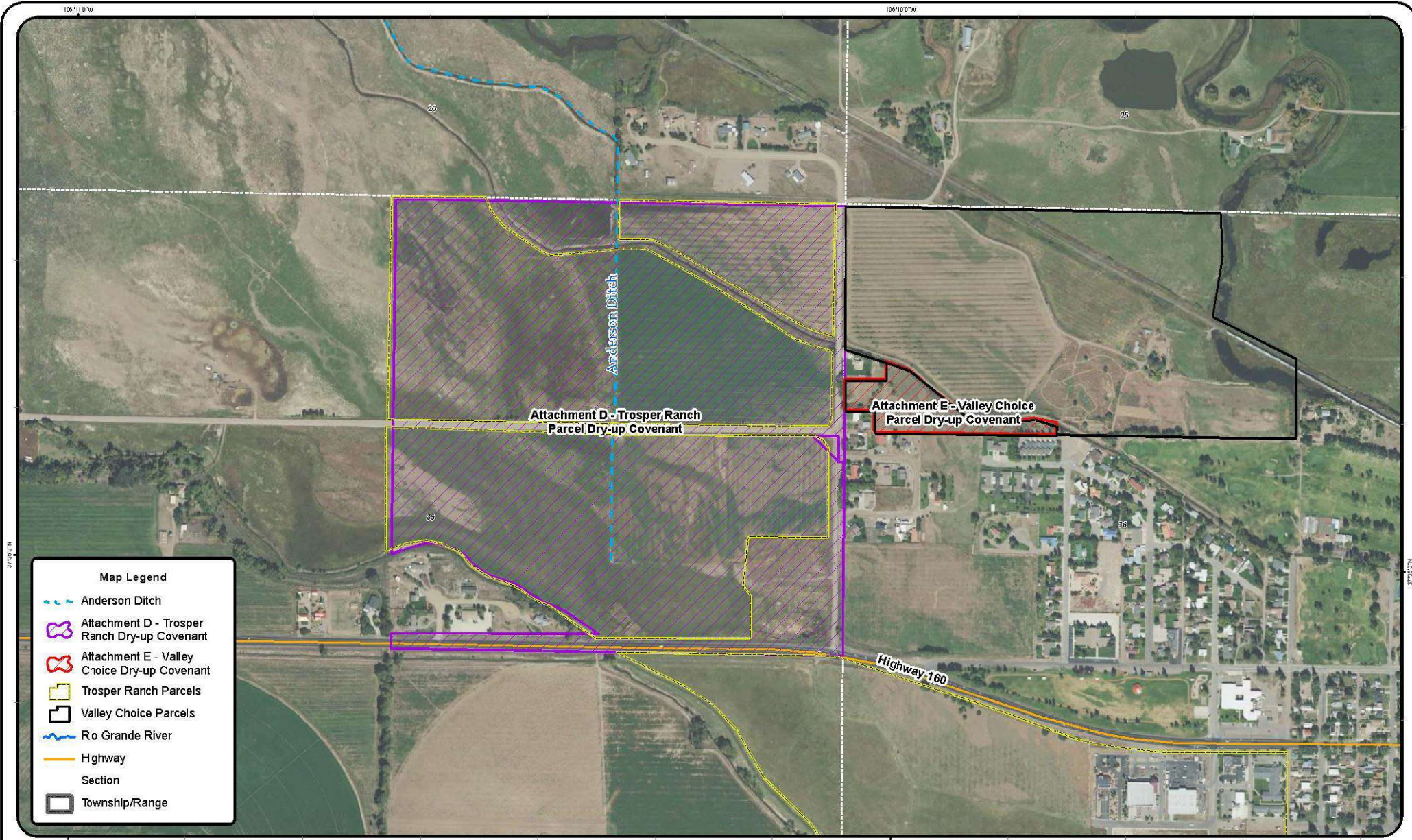
-  Anderson Ditch
-  Highway
-  Irrigated Area
-  Anderson Ditch Irrigated Parcel

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

Date: 1/28/2021	Job No. 136 U9 U6	Map by: ANW	NUJ	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 for descriptions/locations.				





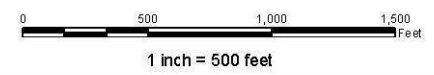


**Map Legend**

-  Anderson Ditch
-  Attachment D - Trospen Ranch Dry-up Covenant
-  Attachment E - Valley Choice Dry-up Covenant
-  Trospen 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 documentation of 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 4<sup>th</sup> 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

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

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

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

- 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:

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

- 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



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

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 1<sup>st</sup> 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

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

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

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

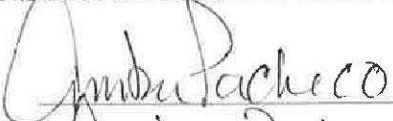
the others and is not severable unless by mutual consent of the Parties.


- 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:   
Name: Amber Pacheco  
Title: Program Manager


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

**ATTEST:**

Name:

Title:

**ATTEST:**

  
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")

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

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



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

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

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

- 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



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

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 1<sup>st</sup> Avenue  
Monte Vista, CO 81144

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

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',

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

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 8<sup>th</sup> 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 31<sup>st</sup> 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 1<sup>st</sup> 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.

[The rest of this page intentionally blank.]

# 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 8<sup>th</sup> 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

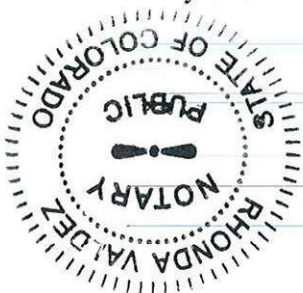
STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) SS

The foregoing instrument was subscribed and sworn before me this 9<sup>th</sup> 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 <sup>25<sup>th</sup></sup> 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 1<sup>st</sup> Avenue  
Monte Vista, CO 81144  
Email: [gdennis@ci.monte-vista.co.us](mailto: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](mailto: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

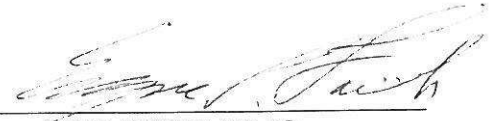
STATE OF COLORADO    )  
  ) ss.  
COUNTY OF RIO GRANDE)

Subscribed under oath before me this <sup>oct</sup> ~~June~~ 29<sup>th</sup> day of ~~June~~, 2010, by Sun Peaks Land Company, LLC by Don Toews, President, as Grantor.

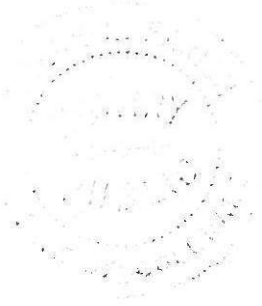
Witness my hand and official seal.

**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 20<sup>th</sup> 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 20<sup>th</sup> 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 J. 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.





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February 1, 2024

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1313 Sherman Street, Room 821  
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**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
<b>Confined Aquifer Wells</b>					
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 <sup>1</sup> (Prospect Well)	88CW13	N/A	4/24/1989	09/30/1950; 04/30/1957; 09/23/1968	& 4.46 cfs absolute
<b>Subtotal (absolute)</b>					14.25 cfs
<b>Unconfined Aquifer Wells</b>					
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
<b>Subtotal (absolute)</b>					5.993 cfs
<b>Total (absolute)</b>					<b>20.234 cfs</b>

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 <sup>(1)</sup>	5/1/1896 (W2967)	May 1, 1896	June 15, 1874	2.90	0.00%	0.00
	90 <sup>(1)</sup>	5/1/1896 (W2967)	May 1, 1896	June 31, 1875	11.33	24.38%	2.76
	143 <sup>(1)</sup>	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:

<sup>(1)</sup> 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)*

<b>Year</b>	<b>Well No. 5 Diversions (AF)</b>	<b>Well No. 5 Consumptive Use<sup>(1)</sup> (AF)</b>
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
<b>Avg</b>	<b>25.4</b>	<b>20.3</b>

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
<b>Total</b>		<b>2.11</b>	<b>100%</b>	<b>25.41</b>	<b>25.41</b>	<b>5.08</b>	<b>5.08</b>	<b>20.33</b>

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	53.55	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	19.2%

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
<b>Total</b>		<b>20.33</b>	<b>68.09</b>	<b>88.42</b>	<b>228.46</b>	<b>11.86</b>	<b>216.60</b>	<b>90.07</b>	

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	<b>95.7</b>
February	20.0	9.5	10.0	37.4	18.9	95.7	0.0	<b>95.7</b>
March	35.6	16.9	17.8	66.9	33.8	171.0	3.1	<b>174.1</b>
April	39.0	18.5	19.5	73.1	36.9	186.9	3.8	<b>190.7</b>
May	42.7	20.2	21.3	80.0	40.4	204.6	4.5	<b>209.1</b>
June	45.8	21.7	22.9	85.9	43.4	219.7	5.1	<b>224.8</b>
July	48.4	22.9	24.2	90.7	45.8	232.1	5.6	<b>237.7</b>
August	47.6	22.6	23.8	89.4	45.1	228.5	5.5	<b>234.0</b>
September	44.7	21.2	22.4	83.8	42.3	214.3	4.9	<b>219.2</b>
October	40.3	19.1	20.1	75.5	38.1	193.1	4.0	<b>197.1</b>
November	20.0	9.5	10.0	37.4	18.9	95.7	0.0	<b>95.7</b>
December	20.0	9.5	10.0	37.4	18.9	95.7	0.0	<b>95.7</b>
<b>Total</b>	<b>423.8</b>	<b>200.7</b>	<b>212.0</b>	<b>795.1</b>	<b>401.5</b>	<b>2,033.1</b>	<b>36.4</b>	<b>2,069.5</b>

Column Notes:

- 1) Average monthly distribution of Monte Vista's annual pumping records was based on the RGDSS 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**

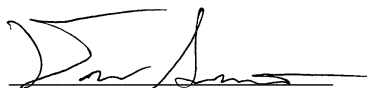
Pursuant to C.R.C. 37-92-308(4), written notice of this request was provided on this same date to all parties in Case No. 16CW3034 via electronic or U.S. postal mail.

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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# COLORADO

## Parks and Wildlife

Department of Natural Resources

Southwest Region  
415 Turner Drive  
Durango, CO 81303  
P 970.317.9507 | F 970.375.6705

April 14, 2023

Angelo Bellah  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

Re: CPW Lease of Tabor Ditch Transmountain Water to USFWS for Augmentation Use for Subdistrict 6

Dear Mr. Bellah,

The purpose of this letter is to notify your office that CPW will lease vintage Tabor Ditch transmountain water rights (Tabor Ditch No.2 and Tabor Ditch No.2 Enlargement) to the U.S. Fish and Wildlife Service (USFWS) for augmentation purposes. The Tabor Ditch transmountain water rights are decreed by the District Court, in and for Montrose County in the Matter of the Adjudication of Priorities for Water Rights in Water District No. 62, in the State of Colorado, Case No. CA6981 (March 30, 1960) and subsequently changed through a decree entered on December 29, 1979, in Case No. W-3549 in the District Court for Hinsdale County. The Tabor Ditch transmountain water rights originate in Water Division 4 and are used in Water Division 3.

Vintage Tabor Ditch transmountain water rights are first stored in Rio Grande Reservoir and applied to a beneficial use decreed in Case No. W-3549. The Tabor water offered in this lease agreement is a successive use, as set forth in C.R.S. §37-82-106.

CPW will lease 197 acre-feet of Tabor Ditch transmountain water rights to the USFWS for the period beginning May 1, 2023 and ending April 30, 2024. It is CPW's understanding that the USFWS will relinquish this same amount to Subdistrict 6 as replacement water to remedy all injurious depletions caused by USFWS groundwater withdrawals during the 2023 Annual Replacement Plan pursuant to the Plan for Water Management of Subdistrict No.6.

Subdistrict 6 will assume operational control of and responsibility of storage of the specified quantity of Tabor Ditch transmountain water during the lease term. This lease will not be considered a transfer of sale of a right in the underlying decree.



Please contact Ryan Unterreiner (970) 317-9507 ([ryan.unterreiner@state.co.us](mailto:ryan.unterreiner@state.co.us)) and Tony Aloia (719) 850-6371 ([tony.aloia@state.co.us](mailto:tony.aloia@state.co.us)) to administer the transfer of 197 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

Best Regards,

A handwritten signature in black ink, appearing to read 'Ryan Unterreiner', is placed over a light gray rectangular background.

Ryan Unterreiner  
SW Region Water Specialist

Cc: Rick Basagoitia (CPW Area 17 Wildlife Manager), Tony Aloia (CPW Area 17 Water Technician), Chris Shaffer (USFWS Hydrologist), Craig Cotton (Division 3 Engineer), Deborah Sarason (Subdistrict Coordinator), David Hofmann (Assistant Subdistrict Coordinator), Sam Riggensbach (District 20 Water Commissioner), Amber Pacheco (RGWCD Deputy General Manager)



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

San Luis Valley National Wildlife Refuge Complex

9383 El Rancho Lane

Alamosa, CO 81101



In Reply Refer to:  
FWS/IR05/IR07

December 28, 2020

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Leased CPW Tabor Ditch Transmountain Water to Subdistrict No. 6 for Use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Ms. Pacheco,

The U.S. Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) have negotiated terms and conditions to lease a portion of CPW's annual yield (125 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement) to the USFWS. CPW has stored this water in Rio Grande Reservoir as a beneficial use as decreed in Case No. 3549.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS but may also be used to cover injurious depletions of all Subdistrict Wells as needed so long as the Subdistrict provides another source of replacement in an amount sufficient to remedy all injurious depletions calculated to occur as a result of the withdrawal of groundwater by USFWS wells included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility of storage of the specified quantity of water following this transfer. This lease between USFWS and CPW will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict will contact CPW staff to administer the transfer of 125 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

**INTERIOR REGION 5  
MISSOURI BASIN**

KANSAS, MONTANA\*, NEBRASKA, NORTH DAKOTA,  
SOUTH DAKOTA

\*PARTIAL

**INTERIOR REGION 7  
UPPER COLORADO RIVER BASIN**

COLORADO, NEW MEXICO, UTAH, WYOMING



## COLORADO

### Parks and Wildlife

Department of Natural Resources

Southwest Region  
415 Turner Drive  
Durango, CO 81303  
P 970.317.9507 | F 970.375.6705

September 15, 2020

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

Re: CPW Lease of Tabor Ditch Transmountain Water to USFWS for Augmentation Use for Subdistrict 6

Dear Ms. Pacheco,

CPW is negotiating the terms and conditions of a new lease with the U.S. Fish and Wildlife Service (USFWS) for a portion of the annual yield (125 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No.2 and Tabor Ditch No.2 Enlargement). The Tabor Ditch transmountain water rights are decreed by the District Court, in and for Montrose County in the Matter of the Adjudication of Priorities for Water Rights in Water District No. 62, in the State of Colorado, Case No. CA6981 (March 30, 1960) and subsequently changed through a decree entered on December 29, 1979, in Case No. W-3549 in the District Court for Hinsdale County. The Tabor Ditch transmountain water rights originate in Water Division 4 and are used in Water Division 3.

CPW will first store Tabor Ditch transmountain water rights in Rio Grande Reservoir and first apply the water to beneficial uses decreed in Case No. 3549. Therefore, the USFWS augmentation use of Tabor water offered in this lease agreement is a successive use, as set forth in C.R.S. §37-82-106, and not those applied to administratively change the initial use of a transmountain water right.

CPW will lease 125 acre-feet of Tabor Ditch transmountain water rights to the USFWS for the period beginning September 25, 2020 and ending April 30, 2021. It is CPW's understanding that the USFWS will relinquish this same amount to Subdistrict 6 for successive use as replacement water to remedy all injurious depletions caused by USFWS groundwater withdrawals during the 2020 Annual Replacement Plan pursuant to the Plan for Water Management of Subdistrict No.6.



The USFWS will assume operational control of and responsibility of storage of the specified quantity of Tabor Ditch transmountain water during the lease term. This lease will not be considered a transfer of sale of a right in the underlying decree.

Please contact Ryan Unterreiner (970) 317-9507 ([ryan.unterreiner@state.co.us](mailto:ryan.unterreiner@state.co.us)) and Tony Aloia (719) 850-6371 ([tony.aloia@state.co.us](mailto:tony.aloia@state.co.us)) to administer the transfer of 125 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

Best Regards,

A handwritten signature in black ink, appearing to read 'Ryan Unterreiner', with a stylized flourish at the end.

Ryan Unterreiner  
SW Region Water Specialist

Cc: Rick Basagoitia (CPW Area 17 Wildlife Manager), Tony Aloia (CPW Area 17 Water Technician), Chris Shaffer (USFWS Hydrologist)



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
134 Union Blvd  
Lakewood, Colorado 80228



In Reply Refer to:  
FWS/IR05/IR07

March 3, 2021

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Leased CPW Tabor Ditch Transmountain Water to Subdistrict No. 6 for use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Ms. Pacheco,

The U.S. Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) have negotiated terms and conditions to lease a portion of CPW's annual yield (227 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement) to the USFWS. CPW has stored this water in Rio Grande Reservoir as a beneficial use as decreed in Case No. 3549.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS and may also be used to cover injurious depletions of all Subdistrict wells as needed; as long as the Subdistrict provides another source of replacement in an amount sufficient to remedy all injurious depletions calculated to occur as a result of the withdrawal of groundwater by USFWS wells included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility of storage of the specified quantity of water following this transfer. This lease between USFWS and CPW will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict will contact CPW staff to administer the transfer of 227 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

Please contact Sharon Vaughn ([sharon\\_vaughn@fws.gov](mailto:sharon_vaughn@fws.gov)) or Chris Shaffer ([christopher\\_shaffer@fws.gov](mailto:christopher_shaffer@fws.gov)) with any questions and to administer the transfer of water to the appropriate Subdistrict account.

Best Regards,

Digitally signed by  
SHARON VAUGHN  
Date: 2021.03.11  
15:26:23 -07'00'

Sharon Vaughn  
Project leader  
San Luis Valley National Wildlife Refuge Complex

INTERIOR REGION 5  
MISSOURI BASIN

KANSAS, MONTANA\*, NEBRASKA, NORTH DAKOTA,  
SOUTH DAKOTA

\*PARTIAL

INTERIOR REGION 7  
UPPER COLORADO RIVER BASIN

COLORADO, NEW MEXICO, UTAH, WYOMING





# COLORADO

## Parks and Wildlife

Department of Natural Resources

Southwest Region  
415 Turner Drive  
Durango, CO 81303  
P 970.317.9507 | F 970.375.6705

March 29, 2021

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

Re: CPW Lease of Tabor Ditch Transmountain Water to USFWS for Augmentation Use for Subdistrict 6

Dear Ms. Pacheco,

The purpose of this letter is to notify your office that CPW will lease a portion of the annual yield (227 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No.2 and Tabor Ditch No.2 Enlargement) to the U.S. Fish and Wildlife Service (USFWS) for augmentation purposes. The Tabor Ditch transmountain water rights are decreed by the District Court, in and for Montrose County in the Matter of the Adjudication of Priorities for Water Rights in Water District No. 62, in the State of Colorado, Case No. CA6981 (March 30, 1960) and subsequently changed through a decree entered on December 29, 1979, in Case No. W-3549 in the District Court for Hinsdale County. The Tabor Ditch transmountain water rights originate in Water Division 4 and are used in Water Division 3.

CPW will first store Tabor Ditch transmountain water rights in Rio Grande Reservoir and first apply the water to beneficial uses decreed in Case No. 3549. The USFWS augmentation use of Tabor water offered in this lease agreement is a successive use, as set forth in C.R.S. §37-82-106, and not those applied to administratively change the initial use of a transmountain water right.

CPW will lease 227 acre-feet of Tabor Ditch transmountain water rights to the USFWS for the period beginning May 1, 2021 and ending April 30, 2022. It is CPW's understanding that the USFWS will relinquish this same amount to Subdistrict 6 for successive use as replacement water to remedy all injurious depletions caused by USFWS groundwater withdrawals during the 2021 Annual Replacement Plan pursuant to the Plan for Water Management of Subdistrict No.6.



## LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 6 of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict No. 6”), and EXPO, LLC (“EXPO”) as the owner of certain decreed water rights decreed for augmentation use and stored in Terrace Reservoir (collectively “Parties” or in the singular “Party”).

### INTRODUCTORY RECITALS

A. The Lessor holds title to a decreed plan for augmentation which includes a portion of the water right, as originally set forth in a change decree entered in Case No. 1982CW97 (Water Division 3) on November 22, 1983, and later transferred to Lessor under Case Nos. 2014CW3027 and 2016CW3019 (“Decrees”). This water right will be produced under the plan for augmentation for 2024 and stored in Terrace Reservoir pursuant to an existing agreement between the Terrace Reservoir Company and EXPO.

B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, where the water right is fully consumable, including for augmentation purposes.

C. The Subdistrict No. 6 desires to lease 22.0 acre-feet of said augmentation water from Lessor 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. Lease Agreement.
  - 1.1. Lease Agreement. Subject to the terms of this Agreement, the Subdistrict No. 6 agrees to lease 22.0 acre-feet of augmentation water stored in Terrace Reservoir (“Stored Water”).
  - 1.2. Term of Agreement and Automatic Renewal. This Agreement begins on the date of acceptance of this Agreement by both the Lessor and the Subdistrict No. 6, which date shall be the “Effective Date” and will end at midnight on April 30, 2025.
  - 1.3. Lease Price. The lease price for the 22.0 acre-feet of water is two hundred fifty dollars (\$250.00) per acre-foot for a total lease price of five-thousand five-hundred dollars (\$5,500.00) with all \$5,500.00 due and payable within ten business days after the Effective Date of this agreement. By July 1, 2024, Lessor will notify the Subdistrict of the total actual amount of water that was available for lease under this agreement. If the Subdistrict did not receive the full 22 acre-feet before the term of this agreement has ended, Lessor will refund the lease price for every acre-foot of water the Subdistrict prepaid but did not receive by July 1<sup>st</sup>, 2024.
  - 1.4. Failure to Pay. If the Subdistrict No. 6 fails to pay when due the lease payment required herein, then this Agreement will terminate in full, Lessor shall retain title to the Stored Water and the Agreement shall be void.
  - 1.5. Water Subject to the Agreement. The water subject to this Agreement is 22.0 acre-feet of the augmentation water which was stored in Terrace Reservoir during 2024. After the Effective Date the Lessor will not be entitled to use or dispose of the 22.0

acre-feet of Stored Water under this lease and, thereafter, the Subdistrict No. 6 shall bear all seepage, evaporation and transit losses on the subject water. The Subdistrict No. 6 will retain title to unused water, if any, after the Term of this Agreement.

- 1.6. Approvals. Subdistrict No. 6 is responsible for obtaining any approvals necessary for Subdistrict No. 6's proposed use and delivery of the Stored Water.
2. Lessor's Obligations and Representations.
  - 2.1. Lessor's Title. Lessor 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. Lessor 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. Notice to Reservoir Owner. Upon Subdistrict No. 6's payment as specified in paragraph 1.3, Lessor will notify the owner of Terrace Reservoir of this Lease Agreement and change of control over the Stored Water to Subdistrict No. 6.
3. 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 Subdistrict No. 6, and is enforceable against Subdistrict No. 6 according to its terms. 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 Subdistrict No. 6 that would prevent it from purchasing the Stored Water.
4. 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 Lessor:                    EXPO, LLC  
                                      C/O: Alex Miller, CFO  
                                      15 Washington Street  
                                      Monte Vista, CO 81144  
                                      Fax: \_\_\_\_\_  
                                      E-mail: \_\_\_\_\_

To 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

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



5. Remedies. In the event of Lessor's default in the performance of this Agreement, Subdistrict No. 6's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 6's default hereunder, Lessor's sole and exclusive remedy shall be to retain all payments made by Subdistrict No. 6 prior to the date of the default, and to retain any water not paid for by Subdistrict No. 6.
6. Miscellaneous Provisions.
- 6.1. 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 Lessor or Subdistrict No. 6 to one another with respect to this Agreement.
- 6.2. Survival. Each of the representations and warranties made by Lessor and Subdistrict No. 6 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.
- 6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 6.4. 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 Lessor and Subdistrict No. 6. 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.
- 6.5. 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.
- 6.6. 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 Lessor may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 6, which consent shall not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.



- 6.7. Litigation. If the Lessor and/or Subdistrict No. 6 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.
- 6.8. 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.
- 6.9. 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.
- 6.10. Recording. Subdistrict No. 6 may record this Agreement or a Memorandum of this Agreement at its own expense.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. 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.
- 6.13. Lessor's Acknowledgment. Lessor 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 Lessor by Subdistrict No. 6, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Lessor except for written amendments or waivers executed by the Parties.

*Signatures on following page*



EXPO, LLC

By: Alex Miller

Date 3/18/24

Name: Alex Miller

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

By: Angelo Bellah  
Angelo Bellah, Program Manager

Date 3/18/24

*Am*



Angelo Bellah <angelo@rgwcd.org>

**2022-2023 SD6/MVC SWSP wrap-up**

1 message

**Austin Malotte** <amalotte@bbawater.com> Fri, May 5, 2023 at 2:57 PM  
 To: "Tyler Faucette (tyler@coloradocatchllc.com)" <tyler@coloradocatchllc.com>, "Amber Pacheco (amber@rgwcd.org)" <amber@rgwcd.org>, Angelo Bellah <angelo@rgwcd.org>, "Wylie Keller (wylie@rgwcd.org)" <wylie@rgwcd.org>  
 Cc: "Mark Deacon (circledfarmsinc@gmail.com)" <circledfarmsinc@gmail.com>, Lauren Tiedemann Loob <ltiedemann@bbawater.com>, Mike Saylor <msaylor@bbawater.com>

All:

Operations under the 2022-2023 Subdistrict 6 / Monte Vista Canal Substitute Water Supply Plan (SWSP ID #9377) concluded this past Sunday, April 30 pursuant to the March 31, 2023 approval letter. As you may recall, that letter approved our quantification of consumptive use credit ("CU credit") associated with groundwater that would have been pumped through three wells in 2022 if not for following and approved pumping of that CU credit through 13 augmentation wells during April 2023, subject to a number of conditions. Augmentation wells were pumped under the Terrace Main Canal and Centennial Ditch, and by forgoing diversion of river water at those ditch headgates, a total of 176.48 acre-feet of CU credit was exchanged to Terrace and Rio Grande Reservoirs. CU pumping and exchange volumes are summarized in the table below.

**Summary of April 2023 SWSP Operations (SWSP ID #9377)**

Aquifer	Layer	Maximum CU Credit	CU Credit Pumped	CU Credit Pumped	CU Credit Exchanged
Confined	Layer 2	56.61	55.49	140.88	138.88
	Layer 3	106.22	85.39		
Unconfined	-	159.49	38.02	38.02	37.60
Total		322.32	178.90	178.90	176.48

*All values in acre-feet*

Considering the limited time to initiate and complete SWSP operations during the month of April, we are very pleased with the results. Amber, Angelo and Wylie were instrumental in not only coordinating agreements with the well owners, ditch companies and others, they also handled the field tasks and the bulk of data collection. And a special thanks to Wylie for helping to cross-check BBA's SWSP accounting and working with Division staff to coordinate on-the-fly operational changes.



While the benefit to Subdistrict 6 of getting CU credit into storage is clear, even more important is the Subdistrict's demonstration of the feasibility of a rotational fallowing ATM project using RGDSS modeling results as a basis for evaluation of consumptive use under irrigation canals. Operation of this SWSP revealed some opportunities for improvements to such projects in the future, including tweaks to the selection process for fallow parcels and augmentation wells, planning for compliance with anticipated additional conditions (e.g. well permitting requirements), and refinements to operations to reduce the management burden. Regardless, operation of this project showed that this type of plan is practicable and should be scalable in future iterations.

The summary tables from the SWSP accounting to be submitted shortly are attached for your files. Please don't hesitate to reach out if you have any questions.

Respectfully,

Austin

**Austin Malotte, P.E.**

BBA Water Consultants, Inc.

720-245-2658 (direct)

[www.bbawater.com](http://www.bbawater.com)



**MVC ATM Project SWSP Accounting Tables (ID 107535).pdf**

393K



March 31, 2023

Lauren Tiedemann Loob, P.E.  
Austin Malotte, P.E.  
BBA Water Consultants, Inc.  
333 West Hampden Avenue, Suite 1050  
Englewood, CO 80110

**RE: Subdistrict 6/Monte Vista Canal Substitute Water Supply Plan  
Section 12, T37N, R7-8E, N.M.P.M.  
Section 34, T37N, R8E, N.M.P.M.  
Section 5, T38N, R8E, N.M.P.M.  
Water Division 3, Water District 20, Rio Grande County  
SWSP ID #9377**

**Approval Period: March 31, 2023 through April 30, 2023**

*Contact Information: Ms. Tiedemann Loob: 303-806-8952; [ltiedemann@bbawater.com](mailto:ltiedemann@bbawater.com)  
Mr. Malotte: 303-806-8952; [amalotte@bbawater.com](mailto:amalotte@bbawater.com)*

Dear Ms. Tiedemann Loob and Mr. Malotte:

We have reviewed your letter of July 14, 2022, requesting a substitute water supply plan ("SWSP") on the behalf of the Rio Grande Water Conservation District's Special Improvement District No. 6 ("Subdistrict 6" or "Applicant") pursuant to §37-92-308(5), C.R.S. Notice was sent to all parties on the Division 3 SWSP Notification List on July 14, 2022. No comments were received during the statutory 35-day comment period. A deficiency letter was sent on October 3, 2022, and additional information provided in a response dated March 2, 2023, The \$300 filing fee has been received and given receipt no. 10022849.

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 water use plan or change proposed 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 approval for this SWSP.**

## SWSP OPERATION

The SWSP is intended as a temporary change in the use of water historically diverted from the Rio Grande River through the Monte Vista Canal ("MVC") for irrigation of lands lying under said canal, and groundwater diverted through wells historically used to irrigate those same lands. The



surface water and groundwater rights sought to be applied to changed uses comprise water supplies historically used for irrigation of certain parcels that will be left fallow during the 2022 irrigation season. The SWSP is intended to function as an ATM demonstration project which focuses on the generation of fully consumable water for replacement of stream depletions associated with Subdistrict 6 well pumping, but the CU credits produced by this and similar projects could be used to replace any depletions to a stream segment to which they can be physically delivered directly or by exchange.

The Monte Vista Canal (“MVC”) was selected for this initial demonstration project because of several key factors. First, irrigation deliveries (including those from groundwater sources) and crop consumptive use under the canal are reasonably consistent year-to-year regardless of hydrologic conditions. Second, the canal irrigates a land area sufficiently large enough that rotational fallowing projects can be operated at an economical scale. Third, the canal is located such that replacement water can be delivered to the Rio Grande upstream of many of the typical calling water rights.

Three subject parcels belonging to MVC shareholders who also irrigate with groundwater wells are participating in the project. The areas to be fallowed are depicted in Figures 1 - 3 (attached). The shareholders are Archuleta, Washburn and DeClerck.

To determine the number of MVC shares associated with each 2022 Fallow Field, BBA first identified the number of MVC shares associated with each subject parcel through irrigator interviews, RGWCD/Subdistrict 6 records and Canal Company records. The MVC shares for each Subject Parcel were then prorated by sprinkler-irrigated acres to identify the number of shares associated with each 2022 Fallow Field.

The Applicant is requesting to generate CU credits for the water rights described below:

Owner	Well Name	Permit Number	WDID	Irrigated Acres	Decree	Aquifer	Pumping Rate (GPM)	MVC shares (prorated from total farm allocation)	Fallow Acres
Archuleta	Well No. 1	10821-R	2009239	SE1/4, E1/2 of SW1/4 Sec 13-T37N-R 7E	W0525	Confined	1000	14	55
Washburn	Well No. 1	1052-R	2008523	N1/2 of SW1/4, N1/2 of SE1/4 Sec 35-T37N-R 8E*	W0127	Confined	2000	11	51.85
DeClerck	Well No. 6	6320 F-R	2012705	NW1/4 Sec 9-T38N-R8 E	W2599	Unconfined	650	10	115

\* Changed from original registration on December 18, 1959 to NW1/4, SW1/4 of Section 35, T37N, R8E claimed in SBU to have been irrigated on July 15, 1953 although attached map indicates original registration claim

Pumping from these three wells was reduced, and the estimated consumptive use (“CU”) credits are to be transferred to augmentation wells that will be pumped to deliver the CU credits via canal to replace downstream depletions or exchange to upstream storage. A summary of the amounts are shown in the table below:

Well Owner	Estimated 2022 Well Pumping (AF)*	Allowable 2022 Well Pumping (AF)**	Forgone 2022 Well Pumping (AF)	CU Credits to Transfer to Augmentation Well (AF)
Archuleta	115.06	59.17	55.89	46.39
Washburn	283.11	142.83	140.28	116.43
Total Confined	398.17	202.00	196.17	162.82
DeClerck	192.16	0	192.16	159.49
Total Unconfined	192.16	0	192.16	159.49

\*Estimate of total well pumping anticipated to have occurred in lieu of the following project.

\*\*Portion of estimated 2022 well pumping associated with non-fallow fields.

Table 1 (attached) presents additional details regarding total 2022 Monte Vista Canal diversions, the resulting forgone well pumping, groundwater CU credits associated with that forgone pumping, and actual 2022 pumping for the fallow wells, to confirm that all three fallow wells were in compliance with the allowable 2022 well pumping limits. As shown in column 9 of Table 1, groundwater CU credits associated with the 2022 fallowed fields total 322.32 acre-feet, including 162.82 acre-feet from the confined aquifer fallow wells (Archuleta and Washburn) and 159.49 acre-feet from the unconfined aquifer fallow well (DeClerck).

Table 2 (shown below) presents CU credit by fallow well and the proportion of each well’s perforated interval extending through each confined aquifer layer, as reflected in the RGSS wells database. CU credit from each confined aquifer fallow well was then prorated by layer using those proportions and summed by layer as shown below:

**Table 2**  
**2022 Monte Vista Canal ATM Project**  
**Groundwater CU Credit Summary**  
*Acre-feet except as indicated*

WDID	Well Owner	Aquifer	Confined Aquifer Layers		CU Credit
			% Layer 2	% Layer 3	
2009239	Archuleta	Confined	26%	74%	46.39
2008523	Washburn	Confined	38%	62%	116.43
2012705	DeClerck	Unconfined	-	-	159.49

Aquifer	Layer	CU Credit
Confined	Layer 2	56.61
	Layer 3	106.22
Unconfined	-	159.49

As shown in Table 3 below, the confined aquifer augmentation wells will impact confined aquifer layers 2 & 3 in different percentage splits than the Archuleta and Washburn fallow wells; however the proposed pumping amounts from the confined aquifer augmentation wells will be managed with the goal of matching the CU credit by layer associated with the two fallow wells. Combined pumping from the confined aquifer augmentation wells must be limited so depletions do not exceed 56.61 acre-feet to Layer 2 and 106.22 to Layer 3.

**Table 3**  
**2022 Monte Vista Canal ATM Project**  
**Augmentation Wells Summary**  
*Acre-feet except as indicated*

WDID <sub>1</sub>	Well Contact <sub>2</sub>	Ditch System	Aquifer	Confined Aquifer Layers		Projected Pumping <sub>3</sub>
				% Layer 2	% Layer 3	
2009239	Archuleta	Monte Vista	Confined	26%	74%	21.02
2009318	Christensen	Terrace Main	Confined	26%	74%	22.72
2011396	Christensen	Terrace Main	Confined	35%	65%	27.12
2010069	Christensen	Terrace Main	Confined	43%	57%	22.46
2011435	Johnson	Terrace Main	Confined	19%	81%	23.77
2011453	Johnson	Terrace Main	Confined	55%	45%	0.00
2009225	Caldon	Terrace Main	Confined	39%	61%	37.41
2010907	Booth	Terrace Main	Confined	64%	36%	0.00
2012556	Coblentz	Terrace Main	Confined	78%	22%	0.00
2005110	Coblentz	Terrace Main	Confined	63%	37%	0.00
2008498	DeClerck	Terrace Main	Confined	82%	18%	8.31
2008957	Cooper	Monte Vista	Unconfined	-	-	68.56
2006432	Shriver	Centennial	Unconfined	-	-	90.94
				Confined Layer 2		56.61
Total Projected Pumping by Aquifer/Layer				Confined Layer 3		106.22
				Unconfined		159.49

Notes:

1. WDIDs for existing wells whose owners have verbally agreed to use these wells to deliver CU credits by intra-ditch exchange.
2. Well contact names retrieved from DWR wells database and/or imaged documents. May not reflect current owner/operator of proposed augmentation well.
3. Projected pumping distribution reflects one possible solution to match augmentation well pumping by layer with CU credit by layer. Other solutions exist. Actual pumping distribution will depend on a variety of factors.

All 11 of the confined aquifer wells proposed to be used for augmentation under this SWSP are located within five miles of the two SWSP fallow wells, except the Archuleta Well (WDID 2009239), which is both a fallow well and a Confined Aquifer Augmentation Well and is located approximately 5.25 miles from the other fallow well (Washburn WDID 2008523).

As shown in Table 3 (above) and Figures 1 and 2 (attached), you have indicated the Applicants have obtained at least verbal agreement to utilize up to 11 existing wells completed in the confined aquifer and up to 2 existing wells completed in the unconfined aquifer to deliver groundwater CU credit associated with the lands fallowed during the 2022 irrigation season. These wells are typically used to provide irrigation water to lands under the Monte Vista Canal (2 augmentation wells), the Terrace Main Canal (10 augmentation wells) and the Centennial Ditch (1 augmentation well).

During April, augmentation wells under the Monte Vista Canal and Terrace Main Canal will be pumped either directly into the associated canal or applied to irrigation on the same fields typically served by the well. In either case, each well owner will forgo the same volume of water

delivery under his or her ditch shares, and the river headgate diversion for each ditch will be curtailed by the total of such augmentation well pumping under each ditch, thereby leaving that amount of fully consumable water available in the river to replace downstream depletions and/or exchange to upstream storage. For the Monte Vista Canal and Terrace Main Canal, the maximum diversion rate during operation of these intra-ditch exchanges will be limited to the amount identified on the Division 3 Daily Sheets as available in priority, less the total daily pumping of CU credit water through the augmentation wells under each ditch. Any pumping of the augmentation wells in excess of the amount of forgone diversion at the river headgate will be accounted for as normal irrigation pumping under the applicable Subdistrict ARP.

One augmentation well completed in the unconfined aquifer (WDID 2006432) is located adjacent to the Centennial Ditch near lands irrigated by Colorado Parks & Wildlife (CPW) using their Centennial Ditch shares. Applicants are coordinating with CPW to finalize a plan to deliver CPW's share deliveries in April through Well WDID 2006432, with CPW forgoing delivery of that same amount of water under their Centennial Ditch shares. Because Centennial Ditch diversions are not typically call limited and CPW's demand for water during April will be met by well pumping and not by delivery of surface water through the Centennial Ditch, river diversions through the Centennial Ditch headgate will be reduced by the amount of well pumping delivered for irrigation on CPW lands.

Augmentation wells completed in the confined aquifer will only be used to pump CU credits associated with the confined aquifer fallow wells, and augmentation wells completed in the unconfined aquifer will only be used to pump CU credits associated with the unconfined fallow well. RGWCD will provide copies of written agreements with owners of structures identified herein prior to utilizing those structures for purposes of this SWSP.

Return flows associated with the confined aquifer fallow wells will be pumped by the Archuleta Well, WDID 2009239 (see Figure 1, attached) and delivered directly into the Monte Vista Canal for in-ditch recharge when the Canal is not diverting surface water. If the Monte Vista Canal is diverting water and recharge needs to continue, the recharge must take place in a recharge pit near the dry up land, preferably the pit decreed in case 13CW3002 for the canal. All recharge must be completed prior to the end date of this SWSP

The return flow component for the DeClerck well will be left unpumped in the unconfined aquifer, which will replicate historical irrigation return flows to the same aquifer.

## **DEPLETIONS**

The SWSP request states that there will be no out-of-priority depletions caused by the operations proposed.

## **REPLACEMENTS**

Replacement credits are derived from the CU credit associated with the following of the subject parcels. Surface water CU credit derived from the Monte Vista Canal direct flow water rights are estimated in the table below:



**Monte Vista Canal Surface Water CU Factors for Farm Headgate Deliveries**

	Apr	May	June	July	Aug	Sept	Oct
<b>CU Factors</b>	0.615	0.608	0.593	0.580	0.591	0.592	0.610

Groundwater CU credit derived from the cessation of pumping during the 2022 irrigation season (“Foregone Well Pumping”) was calculated to be 83% of the historical pumping.

**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 March 31, 2023 through April 30, 2023, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. 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, 2024.
2. The approved dryup period of this SWSP is the 2022 irrigation season. The Division Engineer has the authority to adjust the irrigation season dates based on local conditions as allowed by State Engineer’s Policy 2010-1.
3. Approval of this SWSP is for the purposes stated herein and pumping for CU credit is limited to the wells identified in Table 3. Any additional diversion structures/wells and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional structures/uses.
4. **Pumping of the identified wells for CU credit during the term of this SWSP shall not exceed the HCU amounts from the fallow fields identified herein for Layers 2 & 3 of the confined aquifer and the unconfined aquifer. Combined pumping from the confined aquifer augmentation wells must be limited so depletions do not exceed 56.61 acre-feet to Layer 2 and 106.22 to Layer 3.**
5. Approval of this SWSP is for the purposes stated herein; however, further hydrological analysis may be required for any renewal of this SWSP or any future SWSP request to consider the volume of water to be pumped, the confined aquifer layers that wells produce from, the location of wells, and the distances between fallow wells and wells used to pump the HCU credits.
6. The Applicant must provide copies of written agreements with owners of wells/structures identified herein to the Division Engineer and Water Commissioners for the uses proposed in this SWSP.
7. If the Monte Vista Canal is diverting water and recharge needs to continue, the recharge must take place in a recharge pit near the dry up land, preferably the pit decreed in case

13CW3002 for the canal. All recharge must be completed prior to the end date of this SWSP.

8. If future SWSPs will be requested, new well permits must be obtained for the wells that will be pumped for augmentation purposes in accordance with section 37-90-137(2), C.R.S., and this SWSP. Any application will be evaluated subsequent to approval of this SWSP. The provisions of section 37-90-137(2), C.R.S., prohibit the issuance of a permit for a well to be located within 600 feet of any existing well, unless the state engineer finds that circumstances so warrant after a hearing in accordance with the procedural rules in 2CCR402-5. The hearing will be waived if the well owners can obtain statements from the owners of all wells within 600 feet, verifying that they have no objection to use of the proposed augmentation wells.
9. The Applicant shall maintain such measuring devices as required by the Division Engineer for operation of this SWSP. The measuring devices shall 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.
10. 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 rights.
11. Any delivery by exchange of Subdistrict CU credits must meet all statutory requirements, DWR policies, conditions and MOUs as set forth for exchanges.
12. The Applicant shall provide accounting of water attributed to recharge and pumped from the wells on a monthly basis. The accounting must be submitted to the Division Engineer via email. Please contact Michelle Lanzoni at [michelle.lanzoni@state.co.us](mailto:michelle.lanzoni@state.co.us) for all accounting with the subject line "Subdistrict 6-Monte Vista Canal SWSP". Accounting must be submitted within 7 days after the end of the month for which the accounting applies and included in all monthly accounting for SD6 ARP. Accounting and reporting procedures are subject to approval and modification by the Division Engineer. An initial reading of the well meters must be provided with the accounting. Accounting and reporting procedures are subject to approval and modification by the Division Engineer. **Frequent, if not daily, contact with the Water Commissioner is required to ensure daily administration and to prevent injury to other parties.**
13. 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.
14. 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 change of water right, all use of water under this SWSP must cease immediately.

15. 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. Any appeal of the decision made by the State Engineer concerning this 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 Craig Cotten, in the Division 3 office in Alamosa at (719) 589-6683.

Sincerely,

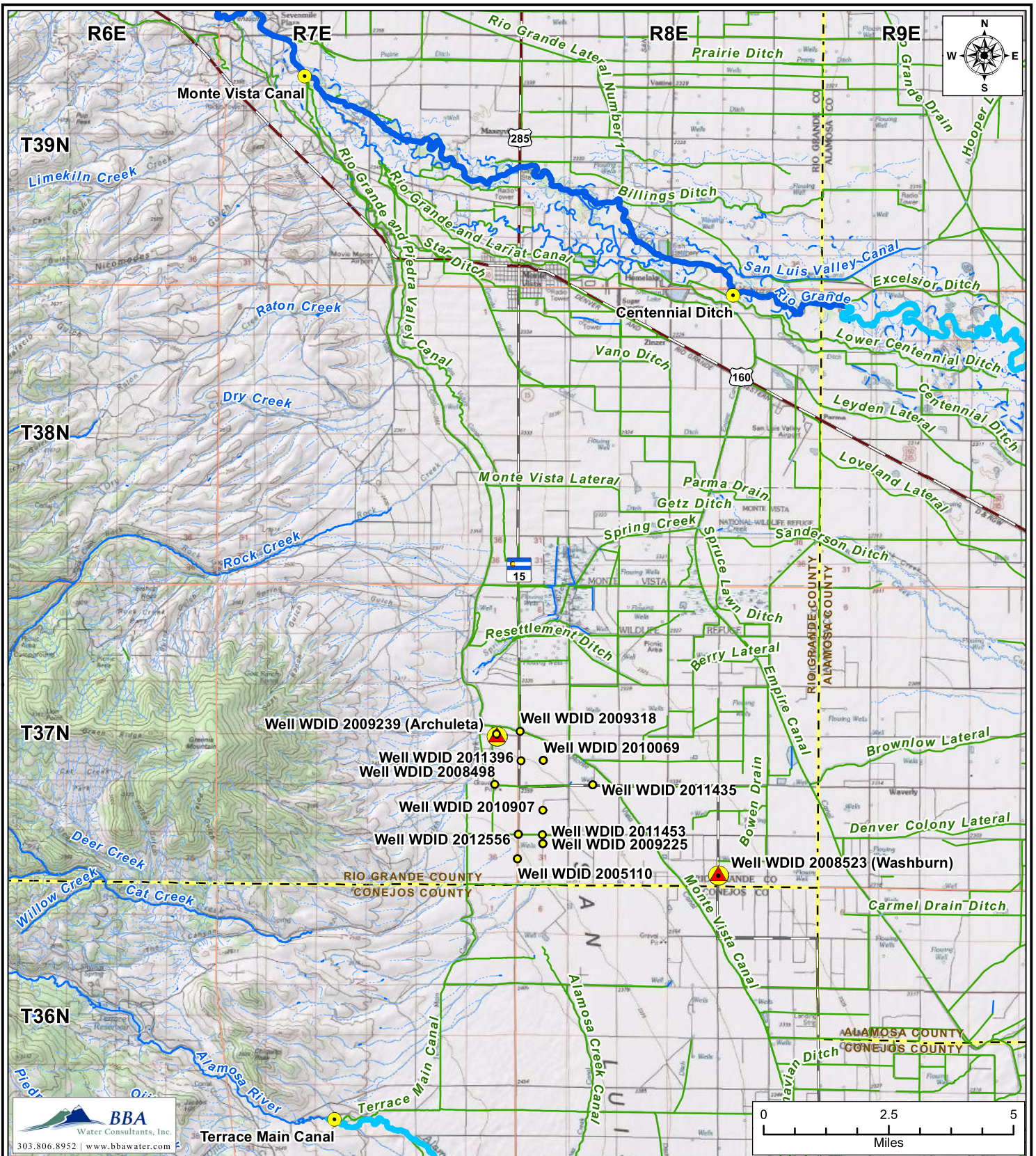


Jeff Deatherage, P.E.  
Chief of Water Supply

Attachments:           Table 1 (from March 2, 2023 response letter)  
                              Figures 1 - 3, Irrigated Lands  
                              Figures 1 & 2 (from March 2, 2023 response letter)

ec:     Craig W. Cotten, Division 3 Engineer  
          Deborah Sarason, Subdistrict Coordinator  
          David Hofmann, Assistant Subdistrict Coordinator  
          Michelle Lanzoni, Water Accounting Operations Specialist  
          Sam Riggerbach; District 20 Lead Water Commissioner  
          Rachel Rilling; District 21 Lead Water Commissioner





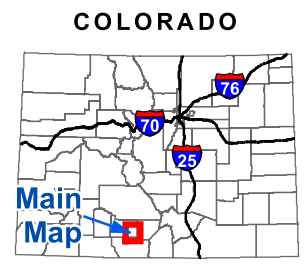
**Figure 1**  
**SWSP ID 9377**  
**Confined Aquifer Wells**

Date: 2/28/2023 | Job No. 1505.02

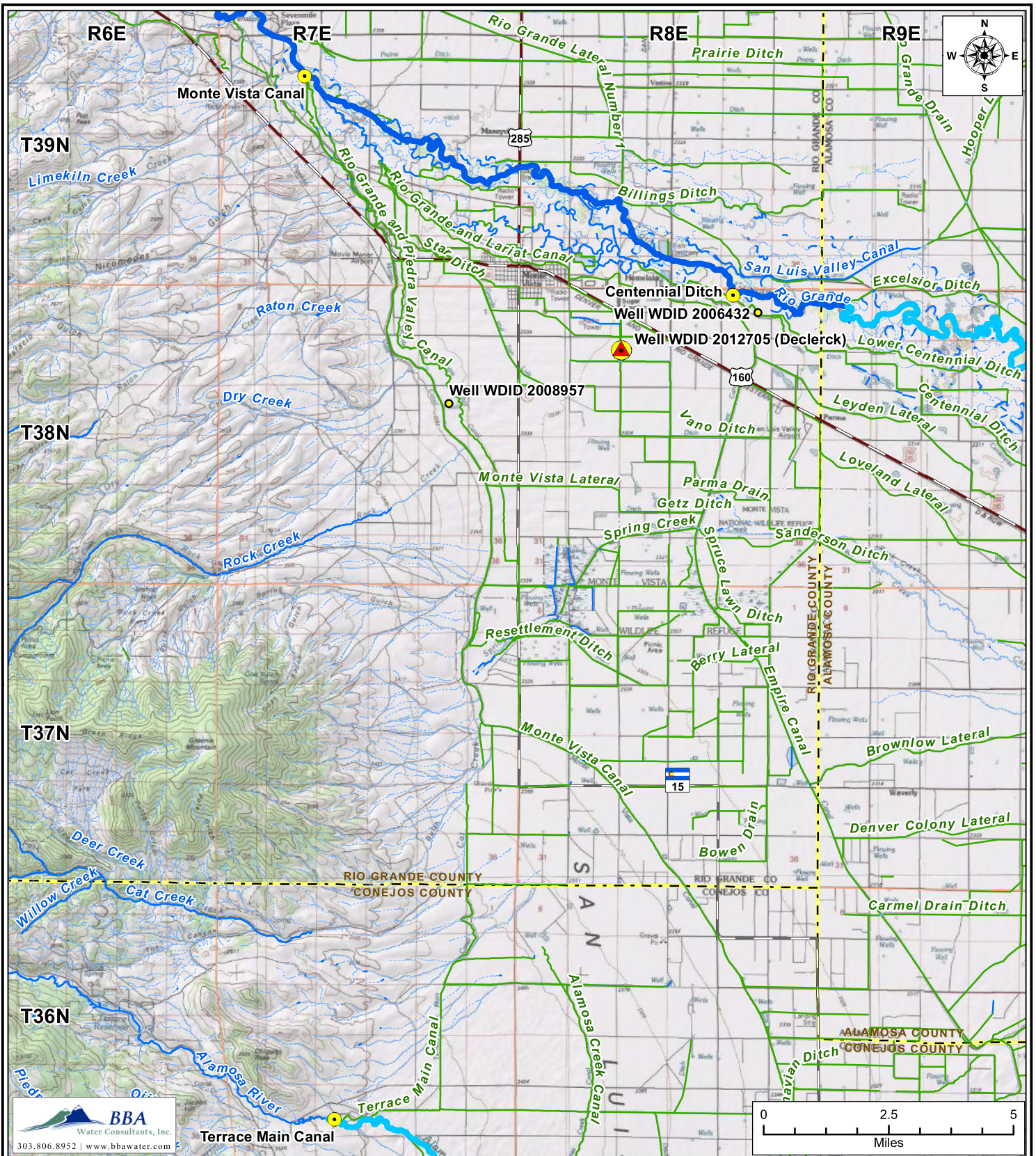
**Legend**

- Headgate
- ▲ SWSP Fallow Well
- SWSP Augmentation Well
- RGDS Reaches

Data Source: CDSS, CDOT, BLM, USGS







**Figure 2**  
**SWSP ID 9377**  
**Unconfined**  
**Aquifer Wells**

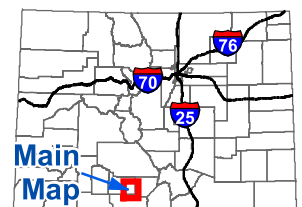
Date: 2/28/2023 | Job No. 1505.02

**Legend**

- Headgate
- ▲ SWSP Fallow Well
- SWSP Augmentation Well
- ▬ RGDSS Reaches

Data Source: CDSS, CDOT, BLM, USGS

**COLORADO**



Main Map



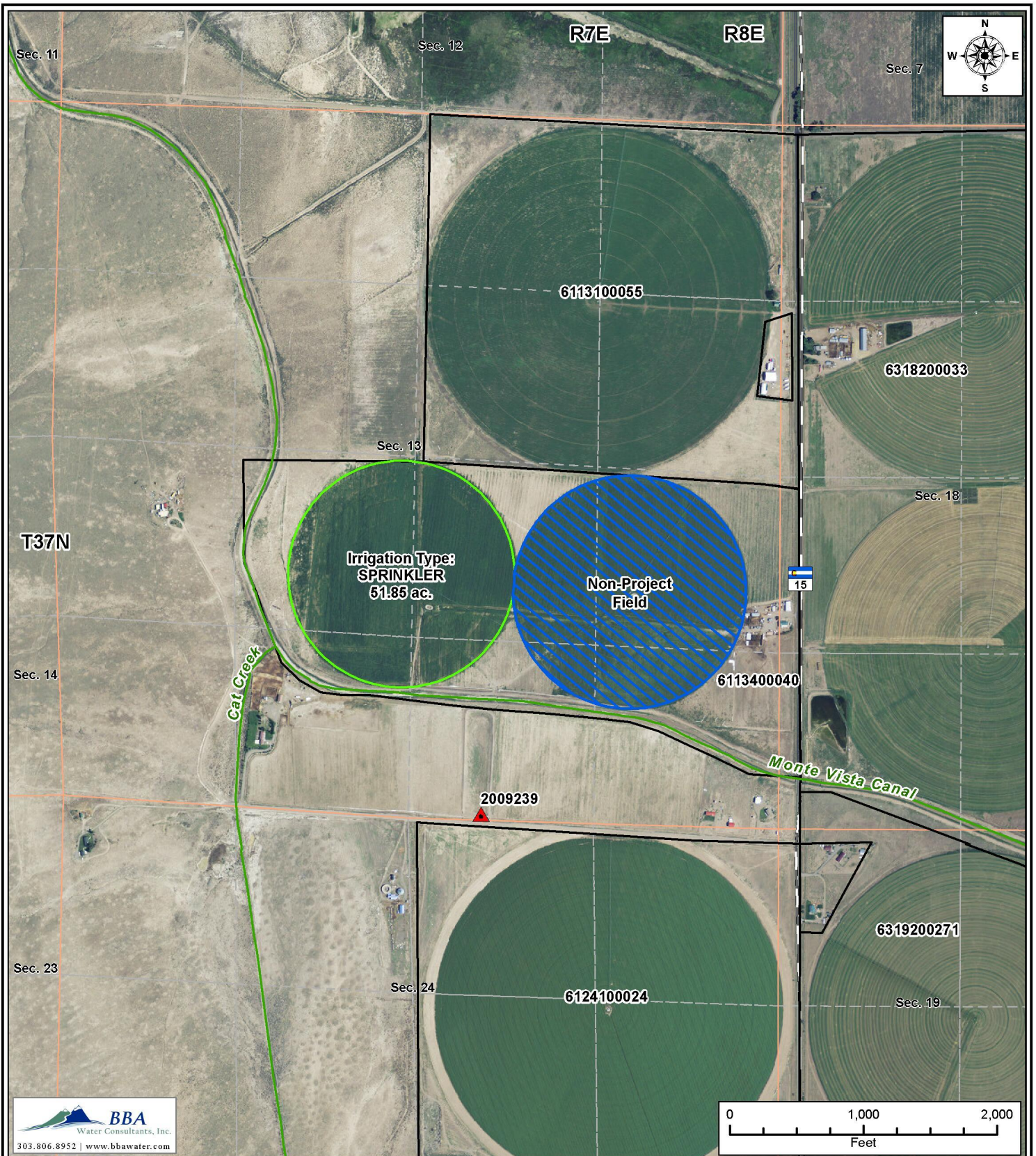
**Table 1**  
**Monte Vista Canal ATM Project**  
**End of Water Year Forgone Well Pumping Accounting**  
*all values in acre-feet*

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]
Shareholder	2022 MVC Supply	Maximum Annual Well Pumping	Actual 2022 MVC Direct Flow Diversions	2022 Farm Headgate Deliveries	Estimated 2022 Well Pumping	Allowable 2022 Well Pumping	Actual 2022 Well Pumping	Forgone 2022 Well Pumping	Consumptive Use Component of Forgone 2022 Well Pumping	Return Flow Component of Forgone 2022 Well Pumping
Archuleta	220.44	229.52		105.38	115.06	59.17	17.61	55.89	46.39	9.50
DeClerck	267.43	242.15	21,727	75.27	192.16	0.00	0.00	192.16	159.49	32.67
Washburn	365.91	392.27		82.80	283.11	142.83	109.52	140.28	116.43	23.85

Column notes:

- [1] Average annual water supply for the entire parcel containing the fallow field (from SWSP request Tables 4). Equal to 2011-2020 average water supply to parcel including farm headgate deliveries and well pumping.
- [2] Maximum 2011-2020 annual well pumping for the entire parcel (from SWSP request Table 2).
- [3] Actual 2022 Monte Vista Canal diversions through October 31, 2022 (from MONCANCO Station records on CDSS). Total conservatively includes all surface water diversions and is not reduced for diversions from other sources or for uses other than irrigation.
- [4] 2022 farm headgate deliveries for entire parcel containing fallow field. Equal to value in column [3] multiplied by 63% to account for ditch loss, then multiplied by the ratio of total shares on parcel to total MVC shares.
- [5] Estimate of total well pumping anticipated to have occurred in lieu of the following project. Equal to lesser of (a) column [1] minus column [4] or (b) column [2].
- [6] Portion of Estimated 2022 Well Pumping in column [5] associated with non-fallow fields on each parcel. Equal to column [5] multiplied by the ratio of non-project (non-fallow) acres to total acres served by each well.
- [7] Equal to actual 2022 well pumping associated with non-fallow fields on each parcel.
- [8] Estimated volume of pumping that did not occur in 2022 due to the following project. Equal to estimated total 2022 well pumping [5] minus allowable well pumping [6]. If actual 2022 well pumping [7] is greater than allowable [6], equal to estimated total 2022 well pumping [5] minus actual 2022 well pumping [7].
- [9] Equal to column [8] multiplied by the RGDSS 83% consumptive use factor for sprinkler irrigation.
- [10] Equal to column [8] multiplied by a 17% return flow factor.









**Figure 1**  
**Archuleta Farms**  
**Irrigated Lands**  
**Location Map**

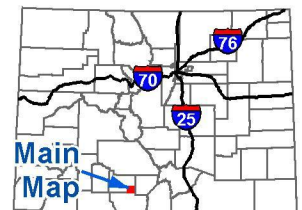
Date: 6/28/2022 | Job No. 1505.02

**Legend**

-  Subject Well Location (WDID)
-  Farm Unit (PIN)
-  2022 Fallow Field
-  Non-Project Field

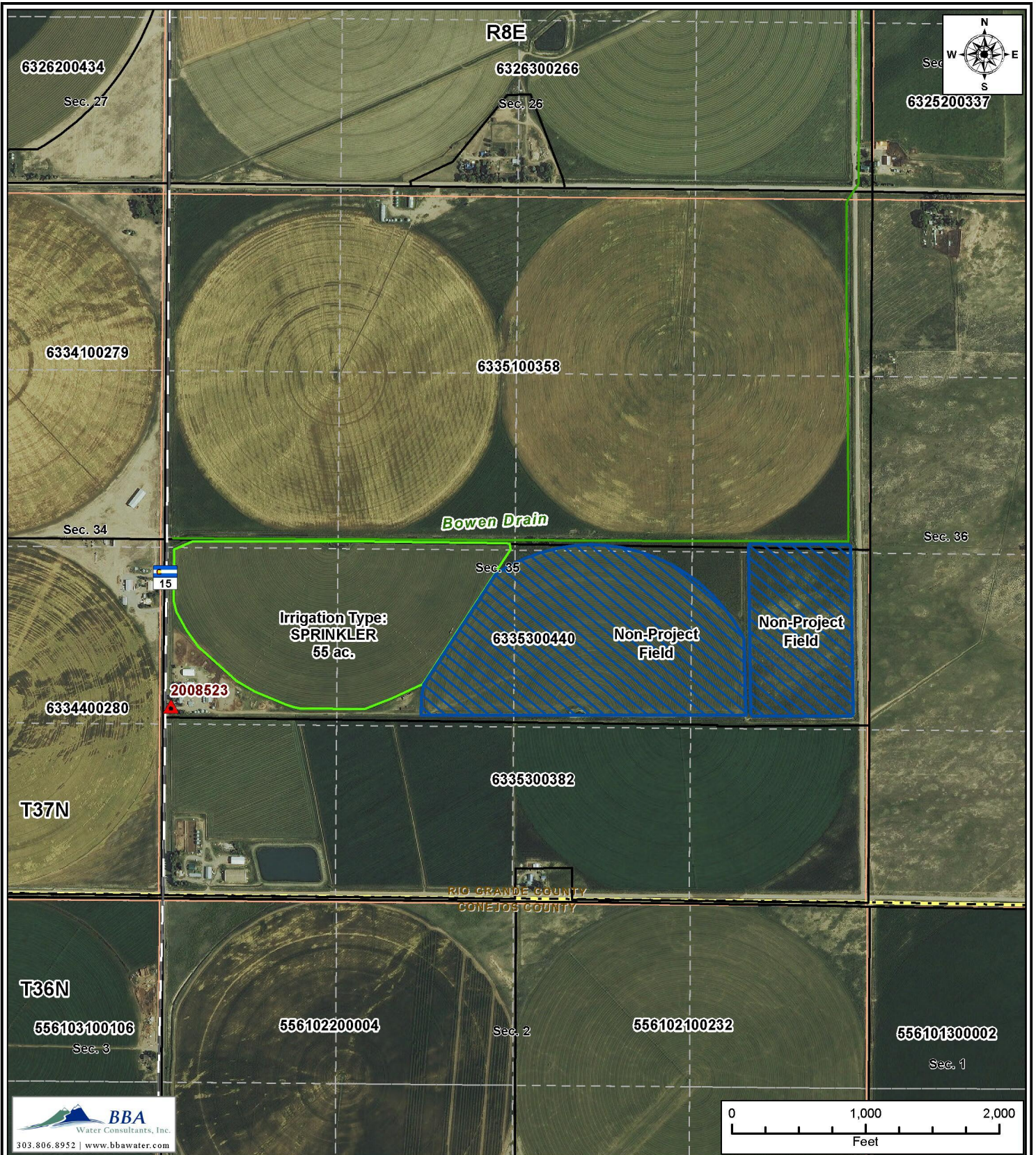
Aerial Photo Date: 8/12/2011 NAIP USDA  
 Data Source: Rio Grande County, CDSS, CDOT, BLM, USGS

**COLORADO**



Main  
Map





**Figure 2**  
**Jeff Washburn**  
**Irrigated Lands**  
**Location Map**

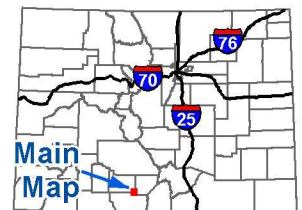
Date: 6/28/2022 | Job No. 1505.02

**Legend**

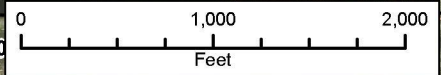
- ▲ Subject Well Location (WDID)
- Farm Unit (PIN)
- 2022 Fallow Field
- Non-Project Field

Aerial Photo Date: 8/16/2013 NAIP USDA  
 Data Source: Rio Grande County, CDSS, CDOT, BLM, USGS

**COLORADO**







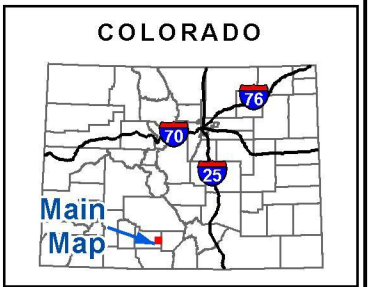
**Figure 3**  
**DeClerck Farms**  
**Irrigated Lands**  
**Location Map**

Date: 7/14/2022 | Job No. 1505.02

**Legend**

- Subject Well Location (WDID)
- Farm Unit (PIN)
- 2022 Fallow Field

Aerial Photo Date: 8/16/2013 NAIP USDA  
 Data Source: Rio Grande County, CDSS, CDOT, BLM, USGS





## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into between the Rio Grande Water Conservation District ("RGWCD") 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"). This water right is currently stored in Rio Grande Reservoir.
- B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, where the water right is fully consumable, including for augmentation and replacement purposes.
- C. The RGWCD desires to purchase 138.51 acre-feet of said transmountain water currently being held in storage in the 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 and Option Agreement.
  - 1.1. Purchase Agreement. Subject to the terms of this Agreement, the RGWCD agrees to purchase 138.51 acre-feet of transmountain water 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 the RGWCD, which date shall be the "Effective Date." If the RGWCD 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 138.51 acre-feet of water is sixty-five dollars (\$65.00) per acre-foot for a total purchase price of nine thousand, three dollars and fifteen cents (\$9,003.15) with all \$9,003.15 due and payable within ten business days after the Effective Date of this agreement.
  - 1.4. Failure to Pay. If the RGWCD 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 138.51 acre-feet of the transbasin water in storage in the Rio Grande Reservoir. After the Effective Date the Seller will not be entitled to use or dispose of the Stored Water and thereafter the RGWCD shall bear all seepage, evaporation and transit losses on the subject water.

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1.6. Approvals. RGWCD is responsible for obtaining any approvals necessary for RGWCD's 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 water subject to this Agreement 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 RGWCD's payment as specified in paragraph 1.3

Seller will notify the owner of Rio Grande Reservoir of the change in ownership of the Stored Water.

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

4. 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](mailto:navdev@me.com)

To RGWCD: Cleave Simpson  
General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
Fax: 719-992-2026  
Email: [cleave@rgwcd.org](mailto:cleave@rgwcd.org)

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

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

6. Miscellaneous Provisions.

6.1. 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 the RGWCD to one another with respect to this Agreement.

6.2. Survival. Each of the representations and warranties made by Seller and the RGWCD 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.

6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.

6.4. 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 the RGWCD. 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.

6.5. 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.

6.6. 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 the RGWCD, which consent shall not be unreasonably withheld. The RGWCD may not assign its rights

JHP

hereunder to any other person or entity without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

- 6.7. Litigation. If the Seller and/or the RGWCD 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.
- 6.8. 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.
- 6.9. 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.
- 6.10. Recording. The RGWCD may record this Agreement or a Memorandum of this Agreement.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. 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.
- 6.13. 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 the RGWCD, 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.

JHB

**Seller:**

John A. Parker  
Navajo Development Co., Inc.

3/11/19  
Date

**Accepted:**

**Rio Grande Water Conservation District**

By: Greg Higel  
Greg Higel

3/12/19  
Date

Title: President  
President



## PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is entered into between the Rio Grande Water Conservation District (RGWCD) and Navajo Development Co., Inc. and Linda and Frances Deture (“Sellers”) as the owners of certain water to be diverted and stored in Rio Grande Reservoir during the 2019 irrigation year.

### INTRODUCTORY RECITALS

A. The Sellers hold 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”). This water right will be stored in Rio Grande Reservoir during the 2019 irrigation year.

B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, including for augmentation and replacement purposes, and provides that the water is fully consumable within Water Division 3.

C. The RGWCD desires to purchase the entire volume of transmountain water, in excess of the needs of Sellers’ Plan for Augmentation, diverted during 2019 and subsequently held in storage in Rio Grande Reservoir, (“Available Water”) from Sellers 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 and Option Agreement.

1.1. Purchase Agreement. Subject to the terms of this Agreement, the RGWCD agrees to purchase all Available Water.

1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Sellers and the RGWCD, which date shall be the “Effective Date.” If the RGWCD has not made full payment pursuant to this agreement as provided in paragraph 1.3, then the Agreement will terminate as provided in paragraph 1.4.

1.3. Purchase Price. The purchase price for the water made available to the RGWCD is sixty-five dollars (\$65.00) per acre-foot.

1.3.1 Within 30 days from the date the 2019 diversions of subject water right cease or from Water Division No. 3’s end of irrigation season on the Rio Grande, Sellers must provide to the RGWCD a written accounting showing the quantity of Available Water. RGWCD will have 10 days from receipt of said accounting to provide written notice to Sellers that it either accepts such accounting or disagrees with some or all of the accounting.

1.3.2 If there is a dispute between the Parties regarding the accounting required in paragraph 1.3.1, the Parties will attempt, in good faith, to resolve the dispute within 10 days from Sellers’ receipt of notice from the RGWCD. If such dispute is not resolved, each Party retains all rights under this agreement and such other rights as it may have.

1.3.3. Within 10 days of the acceptance or resolution of dispute regarding the accounting

required in paragraph 1.3.1, RGWCD must pay to Sellers the total amount due to Sellers under this agreement, as determined by multiplying the total acre-feet of Available Water provided to RGWCD by the per acre-foot Purchase Price, above. Said date of payment is the Transfer Date of the Available Water

1.4. Failure to Pay. If the RGWCD fails to pay the purchase payment required herein when due, then this Agreement will terminate in full, Sellers shall retain title to the Available Water and the Option Agreement shall be void.

1.5. Water Subject to the Agreement. The water subject to this Agreement is the Available Water. After the Effective Date, the Sellers will not be entitled to use or dispose of any Available Water.

1.6. Approvals. RGWCD is responsible for obtaining any approvals necessary for RGWCD's proposed use or delivery of the Available Water.

2. Sellers' Obligations and Representations.

2.1. Seller's Title. Sellers represents that they are the owner of the water subject to this Agreement and that they have full power and authority to enter into this Agreement. Sellers further represents that they are 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. Sellers agree to stand evaporation and seepage losses occurring prior to the Transfer Date of the Available Water.

2.3. Notice to Reservoir Owner. On the Transfer Date of the Available Water, Sellers will notify the owner of Rio Grande Reservoir of the change in ownership of the Available Water.

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

4. 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](mailto:navdev@me.com)

To RGWCD: 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.

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

6. Miscellaneous Provisions.

6.1. 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 Sellers or the RGWCD to one another with respect to this Agreement.

6.2. Survival. Each of the representations and warranties made by Sellers and the RGWCD 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.

6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.

6.4. 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 Sellers and the RGWCD. 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.

6.5. 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.

6.6. **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 Sellers may not assign its rights or delegate its duties hereunder without the prior written consent of the RGWCD, which consent shall not be unreasonably withheld.

6.7. **Litigation.** If the Sellers and/or the RGWCD 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.

6.8. **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.

6.9. **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.

6.10. **Recording.** The RGWCD may record this Agreement or a Memorandum of this Agreement.

6.11. **Time.** Time is of the essence in this Agreement.

6.12. **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.

6.13. **Sellers' Acknowledgment.** Sellers 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 to Sellers by the RGWCD, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Sellers except for written amendments or waivers executed by the Parties.

18,703.75  
287.75  
@65

Sellers: John H. Parker  
Navajo Development Co., Inc.

12/17/19  
Date

Linda and Francis Deture  
Linda and Francis Deture

12-17-2019  
Date  
12-17-2019

Accepted: Francis Deture

Rio Grande Water Conservation District

By: Charles Sy-

12-23-19  
Date

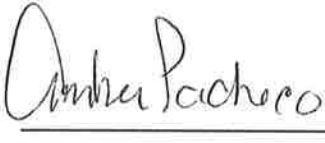
Title: General Manager

**TO:** Subdistrict No. 6 Board of Managers  
**DATE:** April 14, 2021  
**SUBJECT:** Lease of RGWCD water currently stored in Rio Grande Reservoir

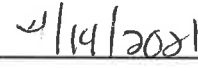
Dear Board of Managers for Subdistrict No. 6,

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. 6 leased 426.26 acre-feet of water the RGWCD currently held in storage in Rio Grande Reservoir. This water was leased from Navajo Development, Inc. during 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.

Subdistrict No. 6 leased the entire 426.26 acre-feet to cover their injurious depletions during the 2020 and 2021 ARP Years and any amount that remains in storage will remain under the control of Subdistrict No. 6 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  
General Mgr.

Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

  
Date



August 23, 2023

Peter J. Ampe, Esq.  
Hill & Robbins, P.C.  
1660 Lincoln Street, Suite 2720  
Denver, CO 802647

**Re: Alamosa Creek Canal and Special Improvement District No. 6 (Subdistrict 6) of the Rio Grande Water Conservation District Substitute Water Supply Plan  
Section 14, T36N, R8E, N.M.P.M.  
Water Division 3, Water District 20, Rio Grande County  
SWSP ID 9441**

**Approval Period: August 23, 2023 to November 1, 2023**

Contact phone number for Mr. Peter J. Ampe: 303-296-8100; [peterampe@hillrobbins.com](mailto:peterampe@hillrobbins.com)

Dear Mr. Ampe:

We have reviewed your letter dated May 11, 2023 in which you request approval of the substitute water supply plan (“SWSP”) on behalf of the Special Improvement District No. 6 (“Subdistrict No. 6” or “Applicant”) of the Rio Grande Water Conservation District (“RGWCD”) pursuant to § 37-92-308(5), C.R.S. Notice was provided to all parties who have subscribed to the Division 3 SWSP Notification List on May 11, 2023. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 10029105) has been received.

An application for approval of a change of water right as proposed under this SWSP has not been filed with the water court and the depletions associated with the proposed change of water right 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 water use plan or change proposed 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 for 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 Subdistrict No 6 (2018CV30014) to meet the requirements of the Subdistrict's Plan of Water Management ("Plan") as approved by the State Engineer. 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 Subdistrict 6's ARP. The water that is the subject of this SWSP may be made available by separate contract with other Subdistricts, only after prior approval by the Division Engineer.

## **SWSP OPERATION**

The SWSP is intended to change a portion of the waters historically applied to the Reinhardt farm to augmentation use by Subdistrict No. 6. A portion of Reinhardt property on the Alamosa Creek Canal located in Conejos County has been dried-up during the 2023 irrigation season to enable Subdistrict No. 6 to use the historical consumptive use ("HCU") water in their Annual Replacement Plan ("ARP"). The dry up area consists of 20.2 acres that were irrigated historically with a combination of surface, storage and groundwater. The water rights used for irrigation of the entire farm unit have historically been 53 shares of the total 366 Alamosa Creek Canal, corresponding share of storage water from Terrace Reservoir (42 acre-feet for this plan period), Well No. 1 of Case No. W-0118 (WDID 2005021), Well No. 1 of Case No. W-0119 (WDID 2005023), and Well No. 2 of Case No. W-0120 (WDID 2008507).

The fields to be dried up are two partial pivots consisting of 10.5 acres and 9.7 acres (Appendix B), located in portions of the SE1/4 of the SW1/4 of Section 11, and the SW1/4 of the NW1/4 of Section 14, both in Township 36N, Range 8E of the N.M.P.M. During normal years, operations start with direct deliveries to the farm from laterals of the Alamosa Creek Canal consisting of native waters supplemented upon request with deliveries from storage water to the farm from Terrace Reservoir and finally supplemented by pumping from the three confined aquifer wells noted above.

For purposes of this SWSP approval the historical consumptive use analysis was performed for years 2013-2020 for the 20.2 acres only. During the analysis period the dry-up area was used for both barley and alfalfa crops. Monthly diversion records from the Alamosa Creek Canal were obtained for all years of the study period for both direct flow water and water released from storage in Terrace Reservoir. Water losses along the canal were assumed to be 5% with a historical application efficiency of 83% as is typical for sprinkler application in the RGDSS.

The HCU attributed to surface water irrigation was calculated to be 30.3 acre-feet over the study period from 1913 through 2020 with 10.0 acre-feet designated as return flows and 1.7 acre-feet of ditch loss. The analysis performed for this SWSP approval only looked at the potential HCU from the 20.2 acres designated for dry-up.

<i>Reinhardt Fallow Area - 2013-2020 - Monthly HCU Analysis Results</i>								
Month	Crop Demands (AF)	Farm Share of Total Diversion (AF)	Farm Delivery After Ditch Loss (AF)	Residual After Irrigation Efficiency (AF)	Total GW Diversion (AF)	Ditch Loss (AF)	Total Return Flow (AF)	Total Consumptive Use (AF)
Mar	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Apr	0.4	2.6	2.4	2.0	0.0	0.1	0.5	1.9
May	3.9	4.8	4.5	3.7	0.8	0.2	1.7	3.6
Jun	11.0	8.5	8.1	6.7	4.0	0.4	2.2	9.9
Jul	10.7	7.8	7.4	6.1	2.9	0.4	1.7	8.5
Aug	7.2	5.0	4.7	3.9	0.7	0.2	0.9	4.5
Sep	1.6	2.8	2.7	2.2	0.0	0.1	1.4	1.2
Oct	0.6	2.0	1.9	1.6	0.0	0.1	1.4	0.5
Nov	0.0	0.0	0.0	0.0	0.1	0.0	0.1	0.0
<b>Total</b>	<b>35.4</b>	<b>33.5</b>	<b>31.8</b>	<b>26.4</b>	<b>8.5</b>	<b>1.7</b>	<b>10.0</b>	<b>30.3</b>

## DEPLETIONS

During the 2023 irrigation season the applicants farm will continue to take deliveries of Alamosa Creek Canal water and pumping of the three confined aquifer wells but will not irrigate more than 516.2 acres on the remaining center pivots. In order to prevent expansion of use a limit will be placed on the volume of water that can be supplied to the remaining 516.2 acres from all available sources (surface and groundwater). The average supply of water to the farm during the study period from the three confined aquifer wells and Alamosa Creek Canal water was determined to be 1,070 acre-feet (2.0 acre-feet/acre).

The farm will be limited to the same average of 2.0 acre-feet/acre for 516.2 acres during the current SWSP approval period. Resulting in a limit in total irrigation diversion on the farm from all sources being 1,032 acre-feet. The applicant shall not divert a combination of surface and groundwater greater than 1,032 acre-feet during the current SWSP approval period.

## REPLACEMENTS

Subdistrict No. 6 has entered into a lease agreement (attached) with Rodney Reinhardt to lease 42.0 acre-feet of water currently stored in Terrace Reservoir. Of the total lease volume, 30.3 acre-feet will be available to Subdistrict No. 6 for use in the current ARP. This water is storage that would have otherwise been deliverable to the farm under storage rights of the Alamosa Creek Canal during the 2023 irrigation year.

Replacement for both the ditch loss and the return flows will be required to mimic historic operations of the farm. The historical return flows associated with the dry-up parcels total 10.0 acre-feet and will be returned to the EXPO, LLC recharge facility located in the SE1/4 of the

NW1/4 of Section 22, Township 36N, Range 8 East of the NMPM (Appendix A). The remaining 1.7 acre-feet will be released and diverted into the Alamosa Creek Canal to cover historic ditch losses.

**For purposes of this SWSP, approval of the Applicant's assumed ditch loss, study period and consumptive use factors associated with 20.2 acres of dry-up is being accepted. However, any additional SWSP requests must be accompanied by a historical consumptive use analysis that accounts for the total farm acreage consumptive use from all sources. The analysis should detail when and where the storage water was historically used and provide a more comprehensive total farm unit diversion pumping limitation.**

### **CONDITIONS OF APPROVAL**

Pursuant to section 37-92-308(5)(a)(IV)(A), C.R.S., the state engineer, after consideration of the comments received, 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 §37-92-308(5), C.R.S., subject to the conditions stated below:

1. This SWSP shall be valid for the period of August 23, 2023 through November 1, 2023, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. 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, 2024**.
2. In accordance with section 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. The dryup period of this SWSP is the 2023 irrigation season. The Division Engineer has the authority to adjust the irrigation season dates based on local conditions as allowed by State Engineer's Policy 2010-1. The 2023 irrigation season is projected to begin April 1 and end November 1, 2023.
4. Diversions are limited to a combined maximum of 1,032 acre-feet from all sources of water to the Reinhardt farm. This includes deliveries from the Alamosa Creek Canal, both river and storage deliveries, and the three confined aquifer wells Well No. 1 of Case No. W-0118 (WDID 2005021), Well No. 1 of Case No. W-0119 (WDID 2005023), and Well No. 2 of Case No. W-0120 (WDID 2008507). No additional uses of the water are allowed unless an additional SWSP is approved. All pumping and headgate totals must be verified with the water commissioner and the DWR subdistrict staff on a monthly basis.
5. Approval of this SWSP is for the purposes stated herein. Any subsequent applications requesting a second year approval must be accompanied by a historical consumptive use analysis that accounts for the total farm acreage consumptive use from all sources. The analysis should detail when and where the storage water was historically used and provide a

more comprehensive total farm unit diversion limitation. This office may not approve a second year of this SWSP without such an analysis.

6. 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.
7. This SWSP is being sought in order to provide a part of the water supplies to be used by Subdistrict No 6 (2016CV30021) to meet the requirements of the Subdistrict's Plan of Water Management as approved by the State Engineer. This SWSP application is intended to provide a part of the water supplies to be used in the Subdistrict 6's ARP. The water that is the subject of this SWSP may be made available by separate contract with other Subdistricts, only after prior approval by the Division Engineer.
8. The Applicant shall perform an inspection and provide verification that the land associated with Fields 1 and 2 in this SWSP have been removed from irrigation during the term of this SWSP. Verification of dry-up must be in the form of an affidavit signed by an individual with personal knowledge of the dry-up for the entire irrigation season for each parcel of land associated with the change of water right in this SWSP. **By October 31, 2023**, the Applicant shall provide an affidavit to the Water Commissioner and Division Engineer that confirms dry-up during the **2023** irrigation season.
9. The 10.0 acre-feet designated for recharge must be delivered to the EXPO, LLC recharge facility located in the SE1/4 of the NW1/4 of Section 22, Township 36N, Range 8 East of the NMPM (Appendix A). All recharge must be completed before the end of the irrigation season and prior to the Alamosa Creek Canal Expo lateral being physically unable to deliver such water to the recharge pit .
10. The Applicant shall install and maintain such measuring devices as required by the Division Engineer for operation of this SWSP. 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.
11. The Applicant shall provide accounting of water attributed to recharge, direct diversion and pumping from the wells. The daily accounting must be submitted on a monthly basis to DWR Division 3 via email. Please contact Michelle Lanzoni at [michelle.lanzoni@state.co.us](mailto:michelle.lanzoni@state.co.us) for all accounting with the subject line "Subdistrict No. 6 - Reinhardt SWSP". Accounting must be submitted within 7 days after the end of the month for which the accounting applies and included in all monthly accounting for SD6 ARP. Accounting and reporting procedures are subject to approval and modification by the Division Engineer. An initial reading of the well meters must be provided with the accounting. Accounting and reporting procedures are subject to approval and modification by the Division Engineer. **Frequent, if not daily, contact with the Water Commissioner is required to ensure daily administration and to prevent injury to other parties.**
12. 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, Division 3 accounting staff, and Water Commissioner.

13. 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.
14. 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 David Hofmann, Assistant Subdistrict Coordinator, in our Division 3 office in Alamosa at (719) 589-6683.

Sincerely,



Jeff Deatherage, P.E.  
Water Supply Chief

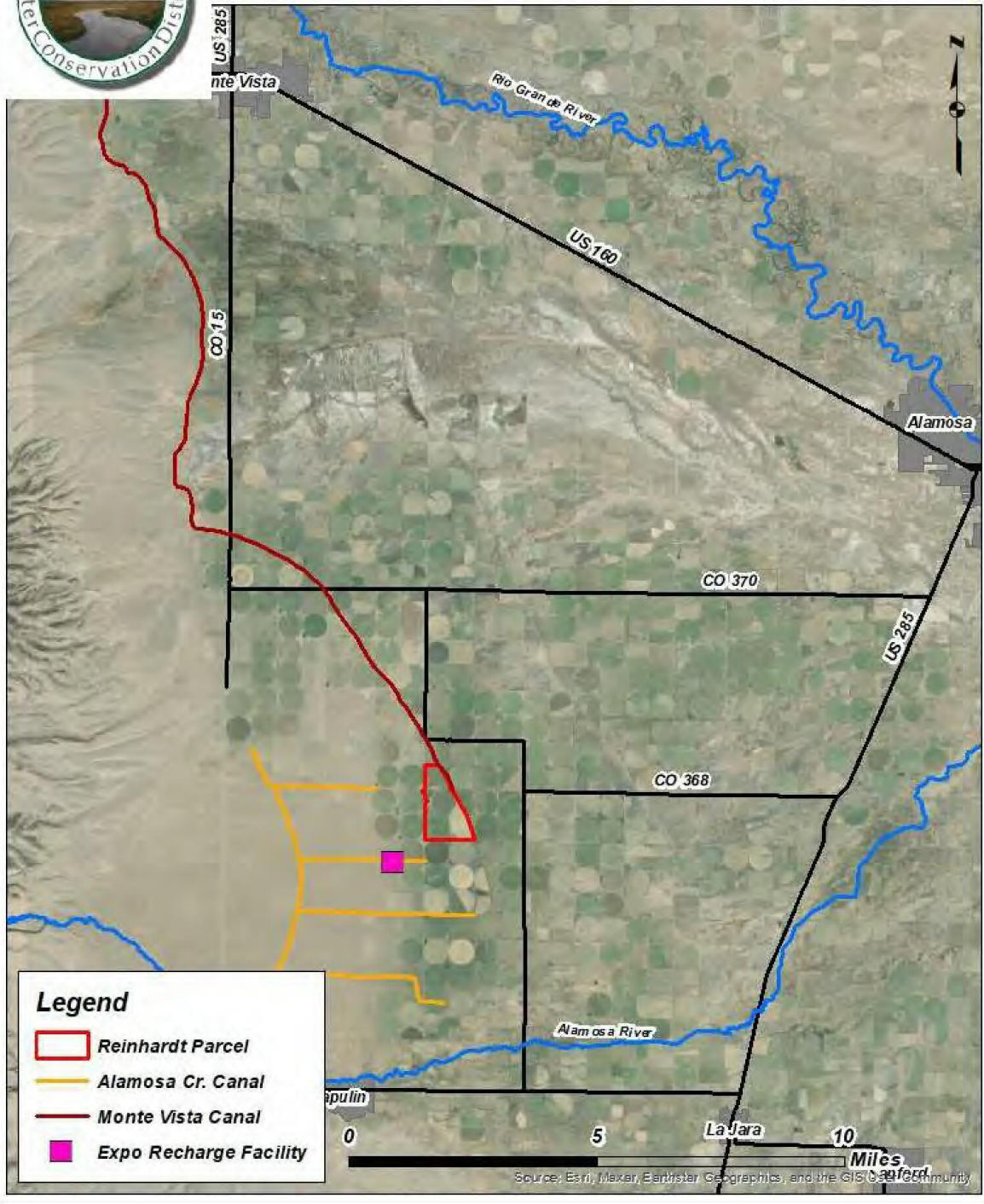
Attachments: Appendix A - Area Overview, Appendix B - Dry Up Area,  
Lease-Temporary Fallow Agreement May 11, 2023  
Recharge Pond Lease Agreement March 23, 2023

ec: Craig Cotten, Division 3 Engineer  
Division 3 SWSP Review Team



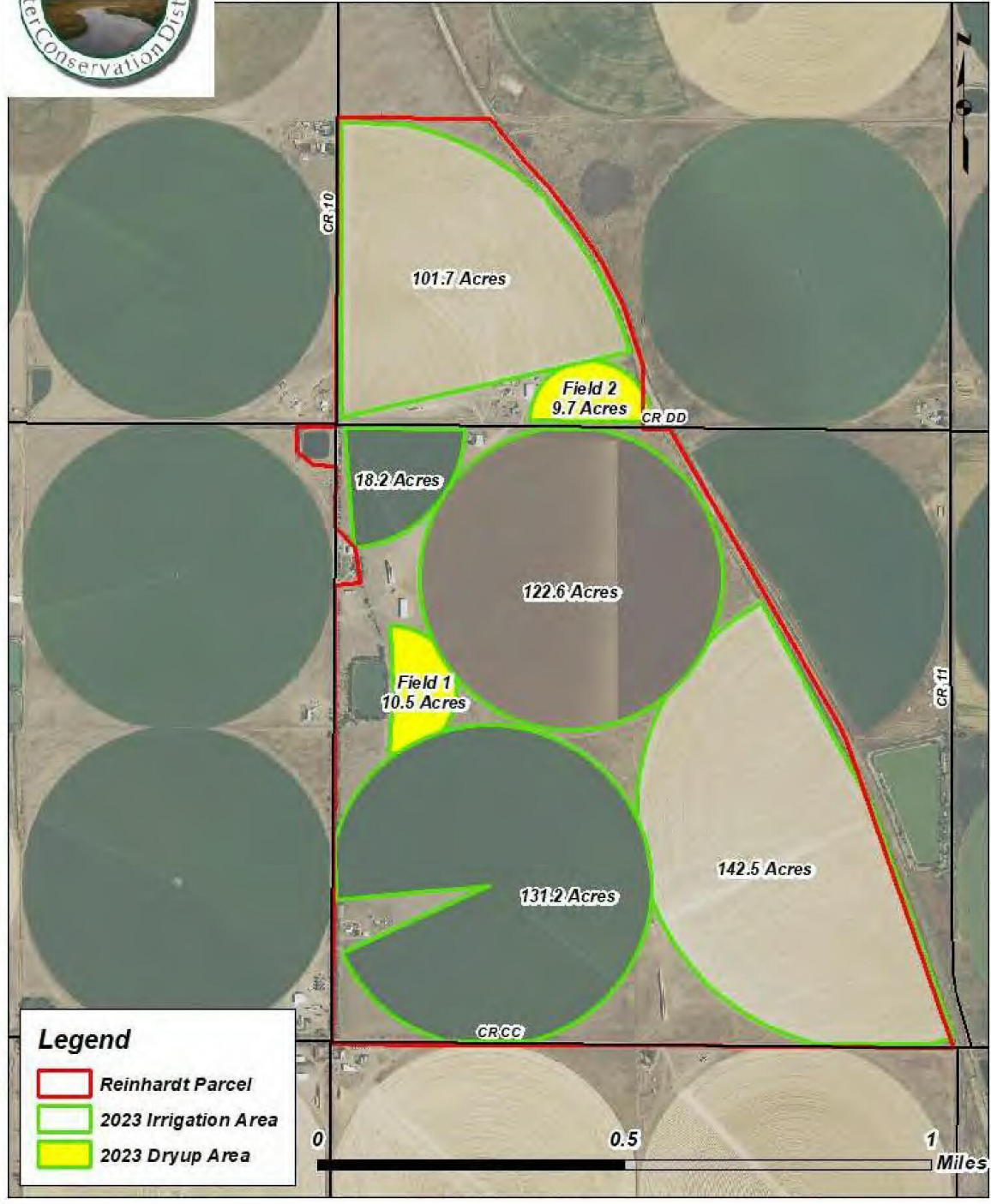


## APPENDIX A - AREA OVERVIEW





## **APPENDIX B - DRYUP AREA**





## LEASE-TEMPORARY FALLOW AGREEMENT

On this 11<sup>th</sup> day of May, 2023, this Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 6 of the Rio Grande Water Conservation District’s Water Activity Enterprise (“Subdistrict No. 6”), and Rodney Reinhardt (“Owner”) as the owner of certain water rights decreed for irrigation and used within the Alamosa River system (collectively “Parties” or in the singular “Party”).

### INTRODUCTORY RECITALS

- A. Subdistrict No. 6 desires water for augmentation and replacement purposes to comply with its approved Plan of Water Management and for use in the current and/or future approved Annual Replacement Plans (“ARP”).
- B. Owner holds title to Water Rights which include surface water rights, including but not limited to a portion of the Alamosa Creek Canal, Terrace Reservoir, and decreed confined aquifer wells, WDIDs 2005021, 2005023, 2008507, as further described in Appendix B of this agreement. Owner owns Parcels 556111300024, 556114100045, and 556114200045 as described by the Conejos County Assessor, Conejos County, Colorado. These parcels of land have historically been irrigated by Owner’s Water Rights.
- C. In order to supply augmentation and replacement water to Subdistrict No. 6, and for water conservation purposes, Owner is willing to temporarily fallow 20.2 acres of historically irrigated land for the 2023 irrigation season and lease the historical consumptive use credits (“HCU”) from these fallowed acres during the Term of this Agreement to Subdistrict 6 for its use as part of the current year’s ARP or subsequent years’ ARPs. A map of the fallowed acres is shown in the map in Appendix A of this Agreement.
- D. Owner and Subdistrict No. 6 wish to enter into an agreement for the Subdistrict’s use of the Wells and Water Rights for the changed uses of augmentation and replacement in the Subdistrict’s ARP for the period of April 1, 2023 through March 31, 2024, pursuant to a Substitute Water Supply Plan approved by the State Engineer pursuant to C.R.S. 37-92-308 (“SWSP”).

### AGREEMENT

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

1. Term. This Agreement will begin on April 1, 2023 and continue in effect until March 31, 2024. However, any of the HCU generated during the 2023 Irrigation Season and not used, lost or otherwise consumed by Subdistrict No. 6 will remain under the use and control of Subdistrict No. 6 after this Term expires for future use in its sole discretion.
2. Fallow Agreement. During the Term of this agreement, Owner must not apply any irrigation water to the Designated Fields during the entire 2023 Irrigation Season as defined by the Division No. 3 Division Engineer. After the expiration of the Term of this agreement, Owner may take such actions as he desires in his sole discretion.

3. Allocation of Groundwater: Owner's well can legally irrigate additional acres that are not included as part of this lease agreement. It is necessary to limit the amount of historical groundwater pumping on those additional acres to conform to the Division of Water Resources there will be no expansion of use from groundwater during the term of this agreement. The restricted amount of groundwater pumping which will be allowed on the non-fallowed acres will be determined by the Subdistrict and will be calculated based on the total annual water supply available to the parcel from both surface water and groundwater. The last meter reading submitted to Division of Water Resources for WDID 2005021 was 190.94 acre-feet on October 18<sup>th</sup>, 2022, WDID 2005023 was 2,452.67 acre-feet on November 1<sup>st</sup>, 2022, and WDID 2008507 was 756.96 acre-feet on November 1<sup>st</sup>, 2022. Based on the limit allowed under this lease, the Owner's combined diversions for all surface water rights associated with the Alamosa Creek Canal and Terrace Reservoir along with diversions from WDIDs 2005021, 2005023, and 2008507 should not exceed 1,032 acre-feet at the end of the 2023 Irrigation Season. If surface water is available to the Owner in excess of 1,032 acre-feet, Owner shall not be required to forgo the diversion of any surface water to which they are legally entitled. It may be necessary to adjust the amount of restricted groundwater pumping based on actual surface water diversion records provided to the Subdistrict from Division of Water Resources and/or any conditions for approval included in the final approval of the Substitute Water Supply Plan. Owner will be notified if the Subdistrict should need to make any adjustments to the amount of restricted groundwater use allowed on the non-fallowed acres.

4. Lease Agreement.

- 4.1. Lease Agreement. Subject to the terms of this Agreement, Subdistrict No. 6 agrees to lease 42.0 acre-feet from the Owner, of which 30.3 acre-feet is HCU, generated during the 2023 Irrigation Season as a result of fallowing the Designated Fields during the Term of this Agreement.
- 4.2. Determination of HCU Credit and Administrative Approval. Subdistrict No. 6 is responsible for the determination of HCU under this Agreement and is solely responsible for obtaining administrative or other legal approval for the use of the water and/or HCU as part of the ARP. Owner agrees to cooperate, within reason, with Subdistrict No. 6 in accomplishing these objectives, to include, providing information necessary or desirable to Subdistrict No. 6 in accomplishing these objectives.
- 4.3. Lease Price. The lease price for temporarily fallowing the Designated Fields is [REDACTED] per acre-foot of HCU. Total payment due to owner is [REDACTED]. Total payment is due to Owner on or before July 15, 2023.
- 4.4. Failure to Pay. If Subdistrict No. 6 fails to pay the lease price when due, then this Agreement will terminate in full, Owner will retain title to the HCU and the Agreement will be void.
- 4.5. Water Subject to the Agreement. The water subject to this Agreement is the HCU generated from the temporary fallowing of the Designated Field.



retain any water/HCU not paid for by Subdistrict No. 6, to include the release from any groundwater restrictions included in this agreement under Section 3-Allocation of Groundwater.

9. Miscellaneous Provisions.

- 9.1. 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 Owner or Subdistrict No. 6 to one another with respect to this Agreement.
- 9.2. Survival. Each of the representations and warranties made by Owner and Subdistrict No. 6 in this Agreement, or in any document or instrument delivered pursuant to this Agreement, are 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. 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.
- 9.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 9.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Owner and Subdistrict No. 6. 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.
- 9.5. 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.
- 9.6. 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. Owner may not assign his rights or delegate his duties hereunder without the prior written consent of Subdistrict No. 6, which consent will not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of Owner, which consent will not be unreasonably withheld.
- 9.7. Litigation. If Owner and/or Subdistrict No. 6 litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant must

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.

- 9.8. 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.
- 9.9. 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.
- 9.10. Recording. Subdistrict No. 6 may record this Agreement or a Memorandum of this Agreement at its own expense and may also file this Agreement with the Division Engineer, Water Division No. 3, as part of the documentation for an SWSP.
- 9.11. Time. Time is of the essence in this Agreement.
- 9.12. 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.
- 9.13. Owner's Acknowledgment. Owner certifies that he 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 Owner by Subdistrict No. 6, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Owner except for written amendments or waivers executed by the Parties.

By: Rodney Reinhardt  
Rodney Reinhardt

5/11/23  
Date

**SPECIAL IMPROVEMENT DISTRICT NO. 6  
RIO GRANDE WATER CONSERVATION DISTRICT  
WATER ACTIVITY ENTERPRISE**

By: Angelo Bellah  
Angelo Bellah, Program Manager

5/11/2023  
Date

## RECHARGE POND LEASE AGREEMENT

This Agreement is made and entered into this 23<sup>rd</sup> day of March, 2023, by and between Expo, LLC, a Colorado corporation (hereinafter referred to as "Expo"), and Special Improvement District No. 6 of the Rio Grande Water Conservation District's Water Activity Enterprise ("Subdistrict No. 6").

### RECITALS

**WHEREAS**, Expo is the owner of the Expo Recharge Pond, located in Section 22 in Township 36 North, Range 8 East, N.M.P.M., Conejos County, Colorado; and

**WHEREAS**, Expo operates the Recharge Pond for the purpose of covering its own Augmentation Plan needs by delivering water into the Recharge Pond in order to return water to the confined aquifer; and

**WHEREAS**, Subdistrict No. 6 enters into this Agreement with Expo to use its Recharge Pond to recharge up to ten (10) acre-feet of water delivered from the Alamosa Creek Canal located on the Alamosa River ("Leased Water"). Subdistrict No. 6 has requested the use of the Leased Water for recharge in a substitute water supply plan ("SWSP"); and

**WHEREAS**, Expo is willing to allow Subdistrict No. 6 to recharge the Leased Water in its Recharge Pond, subject to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. It is anticipated that the Leased Water will be recharged in such amounts as directed by Subdistrict No. 6 between May 1, 2023, and October 31, 2023, on a space-available basis.
2. Expo shall be solely responsible for all operation, maintenance and related costs associated with the Recharge Pond, and shall maintain full control of its daily operations. Expo shall have the final decision on when Leased Water can or will be recharged, provided however, that Expo shall make reasonable efforts to recharge the Leased Water at times requested by Subdistrict No. 6 during the 2023 Irrigation Season, subject to coordination with the Division Engineer's Office. Subdistrict No. 6 and Expo each agree that the most preferable time for delivery of the Leased Water is between May 1, 2023, and October 31, 2023. Each party agrees to make reasonable efforts to affect the delivery of the water within such time-frame, unless another time for delivery is agreed to between the parties.
3. Expo shall be responsible for accounting for the amount of Leased Water run through Expo's installed SDR Recorder and recharged in the Recharge Pond. Expo shall perform such accounting and share it with Subdistrict No. 6 in such a manner that Subdistrict No. 6 is able to



comply with the accounting obligations imposed by the Division Engineer in an approved SWSP. Subdistrict No. 6 shall be responsible for all other accounting requirements associated with its SWSP.

4. The compensation to be paid by Subdistrict No. 6 to Expo to recharge the Leased Water in the Recharge Pond consists of the following two parts:

- a. Subdistrict No. 6 shall pay an Administration Fee of [REDACTED]
- b. Subdistrict No. 6 shall pay a Recharge Fee of [REDACTED] per acre-foot for each acre-foot of Leased Water recharged in the Recharge Pond between May 1, 2023, and October 31, 2023. Expo shall invoice Subdistrict No. 6 no later than November 15, 2023, for the Administration Fee and the Recharge Fee due under this Agreement. Subdistrict No. 6 shall pay the invoice within 10 days of receipt.

5. The term of this Agreement is for the period commencing on May 1, 2023, and ending on October 31, 2023.

6. Notice under this Agreement shall be sufficient if given in writing, or in person, or by phone or email addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other parties.

**Subdistrict No. 6:**

Rio Grande Water Conservation District  
c/o Angelo Bellah  
8805 Independence Way  
Alamosa, CO 81101  
e-mail: [angelo@rgwcd.org](mailto:angelo@rgwcd.org)  
phone: 719-480-1272

**Expo, LLC:**

15 Washington Street  
c/o \_\_\_\_\_  
Monte Vista, Colorado 81144  
e-mail: \_\_\_\_\_  
phone: \_\_\_\_\_

7. By virtue of entering into this Agreement, Expo assumes no liability for Subdistrict No. 6's use of the Leased Water. Subdistrict No. 6 is responsible at its sole cost and expense for obtaining any and all local, state, or federal permits or approvals, if any, required for its storage and use of the Leased Water.

8. Subdistrict No. 6's use of Expo's facilities shall not create any rights of ownership or other property interests outside of this Agreement.

9. This Agreement does not and shall not be construed to modify any other agreements regarding Expo's Recharge Pond.

10. Remedies. In the event of default in the performance of this Agreement by Expo, Subdistrict No. 6's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 6's default hereunder, Expo's remedies shall be to retain all payments made by Subdistrict No. 6 prior to the date of the default, specific performance or damages.

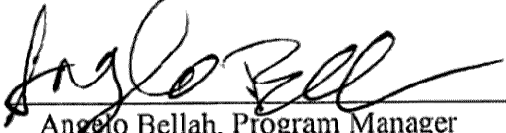
11. Miscellaneous Provisions.

- a. 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 Expo or Subdistrict No. 6 to one another with respect to this Agreement.
- b. 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, 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.
- c. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.

- d. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Expo and Subdistrict No. 6. 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.
- e. 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.
- f. 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. Expo may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 6, which consent shall not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of Expo, which consent shall not be unreasonably withheld.
- g. 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.
- h. 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.
- i. Time. Time is of the essence in this Agreement.
- j. 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.

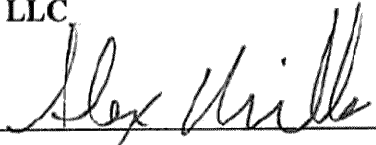
IN WITNESS HEREOF, the parties have executed this Agreement on the signature dates indicated below, to take effect on the later of such signature dates.

**Water Activity Enterprise, Special Improvement District No. 6  
of the Rio Grande Water Conservation District**

By:   
Angelo Bellah, Program Manager

3/23/23  
Date

Expo, LLC

By: 

3/23/23  
Date

## LEASE-TEMPORARY FALLOW AGREEMENT

On this 11<sup>th</sup> day of May, 2023, this Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 6 of the Rio Grande Water Conservation District’s Water Activity Enterprise (“Subdistrict No. 6”), and Rodney Reinhardt (“Owner”) as the owner of certain water rights decreed for irrigation and used within the Alamosa River system (collectively “Parties” or in the singular “Party”).

### INTRODUCTORY RECITALS

- A. Subdistrict No. 6 desires water for augmentation and replacement purposes to comply with its approved Plan of Water Management and for use in the current and/or future approved Annual Replacement Plans (“ARP”).
- B. Owner holds title to Water Rights which include surface water rights, including but not limited to a portion of the Alamosa Creek Canal, Terrace Reservoir, and decreed confined aquifer wells, WDIDs 2005021, 2005023, 2008507, as further described in Appendix B of this agreement. Owner owns Parcels 556111300024, 556114100045, and 556114200045 as described by the Conejos County Assessor, Conejos County, Colorado. These parcels of land have historically been irrigated by Owner’s Water Rights.
- C. In order to supply augmentation and replacement water to Subdistrict No. 6, and for water conservation purposes, Owner is willing to temporarily fallow 20.2 acres of historically irrigated land for the 2023 irrigation season and lease the historical consumptive use credits (“HCU”) from these fallowed acres during the Term of this Agreement to Subdistrict 6 for its use as part of the current year’s ARP or subsequent years’ ARPs. A map of the fallowed acres is shown in the map in Appendix A of this Agreement.
- D. Owner and Subdistrict No. 6 wish to enter into an agreement for the Subdistrict’s use of the Wells and Water Rights for the changed uses of augmentation and replacement in the Subdistrict’s ARP for the period of April 1, 2023 through March 31, 2024, pursuant to a Substitute Water Supply Plan approved by the State Engineer pursuant to C.R.S. 37-92-308 (“SWSP”).

### AGREEMENT

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

1. Term. This Agreement will begin on April 1, 2023 and continue in effect until March 31, 2024. However, any of the HCU generated during the 2023 Irrigation Season and not used, lost or otherwise consumed by Subdistrict No. 6 will remain under the use and control of Subdistrict No. 6 after this Term expires for future use in its sole discretion.
2. Fallow Agreement. During the Term of this agreement, Owner must not apply any irrigation water to the Designated Fields during the entire 2023 Irrigation Season as defined by the Division No. 3 Division Engineer. After the expiration of the Term of this agreement, Owner may take such actions as he desires in his sole discretion.

3. Allocation of Groundwater: Owner's well can legally irrigate additional acres that are not included as part of this lease agreement. It is necessary to limit the amount of historical groundwater pumping on those additional acres to conform to the Division of Water Resources there will be no expansion of use from groundwater during the term of this agreement. The restricted amount of groundwater pumping which will be allowed on the non-fallowed acres will be determined by the Subdistrict and will be calculated based on the total annual water supply available to the parcel from both surface water and groundwater. The last meter reading submitted to Division of Water Resources for WDID 2005021 was 190.94 acre-feet on October 18<sup>th</sup>, 2022, WDID 2005023 was 2,452.67 acre-feet on November 1<sup>st</sup>, 2022, and WDID 2008507 was 756.96 acre-feet on November 1<sup>st</sup>, 2022. Based on the limit allowed under this lease, the Owner's combined diversions for all surface water rights associated with the Alamosa Creek Canal and Terrace Reservoir along with diversions from WDIDs 2005021, 2005023, and 2008507 should not exceed 1,032 acre-feet at the end of the 2023 Irrigation Season. If surface water is available to the Owner in excess of 1,032 acre-feet, Owner shall not be required to forgo the diversion of any surface water to which they are legally entitled. It may be necessary to adjust the amount of restricted groundwater pumping based on actual surface water diversion records provided to the Subdistrict from Division of Water Resources and/or any conditions for approval included in the final approval of the Substitute Water Supply Plan. Owner will be notified if the Subdistrict should need to make any adjustments to the amount of restricted groundwater use allowed on the non-fallowed acres.

4. Lease Agreement.

- 4.1. Lease Agreement. Subject to the terms of this Agreement, Subdistrict No. 6 agrees to lease 42.0 acre-feet from the Owner, of which 30.3 acre-feet is HCU, generated during the 2023 Irrigation Season as a result of fallowing the Designated Fields during the Term of this Agreement.
- 4.2. Determination of HCU Credit and Administrative Approval. Subdistrict No. 6 is responsible for the determination of HCU under this Agreement and is solely responsible for obtaining administrative or other legal approval for the use of the water and/or HCU as part of the ARP. Owner agrees to cooperate, within reason, with Subdistrict No. 6 in accomplishing these objectives, to include, providing information necessary or desirable to Subdistrict No. 6 in accomplishing these objectives.
- 4.3. Lease Price. The lease price for temporarily fallowing the Designated Fields is two hundred fifty and 00/100 dollars (\$250.00) per acre-foot of HCU. Total payment due to owner is seven-thousand five-hundred seventy-five and 00/100 dollars (\$7,575.00). Total payment is due to Owner on or before July 15, 2023.
- 4.4. Failure to Pay. If Subdistrict No. 6 fails to pay the lease price when due, then this Agreement will terminate in full, Owner will retain title to the HCU and the Agreement will be void.
- 4.5. Water Subject to the Agreement. The water subject to this Agreement is the HCU generated from the temporary fallowing of the Designated Field.



4.6. Title to Water Rights. Nothing in this agreement is to be interpreted as giving Subdistrict No. 6 any legal or equitable title in or to the Owner's Water Rights.

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

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. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict No. 6, however consent from the Rio Grande Water Conservation District Board of Directors is required and Subdistrict No. 6 believes it will obtain such consent. If such consent is not given, Subdistrict No. 6 must immediately provide Notice to Owner and this Agreement will be void as of the date of that Notice. To the best of the Subdistrict No. 6's knowledge, there is no pending or threatened litigation or administrative proceeding against Subdistrict No. 6 that would prevent it from leasing the Designated Field.

7. 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:	Address: Rodney Reinhardt 10270 County Road DD La Jara, CO 81140 Phone: (719) 580-2128 E-mail: rodneyvirg@aol.com
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To Subdistrict No. 6:	Rio Grande Water Conservation District c/o Angelo Bellah 8805 Independence Way Alamosa, CO 81101 Phone: (719) 589-6301 Email: angelo@rgwcd.org
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Such addresses may be changed during the term of this Agreement by written notice given in accordance with this paragraph.

8. Remedies. In the event of Lessor's default in the performance of this Agreement, Subdistrict No. 6's remedies include, but are not limited to, the remedy of specific performance. In the event of the Subdistrict No. 6's default hereunder, Owner's sole and exclusive remedy shall be to retain all payments made by Subdistrict No. 6 prior to the date of the default, and to

retain any water/HCU not paid for by Subdistrict No. 6, to include the release from any groundwater restrictions included in this agreement under Section 3-Allocation of Groundwater.

9. Miscellaneous Provisions.

- 9.1. 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 Owner or Subdistrict No. 6 to one another with respect to this Agreement.
- 9.2. Survival. Each of the representations and warranties made by Owner and Subdistrict No. 6 in this Agreement, or in any document or instrument delivered pursuant to this Agreement, are 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. 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.
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- 9.6. 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. Owner may not assign his rights or delegate his duties hereunder without the prior written consent of Subdistrict No. 6, which consent will not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of Owner, which consent will not be unreasonably withheld.
- 9.7. Litigation. If Owner and/or Subdistrict No. 6 litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant must

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.

- 9.8. 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.
- 9.9. 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.
- 9.10. Recording. Subdistrict No. 6 may record this Agreement or a Memorandum of this Agreement at its own expense and may also file this Agreement with the Division Engineer, Water Division No. 3, as part of the documentation for an SWSP.
- 9.11. Time. Time is of the essence in this Agreement.
- 9.12. 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.
- 9.13. Owner's Acknowledgment. Owner certifies that he 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 Owner by Subdistrict No. 6, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Owner except for written amendments or waivers executed by the Parties.

By: Rodney Reinhardt  
Rodney Reinhardt

5/11/23  
Date

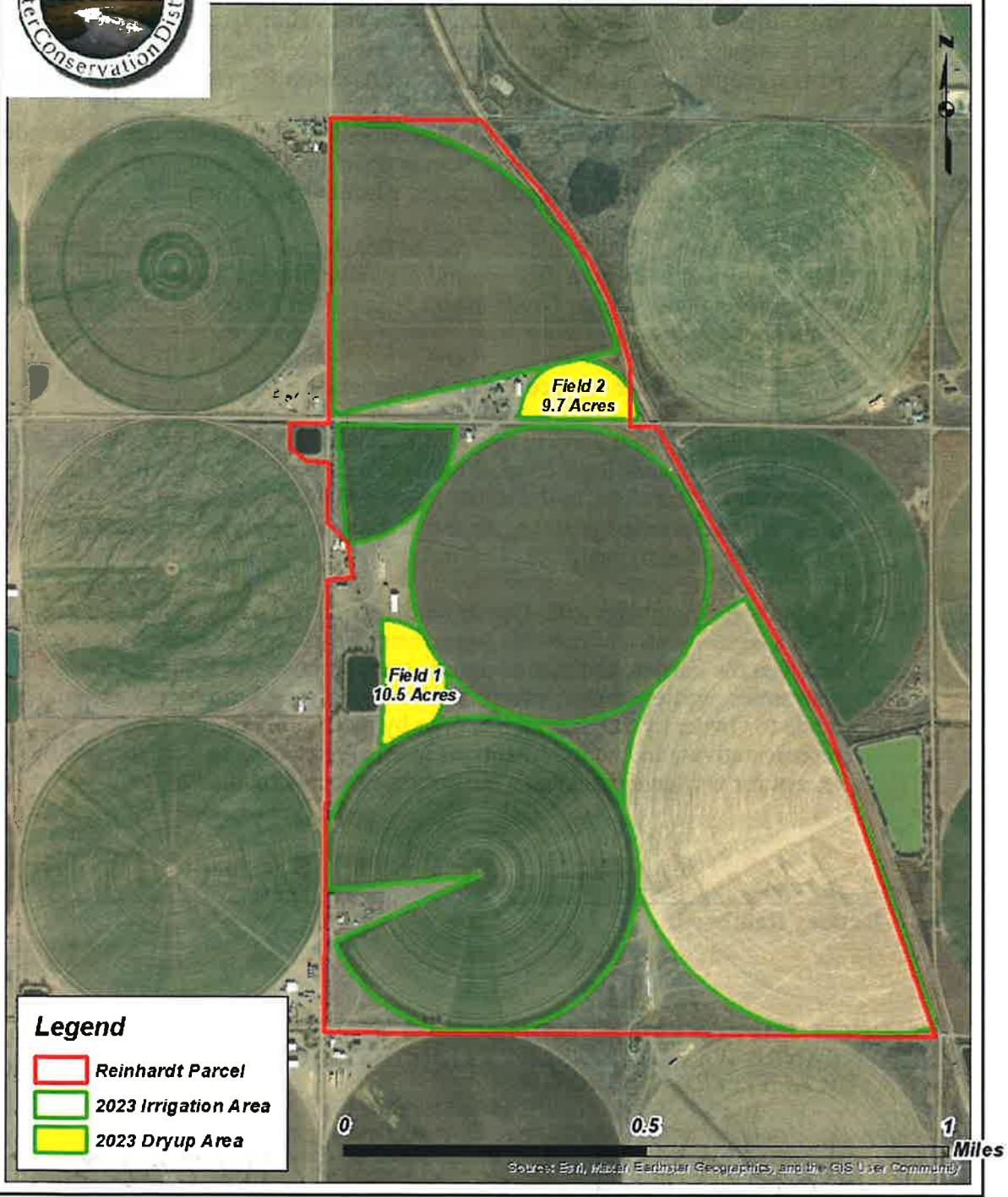
**SPECIAL IMPROVEMENT DISTRICT NO. 6  
RIO GRANDE WATER CONSERVATION DISTRICT  
WATER ACTIVITY ENTERPRISE**

By: Angelo Bellah  
Angelo Bellah, Program Manager

5/11/2023  
Date



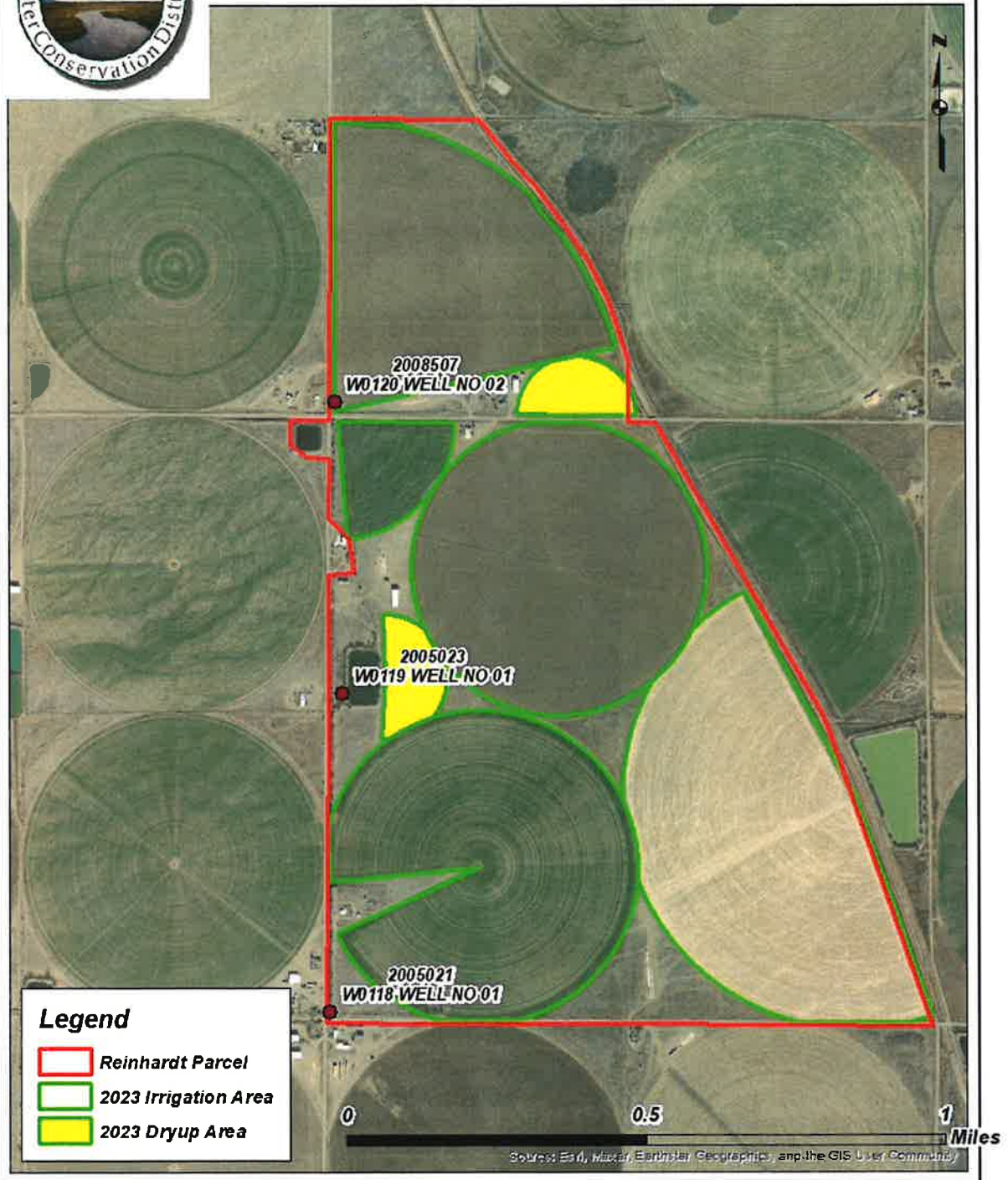
## APPENDIX A - DRYUP AREA







## APPENDIX B - PROPERTY WELLS



DAVID W ROBBINS  
PETER J AMPE  
MATTHEW A MONTGOMERY

**HILL & ROBBINS, P.C.**  
ATTORNEYS AT LAW  
1660 LINCOLN STREET, SUITE 2720  
DENVER, COLORADO 80264

TELEPHONE  
303 296-8100

FAX  
303 296-2388

E-MAIL  
[peterampe@hillandrobbs.com](mailto:peterampe@hillandrobbs.com)

ROBERT F HILL (Ret.)

May 11, 2023

Kevin Rein, P.E.  
State Engineer  
State Engineer's Office  
1313 Sherman Street, Room 818  
Denver, Colorado 80202

**Via DWR Portal**

**Re: Request for Approval of Substitute Water Supply Plan ending April 30, 2024 for the purpose of changing the purpose of use of a water right for Special Improvement District No. 6 of the Rio Grande Water Conservation District pursuant to section 37-92-308(5), C.R.S.**

Dear Mr. Rein,

Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise ("Subdistrict No. 6") submits this request to approve a Substitute Water Supply Plan ("SWSP"), to run from the date of approval to April 30, 2024. The \$300.00 filing fee will be paid through the DWR portal. A certificate of mailing showing service of this Request for Approval of a Substitute Water Supply Plan to all parties who have subscribed to the SWSP notification list for Water Division No. 3, Colorado is attached as Exhibit A. This is the first request for a SWSP for this water.

This SWSP does not represent all sources of water Subdistrict No. 6 will use to remedy injurious depletions and does not limit the other actions being taken by Subdistrict No. 6 in order to meet the requirements of the Plan of Water Management as approved by the State Engineer. Instead, this SWSP is one portion of the overall actions taken by Subdistrict No. 6 to assure a 2023/2024 Annual Replacement Plan conforms with the requirements of the Plan of Water Management.

This SWSP application is intended to provide a part of the water supplies to be used in the Subdistrict's Annual Replacement Plan, but the approval of this SWSP does not have the effect of approving the Annual Replacement Plan. The Annual Replacement Plan approval is a separate process.



## **I. Project Description.**

This request for approval of a SWSP is being submitted pursuant to section 37-92-308(5), C.R.S. for the purpose of changing the water rights listed below to change the use of the water rights to include augmentation and replacement of injurious depletions as use in accord with the Subdistrict No. 6 ARP. No other changes to the previous decrees are requested.

Subdistrict No. 6 will use the water changed under this SWSP as set forth in detail in Section III, below.

The Subdistrict will lease 42.0 acre-feet from the Lessee, which will provide for 30.3 acre-feet available to the Subdistrict for use to remedy injurious depletions under its ARP and the remaining 11.7 acre-feet will be used to replace ditch losses and provide for return flows. A copy of the Lease Agreement is attached as Exhibit C.

## **II. Change of Water Right.**

The water rights to be changed are: 30.3 acre-feet of the storage rights of the Alamosa Creek Canal. The requested change is to change the purpose of use to include use in an annual replacement plan for remedy of injurious depletions directly, by exchange, or by storage in Terrace Reservoir for later release, and adding an alternative point of diversion for each water right. The exchange reach will be from the point of diversion of the ditch to the top of the Alamosa River reach as defined in the Rio Grande Decision Support System.

The Engineering Analysis supporting this change of use and establishment of historical consumptive use is attached as Exhibit B.

## **III. Operation of Plan.**

The water right listed above, in combination with the other water rights to be listed as part of the overall water portfolio in the ARP, as required by the approved Plan of Water Management for Subdistrict No. 6, will be used to remedy injurious depletions through augmentation, replacement, or recharge, either directly or by exchange. This SWSP is intended to add additional purposes of use for the above listed water.

During the 2023 irrigation season, the historically irrigated acres identified in the Engineering Report attached as Exhibit B, will be fallowed and no further irrigation will take place on those acres during the 2023 irrigation season in order to provide the 42.0 acre-feet to the Subdistrict to remedy injurious depletions. The calculations used to determine the historical consumptive use of the fallowed acres are included in the Engineering Report. The historical consumptive use from those acres will be used under the changed water rights requested herein in the manner described in the Engineering Report. In short, 30.3 acre-feet of the historical consumptive use will be left in the stream, or stored and released from Terrace Reservoir as direct replacement of injurious depletions or by exchange and/or diverted and recharged and the

Kevin Rein, P.E.

May 11, 2023

Page 3

return flows to the stream used to remedy injurious depletions as shown in Exhibit B. All accounting of remedy of injurious depletions will be in a form acceptable to the division engineer.

Return flows attributable to the changed water, 10.0 acre-feet, will be diverted and recharged at a dedicated recharge facility near the original place of use, as detailed in the Engineering Report. This diversion and recharge will mimic the historical return flows from the changed water rights. The Subdistrict's right to use the recharge facility is attached as Exhibit D.

In order to assure no expansion of use under the other water held by the Lessee, Lessee's combined groundwater and Alamosa Creek Canal diversions will be limited as set forth in the Engineering report.

#### **IV. Conclusion.**

The Engineering analysis attached as Exhibit B shows that granting the SWSP request will not result in injury to any senior water rights. Subdistrict No. 6 hereby requests that the State Engineer approve this Substitute Water Supply Plan which is submitted in compliance with section 37-92-308(5), C.R.S.

Very truly yours,

/s Peter J. Ampe

Subdistrict No. 6

Peter J. Ampe, Esq.

# EXHIBIT A

## CERTIFICATE OF SERVICE

This is to certify that I have duly served the forgoing Request for Renewal of Substitute Water Supply Plan for 2022/2023 water year for the purpose of changing purpose of use of water rights for Special Improvement District No. 6 of the Rio Grande Water Conservation District pursuant to section 37-92-308(5), C.R.S. upon all person listed on the Substitute Water Supply Plan Notification List for Water Division No. 3 (May11, 2023) this 11<sup>th</sup> day of May 2023.

*s/ Peter J. Ampe* \_\_\_\_\_  
Peter Ampe

**EXHIBIT B**

**ENGINEERING REPORT  
HISTORICAL CONSUMPTIVE USE**



## Rio Grande Water Conservation District

8805 Independence Way • Alamosa, Colorado 81101

Phone: (719) 589-6301 • Fax: (719) 992-2026

*Protecting & Conserving San Luis Valley Water*

May 11, 2023

Mr. Kevin Rein, P.E.  
Division of Water Resources  
1313 Sherman St., Room 821  
Denver, CO 80203

Mr. Craig Cotten, P.E.  
Water Division Three  
Colorado Division of Water Resources  
301 Murphy Drive  
Alamosa, CO 81101

Dear Mr. Rein and Mr. Cotton,

This Historic Consumptive Use (HCU) Analysis has been prepared to show the amount of consumptive use historically associated with a portion of a farm (Farm) in Conejos County that will be allowed for the 2023 irrigation season. This analysis is intended to support a Substitute Water Supply Plan (SWSP) request, filed pursuant to CRS 37-92-308(5). The SWSP request is for a change in the type and place of use of water rights detailed below. The Farm's owner (Owner) will allow the Rio Grande Water Conservation District's Special Improvement District #6 (Subdistrict) to lease the amount of water normally applied to the irrigated land and use the HCU portion for paying stream depletions caused by groundwater withdrawals. Details regarding the method for determining the amount of HCU credit available to the Subdistrict are presented below.

The requested period of approval for the SWSP is April 1, 2023 through March 31, 2024

### **Project Description**

The Subdistrict is responsible to remedy injurious depletions to certain streams listed in its Annual Replacement Plan (ARP) that are a result of groundwater withdrawals being made by wells listed in the ARP. One such stream is the Alamosa River. This SWSP request is intended to change the use of 30.3 AF of water that is currently stored in Terrace Reservoir and allow for it to be used as augmentation water for the Subdistrict.

## **Project Location**

The Farm participating in this project is comprised of 652.5 acres located in Sections 11 and 14 of Township 36N, Range 8E, NMPM in northern Conejos County, immediately west of the Monte Vista Canal. Of the total acreage, 536.4 acres is irrigated by 7 center pivot systems, ranging in size from 9.7 acres to 142.5 acres. The remainder of the land is not used for crop production and is not irrigated. An overview map is shown in Appendix A.

Of the 7 center pivots located on the property, the Owner will follow the two smallest pivots for the 2023 irrigation season. The larger field (Field 1) is a 10.5 acre half-circle located in the NW  $\frac{1}{4}$  of 14-36-8. The smaller field (Field 2) is 9.7 acre half-circle located in the SW  $\frac{1}{4}$  of 11-36-8. Together, Fields 1 and 2 form the dry-up area, comprised of 20.2 acres, or 3.77% of the total irrigated area on the Farm. The dry-up area is shown in Appendix B.

## **Crop History**

Cropping history on the Farm has been dominated by alfalfa and barley crops in the past. This analysis covers years 2013-2020, inclusive of all intervening years. During the analysis period, the dry-up area was used for both barley and alfalfa crops, however barley was grown more of the time than alfalfa. Prior to 2013 more of the area was used for alfalfa, which consumes more water than barley, and as a result this analysis will be a conservative estimate of the true HCU available.

Records of crops grown during the study period were obtained from the Owner and verified with satellite imagery for years that imagery is available. The cropping history is shown in Appendix H.

## **Analysis Period**

For the purposes of this SWSP, the HCU analysis was done for years 2013-2020, inclusive. Crop types before 2013 tended to be more alfalfa and the method of irrigation was flooding. The area flooded in Fields 1 and 2 were greater than the areas currently covered by center pivots. Because the crop type tended to be alfalfa and the irrigated area larger under Fields 1 and 2, the selected analysis period is consistent with or conservative to periods before 2013. Also, as shown in Appendix C, the analysis period covers an array of climatic conditions. Alamosa River flows ranged from a low of 32,900 AF in 2013 to a high of 98,700 AF in 2019. This analysis period covers wet, dry and average years, as those terms relate to the water supplies for this farm.

## **Water Supplies**

Farm water sources consist of two separate water sources from the Alamosa River and three confined aquifer wells located on the Farm. All water from the Alamosa River (Surface Water) is delivered to the Farm via the Alamosa Creek Canal. The Surface Water delivered consists of both the Alamosa Creek Canal's various direct flow water rights as well as the Alamosa Creek Canal's portion of water stored in Terrace Reservoir pursuant to the reservoir's storage rights. Surface Water from both sources is allocated to the Farm based on the Farm's ownership of 53 shares out of the total outstanding 366 Alamosa Creek Canal shares. Both fields that will be followed for 2023 are within the historic area legally serviced by the Alamosa Creek Canal.

Monthly diversion records for the Alamosa Creek Canal were obtained from the Division of Water Resources (DWR) for all years of the study period for both direct flow water and water released from



storage. Water losses along the canal are assumed to be minimal, at 5%, due to significant portions of the canal being concrete lined above the Farm's headgate. Historic application efficiency was assumed to be 83%, which is the typical RGDSS efficiency for sprinkler applications.

Along with water from the Alamosa Creek Canal, the dry-up area has also been historically irrigated with water from the three confined aquifer wells shown in Appendix E. Each well is metered separately and then may be co-mingled together along with the Farm's other Surface Water. All water from the wells and from the Alamosa Creek Canal is collected together into two centrally located reservoirs which each serve their respective center pivots. Fields 1 and 2 draw from separate reservoirs and do not have meters to specifically measure their usage, and therefore the amount of water assumed to be historically available to the dry-up area was based on the ratio of acres within the dry-up to the total irrigated acres on the Farm for both surface water and groundwater. As mentioned above, this amount is 20.2 acres out of 536.4 acres, or about 3.7%. Farm water supplies are summarized in Appendix E

### **Soil Profile**

The soil profile is assumed to be 1.5 feet in depth, though the true amount is likely much more for alfalfa, thus resulting in a conservative approach to this analysis. The soil moisture holding capacity is assumed to be 0.72 in/ft which is consistent with soil types found in the dry-up area. Soil types and water holding capacities for the dry-up area are shown in Appendix D.

### **Climate Station**

StateCU was used to determine the amount the crop water demands on a monthly basis for the duration of the study period. Precipitation and climate data from the Waverly 1W climate station were used by StateCU to determine total crop irrigation needs. A summary of annual irrigation needs for the crops grown in the dry-up area is shown in Appendix F.

### **Analysis Method**

This analysis is based on a monthly water budget. For each month of the analysis period, crop demands were compared to available water supplies. Crop demand is the total potential crop evapotranspiration less any precipitation received in a particular month. Water supply is the amount of groundwater and Surface Water available to the Farm in that month, based on diversion records. If excess Surface Water was available to the Farm in any particular month above and beyond the amount required by the crop, then the excess amount was assumed to be stored in the soil profile and would be available for usage by the crop within that same year if water supply was insufficient in a future month. If Surface Water and water available from the soil profile were insufficient to meet the crop demands, then it was assumed that groundwater would have been used to cover any deficit in supply, up to the pro rata amount of groundwater available to the dry-up area.

Prior to the analysis period the irrigation method was flood irrigation instead of center pivot irrigation and the area irrigated does not exactly match the area irrigated by the existing center pivots. An analysis was also completed using the same methods outlined above, but with an irrigation efficiency of 60% on the areas that were actually irrigated at that time. That analysis resulted in a consumptive use number that was about 1% higher than the one determined in the 2013-2020 analysis period, and so the selected analysis is consistent with or conservative to other historic periods of irrigation.

## **Analysis Results**

The results of this analysis using the methods and assumptions outlined above indicate that the 20.2 acre dry-up area, consisting of Field 1 and 2, has an HCU of 30.3 AF/year. Of the total 42.0 AF leased from the Owner, 30.3 AF is the amount of water that will be available to the Subdistrict for the use of remedying injurious depletions on the Alamosa River.

As a result of irrigation efficiency being less than 100% and excess water being available in some months above crop demands, the Farm has historically generated a return flow. This analysis indicates that the return flow associated with the dry-up area is 10.0 AF. 100% of these return flows are assumed to accrue to the aquifer immediately underlying the farm and some portion of that return flow eventually accrues to local stream systems. No analysis has been done to show when and where these stream accretions would occur, and as such the on-farm return flows must be continued in a manner that mimics historic return flows to ensure no injury to any vested water rights. Results are summarized in Appendix G.

## **SWSP Operation**

The Subdistrict proposes to operate this SWSP in the following manner that will prevent injury to any vested water rights and will also prevent any expansion of use. In order to prevent injury or expansion of use the Subdistrict will ensure that 10.0 AF is delivered to a nearby recharge facility during the 2023 irrigation season and that limitations are set on the Farm's groundwater withdrawals that reflect a reduced number of irrigated acres.

### **Return Flows**

As noted in the analysis above, the historic return flows associated with the dry-up parcel totaled 10.0 AF. This SWSP proposes to mimic this return flow by recharging 10.0 AF of the leased water at a dedicated recharge facility located in the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  22-36N-8E NMPM. The recharge site is located approximately 1 mile from the Farm and is owned by EXPO, LLC and is used to recharge their water pursuant to 14CW3027. The site is shown as the Expo Recharge Facility in Appendix A. Water recharged at the Expo site will be measured in a manner acceptable to the Division Engineer and shall total at least 10.0 AF.

### **Groundwater Limitations**

In order to prevent expansion of use, a limit will be placed on total groundwater that may be withdrawn by the Owner. Average total Farm diversion from the wells and Alamosa Creek Canal combined total 1,070 AF, or an average of 2.0 AF/acre. The Owner will be limited to this same amount for the 2023 growing season, resulting in total irrigation diversion on the Farm from all sources being limited to 1,032 AF based on an irrigated acreage of 516.2 acres. If the total amount of Surface Water available is greater than 1,032 AF, the Owner will not be required to pass the additional water to other users but will not be allowed use the wells for irrigation. If the amount of Surface Water is less than 1,032 AF, the Owner may use the wells for irrigation if the Farm's total irrigation diversions are less than 1,032 AF during the 2023 irrigation season.

Leased Water Allocation

The Subdistrict will lease 42.0 AF from the Owner that will be comprised of water that would have otherwise been deliverable to the Farm under the storage rights of the Alamosa Creek Canal. Of the leased amount, 30.3 AF will be available to remedy daily stream depletions. This is equivalent to the CU that is being eliminated by drying up Fields 1 and 2. To cover ditch losses, 1.7 AF of the leased reservoir water will be returned to the other shareholders of the Alamosa Creek Canal and will be allowed to flow in that canal to cover any ditch losses. The remaining 10.0 AF will be diverted at the Expo recharge facility and recharged as outlined above. The Owner will be able to divert the remaining reservoir water normally attributable to the Farm and will continue diverting the Farm's full share of Alamosa Creek Canal water.

Please contact us with any questions or concerns.

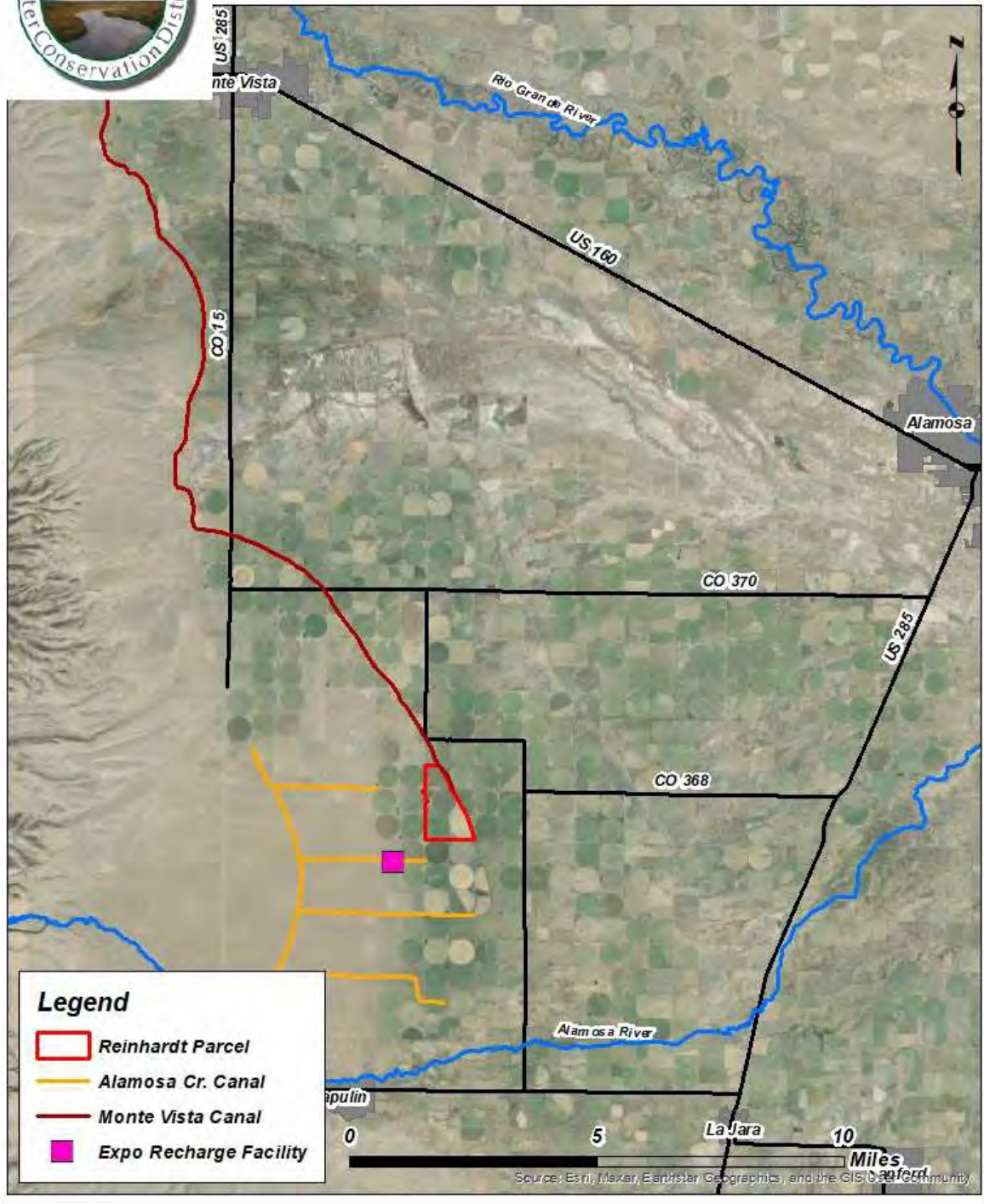
Sincerely,

Rio Grande Water Conservation District

**APPENDIX A**  
**Property Overview Map**



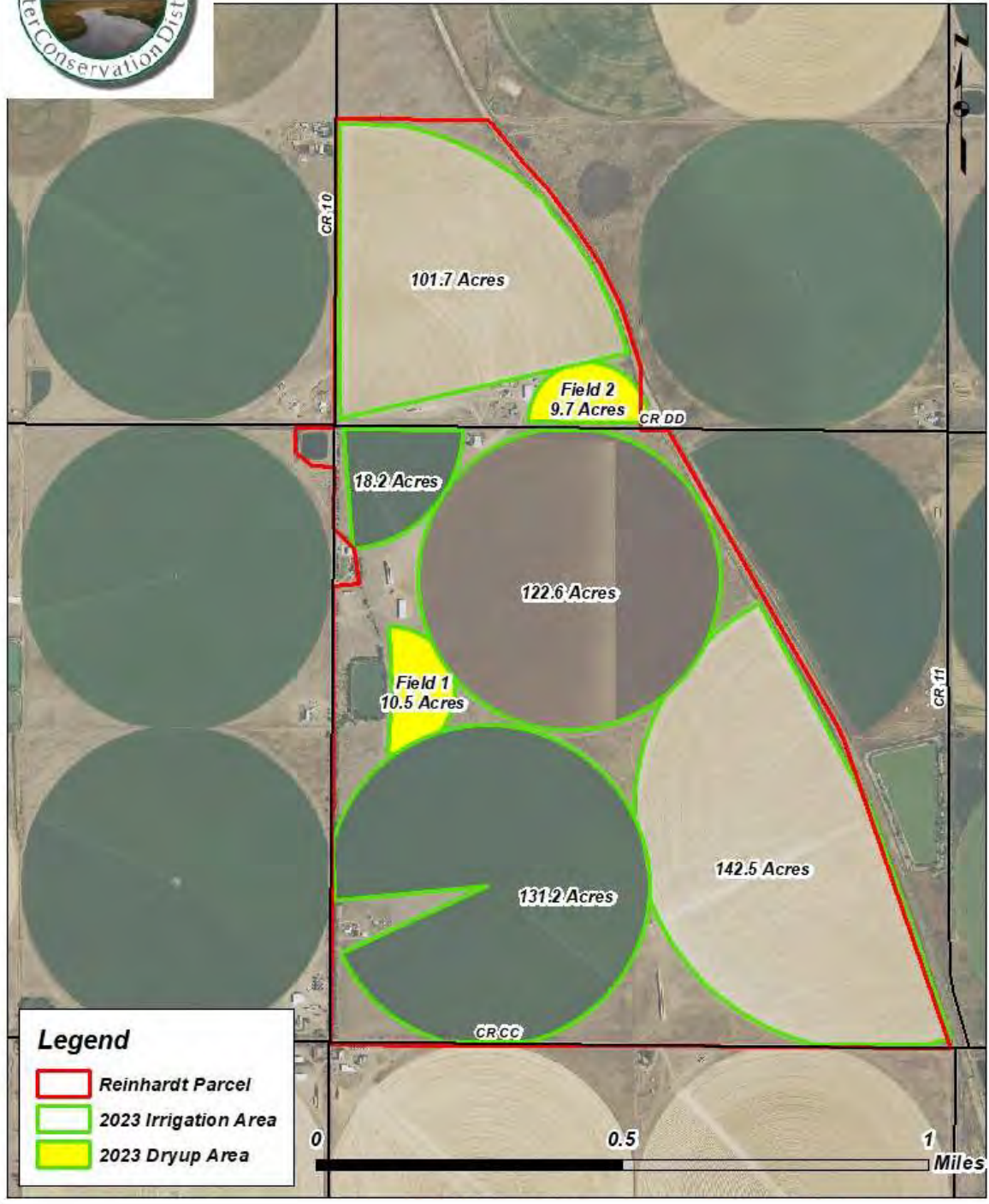
## APPENDIX A - AREA OVERVIEW



**APPENDIX B**  
**Dry-up Area Map**



## **APPENDIX B - DRYUP AREA**

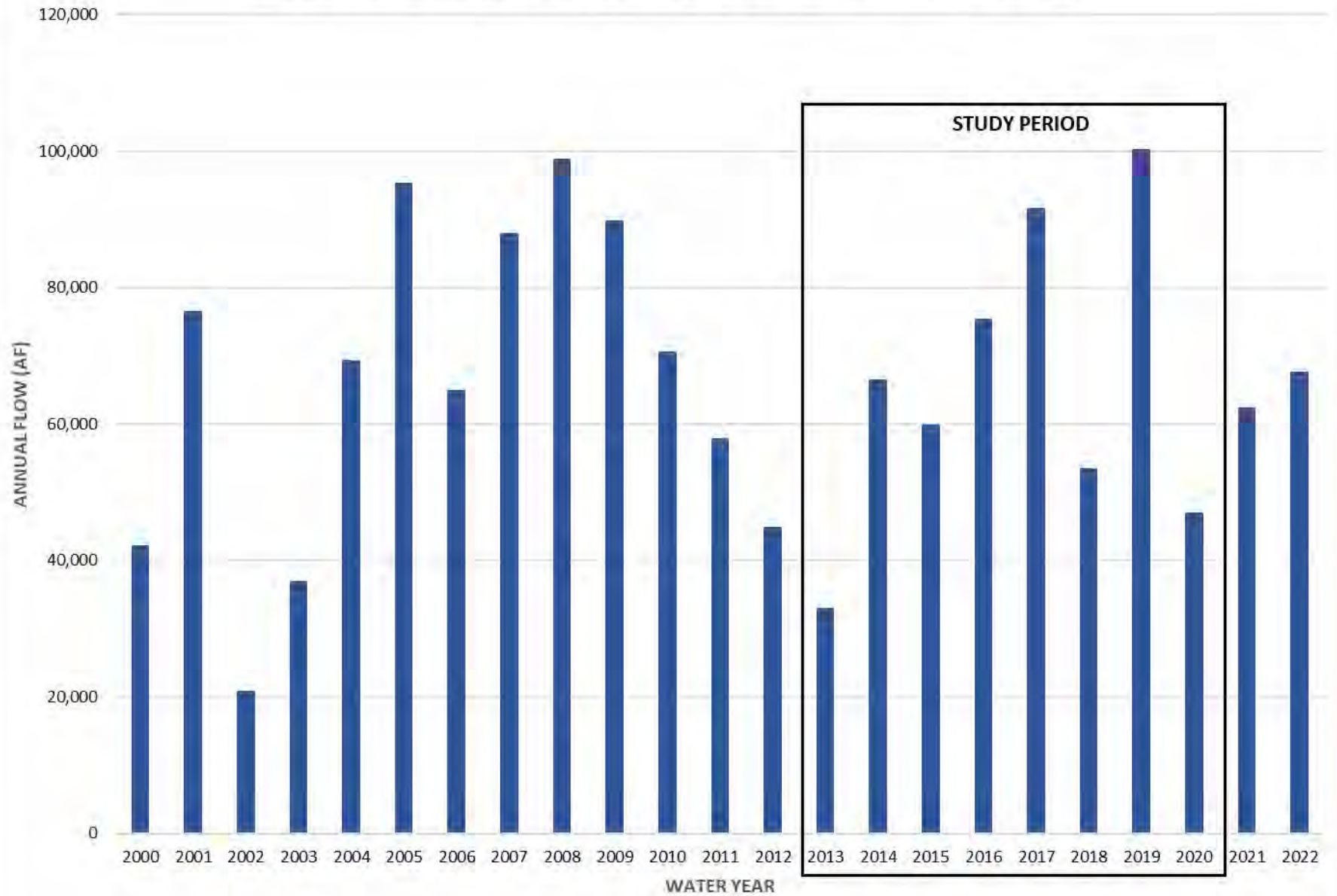




## **APPENDIX C**

### **Alamosa River Streamflow History**

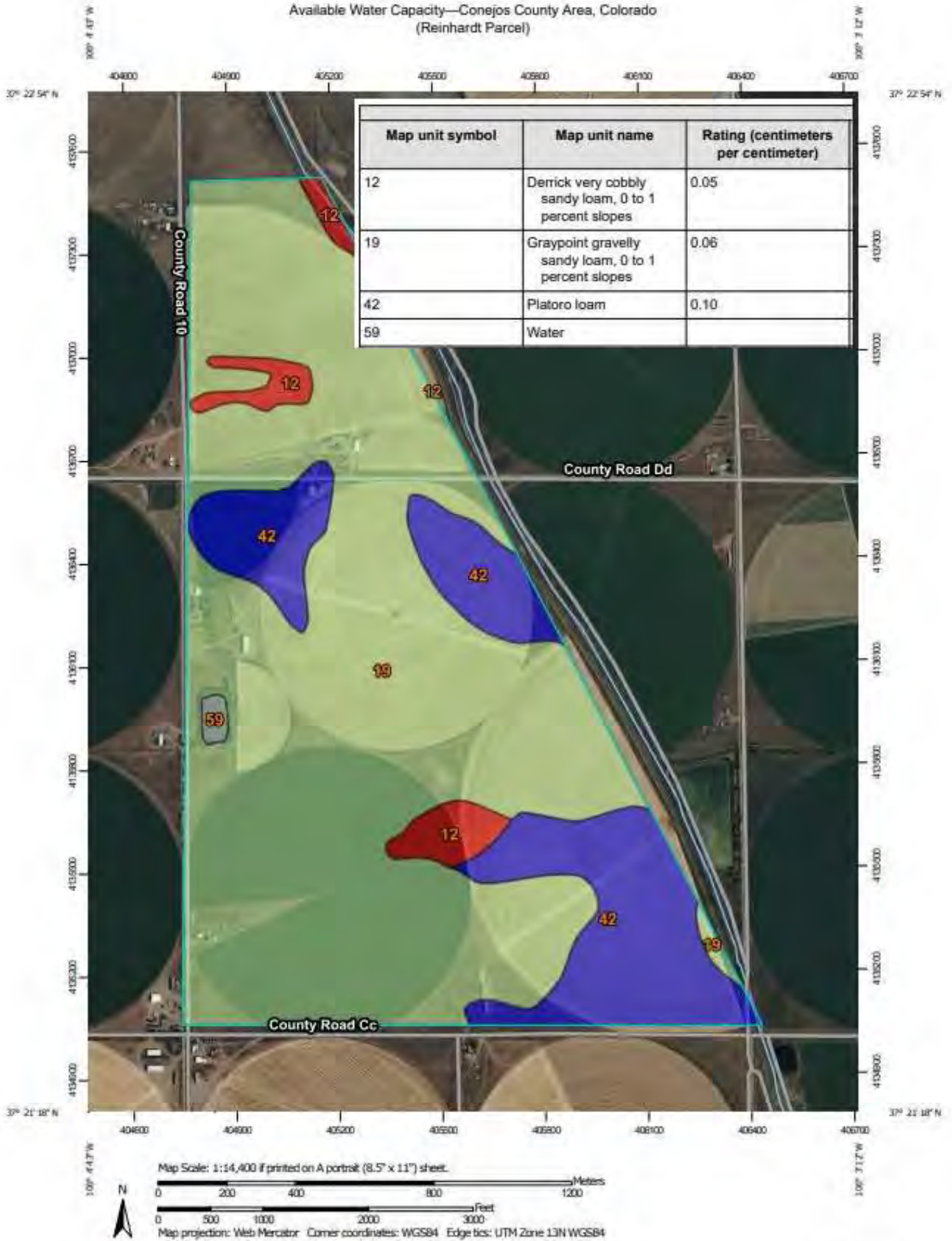
## **APPENDIX H - ALAMOSA RIVER ANNUAL STREAMFLOW**



# **APPENDIX D**

## **Soil Type Map**

Available Water Capacity—Conejos County Area, Colorado  
(Reinhardt Parcel)



**APPENDIX E**  
**Water Supply Tables**

<b>Alamosa Creek Canal - Dryup Area Share of Total Diversion (AF)</b>											
<b>Year</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Total</b>	
<b>2020</b>	0.0	2.3	6.0	7.1	7.2	3.3	2.1	0.9	0.0	<b>28.9</b>	
<b>2019</b>	0.0	2.6	4.7	14.0	12.4	7.7	4.5	3.4	0.0	<b>49.3</b>	
<b>2018</b>	0.1	3.1	5.2	7.8	7.6	4.0	0.9	0.7	0.1	<b>29.5</b>	
<b>2017</b>	0.0	3.6	5.5	10.7	9.9	5.4	5.1	3.0	0.1	<b>43.3</b>	
<b>2016</b>	0.0	2.6	4.7	9.9	8.7	5.2	2.9	2.5	0.0	<b>36.4</b>	
<b>2015</b>	0.0	2.2	3.6	6.2	5.9	5.8	2.0	1.5	0.0	<b>27.2</b>	
<b>2014</b>	0.0	2.5	5.2	8.1	6.2	5.1	2.1	2.2	0.0	<b>31.3</b>	
<b>2013</b>	0.0	1.6	3.2	4.1	4.4	3.3	2.9	2.1	0.0	<b>21.7</b>	
<b>Average</b>	<b>0.0</b>	<b>2.6</b>	<b>4.8</b>	<b>8.5</b>	<b>7.8</b>	<b>5.0</b>	<b>2.8</b>	<b>2.0</b>	<b>0.0</b>	<b>33.5</b>	

<b>Groundwater - Dryup Area Share of Total Diversion (AF)</b>					
	2005021	2005023	2008507	Parcel	Dryup Area
Year	W0118 WELL NO 01	W0119 WELL NO 01	W0120 WELL NO 02	Total	Share
2020	0.0	329.5	69.7	399.2	15.0
2019	0.0	36.8	3.9	40.8	1.5
2018	0.0	288.3	40.9	329.1	12.4
2017	0.0	30.6	4.5	35.1	1.3
2016	1.8	97.1	8.1	106.9	4.0
2015	1.0	77.1	22.3	100.5	3.8
2014	22.2	163.0	66.9	252.1	9.5
2013	83.3	304.2	160.9	548.5	20.7
<b>Average</b>	<b>13.5</b>	<b>165.8</b>	<b>47.1</b>	<b>226.5</b>	<b>8.5</b>

# **APPENDIX F**

## **StateCU Results**



<b>StateCU Blaney-Criddle Results</b>				
<b>Alfalfa</b>				
Year	Climate Station	Evapotranspiration (ft)	Precipitation (ft)	Irrigation Water Requirement (ft)
2013	Waverly	2.78	0.55	<b>2.23</b>
2014	Waverly	2.67	0.36	<b>2.31</b>
2015	Waverly	2.77	0.56	<b>2.21</b>
2016	Waverly	2.69	0.29	<b>2.39</b>
2017	Waverly	2.72	0.55	<b>2.18</b>
2018	Waverly	3.01	0.37	<b>2.64</b>
2019	Waverly	2.58	0.39	<b>2.19</b>
2020	Waverly	2.94	0.47	<b>2.47</b>

<b>StateCU Blaney-Criddle Results</b>				
<b>Small Grains</b>				
Year	Climate Station	Evapotranspiration (ft)	Precipitation (ft)	Irrigation Water Requirement (ft)
2013	Waverly	1.80	0.32	<b>1.47</b>
2014	Waverly	1.73	0.27	<b>1.46</b>
2015	Waverly	1.78	0.40	<b>1.39</b>
2016	Waverly	1.79	0.25	<b>1.54</b>
2017	Waverly	1.75	0.36	<b>1.39</b>
2018	Waverly	1.76	0.24	<b>1.53</b>
2019	Waverly	1.74	0.29	<b>1.45</b>
2020	Waverly	1.75	0.27	<b>1.48</b>

**APPENDIX G**  
**Analysis Summary Tables**

<i>Reinhardt Fallow Area - 2013-2020 - Annual HCU Analysis Results</i>									
Year	Farm Share of Total Diversion (AF)	Delivery After Ditch Loss (AF)	Residual After Irrigation Efficiency (AF)	Crop Demands (AF)	SW Used (AF)	Soil Profile Use (AF)	GW Diversions (AF)	GW CU (AF)	Total CU (AF)
2020	28.9	27.5	22.8	40.3	22.0	0.8	15.0	12.5	35.3
2019	49.3	46.8	38.9	37.0	32.6	1.8	1.5	1.3	35.7
2018	29.5	28.0	23.3	42.6	22.0	1.2	12.4	10.3	33.5
2017	43.3	41.2	34.2	36.4	27.4	1.8	1.3	1.1	30.3
2016	36.4	34.6	28.7	40.1	26.4	1.8	4.0	3.3	31.5
2015	27.2	25.8	21.4	28.0	14.3	1.8	3.8	3.1	19.2
2014	31.3	29.8	24.7	29.5	17.0	1.8	9.5	7.9	26.7
2013	21.7	20.6	17.1	29.7	11.7	1.4	20.7	16.6	29.7
<b>Average</b>	<b>33.5</b>	<b>31.8</b>	<b>26.4</b>	<b>35.4</b>	<b>21.7</b>	<b>1.6</b>	<b>8.5</b>	<b>7.0</b>	<b>30.3</b>

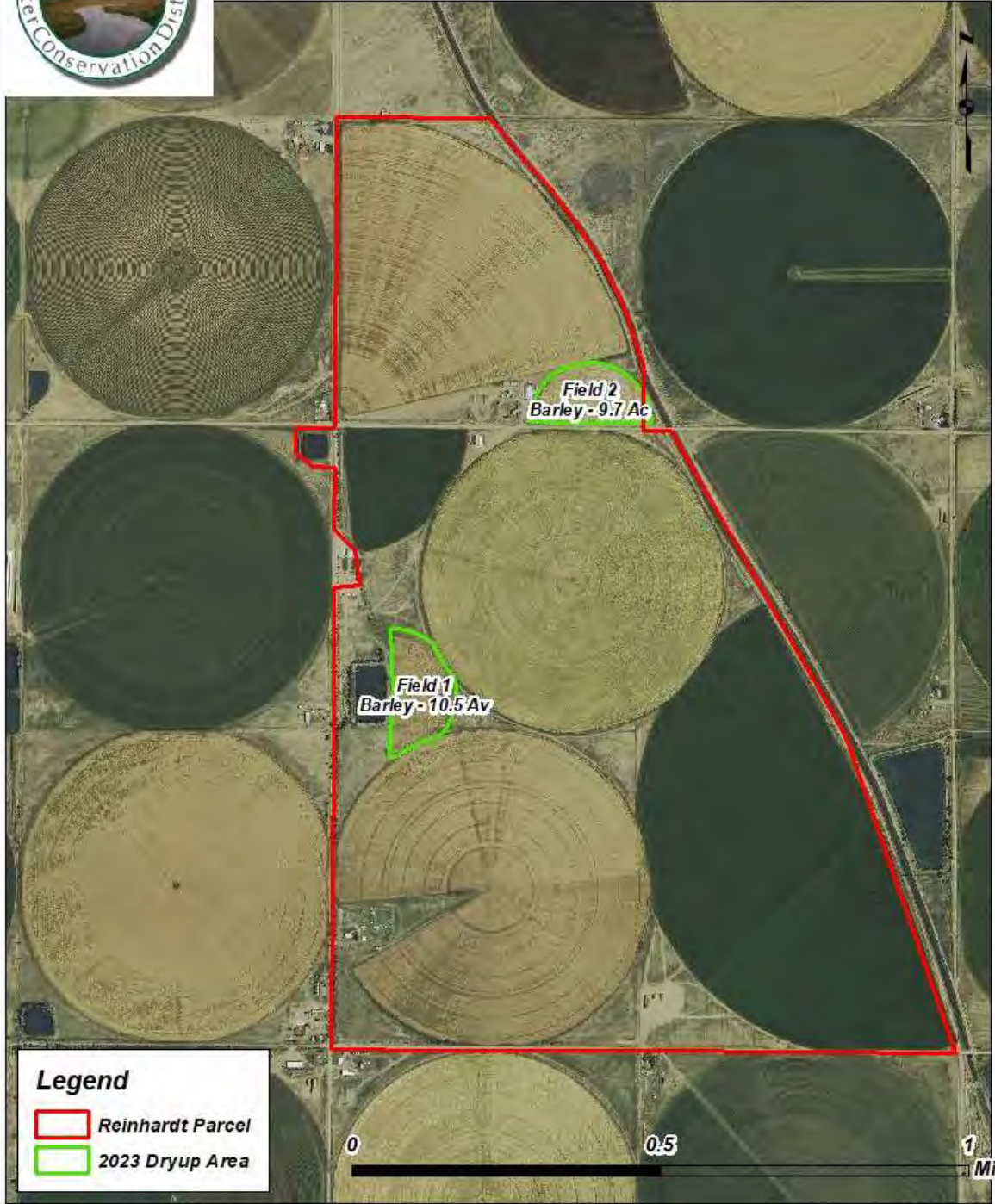
<i>Reinhardt Fallow Area - 2013-2020 - Monthly HCU Analysis Results</i>								
Month	Crop Demands (AF)	Farm Share of Total Diversion (AF)	Farm Delivery After Ditch Loss (AF)	Residual After Irrigation Efficiency (AF)	Total GW Diversion (AF)	Ditch Loss (AF)	Total Return Flow (AF)	Total Consumptive Use (AF)
Mar	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Apr	0.4	2.6	2.4	2.0	0.0	0.1	0.5	1.9
May	3.9	4.8	4.5	3.7	0.8	0.2	1.7	3.6
Jun	11.0	8.5	8.1	6.7	4.0	0.4	2.2	9.9
Jul	10.7	7.8	7.4	6.1	2.9	0.4	1.7	8.5
Aug	7.2	5.0	4.7	3.9	0.7	0.2	0.9	4.5
Sep	1.6	2.8	2.7	2.2	0.0	0.1	1.4	1.2
Oct	0.6	2.0	1.9	1.6	0.0	0.1	1.4	0.5
Nov	0.0	0.0	0.0	0.0	0.1	0.0	0.1	0.0
<b>Total</b>	<b>35.4</b>	<b>33.5</b>	<b>31.8</b>	<b>26.4</b>	<b>8.5</b>	<b>1.7</b>	<b>10.0</b>	<b>30.3</b>

# **APPENDIX H**

## **Crop History Maps**

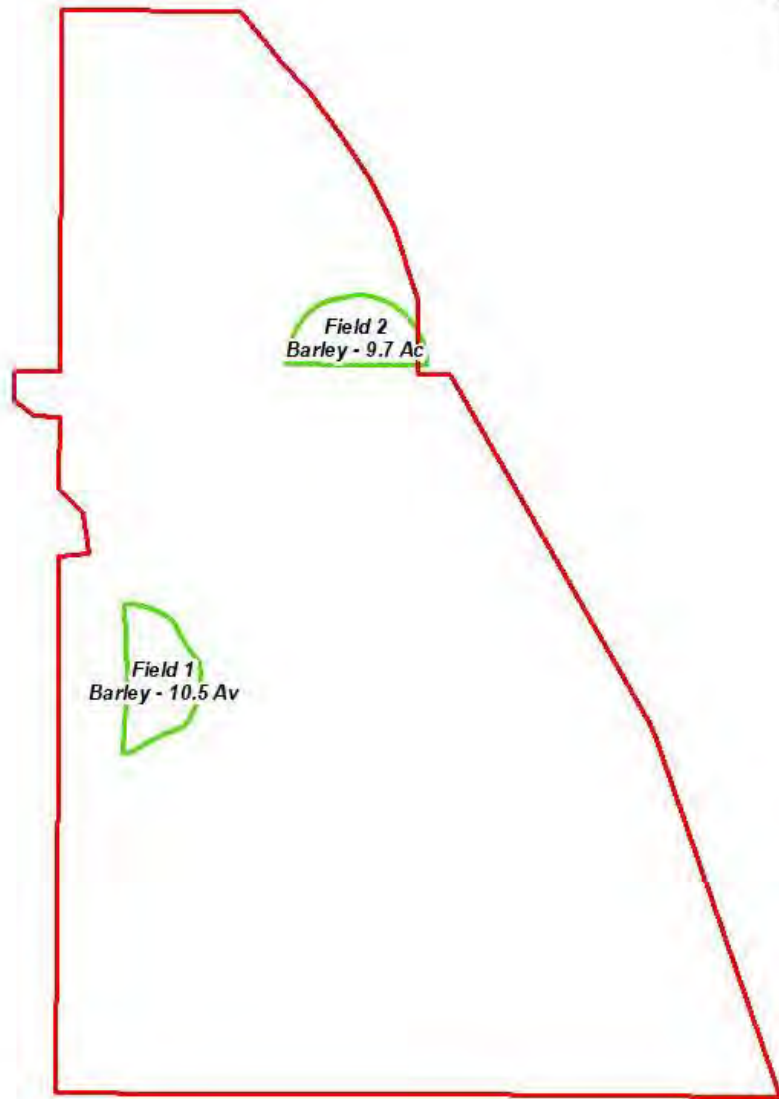


## **APPENDIX H - 2013 CROP MAP**



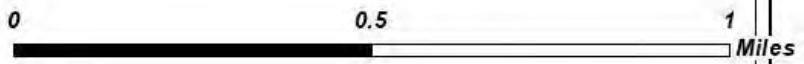


## APPENDIX H - 2014 CROP MAP



**Legend**

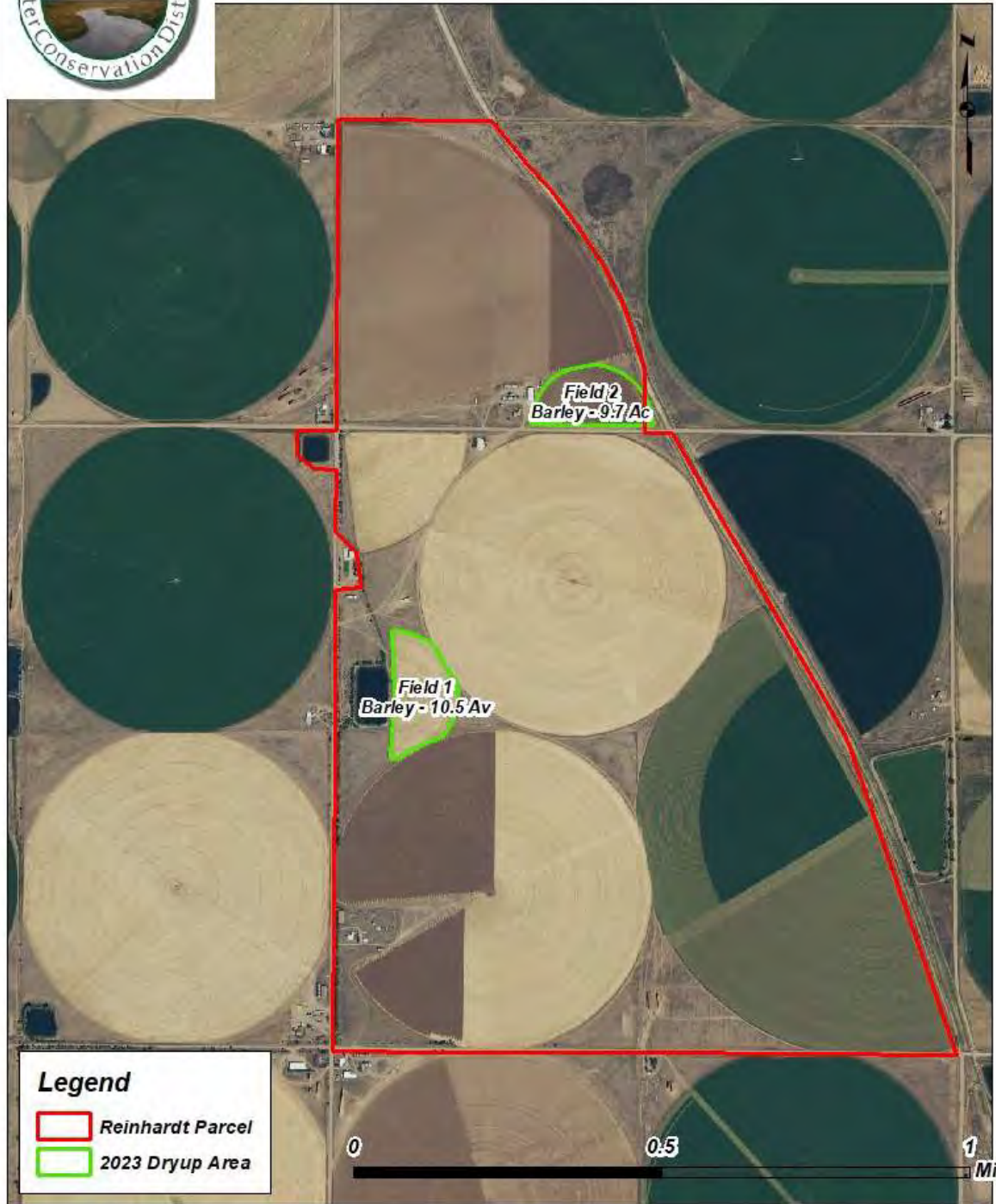
-  Reinhardt Parcel
-  2023 Dryup Area









## APPENDIX H - 2015 CROP MAP



### Legend

-  Reinhardt Parcel
-  2023 Dryup Area

0 0.5 1 Miles



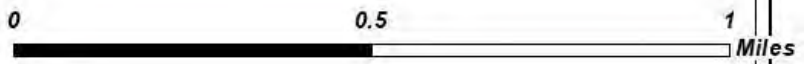


## APPENDIX H - 2016 CROP MAP



**Legend**

-  Reinhardt Parcel
-  2023 Dryup Area



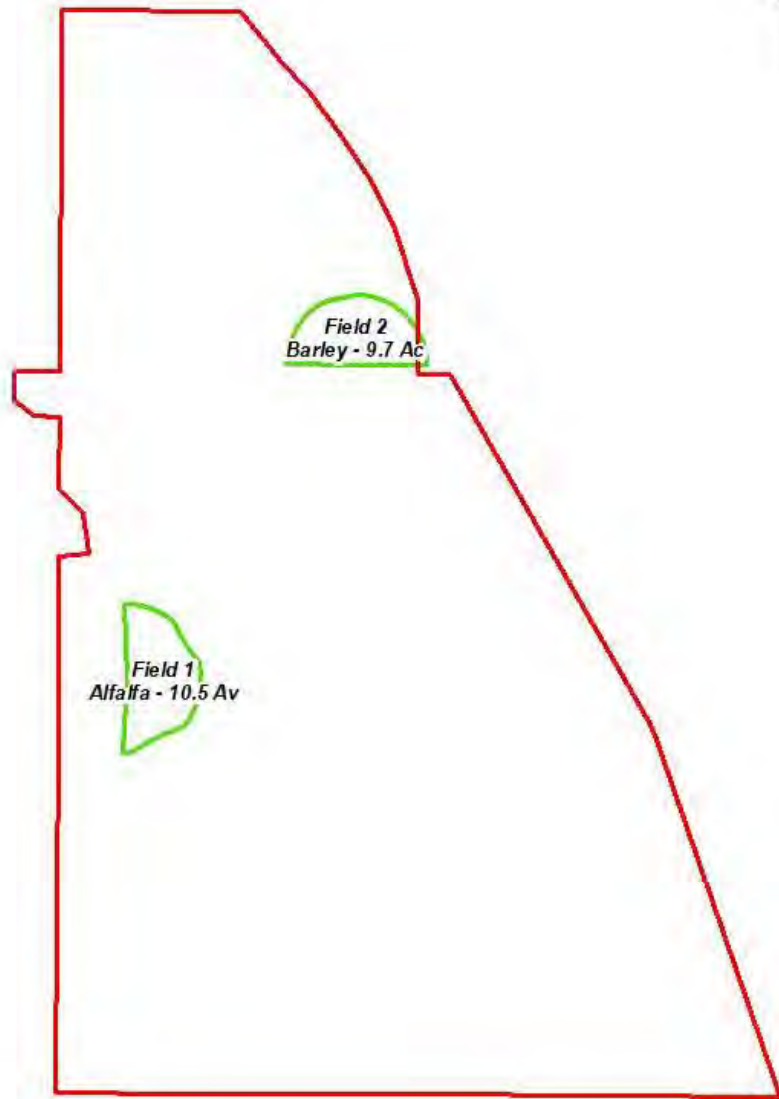


## **APPENDIX H - 2017 CROP MAP**



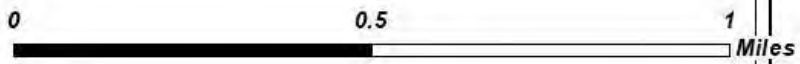


## APPENDIX H - 2018 CROP MAP



**Legend**

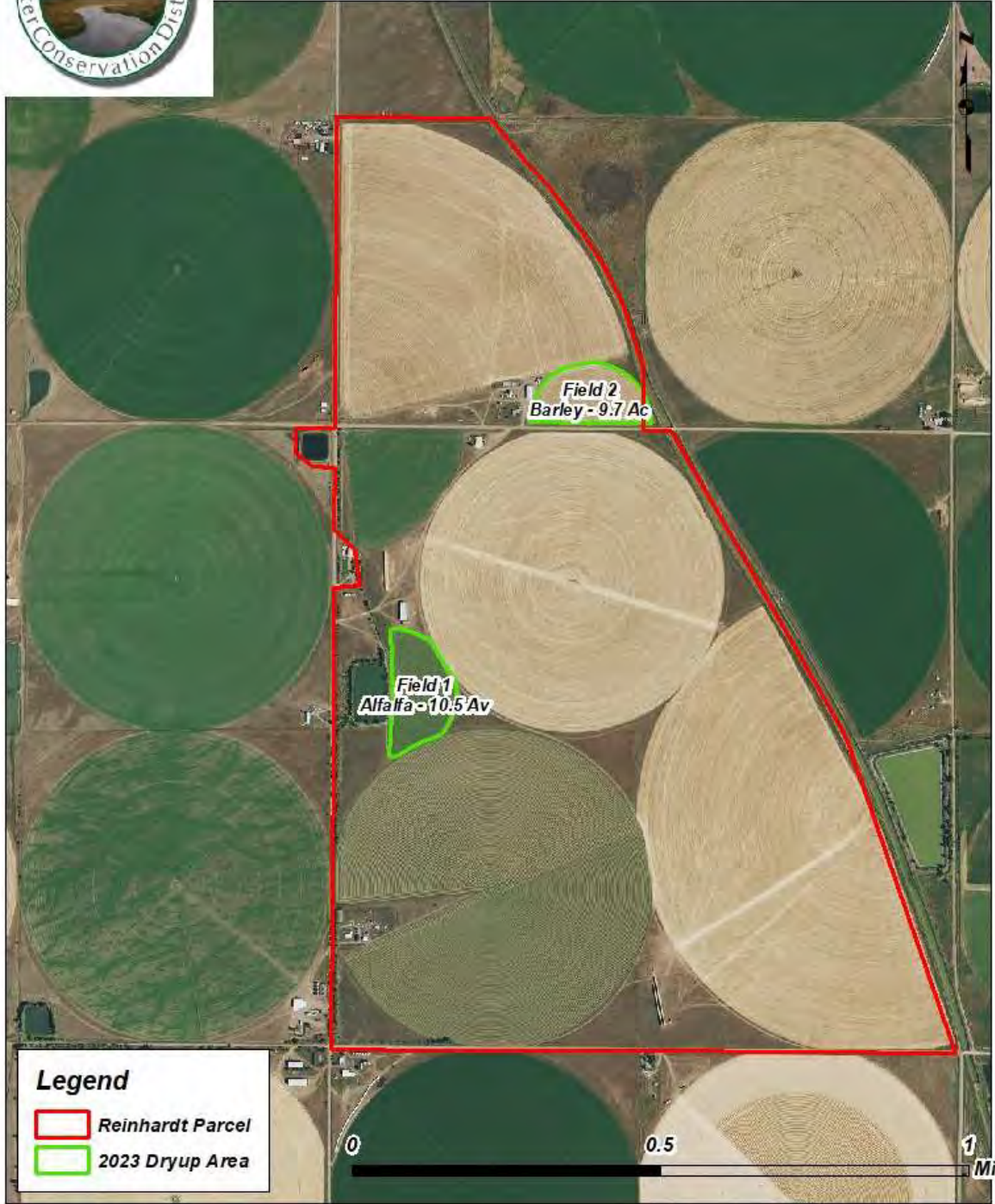
-  Reinhardt Parcel
-  2023 Dryup Area









## **APPENDIX H - 2019 CROP MAP**



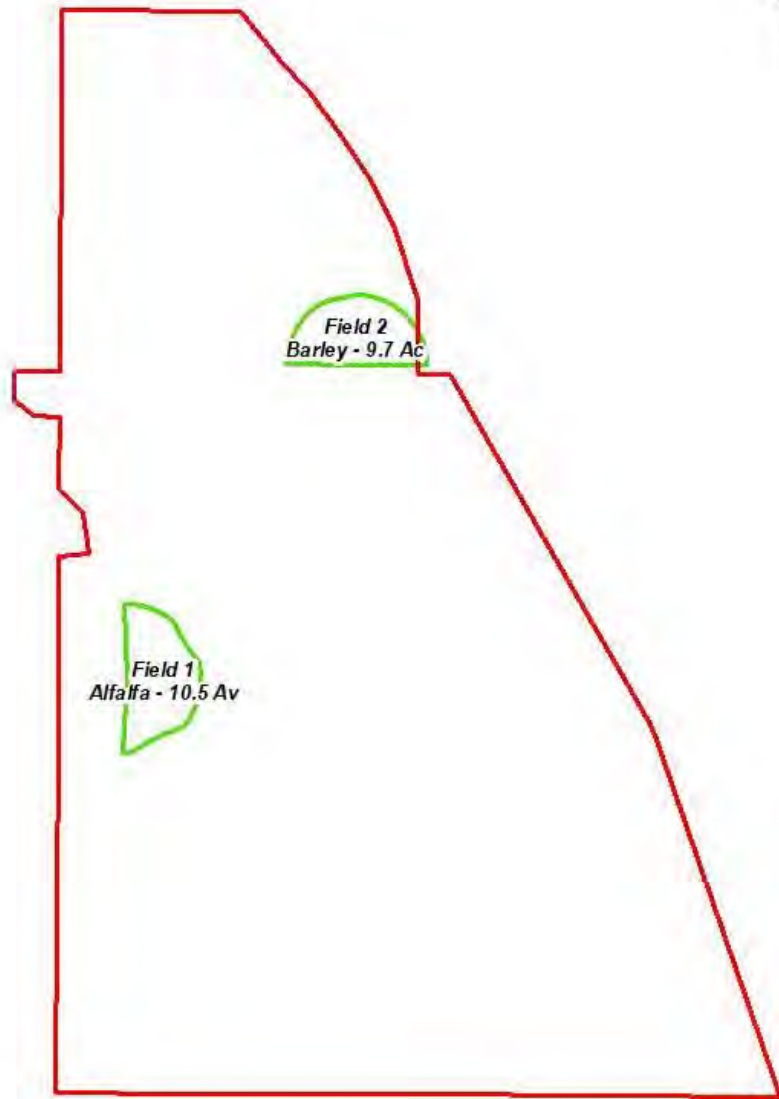
### **Legend**

-  Reinhardt Parcel
-  2023 Dryup Area

0 0.5 1 Miles



## APPENDIX H - 2020 CROP MAP



**Legend**

-  Reinhardt Parcel
-  2023 Dryup Area

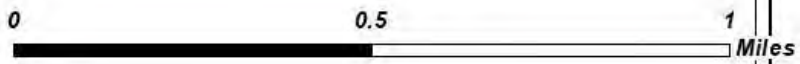


EXHIBIT C

LEASE FALLOW AGREEMENT

## LEASE-TEMPORARY FALLOW AGREEMENT

On this 11<sup>th</sup> day of May, 2023, this Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 6 of the Rio Grande Water Conservation District’s Water Activity Enterprise (“Subdistrict No. 6”), and Rodney Reinhardt (“Owner”) as the owner of certain water rights decreed for irrigation and used within the Alamosa River system (collectively “Parties” or in the singular “Party”).

### INTRODUCTORY RECITALS

- A. Subdistrict No. 6 desires water for augmentation and replacement purposes to comply with its approved Plan of Water Management and for use in the current and/or future approved Annual Replacement Plans (“ARP”).
- B. Owner holds title to Water Rights which include surface water rights, including but not limited to a portion of the Alamosa Creek Canal, Terrace Reservoir, and decreed confined aquifer wells, WDIDs 2005021, 2005023, 2008507, as further described in Appendix B of this agreement. Owner owns Parcels 556111300024, 556114100045, and 556114200045 as described by the Conejos County Assessor, Conejos County, Colorado. These parcels of land have historically been irrigated by Owner’s Water Rights.
- C. In order to supply augmentation and replacement water to Subdistrict No. 6, and for water conservation purposes, Owner is willing to temporarily fallow 20.2 acres of historically irrigated land for the 2023 irrigation season and lease the historical consumptive use credits (“HCU”) from these fallowed acres during the Term of this Agreement to Subdistrict 6 for its use as part of the current year’s ARP or subsequent years’ ARPs. A map of the fallowed acres is shown in the map in Appendix A of this Agreement.
- D. Owner and Subdistrict No. 6 wish to enter into an agreement for the Subdistrict’s use of the Wells and Water Rights for the changed uses of augmentation and replacement in the Subdistrict’s ARP for the period of April 1, 2023 through March 31, 2024, pursuant to a Substitute Water Supply Plan approved by the State Engineer pursuant to C.R.S. 37-92-308 (“SWSP”).

### AGREEMENT

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

1. Term. This Agreement will begin on April 1, 2023 and continue in effect until March 31, 2024. However, any of the HCU generated during the 2023 Irrigation Season and not used, lost or otherwise consumed by Subdistrict No. 6 will remain under the use and control of Subdistrict No. 6 after this Term expires for future use in its sole discretion.
2. Fallow Agreement. During the Term of this agreement, Owner must not apply any irrigation water to the Designated Fields during the entire 2023 Irrigation Season as defined by the Division No. 3 Division Engineer. After the expiration of the Term of this agreement, Owner may take such actions as he desires in his sole discretion.



3. Allocation of Groundwater: Owner's well can legally irrigate additional acres that are not included as part of this lease agreement. It is necessary to limit the amount of historical groundwater pumping on those additional acres to conform to the Division of Water Resources there will be no expansion of use from groundwater during the term of this agreement. The restricted amount of groundwater pumping which will be allowed on the non-fallowed acres will be determined by the Subdistrict and will be calculated based on the total annual water supply available to the parcel from both surface water and groundwater. The last meter reading submitted to Division of Water Resources for WDID 2005021 was 190.94 acre-feet on October 18<sup>th</sup>, 2022, WDID 2005023 was 2,452.67 acre-feet on November 1<sup>st</sup>, 2022, and WDID 2008507 was 756.96 acre-feet on November 1<sup>st</sup>, 2022. Based on the limit allowed under this lease, the Owner's combined diversions for all surface water rights associated with the Alamosa Creek Canal and Terrace Reservoir along with diversions from WDIDs 2005021, 2005023, and 2008507 should not exceed 1,032 acre-feet at the end of the 2023 Irrigation Season. If surface water is available to the Owner in excess of 1,032 acre-feet, Owner shall not be required to forgo the diversion of any surface water to which they are legally entitled. It may be necessary to adjust the amount of restricted groundwater pumping based on actual surface water diversion records provided to the Subdistrict from Division of Water Resources and/or any conditions for approval included in the final approval of the Substitute Water Supply Plan. Owner will be notified if the Subdistrict should need to make any adjustments to the amount of restricted groundwater use allowed on the non-fallowed acres.

4. Lease Agreement.

- 4.1. Lease Agreement. Subject to the terms of this Agreement, Subdistrict No. 6 agrees to lease 42.0 acre-feet from the Owner, of which 30.3 acre-feet is HCU, generated during the 2023 Irrigation Season as a result of fallowing the Designated Fields during the Term of this Agreement.
- 4.2. Determination of HCU Credit and Administrative Approval. Subdistrict No. 6 is responsible for the determination of HCU under this Agreement and is solely responsible for obtaining administrative or other legal approval for the use of the water and/or HCU as part of the ARP. Owner agrees to cooperate, within reason, with Subdistrict No. 6 in accomplishing these objectives, to include, providing information necessary or desirable to Subdistrict No. 6 in accomplishing these objectives.
- 4.3. Lease Price. The lease price for temporarily fallowing the Designated Fields is [REDACTED] per acre-foot of HCU. Total payment due to owner is [REDACTED]. Total payment is due to Owner on or before July 15, 2023.
- 4.4. Failure to Pay. If Subdistrict No. 6 fails to pay the lease price when due, then this Agreement will terminate in full, Owner will retain title to the HCU and the Agreement will be void.
- 4.5. Water Subject to the Agreement. The water subject to this Agreement is the HCU generated from the temporary fallowing of the Designated Field.

4.6. Title to Water Rights. Nothing in this agreement is to be interpreted as giving Subdistrict No. 6 any legal or equitable title in or to the Owner's Water Rights.

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

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. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict No. 6, however consent from the Rio Grande Water Conservation District Board of Directors is required and Subdistrict No. 6 believes it will obtain such consent. If such consent is not given, Subdistrict No. 6 must immediately provide Notice to Owner and this Agreement will be void as of the date of that Notice. To the best of the Subdistrict No. 6's knowledge, there is no pending or threatened litigation or administrative proceeding against Subdistrict No. 6 that would prevent it from leasing the Designated Field.

7. 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:	Address: Rodney Reinhardt 10270 County Road DD La Jara, CO 81140 Phone: (719) 580-2128 E-mail: rodneyvirg@aol.com
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To Subdistrict No. 6:	Rio Grande Water Conservation District c/o Angelo Bellah 8805 Independence Way Alamosa, CO 81101 Phone: (719) 589-6301 Email: angelo@rgwcd.org
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Such addresses may be changed during the term of this Agreement by written notice given in accordance with this paragraph.

8. Remedies. In the event of Lessor's default in the performance of this Agreement, Subdistrict No. 6's remedies include, but are not limited to, the remedy of specific performance. In the event of the Subdistrict No. 6's default hereunder, Owner's sole and exclusive remedy shall be to retain all payments made by Subdistrict No. 6 prior to the date of the default, and to

retain any water/HCU not paid for by Subdistrict No. 6, to include the release from any groundwater restrictions included in this agreement under Section 3-Allocation of Groundwater.

9. Miscellaneous Provisions.

- 9.1. 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 Owner or Subdistrict No. 6 to one another with respect to this Agreement.
- 9.2. Survival. Each of the representations and warranties made by Owner and Subdistrict No. 6 in this Agreement, or in any document or instrument delivered pursuant to this Agreement, are 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. 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.
- 9.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 9.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Owner and Subdistrict No. 6. 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.
- 9.5. 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.
- 9.6. 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. Owner may not assign his rights or delegate his duties hereunder without the prior written consent of Subdistrict No. 6, which consent will not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of Owner, which consent will not be unreasonably withheld.
- 9.7. Litigation. If Owner and/or Subdistrict No. 6 litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant must

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.

- 9.8. 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.
- 9.9. 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.
- 9.10. Recording. Subdistrict No. 6 may record this Agreement or a Memorandum of this Agreement at its own expense and may also file this Agreement with the Division Engineer, Water Division No. 3, as part of the documentation for an SWSP.
- 9.11. Time. Time is of the essence in this Agreement.
- 9.12. 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.
- 9.13. Owner's Acknowledgment. Owner certifies that he 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 Owner by Subdistrict No. 6, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Owner except for written amendments or waivers executed by the Parties.

By: Rodney Reinhardt  
Rodney Reinhardt

5/11/23  
Date

**SPECIAL IMPROVEMENT DISTRICT NO. 6  
RIO GRANDE WATER CONSERVATION DISTRICT  
WATER ACTIVITY ENTERPRISE**

By: Angelo Bellah  
Angelo Bellah, Program Manager

5/11/2023  
Date



## **APPENDIX A - DRYUP AREA**







## APPENDIX B - PROPERTY WELLS

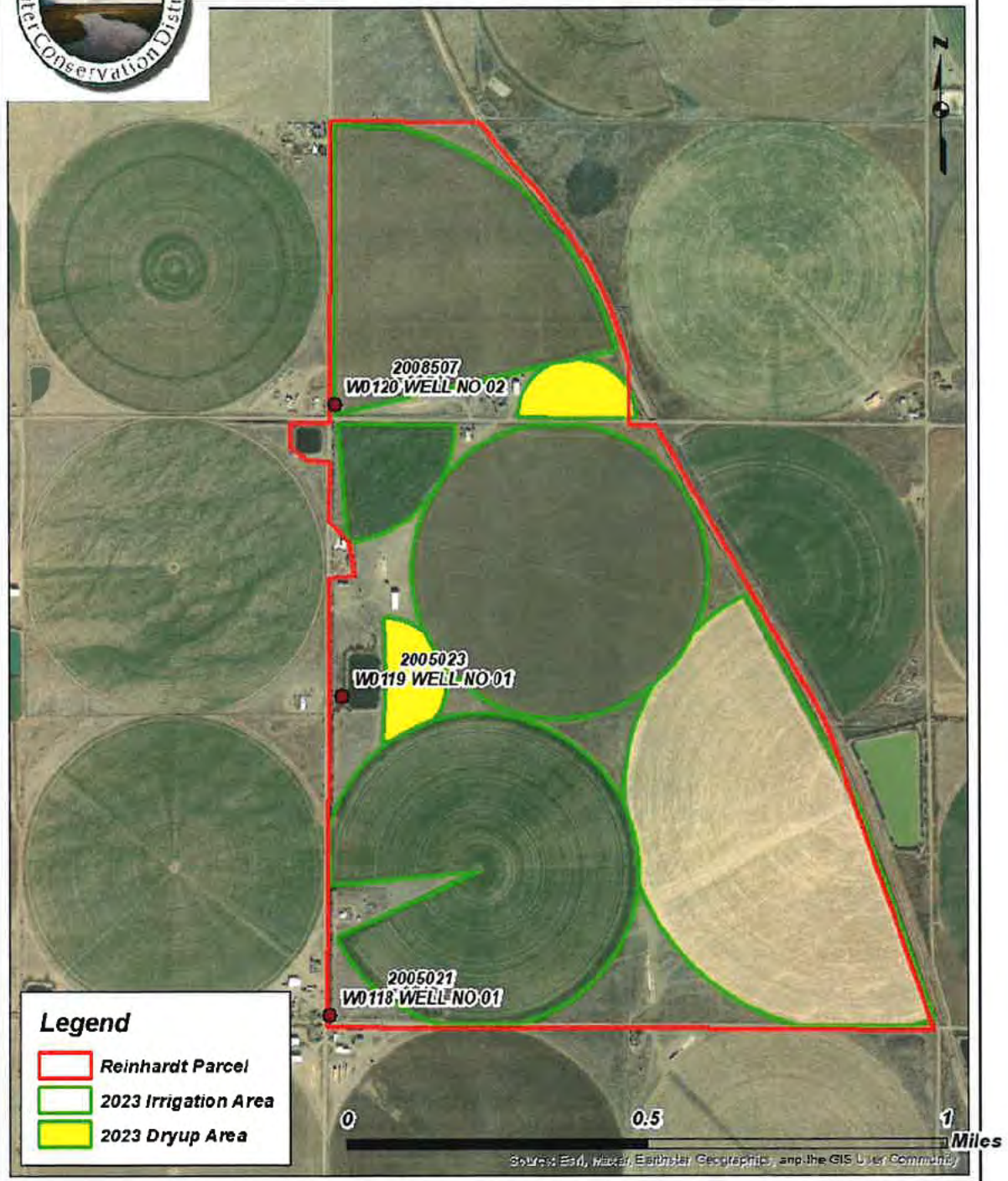


EXHIBIT D

RECHARGE FACILITY LEASE



## RECHARGE POND LEASE AGREEMENT

This Agreement is made and entered into this 23<sup>rd</sup> day of March, 2023, by and between Expo, LLC, a Colorado corporation (hereinafter referred to as "Expo"), and Special Improvement District No. 6 of the Rio Grande Water Conservation District's Water Activity Enterprise ("Subdistrict No. 6").

### RECITALS

**WHEREAS**, Expo is the owner of the Expo Recharge Pond, located in Section 22 in Township 36 North, Range 8 East, N.M.P.M., Conejos County, Colorado; and

**WHEREAS**, Expo operates the Recharge Pond for the purpose of covering its own Augmentation Plan needs by delivering water into the Recharge Pond in order to return water to the confined aquifer; and

**WHEREAS**, Subdistrict No. 6 enters into this Agreement with Expo to use its Recharge Pond to recharge up to ten (10) acre-feet of water delivered from the Alamosa Creek Canal located on the Alamosa River ("Leased Water"). Subdistrict No. 6 has requested the use of the Leased Water for recharge in a substitute water supply plan ("SWSP"); and

**WHEREAS**, Expo is willing to allow Subdistrict No. 6 to recharge the Leased Water in its Recharge Pond, subject to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. It is anticipated that the Leased Water will be recharged in such amounts as directed by Subdistrict No. 6 between May 1, 2023, and October 31, 2023, on a space-available basis.
2. Expo shall be solely responsible for all operation, maintenance and related costs associated with the Recharge Pond, and shall maintain full control of its daily operations. Expo shall have the final decision on when Leased Water can or will be recharged, provided however, that Expo shall make reasonable efforts to recharge the Leased Water at times requested by Subdistrict No. 6 during the 2023 Irrigation Season, subject to coordination with the Division Engineer's Office. Subdistrict No. 6 and Expo each agree that the most preferable time for delivery of the Leased Water is between May 1, 2023, and October 31, 2023. Each party agrees to make reasonable efforts to affect the delivery of the water within such time-frame, unless another time for delivery is agreed to between the parties.
3. Expo shall be responsible for accounting for the amount of Leased Water run through Expo's installed SDR Recorder and recharged in the Recharge Pond. Expo shall perform such accounting and share it with Subdistrict No. 6 in such a manner that Subdistrict No. 6 is able to

comply with the accounting obligations imposed by the Division Engineer in an approved SWSP. Subdistrict No. 6 shall be responsible for all other accounting requirements associated with its SWSP.

4. The compensation to be paid by Subdistrict No. 6 to Expo to recharge the Leased Water in the Recharge Pond consists of the following two parts:

- a. Subdistrict No. 6 shall pay an Administration Fee of [REDACTED]
- b. Subdistrict No. 6 shall pay a Recharge Fee of [REDACTED] per acre-foot for each acre-foot of Leased Water recharged in the Recharge Pond between May 1, 2023, and October 31, 2023. Expo shall invoice Subdistrict No. 6 no later than November 15, 2023, for the Administration Fee and the Recharge Fee due under this Agreement. Subdistrict No. 6 shall pay the invoice within 10 days of receipt.

5. The term of this Agreement is for the period commencing on May 1, 2023, and ending on October 31, 2023.

6. Notice under this Agreement shall be sufficient if given in writing, or in person, or by phone or email addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other parties.

**Subdistrict No. 6:**

Rio Grande Water Conservation District  
c/o Angelo Bellah  
8805 Independence Way  
Alamosa, CO 81101  
e-mail: [angelo@rgwcd.org](mailto:angelo@rgwcd.org)  
phone: 719-480-1272

**Expo, LLC:**

15 Washington Street  
c/o \_\_\_\_\_  
Monte Vista, Colorado 81144  
e-mail: \_\_\_\_\_  
phone: \_\_\_\_\_

7. By virtue of entering into this Agreement, Expo assumes no liability for Subdistrict No. 6's use of the Leased Water. Subdistrict No. 6 is responsible at its sole cost and expense for obtaining any and all local, state, or federal permits or approvals, if any, required for its storage and use of the Leased Water.

8. Subdistrict No. 6's use of Expo's facilities shall not create any rights of ownership or other property interests outside of this Agreement.

9. This Agreement does not and shall not be construed to modify any other agreements regarding Expo's Recharge Pond.

10. Remedies. In the event of default in the performance of this Agreement by Expo, Subdistrict No. 6's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 6's default hereunder, Expo's remedies shall be to retain all payments made by Subdistrict No. 6 prior to the date of the default, specific performance or damages.

11. Miscellaneous Provisions.

- a. 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 Expo or Subdistrict No. 6 to one another with respect to this Agreement.
- b. 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, 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.
- c. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.

- d. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Expo and Subdistrict No. 6. 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.
- e. 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.
- f. 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. Expo may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 6, which consent shall not be unreasonably withheld. Subdistrict No. 6 may not assign its rights hereunder to any other person or entity without the prior written consent of Expo, which consent shall not be unreasonably withheld.
- g. 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.
- h. 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.
- i. Time. Time is of the essence in this Agreement.
- j. 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.

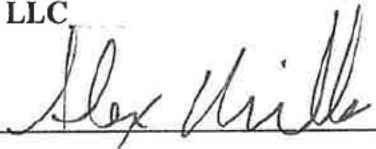
IN WITNESS HEREOF, the parties have executed this Agreement on the signature dates indicated below, to take effect on the later of such signature dates.

**Water Activity Enterprise, Special Improvement District No. 6  
of the Rio Grande Water Conservation District**

By:   
Angelo Bellah, Program Manager

3/23/23  
Date

Expo, LLC

By: 

3/23/23  
Date

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>Beaver Water:</p> <p>238.95 ac-ft <sup>Pine</sup> Case 1984CW116 and 1994CW162</p> <p>88.19 ac-ft Bear Creek case 2005CW13 and 2007CW163</p> <p>42.65 ac-ft Bar Cattle Case 2003CW41</p> <p>73.08 ac-ft Anaconda case 2009CW31</p> <p><u>442.87 ac-ft</u></p> <p>Continental Water:</p> <p>22.89 ac-ft Bear Creek Case 2005CW13 and 2007CW163</p> <p>17.18 ac-ft Bar Cattle Case 2003CW41</p> <p>89.10 ac-ft Anaconda case 14CW3011</p> <p>0.83 ac-ft Pine case 84CW116</p> <p><u>130.0</u></p>	
PLEASE INCLUDE CERTIFICATE NUMBER ON CHECK	<b>Total</b>
	\$37,236.55

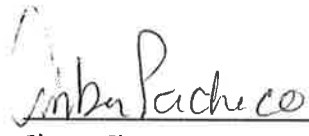
AP  
12/28/2020

**TO:** Subdistrict No. 6 Board of Managers  
**DATE:** April 13, 2021  
**SUBJECT:** Lease of RGWCD SLVWCD Water stored in Beaver Reservoir

Dear Board of Managers for Subdistrict No. 6,

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. 6 has made a request to lease 158.0 acre-feet of water this RGWCD currently holds in storage in Beaver Reservoir and 89.1 acre-feet of the water stored in Continental 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. 6 and the RGWCD that remains in storage will remain under the control of Subdistrict No. 6 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.

 *Cleave Simpson*  
*Acting Deputy  
General Mgr.*

Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

4/14/21  
Date

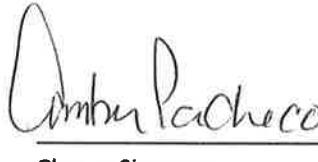


**TO:** Subdistrict No. 6 Board of Managers  
**DATE:** April 13, 2021  
**SUBJECT:** Lease of RGWCD water currently stored in Platoro Reservoir

Dear Board of Managers for Subdistrict No. 6,

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. 6 made a request to lease up to 325.2 acre-feet of water the RGWCD currently holds in storage in Platoro Reservoir. This water was leased from the San Luis Valley Water Conservancy District during 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.

Subdistrict No. 6 leased the entire 325.2 acre-feet to cover their injurious depletions during the 2020 ARP Year, and any amount that remains in storage will remain under the control of Subdistrict No. 6 and is available for 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.

 *Amber Pacheco*  
*Acting Deputy  
General Mgr.*

Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

4/14/2021  
Date

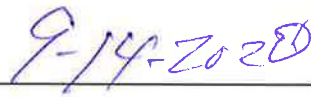
**TO:** Subdistrict No. 6 Board of Managers  
**DATE:** September 14, 2020  
**SUBJECT:** Lease of RGWCD water currently stored in Platoro Reservoir

Dear Board of Managers for Subdistrict No. 6,

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. 6 has made a request to lease up to 325.2 acre-feet of water the RGWCD currently holds in storage in Platoro Reservoir. This water was leased from the San Luis Valley Water Conservancy District during 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. The Subdistrict will only be required to reimburse the RGWCD for the amount of water that is used during the 2020 ARP Plan Year to remedy injurious depletions on the Rio Grande caused by groundwater withdrawals from Subdistrict No. 6 ARP Wells.

If Subdistrict No. 6 does not require the total 325.2 acre-feet to cover their injurious depletions during the 2020 ARP Year, any amount that remains in storage will remain under the control of the Rio Grande Water Conservation District and may be made available for other Subdistricts in future ARP Years. This agreement is for the 2020 ARP only. 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.

  
\_\_\_\_\_  
Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

  
\_\_\_\_\_  
Date

**Purchase of Richfield Canal Project Water for Subdistrict No. 6**

On November 3, 2020, the Board of Managers for Subdistrict No. 6 approved the purchase of 202 acre-feet of project water from the Richfield Canal. This water is currently being stored in Platoro Reservoir. The Board agreed to pay \$65 per acre-foot for a total cost of \$13,130.00.

Please make check payable to:

Richfield Canal Company  
PO Box 481  
La Jara, CO 81140

*Alp 11/3/2020*

**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**

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

**ROCKY MOUNTAIN HIGH DEVELOPMENT,  
LLC**



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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.



## LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into this 10 day of February, 2022 (the “Effective Date”) by and between 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 (“Trinchera” ), together with 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 in 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. 3 wishes to lease up to 2,000 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 2022/2023 Annual Replacement Plan (“ARP”).

F. Subdistrict No. 6 wishes to lease up to 3,000 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 2023/2023 ARP.

G. Trinchera wishes to lease up to 3,000 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 2022/2023 ARP.

H. 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.

I. Subject to the terms and conditions of this Lease Agreement and in exchange for compensation listed herein from Subdistrict No. 3, Subdistrict No. 6, and Trinchera, SLVIWO agrees to provide 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. 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.

- 1.1.1. 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").
- 1.1.2. 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").
- 1.1.3. 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").
- 1.1.4. Water from the Taos Valley No. 3 will be exchanged into Platoro Reservoir if possible. 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: 57.5% to the SLVIWO; 15% to Subdistrict No. 3; and 27.5% to Subdistrict No. 6. If it is not possible to exchange the water, then water from the Taos Valley No. 3 water right will be delivered downstream to the Rio Grande River Compact gage for credit on the DWR's 10-day report and availability for use in replacing depletions under an ARP by 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 1.4.
- 1.1.5. If 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 ARPs, upon written notice and agreement between the Subdistricts, the remaining two 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.

- 1.2. Term of Agreement. This Agreement is for a one-year term commencing on the Effective Date and ending April 30, 2022 (the "Term"); however, this Lease Agreement will only apply to water produced under the 2015CW3030 Case during the 2022 Irrigation Season. This Agreement is for a single term only and is not renewable. If 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. 2023  
M  
KVP  
S.E.V.
- 1.3. 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 2022/2023 or subsequent years ARP is fifty dollars (\$50.00) per acre-foot of water (the "Lease Price").
- 1.3.1 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 then 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 Rio Grande River 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 herein).

- 1.3.2 Within a reasonable amount of time after the designated 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.
- 1.3.3 If there is a dispute between any of the Parties regarding the accounting required in paragraph 1.3.2, 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.
- 1.3.4 Within 60 days of the acceptance or resolution of dispute regarding the accounting required in paragraph 1.3.2, 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.
- 1.4 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. 3's use pursuant to paragraph 1.1.1, up to 3,000 acre-feet of water for Subdistrict No. 6's use pursuant to paragraph 1.1.2, and up to 3,000 acre-feet of water for Trinchera's use pursuant to paragraph 1.1.3. Further details regarding this provision are outlined in the following subsections.
- 1.4.1 Delivery of Excess Credit Water. The ARP water will be 100% of the first 8,000 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 1.1.4. For each acre-foot generated from the Taos Valley No. 3 water right in the 2022 Irrigation season which is not exchanged into storage by the SLVIWO, 30.61% will be provided for use in ARP by Subdistrict No. 3 pursuant to paragraph 1.1.1 and 54.32% will be provided for use in ARP by Subdistrict 6 pursuant to paragraph 1.1.2 and 15.06% will be provided for use in ARP by Trinchera pursuant to paragraph 1.1.3.
- 1.4.2 SLVIWO retains the right to the use of its water exchanged into storage in Platoro Reservoir and any additional water generated over the combined 8,000 acre-feet, to be provided to Subdistrict No. 3, Subdistrict No. 6, and Trinchera under this Lease and any portion of the combined 8,000 acre feet which is not delivered to either Subdistrict No. 3, Subdistrict No. 6, or Trinchera following a Notice of Termination of Delivery pursuant to paragraph 1.4.6 of this Agreement.

1.4.3 SLVIWO retains the right to enter into a separate agreement with Trinchera in order to lease Taos Valley No. 3 water stored by SLVIWO in the Platoro Reservoir to Trinchera.

1.4.4 The ARP Water will be accounted for as delivered to 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  $\frac{1}{4}$  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 any Subdistrict.

1.4.5 Use of ARP Water.

1.4.5.1 Preservation of SLVIWO Water Rights: 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 2022/2023 ARP, or subsequent years pursuant to paragraph 1.4.1 to 1.4.4, above. 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. 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. 3, Subdistrict No. 6, or Trinchera, other than the up to the combined 8,000 acre-feet leased between them, herein. Furthermore, the Parties understand and agree that by permitting 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.

1.4.5.2 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. 3, Subdistrict No. 6, and Trinchera, respectively, will retain all rights to such ARP Water after the expiration of this Agreement. 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.

1.4.5.3 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.

1.4.6 Termination of Delivery. 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 Subdistricts. 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.

1.4.7 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.

1.5 Approvals. Each Subdistrict is responsible for obtaining any approvals necessary for their respective Subdistrict's proposed use and delivery of the ARP Water.

1.6 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. 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.

3. 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.

4. 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.
5. 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: Lyla Hathaway  
   P.O. Box 147  
   La Jara, CO 81140  
   E-mail: [lyla@notes-numbers.com](mailto:lyla@notes-numbers.com)

To 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](mailto: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](mailto:trincerawaterconservancy@gmail.com)

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 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 a 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 the minimum payment stated in paragraph 1.4.7 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 any other Subdistrict.
  
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 Parties 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 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 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 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.
  
  - 7.5. 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.

- 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 SLVIWO may not assign its rights or delegate its duties hereunder without the prior written consent of 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.
- 7.7. Litigation. If the SLVIWO 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.
- 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. Neither SLVIWO nor Subdistrict No. 3, Subdistrict No. 6, or Trinchera agree to binding arbitration by any extra-judicial body or person.
- 7.9. Governmental Immunity. To the extent allowed by law and as otherwise consistent with this Agreement, 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.

- 7.10. 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.
- 7.11. 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.
- 7.12. Time. Time is of the essence in this Agreement.
- 7.13. Binding Agreement. This Agreement binds and benefits the Parties and their respective successors and assigns.
- 7.14. 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.
- 7.15. 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.

7.16. 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: Sam S. Vance

1-26-22  
Date

San Luis Valley Irrigation Well Owners, Inc.

Special Improvement District No. 3  
Water Activity Enterprise

By: Amber Pacheco

2/10/2022  
Date

Amber Pacheco  
Program Manager  
Special Improvement District No. 3 of the  
Rio Grande Water Conservation District,  
Water Activity Enterprise

Special Improvement District Subdistrict No. 6  
Water Activity Enterprise

By: Amber Pacheco

2/10/2022  
Date

Amber Pacheco  
Program Manager  
Special Improvement District No. 6 of the  
Rio Grande Water Conservation District,  
Water Activity Enterprise

Ground Water Management Subdistrict of  
The Trinchera Water Conservancy District

By: Monty Smith

2/10/2022  
Date

Monty Smith  
President  
Ground Water Management Subdistrict of  
The Trinchera Water Conservancy District

## LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into this 10<sup>th</sup> day of Feb., 2023 (the “Effective Date”) by and between 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. 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. 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 2023/2024 Annual Replacement Plan (“ARP”).

F. 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 2023/2024 ARP.

G. 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 2023/2024 ARP.

H. 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.

I. Subject to the terms and conditions of this Lease Agreement and in exchange for compensation listed herein from Subdistrict No. 3, Subdistrict No. 6, and Trinchera, SLVIWO agrees to provide Subdistrict No. 3 with the right to use up to 2000 acre-feet of water, Subdistrict No. 6 with the right to use up to 3000 acre-feet of water, and Trinchera with the right to use up to 3000 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. 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.

- 1.1.1. 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").
- 1.1.2. 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").
- 1.1.3. 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").
- 1.1.4. 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: 57.5% to the SLVIWO; 15% to Subdistrict 3; 27.5% to Subdistrict 6. If it is not possible to exchange the water, then water from the Taos Valley No. 3 water right will 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. 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.
- 1.1.5. If 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 two 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. 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.

- 1.2. Term of Agreement. This Agreement is for a one-year term commencing on the Effective Date and ending April 30, 2024 (the “Term”); however, this Lease Agreement will only apply to water produced under the 2015CW3030 Case during the 2023 Irrigation Season. This Agreement is for a single term only and is not renewable. If 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.
- 1.3. 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”).
  - 1.3.1 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).

- 1.3.2 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.
  - 1.3.3 If there is a dispute between any of the Parties regarding the accounting required in paragraph 1.3.2, 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.
  - 1.3.4 Within 60 days of the acceptance or resolution of dispute regarding the accounting required in paragraph 1.3.2, 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.
- 1.4 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. 3's use pursuant to paragraph 1.1.1, up to 3,000 acre-feet of water for Subdistrict No. 6's use pursuant to paragraph 1.1.2, and up to 3,000 acre-feet of water for Trinchera's use pursuant to paragraph 1.1.3. Further details regarding this provision are outlined in the following subsections.
- 1.4.1 Delivery of Excess Credit Water. The ARP water will be 100% of the first 8,000 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 1.1.4. For each acre-foot generated from the Taos Valley No. 3 water right in the 2023 Irrigation season, 30.61% will be provided for use by Subdistrict No. 3 pursuant to paragraph 1.1.1 and 54.32% will be provided for use by Subdistrict 6 pursuant to paragraph 1.1.2 and 15.06% will be provided for use by Trinchera pursuant to paragraph 1.1.3.
  - 1.4.2 SLVIWO retains the right to the use of its water exchanged into storage in Platoro Reservoir and any additional water generated over the combined 8,000 acre-feet, to be provided to Subdistrict No. 3, Subdistrict No. 6, and Trinchera under this Lease and any portion of the 8,000 acre-feet which is not delivered to either Subdistrict No. 3, Subdistrict No. 6, or Trinchera following a Notice of Termination of Delivery pursuant to paragraph 1.4.6 of this Agreement.

1.4.3 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.

1.4.4 The ARP Water will be accounted for as delivered to 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  $\frac{1}{4}$  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.

1.4.5 Use of ARP Water.

1.4.5.1 Preservation of SLVIWO Water Rights: 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 2023/2024 ARP, or subsequent years pursuant to paragraph 1.4.1 to 1.4.4, above. 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. 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. 3, Subdistrict No. 6, or Trinchera, other than the up to the combined 8,000 acre-feet leased between them, herein. Furthermore, the Parties understand and agree that by permitting 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.

1.4.5.2 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. 3, Subdistrict No. 6, and Trinchera, respectively, will retain all rights to such ARP Water after the expiration of this Agreement. 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.

1.4.5.3 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.

1.4.6 Termination of Delivery. 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.

1.4.7 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.

1.5 Approvals. Each Subdistrict is responsible for obtaining any approvals necessary for their respective Subdistrict's proposed use and delivery of the ARP Water.

1.6 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. 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.

3. 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.

4. 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.
5. 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: Teri Dunn  
   P.O. Box 147  
   La Jara, CO 81140  
   E-mail: [terij\\_dunn@yahoo.com](mailto:terij_dunn@yahoo.com)

To 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](mailto: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](mailto:trincerawaterconservancy@gmail.com)

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 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 1.4.7 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.
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 Parties 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 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 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 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.

- 7.5. 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.
- 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 SLVIWO may not assign its rights or delegate its duties hereunder without the prior written consent of 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.
- 7.7. Litigation. If the SLVIWO 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.
- 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. Neither SLVIWO nor Subdistrict No. 3, Subdistrict No. 6, or Trinchera agree to binding arbitration by any extra-judicial body or person.
- 7.9. Governmental Immunity. To the extent allowed by law and as otherwise consistent with this Agreement, 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.


- 7.10. 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.
- 7.11. 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.
- 7.12. Time. Time is of the essence in this Agreement.
- 7.13. Binding Agreement. This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- 7.14. 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.
- 7.15. 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.
- 7.16. 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: \_\_\_\_\_  
Sam Vance  
San Luis Valley Irrigation Well Owners, Inc.

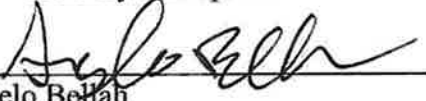
\_\_\_\_\_  
Date

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


\_\_\_\_\_  
Date 1/24/2023

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

\_\_\_\_\_  
Date 1/24/2023

Ground Water Management Subdistrict of  
The Trinchera Water Conservancy District

By:   
Monty Smith  
President  
Ground Water Management Subdistrict of  
The Trinchera Water Conservancy District

\_\_\_\_\_  
Date 1/24/2023

SLVIWO

By: Sam Vance  
Sam Vance  
San Luis Valley Irrigation Well Owners, Inc.

2/10/2023  
Date

Special Improvement District No. 3  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah  
Program Manager  
Special Improvement District No. 3 of the  
Rio Grande Water Conservation District,  
Water Activity Enterprise

1/24/2023  
Date

Special Improvement District Subdistrict No. 6  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah  
Program Manager  
Special Improvement District No. 6 of the  
Rio Grande Water Conservation District,  
Water Activity Enterprise

1/24/2023  
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

\_\_\_\_\_  
Date

## **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](mailto:monty265@msn.com); [lyla@notes-numbers.com](mailto: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](mailto: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](mailto: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.

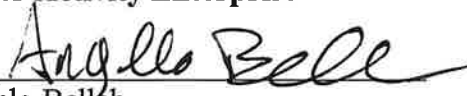
5.18. Captions. The captions and headings in the Lease Agreement are for convenience of reference only and will not be used to interpret, define, or limit its provisions.

**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

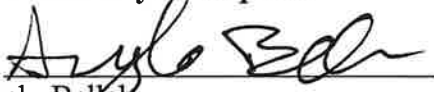
4/2/2024  
Date

**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”

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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.

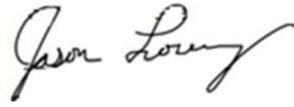
SLVIWO understands that the Division Engineer may impose reasonable losses on the use or exchange of the water under the SWSP due to stream delivery losses, evaporation or other factors.

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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## LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into between the Water Activity Enterprise of Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District ("herein referred to as "Subdistrict"), and Terrace Irrigation Company, a Colorado nonprofit corporation (herein after referred to as "Lessor") as the owner of certain decreed water rights decreed for augmentation use and stored in Terrace Reservoir (collectively "Parties" or in the singular "Party").

### INTRODUCTORY RECITALS

A. The Lessor holds title to a decreed plan for augmentation which includes a portion of the water right, as originally set forth in a change decree entered in Case No. 1982CW97 (Water Division 3) on November 22, 1983. This water right was produced under the plan for augmentation for 2022 and stored in Terrace Reservoir.

B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, where the water right is fully consumable, including for augmentation purposes.

C. The Subdistrict desires to lease 23.85 acre-feet of said augmentation water from Lessor 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. Lease Agreement.
  - 1.1. Lease Agreement. Subject to the terms of this Agreement, the Subdistrict agrees to lease 23.85 acre-feet of augmentation water stored in Terrace Reservoir ("Stored Water").
  - 1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Lessor and the Subdistrict, which date shall be the "Effective Date" and will end at midnight on April 30, 2024.
  - 1.3. Lease Price. The lease price for the 23.85 acre-feet of water is two hundred dollars (\$200.00) per acre-foot for a total lease price of four thousand seven hundred seventy dollars (\$4,770.00) with all \$4,770.00 due and payable within ten business days after the Effective Date of this agreement.
  - 1.4. Failure to Pay. If the Subdistrict fails to pay when due the lease payment required herein, then this Agreement will terminate in full, Lessor shall retain title to the Stored Water and the Agreement shall be void.
  - 1.5. Water Subject to the Agreement. The water subject to this Agreement is 23.85 acre-feet of the augmentation water which was stored in Terrace Reservoir during 2022. After the Effective Date the Lessor will not be entitled to use or dispose of the 23.85 acre-feet of Stored Water under this lease and, thereafter, the Subdistrict shall bear all seepage, evaporation and transit losses on the subject water. The Subdistrict will retain title to unused water, if any, after the Term of this Agreement.

- 1.6. Approvals. The Subdistrict is responsible for obtaining any approvals necessary for their proposed use and delivery of the Stored Water.
2. Lessor's Obligations and Representations.

  - 2.1. Lessor's Title. Lessor 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. Lessor 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 is required to be made to any mortgagee, lender, or lien holder.
  - 2.2. Upon the Subdistrict's payment as specified in paragraph 1.3, Lessor will change control of the Stored Water over to the Subdistrict.
3. Subdistrict's Representations. This Agreement has been duly authorized and executed by the Subdistrict, is the legal, valid, and binding obligation of the Subdistrict, and is enforceable against the Subdistrict according to its terms. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict. To the best of the Subdistrict's knowledge, there is no pending or threatened litigation or administrative proceeding against the Subdistrict that would prevent it from purchasing the Stored Water.
4. 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 Lessor:                    c/o President  
   P.O. Box 109  
   Monte Vista, CO 81144  
   e-mail: [reinkvc@gojade.org](mailto:reinkvc@gojade.org)  
   and [lyla@notes-numbers.com](mailto:lyla@notes-numbers.com)  
   phone: 719-852-5638

To Subdistricts:            Deputy General Manager  
   Rio Grande Water Conservation District  
   8805 Independence Way  
   Alamosa, CO 81101  
   Fax: 719-992-2026  
   Email: [amber@rgwcd.org](mailto:amber@rgwcd.org)

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

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

6. Miscellaneous Provisions.

- 6.1. 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 Lessor or the Subdistrict to one another with respect to this Agreement.
- 6.2. Survival. Each of the representations and warranties made by Lessor and the Subdistrict 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.
- 6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 6.4. 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 Lessor 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.
- 6.5. 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.
- 6.6. 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 Lessor 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 Lessor, which consent shall not be unreasonably withheld.
- 6.7. Litigation. If the Lessor and/or the Subdistrict 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.

- 6.8. 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.
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- 6.10. Recording. The Subdistrict may record this Agreement or a Memorandum of this Agreement at its own expense.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. 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.
- 6.13. Lessor's Acknowledgment. Lessor 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 Lessor by the Subdistrict, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Lessor except for written amendments or waivers executed by the Parties.

**TERRACE IRRIGATION COMPANY**

By: Kent Reinhardt

2/20/2023  
Date

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

By: Angelo Bellah  
Angelo Bellah, Program Manager

2/14/23  
Date

## LEASE AGREEMENT

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B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, where the water right is fully consumable, including for augmentation purposes.

C. The Subdistrict desires to lease 23.85 acre-feet of said augmentation water from Lessor on the terms set forth below.

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  - 1.3. Lease Price. The lease price for the 23.85 acre-feet of water is two hundred dollars (\$200.00) per acre-foot for a total lease price of four thousand seven hundred seventy dollars (\$4,770.00) with all \$4,770.00 due and payable within ten business days after the Effective Date of this agreement.
  - 1.4. Failure to Pay. If the Subdistrict fails to pay when due the lease payment required herein, then this Agreement will terminate in full, Lessor shall retain title to the Stored Water and the Agreement shall be void.
  - 1.5. Water Subject to the Agreement. The water subject to this Agreement is 23.85 acre-feet of the augmentation water which was stored in Terrace Reservoir during 2023. After the Effective Date the Lessor will not be entitled to use or dispose of the 23.85 acre-feet of Stored Water under this lease and, thereafter, the Subdistrict shall bear all seepage, evaporation and transit losses on the subject water. The Subdistrict will retain title to unused water, if any, after the Term of this Agreement, except as specified in paragraph 3.3.

- 1.6. Approvals. The Subdistrict is responsible for obtaining any approvals necessary for their proposed use and delivery of the Stored Water.
2. Storage Agreement. The compensation to be paid by Subdistrict to Lessor to store the Leased Water and deliver the Leased Water to the Delivery Point shall be as follows:
  - 2.1. Subdistrict shall pay an annual administrative fee of TEN DOLLARS (\$10.00) per acre-foot for each acre-foot of Leased Water stored in Terrace Reservoir. In calculating this fee, the amount stored shall be rounded up to the nearest half an acre-foot. For example, storage of 70.3 acre-feet shall be rounded up to 70.5 acre-feet to calculate this annual fee. Lessor shall invoice Subdistrict no later than December 15th for the annual fee applicable to storage during the prior water year. Subdistrict shall pay the invoice within 30 days of receipt.
  - 2.2. In the event of a spill at Terrace Reservoir during the 2024 Irrigation Season, Lessor will notify Subdistrict of the total amount of water that was spilled out of the Terrace shareholders pool in Terrace Reservoir to allow the Subdistrict water to remain in storage. Subdistrict shall pay an administrative fee of ONE HUNDRED DOLLARS (\$100.00) per acre-foot for each acre-foot of Subdistrict water that was not spilled. In calculating this fee, the amount shall be rounded up to the nearest half an acre-foot. For example, storage of 70.3 acre-feet shall be rounded up to 70.5 acre-feet to calculate this additional fee. Lessor shall invoice the Subdistrict no later than December 15th for this additional administrative fee applicable to storage during the prior water year. Subdistrict shall pay the invoice within 30 days of receipt.
3. Lessor's Obligations and Representations.
  - 3.1. Lessor's Title. Lessor 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. Lessor 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 is required to be made to any mortgagee, lender, or lien holder.
  - 3.2. Upon the Subdistrict's payment as specified in paragraph 1.3, Lessor will change control of the Stored Water over to the Subdistrict.
  - 3.3. Lessor shall be solely responsible for all operation, maintenance and related costs associated with Terrace Reservoir, and shall maintain full control of its daily operations. Lessor shall have the final decision on when Leased Water can or will be delivered, provided however, that the Lessor shall make reasonable efforts to deliver the Leased Water at times requested by the Subdistrict during the normal irrigation season of each year, subject to coordination with the Division Engineer's Office. Parties agree that the most preferable time for delivery of the Leased Water is between April 1 and October 31. Parties agree to make reasonable efforts to affect the delivery of the water within such time-frame, unless another time for delivery is agreed to between the parties. Any of the Leased Water not released by October 31, 2024, may be carried over into the following year(s), however 12 % of the water carried over to a subsequent year will be transferred to Lessor's ownership and control and the Subdistrict will have no further rights or obligations concerning the forfeited water. The Leased Water shall be heavy water and will not be spilled from Terrace Reservoir in the event of a spill. The Subdistrict shall be responsible for carriage or transit losses associated with delivery of its Leased Water below the Delivery Point.
4. Subdistrict's Representations. This Agreement has been duly authorized and executed by



the Subdistrict, is the legal, valid, and binding obligation of the Subdistrict, and is enforceable against the Subdistrict according to its terms. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict. To the best of the Subdistrict's knowledge, there is no pending or threatened litigation or administrative proceeding against the Subdistrict that would prevent it from purchasing the Stored Water.

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 Lessor:                   c/o Kent Reinhardt, President  
P.O. Box 109  
Monte Vista, CO 81144  
e-mail: [reinkvc@gojade.org](mailto:reinkvc@gojade.org)  
and [lyla@notes-numbers.com](mailto:lyla@notes-numbers.com)  
phone: 719-852-5638

To Subdistrict:           Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
Fax: 719-992-2026  
Email: [amber@rgwcd.org](mailto:amber@rgwcd.org)

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

6. Miscellaneous Provisions.

- 6.1. 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 Lessor or the Subdistrict to one another with respect to this Agreement.
- 6.2. Survival. Each of the representations and warranties made by Lessor and the Subdistrict 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.
- 6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.

- 6.4. 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 Lessor 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.
- 6.5. 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.
- 6.6. 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 Lessor 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 Lessor, which consent shall not be unreasonably withheld.
- 6.7. Litigation. If the Lessor and/or the Subdistrict 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.
- 6.8. 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.
- 6.9. 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.
- 6.10. Recording. The Subdistrict may record this Agreement or a Memorandum of this Agreement at its own expense.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. 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.

6.13. Lessor's Acknowledgment. Lessor 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 Lessor by the Subdistrict, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Lessor except for written amendments or waivers executed by the Parties.

**TERRACE IRRIGATION COMPANY**

By: Kent Reinhardt

3/23/2024

Date

Name: Kent Reinhardt

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

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/25/24

Date

DAVID W. ROBBINS  
PETER J. AMPE  
MATTHEW A. MONTGOMERY

**HILL & ROBBINS, P.C.**  
ATTORNEYS AT LAW  
1660 LINCOLN STREET, SUITE 2720  
DENVER, COLORADO 80264

TELEPHONE  
303 296-8100

FAX  
303 296-2388

E-MAIL  
peterampe@hillandrobbs.com

ROBERT F. HILL (Ret.)

April 5, 2024

Jason Ullmann, P.E.  
State Engineer  
State Engineer's Office  
1313 Sherman Street, Room 818  
Denver, Colorado 80202

VIA DWR PORTAL

Re: **Request for a Renewal of a Substitute Water Supply Plan for the 2024/2025 water year for the purpose of changing the purpose of use of a water right for Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise.**

Dear Mr. Rein,

Special Improvement District No. 6 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise ("Subdistrict No. 6") submits this request to approve a Substitute Water Supply Plan ("SWSP"), to run from May 1, 2024 to April 30, 2025. The filing fee will be paid through the DWR portal.

A previous SWSP from this source was approved. SWSP ID 6209.

A certificate of mailing showing service of this Request for Approval of a Substitute Water Supply Plan to all parties who have subscribed to the SWSP notification list for Water Division No. 3, Colorado is attached as Exhibit A.

This SWSP does not represent all sources of water Subdistrict No. 6 will use to remedy injurious depletions and does not limit the other actions being taken by Subdistrict No. 6 in order to meet the requirements of the Plan of Water Management as approved by the State Engineer. Instead, this SWSP is one portion of the overall actions taken by Subdistrict No. 6 to assure the 2024/2025 Annual Replacement Plans conforms with the requirements of the Plan of Water Management.

This SWSP application is intended to provide a part of the water supplies to be used in the Subdistrict's Annual Replacement Plans, but the approval of this SWSP does not have the effect of approving the Annual Replacement Plan. The Annual Replacement Plan approval is a separate process.

**I. 23.85 Acre-Feet of Water Stored in Terrace Reservoir, Water Division No. 3.**

The Terrace Irrigation Company is the owner of a decreed plan for augmentation which includes a portion of the water right as originally set forth in a change decree entered in Case No. 1982CW97 (Water Division 3) on November 22, 1983. This water was produced under the plan for augmentation and stored in Terrace Reservoir in 2023. The Terrace Irrigation Company is leasing 23.85 acre-feet of said water stored in Terrace Reservoir to Subdistrict No. 6. See Exhibit B.

**II. Project Description.**

This request for approval of a SWSP is being submitted pursuant to section 37-92-308(5), C.R.S. for the purpose of approving the change of the water rights listed above to include augmentation, replacement, remedy, including by substitution and exchange, for use as part of Subdistrict No. 6's Annual Replacement Plans. The water will be released from Terrace Reservoir at the direction of the Division Engineer to remedy injurious depletions to the Alamosa River, as described in the Plan of Water Management and Annual Replacement Plans.

**III. Change of Water Right.**

The water right to be changed is 23.85 acre-feet of water stored by the Terrace Reservoir Company in Terrace Reservoir. Evidence of Subdistrict No. 6's right to use such water is attached as Exhibit B.

**IV. Operation of Plan.**

Subdistrict No. 6 will release this water from Terrace Reservoir under the direction of the Division Engineer to remedy injury caused by the withdrawal of groundwater by wells within the Subdistrict No. 6 Annual Replacement Plan or otherwise to comply with the requirements of that Plan.

Subdistrict No. 6 understands that the Division Engineer may impose reasonable losses on the use or exchange of the water under the SWSP due to evaporation or other factors. Subdistrict further understands that, to the extent these 23.85 acre-feet are not released from storage or otherwise consumed, such amounts may be carried over and used in subsequent Annual Replacement Plans without the need for a subsequent Substitute Water Supply Plan.

Subdistrict No. 6 hereby requests that the State Engineer approve this Substitute Water Supply Plan which is submitted in compliance with section 37-92-308(5), C.R.S.

Jason Ullmann, P.E.  
April 5, 2024  
Page 3

Very truly yours,

*/s Peter Ampe*  
\_\_\_\_\_  
Subdistrict No. 6  
Peter J. Ampe, Esq.



# EXHIBIT A

## CERTIFICATE OF SERVICE

This is to certify that I have duly served the forgoing Request for a Substitute Water Supply Plan for the 2024/2025 water years for the purpose of changing purpose of use of water rights for Special Improvement District No. 6 of the Rio Grande Water Conservation District pursuant to section 37-92-308(5), C.R.S. upon all person listed on the Substitute Water Supply Plan Notification List for Water Division No. 3 (April 5, 2024) this 5<sup>th</sup> day of April 2024.

*s/ Peter Ampe*

\_\_\_\_\_

Peter Ampe

## EXHIBIT B

## LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into between the Water Activity Enterprise of Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District (“herein referred to as “Subdistrict”), and Terrace Irrigation Company, a Colorado nonprofit corporation (herein after referred to as “Lessor”) as the owner of certain decreed water rights decreed for augmentation use and stored in Terrace Reservoir (collectively “Parties” or in the singular “Party”).

### INTRODUCTORY RECITALS

A. The Lessor holds title to a decreed plan for augmentation which includes a portion of the water right, as originally set forth in a change decree entered in Case No. 1982CW97 (Water Division 3) on November 22, 1983. This water right was produced under the plan for augmentation for 2023 and stored in Terrace Reservoir.

B. The Decree authorizes the water right to be used for multiple uses in Water Division 3, where the water right is fully consumable, including for augmentation purposes.

C. The Subdistrict desires to lease 23.85 acre-feet of said augmentation water from Lessor 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. Lease Agreement.

- 1.1. Lease Agreement. Subject to the terms of this Agreement, the Subdistrict agrees to lease 23.85 acre-feet of augmentation water stored in Terrace Reservoir (“Stored Water”).
- 1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Lessor and the Subdistrict, which date shall be the “Effective Date” and will end at midnight on April 30, 2025.
- 1.3. Lease Price. The lease price for the 23.85 acre-feet of water is [REDACTED] per acre-foot for a total lease price of [REDACTED] with all [REDACTED] due and payable within ten business days after the Effective Date of this agreement.
- 1.4. Failure to Pay. If the Subdistrict fails to pay when due the lease payment required herein, then this Agreement will terminate in full, Lessor shall retain title to the Stored Water and the Agreement shall be void.
- 1.5. Water Subject to the Agreement. The water subject to this Agreement is 23.85 acre-feet of the augmentation water which was stored in Terrace Reservoir during 2023. After the Effective Date the Lessor will not be entitled to use or dispose of the 23.85 acre-feet of Stored Water under this lease and, thereafter, the Subdistrict shall bear all seepage, evaporation and transit losses on the subject water. The Subdistrict will retain title to unused water, if any, after the Term of this Agreement, except as specified in paragraph 3.3.

- 1.6. Approvals. The Subdistrict is responsible for obtaining any approvals necessary for their proposed use and delivery of the Stored Water.
2. Storage Agreement. The compensation to be paid by Subdistrict to Lessor to store the Leased Water and deliver the Leased Water to the Delivery Point shall be as follows:
  - 2.1. Subdistrict shall pay an annual administrative fee of TEN DOLLARS (\$10.00) per acre-foot for each acre-foot of Leased Water stored in Terrace Reservoir. In calculating this fee, the amount stored shall be rounded up to the nearest half an acre-foot. For example, storage of 70.3 acre-feet shall be rounded up to 70.5 acre-feet to calculate this annual fee. Lessor shall invoice Subdistrict no later than December 15th for the annual fee applicable to storage during the prior water year. Subdistrict shall pay the invoice within 30 days of receipt.
  - 2.2. In the event of a spill at Terrace Reservoir during the 2024 Irrigation Season, Lessor will notify Subdistrict of the total amount of water that was spilled out of the Terrace shareholders pool in Terrace Reservoir to allow the Subdistrict water to remain in storage. Subdistrict shall pay an administrative fee of ONE HUNDRED DOLLARS (\$100.00) per acre-foot for each acre-foot of Subdistrict water that was not spilled. In calculating this fee, the amount shall be rounded up to the nearest half an acre-foot. For example, storage of 70.3 acre-feet shall be rounded up to 70.5 acre-feet to calculate this additional fee. Lessor shall invoice the Subdistrict no later than December 15th for this additional administrative fee applicable to storage during the prior water year. Subdistrict shall pay the invoice within 30 days of receipt.
3. Lessor's Obligations and Representations.
  - 3.1. Lessor's Title. Lessor 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. Lessor 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 is required to be made to any mortgagee, lender, or lien holder.
  - 3.2. Upon the Subdistrict's payment as specified in paragraph 1.3, Lessor will change control of the Stored Water over to the Subdistrict.
  - 3.3. Lessor shall be solely responsible for all operation, maintenance and related costs associated with Terrace Reservoir, and shall maintain full control of its daily operations. Lessor shall have the final decision on when Leased Water can or will be delivered, provided however, that the Lessor shall make reasonable efforts to deliver the Leased Water at times requested by the Subdistrict during the normal irrigation season of each year, subject to coordination with the Division Engineer's Office. Parties agree that the most preferable time for delivery of the Leased Water is between April 1 and October 31. Parties agree to make reasonable efforts to affect the delivery of the water within such time-frame, unless another time for delivery is agreed to between the parties. Any of the Leased Water not released by October 31, 2024, may be carried over into the following year(s), however 12 % of the water carried over to a subsequent year will be transferred to Lessor's ownership and control and the Subdistrict will have no further rights or obligations concerning the forfeited water. The Leased Water shall be heavy water and will not be spilled from Terrace Reservoir in the event of a spill. The Subdistrict shall be responsible for carriage or transit losses associated with delivery of its Leased Water below the Delivery Point.
4. Subdistrict's Representations. This Agreement has been duly authorized and executed by

the Subdistrict, is the legal, valid, and binding obligation of the Subdistrict, and is enforceable against the Subdistrict according to its terms. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict. To the best of the Subdistrict's knowledge, there is no pending or threatened litigation or administrative proceeding against the Subdistrict that would prevent it from purchasing the Stored Water.

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 Lessor:                   c/o Kent Reinhardt, President  
P.O. Box 109  
Monte Vista, CO 81144  
e-mail: [reinkvc@gojade.org](mailto:reinkvc@gojade.org)  
and [lyla@notes-numbers.com](mailto:lyla@notes-numbers.com)  
phone: 719-852-5638

To Subdistrict:           Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
Fax: 719-992-2026  
Email: [amber@rgwcd.org](mailto:amber@rgwcd.org)

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

6. Miscellaneous Provisions.

- 6.1. 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 Lessor or the Subdistrict to one another with respect to this Agreement.
- 6.2. Survival. Each of the representations and warranties made by Lessor and the Subdistrict 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.
- 6.3. 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.

- 6.4. 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 Lessor 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.
- 6.5. 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.
- 6.6. 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 Lessor 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 Lessor, which consent shall not be unreasonably withheld.
- 6.7. Litigation. If the Lessor and/or the Subdistrict 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.
- 6.8. 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.
- 6.9. 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.
- 6.10. Recording. The Subdistrict may record this Agreement or a Memorandum of this Agreement at its own expense.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. 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.



6.13. Lessor's Acknowledgment. Lessor 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 Lessor by the Subdistrict, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Lessor except for written amendments or waivers executed by the Parties.

**TERRACE IRRIGATION COMPANY**

By: Kent Reinhardt

3/23/2024

Date

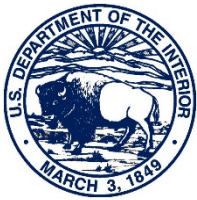
Name: Kent Reinhardt

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

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/25/24

Date



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
134 Union Blvd  
Lakewood, Colorado 80228



In Reply Refer to:  
FWS/IR05/IR07

April 10, 2023

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Leased CPW Tabor Ditch Transmountain Water to Subdistrict No. 6 for Use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Ms. Pacheco,

The U.S. Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) have negotiated terms and conditions to lease a portion of CPW's annual yield (197 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement) to the USFWS. CPW has stored this water in Rio Grande Reservoir as a beneficial use as decreed in Case No. 3549.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS but may also be used to cover injurious depletions of all Subdistrict Wells as needed so long as the Subdistrict provides another source of replacement in an amount sufficient to remedy all injurious depletions calculated to occur as a result of the withdrawal of groundwater by USFWS wells included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility of storage of the specified quantity of water following this transfer. This lease between USFWS and CPW will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict will contact CPW staff to administer the transfer of 197 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

**INTERIOR REGION 5**  
**MISSOURI BASIN**

KANSAS, MONTANA\*, NEBRASKA, NORTH DAKOTA,  
SOUTH DAKOTA

\*PARTIAL

**INTERIOR REGION 7**  
**UPPER COLORADO RIVER BASIN**

COLORADO, NEW MEXICO, UTAH, WYOMING

Please contact Sharon Vaughn ([sharon\\_vaugh@fws.gov](mailto:sharon_vaugh@fws.gov)) or Chris Shaffer ([christopher\\_shaffer@fws.gov](mailto:christopher_shaffer@fws.gov)) with any questions and to administer the transfer of water to the appropriate Subdistrict account.

Best Regards,

Sharon Vaughn  
Project leader  
San Luis Valley National Wildlife Refuge Complex



# United States Department of the Interior



IN REPLY REFER TO:  
FWS/R6/

FISH AND WILDLIFE SERVICE  
Mountain-Prairie Region  
San Luis Valley National Wildlife Refuge Complex  
Alamosa, CO 81101

April 5, 2024

Angelo Bellah  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Vintage Tabor Ditch Transmountain Water to Subdistrict No. 6 for Use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Mr. Bellah,

The U.S. Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) have entered into an agreement that authorizes the USFWS to use 248 acre-feet of vintage Tabor Ditch transmountain water (Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement). Vintage Tabor water has been used to maintain conservation pools, a beneficial use decreed in Case No. 3549.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS but may also be used to cover injurious depletions of all Subdistrict Wells as needed. In the latter instance, the Subdistrict must provide another source of replacement water in an amount sufficient to remedy all injurious depletions resulting from the withdrawal of groundwater by USFWS wells that are included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility of storage of the specified quantity of water following this transfer. This agreement between USFWS and CPW will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict will contact CPW staff to administer the transfer of 248 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

Please contact John Hughes ([john\\_hughes@fws.gov](mailto:john_hughes@fws.gov)) or Chris Shaffer ([christopher\\_shaffer@fws.gov](mailto:christopher_shaffer@fws.gov)) with any questions and to administer the transfer of water to the appropriate Subdistrict account.

Best Regards,

A handwritten signature in black ink that reads "John Hughes". The signature is written in a cursive style with a large initial "J" and "H".

John Hughes  
Acting Project Leader  
San Luis Valley National Wildlife Refuge Complex



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO:  
FWS/R6

San Luis Valley National Wildlife Refuge Complex  
Alamosa, Baca and Monte Vista NWRs  
9383 El Rancho Lane  
Alamosa CO 81101

April 14, 2022

Amber Pacheco  
Rio Grande Water Conservation District  
Subdistrict 6 Program Manager  
8805 Independence Way  
Alamosa, CO 81101

RE: USFWS Transfer of Leased CPW Tabor Ditch Transmountain Water to Subdistrict No. 6 for Use as a Replacement Source by the Subdistrict in the current or a subsequent Annual Replacement Plan

Dear Ms. Pacheco,

The U.S. Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) have negotiated terms and conditions to lease a portion of CPW's annual yield (250 acre-feet) of its Tabor Ditch transmountain water rights (Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement) to the USFWS. CPW has stored this water in Rio Grande Reservoir as a beneficial use as decreed in Case No. 3549.

The USFWS is relinquishing this same amount of water to Subdistrict No. 6 for use as replacement water in either the current or a successive Annual Replacement Plan. This water may be used to replace injurious depletions of the USFWS but may also be used to cover injurious depletions of all Subdistrict Wells as needed so long as the Subdistrict provides another source of replacement in an amount sufficient to remedy all injurious depletions calculated to occur as a result of the withdrawal of groundwater by USFWS wells included in the Subdistrict's current Annual Replacement Plan.

Subdistrict No. 6 will assume operational control of and responsibility of storage of the specified quantity of water following this transfer. This lease between USFWS and CPW will not be considered a transfer or sale of a right in the underlying decree. The Subdistrict will contact CPW staff to administer the transfer of 250 acre-feet of Tabor Ditch transmountain water to the appropriate Subdistrict account.

Please contact Sharon Vaughn ([sharon\\_vaughn@fws.gov](mailto:sharon_vaughn@fws.gov)) or Chris Shaffer ([christopher\\_shaffer@fws.gov](mailto:christopher_shaffer@fws.gov)) with any questions and to administer the transfer of water to the appropriate Subdistrict account.

Sincerely,

Sharon Vaughn  
Project leader  
San Luis Valley National Wildlife Refuge Complex



**2024 Leased Shares of Santa Maria Reservoir Company Shareholders**

<b>Shareholders</b>	<b>Canal Company</b>	<b>No. of Shares</b>	<b>Ac_Ft Leased Per Share</b>	<b>Total Ac_Ft.</b>
Bryan and Virginia Christensen	Monte Vista Canal	10	0.982	9.82
Colo Kist Farms LLC	Monte Vista Canal	5	0.982	4.91
David Faucette	Monte Vista Canal	30	0.982	29.46
DeClerck Farms, Inc.	Monte Vista Canal	55	0.982	54.01
Esperanza Farms, LLC	Monte Vista Canal	85	0.982	83.47
Haedge Heath & Dana	Monte Vista Canal	10	0.982	9.82
John Steven & Trena Brady	Monte Vista Canal	10	0.982	9.82
Louis Schmidt	Monte Vista Canal	10	0.982	9.82
Mark Q. Deacon	Monte Vista Canal	10	0.982	9.82
Michael Jay & Rhonda K. Schaefer	Monte Vista Canal	10	0.982	9.82
Michael Kirk & Alesha Ann Brady	Monte Vista Canal	10	0.982	9.82
Michele S. Tratos-Hilt	Monte Vista Canal	5	0.982	4.91
R & J Ag Ventures, LLC	Monte Vista Canal	15	0.982	14.73
Robert & Krista Middlemist	Monte Vista Canal	10	0.982	9.82
Rodney & Jeanne Archer	Monte Vista Canal	10	0.982	9.82
Schaefer Mike & Rhonda	Monte Vista Canal	10	0.982	9.82
Shirley Johnson	Monte Vista Canal	20	0.982	19.64
Steve Brady for L&P Corp	Monte Vista Canal	10	0.982	9.82
Steve Brady for Schaefer Ranch	Monte Vista Canal	10	0.982	9.82
Terry and Connie Beckner	Monte Vista Canal	20	0.982	19.64
Thomas O. Corzine	Monte Vista Canal	10	0.982	9.82
Tyler and Rochelle Faucette	Monte Vista Canal	25	0.982	24.55
William and Esther Miller	Monte Vista Canal	10	0.982	9.82
<b>Total Shares Leased: 400</b>			<b>Total Water Leased: 392.8</b>	

## **APPENDIX G**

### **Forbearance Agreements**

**FORBEARANCE AGREEMENT**

This Forbearance Agreement is entered into effective May 1, 2023 between the Alamosa Spring Creek 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:**

AV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

AV Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

**RECITALS**

A. The Company owns and operates the Alamosa Spring Creek Ditch and the water rights decreed thereto. The Alamosa Spring Creek Ditch diverts water from the Alamosa River in the SE1/4 NW1/4 of Section 11, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 30.32 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 Alamosa 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 ARPs.

**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)  
AV Ten Years (May 1, 2023 through April 30, ~~3033~~) 2873 - AV

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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 29, 41 and 54 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 Alamosa 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>
29	5.76
41	18.14
54	6.42

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 \$ 70 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 \$ 70 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 15<sup>th</sup>.

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:

Alamosa Spring Creek Ditch  
20500 County Road 10.75  
La Jara, CO 81146

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.

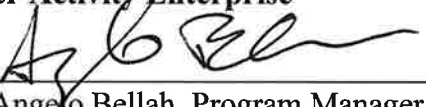
**Alamosa Spring Creek Ditch**

By: 

03/24/2023  
Date

**APPROVED:**

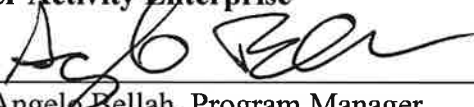
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Alamosa Spring Creek Ditch

Address to mail payment to: 20500 County Road 10.75  
La Jara, CO 81140

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 Arroya 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:**

- CC Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
CC Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

## RECITALS

A. The Company owns and operates the Arroya Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ NE ¼ of Section 12, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 53.12 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 Alamosa 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 forbear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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.

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>
36	53.12

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 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 15<sup>th</sup>.

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:

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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<sup>st</sup> of each year for the term of the Agreement.



Arroya Ditch Owner

By: [Signature]

4-7-23  
Date

APPROVED:

Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date

APPROVED:

Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date



To ensure payments are made correctly, please fill in the following:

Arroya Ditch CO

Checks should be made in the name of: Audrey Schmidt

Address to mail payment to: 21731 State Hwy 285  
La Jara, CO 81140

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 Capulin 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. 3 “Subdistrict No. 3”
- Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Capulin Ditch and the water rights decreed thereto. The Capulin Ditch diverts water from the Alamosa River in the SW1/4 SE1/4 of Section 9, Township 35 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 31.37 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 Alamosa 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 ARPs.

### 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 10 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 Alamosa 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>
10	31.37

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 \$ 75 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 \$ 75 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 15<sup>th</sup>.

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:

Capulin Ditch Co  
395 First St.  
Sanford, CO 8151

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 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.


**Capulin Ditch**

By: 

4-10-23  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Cepulin Ditch Co.

Address to mail payment to: 395 First St.  
Sanford, CO 81151

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 Clark 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:**

IS Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"

IS Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the Clark Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the SE ¼ SW ¼ of Section 4, T35N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 6.75 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 Alamosa 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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.

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>
58	6.75

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 \$ 5.00 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 15<sup>th</sup>.

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:

Silva Farm & Ranch, LLC / Clark Ditch  
15735 State Highway 15  
La Jara, CO 81140

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 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.

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<sup>st</sup> of each year for the term of the Agreement.

**Clark Ditch**

By: Inocencio Silva

04/24/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: **Silva Farm & Ranch LLC**

Address to mail payment to: **15735 State HWY 15, La Jara, CO 81140**

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. 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 Ditch diverts water from the Alamosa River in the SE ¼ NE ¼ of Section 2, T35N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 85.0 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 Alamosa 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)
- LC 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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 [redacted] 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>
105	85.0

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 \$ 20.00 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 15<sup>th</sup>.

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:

Commonwealth Irrigation Company  
P.O. Box 993  
Alamosa, CO 81101

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

**Commonwealth Irrigation Company**

By: Lauren Crowder

3-14-2024  
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, 2023 between the Cottonwood 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:

- C Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
C Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

## RECITALS

A. The Company owns and operates the Cottonwood Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NW ¼ NW ¼ of Section 12, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 35.70 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 Alamosa 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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.

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>
44	8.46
55	5.65
82	21.59

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 \$ 40 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 15<sup>th</sup>.

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:

Cotton wood Ditch Co  
12526 county RD 2  
LaJara, CO 81140  
  
Robert Horton

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<sup>st</sup> of each year for the term of the Agreement.



Cottonwood Ditch Owner

By: [Signature]

4-7-23  
Date

APPROVED:

Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date

APPROVED:

Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date



To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Cottonwood Ditch Co

Address to mail payment to: Robert Horton  
12526 County RD. 2 LaJara CO 81140

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 Cristobal Rivera 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:

- 47 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
47 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the Cristobal Rivera Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ SE ¼ of Section 9, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 7.08 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 Alamosa 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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>
15	7.08

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 \$ 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 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 15<sup>th</sup>.

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:

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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. 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



**Cristobal Rivera Ditch Owner**

By: [Signature]  
Alan Miller ~~XXX~~ ~~XX~~ 30%

3/13/24  
Date

By: [Signature]  
Gerald Faucette 56%

3/13/24  
Date

By: [Signature]  
Robert Marquez 7%

3/23/24  
Date

By: [Signature]  
Sandel Marquez 7%

Date Mar 23 - 24

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

3/28/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

3/28/24  
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. Alan Miller (29%)

20758 Cordillo LaTara, CO 81140

2. Gerald Faucette (56%)

P.O. Box 312 Sanford CO 81151

3. Robert Marquez (~~15%~~) 7%

\_\_\_\_\_

4. Sammy Marguz 7%

5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the El Viejo 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:**

- 17 Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
A7 Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

- A. The Company owns and operates the El Viejo Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ NW ¼ of Section 1, T35N, R7E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 14.4 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 Alamosa 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)
- 47   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 30<sup>th</sup> 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 1<sup>st</sup> 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.

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**2. Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forbear from requiring the Subdistrict to replace up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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

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.

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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.

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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.

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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.



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:

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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

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>
1	14.4

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 \$ 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 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 15<sup>th</sup>.

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: El Viejo Ditch

Address to mail payment to: 20758 county d. 10  
La Jara CO 81140

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. \_\_\_\_\_

**El Viejo Ditch Owner**

By: Alan Miller  
Alan Miller 29%

3/13/24  
Date

By: Gerald Faucette  
Gerald Faucette 55%

3/13/24  
Date

By: Joe McCann  
Joe McCann 3%

3/13/24  
Date

By: Bennie Martinez  
Bennie Martinez 1%

3/13/24  
Date

By: Cala Rodriguez  
Cala Rodriguez 1%

\_\_\_\_\_  
Date

By: Harlin Hanson  
Harlin Hanson 1%

4/5/24  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Flintham 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. 3 “Subdistrict No. 3”  
 Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Flintham Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ SE ¼ of Section 10, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 27.125 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 Alamosa 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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>
45	2.225
69	24.9

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 \$ 1 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 15<sup>th</sup>.

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:

Flintham Ditch  
13609 County Road Z  
La Jara, CO 81140

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

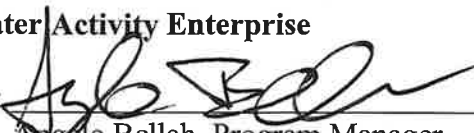
**Flintham Ditch**

By:  \_\_\_\_\_

2-14-2024  
Date

**APPROVED:**

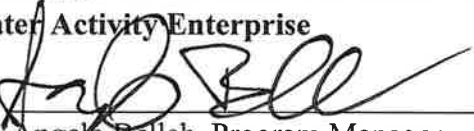
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

2/20/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

2/20/24  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Flintham Ditch

Address to mail payment to: 13609 County Road Z  
La Jara, CO 81140

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 Gabino Gallegos 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:**

LU Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
LU Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Gabino Gallegos Ditch and the water rights decreed thereto. The Gabino Gallegos Ditch diverts water from the Alamosa River in the SW1/4 SW1/4 of Section 6, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 33.00 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 Alamosa 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 ARPs.

### 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)
- ZV \_\_\_\_\_ Ten Years (May 1, 2023 through April 30, ~~2033~~ <sup>2033</sup> ZV)

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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 11 and 113 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 Alamosa 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>
11	13.00
113	20.00

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 \$ 30 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 \$ 30 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 15<sup>th</sup>.

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:

Lionel Valdez  
10418 County Road Y  
La Jara Co 81140

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 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.

**Gabino Gallegos Ditch**

By: 

03/26/2023  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Gabino Gallegos Piteh

Address to mail payment to: 10418 County Road Y  
La Jara, CO 81140

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 owners of the Gallegos D3 Ditch (“Owners”) 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 Owners own and operate the Gallegos D3 Ditch (“Ditch”) and the water rights decreed thereto. The Gallegos D3 Ditch diverts water from the Alamosa River in the SW1/4 SW1/4 of Section 3, Township 35 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 14.94 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 Alamosa 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 Owners are 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 Owners’ 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 Owners 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Owners.**

2.1. During the term of this Agreement, the Owners will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 46 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 Alamosa 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 Owners 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>
46	14.94

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 Owners \$65.00 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.

Subdistrict No. 6 will pay the Owners \$65.00 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 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 Owners with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owners; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owners 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 Owners with an accounting of the unreplaced injurious depletions to the water rights of the Owners and the amount of the payment due, but not later than April 15<sup>th</sup>.



4. No Subordination or Waiver of Right to Call. The forbearance by the Owners 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 Owners 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 Owners 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 Owners:

*Teronica R. Gallegos*  
*21729 US Hwy. 285*  
*La Jara, Colorado 81140*

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 Owners' 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, Owners' 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 Owners 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 Owners 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 Owners, 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 Owners 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 Owners on or before December 31, of each year for the term of the Agreement.

**Gallegos D3 Ditch Owners**

By: Teronica R. Gallegos

4/11/2023  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: AB Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: AB Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Veronica R. Gallegos

Address to mail payment to: 21729 US Hwy 285  
La Jara, Colorado 81140

If payments are to be split, please indicate the following:


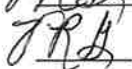
Names and addresses of each individual/entity and percentage of payment each should receive:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023, between the owners of the Gallegos D3 Ditch (“Owners”) 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 Owners own and operate the Gallegos D3 Ditch (“Ditch”) and the water rights decreed thereto. The Gallegos D3 Ditch diverts water from the Alamosa River in the SW1/4 SW1/4 of Section 3, Township 35 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 14.94 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 Alamosa 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 Owners are 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 Owners’ 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 Owners 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Owners.**

2.1. During the term of this Agreement, the Owners will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 46 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 Alamosa 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 Owners 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>
46	14.94

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 Owners \$65.00 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.

Subdistrict No. 6 will pay the Owners \$65.00 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 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 Owners with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owners; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owners 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 Owners with an accounting of the unreplaced injurious depletions to the water rights of the Owners and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owners 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 Owners 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 Owners 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 Owners:

*Teronica R. Gallegos*  
*21729 US Hwy. 285*  
*La Jara, Colorado 81140*

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 Owners' 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, Owners' 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 Owners 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 Owners 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 Owners, 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 Owners 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 Owners on or before December 31, of each year for the term of the Agreement.

**Gallegos D3 Ditch Owners**

By: Teronica R. Gallegos

4/11/2023  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Veronica R. Gallegos

Address to mail payment to: 21729 US Hwy 285  
La Jara, Colorado 81140

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 Garcia No. 2 (“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:**

- X Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
X Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Garcia No. 2 (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the SW ¼SE ¼ of Section 9, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 5.54 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 Alamosa 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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

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>
13	5.54

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 \$70.00 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 15<sup>th</sup>.

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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Subdistrict:

Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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. 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: Bob Peterson

4/5/23  
Date

**APPROVED:**

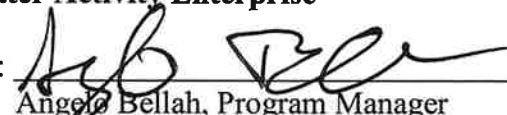
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/5/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/5/23  
Date

**APPROVED:**

**Special Improvement District No. \_\_\_\_\_  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
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:

- 18.05% 1. Graciela Valdez 20602 CORD 14 Cuyamaca Co 81140
- 27.80% 2. Rudolph Quintana 20011 CORD 9 LA JARA CO 81140
- 36.10% 3. Bob Peterson 18731 CR13 LA JARA CO 81140
- 18.05% 4. Mark McCarroll 17500 CR CC Alamosa, CO. 81101
5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023, between the owners of the Head Overflow No. 5 Ditch ("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:

- 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 Owners owns and operate the Head Overflow No. 5 Ditch ("Ditch") and the water rights decreed thereto. The Head Overflow No. 5 Ditch diverts water from the Alamosa River in the SW1/4 SW1/4 of Section 36, Township 36 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 155.725 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 Alamosa 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 Owners are 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 Owners' 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 Owners 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)

*E.G. MB* \_\_\_\_\_ *J.S.* 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Owners.**

2.1. During the term of this Agreement, the Owners will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 13 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 Alamosa 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 Owners 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>
27	49.8
60	16.0

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. 3 will pay the Owners \$ 70 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 Owners \$ 70 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 Owners with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owners; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owners 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 Owners with an accounting of the unreplaced injurious depletions to the water rights of the Owners and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owners 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 Owners 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 Owners 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 Owners:

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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 Owners' 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, Owners' 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 Owners 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 Owners 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 Owners, 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 Owners 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 Owners on or before December 31, of each year for the term of the Agreement.

**Head Overflow No. 5 Ditch Owners**

By: *Eth* - Reverse 51 - Cattle Co. 3-26-23  
Johnathan Bush LL Date

By: *Matt Bush* 3-26-23  
Matt Bush Date

By: *[Signature]* 3-26-23  
Date

By: *[Signature]* 4-4-23  
Date

APPROVED: *Donald J. Stewart* 4-13-2023  
for John B. Stewart  
Ranchos LLP

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah* 4/15/23  
Angelo Bellah, Program Manager Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angela Bellah* 4/15/23  
Angela Bellah, Program Manager Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: X see below \_\_\_\_\_

Address to mail payment to: 25354 US Hwy 285 S  
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:

Priority No. 27:

1. Donald Shawcroft 40.2% 25176 US Hwy 285 S., Alamosa, CO 81101
2. Jefferey Shawcroft 13.4% 25166 US Hwy 285 S., Alamosa, CO 81101
3. ~~Johnathan Bush~~ 13.4% 25354 US Hwy 285 S., Alamosa, CO 81101
4. Matt Bush 13.4% 25170 US Hwy 285 S., Alamosa, CO 81101
5. Bob Peterson 19.6% 18731 County Rd. 13, La Jara, CO 81140

Reverse S/Bar  
Cattle CO. LLC  
25354 US Hwy 285 S  
Alamosa, CO 81101

Priority No. 60:

1. Donald Shawcroft 50.0% 25176 US Hwy 285 S., Alamosa, CO 81101
2. Jefferey Shawcroft 16.667% 25166 US Hwy 285 S., Alamosa, CO 81101
3. ~~Johnathan Bush~~ 16.667% 25354 US Hwy 285 S., Alamosa, CO 81101
4. Matt Bush 16.667% 25170 US Hwy 285 S., Alamosa, CO 81101

Reverse S/Bar  
Cattle CO. LLC  
25354 US Hwy 285 S  
Alamosa, CO 81101



## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Lowland Overflow 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:

DLM

Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

DLM

Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Company owns and operates the Lowland Overflow Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the SE ¼ SW ¼ of Section 36, T36N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 111.94 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 Alamosa 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)
- DCM 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 30<sup>th</sup> 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 1<sup>st</sup> 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~~ <sup>N/A DCM</sup> Agreement, the Company will forebear from requiring the Subdistrict to replace up to ~~5~~ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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 N/A 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>
57	14.94
71	55.00
71	42.00

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 \$5.00 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 15<sup>th</sup>.

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:

Lowland Overflow Ditch Company  
c/o Dwight Martin  
17121 County Rd W. 5  
Lafara Co 81140

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

**Lowland Overflow Ditch Company**

By: Day M. Manta

4 Mar 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

3/4/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/4/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Lowland Overflow Ditch Company

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 the owner of the Miller Ditch-Alamosa (“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:**

- X Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
X Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Owner owns and operates the Miller Ditch-Alamosa (“Ditch”) and the water rights decreed thereto. The Miller Ditch-Alamosa diverts water from the Alamosa River in the NW1/4 SW1/4 of Section 8, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 74.874 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 Alamosa 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 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 17, 24, 70 and 75 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 Alamosa 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 Owner 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>
70	34.86
75	31.54

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 Owner \$ 70 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 \$ 70 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 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 15<sup>th</sup>.



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:

Bob Peterson / Miller Ditch  
18731 CR 13  
LA JARA CO 81140

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 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 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 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 Owner on or before December 31, of each year for the term of the Agreement.

**Miller Ditch Owners**

By: 


4-4-23  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**APPROVED:**

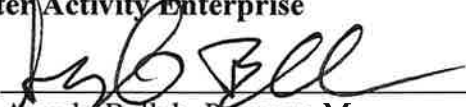
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/5/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/5/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Bob Peterson / Miller Ditch

Address to mail payment to: 18731 CR 13 LA JARA CO 81140

---

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 Miller Ditch-Alamosa (“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 Miller Ditch-Alamosa (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NW ¼ SW ¼ of Section 8, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 74.874 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 Alamosa 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:**



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>
17	6.224
24	2.25

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 \$ \_\_\_\_\_ 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 15<sup>th</sup>.

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.

8.03 The Bonus Payments will be paid to the Company on or before December 31<sup>st</sup> of each year for the term of the Agreement.

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Dennis Mortensen

Address to mail payment to: 17399 County Road 13  
La Jara, CO 81140

*ph no. 719 480-9492*

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. 75% - Dennis Mortensen, 17399 County Road 13, La Jara, CO 81140

2. 25% - Ivan Hunter, 17746 County Road 13, La Jara, CO 81140

3. \_\_\_\_\_



4. \_\_\_\_\_

5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Miller Ditch-Alamosa (“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 Miller Ditch-Alamosa (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NW ¼ SW ¼ of Section 8, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 74.874 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 Alamosa 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 30<sup>th</sup> 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 1<sup>st</sup> 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 2.4 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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 6.2 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>
17	6.224
24	2.25

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 \$ 70.00 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 15<sup>th</sup>.

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:

Ivan Hunter  
17746 County Road 13  
La Jara, CO 81140

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

**Miller Ditch-Alamosa Owner**

By: *Ivan Hunter*  
Ivan Hunter

26 Feb. 2024  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

2/26/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

2/26/24  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Ivan Hunter

Address to mail payment to: 17746 County Road 13  
La Jara, CO 81140

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. 75% - Dennis Mortensen, 17399 County Road 13, La Jara, CO 81140

2. 25% - Ivan Hunter, 17746 County Road 13, La Jara, CO 81140

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Morganville 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. 3 “Subdistrict No. 3”

Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Company owns and operates the Morganville Ditch (“Ditch”) and the water rights decreed thereto. The Morganville Ditch diverts water from the Alamosa River in the SW1/4 NW1/4 of Section 11, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 20.75 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 Alamosa 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)  
           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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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.

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>
73	20.75

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 \$ 500 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 15<sup>th</sup>.

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:

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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<sup>st</sup> of each year for the term of the Agreement.

**Morganville Ditch**

By: Jason D. Coombe  
Secretary

April 17, 2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/26/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/26/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Morganville Ditch Co.

Address to mail payment to: 23719 CR 15  
La Jara, Co. 81140

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 North Alamosa 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:**

- LU Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
LU Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the North Alamosa Ditch and the water rights decreed thereto. The North Alamosa Ditch diverts water from the Alamosa River in the SW1/4 SW1/4 of Section 6, Township 35 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 63.09 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 Alamosa 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 ARPs.

### 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)
- ZU Ten Years (May 1, 2023 through April 30, ~~2033~~ 2023 <sup>ZU</sup>)

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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 40, 74 and 77 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 Alamosa 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>
40	22.41
74	25.85
77	14.83

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 \$ 1.00 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. *1.00 - One - Dollar Even*

Subdistrict No. 6 will pay the Company \$ 1.00 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. *1.00 - One - Dollar Even*

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 15<sup>th</sup>.

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:

North Alamos A Ditch  
10418 County Road Y  
La Jara CO 81140

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.


**North Alamosa Ditch**

By: 

03/26/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: North Alamosa Ditch

Address to mail payment to: 10418, County Road Y  
La Jara Co 81140

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 owner of a portion of the Norland Ditch (“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:**

- ZM Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
ZM Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Owner owns a portion of the Norland Ditch (“Ditch”) and the water rights decreed thereto. The El Viejo Ditch diverts water from the Alamosa River in the SW1/4 NE1/4 of Section 7, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 48.56 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 Alamosa 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 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 agrees 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)

3M \_\_\_\_\_ Ten Years (May 1, 2023 through April 30, 2033) 2 2m

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 30<sup>th</sup> 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 1<sup>st</sup> 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 Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 68 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 Alamosa 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 Owner 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>	<u>% of Priority Being Forborne</u>
68	48.56	30%

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 Owner \$ 70 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 \$ 70 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 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 15<sup>th</sup>.

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:

ZACHARIAH MUNIZ  
20739 County Rd 9  
La JARA CO 81140

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 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 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 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 Owner on or before December 31, of each year for the term of the Agreement.

**Zach Muniz, Owner**

By:  \_\_\_\_\_

3-26-2023  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Zachariah Muniz

Address to mail payment to: 20739 County Road 9  
LaJara CO 81140

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 owner of a portion of the Norland Ditch (“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:**

SA  
BF

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 Owner owns and operates a portion of the Norland Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the SW ¼ NE ¼ of Section 7, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 48.56 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 Alamosa 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 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 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 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, 2024 through April 30, 2025)
- \_\_\_\_\_ Three Years (May 1, 2024 through April 30, 2027)
- \_\_\_\_\_ Five Years (May 1, 2024 through April 30, 2029)
- 10   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 30<sup>th</sup> 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 1<sup>st</sup> 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 up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Owner diverted from the Alamosa 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 Alamosa 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 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 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>	<u>% of Priority Being Forbore</u>
68	48.56	70%

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 Owner \$ 5 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 Owner 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 Owner 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 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 15<sup>th</sup>.



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 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 Owner:

Gerald Fancette  
P.O. Box 312  
Sanford CO 81151

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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 Owner'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, Owner'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 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 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 Owner 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 Owner 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 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 Subdistrict, in recognition of the cooperation of the Owner 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 Owner on or before December 31<sup>st</sup> of each year for the term of the Agreement.

**Gerald Faucette, Owner**

By:  \_\_\_\_\_

2/14/24  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Gerald Faucette

Address to mail payment to: PO Box 512, Sanford, CO 81151

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 Ortiz 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:**

AV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

AV Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Ortiz Ditch and the water rights decreed thereto. The Ortiz Ditch diverts water from the Alamosa River in the NW1/4 SW1/4 of Section 10, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 14.02 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 Alamosa 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 ARPs.

### 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)
- AV Ten Years (May 1, 2023 through April 30, ~~3033~~ 2033 - AV)

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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 32 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 Alamosa 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>
32	14.02

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 \$ 70 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 \$ 70 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 15<sup>th</sup>.

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:

Ortiz Ditch  
20500 County Road 10.75  
La Jara, CO 81140

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 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.



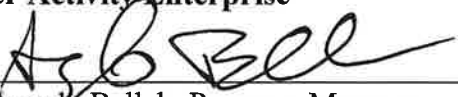
**Ortiz Ditch**

By: 

03/24/2023  
Date

**APPROVED:**

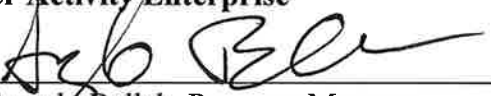
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Ortiz Ditch

Address to mail payment to: 20500 County Road 10.75  
La Jara, CO 81140

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 owners of the Ramona Ditch (“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:

- 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 Owners own and operate the Ramona Ditch (“Ditch”) and the water rights decreed thereto. The Ramona Ditch diverts water from the Alamosa River in the SE1/4 SE1/4 of Section 8, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 9.85 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 Alamosa 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 Owners are 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 Owners’ 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 Owners 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Owners.**

2.1. During the term of this Agreement, the Owners will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority no. 26 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 Alamosa 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 Owners 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>
26	9.85

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 Owners \$ 70 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 Owners \$ 70 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 Owners with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owners; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owners 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 Owners with an accounting of the unreplaced injurious depletions to the water rights of the Owners and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owners 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 Owners 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 Owners 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 Owners: Phil Archuleta  
Joe I. Salby

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 Owners' 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, Owners' 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 Owners 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 Owners 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 Owners, 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 Owners 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 Owners on or before December 31, of each year for the term of the Agreement.

**Ramona Ditch Owners**

By: \_\_\_\_\_

4-25-23  
Date

By: \_\_\_\_\_

7/25/23  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_

  
Angelo Bellah, Program Manager

4/26/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_

  
Angelo Bellah, Program Manager

4/26/2023  
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Lela Arenuleta - Secretary

Address to mail payment to: 9377 St Hwy 15  
La Jolla, Co 91140

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 San Jose Ditch No. 1 ("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 San Jose Ditch No. 1 ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 8, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 4.166 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 Alamosa 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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



depletions to the water rights of the Company and the amount of the payment due, but not later than April 15<sup>th</sup>.

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:

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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



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>
17	4.166

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 \$ 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 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



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<sup>st</sup> of each year for the term of the Agreement.



**San Jose Ditch No. 1 Owner**

By: At. L. Arcehufeto

4-6-2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/6/2023  
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, 2024 between the Scandinavian Canal (“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 Scandinavian Canal (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ SE ¼ of Section 10, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 43.58 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 Alamosa 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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>
84	43.58

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 \$ 1 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 15<sup>th</sup>.

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:

Scandinavian Canal  
13609 County Road Z  
La Jara, CO 81140

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

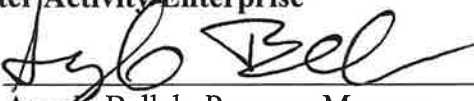
**Scandinavian Canal**

By: 

1-26-2024  
Date

**APPROVED:**

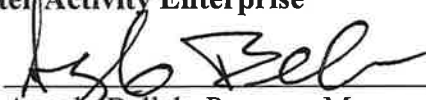
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

1/26/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

1/26/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Scandinavian Canal

Address to mail payment to: 13609 County Road Z, La Jara, CO 81140

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, 2022 between the Water Activity Enterprises of Special Improvement Districts No. 3 (Conejos) and 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District ("Subdistricts") and the Terrace Irrigation Company, Inc. ("Company"), (sometimes collectively referred to as the "Parties").

### **RECITALS**

A. The Company owns and operates Terrace Reservoir, the Terrace Main Canal and the Alamosa Creek Canal and the water rights decreed thereto, and also owns a portion of the water right decreed to the Gabino Gallegos Ditch stored in Terrace Reservoir. The inlet for Terrace Reservoir on the Alamosa Reservoir is located in the NW1/4SW1/4 of Section 8, Township 36 North, Range 6 East, N.M.P.M., in Conejos County, and is decreed for storage of 17,171 acre-feet per year. That is the same location for storage of the Company's interest in the Gabino Gallegos Ditch decreed for storage at a rate up to 0.422 c.f.s. and a volume of 23.85 acre-feet per year. The Terrace Main Canal diverts water from the Alamosa River in the SE1/4 SW1/4 of Section 28, Township 36 North, Range 7 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 142.03 c.f.s. The Alamosa Creek Canal diverts water from the Alamosa River in the NE1/4 SE1/4 of Section 1, Township 35 North, Range 7 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 78.7 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 Alamosa River by the Terrace Reservoir, the Gabino Gallegos Ditch, the Terrace Main Canal and the Alamosa Creek Canal (collectively the "Terrace Water Rights") 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 Terrace Water Rights 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. This Agreement does not apply to any other water rights stored in Terrace Reservoir or diverted through the Company's canals by agreement with other people or entities who are not a party to this Forbearance Agreement.

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs for Plan Year 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, 2022 through April 30, 2023)

HR Three Years (May 1, 2022 through April 30, 2025)

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace, subject to the requirements of paragraph 3, below, up to 100 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa River at the headgate of the Terrace Water Rights under the priority nos. identified in paragraph 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.

2.2. This Agreement applies on each day during the term of the Agreement that the Terrace Water Rights are 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 Alamosa River 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 Terrace Water Rights will be calculated each day Terrace Water Rights are 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 Terrace Water Rights 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 Subdistrict's 2022, 2023 and 2024 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Terrace Water Rights 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 Terrace Water Rights are the last priority served and the injurious depletions are not remedied by actual water:



**Gabino Gallegos Ditch**

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
11	0.422

**Terrace Main Canal**

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
2	2.0
8	5.2
14	2.0
37	2.0
39	10.84
45	7.12
76	21.87
112	91

**Alamosa Creek Canal**

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
1	4.8
3	2.85
15	3.0
37	2.0
71	10.0
76	30.0
85	26.05

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Terrace Water Rights 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 Terrace Water Rights to divert the full amount of last priority served on that day.

**3. Payment:**

Subdistrict No. 3 will pay the Company \$ 5.00<sup>KR</sup> 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 \$ 5.00<sup>KR</sup> 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 Terrace Water Rights would have been able to divert if all unreplaced injurious depletions to the Terrace Water Rights 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 Terrace Water Rights; 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 Terrace Water Rights and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 Terrace Water Rights. 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 headgates of the Terrace Water Rights to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2022, 2023 and 2024 Annual Replacement Plans.

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:

Terrace Irrigation Company, Inc.  
P.O. Box 109  
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 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 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.

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 to the Company 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, for a total of \$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 for each year of the term, for a total of \$1,800.00 over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each 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.

**Terrace Irrigation Company, Inc.**

By: Kent Reinhardt

2/16/2022  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Amber Pacheco  
Amber Pacheco, Program Manager

2/16/2022  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Amber Pacheco  
Amber Pacheco, Program Manager

2/16/2022  
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 the T. K. Walsh 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:**

AV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

AV Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the T. K. Walsh Ditch and the water rights decreed thereto. The T. K. Walsh Ditch diverts water from the Alamosa River in the SW1/4 NW1/4 of Section 11, Township 35 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 4.51 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 Alamosa 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 ARPs.

### 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)
- AV Ten Years (May 1, 2023 through April 30, ~~3033~~ 2033 - AV)

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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Alamosa River at the headgate of the Ditch under priority nos. 37 and 45 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 Alamosa 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>
37	2.93
45	1.58

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 \$ 70 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 \$ 70 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 15<sup>th</sup>.

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:

TK Walsh Ditch  
20500 County Rd 10.75  
La Jara, CO 81140

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.



**T. K. Walsh Ditch**

By: 

03/24/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Valdez Land + Livestock, LLC

Address to mail payment to: 20500 County Road 10.75  
La Jara, CO 81140

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 The New Union 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:

- CC Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
CC Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

- A. The Company owns and operates the Union Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 10, T35N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 30.32 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 Alamosa 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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.

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>
38	14.13
62	27.21
67	28.15

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 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 15<sup>th</sup>.

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:

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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<sup>st</sup> of each year for the term of the Agreement.



**The New Union Ditch Owner**

By: [Signature]

4-7-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

4/7/23  
Date



To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: New Union Ditch Co

Address to mail payment to: Janet Morgan  
P.O. 92 Sanford, CO 81151

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 Weist 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:

- IS Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
IS Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

## RECITALS

A. The Company owns and operates the Weist Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the SE ¼ SW ¼ of Section 4, T35N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 3.95 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 Alamosa 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)
- ~~\_\_\_\_\_~~ ~~X~~ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Alamosa 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 Alamosa 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.

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>
74	3.95

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 \$5.00 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 15<sup>th</sup>.

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:

Silva Farm & Ranch, LLC / Weist Ditch  
15735 State Hwy 15  
La Jara CO 81140  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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<sup>st</sup> of each year for the term of the Agreement.



**Weist Ditch**

By: Inocencio Silva

04/24/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Silva Farm & Ranch LLC

Address to mail payment to: 15735 State Hwy 15  
La Jara Co 81140

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 A.D. Archuleta 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. 3 “Subdistrict No. 3”

Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Company owns and operates the A.D. Archuleta Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ NW ¼ of Section 20, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 19.31 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 Conejos 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 30<sup>th</sup> 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 1<sup>st</sup> 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 22 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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>
37	1.00
60	10.31
96	8.00

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 \$ 7 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 15<sup>th</sup>.

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:

Alpha Hay Farm LLC

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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<sup>st</sup> of each year for the term of the Agreement.

**A.D. Archuleta Ditch**

By: Jack Gilliland

1-9-2024  
Date

Print Name: Jack Gilliland

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

1/9/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

1/9/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Alpha Hay Farm LLC

Address to mail payment to: 13256 CO Rd F LAJANA CO  
81140

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 Willett Dairy Farm and Cattle Company (“Company”) and the Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict”) of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

### RECITALS

A. The Company owns and operates the Alamo Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ SE ¼ of Section 12, T35N, R10E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 52.00 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 Conejos 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)

  X   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 30<sup>th</sup> 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 1<sup>st</sup> 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 Conejos 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 Conejos 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 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>	<u>% of Priority Forbore</u>
108	23.96	66.5%
137	16.00	100%

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 \$65.00 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 15<sup>th</sup>.

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:

Willett Cattle Co.  
20785 County Road 28  
Sanford, CO 81151

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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<sup>st</sup> of each year for the term of the Agreement.


**Alamo Ditch Owner**

By:   
Toby Willett, President

3-15-24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/15/24  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Willett Cattle Co.

Address to mail payment to: 20785 County Road 28, Sanford, CO 81151

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 Wayne Quinlan (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) 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”)
- Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

### **RECITALS**

A. The Owner owns and operates the An Con Ditch, Priority No. 42 (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ SW ¼ of Section 17, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 18.8 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Owner, 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 Owner’s water right is remedied by means other than providing water to replace injurious stream depletions.

E. The Subdistricts 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 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, 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year Agreement to end.

**2. Forbearance by the Owner.**

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistricts to collectively replace up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Owner diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 Owner 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict’s ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistricts’ estimated unreplaced depletions to the water rights decreed to the Ditch during the term of this Agreement equals \_\_\_\_\_ acre-feet, the Subdistricts will begin replacement of all injurious stream depletions to the calling water right decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% of Priority Forbore</u>
42	10.8	60%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Owner \$ 31.<sup>00</sup> per acre-foot of remedy of injurious stream depletions caused by that Subdistrict’s wells 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 each Subdistrict’s ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 Ditch; 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 Subdistrict to make actual 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 individual 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:

Wayne Quinlan

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincerawaterconservancy@gmail.com](mailto:trincerawaterconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:

Amber Pacheco, Deputy General Manager

Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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. If the Agreement includes all Subdistricts, the total bonus will be \$600.00 over the term of the Agreement

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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

**Cannon Irrigating Ditch Owner**

By: 


Print Name: Wayne E. Quinlan

4/10/24

Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**


By:   
Angelo Bellah, Program Manager

4/10/24

Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

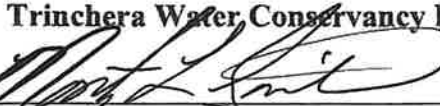
By:   
Angelo Bellah, Program Manager

4/10/24

Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/10/24

Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Canon Ditch Company

Address to mail payment to: PO Box 577, Antonito, CO 81120

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 Antonito Ditch (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) 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”)
- Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

## RECITALS

A. The Company owns and operates the Antonito Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ SE ¼ of Section 32, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 139.0 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)
- 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace up to          acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistricts' estimated unreplaced depletions to the water rights decreed to the Ditch during the term of this Agreement equals \_\_\_\_\_ acre-feet, the Subdistricts will begin replacement of all injurious stream depletions to the calling water right decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
113	139.0

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company \$ 31 per acre-foot of remedy of injurious stream depletions caused by that Subdistrict's wells 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 each Subdistrict's ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Antonito Ditch  
PO Box 577  
Antonito, CO 81120

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincheraconservancy@gmail.com](mailto:trincheraconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:

Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District

8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

**Cannon Irrigating Ditch Owner**

By: 


Print Name: Wayne E. Quinton

4/10/24

Date

**APPROVED:**

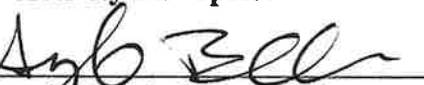
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/24  
Date

**APPROVED:**

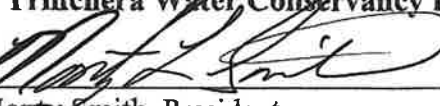
**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/10/24  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Canon Ditch Company

Address to mail payment to: PO Box 577, Antonito, CO 81120

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 Willett Dairy Farm and Cattle Company (“Company”) and the Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict”) of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

### RECITALS

- A. The Company owns and operates the Ball Brothers Overflow No. 1 and No. 2 (“Ditches”) and the water rights decreed thereto. The Ditches diverts water from the Conejos River in the NW ¼ NW ¼ of Section 10 and/or the SW ¼ NE ¼, T35N, R11E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 52.00 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 Conejos River by the Ditches 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 Ditches 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)

  X   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 Ditches may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditches 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 30<sup>th</sup> 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 1<sup>st</sup> following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditches 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 Ditches 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 Conejos River at the headgate of the Ditches 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 Ditches 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 Conejos 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 Ditches will be calculated each day the Ditches is the calling water right, in whole or in part, 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 Ditches 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 Ditches 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 Ditches 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>
80	22.00
81	20.00

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditches 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 Ditches to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$65.00 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 Ditches would have been able to divert if all unreplaced injurious depletions to the Ditches 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 Ditches; 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 15<sup>th</sup>.

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 Ditches. 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 Ditches 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:

Willett Cattle Co.  
20785 County Road 28  
Sanford, CO 81151

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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<sup>st</sup> of each year for the term of the Agreement.

**Ball Brothers Overflow No. 1 and No. 2 Ditch Owner**

By: Toby Willett  
Toby Willett, President

3-15-24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/15/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Willett Cattle Co.

Address to mail payment to: 20785 County Road 28, Sanford, CO 81151

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 Bernardo Romero 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. 3 “Subdistrict No. 3”
- Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Bernardo Romero Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ SE ¼ of Section 32 T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed totaling 8.76 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 Conejos 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 all acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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 21 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>
35	8.76

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 \$ Fifty 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 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 15<sup>th</sup>.

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:

Virgil Ruybal  
6120 CR 10  
Antonito, CO 81120

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. 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<sup>st</sup> of each year for the term of the Agreement.

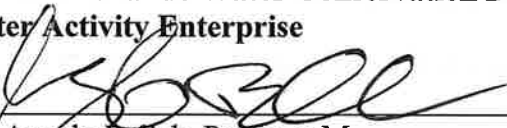
**Bernardo Romero Ditch**

By:  \_\_\_\_\_

4/11/2023  
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: Virgil Ruybal

Address to mail payment to: 620 CR 10  
Antonito, CO 81120

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 Branch 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:

- B, SS Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
RS, SS Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

## RECITALS

A. The Company owns and operates the Branch Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NW ¼ of Section 30, T34N, R10E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 10.4 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 Conejos 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)
- 855 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Conejos 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 Conejos 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.

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>
120	10.4

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 \$ 45 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 15<sup>th</sup>.

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:

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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. 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<sup>st</sup> of each year for the term of the Agreement.

**Branch Ditch Owner**

By: 

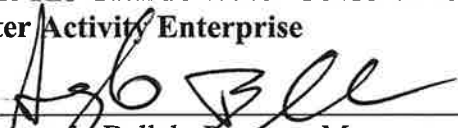
4-24-2023  
Date

By: 

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

4/26/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/26/2023  
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. Raymond Smith, 15170 CR T.25 La Jara Co 81140
2. Steven Sowards P.O. Box 297 Sanford, CO 81151
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Canon Ditch Company (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) 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”)
- Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

### RECITALS

A. The Company owns and operates the Canon Irrigating Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NE ¼ of Section 1, T32N, R7E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 42.676 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)
- 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict’s ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistricts’ estimated unreplaced depletions to the water rights decreed to the Ditch during the term of this Agreement equals \_\_\_\_\_ acre-feet, the Subdistricts will begin replacement of all injurious stream depletions to the calling water right decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
22	42.676

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company \$ ~~31~~ <sup>31</sup> per acre-foot of remedy of injurious stream depletions caused by that Subdistrict’s wells 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 each Subdistrict’s ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Canon Ditch Company  
PO Box 577  
Antonito, CO 81120

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincerawaterconservancy@gmail.com](mailto:trincerawaterconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:

Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District

8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

**An Con Ditch, Priority No. 42 Owner**

By: 

Print Name: Wayne F. Quintero

4/10/24

Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/24  
Date

**APPROVED:**

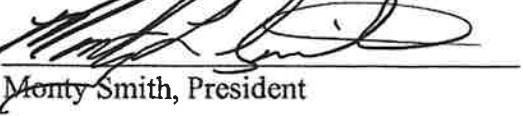
**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/10/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/10/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Quinten Ranches Inc

Address to mail payment to: PO Box 577  
Antonio, CO 81120

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 Del Puerticito 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:**

- JB Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
JB Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Del Puerticito Ditch and the water rights decreed thereto. The Del Puerticito Ditch diverts water from the Conejos River in the SW1/4 NE1/4 of Section 1, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 8.76 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 Conejos 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 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 Subdistricts desire to enter into this Forbearance Agreement as part of the ARP for all 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)
- JB** 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Company diverted from the Conejos 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 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 Conejos 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' 2020, 2021 and 2022 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>
12	8.76

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 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 \$ 15 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 \$ 15 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 15<sup>th</sup>.

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:

Jessie Bagwell  
PO Box 1095  
Manassa, CO 81141

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.



**Del Puerticito Ditch**

By: Jessie Bagwell

4-27-2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah Program Manager

4/28/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/28/23  
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Jessie Bagwell

Address to mail payment to: PO Box 695  
MANASSA, CO 81141

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 Special Improvement Districts No. 3 (Conejos) and No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District Water Activity Enterprises (“Subdistricts”) and the United States Department of the Interior, Bureau of Land Management (“Agency”), (sometimes collectively referred to as the “Parties”).

### RECITALS

A. AGENCY is the Bureau of Land Management, an agency within the United States Department of the Interior. AGENCY owns and operates surface water rights that are used to carry out land and water management functions that are required under federal law, including management of habitat for wildlife species. AGENCY water rights that are used to fulfill these management purposes were created and decreed pursuant to provisions of Colorado water law. AGENCY owns and operates the following surface water rights, (collectively “Ditches”):

- a. 3.5 c.f.s. of the East Bend Ditch Priority No. 88. The East Bend Ditch diverts water from the Conejos River in the SE1/4 SW1/4 of Section 34, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 37.4 c.f.s.
- b. 6.58 c.f.s. of the Los Ojos No. 1 Ditch Priority No. 63. The Los Ojos No. 1 Ditch diverts water from the Conejos River in the SW1/4 SE1/4 of Section 22, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 40.08 c.f.s.
- c. 3.00 c.f.s. of the Los Ojos No. 2 Ditch Priority No. 58. The Los Ojos No. 2 Ditch diverts water from the Conejos River in the NE1/4 NW1/4 of Section 23, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 8.53 c.f.s.
- d. 12.04 c.f.s. of the Alamo Ditch Priority No. 108. The Alamo Ditch diverts water from the Conejos River in the SW1/4 SE1/4 of Section 12, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 53.5 c.f.s.
- e. 4.00 c.f.s. of the Lovato Irrigation Ditch Priority No. 33. The Lovato Irrigation Ditch diverts water from the Rio San Antonio in the NW1/4 SW1/4 of Section 30, Township 33 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 53.08 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 San Antonio and Conejos River by the Ditches 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 Ditches at the top of the Stream Reach in order to remedy injurious stream depletions.

D. AGENCY, 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 AGENCY's water right is remedied by means other than providing water to replace injurious stream depletions.

E. The District, on behalf of the Subdistricts, desires to enter into this Forbearance Agreement as part of the ARPs.

### DEFINITIONS

A. "Remedy Costs" means the total cost to Subdistrict No. 3 and Subdistrict No. 6 for providing augmentation water to offset injurious depletions associated with the operation of AGENCY groundwater rights, including costs associated with meeting the Subdistrict No. 3 and Subdistrict No. 6 sustainability requirements under their Annual Plans of Water Management.

B. "Remedy Credits" means the value assigned to the injurious depletions not required to be made available for diversion by the AGENCY'S Ditch water right. "Remedy Credits" are calculated by multiplying the number of acre-feet of injurious stream depletions that are not required to be made available for diversion to the AGENCY'S Ditches by the Forbearance Rate.

C. "Forbearance Rate" means \$80.00 per acre foot.

### AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the District and the Subdistricts and the Company agree as follows:

**Term of Agreement.** This Agreement will be in effect from:

Five Years (May 1, 2023 through April 30, 2028)

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.

#### 1. Forbearance by the AGENCY.

1.1. During the term of this Agreement AGENCY will forebear from requiring Subdistrict No. 3 and Subdistrict No. 6 to replace any of the injurious stream depletions to the Ditches. Subdistrict No. 3 and Subdistrict No. 6 may remedy injurious stream depletions under this agreement or by providing water in its sole discretion.

1.2. This Agreement applies on each day during the term of the Agreement that any of the Ditches are 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 Conejos 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.

1.3. The number of acre-feet of injurious depletions to the water right of AGENCY will be calculated each day any of the Ditches 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 AGENCY 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 any of the Ditches would have been able to divert, but for the depletions caused by wells operating under Subdistricts’ respective ARPs. 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 a Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

1.4. This Agreement will apply only on days when the following priorities decreed to a Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Alamo Ditch</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
108	12.04	36.0	33.44%

<u>East Bend Ditch</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
88	3.5	12.0	29.17%

<b><u>Los Ojos Ditch No. 1</u></b>			
<b>Priority No.</b>	<b>Amount (c.f.s.)</b>	<b>Total c.f.s. of Priority</b>	<b>% of Priority Agency Owns</b>
63	6.58	40.08	16.42%

<b><u>Los Ojos Ditch No. 2</u></b>			
<b>Priority No.</b>	<b>Amount (c.f.s.)</b>	<b>Total c.f.s. of Priority</b>	<b>% of Priority Agency Owns</b>
58	3.0	4.45	67.42%

<b><u>Lovato Ditch</u></b>			
<b>Priority No.</b>	<b>Amount (c.f.s.)</b>	<b>Total c.f.s. of Priority</b>	<b>% of Priority Agency Owns</b>
33	4.0	27.58	14.50%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the AGENCY 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 any of the Ditches to divert the full amount of last priority served on that day.

2.5 This Agreement will apply to only those portions of the entire priorities listed in paragraph 2.4 above that are owned by the Agency. The Agency agrees it will not take or use additional water above the c.f.s. the Agency owns as listed in 2.4 above that is subject to this Agreement. The Agency acknowledges that neither the Division Engineer nor the Subdistrict(s) have any responsibility for distribution of water within the Ditch. If operation of this Agreement results in injury to the remaining c.f.s. of the Ditch, the Division Engineer may require that the Subdistrict not operate this Agreement and remedy all injurious depletions by providing water at the top of the affected Stream Reach.

2. Payment. The Subdistricts will pay the AGENCY in Remedy Credits per acre-foot of replacement of injurious stream depletions that are not required to be made available for diversion at the Ditches pursuant to the terms of this Agreement.

2.1. After the end of each irrigation season, and not later than March 15, of the following calendar year, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then recalculate the amount of water that each of the Ditches would have been able to divert if all unreplaced injurious depletions to a Ditch had been replaced during the term of this Agreement, and provide AGENCY with (1) a full accounting showing the unreplaced injurious depletions to the water rights of any of the Ditches; and (2) a calculation of the amount of the payment due under



paragraph 3.2 below. AGENCY will have fourteen days after the receipt of the calculations to notify the Subdistrict(s) of any errors therein.

2.2. The payment required by paragraph 3, will be due within 35 days of the date that the Subdistricts provide AGENCY with an accounting of the unreplaced injurious depletions to the water rights of AGENCY and the amount of the payment due, but not later than April 15 of each year and will be in the form of Remedy Credits.

3. No Subordination or Waiver of Right to Call. The forbearance by AGENCY 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 AGENCY. Under this Agreement AGENCY 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 AGENCY will not require the Subdistricts to make water available for diversion at the headgate of AGENCY to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective ARPs.

4. Notices and Representatives: Each individual identified below is a representative of the designating Party. All notices required by this Lease Agreement will be hand-delivered with receipt required or sent by certified or registered mail to such Party's representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices will be sent. Unless otherwise provided herein, all notices are effective upon receipt.

5.1 AGENCY Representatives and Contact Addresses: David Thomas, Contracting Officer, is authorized to sign the lease agreement and participation contract. Mr. Thomas can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3637; and by email at [dethomas@blm.gov](mailto:dethomas@blm.gov). Roy Smith, Water Rights Specialist, is authorized to manage the day-to-day administration of the lease and participation contract. Mr. Smith can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3940; and by email at [r20smith@blm.gov](mailto:r20smith@blm.gov).

5.2 Subdistrict No. 3 and Subdistrict No. 6 Representative and Contact Address: District Manager (Cleave Simpson) is the representative for Subdistrict No. 3 and Subdistrict No. 6 for purposes of this Lease Agreement. Mr. Simpson can be reached by physical mail at: Rio Grande Water Conservation District, 8805 Independence Way, Alamosa, Colorado 81101; by telephone at: (719) 589-6301; and by e-mail at: [cleave@rgwcd.org](mailto:cleave@rgwcd.org).

5. Remedies. In the event of AGENCY's default in the performance of this Agreement, the District's and/or Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, AGENCY's remedies will be to retain all payments made by the District on behalf of 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 AGENCY for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

6. General Provisions

- 6.1. Assignment: Neither Party has the right to transfer or sub-lease its rights or obligations under this Lease Agreement without the advanced written consent of the other Party.
- 6.2. Binding Agreement: This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- 6.3. Binding Arbitration Prohibited: Neither AGENCY nor Subdistrict No. 3 nor Subdistrict No. 6 agree to binding arbitration by any extra-judicial body or person. Any provision incorporated herein by reference is null and void.
- 6.4. 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.
- 6.5. Compliance with Applicable Laws: At all times during the performance of this Lease Agreement, Subdistrict No. 3 and Subdistrict No. 6 will adhere to all applicable Federal and State laws, rules, and regulations then in effect. In addition:
- 6.5.1. The signatories to this Lease Agreement affirm that they are familiar with C.R.S. § 18-8-301, *et seq.* (Bribery and Corrupt Influences) and C.R.S. § 18-8-401, *et seq.* (Abuse of Public Office), and that no violation of such provisions has occurred in connection with the negotiation and signing of this Lease Agreement; and
- 6.5.2. The signatories to this Lease Agreement affirm that to the best of their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.
- 6.6. CORA Disclosure: To the extent not prohibited by Federal law, this Lease Agreement and the performance measures and standards under C.R.S. §

24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

- 6.7. Entire Understanding: This Lease Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto will not have any force or effect whatsoever, unless embodied herein.
- 6.8. Governing Law and Venue: This Lease Agreement will be governed and enforced in accordance with the laws, and rules and regulations issued pursuant thereto, of the State of Colorado and under applicable Federal Law. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations will not be valid, enforceable, or available in any action at law, whether by way of complaint, defense, or otherwise. Venue for any action regarding water matters under this lease agreement will be in either the District Court for Alamosa County, Colorado or Water Court in and for Water Division No. 3, as appropriate. Otherwise, for contract disputes, Federal Law applies. Venue for contract matters will be determined by the Contract Disputes Act of 1978, 41 U.S.C. §§ 7107-7109.
- 6.9. Governmental Immunity: No term or condition in this Lease 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, C.R.S. § 24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, 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, C.R.S. § 24-10-101, *et seq.* and the risk management statutes, C.R.S. § 24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Federal Government, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*
- 6.10. Legal Counsel: Each Party to this Lease Agreement has engaged legal counsel to negotiate, draft, or review this Lease Agreement. Therefore, in the construction and interpretation of this Lease Agreement, the Parties acknowledge and agree that it will not be construed against any Party on the basis of authorship.

- 6.11. Litigation Reporting: Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency related to this Lease Agreement or which may affect a Party's ability to comply with the terms and conditions of this Lease Agreement, the Party who is in receipt of the served pleading will notify the other Party of such action and deliver copies of such pleadings to the other Party, as set forth in paragraph 7 of this Lease Agreement.
- 6.12. Modification:
- 6.12.1. By the Parties: Except as specifically provided in the Lease Agreement, modifications hereof will not be effective unless agreed to by the Parties in a written amendment hereto.
- 6.12.2. By Operation of Law: This Lease Agreement is subject to such modifications as may be required by changes in Federal law or Colorado State law, or their implementing regulations. Any such required modification will be automatically incorporated as part of the Lease Agreement on the effective date of such change, as if fully set forth herein.
- 6.13. Order of Precedence: The provisions of this Lease Agreement will govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Lease Agreement and its exhibits, such conflicts or inconsistencies will be resolved by reference to the documents in the following order of priority:
- 6.13.1. The provisions of the main body of this Lease Agreement;
- 6.13.2. Exhibits.
- 6.14. Prior Agreements: This Lease Agreement cancels and supersedes all prior agreements between the Parties related to the lease of AGENCY's Excess Credits to Subdistrict No. 3, if any.
- 6.15. Third Party Enforcement: The terms and conditions of this Lease Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Lease Agreement gives or allows any claim, right, or cause of action whatsoever by any other person not included in this Lease Agreement. Any person or entity, other than the Parties, receiving services or benefits under this Lease Agreement will be deemed an incidental beneficiary only.

7.16 Waiver: A waiver of a breach of any provision of this Lease Agreement does not waive any subsequent breach of the same or different provision of this Lease 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 Lease Agreement or another remedy for a breach of this Lease 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 Lease Agreement. Any express waiver of a term of this Lease Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

7. Bonus Payment.

- 8.01 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.
- 8.02 The Bonus payment in this Paragraph 8 will be paid by each 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 For purposes of this Agreement, the Bonus Payment will be a Remedy Credit.
- 8.04 The Bonus Payments will be paid to AGENCY on or before December 31, of each year for the term of the Agreement.

*Signatures follow on Separate Page*

United States Department of the Interior,  
Bureau of Land Management

**DAVID THOMAS**

Digitally signed by DAVID THOMAS

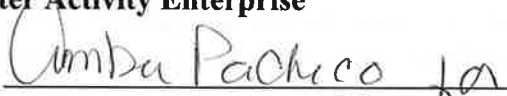
Date: 2023.03.23 15:31:13 -06'00'

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**ACCEPTED:**


**The Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Cleave Simpson, General Manager

3/27/2023  
Date

**APPROVED:**

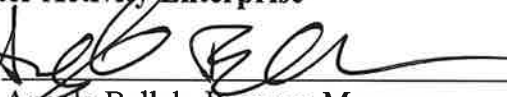
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager


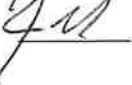
3/27/23  
Date



## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between John T. Salazar (“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 El Cerrito Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NW¼ NW ¼ of Section 32, T34N, R10E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 16.19 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 Conejos 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)
- 4.22*   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 30<sup>th</sup> 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 1<sup>st</sup> 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 injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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.

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>
14	6.19

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 \$ 30.00 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 15<sup>th</sup>.

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:

El Cerrito  
c/o John Salazar  
P.O. Box 510  
Manassa, CO 81141

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. 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<sup>st</sup> of each year for the term of the Agreement.



**John T. Salazar**

By: John T. Salazar

4-8-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: **John Salazar**

Address to mail payment to: **P.O. Box 510, Manassa, CO 81141**

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 El Viejo 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:**

- 17 Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
A7 Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

- A. The Company owns and operates the El Viejo Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Alamosa River in the NE ¼ NW ¼ of Section 1, T35N, R7E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 14.4 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 Alamosa 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)
- 47   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 30<sup>th</sup> 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 1<sup>st</sup> 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 forbear from requiring the Subdistrict to replace up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Alamosa 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 Alamosa 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

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

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.



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:

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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

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>
1	14.4

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 \$ 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 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 15<sup>th</sup>.

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: El Viejo Ditch


Address to mail payment to: 20758 conty d. 10  
La Jara CO 81140

If payments are to be split, please indicate the following:

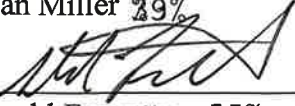
Names and addresses of each individual/entity and percentage of payment each should receive:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

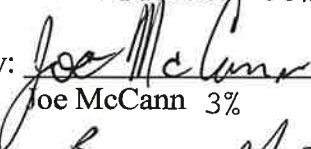
**El Viejo Ditch Owner**

By:   
Alan Miller 79%

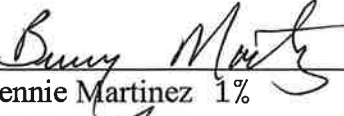
3/13/24  
Date

By:   
Gerald Faucette 55%

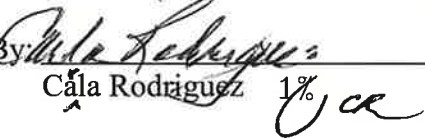
3/13/24  
Date

By:   
Joe McCann 3%

3/13/24  
Date

By:   
Bennie Martinez 1%

3/13/24  
Date

By:   
Cala Rodriguez 1%

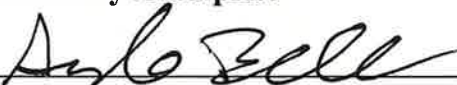
4/8/24  
Date

By: \_\_\_\_\_  
Harlin Hanson 1%

\_\_\_\_\_  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/11/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/11/24  
Date

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<sup>st</sup> of each year for the term of the Agreement.

**El Viejo Ditch Owner**

By: Alan Miller  
Alan Miller 79%

3/13/24  
Date

By: Gerald Faucette  
Gerald Faucette 55%

3/13/24  
Date

By: Joe McCann  
Joe McCann 3%

3/13/24  
Date

By: Bennie Martinez  
Bennie Martinez 1%

3/13/24  
Date

By: \_\_\_\_\_  
Cala Rodriguez 1%

\_\_\_\_\_  
Date

By: Harlin Hanson  
Harlin Hanson 1%

4/5/24  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: \_\_\_\_\_  
Angelo Bellah, Program Manager

\_\_\_\_\_  
Date



**FORBEARANCE AGREEMENT**

This Forbearance Agreement is entered into effective May 1, 2023 between the Ephraim 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:**

- WC Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
- WC Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

**RECITALS**

A. The Company owns and operates the Ephraim Ditch (“Ditch”) and the water rights decreed thereto. The Ephraim Ditch diverts water from the Conejos River in the NE1/4 SW1/4 of Section 17, Township 34 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 47.0 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 Conejos 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 ARPs.

**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)
- Wc 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Conejos River at the headgate of the Ditch under priority no. 56 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 Conejos 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>
56	47.0

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. 3 will pay the Company \$ 1.00 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.

Subdistrict No. 6 will pay the Company \$ 1.00 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 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 15<sup>th</sup>.

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:

Ephraim Ditch Co  
~~18353 Hwy 136~~ P.O. Box 161  
Sanford CO 81151

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.



**Ephraim Ditch Company**

By: Wam Growth

4-6-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/6/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of:   Ephraim Ditch Co.  

Address to mail payment to:   ~~18353 Hwy 136~~ P.O. Box 161    
  Sanford Co 81151  

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 following Water Activity Enterprises of the Rio Grande Water Conservation District (“Subdistricts”) and the Gabriel Martinez Ditch (“Company”), (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 Gabriel Martinez Ditch (“Ditch”) and the water rights decreed thereto. The Gabriel Martinez Ditch diverts water from the Conejos River in the SW1/4 NE1/4 of Section 33, Township 33 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 3.71 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 Conejos River by the Ditches 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 Ditches 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 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 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream to the water rights of the Company diverted from the Conejos 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 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 Ditches are 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 Conejos 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 Ditches will be calculated each day the Ditches are 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 Ditches 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' 2022, 2023 and 2024 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditches 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 Ditches 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>
15	3.71

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditches 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 Ditches to divert the full amount of last priority served on that day.

3. Payment.

Subdistrict No. 3 will pay the Owners \$ 40<sup>00</sup> 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 Owners \$ 70<sup>00</sup> 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 Ditches would have been able to divert if all unreplaced injurious depletions to the Ditches 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 15<sup>th</sup>.

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 Ditches. 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 Ditches to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2022, 2023 and 2024 Annual Replacement Plans.

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

To Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To 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 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 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 to the Company 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 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.


**Gabriel Martinez Ditch**

By: 

April 5, 2023  
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: \_\_\_\_\_

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 the following Water Activity Enterprises of the Rio Grande Water Conservation District (“Subdistricts”) and the Guadalupe and Brazo Del Norte Ditches (“Company”), (sometimes collectively referred to as the “Parties”).

Please initial next to your selections:

RM

Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

RM

Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Guadalupe and Brazo Del Norte Ditches, and the water rights decreed thereto, sometimes collectively referred to as the “Ditches”. The Ditches divert water from the Conejos River in the SW1/4NE1/4 of Section 24, Township 33 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 33.46 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 Conejos River by the Ditches 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 Ditches 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 Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs 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 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)

DM 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream to the water rights of the Company diverted from the Conejos 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 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 Ditches are 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 Conejos 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 Ditches will be calculated each day the Ditches are 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 Ditches 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' 2020, 2021 and 2022 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditches 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 Ditches 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>
<b>Guadalupe Main</b>	
1	13.46
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
<b>Brazo Del Norte</b>	
139	20.00

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditches 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 Company to divert the full amount of last priority served on that day.

3. Remedy of Injurious Depletions. The Subdistrict will, for every acre-foot of injurious depletions to the Company, as stated above, provide one acre-foot of water in storage in Platoro Reservoir to be released upon request by the Company.

3.1 By the 5<sup>th</sup> day of each month under this agreement, the Subdistricts will provide to the Company and the Conejos Water Conservancy District a total of the amount of injurious depletions calculated pursuant to Paragraph 2, above ("Credit Water").

3.2 Any time after the 5<sup>th</sup> day of each month, Company may request a release of all or a part of the accumulated Credit Water for release by the Conejos Water Conservancy District, in compliance with the legal and physical restrictions on such releases.

3.3 All Credit Water must be released from Platoro Reservoir before December 31 of the year in which it is stored.

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 Ditches. 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 Ditches to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2020, 2021 and 2022 Annual Replacement Plans.

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:

Guadalupe Ditch Co.  
P.O. Box 462  
Antonito, CO 81120

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 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 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 to the Company 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 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.

**Guadalupe and Brazo Del Norte Ditches**

By: Dennis Maeller

April 11, 2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/23  
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, 2024 between the La Del Rio 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. 3 “Subdistrict No. 3”
- Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

**RECITALS**

A. The Company owns and operates the La Del Rio Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ SE ¼ of Section 27, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 20.01 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 Conejos 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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>
23	20.01

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 \$ 3.00 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 15<sup>th</sup>.

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:

LA Del Rio Ditch Company  
% Arnella Vigil  
1102 CR H Antonito, CO 81120

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

**La Del Rio Ditch Owner**

By: Rudolph Gallegos

3-1-24  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/1/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/1/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: LA Del Rio Ditch Company  
90 Arnella Vigil

Address to mail payment to: 1103 CR H Antonito, CO 81120

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 Los Sauces Ditch Company (“Company”) and the Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict”) of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

**RECITALS**

A. The Company owns and operates the Los Sauces Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NW ¼ of Section 9, T35N, R11E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 88.43 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 Conejos 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Conejos 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 Conejos 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 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>
32	88.43

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 \$150.00 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 15<sup>th</sup>.

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:

Los Sauces Ditch Company  
17970 County Road 28  
Sanford, CO 81151

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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<sup>st</sup> of each year for the term of the Agreement.

**Los Sauces Ditch Owner**

By: Toby Willett  
Toby Willett, President

3-15-24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/15/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Sauces Ditch Company

Address to mail payment to: 17970 County Road 28, Sanford, CO 81151

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 Los Coyotes Lucero, LLC ("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:

- Σ.Σ. dr Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
Σ.Σ. Ø Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the Lovato Irrigation ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW ¼ SE ¼ of Section 25, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 27.58 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 Conejos 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)
- 2.5. 10 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 30<sup>th</sup> 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 1<sup>st</sup> 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 ALL acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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 ALL 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>	<u>% of Priority Being Forbeared</u>
33	27.58	50%

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 \$ 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 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 15<sup>th</sup>.

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:

Las Coyotes Lugo, LLC  
P.O. Box 152  
Aronito, Ca. 9120

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. 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<sup>st</sup> of each year for the term of the Agreement.



**Lovato Ditch**

By: *[Signature]*

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/6/2023  
Date

*[Signature]*

4/11/23

*[Large handwritten signature]* 4/27/23

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lumber, LLC.

Address to mail payment to: P.O. Box 152  
Antonito, CO 81120

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 Maes Ditch (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) 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”)
- Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

## RECITALS

A. The Company owns and operates the Maes Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the NW¼ NW¼ of Section 35, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 4.00 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)
- 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace up to **1,000** acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict’s ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
116	2.925
180	1.075

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company **\$30.00** per acre-foot of remedy of injurious stream depletions caused by that Subdistrict’s wells 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 each Subdistrict’s ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Maes Ditch Co  
c/o LeRoy Salazar  
P.O. Box 296  
Manassa, CO 81141

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincerawaterconservancy@gmail.com](mailto:trincerawaterconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:

Amber Pacheco, 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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

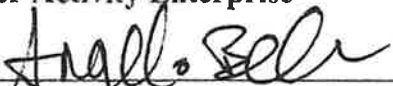
**Maes Ditch**

By:   
LeRoy Salazar

4/9/24  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/11/26  
Date

**APPROVED:**

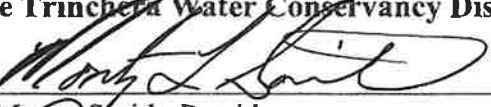
**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/11/26  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/11/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: L&L Engineering, LLC

Address to mail payment to: LeRoy Salazar, P.O. Box 296, Manassa, CO 81141

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 Water Activity Enterprises of Special Improvement Districts No. 3 (Conejos) and 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District (“Subdistricts”) and the Manassa Land and Irrigation Company Ditch (“Company”), (sometimes collectively referred to as the “Parties”).

### RECITALS

A. The Company owns and operates the Manassa Ditch No. 3, the Manassa Westfield Ditch, and the Manassa Eastfield Ditch and the water rights decreed thereto, “sometimes collectively referred to as the “Ditches”. The Manassa Ditch No. 3 diverts water from the Conejos River in the SW1/4 NE1/4 NE1/4 of Section 17, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 192.889 c.f.s. The Manassa Westfield Ditch diverts water from the Conejos River in the NE1/4 SW1/4 NE1/4 of Section 35, Township 34 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 139.0 c.f.s. The Manassa Eastfield Ditch diverts water from the Conejos River in the SE1/4 NW1/4 of Section 25, Township 34 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 38.6 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 Conejos River by the Ditches 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 Ditches 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 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 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)
- NC 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the following water rights of the Company diverted from the Conejos River at the headgate of the Ditches by supplying water to the top of the affected Stream Reach:

- 2.1.1. The Manassa Ditch No. 3 under priority no(s). 1, 2, 5, 16, 48, 67, 68, 84 and 169.
- 2.1.2. The Manassa Westfield Ditch under priority no(s). 98, 112 and 162.
- 2.1.3. The Manassa Eastfield Ditch under priority no. 48.

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 Ditches are 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 Conejos 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 Ditches will be calculated each day the Ditches are 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 Ditches 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’ 2020, 2021 and 2022 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditches 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 Ditches 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>
<b>Manassa Ditch No. 3</b>	
1	29.79
2	11.00
2	29.10 AP
5	8.199
16	13.90
48	35.00
67	6.75
68	1.00
84	23.25
169	64.00
Note: 0.9 cfs of Priority 2 is left in the river per 97CW25	
<b>Manassa Westfield Ditch</b>	
98	30.00
112	24.00
162	85.00
<b>Manassa Eastfield Ditch</b>	
48	38.60

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditches 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 Ditches to divert the full amount of last priority served on that day.

3. Payment.

Subdistrict No. 3 will pay the Owners \$ 1.00 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.

Subdistrict No. 6 will pay the Owners \$ 1.00 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 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 Ditches would have been able to divert if all unreplaced injurious depletions to the Ditches 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 15<sup>th</sup>.

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 Ditches. 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 Ditches to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2020, 2021 and 2022 Annual Replacement Plans.

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:

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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 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 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 to the Company 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 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.




**Manassa Land and Irrigation Company**

By: 

4-11-23  
Date

**APPROVED:**

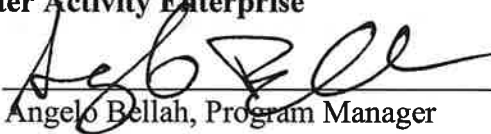
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

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: \_\_\_\_\_

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 O.D. Espinoza and Sons ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise ("Subdistricts" or individually "Subdistrict") 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")
- Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise ("Trinchera Subdistrict")

## RECITALS

A. The Company owns and operates the Martinez, Lopez, Fuerticitios, and Cordova Ditches ("Ditches") and the water rights decreed thereto. The Ditches divert water from the Conejos River; the Martinez ditch in the SE ¼ SW ¼ of Section 35, T34N, R9E, N.M.P.M., and has decreed priorities totaling 12.96 c.f.s.; the Lopez Ditch in the NE ¼ NW ¼ of Section 2, T33N, R9E, N.M.P.M., and has decreed priorities totaling 2.88 c.f.s.; the Fuerticitios Ditch in the NE ¼ NW ¼ of Section 11, T33N, R9E, N.M.P.M., and has decreed priorities totaling 31.7 c.f.s.; the Cordova Ditch in the SW ¼ NW ¼ of Section 2, T33N, R9E, and has decreed priorities totaling 6.54 c.f.s., all in Conejos County, Colorado.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)  
 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace up to \_\_\_\_\_ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistricts' estimated unreplaced depletions to the water rights decreed to the Ditch during the term of this Agreement equals \_\_\_\_\_ acre-feet, the Subdistricts will begin replacement of all injurious stream depletions to the calling water right decreed 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 the Subdistricts with actual water:

<u>Ditch</u>	<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
Martinez Ditch	51	12.96
Lopez Ditch	51	2.88
Fuerticitios Ditch	25	31.47
Cordova Ditch	53	6.54

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company \$ 35<sup>00</sup> per acre-foot of remedy of injurious stream depletions caused by that Subdistrict's wells 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 each Subdistrict's ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

O.D. Espinoza & Sons  
P.O. Box 66  
Manassa, CO 81141

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincheraconservancy@gmail.com](mailto:trincheraconservancy@gmail.com)



(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:  
Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

**Martinez, Lopez, Fuerticitios, and Cordova Ditch Owner**

By: Ricardo Lopez

4-10-24

Print Name: RICARDO ESPINOZA

Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/11/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By: Monty Smith  
Monty Smith, President

4/11/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: RICARDO ESPINOZA

Address to mail payment to: PO Box 66  
Manassa, Co 81141

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. \_\_\_\_\_

~~Las Mesitas Ditch~~

**FORBEARANCE AGREEMENT**

This Forbearance Agreement is entered into effective May 1, 2023 between the LAS MESITAS 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:

- JS Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- JS Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

**RECITALS**

- A. The Company owns and operates the Las Mesitas ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE 1/4 NW 1/4 of Section 1, T32N, R7E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 38.99 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 Conejos 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)
-  \_\_\_\_\_ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 All acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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

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 15<sup>th</sup>.

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:

LAS MESAS DITCH COMPANY  
C/O Jill Lucero  
PO Box 696  
LA JARA, CO. 81140

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.

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 AMY 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>
26	38.99

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 \$ 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 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.

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. 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<sup>st</sup> of each year for the term of the Agreement.



**Ditch Owner**

By: Jim Suero

4/12/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/12/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: LAS MESITAS PITCH CO

Address to mail payment to: P.O. Box 696  
LA JATA, CO. 81140

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 Mill 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. 3 "Subdistrict No. 3"  
    Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

**RECITALS**

A. The Company owns and operates the Mill Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW¼ SE¼ of Section 31, T34N, R10E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 12.67 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 Conejos 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)  
    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 30<sup>th</sup> 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 1<sup>st</sup> 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 injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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.

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:

Priority No. Amount (c.f.s.)

9	12.67
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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 \$ 30.00 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 15<sup>th</sup>.

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:

Mill Ditch  
P.O. Box 510  
Manassa, CO 81141

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. 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<sup>st</sup> of each year for the term of the Agreement.

Mill Ditch

By: 

Date 4-8-23

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

Date 4/11/23

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

Date 4/11/23

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: **Mill Ditch**

Address to mail payment to: **P.O. Box 510, Manassa, CO 81141**

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. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Mogote Ditch and Northeastern Consolidated Ditch Company (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) sometimes collectively referred to as the “Parties”):

**Please initial next to your selections:**

- JP Water Activity Enterprise of Special Improvement District No. 3 (“Subdistrict No. 3”)  
JP Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict No. 6”)  
JP Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

### RECITALS

A. The Company owns and operates the Mogote Ditch and Northeastern Consolidated Ditch (sometimes collectively referred to as “Ditches”) and the water rights decreed thereto. The Mogote Ditch diverts water from the Conejos River in the NE ¼ NW ¼ of Section 26, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 342.4 c.f.s. The Northeastern Consolidated Ditch diverts water from the Conejos River in the SE ¼ of Section 27, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 92.8 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)

X JP \_\_\_\_\_ 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace all of the injurious stream depletions to the water rights of the Company diverted from the Conejos 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.

2.1.1. The Mogote Ditch under priority no. 115.

2.1.2. The Northeastern Ditch under priority no(s). 66, 119, and 127.

Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict’s ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
66	34.71
115	342.40
119	41.25
127	16.84

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company \$ 1.00 per acre-foot of remedy of injurious stream depletions caused by that Subdistrict’s wells 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 each Subdistrict's ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Mogote North eastern  
P.O. Box 491  
Menasco CO 81141

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street



Blanca, CO 81123  
[trincerawaterconservancy@gmail.com](mailto:trincerawaterconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:  
Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

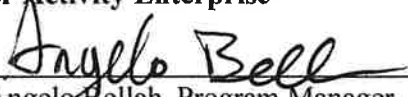
**Mogote Ditch and the Northeastern Consolidated Ditch Company**

By:   
Print Name: Jim Paine

Mar. 27, 2024  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**


**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/9/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Mogote/Northeastern Consolidated Ditch Co.

Address to mail payment to: P.O. Bos 491, Manassa, CO 81141

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 Los Coyotes Lucero, LLC (“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:**

- JL*   Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
  *JL*   Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the New JB Romero D (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SE ¼ NE ¼ of Section 32, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 17.82 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 Conejos 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)
- JB*   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 30<sup>th</sup> 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 1<sup>st</sup> 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 ALL acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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 111 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>
170	17.82

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 \$ 30 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 15<sup>th</sup>.

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:

\_\_\_\_\_  
Los Coyotes Lucha, LLC  
\_\_\_\_\_  
P.O. Box 152  
\_\_\_\_\_  
Antonito, Co. 81120  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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. 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<sup>st</sup> of each year for the term of the Agreement.

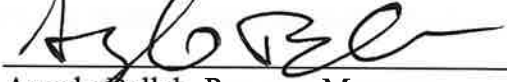
**New JB Romero D Owner**

By: 

4/6/2023  
Date

**APPROVED:**

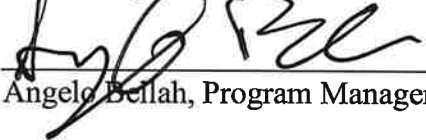
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lucero

Address to mail payment to: P.O. Box 152  
Antonito, Co 81120

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 Ken Salazar (“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 Overflow Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE¼ NW¼ of Section 15, T33N, R9E, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 11.79 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 Conejos 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 unlimited acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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>
20	11.79

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 \$ 30 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 15<sup>th</sup>.

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: Ken Salazar  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Subdistrict:  
  
Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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. 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<sup>st</sup> of each year for the term of the Agreement.



**Overflow Ditch Owner**

*Sr. Ditch Owner - Ken Schaefer*

By: *[Signature]* - representative

4/12/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/13/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/13/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Ken Salazar Ranch

Address to mail payment to: P.O. Box 296  
Manassas Co. 81141

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. All to Ken Salazar Ranch
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Richfield Canal ("Ditch") 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 Richfield Canal and the water rights decreed thereto. The Richfield Canal diverts water from the Conejos River in the SE1/4 NW1/4 of Section 17, Township 34 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 168.74 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 Conejos 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 Ditch, 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 Ditch's water right is 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 Ditch 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Conejos River at the headgate of the Ditch under priority nos. 59 and 105 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 Conejos 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 Ditch 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>
59	56.24
105	112.50

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 Ditch \$ 1.00 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.

Subdistrict No. 6 will pay the Ditch \$ 1.00 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 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch 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 Ditch 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 Ditch:

Richfield Canal Co  
PO Box 481  
La Jara CO 81140

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 Ditch'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, Ditch'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 Ditch 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 Ditch 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 Ditch, 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 Ditch 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 Ditch on or before December 31, of each year for the term of the Agreement.

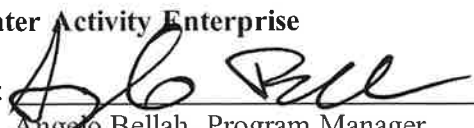
Richfield Canal

By:  \_\_\_\_\_

4-4-2023  
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: Rich Field Canal Co

Address to mail payment to: PO Box 481  
La Jara CO 81140

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 Romero Ditch (“Ditch”) 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:**

- JP Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
JP Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Romero Ditch and the water rights decreed thereto. The Romero Ditch diverts water from the Conejos River in the NE1/4 NE1/4 SE1/4 of Section 24, Township 33 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 257.8 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 Conejos 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 Ditch, 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 Ditch’s water right is 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 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Company diverted from the Conejos River at the headgate of the Ditch under priority no(s) 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 Conejos 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 Ditch 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>
1	26.57
23	11.43
34	25
136	25
168	77

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 \$ 1 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 \$ 1 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch 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 Ditch 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 Ditch:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Ditch'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, Ditch'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 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.

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 Ditch 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 Ditch 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 Ditch on or before December 31, of each year for the term of the Agreement.

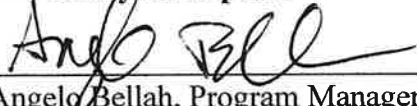
**Romero Ditch**

By: Jim Paine 

3-23-23  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah   
Angelo Bellah, Program Manager

3/28/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah   
Angelo Bellah, Program Manager

3/28/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Romero Irrigation Co.

Address to mail payment to: P.O. Box 491  
Manassa, CO 81141

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 Sabine School Section Ditch (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) sometimes collectively referred to as the “Parties”):

**Please initial next to your selections:**

- JP Water Activity Enterprise of Special Improvement District No. 3 (“Subdistrict No. 3”)
- JP Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict No. 6”)
- JP Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

**RECITALS**

A. The Company owns and operates the Sabine School Section Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SE1/4 NE1/4 of Section 17, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 11.95 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)
- 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace any of the injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed under Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
39	11.95

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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. Each Subdistrict will pay the Company \$ 1.00 per acre-foot of remedy of injurious stream depletions caused by that Subdistrict's wells 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 each Subdistrict's ARP, 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 water rights decreed to the Ditch would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Jim Paine  
7623 CR 15  
Antonito, CO 81120

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincheraconservancy@gmail.com](mailto:trincheraconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:

Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

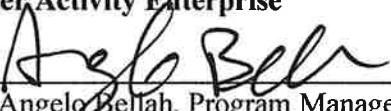
**Sabine School Section Ditch**

By:  \_\_\_\_\_  
Jim Paine

Mar. 27, 2024  
Date

**APPROVED:**


**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**

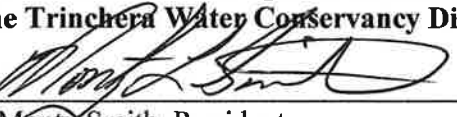
**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:  \_\_\_\_\_  
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:  \_\_\_\_\_  
Monty Smith, President

4/9/24  
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. Jim Paine 7623 CR 15, Antonito, CO 81120 50%
2. Jennie Mealer P.O. Box 462 Antonito CO 81120 50%
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between Salazar 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:*

JB Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

JB Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Salazar Ditch and the water rights decreed thereto. The Salazar Ditch diverts water from the Conejos River in the SW1/4 NW1/4 of Section 6, Township 33 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 12.32 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 Conejos 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 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 Subdistricts desire to enter into this Forbearance Agreement as part of the ARP for all 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)
JTB	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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Company diverted from the Conejos 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 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 Conejos 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' 2020, 2021 and 2022 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>
8	12.32

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 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 \$ 15 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 \$ 15 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 15<sup>th</sup>.

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:

Jessie Bagwell  
PO Box 695  
MANASSA, CO 81141

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.

**Salazar Ditch**

By: Jessie Baguelli

4-27-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/28/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/28/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Jessie Bagwell

Address to mail payment to: P.O. Box 695  
Manassa, CO 81141

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 Special Improvement Districts No. 3 (Conejos) and No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District Water Activity Enterprises (“Subdistricts”) and the United States Department of the Interior, Bureau of Land Management (“Agency”), (sometimes collectively referred to as the “Parties”).

### RECITALS

A. AGENCY is the Bureau of Land Management, an agency within the United States Department of the Interior. AGENCY owns and operates surface water rights that are used to carry out land and water management functions that are required under federal law, including management of habitat for wildlife species. AGENCY water rights that are used to fulfill these management purposes were created and decreed pursuant to provisions of Colorado water law. AGENCY owns and operates the following surface water rights, (collectively “Ditches”):

- a. 3.5 c.f.s. of the East Bend Ditch Priority No. 88. The East Bend Ditch diverts water from the Conejos River in the SE1/4 SW1/4 of Section 34, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 37.4 c.f.s.
- b. 6.58 c.f.s. of the Los Ojos No. 1 Ditch Priority No. 63. The Los Ojos No. 1 Ditch diverts water from the Conejos River in the SW1/4 SE1/4 of Section 22, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 40.08 c.f.s.
- c. 3.00 c.f.s. of the Los Ojos No. 2 Ditch Priority No. 58. The Los Ojos No. 2 Ditch diverts water from the Conejos River in the NE1/4 NW1/4 of Section 23, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 8.53 c.f.s.
- d. 12.04 c.f.s. of the Alamo Ditch Priority No. 108. The Alamo Ditch diverts water from the Conejos River in the SW1/4 SE1/4 of Section 12, Township 35 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 53.5 c.f.s.
- e. 4.00 c.f.s. of the Lovato Irrigation Ditch Priority No. 33. The Lovato Irrigation Ditch diverts water from the Rio San Antonio in the NW1/4 SW1/4 of Section 30, Township 33 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 53.08 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 San Antonio and Conejos River by the Ditches 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 Ditches at the top of the Stream Reach in order to remedy injurious stream depletions.

D. AGENCY, 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 AGENCY's water right is remedied by means other than providing water to replace injurious stream depletions.

E. The District, on behalf of the Subdistricts, desires to enter into this Forbearance Agreement as part of the ARPs.

### DEFINITIONS

A. "Remedy Costs" means the total cost to Subdistrict No. 3 and Subdistrict No. 6 for providing augmentation water to offset injurious depletions associated with the operation of AGENCY groundwater rights, including costs associated with meeting the Subdistrict No. 3 and Subdistrict No. 6 sustainability requirements under their Annual Plans of Water Management.

B. "Remedy Credits" means the value assigned to the injurious depletions not required to be made available for diversion by the AGENCY'S Ditch water right. "Remedy Credits" are calculated by multiplying the number of acre-feet of injurious stream depletions that are not required to be made available for diversion to the AGENCY'S Ditches by the Forbearance Rate.

C. "Forbearance Rate" means \$80.00 per acre foot.

### AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the District and the Subdistricts and the Company agree as follows:

**Term of Agreement.** This Agreement will be in effect from:

Five Years (May 1, 2023 through April 30, 2028)

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.

#### 1. Forbearance by the AGENCY.

1.1. During the term of this Agreement AGENCY will forebear from requiring Subdistrict No. 3 and Subdistrict No. 6 to replace any of the injurious stream depletions to the Ditches. Subdistrict No. 3 and Subdistrict No. 6 may remedy injurious stream depletions under this agreement or by providing water in its sole discretion.

1.2. This Agreement applies on each day during the term of the Agreement that any of the Ditches are 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 Conejos 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.

1.3. The number of acre-feet of injurious depletions to the water right of AGENCY will be calculated each day any of the Ditches 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 AGENCY 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 any of the Ditches would have been able to divert, but for the depletions caused by wells operating under Subdistricts’ respective ARPs. 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 a Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

1.4. This Agreement will apply only on days when the following priorities decreed to a Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Alamo Ditch</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
108	12.04	36.0	33.44%

<u>East Bend Ditch</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
88	3.5	12.0	29.17%

<u>Los Ojos Ditch No. 1</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
63	6.58	40.08	16.42%

<u>Los Ojos Ditch No. 2</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
58	3.0	4.45	67.42%

<u>Lovato Ditch</u>			
Priority No.	Amount (c.f.s.)	Total c.f.s. of Priority	% of Priority Agency Owns
33	4.0	27.58	14.50%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the AGENCY 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 any of the Ditches to divert the full amount of last priority served on that day.

2.5 This Agreement will apply to only those portions of the entire priorities listed in paragraph 2.4 above that are owned by the Agency. The Agency agrees it will not take or use additional water above the c.f.s. the Agency owns as listed in 2.4 above that is subject to this Agreement. The Agency acknowledges that neither the Division Engineer nor the Subdistrict(s) have any responsibility for distribution of water within the Ditch. If operation of this Agreement results in injury to the remaining c.f.s. of the Ditch, the Division Engineer may require that the Subdistrict not operate this Agreement and remedy all injurious depletions by providing water at the top of the affected Stream Reach.

2. Payment. The Subdistricts will pay the AGENCY in Remedy Credits per acre-foot of replacement of injurious stream depletions that are not required to be made available for diversion at the Ditches pursuant to the terms of this Agreement.

2.1. After the end of each irrigation season, and not later than March 15, of the following calendar year, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then recalculate the amount of water that each of the Ditches would have been able to divert if all unreplaced injurious depletions to a Ditch had been replaced during the term of this Agreement, and provide AGENCY with (1) a full accounting showing the unreplaced injurious depletions to the water rights of any of the Ditches; and (2) a calculation of the amount of the payment due under

paragraph 3.2 below. AGENCY will have fourteen days after the receipt of the calculations to notify the Subdistrict(s) of any errors therein.

2.2. The payment required by paragraph 3, will be due within 35 days of the date that the Subdistricts provide AGENCY with an accounting of the unreplaced injurious depletions to the water rights of AGENCY and the amount of the payment due, but not later than April 15 of each year and will be in the form of Remedy Credits.

3. No Subordination or Waiver of Right to Call. The forbearance by AGENCY 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 AGENCY. Under this Agreement AGENCY 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 AGENCY will not require the Subdistricts to make water available for diversion at the headgate of AGENCY to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective ARPs.

4. Notices and Representatives: Each individual identified below is a representative of the designating Party. All notices required by this Lease Agreement will be hand-delivered with receipt required or sent by certified or registered mail to such Party's representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices will be sent. Unless otherwise provided herein, all notices are effective upon receipt.

5.1 AGENCY Representatives and Contact Addresses: David Thomas, Contracting Officer, is authorized to sign the lease agreement and participation contract. Mr. Thomas can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3637; and by email at [dethomas@blm.gov](mailto:dethomas@blm.gov). Roy Smith, Water Rights Specialist, is authorized to manage the day-to-day administration of the lease and participation contract. Mr. Smith can be reached by physical mail at: Bureau of Land Management, Colorado State Office, Denver Federal Center, Building 40, Lakewood, CO 80215 ; by telephone at 303-239-3940; and by email at [r20smith@blm.gov](mailto:r20smith@blm.gov).

5.2 Subdistrict No. 3 and Subdistrict No. 6 Representative and Contact Address: District Manager (Cleave Simpson) is the representative for Subdistrict No. 3 and Subdistrict No. 6 for purposes of this Lease Agreement. Mr. Simpson can be reached by physical mail at: Rio Grande Water Conservation District, 8805 Independence Way, Alamosa, Colorado 81101; by telephone at: (719) 589-6301; and by e-mail at: [cleave@rgwcd.org](mailto:cleave@rgwcd.org).

5. Remedies. In the event of AGENCY's default in the performance of this Agreement, the District's and/or Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, AGENCY's remedies will be to retain all payments made by the District on behalf of 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 AGENCY for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

6. General Provisions

- 6.1. Assignment: Neither Party has the right to transfer or sub-lease its rights or obligations under this Lease Agreement without the advanced written consent of the other Party.
- 6.2. Binding Agreement: This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- 6.3. Binding Arbitration Prohibited: Neither AGENCY nor Subdistrict No. 3 nor Subdistrict No. 6 agree to binding arbitration by any extra-judicial body or person. Any provision incorporated herein by reference is null and void.
- 6.4. 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.
- 6.5. Compliance with Applicable Laws: At all times during the performance of this Lease Agreement, Subdistrict No. 3 and Subdistrict No. 6 will adhere to all applicable Federal and State laws, rules, and regulations then in effect. In addition:
  - 6.5.1. The signatories to this Lease Agreement affirm that they are familiar with C.R.S. § 18-8-301, *et seq.* (Bribery and Corrupt Influences) and C.R.S. § 18-8-401, *et seq.* (Abuse of Public Office), and that no violation of such provisions has occurred in connection with the negotiation and signing of this Lease Agreement; and
  - 6.5.2. The signatories to this Lease Agreement affirm that to the best of their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.
- 6.6. CORA Disclosure: To the extent not prohibited by Federal law, this Lease Agreement and the performance measures and standards under C.R.S. §

24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

- 6.7. Entire Understanding: This Lease Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto will not have any force or effect whatsoever, unless embodied herein.
- 6.8. Governing Law and Venue: This Lease Agreement will be governed and enforced in accordance with the laws, and rules and regulations issued pursuant thereto, of the State of Colorado and under applicable Federal Law. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations will not be valid, enforceable, or available in any action at law, whether by way of complaint, defense, or otherwise. Venue for any action regarding water matters under this lease agreement will be in either the District Court for Alamosa County, Colorado or Water Court in and for Water Division No. 3, as appropriate. Otherwise, for contract disputes, Federal Law applies. Venue for contract matters will be determined by the Contract Disputes Act of 1978, 41 U.S.C. §§ 7107-7109.
- 6.9. Governmental Immunity: No term or condition in this Lease 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, C.R.S. § 24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*, 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, C.R.S. § 24-10-101, *et seq.* and the risk management statutes, C.R.S. § 24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Federal Government, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, *et seq.*
- 6.10. Legal Counsel: Each Party to this Lease Agreement has engaged legal counsel to negotiate, draft, or review this Lease Agreement. Therefore, in the construction and interpretation of this Lease Agreement, the Parties acknowledge and agree that it will not be construed against any Party on the basis of authorship.



- 6.11. Litigation Reporting: Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency related to this Lease Agreement or which may affect a Party's ability to comply with the terms and conditions of this Lease Agreement, the Party who is in receipt of the served pleading will notify the other Party of such action and deliver copies of such pleadings to the other Party, as set forth in paragraph 7 of this Lease Agreement.
- 6.12. Modification:
- 6.12.1. By the Parties: Except as specifically provided in the Lease Agreement, modifications hereof will not be effective unless agreed to by the Parties in a written amendment hereto.
- 6.12.2. By Operation of Law: This Lease Agreement is subject to such modifications as may be required by changes in Federal law or Colorado State law, or their implementing regulations. Any such required modification will be automatically incorporated as part of the Lease Agreement on the effective date of such change, as if fully set forth herein.
- 6.13. Order of Precedence: The provisions of this Lease Agreement will govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Lease Agreement and its exhibits, such conflicts or inconsistencies will be resolved by reference to the documents in the following order of priority:
- 6.13.1. The provisions of the main body of this Lease Agreement;
- 6.13.2. Exhibits.
- 6.14. Prior Agreements: This Lease Agreement cancels and supersedes all prior agreements between the Parties related to the lease of AGENCY's Excess Credits to Subdistrict No. 3, if any.
- 6.15. Third Party Enforcement: The terms and conditions of this Lease Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Lease Agreement gives or allows any claim, right, or cause of action whatsoever by any other person not included in this Lease Agreement. Any person or entity, other than the Parties, receiving services or benefits under this Lease Agreement will be deemed an incidental beneficiary only.

7.16 Waiver: A waiver of a breach of any provision of this Lease Agreement does not waive any subsequent breach of the same or different provision of this Lease 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 Lease Agreement or another remedy for a breach of this Lease 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 Lease Agreement. Any express waiver of a term of this Lease Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

7. Bonus Payment.

8.01 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.

8.02 The Bonus payment in this Paragraph 8 will be paid by each 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 For purposes of this Agreement, the Bonus Payment will be a Remedy Credit.

8.04 The Bonus Payments will be paid to AGENCY on or before December 31, of each year for the term of the Agreement.

*Signatures follow on Separate Page*

United States Department of the Interior,  
Bureau of Land Management

**DAVID THOMAS**

Digitally signed by DAVID THOMAS

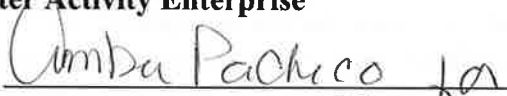
Date: 2023.03.23 15:31:13 -06'00'

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**ACCEPTED:**


**The Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Cleave Simpson, General Manager

3/27/2023  
Date

**APPROVED:**

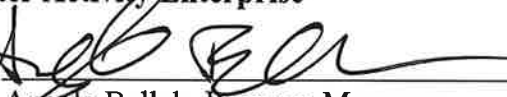
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

3/27/23  
Date

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Sanford Canal 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. 3 “Subdistrict No. 3”
- Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Sanford Ditch (“Ditch”) and the water rights decreed thereto. The Sanford Ditch diverts water from the Conejos River in the SE1/4 SW1/4 NE 1/4 of Section 17, Township 34 North, Range 10 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 146.30 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 Conejos 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 ARPs.

### 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)
- W*   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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Ditch diverted from the Conejos River at the headgate of the Ditch under priority nos. 104 and 172 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 Conejos 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>
104	107.5
172	38.8

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 \$ 1.00 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.

Subdistrict No. 6 will pay the Company \$ 1.00 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 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 15<sup>th</sup>.

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:

Sanford Canal CO  
Box 92  
Sanford, CO 81151

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.

**Sanford Canal Company**

By: 

4/5/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Sanford Canal CO

Address to mail payment to: P.O. Box 92  
Sanford, CO 81151

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. \_\_\_\_\_



4-10-2024

### FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the San Juan San Rafael 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:

- JPC Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- JPC Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the San Juan San Rafael Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NE ¼ of Section 33, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 51.76 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 Conejos 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)  
JPC ✓ \_\_\_\_\_ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 forbear from requiring the Subdistrict to replace up to ~~100~~ <sup>200</sup> acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Conejos 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 214 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>
27	47.76
143	4.00

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<sup>00</sup> 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 15<sup>th</sup>.



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 Juan San Rafael Irrigating and Mill Ditch  
2747 County Road 12.5  
Antonito, CO 81120

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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. 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<sup>st</sup> of each year for the term of the Agreement.

**San Juan San Rafael Ditch Owner**

By: Jasper P. Casias

2/15/2021  
Date

Print Name: JASPER P. CASIAS

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/29/24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/29/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: San Juan San Rafael Irrigating and Mill Ditch

Address to mail payment to: 2747 County Road 12.5, Antonito, CO 81120

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 Servietta Ditch (“Company”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District and the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Subdistricts” or individually “Subdistrict”) sometimes collectively referred to as the “Parties”):

**Please initial next to your selections:**

- RTE Water Activity Enterprise of Special Improvement District No. 3 (“Subdistrict No. 3”)  
RTE Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict No. 6”)  
RTE Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise (“Trinchera Subdistrict”)

### RECITALS

A. The Company owns and operates the Servietta Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NE ¼ of Section 17, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 31.571 c.f.s.

B. The Subdistricts are each responsible for implementing either a Plan of Water Management or Groundwater Management Plan (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Conejos River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, each 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 Subdistricts 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 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)

RRZ \_\_\_\_\_ 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, each Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30<sup>th</sup> of that ARP Year in which the price increase was requested and prior to its effective date in the following ARP year. If a new rate is accepted by the Subdistricts, that rate will become effective on the first May 1<sup>st</sup> following the date the new price was accepted by the Subdistricts.

For a five-year Agreement, either the Ditch or one or more of the Subdistricts may request to cancel the Agreement after providing the other parties 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 five-year Agreement to end.

For a ten-year Agreement, either the Ditch or one or more of the Subdistricts 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 ten-year 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 collectively replace up to 0/6 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Conejos 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 Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed Colorado law.

2.2. This Agreement applies on each day during the term of the Agreement that one of the water rights decreed to the Ditch and listed in paragraph 2.4 below 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 Conejos Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, each Subdistrict 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 decreed to the Ditch will be calculated each day that water right 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 pursuant to the calling water right, but for the depletions caused by wells operating under each 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 each Subdistrict’s ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the water rights decreed to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistricts’ estimated unreplaced depletions to the water rights decreed to the Ditch during the term of this Agreement equals 176 acre-feet, the Subdistricts will begin replacement of all injurious stream depletions to the calling water right decreed 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 the Subdistricts with actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
5	23.571
111	4.00
129	4.00

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the calling water right decreed to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by each 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.** Each Subdistrict will pay the Company \$ 35 per acre-foot of remedy of injurious stream depletions caused by that Subdistrict’s wells 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 each Subdistrict’s ARP, 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 water rights decreed to the Ditch

would have been able to divert if all unreplaced injurious depletions to those water rights 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 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 decreed to the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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 decreed to the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights decreed to the Ditch. 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 actual 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 individual 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:

Servietta Ditch Company  
c/o Sam Vance  
12499 County Road P  
La Jara, CO 81140

To the Trinchera Subdistrict:

Monty Smith, President  
Trinchera Water Conservancy District  
610 Main Street  
Blanca, CO 81123  
[trincheraconservancy@gmail.com](mailto:trincheraconservancy@gmail.com)  
(719) 588-3440

To Subdistrict No. 3 and Subdistrict No. 6:  
Amber Pacheco, Deputy General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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 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 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 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.

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. If the Agreement includes all 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 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 all 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 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 all 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 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 all 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 the Subdistricts 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<sup>st</sup> of each year for the term of the Agreement.

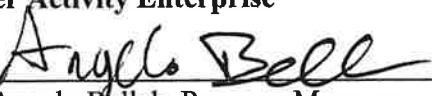
**Servietta Ditch Owner**

By:   
Rick Espinoza

3-27-2024  
Date

**APPROVED:**

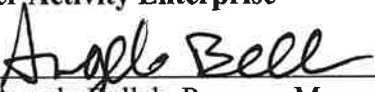
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**


**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/1/24  
Date

**APPROVED:**

**The Groundwater Management Subdistrict  
of the Trinchera Water Conservancy District, acting as a Water Activity Enterprise**

By:   
Monty Smith, President

4/9/2024  
Date



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Servietta Ditch Company c/o Sam Vance

Address to mail payment to: 12499 County Road P, La Jara, CO 81140

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 following Water Activity Enterprises of the Rio Grande Water Conservation District (“Subdistricts”) and 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 (“Company”), (sometimes collectively referred to as the “Parties”).

**Please initial next to your selections:**

- SEV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
S.F.V. Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Company 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 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.

D. The quantity of water available for diversion from the Conejos and San Antonio Rivers by the Company 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 Company at the top of the Stream Reach in order to remedy injurious stream depletions.

E. 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.

F. 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 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)

S. E. V. 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Company diverted from the Conejos and San Antonio Rivers 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 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 Company 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 Conejos Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, the parties will use the last priority served from the most recent Daily Report until a new Daily Report is issued.

2.3. The number of acre-feet of injurious depletions to the water right of the Company will be calculated each day the Company 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 Company 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' 2022, 2023 and 2024 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Company 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 Ditches 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>
141	245.0

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Company 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 Company to divert the full amount of last priority served on that day.

### 3. Payment.

Subdistrict No. 3 will pay the Company \$ \$3.00 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.

Subdistrict No. 6 will pay the Company \$ \$3.00 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 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 Ditches would have been able to divert if all unreplaced injurious depletions to the Ditches 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 15<sup>th</sup>.

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. 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 Company to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2022, 2023 and 2024 Annual Replacement Plans.

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 Well Owners Inc  
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 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 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 to the Company 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 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 Well Owner's Inc.**

By: Ann E. Vannoy

3-24-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/24/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/24/23  
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 the Stover 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:**

- BS, SS Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
BS, SS Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

## RECITALS

A. The Company owns and operates the Stover Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ SW ¼ of Section 25, T34N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 2 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 Conejos 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)
- 15, 55 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Conejos 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 Conejos 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.

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	2.0

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 \$ 45 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 15<sup>th</sup>.

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:

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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. 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<sup>st</sup> of each year for the term of the Agreement.

**Stover Ditch Owner**

By: Rayal w. [Signature]

4-26-2023  
Date

By: [Signature]

4-26-2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

4/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: [Signature]  
Angelo Bellah, Program Manager

4/27/2023  
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. Raymond Smith, 15170 CR T. 25 La Jara CO 81140
2. Steven Sowards P.O. Box 297 Sanford, CO 81151
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Willett Dairy Farm and Cattle Company (“Company”) and the Water Activity Enterprise of Special Improvement District No. 6 (“Subdistrict”) of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

### RECITALS

A. The Company owns and operates the William Stuart Company Irrigation Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE ¼ NW ¼ of Section 8, T35N, R11E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 11.40 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 Conejos 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)

  X   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 30<sup>th</sup> 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 1<sup>st</sup> 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 Conejos 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 Conejos 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 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>
43	11.40

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 \$65.00 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 15<sup>th</sup>.

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:

Willett Cattle Co.  
20785 County Road 28  
Sanford, CO 81151

To the Subdistrict:

Rio Grande Water Conservation District  
c/o Deputy General Manager  
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.

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<sup>st</sup> of each year for the term of the Agreement.

**Alamo Ditch Owner**

By: Toby Willett  
Toby Willett, President

3-15-24  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/15/24  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Willett Cattle Co.

Address to mail payment to: 20785 County Road 28, Sanford, CO 81151

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, 2020 between the Los Pinos 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:

- AV*  Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- AV*  Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the Los Pinos Ditch ("Ditch") and the water rights decreed thereto. The Los Pinos Ditch diverts water from the Los Pinos River in the SW1/4 of Section 24, Township 32 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 22.94 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 Los Pinos 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 Ditch's water right is 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 2020, 2021 and 2022

### 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, 2020 through April 30, 2021)

\_\_\_\_\_ Three Years (May 1, 2020 through April 30, 2023)

\_\_\_\_\_ Five Years (May 1, 2023 through April 30, 2028)

*AV*  Ten Years (May 1, 2023 through April 30, 2033)

**2. Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forbear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Company diverted from the Los Pinos River at the headgate of the Ditch under priority no(s) 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 Conejos 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>
7	22.94

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 \$ 70 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 \$ 70 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 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 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 Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

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:

Los Piños Ditch No. 7  
20500 County Road 10.75  
La Jara, CO 81140

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 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 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 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<sup>st</sup> of each year for the term of the Agreement.

**Los Pinos Ditch**

By: RL Velez, President

04/25/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/25/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Piños Ditch No. 7

Address to mail payment to: 20500 County Road 10.75

La Jara CO 81140

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 30<sup>th</sup> 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 1<sup>st</sup> 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>
<del>163</del>	<del>45.7</del>
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 15<sup>th</sup>.

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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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%

<b>Rio Grande Canal Water User's Assn. Priorities</b>	
<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 15<sup>th</sup>.

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. \_\_\_\_\_

## 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 SE¼ SW¼ 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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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 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:



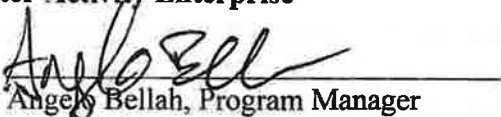
3-16-23

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

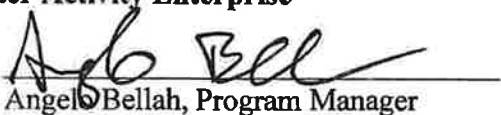
3/16/23

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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \$ 250<sup>00</sup> 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<sup>00</sup> 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<sup>00</sup> 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 15<sup>th</sup>.

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 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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](mailto: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

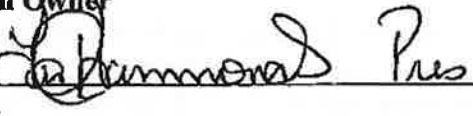
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 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 Dutch Company

Address to mail payment to: 118 Washington Street  
Mante 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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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.

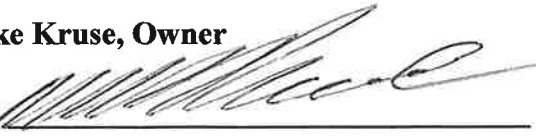
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid 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.

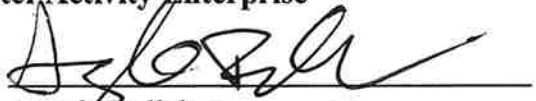
**Mike Kruse, Owner**

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 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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](mailto: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



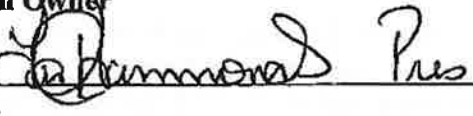
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 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 Dutch Company

Address to mail payment to: 118 Washington Street  
Marte 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. 3 "Subdistrict No. 3"

Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

*Subdistrict 2*

### RECITALS

A. The Company owns and operates the Rio Grande Piedra Valley Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio Grande River in the SW¼ SE ¼ of Section 8, T39N, R7E, N.M.P.M., in Rio Grande County, Colorado, and has decreed priorities totaling 94.48 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 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.

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 15<sup>th</sup>.

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 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. 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<sup>st</sup> of each year for the term of the Agreement.

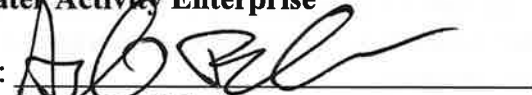
**Rio Grande Piedra Valley Ditch Company**

By: 

4-5-23  
Date

**APPROVED:**

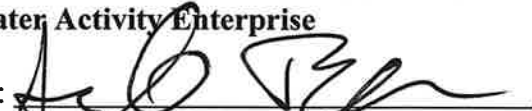
Special Improvement District No. ~~8~~<sup>2</sup>   
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By:   
Angelo Bellah, Program Manager

4/5/23  
Date

**APPROVED:**

Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By:   
Angelo Bellah, Program Manager

4/5/23  
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 City 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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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 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 30<sup>th</sup> 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 1<sup>st</sup> 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%

<b>Rio Grande Canal Water User's Assn. Priorities</b>	
<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 15<sup>th</sup>.

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. \_\_\_\_\_

**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 30<sup>th</sup> 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 1<sup>st</sup> 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 15<sup>th</sup>.

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](mailto: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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 \$ 250<sup>00</sup> 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<sup>00</sup> 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<sup>00</sup> 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 15<sup>th</sup>.

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.

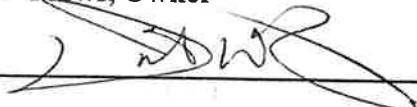
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid 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.

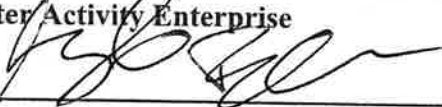
**David Toews, Owner**

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. \_\_\_\_\_



**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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio San Antonio 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 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 Conejos 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 Ditch 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' 2020, 2021 and 2022 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>
71	1.50
72	2.50
73	1.50

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 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. The Subdistricts will pay the Owner \$ 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch



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 Ditch 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 respective 2020, 2021 and 2022 Annual Replacement Plans.

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 Ditch:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Ditch’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, Ditch’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 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 Ditch 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 Ditch 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 to the Ditch 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 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 Ditch on or before December 31, of each ARP year for the term of the Agreement.

**Elliott Salazar**

By: Elliott Salazar

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Ag Bellah  
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: Ag Bellah  
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: \_\_\_\_\_

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 the Eight Mile 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:

- ~~JS~~ ~~Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”~~ *do not include JS*
- JS Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
- JS Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

**RECITALS**

A. The Company owns and operates the Eight Mile Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the NE¼ NE¼ of Section 17, T33N, R10E, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 40.78 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 San Antonio 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 1000 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 0000 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>
194 C	30.00
196	10.78

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 \$ 30 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 15<sup>th</sup>.

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: Eight Mile Ditch  
90 John Salazar  
P.O. Box 510  
Manassa, CO 81141

To the Subdistrict:

Deputy General Manager  
Rio Grande Water Conservation District

8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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.

## 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:

8.01.1 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.2 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.

8.01.3 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.

8.01.4 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.

**Eight Mile Ditch**

By: *[Signature]* *- representative*

3/21/23  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**APPROVED:**

~~Special Improvement District No. 2  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise~~

~~By: *[Signature]* *(AB)*  
Angelo Bellah, Program Manager~~

~~*(AB)*  
3/30/23  
Date~~

**APPROVED:**

Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: *[Signature]*  
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: *[Signature]*  
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: Eight Mile Ditch

Address to mail payment to: Eight Mile Ditch  
c/o John Salazar  
P.O. Box 510  
Marassa, Co. 81141

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. All to Eight Mile Ditch Co.
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_



**FORBEARANCE AGREEMENT**

This Forbearance Agreement is entered into effective May 1, 2023 between Florida/Riedel 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 Florida Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SW¼ SE¼ of Section 29, T33N, R9E, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 20.80 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 San Antonio 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)

*JS* 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 30<sup>th</sup> 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 1<sup>st</sup> 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 1,000 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 0 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>
116	20.80

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 \$ 30 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 15<sup>th</sup>.

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: Los Coyotes Lucero, LLC.  
PO Box 152  
Antonito, CO. 81120  
Alianza Lucero, LLC  
5730 Velict Ct  
Color Spgs, CO 80918

To the Subdistrict:

Deputy General Manager  
Rio Grande Water Conservation District

8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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 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.

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.

## 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:

8.01.1 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.2 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.

8.01.3 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.

8.01.4 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.



Florida Ditch / Riedel

By: Melvin Lucero  
Melvin Lucero

3/30/2023  
Date

APPROVED:

~~Special Improvement District No. 2  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise~~

~~By: Angelo Bellah  
Angelo Bellah, Program Manager~~



~~3/30/23  
Date~~

APPROVED:

Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

APPROVED:

Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

To ensure payments are made correctly, please fill in the following:

See  
Below  
↓

Checks should be made in the name of: Los Coyotes Lucero LLC

Address to mail payment to: PO Box 152  
Antonito, Co. 81120

If payments are to be split, please indicate the following:



Names and addresses of each individual/entity and percentage of payment each should receive:

- 50% 1. Los Coyotes Lucero, LLC. PO Box 152 Antonito, Co 81120
- 50% 2. Alianza Lucero, LLC 5730 Velvet Ct., Cdo. Sags CO 80918
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Los Coyotes Lucero, LLC (“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 Galvis Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SE ¼ NE ¼ of Section 18, T32N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 10.97 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 San Antonio 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 All acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 ALL 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>
36	10.97

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 \$ 30 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 15<sup>th</sup>.

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:

LOS Coyotes Luceso, LLC.  
P.O. Box 152  
Antonio, CO 81200

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. 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<sup>st</sup> of each year for the term of the Agreement.


**Galvis Ditch**

By: 

4-1-2023  
Date

**APPROVED:**

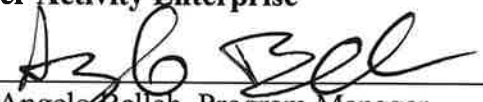
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angela Bellah, Program Manager

4/6/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angela Bellah, Program Manager

4/6/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lucero, LLC.

Address to mail payment to: P.O. Box 152  
Antonito, CO 81020

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 Los Coyotes Lucero, LLC (“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:**

- JS Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
JS Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Jaramillo Overflow No. 2 Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SE ¼ NW ¼ of Section 30 T33N, R10E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 2.00 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 San Antonio 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 ALL acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 ALL 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>
75	2.00

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 \$ 30 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 15<sup>th</sup>.

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:

\_\_\_\_\_  
Los Coyotes Lucero, LLC.  
\_\_\_\_\_  
C/O Jill Lucero  
\_\_\_\_\_  
P.O. Box 152  
\_\_\_\_\_  
Antonito, CO 81120  
\_\_\_\_\_  
\_\_\_\_\_

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. 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<sup>st</sup> of each year for the term of the Agreement.

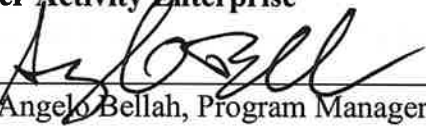
**Jaramillo Overflow No. 2 Ditch**

By: 

4-6-23  
Date

**APPROVED:**

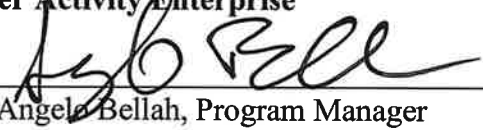
**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/6/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lucero, LLC.

Address to mail payment to: P.O. Box 152  
Armadillo, Co. 81120

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 Los Coyotes Lucero, LLC ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please i11itial llet to your selections:

- 11 - Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"  
11 - Water Activity Entmprise of Special Improvement District No. 6 "Subdistrict No. 6"

### RECITALS

A. The Company owns and operates the Lovato Irrigation ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 25, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 27.58 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 San Antonio by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement  $\frac{1}{2}$  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)(l)(B), C.R.S., pursuant to which injuzy to the Company's water right is remedied by m 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 i11itial llet 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)
- l,.. 5,c(jic\_ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 10,000 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Antonio 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 Conejos 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 ALL 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>	<u>% of Priority Being Forbeared</u>
33	27.58	50%

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 \$ 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 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 15<sup>th</sup>.

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:

Las Coyotes Lugo, LLC  
P.O. Box 152  
Antonito, Co. 81120

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. 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<sup>st</sup> of each year for the term of the Agreement.

**Lovato Ditch**

By: *[Signature]*

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

4/6/2023  
Date

*[Signature]*

4/11/23

*[Large handwritten signature]* 4/27/23



**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lumber, LLC.

Address to mail payment to: P.O. Box 152  
Antonito, CO 81120

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 Maes 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. 3 “Subdistrict No. 3”

 Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

~~ Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”~~

**RECITALS**

A. The Company owns and operates the Maes Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the NW¼ NW¼ of Section 35, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 4.00 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 San Antonio 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)
- JS \_\_\_\_\_ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 1000 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 0.8 million 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>
116	2.925
180	1.075

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 \$ 30 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 15<sup>th</sup>.

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: Maes Ditch Co.  
Go Le Roy Salazar  
PO. Box 296  
Manassa, Co. 81141

To the Subdistrict:

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

[amber@rgwcd.org](mailto: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.

## 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:

8.01.1 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.2 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.

8.01.3 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.



8.01.4 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.

**Maes Ditch**

By: LeRoy Salazar  
LeRoy Salazar

3/21/23  
Date

**APPROVED:**

**Special Improvement District No. 2  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: L+L Engineering, LLC

Address to mail payment to: LeRoy Salazar P. O. Box 296  
Manassa, Co. 81141

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 Los Coyotes Lucero, LLC (“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 Martinez Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SW ¼ SE ¼ of Section 29, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 13.68 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 San Antonio 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 30<sup>th</sup> 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 1<sup>st</sup> 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 forbear from requiring the Subdistrict to replace up to ALL acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 ALL 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>
57	13.68

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 \$ 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 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 15<sup>th</sup>.

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:

Los Coyotes Lucero, LLC  
P.O. Box 152  
Antonito, CO  
81120

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. 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<sup>st</sup> of each year for the term of the Agreement.

**Martinez Ditch Owner**

By: *Ju Suarez*

4/6/2023  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angela Bellah*  
Angela Bellah, Program Manager

4/6/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angela Bellah*  
Angela Bellah, Program Manager

4/6/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Los Coyotes Lucero, LLC.

Address to mail payment to: P.O. Box 152  
Arroyito, W. 8120

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 Andrew Velasquez for Punche Ditch Water Users (“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:**

- AV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
AV Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

## RECITALS

A. The Company owns and operates the Punche Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SE ¼ NE ¼ of Section 33 T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 15.00 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 San Antonio 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)
- 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 30<sup>th</sup> 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 1<sup>st</sup> 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 ALL acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 ALL 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>
94	15.00

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 \$ 50.00 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 15<sup>th</sup>.

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:

ANDREW VELASQUEZ  
PUNCHE DITCH WATER USERS  
4711 COUNTY RD 16  
ANTONITO, CO 81120

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<sup>st</sup> of each year for the term of the Agreement.

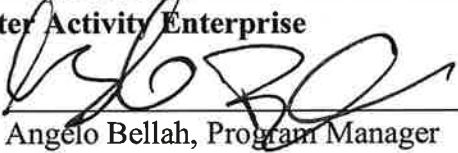
**Andrew Velasquez for Punche Ditch Water Users**

By: 

4/27/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/27/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By:   
Angelo Bellah, Program Manager

4/27/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: ANDREW VELASQUEZ

Address to mail payment to: 4711 COUNTY RD 16  
ANTONITO, CO 81120

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 Los Coyotes Lucero, LLC (“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. 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 Riedel Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SW¼ SE¼ of Section 29, T33N, R9E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 13.75 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 San Antonio 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)  
 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 30<sup>th</sup> 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 1<sup>st</sup> 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 San Antonio 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 Conejos 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.

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>
192	13.75

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 \$30.00 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 15<sup>th</sup>.

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:

Los Coyotes Lucero, LLC  
P.O. Box 152  
Antonito, CO 81120

Copy to:

Alianza Lucero, LLC  
5730 Velvet Ct.  
Colorado Springs, CO 80918

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<sup>st</sup> of each year for the term of the Agreement.

Florida Ditch / Riedel

By: Melvin Lucero  
Melvin Lucero

3/30/2023  
Date

APPROVED:

~~Special Improvement District No. 2  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise~~

~~By: Angelo Bellah  
Angelo Bellah, Program Manager~~

~~3/30/23  
Date~~

APPROVED:

Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date

APPROVED:

Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/30/23  
Date



To ensure payments are made correctly, please fill in the following:

See  
Below  
↓

Checks should be made in the name of: Los Coyotes Lucero, LLC

Address to mail payment to: PO Box 152

Antonito, Co. 81120

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

- 50% 1. Los Coyotes Lucero, LLC. PO Box 152 Antonito, Co 81120
- 50% 2. Alianza Lucero, LLC 5730 Velvet Ct., Cdo. Sags. Co 80918
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

**FORBEARANCE AGREEMENT**

This Forbearance Agreement is entered into effective May 1, 2023 between the Rincones 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:

*Do not include 258 - LeRoy Salazar for las Rincones*

~~258~~ Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"

258 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"

258 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

**RECITALS**

A. The Company owns and operates the Rincones Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio San Antonio in the SW¼ SW¼ of Section 5, T33N, R10E, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 22.25 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 San Antonio 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)

JS \_\_\_\_\_ 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 30<sup>th</sup> 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 1<sup>st</sup> 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 1680 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio San Antonio 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 Conejos 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 0.00 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>
24	22.25

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 \$ 30 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 15<sup>th</sup>.

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: Los Rincones Ditch  
90 John Salazar  
P.O. Box 296  
Manassa, Co 81141

To the Subdistrict:

Deputy General Manager  
Rio Grande Water Conservation District

8805 Independence Way  
Alamosa, CO 81101  
[amber@rgwcd.org](mailto: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.

## 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:

8.01.1 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.2 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.

8.01.3 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.



8.01.4 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.

**Rincones Ditch**

*approved for motion + acceptance  
by ditch company*

By: *[Signature]*

3/21/23  
Date

**APPROVED:**

**Special Improvement District No. 2  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
Angelo Bellah, Program Manager

~~3/30/23~~  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *[Signature]*  
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: *[Signature]*  
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: Los Rincones Ditch Co

Address to mail payment to: 70 John Salazar  
P.O. Box 510  
Manassas Co. 81141

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 Sinecero Ditch (“Ditch”) 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:**

- X   Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
  X   Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company owns and operates the Senicero Ditch and the water rights decreed thereto. The Senicero Ditch diverts water from the Rio San Antonio in the SE1/4 SW1/4 of Section 27, Township 33 North, Range p East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 18.31 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 San Antonio 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 Ditch, 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 Ditch’s water right is 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 in which the 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 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)  
  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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio San Antonio 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 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 Conejos 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 Ditch 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' 2020, 2021 and 2022 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>
11	18.31

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 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. The Subdistricts will pay the Owner \$ 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch

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 Ditch 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 respective 2020, 2021 and 2022 Annual Replacement Plans.

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 Ditch:

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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 Ditch'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, Ditch'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 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 Ditch 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 Ditch 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 to the Ditch 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 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 Ditch on or before December 31, of each ARP year for the term of the Agreement.

**Sinecero Ditch**

By: *Elvira Salgado*

7/11/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

4/11/23  
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 Sisneros Ditch (“Ditch”) 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:**

Σ. Σ. Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”

Σ. Σ Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Owner owns and operates the Sisneros Ditch and the water rights decreed thereto. The Sisneros Ditch diverts water from the Rio San Antonio in the SE1/4 SE1/4 of Section 26, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 6.55 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 San Antonio 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 Ditch, 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 Ditch’s water right is 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 in which the 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 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)  
  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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio San Antonio 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 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 Conejos 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 Ditch and the Subdistricts will keep a running

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 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. The Subdistricts will pay the Owner \$ 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch 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 Ditch 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 respective 2020, 2021 and 2022 Annual Replacement Plans.

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 Ditch:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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 Ditch'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, Ditch'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 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 Ditch 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 Ditch 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 to the Ditch 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 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 Ditch on or before December 31, of each ARP year for the term of the Agreement.

**Sisneros Ditch**

By: *Elinda Salazar*

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

4/11/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: *Angelo Bellah*  
Angelo Bellah, Program Manager

4/11/23  
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 the following Water Activity Enterprises of the Rio Grande Water Conservation District (“Subdistricts”) and 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 (“Company”), (sometimes collectively referred to as the “Parties”).

**Please initial next to your selections:**

- SEV Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”  
S.F.V. Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

### RECITALS

A. The Company 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 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.

D. The quantity of water available for diversion from the Conejos and San Antonio Rivers by the Company 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 Company at the top of the Stream Reach in order to remedy injurious stream depletions.

E. 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.

F. 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 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)

S. E. V. 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 30<sup>th</sup> 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 1<sup>st</sup> 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 any of the injurious stream depletions to the water rights of the Company diverted from the Conejos and San Antonio Rivers 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 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 Company 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 Conejos Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, the parties will use the last priority served from the most recent Daily Report until a new Daily Report is issued.



2.3. The number of acre-feet of injurious depletions to the water right of the Company will be calculated each day the Company 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 Company 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' 2022, 2023 and 2024 ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Company 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 Ditches 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>
141	245.0

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Company 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 Company to divert the full amount of last priority served on that day.

### 3. Payment.

Subdistrict No. 3 will pay the Company \$ \$3.00 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.

Subdistrict No. 6 will pay the Company \$ \$3.00 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 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 Ditches would have been able to divert if all unreplaced injurious depletions to the Ditches 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 15<sup>th</sup>.

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. 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 Company to offset depletions that would otherwise have to be replaced by the Subdistricts under their respective 2022, 2023 and 2024 Annual Replacement Plans.

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 Well Owners Inc  
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 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 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 to the Company 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 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 Well Owner's Inc.**

By: Ann E. Vannoy

3-24-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/24/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

3/24/23  
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 John T. Salazar (“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:*

       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 Owner owns and operates the Star Ditch (“Ditch”) and the water rights decreed thereto. The Star Ditch diverts water from the Rio San Antonio in the SE1/4 SE1/4 of Section 26, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 10.3 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 San Antonio 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 Ditch, 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 Ditch’s water right is 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 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 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)

   *JS*    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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio San Antonio 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 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 Conejos 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 Ditch 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' 2020, 2021 and 2022 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>
185	6.30
186	4.00

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 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. The Subdistricts will pay the Owner \$ 30 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch

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 Ditch 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 respective 2020, 2021 and 2022 Annual Replacement Plans.

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 Ditch: Star Ditch  
John Salazar  
P.O. Box 510  
Manassa, Co 81141

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 Ditch'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, Ditch'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 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 Ditch 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 Ditch 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 to the Ditch 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 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 Ditch on or before December 31, of each ARP year for the term of the Agreement.

**John T. Salazar**

By: John T. Salazar

2-11-23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/13/23  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/13/23  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Star Ditch or John Solayar

Address to mail payment to: P.O. Box 510  
Manassa, Co 81141

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 Teodoro No. 1 (“Ditch”) 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:

- RR   D.S.   Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
- RR   D.S.   Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

**RECITALS**

A. The Owner owns and operates the Teodoro No. 1 Ditch and the water rights decreed thereto. The Teodoro No. 1 Ditch diverts water from the Rio San Antonio in the NE1/4SW1/4 of Section 25, Township 33 North, Range 9 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 4.0 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 San Antonio 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 Ditch, 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 Ditch’s water right is 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 all ARP 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 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, 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 30<sup>th</sup> 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 1<sup>st</sup> 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 Ditch.**

2.1. During the term of this Agreement, the Ditch will forebear from requiring the Subdistricts to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio San Antonio 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 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 Conejos 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 Ditch 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' 2020, 2021 and 2022 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:

**Teodoro Ditch No. 1**

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% of Priority Being Forborne</u>
148	4.0	100%

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 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.

2.5 This Agreement will only apply to that portion of the priority listed in paragraph 2.4 above which is owned by the Owners. The Owners agree they will not divert any water released by the Subdistrict as a remedy of the injury to the remaining owners of the priorities listed in paragraph 2.4 above at any time this Agreement is in effect. The Owners acknowledge that neither the Division Engineer nor the Subdistricts have any responsibility for distribution of water within the Ditch. If ownership of the amount of water forborne cannot be established, or is challenged by another owner of the ditch, the Division Engineer may require that the Subdistrict not operate under this Agreement until the ownership issue is resolved. If operation of this Agreement results in injury to the remaining owners of the Ditch, the Division Engineer may require that the Subdistrict not operate this Agreement and remedy all injurious depletions by providing water at the top of the affected Stream Reach.

3. Payment. The Subdistricts will pay the Owner \$ 30 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 Ditch 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 Ditch 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 Ditch with an accounting of the unreplaced injurious depletions to the water rights of the Ditch and the amount of the payment due, but not later than April 15<sup>th</sup>.

4. No Subordination or Waiver of Right to Call. The forbearance by the Ditch 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 Ditch 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 Ditch 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 respective 2020, 2021 and 2022 Annual Replacement Plans.

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 Ditch: Teodoro Ditch No. 1  
Donald Sandoval -  
Ronald Rael -



Address for each

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 Ditch'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, Ditch'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 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 Ditch 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 Ditch 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 to the Ditch 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 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 Ditch on or before December 31, of each ARP year for the term of the Agreement.



**Teodoro Ditch No.1 Ditch**

By: Donald Sandoval  
Elliott Salazar Donald Sandoval

April, 28 - 2023  
Date

By: Ronald Rael  
Ronald Rael

4/28/23  
Date

**APPROVED:**

**Special Improvement District No. 3  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/28/2023  
Date

**APPROVED:**

**Special Improvement District No. 6  
of the Rio Grande Water Conservation District,  
Water Activity Enterprise**

By: Angelo Bellah  
Angelo Bellah, Program Manager

4/28/2023  
Date

**To ensure payments are made correctly, please fill in the following:**

Checks should be made in the name of: Ronald Rael

Address to mail payment to: 4739 CR 18

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. Ronald Rael  
Elliott Salazar 50% 35283 - H.W.Y 17 - Antonito, Colo. 81120
2. Ronald Rael 50% Ronald Rael - 4739 CR 18, Antonito, CO 81120
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## **APPENDIX H**

### **Closed Basin Project Allocation Letters**



**Conejos Water Conservancy District**

**P. O. Box 550**

**Manassa, CO 81141**

[Cwcd1971@hotmail.com](mailto:Cwcd1971@hotmail.com)

**Conejoswcd.org**

Phone 719-843-5261

April 4, 2024

Cleave Simpson, General Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, Colorado 81101

Re: 2024-2025 Allocation of Conejos Share of Closed Basin Project Production

Dear Cleave:

I am writing on behalf of the Conejos Water Conservancy District to advise you how the District intends to allocate 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 Conejos is entitled to an average of 40% of the annual usable yield of the Closed Basin Project.

The Water Users intend to use 39% of the Project's usable yield in 2024 and will likely use 40% in 2025.

The Board of Directors of the CWCD has reviewed the needs of the Special Improvement Districts numbers 3 and 6 of the Rio Grande Water Conservation District ("Subdistricts") for water to replace stream depletions 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 CWCD Board voted to specifically allocate the Conejos's share of the usable yield of the Closed Basin Project to replace the stream depletions under the respective Subdistricts 2024 Annual Replacement Plans.

The CWCD anticipates that the vast majority of this project Water will be used to replace non-irrigation season depletions from November 1 through March 31. While this water will be delivered to the Rio Grande both before, during, and perhaps after the non-irrigation season, the CWCD understands that the Division Engineer has agreed that this water replacement can be delivered at such times and will be credited to nonirrigation season depletions. The CWCD believes Closed Basin 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 CWCD wishes to make clear to the Subdistricts that this allocation is made on a one-time basis and is not a precedent that binds the CWCD, and that the CWCD has 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 CWCD will make a similar allocation in the future.

If you have any questions about this matter, please give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "N. Coombs".

Nathan Coombs, Manager CWCD

# 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

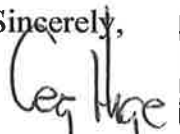
reaches or excessive losses in deliveries. In those circumstances, the Water Users believe Project Water is an appropriate replacement source but intend that the use of the allocation described herein be minimized during the irrigation season.

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](mailto: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.

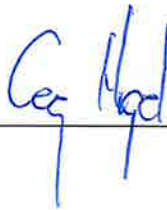
**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Centennial Ditch Company authorizes to allow Subdistrict Nos. 2, 3 and 6 of the Rio Grande Water Conservation District to convey water through the Centennial Ditch to replace injurious depletions under the Annual Replacement Plan and 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.

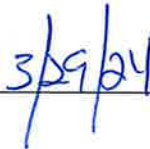
The forgoing resolution was passed by the Board of Directors of the Centennial Ditch Company this 29 day of March, 2024.

**ATTEST:**

Signed: \_\_\_\_\_



Date: \_\_\_\_\_



## **APPENDIX J**

**Five Year Average Groundwater Withdrawals in Confined  
Aquifer Response Areas in Division No. 3; July Requirement of  
Division Groundwater Rules Section 8.1.5, Dated July 1, 2023**



**MEMORANDUM**

**TO:** San Luis Valley Notification List

**FROM:** CDWR Modeling and Decision Support System Team  
 Office of the Colorado State Engineer

**DATE:** July 1, 2023

**SUBJECT:** Five Year Average Groundwater Withdrawals in Confined Aquifer Response Areas in Division 3:  
 July 2023 Requirement of Division 3 Groundwater Rules Section 8.1.5

Below is the table listing the metered total annual withdrawals beginning in 2012 and the 5 year (2018 – 2022) average of the metered total annual withdrawals for the previous five Water Administration Years for the Response Areas subject to Rule 8.1.5. The last column is the estimated average groundwater withdrawal for the period 1978 – 2000 period.

Response Area	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	5-Years Average GW Withdrawal 2018 - 2022	5-Years Average GW Withdrawal 1978 - 2000
	Alamosa / La Jara	113,577	111,273	93,678	86,658	83,311	75,590	116,066	70,234	106,432	101,295	95,757	97,957
Conejos	40,794	42,838	33,324	25,846	25,309	21,353	35,842	16,323	34,745	26,034	25,502	27,689	23,018
Saguache	44,672	39,614	40,140	36,595	38,586	38,071	45,294	32,766	42,384	25,472	24,985	34,180	45,592
San Luis	13,496	11,833	13,520	9,576	11,654	12,474	12,707	10,204	10,598	11,015	8,556	10,616	9,869

*Note: Total Response Area withdrawals data through 2021 are adjusted/updated due to HBDMC data updates*



## **APPENDIX K**

### **Water Levels of Wells Used to Generate Conejos Response Area Composite Water Head**





## MEMORANDUM

**TO:** San Luis Valley Notification List

**FROM:** CDWR Modeling and Decision Support System Team  
Office of the Colorado State Engineer

**DATE:** July 1, 2023

**SUBJECT:** Composite Water Head for Confined Aquifer Response Areas in Division 3:  
July 2023 Requirement of Division 3 Groundwater Rules Section 8.1.4

This memorandum is submitted to comply with Section 8.1.4 of the Division 3 Groundwater Rules which states that:

*No later than July 1 of each year after 2015, the State Engineer must update the Composite Water Head for each of the Response Areas subject to this Rule 8.1 for the areas depicted in Exhibit C to reflect the most recent annual water level measurements collected during February and March (outside of the Irrigation Season) and display the update in graph form.*

Water levels were collected by the Rio Grande Water Conservation District, the US Geological Survey, and the Colorado Division of Water Resources (CDWR) during the non-irrigation season from monitoring network wells identified by CDWR<sup>1</sup>. Monitoring network wells are listed in Table 1.

The water level data from the monitoring wells are briefly discussed in the following section. Monitoring well data and composite water head calculations are summarized in Table 2. As detailed in a memo describing the monitoring plan<sup>2</sup>, composite water head is calculated as a change in water level from the 2015 year baseline. The annual composite water head for each of the confined aquifer response areas through the current year 2023 is shown in Table 3 and Figure 1.

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<sup>1</sup> Kelley Thompson (CDWR Modeling/DSS), May 6, 2015, "Ground Water Sustainability Rules for Water Division 3: Identification of Proposed Monitoring Network Wells", Memorandum to Dick Wolfe (Colorado State Engineer/CDWR Director) and Mike Sullivan (CDWR Deputy State Engineer)

<sup>2</sup> Kelley Thompson and Mary Halstead (CDWR Modeling/DSS), May 6, 2015, "Ground Water Sustainability Rules for Water Division 3: Confined Aquifer Monitoring Plan", Memorandum to Dick Wolfe (Colorado State Engineer/CDWR Director) and Mike Sullivan (CDWR Deputy State Engineer)



## Discussion of Monitoring Well Data

### 2015

Most 2015 measurements were taken in February and March. Water levels from BACA wells DW-4 and DW-5 were measured by the USGS in May and December, respectively, and two other wells were measured by the USGS in January. Transducer issues limited measurement from Well RGDSS P03 until April, and a graph of the well data suggests the April data is not representative of maximum water levels in the non-irrigation season. The well is located very close to well CON2, and the minimum depth to water in CON2 was nearly identical between 2014 and 2015. Therefore, the baseline water level in RGDSS P03 for use in the composite water head was assumed equal to the maximum non-irrigation season water level in 2014.

### 2016

All 2016 measurements were taken in February and March with the exception of three wells which were measured in late January. In the San Luis Creek Response Area, BACA wells DW-4 and DW-5 have erratic water level monitoring data from years prior to 2011, but measurements taken since that time had appeared to stabilize. In review of data for DW-4 the USGS determined that February and April 2016 reported data were bad due to a faulty transducer. The December 2015 data and the June 2016 data were determined to be good and were similar and consistent with previous good data. Since the December 2015 value was free from immediate pumping influence, that value from well DW-4 was considered in the composite water head for 2016.

### 2017

All 2017 measurements were taken in February and March with the exception of two wells which were measured in late January. In the San Luis Creek Response Area, BACA wells DW-4 and DW-5 had significantly erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in both 2016 and 2017. In 2017, measured water levels in wells DW-4 and DW-5 dropped 48 feet and 69 feet, respectively, from baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.

### 2018

All 2018 measurements were taken in February and March with the exception of one well SAG18 (37591810606360) in Saguache Response Area. The last measured data was in mid-November, 2017 and used in the calculation. In Alamosa La Jara Response Area, no measurement taken in 2018 for a Fire Well 6192R (373405106112501) and not included in the composite head calculations. In the San Luis Creek Response Area, BACA wells DW-4 and DW-5 had significantly erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in 2016, 2017 and 2018. In 2018, measured water levels in wells DW-4 and DW-5 dropped 33 feet and 68 feet, respectively, from baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.



## 2019

All 2019 measurements were taken in February and March. In Alamosa La Jara Response Area, no measurement taken in 2019 for a Fire Well 6192R (373405106112501) and not included in the composite head calculations. In the San Luis Creek Response Area, BACA wells (DW-4 and DW-5) had significantly erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in 2016, 2017, 2018 and 2019. In 2019, measured water levels in wells DW-4 and DW-5 dropped 47 feet and 70 feet, respectively, from baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.

## 2020

All 2020 measurements were taken in February and March, except a well named SAG 18 (375918106063601) in Saguache Response Area taken in December. In the San Luis Creek Response Area, BACA wells (DW-4 and DW-5) had significantly erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in 2016, 2017, 2018, 2019, and 2020. In 2020, measured water levels in wells DW-4 and DW-5 dropped 46 feet and 69 feet, respectively, from 2015 baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable. Also, no measurement was taken for a well (11010F) in San Luis Response Area for the current year (2019/2020)

## 2021

All 2021 measurements were taken between January and March. In the San Luis Creek Response Area, BACA wells (DW-4 and DW-5) had erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in 2016, 2017, 2018, 2019, 2020 and 2021. In 2021, measured water levels in wells DW-4 and DW-5 dropped 44 feet and 65 feet, respectively, from 2015 baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.

## 2022

All 2022 measurements were taken between January and March, except DW-1, P12, SAG-9 in December and SAG-13 in November. In the San Luis Creek Response Area, BACA wells (DW-4 and DW-5) had erratic water level monitoring data prior to 2011 but measurements appeared to stabilize for some time after 2011. Wells DW-4 and DW-5 continued to have erratic water level data in 2016, 2017, 2018, 2019, 2020, 2021 and 2022. In 2021, measured water levels in wells DW-4 and DW-5 dropped 41 feet and 66 feet, respectively, from 2015 baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.



## 2023

All 2023 measurements were taken between January and March, except DW-1 in December. In Alamosa La Jara Response Area, a USGS well (6192R), in Saguache Response Area, wells SAG 13 and SAG 18, and in San Luis Response Area, well RG03 measurements were not taken in 2023. In the San Luis Creek Response Area, BACA wells (DW-4 and DW-5) had erratic water level monitoring data prior to 2015 but measurements appeared to stabilize for some time after 2015. Wells DW-4 and DW-5 continued to have erratic water level data from 2016 to 2023 comparing to 2015 data. In 2023, measured water levels in wells DW-4 and DW-5 dropped 41 feet and 63 feet, respectively, from 2015 baseline levels and other surrounding deep wells did not exhibit a similar pattern. Therefore, data from BACA wells DW-4 and DW-5 will not be included in the composite head measurement until such time that the measurements from these wells can be considered reliable.



**Table 1. Monitoring Network Wells**

RA	Name	Model UID	USGS Alias	WDID	Permit	Measured	UTMX	UTMY
Alamosa La Jara	ALA 4	372550105455001	NA03701122CCC1 ALA 4	2006000	6420R	RGWCD	432310	4142957
	ALA 6	372403106000901	NA03700933CCC1 ALA 6	2011058	809R	RGWCD	411281	4139810
	ALA 7	372403106000902	NA03700933CCC2 ALA 7	2011057	810R	RGWCD	411280	4139804
	ALA 8	372506106004201	NA03700929DCB ALA 8			RGWCD	410473	4141775
	ALA 10	373457106003801	NA03900932BCC ALA 10	2010420	6265F	RGWCD	409873	4159849
	ALA 12	372950105580801	NA03800934ADB ALA 12			RGWCD	414304	4150475
	CON 1	371705106021501	NA03500907CCC CON 1	2105055	10543R	RGWCD	407980	4126964
	CON 2	371745105501001	NA03501012BBC CON 2	2205111	20111R	RGWCD	425788	4127870
	RIO 2	373227106030301	NA03800813BDB RIO 2	2014378	15095F	RGWCD	407166	4155390
	6192R	373405106112501	NA03800703ABB	2008878	6192R	USGS	394594	4159277
	P03	RGDSSP03	RGDSSP03		223816	RGWCD	424125	4126845
	P08	RGDSSP08	RGDSSP08		228923	RGWCD	411365	4139762
	P09	RGDSSP09	RGDSSP09		231269	RGWCD	398634	4147181
	P10	RGDSSP10	RGDSSP10		229397	RGWCD	398416	4159268
	4865F	<i>372046106021901</i>		2010441	4865F	CDWR	408015	4133773
Conejos	CON 2	371745105501001	NA03501012BBC CON 2	2205111	20111R	RGWCD	425788	4127870
	P03	RGDSSP03	RGDSSP03		223816	RGWCD	424125	4126845
	P07	RGDSSP07	RGDSSP07		228924	RGWCD	415943	4118608
	P12	RGDSSP12	RGDSSP12		229399	RGWCD	412608	4101681
	20WCB	<i>371118105543501</i>		2205126	20WCB	CDWR	419255	4116148
	6747F	370324105561201	NA03300936DBB	2205062	6747F	CDWR	416666	4101583
	24316F	<i>370446105582701</i>		2205978	24316F	CDWR	413400	4104118
	22258F	<i>371108106005101</i>		2205018	22258F	CDWR	409973	4115953
	3416F	371030105585001	NA03400922BCC	2205074	3416F	CDWR	412817	4114667
296046	<i>370843106021001</i>			296046	CDWR	408005	4111476	
Saguache	SAG 2	375310106021501	NA04200907CCC SAG 2	2706027	11218F	RGWCD	408831	4193716
	SAG 3	380045106044501	NA04300803ABB SAG 3	2605001	12859R	RGWCD	405341	4207897
	SAG 9	375255106084401	NA04200818CCB SAG 9			RGWCD	399209	4193336
	SAG 10	375310106050001	NA04200815ACC SAG 10	2705295	4589F	RGWCD	404915	4193766
	SAG 12	380047106024801	NA04300801BBA SAG 12			RGWCD	408070	4207781
	SAG 13	375820106052001	NA04300815CBB SAG 13	2605614	9541F	RGWCD	404390	4203427
	SAG 18	375918106063601	NA04300808ADC SAG 18			RGWCD	402528	4205102
	P01	RGDSSP01	RGDSSP01		223817	RGWCD	407731	4207973
	RG05	380537106004801	NA04400906DAA RG05	2605422	11030F	CDWR	411096	4216705
	19513Z	SAG18		2605042	19513Z	CDWR	400613	4211376
San Luis Creek	RG02	380941105545501	RG02			RGWCD	419670	4223904
	RG03	380601105505201	RG03			RGWCD	425620	4217242
	11010F	380855105553501	NA04500913DCA	2505083	11010F	USGS	419056	4222618
	1725R	380640105510001	NA04501034DAA	2505400	1725R	USGS	425706	4218035
	P14	RGDSSP14	RGDSSP14		231876	RGWCD	421705	4206978
	DW-1	375842105473701	BACA DW-1			USGS	430319	4203720
	DW-3	375828105432501	BACA DW-3		195248	USGS	436459	4203233
	DW-4	375428105472501	BACA DW-4			USGS	430536	4195889
	DW-5	375507105505901	BACA DW-5			USGS	425306	4197138
2760FR	<i>380652105552101</i>		2505260	2760FR	CDWR	419163	4218954	



Table 2a. 2015 Monitoring Well Data Summary and Composite Water Head Calculations

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2015 DTW (ft) (c)	2015 DTW Date (d)	2015 ΔDTW (ft) (e)	2015 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-35.39	3/9/2015	0.00	0.00
	ALA 6	372403106000901	2.410%	-10.75	-10.75	3/19/2015	0.00	0.00
	ALA 7	372403106000902	2.410%	-10.13	-10.13	3/18/2015	0.00	0.00
	ALA 8	372506106004201	5.461%	-15.02	-15.02	3/19/2015	0.00	0.00
	ALA 10	373457106003801	2.817%	-17.81	-17.81	3/17/2015	0.00	0.00
	ALA 12	372950105580801	14.208%	-4.18	-4.18	3/26/2015	0.00	0.00
	CON 1	371705106021501	9.582%	53.73	53.73	3/18/2015	0.00	0.00
	CON 2	371745105501001	5.730%	-15.64	-15.64	3/24/2015	0.00	0.00
	RIO 2	373227106030301	5.567%	-0.97	-0.97	3/24/2015	0.00	0.00
	6192R	373405106112501	3.516%	52.48	52.48	1/22/2015	0.00	0.00
	P03	RGDSSP03	2.909%	-2.74	-2.74	4/28/2015	0.00	0.00
	P08	RGDSSP08	2.410%	-13.37	-13.37	3/31/2015	0.00	0.00
	P09	RGDSSP09	10.619%	37.54	37.54	2/10/2015	0.00	0.00
	P10	RGDSSP10	4.690%	19.39	19.39	2/10/2015	0.00	0.00
	4865F	372046106021901	10.783%	32.48	32.48	2/27/2015	0.00	0.00
Conejos	CON 2	371745105501001	8.700%	-15.64	-15.64	3/24/2015	0.00	0.00
	P03	RGDSSP03	8.233%	-7.77	-7.77	2/13/2014	0.00	0.00
	P07	RGDSSP07	10.749%	0.53	0.53	3/3/2015	0.00	0.00
	P12	RGDSSP12	16.939%	166.04	166.04	3/3/2015	0.00	0.00
	20WCB	371118105543501	10.968%	4.00	4.00	2/27/2015	0.00	0.00
	6747F	370324105561201	10.371%	100.42	100.42	2/27/2015	0.00	0.00
	24316F	370446105582701	9.104%	144.61	144.61	2/27/2015	0.00	0.00
	22258F	371108106005101	6.886%	61.37	61.37	2/27/2015	0.00	0.00
	3416F	371030105585001	6.804%	63.41	63.41	2/27/2015	0.00	0.00
	296046	370843106021001	11.246%	160.91	160.91	3/29/2015	0.00	0.00
Saguache	SAG 2	375310106021501	17.494%	-39.14	-39.14	3/26/2015	0.00	0.00
	SAG 3	380045106044501	3.607%	5.95	5.95	3/30/2015	0.00	0.00
	SAG 9	375255106084401	11.398%	-4.25	-4.25	3/30/2015	0.00	0.00
	SAG 10	375310106050001	8.230%	-28.93	-28.93	3/25/2015	0.00	0.00
	SAG 12	380047106024801	14.626%	-7.04	-7.04	3/30/2015	0.00	0.00
	SAG 13	375820106052001	8.507%	-11.98	-11.98	3/25/2015	0.00	0.00
	SAG 18	375918106063601	9.324%	3.34	3.34	3/30/2015	0.00	0.00
	P01	RGDSSP01	2.518%	-1.31	-1.31	3/28/2015	0.00	0.00
	RG05	380537106004801	14.135%	46.37	46.37	3/3/2015	0.00	0.00
	19513Z	SAG18	10.160%	58.08	58.08	3/3/2015	0.00	0.00
San Luis Creek	RG02	380941105545501	13.117%	65.28	65.28	3/4/2015	0.00	0.00
	RG03	380601105505201	9.758%	29.10	29.10	3/4/2015	0.00	0.00
	11010F	380855105553501	3.261%	65.20	65.20	1/20/2015	0.00	0.00
	1725R	380640105510001	7.611%	55.59	55.59	2/17/2015	0.00	0.00
	P14	RGDSSP14	14.205%	-32.87	-32.87	3/31/2015	0.00	0.00
	DW-1	375842105473701	11.410%	-38.10	-38.10	2/10/2015	0.00	0.00
	DW-3	375828105432501	17.029%	24.41	24.41	2/10/2015	0.00	0.00
	DW-4	375428105472501	9.348%	-84.96	-84.96	5/27/2015	0.00	0.00
	DW-5	375507105505901	5.497%	-142.08	-142.08	12/16/2014	0.00	0.00
	2760FR	380652105552101	8.765%	28.21	28.21	3/3/2015	0.00	0.00





**Table 2b. 2016 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2016 DTW (ft) (c)	2016 Date (d)	2016 ΔDTW (ft) (e)	2016 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-39.09	3/14/2016	3.70	0.62
	ALA 6	372403106000901	2.410%	-10.75	-11.64	3/16/2016	0.89	0.02
	ALA 7	372403106000902	2.410%	-10.13	-11.35	3/16/2016	1.22	0.03
	ALA 8	372506106004201	5.461%	-15.02	-15.97	3/16/2016	0.95	0.05
	ALA 10	373457106003801	2.817%	-17.81	-19.38	2/18/2016	1.57	0.04
	ALA 12	372950105580801	14.208%	-4.18	-4.61	3/24/2016	0.43	0.06
	CON 1	371705106021501	9.582%	53.73	53.05	3/31/2016	0.68	0.07
	CON 2	371745105501001	5.730%	-15.64	-16.13	3/23/2016	0.49	0.03
	RIO 2	373227106030301	5.567%	-0.97	-3.21	3/24/2016	2.24	0.12
	6192R	373405106112501	3.516%	52.48	53.90	1/27/2016	-1.42	-0.05
	P03	RGDSSP03	2.909%	-7.77	-8.39	3/30/2016	0.62	0.02
	P08	RGDSSP08	2.410%	-13.37	-14.33	3/29/2016	0.96	0.02
	P09	RGDSSP09	10.619%	37.54	35.72	2/24/2016	1.82	0.19
	P10	RGDSSP10	4.690%	19.39	17.86	2/24/2016	1.53	0.07
	4865F	372046106021901	10.783%	32.47	30.83	3/8/2016	1.64	0.18
Conejos	CON 2	371745105501001	8.700%	-15.64	-16.13	3/23/2016	0.49	0.04
	P03	RGDSSP03	8.233%	-7.77	-8.39	3/30/2016	0.62	0.05
	P07	RGDSSP07	10.749%	0.53	0.39	2/22/2016	0.14	0.02
	P12	RGDSSP12	16.939%	166.04	166.48	3/8/2016	-0.44	-0.07
	20WCB	371118105543501	10.968%	4.00	3.48	3/7/2016	0.52	0.06
	6747F	370324105561201	10.371%	100.42	101.14	3/10/2016	-0.72	-0.07
	24316F	370446105582701	9.104%	144.61	145.34	3/10/2016	-0.73	-0.07
	22258F	371108106005101	6.886%	61.37	63.44	3/7/2016	-2.07	-0.14
	3416F	371030105585001	6.804%	63.26	62.23	3/7/2016	1.04	0.07
	296046	370843106021001	11.246%	160.91	160.81	3/8/2016	0.10	0.01
Saguache	SAG 2	375310106021501	17.494%	-39.14	-41.52	3/29/2016	2.38	0.42
	SAG 3	380045106044501	3.607%	5.95	4.23	3/31/2016	1.72	0.06
	SAG 9	375255106084401	11.398%	-4.25	-8.71	3/30/2016	4.46	0.51
	SAG 10	375310106050001	8.230%	-28.93	-31.62	3/30/2016	2.69	0.22
	SAG 12	380047106024801	14.626%	-7.04	-8.27	3/29/2016	1.23	0.18
	SAG 13	375820106052001	8.507%	-11.98	-13.43	3/29/2016	1.45	0.12
	SAG 18	375918106063601	9.324%	3.34	1.55	3/31/2016	1.79	0.17
	P01	RGDSSP01	2.518%	-1.31	-2.38	3/29/2016	1.07	0.03
	RG05	380537106004801	14.135%	46.37	44.07	3/8/2016	2.30	0.33
	19513Z	SAG18	10.160%	58.08	54.17	3/8/2016	3.91	0.40
San Luis Creek	RG02	380941105545501	13.117%	65.28	62.18	3/8/2016	3.10	0.41
	RG03	380601105505201	9.758%	29.10	26.74	3/8/2016	2.36	0.23
	11010F	380855105553501	3.261%	65.20	53.22	1/26/2016	11.98	0.39
	1725R	380640105510001	7.611%	55.59	51.64	1/26/2016	3.95	0.30
	P14	RGDSSP14	14.205%	-32.87	-35.43	3/29/2016	2.56	0.36
	DW-1	375842105473701	11.410%	-38.10	-40.81	2/10/2016	2.71	0.31
	DW-3	375828105432501	17.029%	24.41	23.86	2/10/2016	0.55	0.09
	DW-4	375428105472501	9.348%	-84.96				0.00
	DW-5	375507105505901	5.497%	-142.08				0.00
2760FR	380652105552101	8.765%	28.21	26.19	3/8/2016	2.02	0.18	





**Table 2c. 2017 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2017 DTW (ft) (c)	2017 Date (d)	2017 ΔDTW (ft) (e)	2017 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-38.29	3/5/2017	2.90	0.49
	ALA 6	372403106000901	2.410%	-10.75	-11.33	3/9/2017	0.58	0.01
	ALA 7	372403106000902	2.410%	-10.13	-10.80	3/9/2017	0.67	0.02
	ALA 8	372506106004201	5.461%	-15.02	-15.72	3/10/2017	0.70	0.04
	ALA 10	373457106003801	2.817%	-17.81	-18.52	3/13/2017	0.71	0.02
	ALA 12	372950105580801	14.208%	-4.18	-9.98	2/22/2017	5.80	0.82
	CON 1	371705106021501	9.582%	53.73	52.21	3/9/2017	1.52	0.15
	CON 2	371745105501001	5.730%	-15.64	-16.03	3/9/2017	0.39	0.02
	RIO 2	373227106030301	5.567%	-0.97	-3.52	2/14/2017	2.55	0.14
	6192R	373405106112501	3.516%	52.48	51.87	2/1/2017	0.61	0.02
	P03	RGDSSP03	2.909%	-7.77	-10.07	3/31/2017	2.30	0.07
	P08	RGDSSP08	2.410%	-13.37	-14.83	3/31/2017	1.46	0.04
	P09	RGDSSP09	10.619%	37.54	36.41	2/13/2017	1.13	0.12
	P10	RGDSSP10	4.690%	19.39	16.76	2/1/2017	2.63	0.12
	4865F	372046106021901	10.783%	32.47	30.35	3/20/2017	2.12	0.23
Conejos	CON 2	371745105501001	8.700%	-15.64	-16.03	3/9/2017	0.39	0.03
	P03	RGDSSP03	8.233%	-7.77	-10.07	3/31/2017	2.30	0.19
	P07	RGDSSP07	10.749%	0.53	-0.08	3/31/2017	0.61	0.07
	P12	RGDSSP12	16.939%	166.04	166.53	2/27/2017	-0.49	-0.08
	20WCB	371118105543501	10.968%	4.00	3.41	3/20/2017	0.59	0.06
	6747F	370324105561201	10.371%	100.42	101.23	3/13/2017	-0.81	-0.08
	24316F	370446105582701	9.104%	144.61	145.38	3/13/2017	-0.77	-0.07
	22258F	371108106005101	6.886%	61.37	60.35	3/20/2017	1.02	0.07
	3416F	371030105585001	6.804%	63.26	62.34	3/13/2017	0.93	0.06
	296046	370843106021001	11.246%	160.91	160.90	3/20/2017	0.01	0.00
Saguache	SAG 2	375310106021501	17.494%	-39.14	-42.44	3/14/2017	3.30	0.58
	SAG 3	380045106044501	3.607%	5.95	3.21	3/15/2017	2.74	0.10
	SAG 9	375255106084401	11.398%	-4.25	-7.28	3/15/2017	3.03	0.35
	SAG 10	375310106050001	8.230%	-28.93	-32.79	3/14/2017	3.86	0.32
	SAG 12	380047106024801	14.626%	-7.04	-8.68	3/15/2017	1.64	0.24
	SAG 13	375820106052001	8.507%	-11.98	-14.39	2/22/2017	2.41	0.21
	SAG 18	375918106063601	9.324%	3.34	3.35	5/26/2017	-0.01	0.00
	P01	RGDSSP01	2.518%	-1.31	-3.65	3/31/2017	2.34	0.06
	RG05	380537106004801	14.135%	46.37	43.04	3/14/2017	3.33	0.47
	19513Z	SAG18	10.160%	58.08	52.17	3/14/2017	5.91	0.60
San Luis Creek	RG02	380941105545501	13.117%	65.28	60.49	3/6/2017	4.79	0.63
	RG03	380601105505201	9.758%	29.10	25.63	3/6/2017	3.47	0.34
	11010F	380855105553501	3.261%	65.20	53.20	1/30/2017	12.00	0.39
	1725R	380640105510001	7.611%	55.59	49.98	1/30/2017	5.61	0.43
	P14	RGDSSP14	14.205%	-32.87	-35.92	3/31/2017	3.05	0.43
	DW-1	375842105473701	11.410%	-38.10	-41.38	2/28/2017	3.28	0.37
	DW-3	375828105432501	17.029%	24.41	23.15	2/28/2017	1.26	0.21
	DW-4	375428105472501	9.348%	-84.96				0.00
	DW-5	375507105505901	5.497%	-142.08				0.00
	2760FR	380652105552101	8.765%	28.21	25.33	3/14/2017	2.88	0.25



**Table 2d. 2018 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2018 DTW (ft) (c)	2018 Date (d)	2018 ΔDTW (ft) (e)	2018 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-38.10	2/12/2018	2.71	0.46
	ALA 6	372403106000901	2.410%	-10.75	-11.96	3/8/2018	1.21	0.03
	ALA 7	372403106000902	2.410%	-10.13	-11.38	2/5/2018	1.25	0.03
	ALA 8	372506106004201	5.461%	-15.02	-15.89	3/20/2018	0.87	0.05
	ALA 10	373457106003801	2.817%	-17.81	-20.05	3/15/2018	2.24	0.06
	ALA 12	372950105580801	14.208%	-4.18	-7.67	2/7/2018	3.49	0.50
	CON 1	371705106021501	9.582%	53.73	49.21	3/4/2018	4.52	0.43
	CON 2	371745105501001	5.730%	-15.64	-15.16	3/8/2018	-0.48	-0.03
	RIO 2	373227106030301	5.567%	-0.97	-4.90	3/15/2018	3.93	0.22
	6192R	373405106112501	3.516%	52.48				0.00
	P03	RGDSSP03	2.909%	-7.77	-10.61	3/10/2018	2.84	0.08
	P08	RGDSSP08	2.410%	-13.37	-16.51	3/31/2018	3.14	0.08
	P09	RGDSSP09	10.619%	37.54	33.15	2/1/2018	4.39	0.47
	P10	RGDSSP10	4.690%	19.39	14.20	2/2/2018	5.19	0.24
	4865F	372046106021901	10.783%	32.47	27.62	3/12/2018	4.85	0.52
Conejos	CON 2	371745105501001	8.700%	-15.64	-15.16	3/8/2018	-0.48	-0.04
	P03	RGDSSP03	8.233%	-7.77	-10.61	3/10/2018	2.84	0.23
	P07	RGDSSP07	10.749%	0.53	-1.87	2/19/2018	2.40	0.26
	P12	RGDSSP12	16.939%	166.04	165.44	2/6/2018	0.60	0.10
	20WCB	371118105543501	10.968%	4.00	1.83	3/12/2018	2.17	0.24
	6747F	370324105561201	10.371%	100.42	99.40	3/12/2018	1.02	0.11
	24316F	370446105582701	9.104%	144.61	142.96	3/12/2018	1.65	0.15
	22258F	371108106005101	6.886%	61.37	56.55	3/12/2018	4.82	0.33
	3416F	371030105585001	6.804%	63.26	63.04	3/12/2018	0.22	0.02
	296046	370843106021001	11.246%	160.91	158.91	3/12/2018	2.00	0.22
Saguache	SAG 2	375310106021501	17.494%	-39.14	-41.88	2/20/2018	2.74	0.48
	SAG 3	380045106044501	3.607%	5.95	1.57	3/12/2018	4.38	0.16
	SAG 9	375255106084401	11.398%	-4.25	-7.98	3/12/2018	3.73	0.43
	SAG 10	375310106050001	8.230%	-28.93	-30.29	2/13/2018	1.36	0.11
	SAG 12	380047106024801	14.626%	-7.04	-9.65	3/12/2018	2.61	0.38
	SAG 13	375820106052001	8.507%	-11.98	-13.25	2/13/2018	1.27	0.11
	SAG 18	375918106063601	9.324%	3.34	0.84	11/18/2017	2.50	0.23
	P01	RGDSSP01	2.518%	-1.31	-5.22	3/26/2018	3.91	0.10
	RG05	380537106004801	14.135%	46.37	42.73	3/12/2018	3.64	0.51
	19513Z	SAG18	10.160%	58.08	52.57	3/12/2018	5.51	0.56
San Luis Creek	RG02	380941105545501	13.117%	65.28	59.69	3/6/2018	5.59	0.73
	RG03	380601105505201	9.758%	29.10	25.16	3/3/2018	3.94	0.38
	11010F	380855105553501	3.261%	65.20	51.90	2/2/2018	13.30	0.43
	1725R	380640105510001	7.611%	55.59	49.22	2/2/2018	6.37	0.48
	P14	RGDSSP14	14.205%	-32.87	-37.81	3/31/2018	4.94	0.70
	DW-1	375842105473701	11.410%	-38.10	-42.18	2/27/2018	4.08	0.47
	DW-3	375828105432501	17.029%	24.41	22.43	2/27/2018	1.98	0.34
	DW-4	375428105472501	9.348%	-84.96				0.00
	DW-5	375507105505901	5.497%	-142.08				0.00
	2760FR	380652105552101	8.765%	28.21	25.29	3/14/2017	2.92	0.26



**Table 2e. 2019 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2019 DTW (ft) (c)	2019 Date (d)	2019 ΔDTW (ft) (e)	2019 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-37.55	3/14/2019	2.16	0.36
	ALA 6	372403106000901	2.410%	-10.75	-9.43	2/13/2019	-1.32	-0.03
	ALA 7	372403106000902	2.410%	-10.13	-9.88	3/11/2019	-0.25	-0.01
	ALA 8	372506106004201	5.461%	-15.02	-15.40	2/14/2019	0.38	0.02
	ALA 10	373457106003801	2.817%	-17.81	-21.28	3/13/2019	3.47	0.10
	ALA 12	372950105580801	14.208%	-4.18	-7.22	2/15/2019	3.04	0.43
	CON 1	371705106021501	9.582%	53.73	54.15	3/5/2019	-0.42	-0.04
	CON 2	371745105501001	5.730%	-15.64	-14.63	3/11/2019	-1.01	-0.06
	RIO 2	373227106030301	5.567%	-0.97	-1.41	2/15/2019	0.44	0.02
	6192R	373405106112501	3.516%	52.48				
	P03	RGDSSP03	2.909%	-7.77	-8.60	3/29/2019	0.83	0.02
	P08	RGDSSP08	2.410%	-13.37	-13.12	3/31/2019	-0.25	-0.01
	P09	RGDSSP09	10.619%	37.54	39.41	2/1/2019	-1.87	-0.20
	P10	RGDSSP10	4.690%	19.39	19.36	3/7/2019	0.03	0.00
	4865F	372046106021901	10.783%	32.47	31.69	3/7/2019	0.78	0.08
Conejos	CON 2	371745105501001	8.700%	-15.64	-14.63	3/11/2019	-1.01	-0.09
	P03	RGDSSP03	8.233%	-7.77	-8.60	3/29/2019	0.83	0.07
	P07	RGDSSP07	10.749%	0.53	0.62	3/13/2019	-0.09	-0.01
	P12	RGDSSP12	16.939%	166.04	167.01	2/5/2019	-0.97	-0.16
	20WCB	371118105543501	10.968%	4.00	4.22	3/7/2019	-0.22	-0.02
	6747F	370324105561201	10.371%	100.42	101.28	3/7/2019	-0.86	-0.09
	24316F	370446105582701	9.104%	144.61	144.90	3/7/2019	-0.29	-0.03
	22258F	371108106005101	6.886%	61.37	61.32	3/7/2019	0.05	0.00
	3416F	371030105585001	6.804%	63.26	63.40	3/7/2019	-0.14	-0.01
	296046	370843106021001	11.246%	160.91	161.26	3/7/2019	-0.35	-0.04
Saguache	SAG 2	375310106021501	17.494%	-39.14	-39.22	3/12/2019	0.08	0.01
	SAG 3	380045106044501	3.607%	5.95	3.25	3/12/2019	2.70	0.10
	SAG 9	375255106084401	11.398%	-4.25	-6.50	3/13/2019	2.25	0.26
	SAG 10	375310106050001	8.230%	-28.93	-30.70	3/13/2019	1.77	0.15
	SAG 12	380047106024801	14.626%	-7.04	-7.53	3/13/2019	0.49	0.07
	SAG 13	375820106052001	8.507%	-11.98	-14.50	3/13/2019	2.52	0.21
	SAG 18	375918106063601	9.324%	3.34	1.74	3/13/2019	1.60	0.15
	P01	RGDSSP01	2.518%	-1.31	-4.70	3/31/2019	3.39	0.09
	RG05	380537106004801	14.135%	46.37	44.42	3/6/2019	1.95	0.28
	19513Z	SAG18	10.160%	58.08	57.12	3/6/2019	0.96	0.10
	San Luis Creek	RG02	380941105545501	13.117%	65.28	62.46	3/4/2019	2.82
RG03		380601105505201	9.758%	29.10	26.03	3/4/2019	3.07	0.30
11010F		380855105553501	3.261%	65.20	53.47	2/6/2019	11.73	0.38
1725R		380640105510001	7.611%	55.59	52.32	2/6/2019	3.27	0.25
P14		RGDSSP14	14.205%	-32.87	-37.15	3/13/2019	4.28	0.61
DW-1		375842105473701	11.410%	-38.10	-39.82	3/20/2019	1.72	0.20
DW-3		375828105432501	17.029%	24.41	25.01	3/20/2019	-0.60	-0.10
DW-4		375428105472501	9.348%	-84.96				
DW-5		375507105505901	5.497%	-142.08				
2760FR		380652105552101	8.765%	28.21	25.89	3/6/2019	2.32	0.20



**Table 2f. 2020 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2020 DTW (ft) (c)	2020 Date (d)	2020 ΔDTW (ft) (e)	2020 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-39.09	3/25/2020	3.70	0.62
	ALA 6	372403106000901	2.410%	-10.75	-11.43	3/27/2020	0.68	0.02
	ALA 7	372403106000902	2.410%	-10.13	-11.54	3/27/2020	1.41	0.03
	ALA 8	372506106004201	5.461%	-15.02	-17.58	3/27/2020	2.56	0.14
	ALA 10	373457106003801	2.817%	-17.81	-20.24	3/30/2020	2.43	0.07
	ALA 12	372950105580801	14.208%	-4.18	-10.65	3/30/2020	6.47	0.92
	CON 1	371705106021501	9.582%	53.73	50.11	3/16/2020	3.62	0.35
	CON 2	371745105501001	5.730%	-15.64	-16.54	3/27/2020	0.90	0.05
	RIO 2	373227106030301	5.567%	-0.97	-4.54	3/26/2020	3.57	0.20
	6192R	373405106112501	3.516%	52.48	49.40	2/3/2020	3.08	0.11
	P03	RGDSSP03	2.909%	-7.77	-10.66	3/27/2020	2.89	0.08
	P08	RGDSSP08	2.410%	-13.37	-15.83	3/28/2020	2.46	0.06
	P09	RGDSSP09	10.619%	37.54	39.81	3/16/2020	-2.27	-0.24
	P10	RGDSSP10	4.690%	19.39	16.54	3/4/2020	2.85	0.13
	4865F	372046106021901	10.783%	32.47	26.82	3/5/2020	5.65	0.61
Conejos	CON 2	371745105501001	8.700%	-15.64	-16.54	3/27/2020	0.90	0.08
	P03	RGDSSP03	8.233%	-7.77	-10.66	3/27/2020	2.89	0.24
	P07	RGDSSP07	10.749%	0.53	-0.92	3/27/2020	1.45	0.16
	P12	RGDSSP12	16.939%	166.04	165.97	3/5/2020	0.07	0.01
	20WCB	371118105543501	10.968%	4.00	2.68	3/5/2020	1.32	0.14
	6747F	370324105561201	10.371%	100.42	100.09	3/5/2020	0.33	0.03
	24316F	370446105582701	9.104%	144.61	143.47	3/5/2020	1.14	0.10
	22258F	371108106005101	6.886%	61.37	59.77	3/5/2020	1.60	0.11
	3416F	371030105585001	6.804%	63.26	61.66	3/5/2020	1.60	0.11
	296046	370843106021001	11.246%	160.91	159.98	3/5/2020	0.93	0.10
Saguache	SAG 2	375310106021501	17.494%	-39.14	-40.57	3/26/2020	1.43	0.25
	SAG 3	380045106044501	3.607%	5.95	1.56	3/21/2020	4.39	0.16
	SAG 9	375255106084401	11.398%	-4.25	-6.60	3/24/2020	2.35	0.27
	SAG 10	375310106050001	8.230%	-28.93	-29.95	3/24/2020	1.02	0.08
	SAG 12	380047106024801	14.626%	-7.04	-8.41	3/24/2020	1.37	0.20
	SAG 13	375820106052001	8.507%	-11.98	-12.52	3/24/2020	0.54	0.05
	SAG 18	375918106063601	9.324%	3.34	0.90	12/10/2019	2.44	0.23
	P01	RGDSSP01	2.518%	-1.31	-6.64	3/27/2020	5.33	0.13
	RG05	380537106004801	14.135%	46.37	42.58	3/6/2020	3.79	0.54
	19513Z	SAG18	10.160%	58.08	55.67	3/6/2020	2.41	0.24
San Luis Creek	RG02	380941105545501	13.117%	65.28	60.98	3/2/2020	4.30	0.56
	RG03	380601105505201	9.758%	29.10	26.19	3/2/2020	2.91	0.28
	11010F	380855105553501	3.261%	65.20				
	1725R	380640105510001	7.611%	55.59	52.29	2/4/2020	3.30	0.25
	P14	RGDSSP14	14.205%	-32.87	-38.16	3/19/2020	5.29	0.75
	DW-1	375842105473701	11.410%	-38.10	-39.46	3/31/2020	1.36	0.16
	DW-3	375828105432501	17.029%	24.41	25.33	3/23/2020	-0.92	-0.16
	DW-4	375428105472501	9.348%	-84.96				
	DW-5	375507105505901	5.497%	-142.08				
	2760FR	380652105552101	8.765%	28.21	24.62	3/6/2020	3.59	0.31



**Table 2g. 2021 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2021 DTW (ft) (c)	2021 Date (d)	2021 ΔDTW (ft) (e)	2021 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-36.45	2/22/2021	1.06	0.18
	ALA 6	372403106000901	2.410%	-10.75	-9.42	3/19/2021	-1.33	-0.03
	ALA 7	372403106000902	2.410%	-10.13	-9.21	3/19/2021	-0.92	-0.02
	ALA 8	372506106004201	5.461%	-15.02	-14.18	3/19/2021	-0.84	-0.05
	ALA 10	373457106003801	2.817%	-17.81	-17.15	3/23/2021	-0.66	-0.02
	ALA 12	372950105580801	14.208%	-4.18	-2.16	2/18/2021	-2.02	-0.29
	CON 1	371705106021501	9.582%	53.73	53.53	3/19/2021	0.20	0.02
	CON 2	371745105501001	5.730%	-15.64	-15.03	3/19/2021	-0.61	-0.03
	RIO 2	373227106030301	5.567%	-0.97	-2.41	3/17/2021	1.44	0.08
	6192R	373405106112501	3.516%	52.48	51.00	1/27/2021	1.48	0.05
	P03	RGDSSP03	2.909%	-7.77	-9.14	3/30/2021	1.37	0.04
	P08	RGDSSP08	2.410%	-13.37	-12.98	3/30/2021	-0.39	-0.01
	P09	RGDSSP09	10.619%	37.54	39.04	2/9/2021	-1.50	-0.16
	P10	RGDSSP10	4.690%	19.39	18.79	2/9/2021	0.60	0.03
	4865F	372046106021901	10.783%	32.47	30.06	3/11/2021	2.41	0.26
Conejos	CON 2	371745105501001	8.700%	-15.64	-15.03	3/19/2021	-0.61	-0.05
	P03	RGDSSP03	8.233%	-7.77	-9.14	3/30/2021	1.37	0.11
	P07	RGDSSP07	10.749%	0.53	1.08	3/23/2021	-0.55	-0.06
	P12	RGDSSP12	16.939%	166.04	167.49	3/10/2021	-1.45	-0.25
	20WCB	371118105543501	10.968%	4.00	4.34	3/11/2021	-0.34	-0.04
	6747F	370324105561201	10.371%	100.42	101.89	3/11/2021	-1.47	-0.15
	24316F	370446105582701	9.104%	144.61	145.36	3/11/2021	-0.75	-0.07
	22258F	371108106005101	6.886%	61.37	63.60	3/11/2021	-2.23	-0.15
	3416F	371030105585001	6.804%	63.26	63.96	3/11/2021	-0.70	-0.05
	296046	370843106021001	11.246%	160.91	161.93	3/11/2021	-1.02	-0.11
Saguache	SAG 2	375310106021501	17.494%	-39.14	-39.84	3/22/2021	0.70	0.12
	SAG 3	380045106044501	3.607%	5.95	3.43	3/26/2021	2.52	0.09
	SAG 9	375255106084401	11.398%	-4.25	-6.63	3/25/2021	2.38	0.27
	SAG 10	375310106050001	8.230%	-28.93	-31.39	3/25/2021	2.46	0.20
	SAG 12	380047106024801	14.626%	-7.04	-8.40	3/26/2021	1.36	0.20
	SAG 13	375820106052001	8.507%	-11.98	-12.10	3/26/2021	0.12	0.01
	SAG 18	375918106063601	9.324%	3.34	1.66	3/25/2021	1.68	0.16
	P01	RGDSSP01	2.518%	-1.31	-5.74	3/30/2021	4.43	0.11
	RG05	380537106004801	14.135%	46.37	44.33	3/10/2021	2.04	0.29
	19513Z	SAG18	10.160%	58.08	57.84	3/10/2021	0.24	0.02
San Luis Creek	RG02	380941105545501	13.117%	65.28	62.15	3/8/2021	3.13	0.41
	RG03	380601105505201	9.758%	29.10	27.65	3/8/2021	1.45	0.14
	11010F	380855105553501	3.261%	65.20	53.14	1/26/2021	12.06	0.39
	1725R	380640105510001	7.611%	55.59	54.20	1/26/2021	1.39	0.11
	P14	RGDSSP14	14.205%	-32.87	-37.13	3/29/2021	4.26	0.61
	DW-1	375842105473701	11.410%	-38.10	-40.76	3/29/2021	2.66	0.30
	DW-3	375828105432501	17.029%	24.41	25.83	3/29/2021	-1.42	-0.24
	DW-4	375428105472501	9.348%	-84.96				
	DW-5	375507105505901	5.497%	-142.08				
	2760FR	380652105552101	8.765%	28.21	25.18	3/10/2021	3.03	0.27





**Table 2h. 2022 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2022 DTW (ft) (c)	2022 Date (d)	2022 ΔDTW (ft) (e)	2022 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-35.18	2/16/2022	-0.21	-0.04
	ALA 6	372403106000901	2.410%	-10.75	-8.04	2/16/2022	-2.71	-0.07
	ALA 7	372403106000902	2.410%	-10.13	-8.84	3/23/2022	-1.29	-0.03
	ALA 8	372506106004201	5.461%	-15.02	-12.77	3/23/2022	-2.25	-0.12
	ALA 10	373457106003801	2.817%	-17.81	-19.41	3/16/2022	1.60	0.05
	ALA 12	372950105580801	14.208%	-4.18	-2.23	1/17/2022	-1.95	-0.28
	CON 1	371705106021501	9.582%	53.73	59.01	3/30/2022	-5.28	-0.51
	CON 2	371745105501001	5.730%	-15.64	-14.70	3/16/2022	-0.94	-0.05
	RIO 2	373227106030301	5.567%	-0.97	-0.26	3/23/2022	-0.71	-0.04
	6192R	373405106112501	3.516%	52.48	54.81	1/25/2022	-2.33	-0.08
	P03	RGDSSP03	2.909%	-7.77	-8.62	3/31/2021	0.85	0.02
	P08	RGDSSP08	2.410%	-13.37	-11.70	3/30/2022	-1.67	-0.04
	P09	RGDSSP09	10.619%	37.54	45.96	3/7/2022	-8.42	-0.89
	P10	RGDSSP10	4.690%	19.39	21.09	3/3/2022	-1.70	-0.08
4865F	372046106021901	10.783%	32.47	31.10	3/15/2022	1.37	0.15	
Conejos	CON 2	371745105501001	8.700%	-15.64	-14.70	3/16/2022	-0.94	-0.08
	P03	RGDSSP03	8.233%	-7.77	-8.62	3/31/2021	0.85	0.07
	P07	RGDSSP07	10.749%	0.53	1.70	3/29/2022	-1.17	-0.13
	P12	RGDSSP12	16.939%	166.04	168.05	12/6/2021	-2.01	-0.34
	20WCB	371118105543501	10.968%	4.00	4.92	3/15/2022	-0.92	-0.10
	6747F	370324105561201	10.371%	100.42	102.47	3/14/2022	-2.05	-0.21
	24316F	370446105582701	9.104%	144.61	145.86	3/14/2022	-1.25	-0.11
	22258F	371108106005101	6.886%	61.37	63.70	3/14/2022	-2.33	-0.16
	3416F	371030105585001	6.804%	63.26	64.75	3/14/2022	-1.49	-0.10
	296046	370843106021001	11.246%	160.91	162.73	3/15/2022	-1.82	-0.20
Saguache	SAG 2	375310106021501	17.494%	-39.14	-42.35	3/29/2022	3.21	0.56
	SAG 3	380045106044501	3.607%	5.95	1.82	2/24/2022	4.13	0.15
	SAG 9	375255106084401	11.398%	-4.25	-5.88	12/21/2021	1.63	0.19
	SAG 10	375310106050001	8.230%	-28.93	-31.37	3/31/2022	2.44	0.20
	SAG 12	380047106024801	14.626%	-7.04	-9.63	3/29/2022	2.59	0.38
	SAG 13	375820106052001	8.507%	-11.98	-12.10	11/29/2022	0.12	0.01
	SAG 18	375918106063601	9.324%	3.34	1.50	2/24/2022	1.84	0.17
	P01	RGDSSP01	2.518%	-1.31	-7.37	3/30/2021	6.06	0.15
	RG05	380537106004801	14.135%	46.37	43.33	3/7/2022	3.04	0.43
	19513Z	SAG18	10.160%	58.08	55.92	3/7/2022	2.16	0.22
San Luis Creek	RG02	380941105545501	13.117%	65.28	63.17	3/2/2022	2.11	0.28
	RG03	380601105505201	9.758%	29.10	28.56	2/3/2022	0.54	0.05
	11010F	380855105553501	3.261%	65.20	53.91	1/25/2022	11.29	0.37
	1725R	380640105510001	7.611%	55.59	55.11	1/25/2022	0.48	0.04
	P14	RGDSSP14	14.205%	-32.87	-38.18	3/30/2022	5.31	0.75
	DW-1	375842105473701	11.410%	-38.10	-42.02	12/29/2021	3.92	0.45
	DW-3	375828105432501	17.029%	24.41	24.80	2/28/2021	-0.39	-0.07
	DW-4	375428105472501	9.348%	-84.96				
	DW-5	375507105505901	5.497%	-142.08				
	2760FR	380652105552101	8.765%	28.21	25.84	3/7/2022	2.37	0.21



**Table 2i. 2023 Monitoring Well Data Summary and Composite Water Head Calculations**

RA	Name	Model UID	Thiessen Weight (a)	2015 DTW Baseline (ft) (b)	2023 DTW (ft) (c)	2023 Date (d)	2023 ΔDTW (ft) (e)	2023 ΔDTW Weighted (f)
Alamosa La Jara	ALA 4	372550105455001	16.888%	-35.39	-34.55	2/19/2023	-0.84	-0.14
	ALA 6	372403106000901	2.410%	-10.75	-8.57	3/24/2023	-2.18	-0.05
	ALA 7	372403106000902	2.410%	-10.13	-8.23	3/24/2023	-1.90	-0.05
	ALA 8	372506106004201	5.461%	-15.02	-11.82	3/24/2023	-3.20	-0.17
	ALA 10	373457106003801	2.817%	-17.81	-19.49	3/24/2023	1.68	0.05
	ALA 12	372950105580801	14.208%	-4.18	-1.64	3/24/2023	-2.54	-0.36
	CON 1	371705106021501	9.582%	53.73	55.75	2/18/2023	-2.02	-0.19
	CON 2	371745105501001	5.730%	-15.64	-15.08	3/22/2023	-0.56	-0.03
	RIO 2	373227106030301	5.567%	-0.97	-0.06	2/18/2023	-0.91	-0.05
	6192R	373405106112501	3.516%	52.48				
	P03	RGDSSP03	2.909%	-7.77	-8.81	3/30/2023	1.04	0.03
	P08	RGDSSP08	2.410%	-13.37	-11.20	3/30/2023	-2.17	-0.05
	P09	RGDSSP09	10.619%	37.54	42.84	1/27/2023	-5.30	-0.56
	P10	RGDSSP10	4.690%	19.39	21.17	3/9/2023	-1.78	-0.08
4865F	372046106021901	10.783%	32.47	32.02	3/13/2023	0.45	0.05	
Conejos	CON 2	371745105501001	8.700%	-15.64	-15.08	3/22/2023	-0.56	-0.05
	P03	RGDSSP03	8.233%	-7.77	-8.81	3/30/2023	1.04	0.09
	P07	RGDSSP07	10.749%	0.53	1.73	2/22/2023	-1.20	-0.13
	P12	RGDSSP12	16.939%	166.04	168.41	2/13/2023	-2.37	-0.40
	20WCB	371118105543501	10.968%	4.00	4.87	3/13/2023	-0.87	-0.10
	6747F	370324105561201	10.371%	100.42	102.24	3/13/2023	-1.82	-0.19
	24316F	370446105582701	9.104%	144.61	145.72	3/13/2023	-1.11	-0.10
	22258F	371108106005101	6.886%	61.37	63.05	3/13/2023	-1.68	-0.12
	3416F	371030105585001	6.804%	63.26	64.16	3/13/2023	-0.90	-0.06
	296046	370843106021001	11.246%	160.91	162.78	3/13/2023	-1.87	-0.21
Saguache	SAG 2	375310106021501	17.494%	-39.14	-43.62	3/30/2023	4.48	0.78
	SAG 3	380045106044501	3.607%	5.95	1.03	3/28/2023	4.92	0.18
	SAG 9	375255106084401	11.398%	-4.25	-8.66	3/30/2023	4.41	0.50
	SAG 10	375310106050001	8.230%	-28.93	-33.91	3/30/2023	4.98	0.41
	SAG 12	380047106024801	14.626%	-7.04	-10.70	3/28/2023	3.66	0.54
	SAG 13	375820106052001	8.507%	-11.98				
	SAG 18	375918106063601	9.324%	3.34				
	P01	RGDSSP01	2.518%	-1.31	-8.58	3/30/2023	7.27	0.18
	RG05	380537106004801	14.135%	46.37	42.66	3/13/2023	3.71	0.52
	19513Z	SAG18	10.160%	58.08	54.25	3/13/2023	3.83	0.39
San Luis Creek	RG02	380941105545501	13.117%	65.28	63.86	3/8/2023	1.42	0.19
	RG03	380601105505201	9.758%	29.10				
	11010F	380855105553501	3.261%	65.20	54.09	1/30/2023	11.11	0.36
	1725R	380640105510001	7.611%	55.59	56.54	1/30/2023	-0.95	-0.07
	P14	RGDSSP14	14.205%	-32.87	-38.18	3/29/2022	5.31	0.75
	DW-1	375842105473701	11.410%	-38.10	-39.57	12/28/2022	1.47	0.17
	DW-3	375828105432501	17.029%	24.41	26.23	3/29/2023	-1.82	-0.31
	DW-4	375428105472501	9.348%	-84.96				
	DW-5	375507105505901	5.497%	-142.08				
2760FR	380652105552101	8.765%	28.21	25.34	3/13/2023	2.87	0.25	





**Table 2. Column Calculation Notes**

- (a) Thiessen weight = Thiessen polygon area / total polygon areas for Response Area (rounded to 5 digits)
- (b) minimum annual depth to water during non-irrigation season for 2015 baseline year (minimum DTW in February-March or progressively in other months if February/March DTW not available)
- (c) minimum annual depth to water during non-irrigation season for year (minimum DTW in February-March or progressively in other months if February/March DTW not available)
- (d) date of minimum annual depth to water during non-irrigation season measurement
- (e) change in depth to water calculated as baseline depth to water less year depth to water (a negative value indicates a falling water table)
- (f) change in depth to water multiplied by Thiessen weight used in calculation of composite water head. The composite water head for a Response Area equals the sum of these values by Response Area for the year.

**Table 3. Composite Water Head by Response Area**

Response Area	2015	2016	2017	2018	2019	2020	2021	2022	2023
Alamosa La Jara	0.00	1.48	2.31	3.14	0.71	3.58	0.20	-2.01	-1.62
Conejos	0.00	-0.11	0.25	1.62	-0.38	1.21	-0.82	-1.37	-1.27
Saguache	0.00	2.43	2.91	3.07	1.41	2.15	1.48	2.46	3.51
San Luis Creek	0.00	2.27	3.06	3.80	2.21	2.16	2.01	2.08	1.34

*Note: Head change in feet from 2015 baseline*



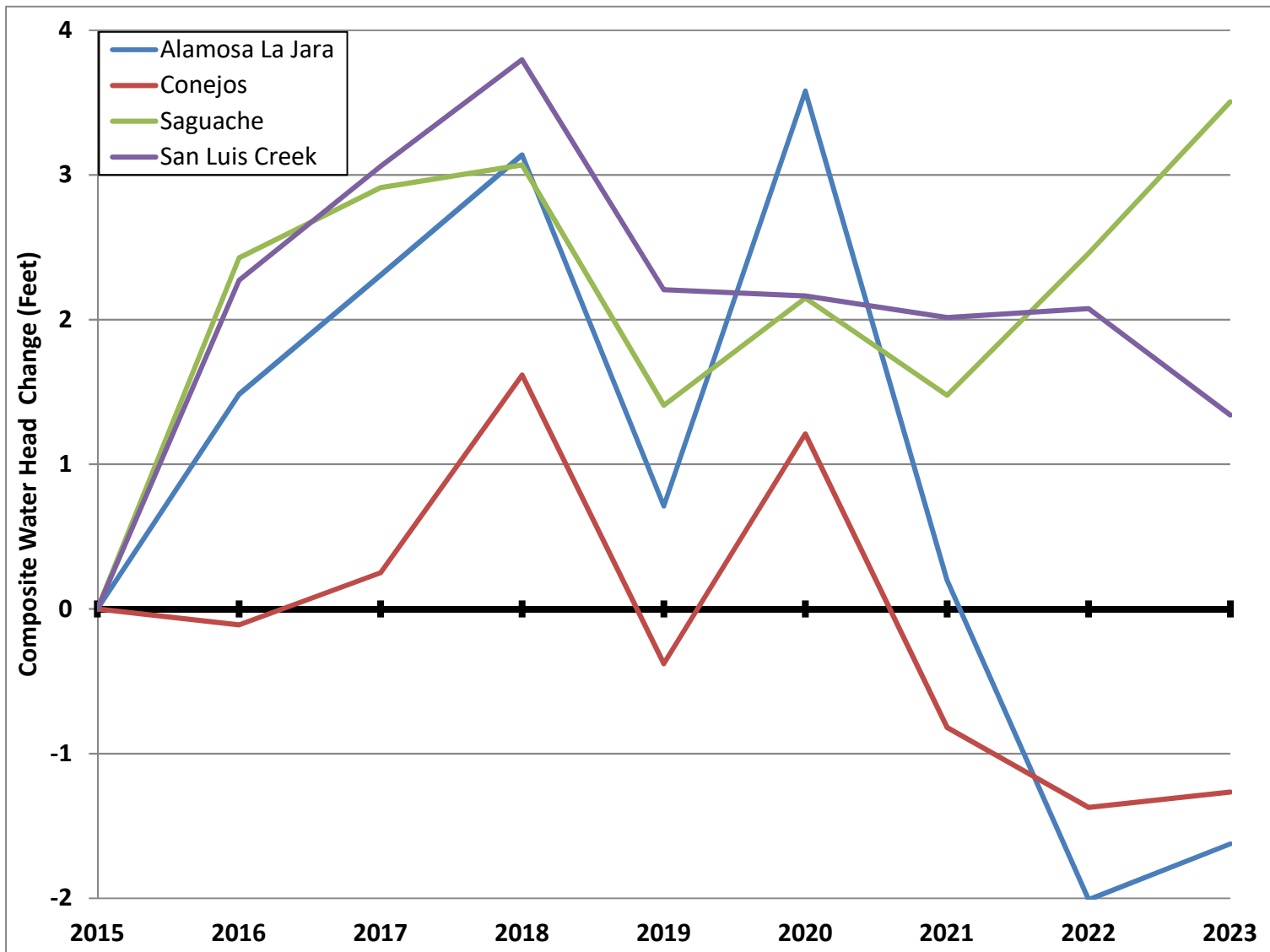


Figure 1. Composite Water Head by Response Area





**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. 6  
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. 6 of the Rio Grande Water Conservation District (“Subdistrict No. 6”) 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. 6 and remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and


WHEREAS, Subdistrict No. 6 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 the status of the sustainability of the Confined Aquifer underlying Subdistrict No. 6; and


NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District on the 15<sup>th</sup> day of April, 2024, that:

The District hereby accepts and approves the Subdistrict No. 6 2024 Annual Replacement Plan to run from May 1, 2024 through April 30, 2025.

ATTEST:

RIO GRANDE WATER CONSERVATION  
DISTRICT

By:   
\_\_\_\_\_  
Zeke Ward  
Secretary/Treasurer

By:   
\_\_\_\_\_  
Greg Higel  
President



**RESOLUTION  
OF THE BOARD OF DIRECTORS OF THE  
RIO GRANDE WATER CONSERVATION DISTRICT**

**TO ALLOW SPECIAL IMPROVEMENT DISTRICT NO. 6 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. 6 of the Rio Grande Water Conservation District (“Subdistrict No. 6”) 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. 6 and to remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and

WHEREAS, Subdistrict No. 6 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. 6 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 3,201.3 acre-feet of water from the production of the Closed Basin Project as a source of supply in the Subdistrict No. 6 2024 Annual Replacement Plan in the amount of 1,762.5 acre-feet to the Rio Grande River and 1,438.8 acre-feet to the Conejos River and the use of said water under the 2024 ARP to remedy injurious stream depletions is approved.

