

WELL INJURY PAYMENT AGREEMENT

This Well Injury Payment Agreement is entered into effect March 15, 2021 between Special Improvement District No. 5 (Saguache) of the Rio Grande Water Conservation District (“Subdistrict”) and _____ (“Company”), (collectively “the Parties”).

RECITALS

A. The Company owns and operates the _____ Ditch and the water rights decreed thereto (“Ditch”). The Ditch diverts water from Saguache Creek in the _____ of Section __, Township __ North, Range _ East, N.M.P.M. in Saguache County, Colorado, and has decreed priorities totaling ___ c.f.s.

B. The Subdistrict is responsible for implementing their 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 Saguache Creek by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Well Injury Payment Agreement, the Subdistrict would make replacement water available at the top of the Stream Reach in order to remedy injurious stream depletions, as required by the Division Engineer.

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

E. The Subdistrict desires to enter into this Well Injury Payment Agreement as part of its Annual Replacement Plan for Plan Year(s) 2020-2025.

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 (March 15, 2021 through April 30, 2022)

_____ Three Years (March 15, 2021 through April 30, 2024)

_____ Five Years (March 15, 2021 through April 30, 2026)

2. **Obligation of the Company.**

2.1. During the term of this Agreement the Company will not require the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from Saguache Creek at the headgate of the Ditch under priority no(s). __. 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 Well Injury Payment 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 Saguache Creek Daily Report (“Daily Report”) prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is issued, the parties will use the last priority served from the most recent Daily Report until a new Daily Report is issued.

2.3. The number of acre-feet of injurious depletions to the water right of the Company will be calculated each day the Ditch 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 Saguache Creek contained in the Subdistrict’s current 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 Well Injury Payment Agreement will apply 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>
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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 Company 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 for diversion at the Ditch 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 the 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 Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

3.2. The payment required by paragraph 3 will be due within 35 days of the date that the Subdistrict provides the company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15th.

4. No Subordination or Waiver of Right to Call. The Obligation of the Company under this agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Well Injury Payment Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require 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 respective 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:

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 Subdistricts to one another with respect to this Agreement.

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

7.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and 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 shall not be unreasonably withheld.

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

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

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

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

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 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 \$100.00, for a total of \$100.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$200.00 for each year of the term, for a total of \$600.00 over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$400.00 for each year of the term, for a total of \$2000.00 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 Well Injury Payment due, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

8.03 The Bonus Payment will be paid to the Company on or before December 31, of each year for the term of the Agreement.

By: _____

Date

By: _____

Date

APPROVED:

**Special Improvement District No. 5
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: _____
Chris Ivers, 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:

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
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