

SPECIAL IMPROVEMENT DISTRICT NO. 3 OF THE
RIO GRANDE WATER CONSERVATION DISTRICT

ANNUAL REPLACEMENT PLAN
2024 PLAN YEAR

Prepared

April 10, 2024

By

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

Rule 11 Subdistrict's Proposed ARP

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

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

11.1.1.1 The structure identification number (WDID)

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

11.1.1.3 A separate list of Subdistrict Wells with Plans for Augmentation

11.1.1.4 The total combined projected annual diversion for all Subdistrict Wells

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

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

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

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

11.1.1.9 Operational Requests to the Division No. 3 Division Engineer for the 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 groundwater

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 groundwater is Remedied by means other than by providing water to replace Injurious Stream Depletions

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

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

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

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

11.1.5.4 Other proposed actions to be taken as applicable

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Abbreviations

ARP	Annual Replacement Plan
CBP	Closed Basin Project
CWCD	Conejos Water Conservancy District
DWR	State of Colorado, Division of Water Resources
NRCS	Natural Resources Conservation Service
Plan Year	The period May 1, 2024 through April 30, 2025
PWM	Plan of Water Management
Response Functions	RFApplication_C_Conejos_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. 3	Special Improvement District No. 3 of the Rio Grande Water Conservation District
Subdistrict Wells	Wells Benefitting Subdistrict No. 3 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. 3, approved without objection on August 27, 2018. Further, the ARP has been prepared in accordance with the requirements of the State Engineer and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights (Groundwater Rules).

As required by the Groundwater Rules, this report includes information necessary for the State Engineer and Subdistrict No. 3 staff to project stream depletions attributable to Subdistrict No. 3 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. 3 staff utilizing the most current version of the Response Functions to tabulate the location and quantities of stream depletions resulting from Subdistrict No. 3 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. 3 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 COVERD 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 166 ARP Wells for 2024, the majority included in the Subdistrict by petition when the Subdistrict was formed March 27, 2017. No additional wells have been added to the ARP Well List for 2024. A table with further details each well which has an approved Subdistrict Participation Contract is included as Appendix B.

2. OTHER WELL IDENTIFICATION INFORMATION

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

3. SUBDISTRICT WELLS WITH PLANS FOR AUGMENTATION

Subdistrict No. 3’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. 3’s PWM. These plans for augmentation typically associate surface rights with these Subdistrict Wells and other non-Subdistrict No. 3 wells to remedy some portion or all of each well’s injurious stream depletions as calculated under that approved augmentation plan. 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. 3 fees and Subdistrict No. 3 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.

Conejos Water Conservancy District Augmentation Certificate No. Com0020

This augmentation certificate provides the participant 9.0 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 no. 47770-F, WDID 2205184. The structure’s place of

use is large lawn located on a parcel of land in the NW1/4 NE1/4 Section 33, Township 33 North, Range 7 E., N.M.P.M. The structure and water diversions covered by this Agreement and Augmentation Certificate is augmented only for the purpose of supplying irrigation water to a large lawn. Any additional use of this well will require the owner to contract with the Subdistrict or to seek additional water under the CWCD Augmentation Plan. This well’s depletions are fully covered under the approved augmentation plan of the CWCD, Case No. 90CW24 with the source of augmentation water being supplied in time, place and amount as calculated under this augmentation certificate by the Subdistrict’s approved sources of water. Water will be transferred from the Subdistrict to the CWCD pool to cover the timing and amount of these depletions at the beginning of each irrigation season. The pool of water that will supply this augmentation water may vary each year based on the Subdistrict’s available water sources but will never be less than the 9.0 acre-feet required under this augmentation certificate. This well is considered a non-benefitted Subdistrict Well as defined in the Subdistrict’s PWM and it was not included in the calculation of injurious depletions owed by the Subdistrict for the 2024 Plan Year.

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 26,955 acre-feet. Based on projected Subdistrict No. 3 operations, weather predictions and antecedent conditions, it is anticipated the 2024 ARP Well groundwater withdrawals will be 26,400 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
31,232	40,698	42,762	33,286	25,743	25,240	21,273	35,626	16,155	34,543	25,836	25,112	26,955

The projection of 2024 ARP Well groundwater withdrawals was made by reviewing past years with actual stream flows on the Conejos River System most comparable to those being forecast for 2024. ARP Well groundwater withdrawals in those years were also reviewed. The stream flows in 2021 and 2022 on the Conejos River System are most comparable to the 2024 forecast and, in those year, Subdistrict ARP Wells withdrew 25,836 acre-feet and 25,112 acre-feet. Using this comparison, the Subdistrict ARP Well groundwater withdrawals in 2024 are projected to be 26,400 acre-feet. The majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers, 64 percent. Approximately 9 percent and 27 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

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

It is projected that the vast majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers. Approximately 9 percent and 27 percent of groundwater withdrawals from ARP Wells will be applied to flood irrigation and other uses, respectively.

Wells included in the ARP Well List are projected to irrigate approximately 23,800 acres during the Plan Year. Of the total projected irrigated acres, it is estimated 15,550 acres will be irrigated by center pivot sprinklers and 8,250 acres will be irrigated by flood application in the Conejos Response Area. This estimate is made based on a review of the breakdown of acres within the Conejos Response Area under each irrigation type prepared by DWR for inclusion in the RGDSS Groundwater Model, a review of any changes in irrigation application type from the previous ARP and a review of the wells being included by Participation Contracts.

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 then calculate stream impacts and returns. Beneficial uses include municipal, 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 2023 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. 3 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. 3 also anticipates they will make a request the Division No. 3 Division Engineer allow Subdistrict No. 3 to aggregate a monthly, positive depletion with a negative depletion of another Subdistrict to offset the positive daily depletion that Subdistrict No. 3 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. 3 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 rivers and a projection of the Post-Plan Stream Depletions calculated as a result of the predicted Plan Year groundwater withdrawals from Subdistrict No. 3 ARP Wells. Subdistrict No. 3 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 March 26, 2024 Rio Grande Compact 10-day report for the Conejos River Basin projected 158,600 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. 3 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)**

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

Analysis	Apr-Sept Forecast (acre-feet)	% of Avg.	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
NRCS, 4/1/2024	60,000	98		

- (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. 3 staff utilized the response functions developed for the Conejos Response Area under the RGDSS Groundwater Model Phase 6P98 to predict stream depletions to the affected streams caused by groundwater withdrawals from ARP Wells. 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 Conejos Response Area requires adjustments for point source return flows and the stream ratios, as listed below.

- Conejos Response Area: Reach 7 (San Antonio River) from the Town of Antonito.
- 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 Town of Antonito 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	19,078	2,431	9,724	56.6%	22,798	0	0	0	0	22,798
2012	27,152	2,409	11,137	58.7%	30,519	0	0	0	0	30,519
2013	27,387	3,235	12,140	60.0%	31,955	0	0	0	0	31,955
2014	21,218	2,624	9,444	56.8%	24,553	0	0	0	0	24,553
2015	15,419	2,496	7,828	57.0%	18,756	0	0	0	0	18,756
2016	14,822	1,724	8,694	57.2%	18,309	0	0	0	0	18,309
2017	12,170	2,007	7,096	55.3%	15,231	0	0	0	0	15,231
2018	24,114	2,589	8,923	56.5%	26,609	0	0	0	0	26,609
2019	9,323	1,102	5,730	50.8%	11,312	0	0	0	0	11,312
2020	24,123	1,574	8,845	56.0%	25,917	0	0	0	0	25,917
2021	16,241	1,684	7,910	55.3%	18,862	0	0	0	0	18,862
2022	15,178	2,577	7,357	55.7%	18,244	0	0	0	0	18,244
2023	17,306	2,404	7,312	55.5%	19,864	0	0	0	0	19,864
2024	16,896	2,376	7,128	56.0%	19,441	0	0	0	0	19,441
Avg	18,602	2,231	8,519	56.2%	21,598	0	0	0	0	21,598

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 Conejos 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 **19,441** 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. 3
(Units in acre-feet)

			Annual Net Stream Depletions (May-Apr) a)							
Year	Conejos River near Mogote (Apr-Sep)	Net Groundwater Consumptive Use (Jan-Dec)	Conejos above Seledonia/Garcia	Conejos below Seledonia/Garcia	Rio Grande Del Norte-Excelsior	Rio Grande Excelsior-Chicago	Rio Grande Chicago-State Line	Alamosa River	San Antonio River	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1970	201,859	13,588	507	1,087	1	4	61	66	-109	1,617
1971	139,131	17,023	473	1,566	6	19	132	74	-109	2,161
1972	90,563	21,686	355	1,934	15	38	166	80	-108	2,480
1973	262,772	11,216	580	1,482	22	50	188	81	-108	2,295
1974	140,237	17,728	524	1,862	25	50	201	76	-108	2,630
1975	255,598	12,686	571	1,619	28	55	211	79	-108	2,455
1976	174,806	17,309	483	1,908	30	54	219	63	-107	2,650
1977	60,935	22,033	343	2,209	35	63	227	42	-107	2,812
1978	162,145	19,147	552	2,262	41	72	267	80	-107	3,167
1979	288,627	16,911	631	2,163	43	75	278	86	-107	3,169
1980	274,695	19,631	608	2,333	42	71	285	82	-104	3,317
1981	104,316	21,006	374	2,300	43	72	266	84	-96	3,043
1982	279,973	15,418	643	2,085	45	75	281	88	-93	3,124
1983	236,269	14,949	653	1,968	43	69	271	90	-93	3,001
1984	216,888	15,931	646	1,994	40	64	270	89	-89	3,014
1985	337,286	10,755	634	1,579	38	60	250	87	-80	2,568

1986	290,253	9,215	604	1,375	35	53	222	83	-81	2,291
1987	230,225	14,848	573	1,752	33	48	228	80	-79	2,635
1988	139,934	18,422	505	2,043	34	52	255	74	-69	2,894
1989	156,367	21,609	516	2,343	39	64	295	75	-60	3,272
1990	134,969	18,284	519	2,190	44	74	307	74	-54	3,154
1991	215,634	16,760	569	2,113	45	75	302	73	-53	3,124
1992	154,657	17,364	513	2,077	44	71	291	74	-100	2,970
1993	248,449	12,943	577	1,773	44	70	276	79	-162	2,657
1994	211,701	15,006	574	1,852	41	63	263	73	-175	2,691
1995	285,693	11,160	574	1,571	38	58	245	80	-182	2,384
1996	145,438	19,961	542	2,142	37	56	262	78	-182	2,935
1997	243,276	15,390	608	1,960	39	64	278	84	-196	2,837
1998	167,766	19,405	541	2,197	39	64	284	78	-239	2,964
1999	199,120	14,399	559	1,913	41	68	283	63	-262	2,665
2000	102,872	25,453	348	2,487	42	68	271	42	-295	2,963
2001	186,276	21,766	528	2,538	48	80	322	68	-282	3,302
2002	41,441	29,566	353	2,964	55	90	327	33	-199	3,623
2003	113,212	26,346	411	2,888	62	100	339	50	-192	3,658
2004	165,509	21,512	676	2,721	67	104	361	98	-214	3,813
2005	251,583	21,056	782	2,680	67	101	363	108	-209	3,892
2006	148,836	20,620	692	2,579	65	95	351	101	-180	3,703
2007	168,399	19,801	715	2,490	65	95	349	103	-125	3,692
2008	235,334	17,639	808	2,353	63	92	339	111	-95	3,671
2009	204,792	16,020	795	2,173	58	83	318	110	-93	3,444
2010	179,106	20,441	687	2,434	55	78	321	100	-129	3,546
2011	165,835	22,798	651	2,652	58	85	348	101	-106	3,789
2012	113,608	30,519	408	3,110	63	95	350	85	-106	4,005
2013	98,533	31,955	458	3,359	70	107	374	56	-106	4,318
2014	149,340	24,553	718	3,073	77	116	411	105	-106	4,394
2015	155,333	18,756	711	2,552	78	115	390	104	-106	3,844
2016	180,401	18,309	715	2,412	76	107	362	103	-106	3,669
2017	241,792	15,231	752	2,168	72	97	337	110	-106	3,430
2018	106,529	26,609	472	2,719	69	89	314	105	-106	3,662
2019	268,828	11,312	765	1,928	69	91	314	112	-106	3,173
2020	114,509	25,917	460	2,634	65	84	292	105	-106	3,534
2021	150,454	18,862	700	2,432	68	91	331	102	-106	3,618
2022	167,011	18,244	673	2,353	67	92	330	97	-106	3,506
2023	241,561	19,864	717	2,481	65	90	336	99	-106	3,682
2024	158,600	19,441	601	2,350	62	86	332	88	-106	3,675
2025			541	858	59	80	253	79	0	3,413
2026			485	506	50	58	165	71	0	1,870
2027			428	357	42	40	120	62	0	1,335
2028			354	289	36	28	94	52	0	1,049
2029			307	208	30	21	76	45	0	853
2030			230	169	25	16	61	33	0	687
2031			170	111	21	13	51	25	0	534
2032			111	67	17	10	42	16	0	391
2033			47	27	14	7	36	7	0	263

2034			0	10	11	6	29	0	0	138
2035			0	0	9	4	23	0	0	56
2036			0	0	7	2	18	0	0	36
2037			0	0	6	1	13	0	0	27
2038			0	0	5	0	9	0	0	20
2039			0	0	4	0	5	0	0	14
2040			0	0	2	0	1	0	0	9
2041			0	0	0	0	0	0	0	3
2042			0	0	0	0	0	0	0	0
2043			0	0	0	0	0	0	0	0
Avg 2001-2015	158,476	22,890	626	2,704	63	96	351	89	-150	0
Avg 2001-2010	169,449	21,477	645	2,582	61	92	339	88	-172	3,780
Post Plan			2,673	2,602	338	286	996	390	0	3,634

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) Conejos River near Mogote Gage streamflow in acre-feet for the NRCS streamflow forecast period of April through September. The streamflow value for 2024 is from the March 26, 2024, Division No. 3 Division Engineer's Rio Grande Compact Ten-Day Report and the NRCS April 1, 2024, forecasts.
- (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 Conejos River streamflow from the March 26, 2024, Division No. 3 Division Engineer's Rio Grande Compact Ten-Day Report the NRCS April 1, 2024, forecasts..
- (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.

Table 2.3
Subdistrict No. 3 Monthly Stream Depletions for Plan Year
(Units in acre-feet)

Stream Reach	Conejos Response Area Total												
	2023								2024				Total
	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	58.3	72.8	72.2	62.6	54.9	54.9	48.6	45.8	35.4	30.0	32.1	33.2	600.9
Conejos below Seledonia/Garcia	149.9	197.3	259.8	292.6	288.9	262.2	205.5	177.3	152.9	124.3	126.9	112.6	2,350.2
Rio Grande Del Norte-Excelsior	5.4	5.1	5.1	4.9	4.8	5.1	5.2	5.5	5.5	5.0	5.5	5.2	62.1
Rio Grande Excelsior-Chicago	7.9	7.1	7.1	6.4	6.3	6.6	6.7	7.4	7.6	7.2	8.1	7.6	85.8
Rio Grande Chicago-State Line	33.3	29.5	25.1	13.3	16.9	26.9	35.0	33.7	30.2	27.2	32.0	29.0	332.1
Alamosa River	23.3	17.5	11.0	5.9	4.6	4.1	0.2	0.0	0.0	0.1	0.1	21.1	87.7
San Antonio River	-9.6	-8.9	-10.6	-10.6	-8.0	-7.4	-8.5	-7.9	-7.9	-7.9	-8.5	-9.9	-105.8
Total	268.5	320.3	369.6	374.9	368.4	352.3	292.6	261.8	223.7	185.8	196.2	198.8	3,413.0

Explanation of Columns

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

As indicated in the lower right-hand corner of Table 2.3, 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 **3,413.0** acre-feet. The Response Functions calculated total stream depletions to the Conejos River are **2,951.1** acre-feet, to the Alamosa River **87.7** acre-feet, and to the Rio Grande **480.0** acre-feet. The inclusion of the Town of Antonito’s well in the Subdistrict ARP Well List has produced stream flow returns to the San Antonio River in the amount of **-105.8**. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.

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 **19** 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 **7,297** 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. 3 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	San Antonio River	Total
2025-2044	2,673	2,602	346	286	1,000	390	0	7,297

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. 3**

Conejos River Replacement Sources					
In Storage					
Water Right	Beginning Balance 4/15/2024	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
Case Nos. 1984CW16 and 1994CW62 (fully consumable water)	726.7	726.7	San Luis Valley Water Conservancy District	6061	Platoro Reservoir
BLM Augmentation Water (Case No. 2002CW38A)	150.8	150.8	Bureau of Land Management	6056	Platoro Reservoir
Taos Valley No. 3	154.9	116	San Luis Valley Irrigation Well Owners, Inc.	6074	Platoro Reservoir
Alpha Hay Farms SWSP	433.9	433.9	Alpha Hay Farms	9364	Platoro Reservoir
In Storage (acre-feet)		1,427.4			
On Call-Irrigation Season					
Water Right	Expected Yield	Source of Diversion	SWSP	Current Storage Location	Contract Limitations
Taos Valley No. 3	2,000	San Antonio River	6093		Lease is limited to 2,000 ac-ft
Alpha Hay Farms SWSP	433.9	Heads Mill and J.F. Chacon 2 - Conejos River	9364		SD 3 will only use this water under an approved SWSP
On Call Water-Irrigation Season	2,433.9				
On Call-Irrigation Season					
Forbearance Agreements	Agreement Limits (1)	Expected Yield	Source of Diversion	WDID	Special Conditions
AD Archuleta	No limit		Conejos River	2200500	
Alamo Ditch	No limit		Conejos River	2200501	
AnCon Ditch	No limit		Conejos River	2200502	
Antonito 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 Ditch	No limit		Conejos River	2200553. 2200519	
JF Chacon Ditch No. 3	No limit		Conejos River	2200562	
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 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	
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	1,000 AF		Rio San Antonio	2200537	
El Coda Ditch	No Limit		Rio San Antonio	2200538	
Florida Ditch	1,000 AF		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	1,000 AF		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	1,000 AF		Rio San Antonio	2200618	
Sinecero 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	
On Call Water-Irrigation Season*		1519.5			
*Description of how the amount for Expected Yield was calculated is in Section 3 below					
On Call-Non-Irrigation Season					
Water Right	Total RG Allocation (all SDs)	Expected Yield Subdistrict 3	Water Previously Controlled By	Attributable to Depletions On	Current Location
Closed Basin Project Production	3,198	938.1	RGWCD	Conejos	Closed Basin Project
On Call Agreements Non-Irrigation Season		938.1			

Rio Grande River Replacement Sources					
In Storage					
Water Right	Beginning Balance 4/15/2024	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
SD 1 Santa Maria Shares (165 shares leased from the MVC in 2011 at a yield of 0.9233 af/share)	152.3	152.3	SD No. 1	n/a	Continental Reservoir Continental
SD 1 Santa Maria Shares (shares leased in the past from RGC)	47.7	47.7	SD No. 1	n/a	Continental Reservoir
City of Creede excess augmentation credits under Case No. 94CW31 and No. 07CW60	4.5	4.5	Rio Grande Water Conservation District	6094	Beaver Reservoir
Case 84CW16 and 94C Case Nos. 1984CW16 and 1994CW62 (fully consumable water) (from RGWCD)	40.9	40.9	San Luis Valley Water Conservancy District	6182	Beaver Reservoir
Taos Valley No. 3	52.1	18.3	SLVIWO, Inc.	6074	Beaver Reservoir
Taos Valley No. 3	485.9	485.9	SLVIWO, Inc.	6074	Rio Grande Reservoir
In Storage (acre-feet)		760.1			
On Call-Irrigation Season					
Water Right	Expected Yield	Source of Diversion	SWSP	Current Storage Location	Contract Limitations
Taos Valley No. 3	500.0	Rio San Antonio	6093	n/a	2,000
On Call Water-Irrigation Season	500.0				

On Call-Irrigation Season					
Forbearance Agreements	Agreement Limits (1)	Expected Yield	Source of Diversion	WDID	Special Conditions
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	Priority 249 and 262
Monte Vista Canal	300		Rio Grande River	2000753	
Rio Grande Canal	150		Rio Grande River	2000812, 2000662, 2001094, 2001007, 2000624	Partial forbearance on Priority 178, 197 and 198 as calculated in agreement
Rio Grande Canal, Ellithorpe	No limit		Rio Grande River	2001094, 2000624	Partial forbearance on priorities 178 and 198
Rio Grande Canal, Kruse	No limit		Rio Grande River	2000624	Partial forbearance on priorities 178 and 198
Rio Grande Canal, Toews	No limit		Rio Grande River	2000624	Partial forbearance on priorities 198
Rio Grande Lariat Ditch	500		Rio Grande River	2000816	
Rio Grande Piedra Valley Ditch	No Limit		Rio Grande River	2000811	
Rio Grande San Luis Ditch	No Limit		Rio Grande River	2000817	
Farmer's Union Canal	500		Rio Grande River	2000631	
On Call Water-Irrigation Season *		189.2			
*Description of how the amount for Expected Yield was calculated is in Section 3 below					
On Call-Non-Irrigation Season					
Water Right	Total RG Allocation (all SDs)	Expected Yield Subdistrict	Water Previously Controlled By	Attributable to Depletions On	Current Location
Closed Basin Project Production	4,100	221.8	RGWCD	Rio Grande	Closed Basin Project
On Call Agreements Non-Irrigation Season		221.8			
Alamosa River Replacement Sources					
In Storage					
Water Right	Beginning Balance 4/15/2024	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
Augmentation Water (Case No. 2014CW3027 and Case No. 2016CW3019)	70.4	69.6	EXPO, LLC	6066	Terrace Reservoir
In Storage (acre-feet)		69.6			
On Call-Irrigation Season					

Forbearance Agreements	Agreement Limits (1)	Expected Yield	Source of Diversion	WDID	Special Conditions
Alamosa Spring Creek Ditch	No Limit		Alamosa River	2100505	
Arroya Ditch	No Limit		Alamosa River	2100506	
Capulin Ditch	No Limit		Alamosa River	2100510	
Cottonwood Ditch	No Limit		Alamosa River	2100513	
Cristobal Rivera	No Limit		Alamosa River	2100514	
El Viejo	No Limit		Alamosa River	2100520	
Empire Canal	No Limit		Alamosa River	2100522	
Flintham Ditch	No Limit		Alamosa River	2100525	
Gallegos D 3	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	100 AF		Alamosa River	2100503, 2100601	
TK Walsh Ditch	No Limit		Alamosa River	2100600	
Union Ditch	No Limit		Alamosa River	2100602	
On Call Water-Irrigation Season*		80.0			
*Description of how the amount for Expected Yield was calculated is in Section 3 below					
(1) The forbearance agreements limits listed here are written into agreements for each SD individually (para. 2.1 and 2.3 of the agreement)					

2. AFTER ACQUIRED SOURCES OF REMEDY

Although Subdistrict No. 3 acknowledges that DWR cannot consider sources or remedy acquired after the submission of this ARP in evaluating the adequacy of the ARP, the Subdistrict will continue to work to acquire additional sources of remedy and/or Forbearance Agreements, and may, with approval from the Division Engineer, use those sources to remedy injury under this ARP.

3. OPERATION OF THE 2024 ANNUAL REPLACEMENT PLAN

The Subdistrict’s acquired replacement sources listed in Table 3.1 may require DWR approval for use as replacement water during the ARP Year. SWSPs have been filed for all sources for which it was required that the Subdistrict has acquired and plans to utilize during this ARP Year. The majority of these sources are renewals of previous SWSPs. Table 3.1 provides more detail

on the date the SWSP was filed and the expected date the water will be available to the Subdistrict as a replacement source. The Subdistrict understands they will not be allowed to use those sources with pending SWSPs until the State has officially approved them. The Subdistrict has forbearance and other approved sources of water that are sufficient to remedy all sources until the approvals for these additional sources are received.

The Subdistrict's replacement water, 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. 3 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. 3 has signed a lease agreement with San Luis Valley Irrigation Well Owners, Inc. 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. An SWSP has been 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.

As shown in Table 3.1 above, Subdistrict No. 3 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. Reviewing diversion records from prior years of similar hydrologic conditions, as predicted for 2024 on the Conejos River, Alamosa River, and Rio Grande, Subdistrict No. 3 staff determined that these agreements could save an estimated **1,788** acre-feet of replacement water during the Plan Year.

The 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 was 2021 and 2022. The analysis for the Alamosa included 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 162 and 217 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 79 acre-feet and 80 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 between 2021/2022 and 2024 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 2021/2022 in terms of acre-feet forbore on the Conejos River.

After submittal of this ARP, Subdistrict No. 3 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 eight ditches within Stream Reaches 1 and 2 on the Rio Grande have entered into forbearance agreements with Subdistrict No. 3 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. 3 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. 3 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. 3 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. 3 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. 3 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. 3'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. 3 to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if Subdistrict No. 3 were to fail or otherwise not be allowed to continue groundwater withdrawals. Subdistrict No. 3 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. 3 were to fail, the individual well owners in Subdistrict No. 3 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. 3 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. 3 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. 3 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. 3 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. 3 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. 3. 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. 3 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. 3 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 \$21.35 and every acre-foot of groundwater withdrawn by ARP Wells for flood application was assessed \$15.43. ARP Wells that are used for commercial, industrial, municipal and fish propagation applications were assessed a variable Groundwater Withdrawal Fee in the range of \$0.08 to \$25.72 per acre-foot. For 2023, the Administrative Fee was set at \$210.00 per in-active well and \$420.00 per active well (or meter when multiple wells are combined through a single meter). The total 2023 Subdistrict No. 3 assessments which were placed on the tax rolls in 2023 to be collected in 2024 are:

Table 4.1
Subdistrict No. 3 Assessments to Fund ARP Operations

Fee Type	Amount of 2022 Assessments
Administrative Fees	\$ 62,370.01
Groundwater Withdrawal Fees	\$ 488,174.91

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

1. There are no new contractual arrangements among water users, water user associations, water conservancy districts, subdistricts, and/or the Rio Grande Water Conservation District.

2. 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. 3 has reached agreement 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 system, Alamosa River, or Rio Grande. The expected yield of these agreements is as shown above in Table 3.1. See Appendix G for documentation of these Forbearance Agreements.

3. CLOSED BASIN PROJECT PRODUCTION

According to the Division No. 3 Division Engineer’s Rio Grande Compact Ten-Day Report on April 5, 2024, the projected production of the project delivered to the Rio Grande is 8,500 acre-feet during the 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. 5 and Subdistrict No. 6. The Board of Directors of the SLVWCD approved an allocation of up to the total CBP production allocated to the Rio Grande, or 50% of the total useable CBP yield in 2024, so long as Subdistrict’s use does not affect the allocation of CBP flows to the Rio Grande and Conejos River’s compact obligations. The CWCD Board of Directors allocated the Conejos’s 39% share of the usable yield of the Closed Basin Project to replace the stream depletions under this ARP. The projected amount of the CBP production needed by Subdistrict No. 3 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. 3

1. ALPHA HAY FARMS FIELDS 11 & 12-HEADS MILL AND J.F. CHACON WATER RIGHTS, WELL NO. 1 IN CASE NO. W0490

In May 2023, Subdistrict No. 3 acquired a portion of Alpha Hay Farms property located in Conejos County known as “Fields 11 and 12.” The land came with senior surface water rights in the Heads Mill & Irrigation Ditch (2.27 c.f.s. of Priority No. 2) and the J.F. Chacon No. 2 (7.54 c.f.s. of Priority No. 44, 4.54 c.f.s. of Priority No. 49, 1.0 c.f.s. of Priority No. 97, and 1.0 c.f.s. of Priority No. 142), as well as groundwater rights in Well No. 1 (Case No. W-0490, Permit No. 88243-F, WDID 2205123), 5.57 c.f.s., 360 acre-feet per year, for irrigation up to 160 acres. The Subdistrict filed an SWSP for the 2023 Plan Year to temporarily change the water rights to add augmentation as a beneficial use. The Subdistrict received approval of the SWSP during the 2023 Plan Year and these changed water rights were used for direct replacement of injurious stream depletions caused by groundwater withdrawals from Subdistrict No. 3 ARP Wells on the Conejos River and was also exchanged to Reach 3 of the Rio Grande to replace the Subdistrict’s injurious depletions. The approved SWSP required that the 221 acres that were irrigated historically be dried up in order for the 433.9 acre-feet of consumptive use attributed to the surface water irrigation and 89 acre-feet of consumptive use attributed to the groundwater supply, for a total of 522.9 acre-feet to be used for the direct replacement of injurious stream depletions during the period between May 1, 2023-March 30, 2024. Any changed water that was not used for direct replacement was exchanged into Platoro Reservoir to be stored for use in a

future ARP Plan Years. See Appendix F for documentation of this purchase and operation of the approved SWSP ID 9364.

2. LUPITA SANDOVAL PROPERTY-EL CODA DITCH SHARES

In August 2021, Subdistrict No. 3 acquired property in Conejos County that is serviced by 72 El Coda Ditch shares from Ms. Lupita Sandoval. The El Coda Ditch is priority #3 on the Rio San Antonio with an adjudication of 25.16 c.f.s. and priority #178 with 51.77 c.f.s. The 72 shares amount to 4% of the total ditch diversions. The long-term goal of this purchase is to utilize this water right to replace injurious depletions to the Rio San Antonio system on an annual to permanent basis.

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 August 27, 2018, the Conejos Response Area five-year running average groundwater withdrawals were above the 1978-2000 average groundwater withdrawals for the Conejos Response Area with a five-year average of 30,107 acre-feet. 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 Conejos Response Area was 27,689 acre-feet. The next five-year average will drop the 2018 withdrawals of 35,842 acre-feet. 2023 was a wetter year on the Conejos River but groundwater withdrawals still increased slightly from the previous year, therefore, it is anticipated the State Engineer's next calculation of the Conejos Response Area five-year average will decrease by approximately 2,000 acre-feet based on the trend in the Subdistrict. Although there will likely be a decrease, the five-year average for the Conejos Response Area will remain below the 1978-2000 average groundwater withdrawals and remain below the average that was calculated at the time the Subdistrict's PWM was approved. The State Engineer's memo is included in Appendix J.

The current five-year running average groundwater withdrawals for ARP Wells, which includes 24 contract wells, for the period 2019-2023 is 27,720 acre-feet. The previous five-year running average from 2018-2022 for ARP wells, including contract wells, was 27,454 acre-feet. The five-year running average increased in 2023 by 266 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.

Based on the trends of both the Conejos 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 Conejos 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." Additionally, the Conejos River System Water Users Association has been collecting hydrostatic pressure data in the Subdistrict No. 3 Response Area and will provide the data to the DWR to continue to improve the understanding of sustainability.

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. The Board of Managers did assess a portion of their fees to build up revenues that can be used, if necessary, to fund future programs to meet these requirements. For 2024, the Board of Managers decided to monitor groundwater withdrawal amounts following the first Subdistrict assessments to determine what, if any, affect they would have on groundwater withdrawal amounts. For that reason, Subdistrict No. 3 is not currently pursuing fallowing of any irrigated lands within the boundaries of the Subdistrict. It is anticipated that the imposition of the Groundwater Withdrawal Fees will naturally 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 has had several meetings with Subdistrict Members during the 2023 Plan Year to receive feedback, inform them, and to generally address how the Subdistrict plans on achieving and maintaining a sustainable confined aquifer within Subdistrict boundaries. Through these meetings the Subdistrict has developed ideas, through Subdistrict Member input and contracted engineering work, on what actions would be most effective and also least intrusive in order to achieve its sustainability goals. These meetings were productive and the Subdistrict plans on implementing aquifer sustainability measures if a voluntary reduction in pumping by Subdistrict Members does not lead to a positive sustainability trend, including the possible implementation of a groundwater allocation program and/or a pumping reduction program.

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. 3 OF THE
RIO GRANDE WATER CONSERVATION
DISTRICT

ANNUAL REPLACEMENT PLAN
2024 PLAN YEAR
APPENDICES

Prepared

April 10, 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
2105004	121.60	Petition
2105018**	5.00	2021 Contract in 2020 ARP
2105023	25.94	Petition
2105043	0.00	Petition
2105085	0.00	Petition
2105127	360.43	Petition
2105158	170.20	Petition
2105181	154.92	Petition
2105229	422.37	Petition
2105231	144.00	Petition
2105256	66.84	Petition
2105318	11.48	Petition
2105354	40.55	Petition
2105382	194.20	Petition
2105383	1175.22	Petition
2105400	3.35	2019 Contract
2105401	37.82	2019 Contract
2105404	1.68	2022 Contract
2105408	162.91	Petition
2105429	0.00	Petition
2105444	806.60	Petition
2105445	672.80	Petition
2105555	62.12	Petition
2105622	6.15	Petition
2105623	100.65	Petition
2105896	5.10	Petition
2105907	3.35	2019 Contract
2205001	29.68	2019 Contract
2205002	104.30	Petition
2205004	0.03	Petition
2205005	445.98	Petition
2205006	591.24	Petition
2205007	317.69	Petition
2205009	576.84	Petition
2205010	102.09	Petition
2205012	538.52	2019 Contract
2205013	58.75	2019 Contract
2205015	67.16	2019 Contract
2205018	171.08	Petition
2205019	169.43	Petition
2205020	0.00	Petition
2205021	216.61	Petition
2205041	124.63	2019 Contract

2205043	25.11	2021 Contract in 2020 ARP
2205050	69.49	Petition
2205051	0.00	Petition
2205052	674.73	Petition
2205053	175.29	Petition
2205054	217.84	Petition
2205055	0.00	Petition
2205056	363.87	Petition
2205057	721.07	Petition
2205058	0.01	Petition
2205059	0.00	Petition
2205060	0.00	Petition
2205061	0.00	Petition
2205062	306.98	Petition
2205063	439.36	Petition
2205066	321.72	Petition
2205067	0.01	Petition
2205071	302.15	Petition
2205072	158.95	Petition
2205073	0.00	2021 Contract
2205074	149.02	Petition
2205076	782.15	Petition
2205094	169.36	Petition
2205095	0.00	Petition
2205110	85.60	Petition
2205112	324.97	Petition
2205122	0.23	Petition
2205123	55.49	Petition
2205124	0.00	Petition
2205126	21.54	Petition
2205127	0.00	Petition
2205128	402.68	Petition
2205129	639.58	Petition
2205130	529.89	Petition
2205131	299.55	Petition
2205132	108.98	Petition
2205141	212.98	Petition
2205142	187.51	Petition
2205145	215.37	Petition
2205147	136.11	Petition
2205151	0.01	Petition
2205167	178.14	Petition
2205172	0.00	Petition
2205173	185.17	Petition
2205175	0.00	Petition
2205176	252.74	Petition
2205177	0.00	Petition

2205182	0.00	Petition
2205183	66.35	Petition
2205184	5.04	2021 Contract (Aug Well)
2205186	6.67	Petition
2205187	142.75	Petition
2205188	163.00	Petition
2205209**	1.50	2021 Contract
2205210	0.00	2021 Contract
2205242	78.78	Petition
2205243	175.84	Petition
2205259	0.00	Petition
2205260	0.00	Petition
2205261	126.29	Petition
2205262	0.19	Petition
2205285	0.00	Petition
2205350	265.20	Petition
2205388	250.11	Petition
2205401	0.00	Petition
2205460	133.38	Petition
2205502	356.24	Petition
2205506	0.00	Petition
2205542	29.99	Petition
2205555	397.40	Petition
2205556	99.64	Petition
2205646	0.00	Petition
2205650	43.03	Petition
2205684	39.74	Petition
2205801	98.77	Petition
2205805	0.00	Petition
2205806	0.00	Petition
2205812	0.00	Petition
2205819	0.00	Petition
2205861	0.00	2019 Contract
2205904	153.75	Petition
2205905	410.20	Petition
2205906	0.00	Petition
2205907	0.00	Petition
2205908	127.07	Petition
2205971	363.04	Petition
2205972	129.27	Petition
2205973	487.94	Petition
2205974	486.94	Petition
2205978	0.00	Petition
2205983	7.12	Petition
2205984	168.47	Petition
2205985	1395.47	Petition
2205986	321.06	Petition

2206010	122.02	Petition
2206011	569.12	Petition
2206012	0.00	Petition
2206015	0.00	Petition
2206061	72.40	Petition
2206064	33.70	Petition
2206067	0.00	Petition
2206069	0.00	Petition
2206077	86.85	Petition
2206083	209.44	Petition
2206086	50.29	Petition
2206092	164.82	Petition
2206095	427.68	Petition
2206096	84.56	Petition
2206098	42.89	Petition
2206107	166.48	Petition
2206108	192.01	Petition
2206375	396.69	Petition
2206387	0.00	2019 Contract
2206388**	105.04	2019 Contract
2206390	0.00	2019 Contract
2206419	336.43	2019 Contract
2206421	171.83	2019 Contract
2206441	13.97	Petition
2206443	175.29	Petition
2206452	5.07	2019 Contract
2206453	3.84	2019 Contract
2206461**	1.88	2021 Contract in 2020 ARP
2206643	9.30	2019 Contract
<p>**WDID 2206461 2020 use is calculated per SWSP, WDID 2105018 is estimate based on meter readings taken by owners, WDID 2205209 is estimate based on meter readings taken by owner on CDPHE meter, WDID 2206388 is estimated by DWR</p> <p>No New Wells in 2024 ARP</p>		

APPENDIX B

Contract Wells Documentation

WDID	Structure Name	Associated Permit	Uses Under Contract	Consumptive Use %
2105018	W-3438 and 80CW26	20807-F	Domestic/Stock	40%
2105400	W1718 Well No. 4	23868-F	Commercial Domestic	40%
2105401	W1718 Well No. 5	23869-FR	Commercial Domestic	40%
2105404	W1726 Well No. 2	3782-F	Sprinkler	83%
2105907		41550-F	Commercial Domestic	40%
2205001	W1766 Well No. 01	246-R	Flood	60%
2205012	W3471 Well No. 1R	22011-F-R	Municipal	40%
2205013	W3471 Well No. 2	22012-F	Municipal	40%
2205015	80CW25 and W3434 Well No. 1	20719-F	Municipal	40%
2205041	W1924 Well No. 1	3116-F	Municipal	100%
2205043	W-657 Well No. 1	12905-F	Domestic.Municipal	40%
2205073	W-0209 Well No. 1	11153-R	Flood	60%
2205209	W-1076 Well No. 1	26062	Domestic/Commercial	10%
2205210	W-1076 Well No. 2	20463, 35783-F	Domestic/Commercial	60%
2205861	W2188 Well No. 5		Fire	
2206387	W3245 Well No. 3	15149-R-R	Flood	60%
2206388	W3245 Well No. 4	15151-R-R	Flood	60%
2206390	W3245 Well No. 6	15150-R	Flood	60%
2206419	2004CW13 Well No. 1	18751-F	Municipal	40%
2206421	2004CW13 Well No. 2	18752-F	Municipal	40%
2206452	05CW14 Well No. 2A	62786-F	Commercial	33%
2206453		22892-FR	Commercial	18%
2206461		292150	Domestic/Commercial	70%
2206643	12CW32 Well No. 1-R	22714-F-R	Sprinkler	83%
*2205184	W-0933 Well No. 1	47770-F	Flood	60%

*Contract well covered by CWCD Aug Plan but water for depletions under that Aug Plan Certificate supplied by SD #3

APPENDIX C

List of Augmentation Wells and Map

APPENDIX C
Augmentation Wells

ARP Wells Partially or Fully Covered by Plan of Augmentation					
Case No.	Plan Type	Augmentation Decree Owner	Well Owner	WDID	Description of ARP Coverage for Augmentation Well
90CW24	Augmentation Certificate No. COM0020	Conejos Water Conservancy District	Randy and Naomi Keys	2205184	Well depletions calculated by CWCD Augmentation Plan. Water for Augmentation needs of this well is supplied by the Subdistrict. Well was not included in Subdistrict No. 3 depletion calculations for ARP Plan Year.

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

Obligation = 81,800

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

Total	260,000	87% of long term average
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Deliveries

Delivery Obligation

<u>Required Delivery</u>	<u>49,200</u>	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
Total	530,000

Deliveries

Delivery Obligation

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

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

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

Delivery Credit 137,200

Expected Dec. 31, 2024 Compact Delivery Status 0

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

USDA NRCS National Water & Climate Center

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

- Based on April 01, 2024 forecast values

Northwestern Rio Grande in Colorado

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

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 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. 3 agreed to lease 440.3 acre-feet of Excess Credits from the BLM in 2019. A portion of this water remains in storage in Platoro Reservoir for use in the ARP as shown above in the table of replacement sources.

SWSP- 6056 BLM Excess Augmentation Credits 02CW38A	
DATE PURCHASED	AMOUNT (AF)
April 2019	440.3
TOTAL	440.3

Excess Augmentation Water owned by Expo, LLC in the amount of 70.4 acre-feet currently stored in Terrace Reservoir

Expo, LLC is the owner of certain water originally decreed in Case No. 1982CW97, District Court, Water Division No. 3, as subsequently changed in part in Case No. 2014CW3027 and Case No. 2016CW3019, both 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. Pursuant to these Decrees, Expo had 22.0 acre-feet of water in storage in Terrace Reservoir in 2019, 2020, 2021 and 2022. Subdistrict No. 3 has entered into a lease with Expo, LLC to lease this water for the purpose of replacing depletions as part of the ARP. To the extent necessary, any return flow

obligations under the original use of this water were addressed in the 1982CW97 Decree. An SWSP has been approved by the State Engineer for the use of the leased water for the purpose of replacing depletions as part of the ARP.

SWSP-6066 Expo, LLC Excess Augmentation Water	
DATE PURCHASED	AMOUNT (AF)
April 2020	22.0
April 2021	22.0
April 2022	22.0
March 2023	22.0
TOTAL	88.00

San Luis Valley Water Conservancy District Fully Consumable Water under Case Nos. 1984CW16 and 1994CW62 currently stored in Platoro Reservoir

This fully consumable water was decreed in Case Nos. 1984CW16 and 1994CW62 for storage and augmentation purposes. Subdistrict No. 3 has agreed to lease 1246.23 acre-feet of fully consumable water under these decrees for use in their ARPs. In 2017, 755 acre-feet was leased and the water was exchanged from Rio Grande Reservoir and Continental Reservoir on the upper Rio Grande into Platoro Reservoir in the upper Conejos. Of the amount exchanged, 50 acre-feet was used to cover a portion of the 15% transit losses for this exchange and the remainder of the transit losses were covered by Colorado Parks and Wildlife with water they had stored in Platoro Reservoir. In 2018, an additional 541.23 acre-feet was leased. Of this amount, 200 acre-feet remained in Beaver Reservoir and the remaining 341.23 acre-feet was exchanged into Platoro Reservoir for use on the Conejos River. A portion of this water remains in storage in Platoro Reservoir for use in the ARP as shown above in the table of replacement sources.

SWSP 6061- SLVWCD 84CW16 & 94CW62	
DATE PURCHASED	AMOUNT (AF)
September 2017	755
June 2018	541.23
TOTAL	1,296.23

SAN LUIS VALLEY WATER CONSERVANCY DISTRICT-LEASED TO THE RIO GRANDE WATER CONSERVATION DISTRICT AND THEN TO SUBDISTRICT NO. 3 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. 3 leased 81.0 acre-feet of this water for use in its 2021 ARP or future ARPs. A portion of this water is currently stored in stored in Beaver Reservoir for use in the ARP as shown in the table of replacement sources.

SWSP Pending- SLVWCD 84CW16 & 94CW62	
DATE PURCHASED	AMOUNT (AF)
April 2021	81.0
TOTAL	81.0

RIO GRANDE WATER CONSERVATION DISTRICT’S EXCESS CITY OF CREEDE AUGMENTATION CREDITS STORED IN BEAVER RESERVOIR

A detailed description of this water is included in the ARP under 11.1.4 Paragraph 3.

Water Right	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
City of Creede excess augmentation credits under Case No. 94CW31 and No. 07CW60	4.5	City of Creede	6094	Beaver Reservoir
In Storage (acre-feet)	4.5			

SANTA MARIA RESERVOIR COMPANY SHARES LEASED FROM SUBDISTRICT NO. 1 IN THE AMOUNT OF 200.0 ACRE-FEET

In 2022, Subdistrict No. 1’s Board of Managers accepted a Memorandum of Understanding to sell 200.0 acre-feet of water they had stored in Santa Maria Reservoir to Subdistrict No. 3 to be used in the Subdistrict’s ARP. Of the amount leased, 152.34 acre-feet was leased from shareholders on the Monte Vista Canal and this water will require the Subdistrict to deliver a portion of the water for losses and return flows. This water is currently held in Santa Maria Reservoir. The following table includes details of this purchase.

Water Right	Beginning Balance 5/1/2024	Water Previously Controlled By	SWSP	Current Storage Location
Santa Maria Reservoir Company Shares (Monte Vista Canal Shares)	47.66	SD No. 1		Santa Maria Reservoir
Santa Maria Reservoir Company Shares (Rio Grande Canal Shares)	152.34	SD No. 1		Santa Maria Reservoir
In Storage (acre-feet)	200.0			

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

On December 30, 2015, the SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange. The SLVIWO is the owner of the water rights and corresponding structures associated with the Taos Valley Canal No. 3. The original decree for the water rights

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

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

Subdistrict No. 3 entered an agreement with the SLVIWO to lease up to 2,000 acre-feet for use in the 2024 ARP as shown above in the table of replacement sources. See Appendix F for documentation of the lease. An SWSP was filed pursuant to section 37-92-308(4), C.R.S., for the purpose of approving the change of the water rights listed above to include requested uses in Case No. 2015CW3030 including. augmentation, exchange, storage by exchange in 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 Subdistrict expects that this water right may not be able to produce the full 2,000 acre-feet which was leased for the Plan Year, but reserves the right to utilize up to the full amount, less any applicable losses, for the benefit of the Subdistrict in the current Plan Year or future Plan Years. The SWSP will also approve the use of Taos Valley No. 3 water delivered, above what is stored, for the use by Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 5, Subdistrict No. 6, and the Trinchera Subdistrict for augmentation use for the replacement of depletions.

Water Right	Beginning Balance 5/1/2024	Water Previously Controlled By	Current Storage Location
Taos Valley No. 3, 2022 Lease	87.7	San Luis Valley Irrigation Well Owners	Platoro Reservoir
Taos Valley No. 3, 2022 Lease	19.7	San Luis Valley Irrigation Well Owners	Beaver Reservoir
Taos Valley No. 3, 2022 Lease	56.4	San Luis Valley Irrigation Well Owners	Rio Grande Reservoir
Taos Valley No. 3, 2023 Lease	67.2	San Luis Valley Irrigation Well Owners	Platoro Reservoir
Taos Valley No. 3, 2023 Lease	84.5	San Luis Valley Irrigation Well Owners	Beaver Reservoir
Taos Valley No. 3, 2023 Lease	429.5	San Luis Valley Irrigation Well Owners	Rio Grande Reservoir
In Storage (acre-feet)	745.0		

LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 3. of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict No. 3”), 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 2022 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. 3 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. 3 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. 3, which date shall be the “Effective Date” and will end at midnight on April 30, 2023.
 - 1.3. Lease Price. The lease price for the 22.0 acre-feet of water is two hundred dollars (\$200.00) per acre-foot for a total lease price of four thousand four hundred dollars (\$4,400.00) with all \$4,400.00 due and payable within ten business days after the Effective Date of this agreement. By July 1, 2022, 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 1st, 2022.
 - 1.4. Failure to Pay. If the SUBDISTRICT NO. 3 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 2022.

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. 3 shall bear all seepage, evaporation and transit losses on the subject water. The SUBDISTRICT NO. 3 will retain title to unused water, if any, after the Term of this Agreement.

1.6. Approvals. SUBDISTRICT NO. 3 is responsible for obtaining any approvals necessary for SUBDISTRICT NO. 3'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. 3'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 the SUBDISTRICT NO. 3.

3. SUBDISTRICT NO. 3's Representations. This Agreement has been duly authorized and executed by the SUBDISTRICT NO. 3, is the legal, valid, and binding obligation of the SUBDISTRICT NO. 3, and is enforceable against the SUBDISTRICT NO. 3 according to its terms. No other consent is required for the execution, delivery or performance of this contract by the SUBDISTRICT NO. 3. To the best of the SUBDISTRICT NO. 3's knowledge, there is no pending or threatened litigation or administrative proceeding against the SUBDISTRICT NO. 3 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: 719+852-3321
E-mail: 'Alex Miller'
<alexm@ffdllc.net>

To SUBDISTRICT NO. 3: 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, the SUBDISTRICT NO. 3's remedies shall include, but not be limited to, the remedy of specific performance. In the event of the SUBDISTRICT NO. 3's default hereunder, Lessor's sole and exclusive remedy shall be to retain all payments made by the SUBDISTRICT NO. 3 prior to the date of the default, and to retain any water not paid for by the SUBDISTRICT NO. 3.
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 NO. 3 to one another with respect to this Agreement.
 - 6.2. **Survival.** Each of the representations and warranties made by Lessor and the SUBDISTRICT NO. 3 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 NO. 3. 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 NO. 3, which consent shall not be unreasonably withheld. The SUBDISTRICT NO. 3 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 NO. 3 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 NO. 3 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 NO. 3, 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

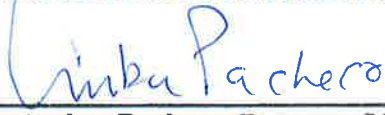
EXPO, LLC

By: 

Alex Miller, CFO

Date 1/13/22

**SPECIAL IMPROVEMENT DISTRICT NO. 3
OF THE RIO GRANDE WATER
CONSERVATION DISTRICT
WATER ACTIVITY ENTERPRISE**

By: 

Amber Pacheco, Program Manager

Date 1/17/2022

LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into between Special Improvement District No. 3. of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict No. 3”), 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 2023 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. 3 desires to lease 22.0 acre-feet of said augmentation water from Lessor on the terms set forth below.

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1. Lease Agreement.

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- 1.6. Approvals. SUBDISTRICT NO. 3 is responsible for obtaining any approvals necessary for SUBDISTRICT NO. 3'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. 3'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 the SUBDISTRICT NO. 3.

3. SUBDISTRICT NO. 3's Representations. This Agreement has been duly authorized and executed by the SUBDISTRICT NO. 3, is the legal, valid, and binding obligation of the SUBDISTRICT NO. 3, and is enforceable against the SUBDISTRICT NO. 3 according to its terms. No other consent is required for the execution, delivery or performance of this contract by the SUBDISTRICT NO. 3. To the best of the SUBDISTRICT NO. 3's knowledge, there is no pending or threatened litigation or administrative proceeding against the SUBDISTRICT NO. 3 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. 3: 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, the SUBDISTRICT NO. 3's remedies shall include, but not be limited to, the remedy of specific performance. In the event of the SUBDISTRICT NO. 3's default hereunder, Lessor's sole and exclusive remedy shall be to retain all payments made by the SUBDISTRICT NO. 3 prior to the date of the default, and to retain any water not paid for by the SUBDISTRICT NO. 3.
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 NO. 3 to one another with respect to this Agreement.
 - 6.2. Survival. Each of the representations and warranties made by Lessor and the SUBDISTRICT NO. 3 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 NO. 3. 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 NO. 3, which consent shall not be unreasonably withheld. The SUBDISTRICT NO. 3 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 NO. 3 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 NO. 3 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 NO. 3, 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: 

Date 2/29/23

**SPECIAL IMPROVEMENT DISTRICT NO. 3
OF THE RIO GRANDE WATER
CONSERVATION DISTRICT
WATER ACTIVITY ENTERPRISE**

By: 
Amber Pacheco, Program Manager

Date 2/28/23

LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into between Special Improvement District No. 3. Of the Rio Grande Water Conservation District Water Activity Enterprise ("Subdistrict No. 3"), 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 2021 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. 3 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. 3 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. 3, which date shall be the "Effective Date" and will end at midnight on April 30, 2022.
- 1.3. Lease Price. The lease price for the 22.0 acre-feet of water is two hundred dollars (\$200.00) per acre-foot for a total lease price of four thousand four hundred dollars (\$4,400.00) with all \$4,400.00 due and payable within ten business days after the Effective Date of this agreement. By July 1, 2021, 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 31st, 2021.
- 1.4. Failure to Pay. If the SUBDISTRICT NO. 3 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 2021.

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. 3 shall bear all seepage, evaporation and transit losses on the subject water. The SUBDISTRICT NO. 3 will retain title to unused water, if any, after the Term of this Agreement.

1.6. Approvals. SUBDISTRICT NO. 3 is responsible for obtaining any approvals necessary for SUBDISTRICT NO. 3'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. 3'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 the SUBDISTRICT NO. 3.

3. SUBDISTRICT NO. 3's Representations. This Agreement has been duly authorized and executed by the SUBDISTRICT NO. 3, is the legal, valid, and binding obligation of the SUBDISTRICT NO. 3, and is enforceable against the SUBDISTRICT NO. 3 according to its terms. No other consent is required for the execution, delivery or performance of this contract by the SUBDISTRICT NO. 3. To the best of the SUBDISTRICT NO. 3's knowledge, there is no pending or threatened litigation or administrative proceeding against the SUBDISTRICT NO. 3 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: AlexM@ffdllc.net

To SUBDISTRICT NO. 3: 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, the SUBDISTRICT NO. 3's remedies shall include, but not be limited to, the remedy of specific performance. In the event of the SUBDISTRICT NO. 3's default hereunder, Lessor's sole and exclusive remedy shall be to retain all payments made by the SUBDISTRICT NO. 3 prior to the date of the default, and to retain any water not paid for by the SUBDISTRICT NO. 3.
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 NO. 3 to one another with respect to this Agreement.
 - 6.2. Survival. Each of the representations and warranties made by Lessor and the SUBDISTRICT NO. 3 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 NO. 3. 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 NO. 3, which consent shall not be unreasonably withheld. The SUBDISTRICT NO. 3 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 NO. 3 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 NO. 3 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 NO. 3, 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

A handwritten signature in black ink, appearing to be the initials 'JL' or similar, located in the bottom right corner of the page.

EXPO, LLC

By: Alex Miller
Alex Miller

3/31/21
Date

**SPECIAL IMPROVEMENT DISTRICT NO. 3
OF THE RIO GRANDE WATER
CONSERVATION DISTRICT
WATER ACTIVITY ENTERPRISE**

By: Amber Pacheco
Amber Pacheco, Program Manager

3/31/21
Date

SAN LUIS VALLEY WATER CONSERVANCY DISTRICT

623 FOURTH STREET
ALAMOSA, CO 81101

Invoice

Date	Invoice #
6/20/2018	2018-SUB#3

Phone #	719-589-2230
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Bill To
RIO GRANDE WATER CONSERVATION CLEAVE SIMPSON SUBDISTRICT #3 8900 INDEPENDENCE WAY ALAMOSA, CO 81101

Description	Amount
760 ACRE FEET OF WATER LOCATED IN BEAVER RESERVOIR	
760 AF @ \$65.00/AF = \$49,400	
AMOUNT DUE JULY 15, 2018	24,700.00
AMOUNT DUE FEBRUARY 1, 2019	24,700.00
THANK YOU	
Total	\$49,400.00

SD#3 Water Agreement

SLV WATER CONSERVANCY DISTRICT

623 FOURTH STREET
ALAMOSA, CO 81101

Phone # 719-589-2230

	Invoice #
9/6/2017	2017-SUB #3

Bill To

RIO GRANDE WATER CONSERVATION
SUBDISTRICT #3
8805 INDEPENDENCE WAY
ALAMOSA, CO 81101

Description	Amount
755 AF OF WATER @ \$65.00/AF	49,075.00
WATER STORAGE - 130 AF @ \$83.75/AF	10,887.50
PLEASE INCLUDE CERTIFICATE NUMBER ON CHECK	
Total	\$59,962.50

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 30 day of March , 2019 (“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. 3 of the Rio Grande Water Conservation District, acting by and through its Water Activity Enterprise (“Subdistrict No. 3”) (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 ground water 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”). These 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. 3 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. 16CV30021, for among other purposes, carrying out water planning and water management functions within the San Luis Valley. Subdistrict No. 3 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. 3 seeks up to 900 acre-feet of water in order to help satisfy the requirements of its 2019-2020 Annual Replacement Plan (“ARP”) for the Plan of Water Management for Subdistrict No. 3 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. 3, AGENCY agrees to provide Subdistrict No. 3 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. 3'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 number 2002CW38A. The availability of "Excess Credits" means that the AGENCY has elected to use the Lovato Ditch water right for alternative purposes authorized under an annual substitute water supply plan approved by the Colorado Division of Water Resources.
- B. "Remedy Costs" means the total cost to Subdistrict No. 3 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. 3 sustainability requirements under its Annual Plan of Water Management.
- C. "Remedy Credits" means the value assigned by Subdistrict No. 3 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 3.

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 Subdistrict No. 3 the right to use up to 900 acre-feet of Excess Credits. In exchange, Subdistrict No. 3 will include wells W-3245 Well No. 3 (WDID 2206387), W-3245 Well No. 4 (WDID 2206388), and W-3245 Well No. 6 (WDID 2206390) according to the terms of a Participation Contract including those wells. If additional wells are added to that Participation Contract, according to its terms, such additional wells will be included in this subparagraph by implication. Subdistrict No. 3 will also take such actions as may be necessary to assure compliance with the sustainability requirements of the 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.
- A. Every acre-foot generated under this Agreement and provided for use by Subdistrict No. 3 will result in the generation of the equivalent of Sixty-five dollars (\$65.00) in Remedy Credits for the AGENCY.

- B. At the time, through a separate written agreement, AGENCY's well or wells are included in a Subdistrict No. 3 ARP, Subdistrict No. 3 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. 3's Plan for Water Management and associated Rules and Regulations.
- C. Except as provided in Paragraph 1.E, below, Subdistrict No. 3 will consider the Fees incurred by AGENCY as determined in paragraph 1.B, above, as Remedy Costs to the AGENCY and will not demand monetary payment for such Fees from AGENCY.
- D. At the same time Subdistrict No. 3 calculates Fees for other Subdistrict Wells, Subdistrict No. 3 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. 3.
- E. AGENCY may carry over any Remedy Credits from year to year, including after the Term of this Agreement has expired, and Subdistrict No. 3 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 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. 3's ARP and AGENCY must comply with the Groundwater Rules in some manner outside of this Agreement.
- F. 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 an ARP year. Upon proper notice, Subdistrict No. 3 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 the Effective Date and ending April 30, 2020. This Lease Agreement is for a single term only and is not renewable. If the Subdistrict chooses to place the leased water into storage, the up to 900 acre-feet need not be used by Subdistrict No. 3 prior to the expiration of the term of this Lease Agreement and any such unused water will remain under the control of Subdistrict No. 3 after expiration of this Lease Agreement.
3. **Agreement to Lease up to 900 Acre-feet of Excess Credits:** Subject to the terms and conditions in this Lease Agreement, AGENCY agrees to provide 900 acre-feet of Excess Credits for

Subdistrict No. 3's use. Further details regarding this provision are outlined in the following subsections.

a. **Delivery of Excess Credit Water:** The up to 900 acre-feet of Excess Credits will be the first 900 acre-feet generated under the terms and conditions of the 2002CW38A Decree. After this 900 acre-feet is under the control of Subdistrict No. 3 pursuant to this contract, AGENCY retains the right to use or dispose of any additional Excess Credits generated.

b. **Use of Leased Excess Credits:**

i. **Preservation of AGENCY's 2002CW38A Water Rights:** Subdistrict No. 3 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 2019-2020 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. 3 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. 3 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. 3'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. 3 other than the up to 900 acre-feet leased herein. Furthermore, the Parties understand and agree that by permitting Subdistrict No. 3 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.

ii. **Assessment of Evaporation, Seepage, and Transit Losses:** Beginning on the Effective Date, Subdistrict No. 3 will bear all seepage, evaporation, and transit losses on the up to 900 acre-feet of Excess Credits leased 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. **Modification and Termination:**

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

- B. Either party may terminate this Agreement by providing the other party with thirty (30) days advance written notice.
- a. In the event AGENCY terminates the performance of this Lease Agreement, Subdistrict No. 3's sole and exclusive remedy will be specific performance until April 30, 2020. In the event Subdistrict No. 3 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. 3 under the terms of this Lease.
5. **Subdistrict No. 3's Representations:** This Lease Agreement has been duly authorized and executed by Subdistrict No. 3, is the legal, valid and binding obligation of Subdistrict No. 3, and is enforceable against Subdistrict No. 3 according to its terms. No other consent is required for the execution, delivery, or performance of this Lease Agreement by Subdistrict No. 3.
6. **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.
- a. **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.
 - b. **Subdistrict No. 3 Representative and Contact Addresses:** District Manager (Cleave Simpson) is the representative for Subdistrict No. 3 for purposes of this Lease Agreement. Mr. Simpson can be reached by physical mail at: Subdistrict No. 3, 8805 Independence Way, Alamosa, Colorado 81101; by telephone at: (719) 589-6301; and by e-mail at: cleave@rgwcd.org.
7. **General Provisions**
- a. **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.

- b. **Binding Agreement:** This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- c. **Binding Arbitration Prohibited:** Neither AGENCY nor Subdistrict No. 3 agree to binding arbitration by any extra-judicial body or person. Any provision incorporated herein by reference is null and void.
- d. **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.
- e. **Compliance with Applicable Laws:** At all times during the performance of this Lease Agreement, Subdistrict No. 3 will adhere to all applicable Federal and State laws, rules, and regulations then in effect. In addition:
 - i. 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
 - ii. 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.
- f. **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.*
- g. **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.
- h. **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.

- i. **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.*
- j. **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.
- k. **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.
- l. **Modification:**
 - i. **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.
 - ii. **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.
- m. **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:

- i. The provisions of the main body of this Lease Agreement
- ii. Exhibits
- n. **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.
- o. **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.
- p. **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: FELICIA SALAZAR Digitally signed by FELICIA SALAZAR
Date: 2019.03.30 18:48:00 -06'00'

Felicia Salazar, Contracting Officer

Date: 3/30/2019

**WATER ACTIVITY ENTERPRISE OF SPECIAL IMPROVEMENT DISTRICT NO. 3 OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

By: 

Cleave Simpson, General Manager

Date: 4-2-19

STATEMENT

SAN LUIS VALLEY IRRIGATION
WELL OWNERS, INC.
PO BOX 147
LA JARA, CO 81140

719-588-5288
Date
1/15/2020

To:

Rio Grande Water Conservation District
8900 Independence Way
Alamosa, CO 81101

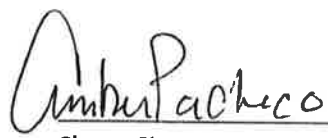
Transaction	Amount	Balance
Lease of Taos Valley No 3 for 2019 107.9 ac-ft @ \$50/ac-ft	5,395.00	5,395.00

TO: Subdistrict No. 3 Board of Managers
DATE: April 13, 2021
SUBJECT: Lease of RGWCD SLVWCD Water stored in Beaver Reservoir

Dear Board of Managers for Subdistrict No. 3,

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. 3 has made a request to lease 80.95 acre-feet of water this RGWCD currently holds in storage in Beaver Reservoir. This water was leased from SLVWCD in 2020. The Subdistrict will reimburse the RGWCD an amount equal to the costs per acre-foot which the District has paid to lease and store this water.

Any amount of water from this lease between Subdistrict No. 3 and the RGWCD that remains in storage will remain under the control of Subdistrict No. 3 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.

 *Amber Pacheco* Acting Deputy
General Mgr.

Cleave Simpson
General Manager
Rio Grande Water Conservation District

4/14/2021

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 ^{Pine} Case 1984CW16 and 1994CW62</p> <p>88.19 ac-ft Bear Creek case 2005CW13 and 2007CW63</p> <p>42.65 ac-ft Bar Cattle case 2003CW41</p> <p>73.08 ac-ft Anaconda case 2009CW34</p> <p><u>442.87 ac-ft</u></p> <p>Continental Water:</p> <p>22.89 ac-ft Bear Creek case 2005CW13 and 2007CW63</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 84CW16</p> <p><u>130.0</u></p>	
PLEASE INCLUDE CERTIFICATE NUMBER ON CHECK	
Total	\$37,236.55

AP
12/28/2020

TO: Subdistrict No. 3 Board of Managers

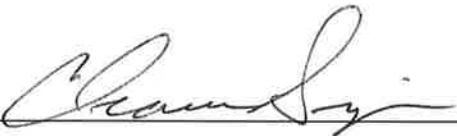
DATE: April 13, 2020

SUBJECT: Purchase of RGWCD water produced through a lease of City of Creede augmentation water currently stored in Beaver Reservoir

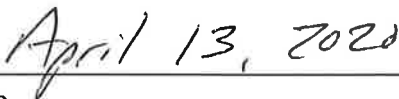
Dear Board of Managers for Subdistrict No. 3,

The Rio Grande Water Conservation District (RGWCD) has been accumulating a pool of water over the past few years for the purpose of making it available to Subdistricts for use in their ARPs as a replacement source to remedy their injurious depletions. Subdistrict No. 3 has made a request to acquire up to 153.45 acre-feet of water the RGWCD currently holds in storage in Beaver Reservoir. This water was leased from City of Creede during the period November 1, 2019-April 30, 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. 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. 3 ARP Wells.

If Subdistrict No. 3 does not require the total 153.45 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 acquire 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



March 31, 2023

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

**Re: Alpha Hay Farms Fields 11 & 12 and Special Improvement District No. 3 (Subdistrict 3) of the Rio Grande Water Conservation District Substitute Water Supply Plan
Water Division 3
SWSP ID 9364**

Approval Period: April 1, 2023 to March 31, 2024 (subject to Condition of Approval #3)
Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated January 31, 2023 in which you request approval of the substitute water supply plan (“SWSP”) on behalf of the Special Improvement District No. 3 (“Subdistrict No. 3” 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 January 31, 2023. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 10026959) 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 3 (2016CV30021) 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 3’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

A portion of Alpha Farms property located in Conejos County has been proposed for dry-up to enable Subdistrict No. 3 to use the historical consumptive use (“HCU”) water in their Annual Replacement Plan (“ARP”). The proposed area consists of 221 acres that were irrigated historically with a combination of surface and groundwater. The water rights used for irrigation of the property were Well No. 1 (Case No. W-0490, Permit no. 10550-F, WDID 2205123), 2.35 cfs of the Heads Mill Ditch, and 16.08 cfs of the J.F. Chacon No. 2 transferred into the Heads Mill Ditch, all of which is diverted at the Heads Mill Ditch point of diversion.

The fields to be dried up are Fields 11 & 12, located in portions of the NE1/4 of Section 20, and the NW1/4 of Section 21, both in Township 33N, Range 9E of the N.M.P.M. Historical diversions from the Heads Mill Ditch headgate are approximately 10,376 acre-feet (from Table 2: Heads Mill Ditch plus J.F. Chacon No. 2 transferred rights 1970 through 2020). Historically irrigated acres and crop type are presented in Table 4 below. There are 19 years of recorded data.

Table 2 – Annual Average Surface Water Diversions

Ditch Name	Annual Average Diversions (Acre-Feet)
Heads Mill Irrigation Ditch	9,848
J.F. Chacon No.2	528
J.F. Chacon No.3	1,177

Table 4 – Cropping & Irrigated Acres Summary

Year	F11		F12		F13		F14	
	Irrigated Acres	Crop Type	Irrigated Acres	Crop Type	Irrigated Acres	Crop Type	Irrigated Acres	Crop Type
1978	116	Alfalfa	138	Small Grain	134	Alfalfa	127	Alfalfa
1985	112	Small Grain	135	Alfalfa	138	Small Grain	63	Alfalfa
1987	108	Alfalfa	134	Alfalfa	132	Small Grain	133	Alfalfa
1988	109	Alfalfa	134	Alfalfa	138	Alfalfa	136	Alfalfa
1998	97	Alfalfa	169	Alfalfa	176	Alfalfa	138	Alfalfa
2002	95	Small Grain	166	Alfalfa	173	Alfalfa	136	Alfalfa
2005	97	Alfalfa	169	Alfalfa	176	Alfalfa	138	Alfalfa
2009	49	New Alfalfa	143	Alfalfa	137	Alfalfa	134	Alfalfa
2010	97	Alfalfa	143	Small Grain	137	Small Grain	134	Alfalfa
2011	97	Alfalfa	143	New Alfalfa	137	New Alfalfa	134	Alfalfa
2012	97	Alfalfa	143	Alfalfa	137	Alfalfa	134	Small Grain
2013	0	Fallow	132	Alfalfa	130	Alfalfa	132	New Alfalfa
2014	97	New Alfalfa	143	Alfalfa	137	Alfalfa	134	Alfalfa
2015	97	Alfalfa	143	Alfalfa	137	Alfalfa	134	Alfalfa
2016	89	Alfalfa	130	Alfalfa	125	Alfalfa	127	Alfalfa
2017	97	Alfalfa	143	Alfalfa	137	Alfalfa	134	Alfalfa
2018	97	Alfalfa	144	Alfalfa	137	Alfalfa	134	Alfalfa
2019	97	Alfalfa	144	Alfalfa	137	Alfalfa	0	Fallow
2020	97	Alfalfa	144	Alfalfa	137	Small Grain	134	Small Grain
Avg	92		144		142		123	

Crop data and irrigated acreage for the years missing in the above Table (24 years) were interpolated from these data.

The HCU attributed to surface water irrigation was calculated to be 433.9 acre-feet over the study period from 1978 through 2020, although the majority of these data were interpolated. Field 12 has an existing well, permit no. 10550-F (WDID 2205123, Well No. 1 in Case No. W0490). The HCU from the groundwater supplies for Field 12 was calculated to be 89 acre-feet using the same study period. The total of 522.9 acre-feet over 221 irrigated acres resulted in 2.37 acre-feet per acre.

DEPLETIONS

Average monthly farm headgate deliveries over the study period were 1617.5 acre-feet, with a ditch loss of 35% (582.3 AF) and surface and deep percolation return flows averaging 37.2% (601.3 acre-feet). The monthly average volumetric CU limits are as follows:

Month	April	May	June	July	August	September	October	Total
CU (AF)	13.29	85.81	113.22	102.5	70.85	35.14	13.10	433.91

When the monthly consumptive use limits in Table 6 are reached, any additional priority water may be stored by exchange to Platoro Reservoir for delivery at a later date within the same year, with appropriate transit losses and diverted as with the earlier water deliveries. This will mimic the historical use of the water rights.

REPLACEMENTS

Replacement for both the ditch loss and the return flows will involve diverting the return flow and the ditch loss portions of the daily allocation at the headgate and those portions will be left in the ditch, except that the return flow portions may be run in the farm laterals or otherwise recharged on-site to replicate the historical return flows. Alternatively, the fields have a supply pond that was previously used to feed the center pivot sprinklers. This pond may be used to recharge on the on-farm return flows for fields 11 and 12 and allow the water to return to the Conejos River.

MEASUREMENT & ACCOUNTING

Daily accounting will be required to ensure that the daily allocation as presented in Table 10 below is not exceeded.

Table 10 – Daily Allocation of Surface Water Supply for F11 & F12

	April	May	June	July	August	September	October
On-Farm Return Flows (cfs)	1.19	2.39	2.32	1.63	1.21	0.52	0.66
Ditch Loss (cfs)	0.80	2.13	2.37	1.85	1.33	0.62	0.49
Consumptive Use (cfs)	0.22	1.40	1.90	1.67	1.19	0.59	0.21

Evaporation calculations due to recharge operations were not considered in this SWSP request but should be included with the accounting.

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 April 1, 2023 through March 31, 2024, unless otherwise revoked or superseded by decree. Additional SWSPs are required until a court decreed plan for augmentation is obtained for the proposed uses. Should an additional SWSP be requested, the provisions of § 37-92-308(4)(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. Approval of this SWSP is for the purposes stated herein. Additional diversion structures 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. The replacement water, which is the subject of this SWSP, cannot be sold or leased to any other entity during the term of this SWSP without prior approval of the Division Engineer.
4. 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.
5. The only use of Well No. 1 under this SWSP would be to pump groundwater CU and groundwater return flow into the recharge pit for the replacement of confined aquifer and surface water return flows obligations to the Conejos River. Diversions are limited to a maximum of 107.23 acre-feet (89 AF is CU, 18.23 is return flow obligation from the 83% sprinkler efficiency). The surface water return flow obligations would be reduced and an equivalent amount up to the 89 AF CU credit pumped at the well. The reduction in diversion at the ditch headgate must be equal to the pumping rate at the well during any 24 hour period. 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 on a daily basis.
6. For the existing well that will be pumped for the new uses described in this SWSP, a **new well permit must be obtained** in accordance with § 37-90-137(2), C.R.S. and this SWSP. **The well permit application must be submitted by June 1, 2023.** Any application will be evaluated subsequent to approval of this SWSP. The provisions of § 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 2 CCR 402-5. The hearing will be waived if the applicant is able to obtain statements from the owners of all wells within 600 feet, verifying that they have no objection to the use of the proposed wells.
7. This SWSP is being sought in order to provide a part of the water supplies to be used by Subdistrict No 3 (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 3'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. 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.
9. The Applicant shall perform an inspection and provide verification that the land associated with Fields 11 and 12 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.

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. In order to prevent injury to other water rights, the Division Engineer and Water Commissioner must be able to ensure the delivery of the Heads Mills Irrigation Ditch water to non-participating users on the ditches. In the event that delivery past dry-up points is not being achieved, for which a carriage or use agreement with a third party is required, the applicant shall be responsible for securing such agreement. If such a situation arises, until the Applicant provides a copy of the carriage or use agreement to the Division Engineer and Water Commissioner, no credit will be allowed for replacement of depletions to the Rio Grande.
12. Any delivery by exchange of Subdistrict CU must meet all statutory requirements, DWR policies, conditions and MOUs as set forth for exchanges.
13. 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.
14. 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 for all accounting with the subject line "Subdistrict 3-Alpha Hay Fields 11 & 12 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 SD3 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.**
15. 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.
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 § 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 Hoffman, Assistant Subdistrict Coordinator, in our Division 3 office in Alamosa at (719) 589-6683.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Deatherage". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Exhibit A (p.19), Water Supply map (p. 38),

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



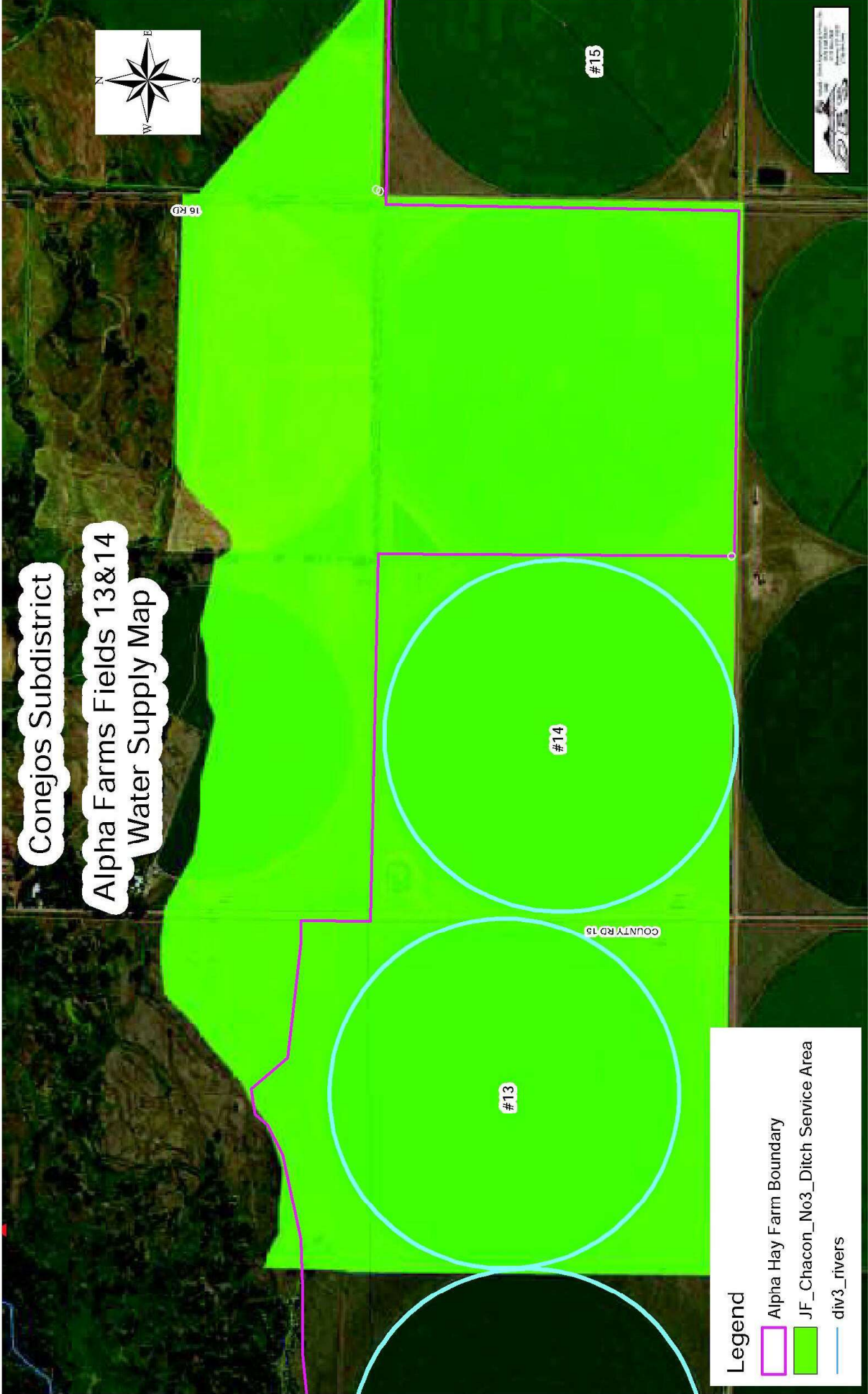
Exhibit A Fields 11 & 12



DES
SINCE 1948
Dens Engineering Services, Inc.
1514 Life Street
P.O. Box 1840
Hammond, CT 07110
773/855-3464

Legend
[Pink outline symbol] Approximate Subd#3 Boundary

Conejos Subdistrict Alpha Farms Fields 13&14 Water Supply Map



Legend

- Alpha Hay Farm Boundary
- JF_Chacon_No3_Ditch Service Area
- div3_rivers

LEASE AND OPTION TO PURCHASE AGREEMENT

THIS LEASE AND OPTION TO PURCHASE AGREEMENT (this “Agreement”) is made this 15 day of April, 2022 (the “Execution Date”), by and between Alpha Hay Farms, LLC. (“Grantor”), and the Rio Grande Water Conservation District, for and on behalf of the Water Activity Enterprise of Special Improvement District No. 3 of the Rio Grande Water Conservation District, a body corporate and politic and a political subdivision of the state of Colorado whose principal address is 8805 Independence Way, Alamosa, Colorado 81101 (the “District”). Grantor and the District may be referred to herein, individually, as a “Party”, or, collectively, as the “Parties”.

RECITALS

A. WHEREAS, Grantor is the owner in fee-simple of certain real property located in Conejos County, Colorado, identified as: Alpha Hay Farm, LLC Fields 11 & 12, located in the NE1/4 of Section 20, Township 33 N., Range 9 E. and the NW1/4 of Section 21, Township 33 N., Range 9 E., N.M.P.M., Conejos County, Colorado, as such lands are shown in the figure attached as Exhibit A (the “Property”).

B. WHEREAS, the Property includes appurtenant surface water and groundwater rights: Well No. 01, Case No. W-0490, Permit No. 10550-F; 2.35 cfs decreed to the Heads Mill Ditch as Priority No 2 on the Conejos River, Appropriation Date of June 1, 1855 pursuant to the decree entered on 10/22/1883 for Water District No. 22; J.F. Chacon No. 2, Priority No. 44 (7.54 cfs) Appropriation Date of October 15, 1877 pursuant to the decree entered on 10/22/1883 for Water District No. 22, Priority No. 49 (4.54 cfs) Appropriation Date of October 15, 1879 pursuant to the decree entered on 10/22/1883 for Water District No. 22, Priority No. 97 (2.0 cfs) Appropriation Date of May 1, 1884 pursuant to the decree entered on 10/3/1890 for Water District No. 22, and Priority No. 142 (2.0 cfs) Appropriation Date of May 15, 1889 pursuant to the decree entered on 10/3/1890 for Water District No. 22 (the “Water Rights”).

C. WHEREAS, Grantor desires to sell the Property, including the Water Rights.

D. WHEREAS, the District desires to purchase the Property, including the Water Rights; however, the District requires additional time to perform due diligence on the Property prior to purchasing the Property, including, but not limited to, an appraisal, an environmental assessment, title review, and an evaluation of water and water rights appurtenant to or otherwise associated with the Property.

E. WHEREAS, Grantor is willing to grant to the District an exclusive, irrevocable option to purchase the Property, including the Water Rights (the “Option”), and Grantor is willing to lease the Property, including the use of the Water Rights, to District so that District may perform due diligence on the Property (the “Diligence Lease”).

F. WHEREAS, the District desires to purchase the Option from, and enter into the Diligence Lease with, Grantor consistent with and subject to the Terms and Conditions of this Agreement.

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

TERMS AND CONDITIONS

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

Diligence Lease and Option

1. **Option and Diligence Lease.** Grantor hereby grants the Option and Diligence Lease to the District together with all rights, privileges, easements, and appurtenances belonging to, or in any way pertaining to, the Property.

2. **Option and Diligence Lease Term.** Unless otherwise agreed in writing by the Parties, the term of the Option and the Diligence Lease shall be from the Execution Date until and including December 31, 2022 (“Option and Diligence Lease Term”). During the Option and Diligence Lease Term, the Option shall be irrevocable, and exclusive to the District.

3. **Diligence Lease Rent and Option Price.** The rent for the Diligence Lease and the price for the Option shall be the sum of One Hundred Twenty Thousand and 00/100 dollars (\$120,000.00) (the “Diligence Lease Rent and Option Price”). The District shall pay the Diligence Lease Rent and Option Price in one-lump sum by check to Grantor within ten (10) business days of the Execution Date. Except for the Diligence Lease Rent and Option Price, no other rent or payment shall be due or payable to Grantor by the District during the Option and Diligence Lease Term.

4. **Full Use and Quiet Enjoyment.** During the Option and Diligence Lease Term, the District, including its agents, employees, and contractors, shall be entitled to the full use and quiet enjoyment of the Property, including the use of the Water Rights, which includes, but is not limited to, the right to enter and access on, above, and under the Property, including any residences or dwellings, fixtures or improvements, including the Water Rights and any related structures, wells, or equipment necessary to divert or operate the Water Rights, for the purposes of performing due diligence, including, but not limited to, inspection of the premises, improvements and fixtures; performing environmental assessments; and evaluation of the water and water rights. The Parties further agree that during the Option and Diligence Lease Term, the District may use the Water Rights as a source of substitute/replacement supply in a replacement plan or plan for augmentation pursuant to a Substitute Water Supply Plan (SWSP) approved by the State and Division Engineers. Unless otherwise agreed to in writing by the Parties, the District shall not file an application concerning the Water Rights in the Water Court for Water Division Three (Rio Grande and Closed Basins) during the Option and Diligence Lease Term.

5. **Damages Liens and Indemnity.** To the extent permitted by law, the District shall indemnify and hold Grantor harmless from and against any and all mechanic’s liens, claims, damages, liability, causes of action, judgments, and expenses (including reasonable attorneys’ fees and costs) arising from the District’s occupancy of the Property during the Diligence Lease Term. The District shall repair any and all damage to the Property arising out of District use and occupancy during the Diligence Lease Term and shall restore the Property to as good a condition as existed on the date immediately preceding the date of such damage, with the exception of the

natural impacts of dry-up on existing vegetation as necessary for use of the Water Rights by the District pursuant to an SWSP. The indemnification and repair obligations set forth in this Section shall survive the closing or the termination of this Agreement. The District shall have no obligation to indemnify, and hold Grantor harmless from any claim, damage, liability, cause of action, judgment, or expense, including mechanic's liens, caused by Grantor's negligence or willful misconduct or any physical condition existing on the Property prior to the District's occupancy of the Property.

6. Grantor's Disclosures and Due Diligence. Grantor shall disclose to the District all easements, liens (including, without limitation, governmental improvements approved, but not yet installed), agreements or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Grantor has actual knowledge concerning the Property, including the Water Rights. Not later than ten (10) business days after the Effective Date, Grantor shall make available for the District's inspection, review and copying, those documents that exist and are within Grantor's possession or control which fall within the types of documents identified in Schedule 1 and are related to the Property (collectively, the "Due Diligence Materials"). Many of the Due Diligence Materials are public records available to the District from the Conejos County Clerk and Recorder or the Colorado Division of Water Resources, and to the extent they are publicly available, Grantor is not required to obtain or otherwise procure copies of those records for the District if they are not already in the possession or control of Grantor. Grantor shall make the Due Diligence Materials available at the Rio Grande Water Conservation District office, or at any other location the parties agree to. If this Agreement terminates prior to closing for any reason, the District shall return the Due Diligence Materials, and any copies thereof, to Grantor as soon as reasonably possible.

7. Crops. If there are any crops on the Property at the beginning of the Option and Diligence Lease Term, Grantor shall own the crops. Grantor shall be permitted reasonable access the Property for the purposes of harvesting the crops. Grantor acknowledges and agrees that unless otherwise set forth in a writing between the Parties, Grantor shall cease irrigation of the crops with any water attributable to the Water Rights upon the Execution Date. Grantor shall indemnify and hold harmless the District for Grantor's negligent or willful acts or omissions, and those of its employees, agents, and contractors. Grantor shall maintain commercially reasonable amounts of liability insurance to insure against these risks.

8. Option Exercise. If the District elects to exercise the Option and purchase the Property, the District shall provide written notice ("Notice") to Grantor in conformity with the Notice Provision below prior to the expiration of the Option and Diligence Lease Term. The Option shall be deemed exercised upon the mailing of the Notice by the District (the "Date of Exercise"). If the District does not elect to exercise the Option prior to the expiration of the Option and Diligence Lease Term, upon expiration of the Option and Diligence Lease Term, this Agreement shall terminate, and the Parties shall have no further obligations to each other, except as expressly set forth herein.

9. Compliance with Obligations. During the Option and Diligence Lease Term, Grantor shall comply on a timely basis with all of its legal and contractual obligations with respect to the Property, including the payment of property taxes.

10. Damages to Property. The District shall make reasonable efforts to minimize damage to Grantor as a result of the District's diligence activities. The District shall be responsible for its negligent or willful acts or omissions, and those of its employees, agents, and contractors which occur during the performance of their duties and within the scope of their employment in connection with the Diligence Lease. Grantor shall otherwise bear the risk of damages or losses to the Property that occur during the Option and Diligence Lease Term. Grantor shall maintain commercially reasonable amounts of liability insurance to insure against these risks.

Property Purchase

11. Purchase Price. If the District exercises the Option, the purchase price for the Property shall be Two Million One Hundred Eight-Seven Thousand Two Hundred Nine and 90/100 dollars (\$2,187,209.90 (the "Purchase Price"). The District's prior non-refundable payment of the Diligence Lease Rent and Option Price shall be applied as against the Purchase Price.

12. Closing. Unless otherwise agreed by the Parties in writing, the closing date for the purchase of the Property shall be June 30, 2023 (the "Closing Date"). The parties may extend the Closing Date, by mutual agreement evidenced in writing signed by both Parties. Following exercise of the Option, the Parties shall cooperate in good faith to negotiate the necessary closing documents, which will include a special warranty deed for the land comprising the Property, and a bargain and sale deed for the Water Rights which will transfer to the District all of Grantor's interest in the Property, including the Water Rights.

13. Purchase of Property.

- a. Right of Purchase. On the Closing Date, the District will purchase from Grantor, and Grantor will sell and convey to the District the Property, including the Water Rights, in accordance with the terms and conditions contained in this Agreement.
- b. Payment of Purchase Price. Subject to the full and timely performance by the parties hereunder, the Purchase Price for the Property will be payable to Grantor by the District, on the relevant Closing Date, as follows:
 - i. The Diligence Lease Rent and Option Price will be applied to the Purchase Price; and
 - ii. The balance of the Purchase Price, subject to Closing Adjustments (defined below), will be paid by cashier's check, wire transfer or other good funds.
- c. Closing Adjustments. General real property taxes for the year in which the Closing Date occurs will be apportioned between the parties based upon the most recent mill levy and assessment and will be final. Other customary prorations shall be made as of the Closing Date and applied as adjustments to the Purchase Price. Grantor will pay the cost of the premium for the Title Policy including deletion of standard printed

exceptions; the cost for any endorsements will be at the sole cost and expense of the District. The closing fees of the Title Company will be borne one-half by Grantor and one-half by the District. All other costs and expenses of Closing will be allocated in accordance with customary practice for real estate sales in Conejos County, Colorado.

- d. Closing Documents. The Parties shall execute and deliver at Closing all other documents required by the Title Company to close the transaction and issue title insurance on the Property to the District following the closing.
- e. Conveyance of the Property. On the Closing Date, Grantor will convey to the District fee simple title to the lands comprising the Property by a special warranty deed conveying the Property to the District free and clear of any and all taxes, assessments, liens, encumbrances, except the Permitted Exceptions. Title to the Water Rights will be conveyed by bargain and sale deed and change of ownership form for the well.

14. Title Insurance. Grantor will cause to be delivered to the District at Grantor's expense, on or before ten (10) days after the Date of Exercise, a certificate of taxes due on the Property and a current title insurance commitment ("Commitment") (together with legible copies of all instruments referred to therein) committing to issue a standard ALTA owner's title insurance policy, as amended, issued by the Title Company to the District in the amount of the Purchase Price insuring good and marketable title in fee simple in the District to the Property, subject only to: a) current non-delinquent general real property taxes for the year of Closing, b) any deeds of trust, mortgages, financial encumbrances and liens or other encumbrances arising from the actions or omissions of the District, and c) such easements, rights-of way, restrictions and other title matters of record approved by the District. The foregoing items a) through c) are hereinafter referred to as the "Permitted Exceptions." All items listed on the title commitment will be deemed to be Permitted Exceptions unless the District notifies Grantor within seven (7) days of receipt of the commitment that it objects to any particular items ("Objection Notice"). In the event the District timely provides its Objection Notice, Grantor will have seven (7) days thereafter in which to remove such exception or to notify the District that it is unable or unwilling to remove such exceptions, in which case the District may elect to terminate this Agreement by written notice to Grantor within seven (7) days thereafter, or to accept such exceptions (which the District will be deemed to do if the District does not timely elect to terminate this Agreement). The Commitment will affirmatively provide for the deletion, at Grantor's expense, of all standard printed exceptions of Schedule B-2 thereof. If the Title Company requires a survey in order to delete the standard pre-printed exceptions, the District shall order and pay for such survey. After the Closing Date, Grantor will cause to be delivered to the District, at Grantor's sole expense, a title policy for the Property, in the amount of the Purchase Price showing fee simple title thereto as being vested in the District subject only to the Permitted Exceptions.

15. Grantor agrees to:

- a. Participate in any water change case as reasonably required for purposes of the District's use of the Water Rights. "Participate" means to provide testimony and evidence in any court proceeding required to substantiate

the information provided in an affidavit described below, if available or in the possession of the Grantor; and To assure that participation is "reasonably required" the District agrees to make reasonable efforts to restrict any required participation to an interview, site inspection, deposition testimony, trial testimony, and preparation for depositions and trial testimony with the Grantor and Grantor agrees to make reasonable efforts to provide the previously mentioned participation requests by the District.

- b. Cooperate with the preparation and signature of an affidavit, due at closing, related to historical irrigation, including maps and descriptions of crop planting locations, and observed groundwater levels.

Miscellaneous

16. Representation and Warranties. Grantor represents and warrants to the District that, as of the Execution Date: Grantor is the sole owner in fee-simple of the Property; Grantor is authorized to and has the full legal power to enter into this Agreement and to grant the Option and Diligence Lease; the Property is not subject to any encumbrances or other agreements that could affect District's use, possession or occupancy of the Property, or the Option and Diligence Lease; no other person (including any spouse) is required to join in or consent to this Agreement in order for the Agreement to be fully enforceable by the District; this Agreement constitutes a valid and binding obligation of Grantor, and is enforceable in accordance with its terms; Grantor is not the subject of any bankruptcy, insolvency or probate proceeding; and to the best of Grantor's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings, or any other proceedings affecting or that could affect the Property, or any portion thereof, in law or in equity, before any court or governmental agency. Except for the representations and warranties above, the Property and Water Rights are being sold "as is" and the District shall conduct such due diligence as it deems appropriate.

17. Indebtedness. No provision, covenant or agreement contained in this Agreement, 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.

18. 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 Agreement. The performance of those obligations of the District requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

19. No Partnership or Agency. Notwithstanding any language in this Agreement 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.

20. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights and actions relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

21. **Governmental Immunity.** Nothing in this Agreement or any actions taken by the Parties pursuant to this Agreement shall be construed or interpreted as a waiver, express or implies, 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.

22. **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.

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

If to Grantor:

Alpha Hay Farm, LLC
Jack C Gilleland
13256 County Road P
La Jara, CO 81140
jackgilleland@hotmail.com

With a copy to:

Donald De Jong
P. O. Box 659
Hartley, TX 79044
dejongd@agrivisionfm.com

If to the District:

Special Improvement District No. 3
Rio Grande Water Conservation District
Attn: Program Manager
8805 Independence Way
Alamosa, CO 81101

With a copy to:

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

24. **Default and Remedies.** If any payment or any other condition hereof is not made, tendered, or performed as herein provided, there will be the following remedies. In the event the District fails to perform any covenant or agreement hereof as provided herein, and such failure is not cured within thirty (30) days after written notice thereof, then this Agreement will be null and void and of no effect, and both parties hereto will, thereupon be released from all obligations hereunder, except for obligations that expressly survive termination hereof, and the Option Consideration paid hereunder will be retained by Grantor as liquidated damages as Grantor's sole and exclusive remedy hereunder. These are the only conditions under which

Grantor may terminate. In the event that Grantor fails to perform any covenant or agreement hereof as provided herein, and such failure is not cured within thirty (30) days after written notice thereof, then the District may, at its election, treat this Agreement as terminated, and all payments made hereunder, including the Option Consideration, will be returned to the District; provided, however, that the District may, at its election, treat this Agreement as being in full force and effect with the right to an action for specific performance, provided such action for specific performance must be brought within ninety (90) days of the expiration of the 30-day cure period provided above. Notwithstanding the foregoing to the contrary, if the alleged default provided for in such notice is not capable of being fully cured within the 30-day period, such party will not be in default hereunder, provided that party has commenced to cure the default within the 30-day period and thereafter diligently pursues such cure to full completion within a reasonable period of time.

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

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

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

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

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

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

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

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

33. Further Instruments. Each party hereto will, from time to time execute and deliver such further instruments as the other party or its counsel or the Title Company may reasonably require effectuating the intent of this Agreement.

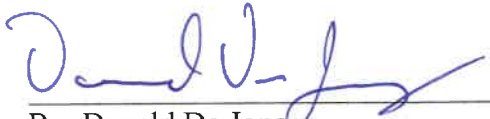
34. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

35. Recordation. Grantor and the District will execute and record a Memorandum of Option Agreement in the records of the County Clerk and Recorder for Conejos County, Colorado (“Memorandum”), provided that the Memorandum will recite only the identity of the parties, the grant of the Option, and the Option Term, and no financial terms or provisions of this Agreement will be set forth in such Memorandum. Upon the expiration or any earlier termination of this Agreement, or upon full exercise of the Option, at the request of either party, both parties will execute and record an appropriate notice to release the Memorandum and Option from title. Notwithstanding the foregoing, following the expiration of this Agreement as a result of the District’s failure to close on the transaction, or in the event of termination of this Agreement as a result of a default of either party, Grantor may unilaterally record a release of the Option and the Memorandum and the Memorandum will contain a provision addressing this unilateral right to record such release.

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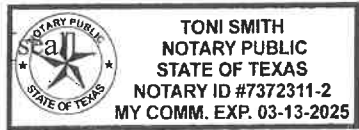
IN WITNESS HEREOF, the Parties have executed this Lease and Option to Purchase Agreement effective as of the date set forth above.

GRANTOR
ALPHA HAY FARM, LLC


By: Donald De Jong
Title: Manager

STATE OF TEXAS)
) ss
COUNTY OF HARTLEY)

The foregoing Lease and Option to Purchase Agreement was acknowledged before me this 15th day of April, 2022, by Donald De Jong, as Manager of Alpha Hay Farm, LLC. Witness my hand and official seal.




Notary Public

My Commission Expires: 3/13/2025

**RIO GRANDE WATER CONSERVATION DISTRICT
For and on Behalf of
WATER ACTIVITY ENTERPRISE
SPECIAL IMPROVEMENT DISTRICT NO. 3
RIO GRANDE WATER CONSERVATION DISTRICT**

Cleave Simpson
General Manager
Rio Grande Water Conservation District

**STATE OF COLORADO)
)s
COUNTY OF ALAMOSA)**

The foregoing Lease and Option to Purchase Agreement was acknowledged before me this ____ day of April 2022, by Cleave Simpson, General Manager, Rio Grande Water Conservation District. Witness my hand and official seal.

[seal]

Notary Public

My Commission Expires:

Exhibit A - The Property

SCHEDULE 1
DUE DILIGENCE MATERIALS

- Map(s) of the Property showing irrigated areas, locations of wells, headgates, and distribution lines or ditches and other related facilities and structures in Grantor's possession or control;
- Copies of all Leases and surveys in Grantor's possession or control pertaining to the Property, Water Rights and/or minerals or mineral rights;
- Well permits or well permit numbers, and for each well that is among the Water Rights to the extent they are in the possession or control of the Grantor;
- Records of surface diversions and well pumping rate, total depth, static water level and pumping level to the extent they are in the possession or control of the Grantor;
- Well Completion and Pump Installation Reports for each well to the extent they are in the possession or control of the Grantor;
- Copies of Water Court decrees for the Water Rights to the extent they are in the possession or control of the Grantor;
- Copies of orders issued by the Colorado Division of Water Resources (DWR) State Engineer's Office or Division 3 Office pertaining to the Water Rights to the extent they are maintained by and in the possession or control of the Grantor;
- Crop records for the last 5 years to the extent they are maintained by and in the possession or control of the Grantor;
- CRP, CREP, EQIP and other USDA contracts or agreements affecting the Property or Water Rights to the extent they are in the possession or control of the Grantor;
- Repair and maintenance records for wells and irrigation equipment to the extent they are maintained by and in the possession or control of the Grantor;
- Irrigation system plans, specifications and/or as-built drawings to the extent they are maintained by and in the possession or control of the Grantor;
- Environmental, water, mineral, cultural or wildlife surveys, studies, or reports to the extent they are in the possession or control of the Grantor;
- Leases or agreements, pertaining to or affecting the ownership or use of the Land, the Water Rights and/or minerals and mineral rights to the extent they are in the possession or control of the Grantor; and

- such other materials pertaining to the Property, which must derive from or relate to one of the categories set forth above, as may be reasonably requested by the District, its counsel, or its consultants during the Due Diligence Period.

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

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

To Trinchera: Monty Smith
 President
 Ground Water Management Subdistrict of
 the Trinchera Water Conservancy District
 610 Main Street, Blanca, CO 81123
 Phone: 719-379-3467
 Email: trincerawaterconservancy@gmail.com

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

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 10th 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

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

To Trinchera: Monty Smith
 President
 Ground Water Management Subdistrict of
 the Trinchera Water Conservancy District
 610 Main Street, Blanca, CO
 81123
 Phone: 719.379.3467

Email:
trincerawaterconservancy@gmail.com

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

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.

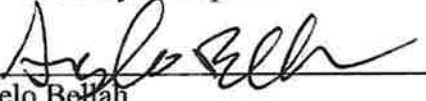
Date

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; lyla@notes-numbers.com

To Subdistrict 1,
Subdistrict 2, Subdistrict 3
and/or Subdistrict No. 6: Cleave Simpson
General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
Fax: 719-992-2026
Email: cleave@rgwcd.org

To Trinchera: Monty Smith
President
Ground Water Management Subdistrict of
the Trinchera Water Conservancy District
610 Main Street, Blanca, CO
81123
Phone: 719.379.3467
Email: trincerawaterconservancy@gmail.com

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

4. Remedies. In the event of SLVIWO's default in the performance of this Agreement, a Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of Subdistrict's default hereunder, SLVIWO's sole and exclusive remedy will be to receive the greater of: a) all payments due from the defaulting Subdistrict for ARP Water prior to the date of the default; or, b) the minimum payment stated in paragraph 1.5.7 as liquidated damages, and to retain the use of the remaining water not paid for by the defaulting Subdistrict. Default by one Subdistrict will not be considered as a default by the other Subdistrict.

5. Miscellaneous Provisions.

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

5.4. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.

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

5.6. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by consent of each of the Parties. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the entire Agreement will terminate.

5.7. Waiver. A waiver of a breach of any provision of this Agreement does not waive any subsequent breach of the same or different provision of this Agreement. Any Party’s failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or another remedy for a breach of this Agreement, or to exercise any right herein conferred will not be construed as a waiver or relinquishment of that right or of that Party’s right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement will not be binding and effective unless made in writing and properly executed by the waiving Party.

5.8. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The SLVIWO may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera, which consent shall not be unreasonably withheld. No Subdistrict may assign its rights hereunder to any other person or entity without the prior written consent of the SLVIWO, which consent shall not be unreasonably withheld. Any such assignment must be in writing and signed by the other Party.

5.9. Litigation. If the SLVIWO and/or Subdistrict No. 1 and/or Subdistrict No. 2 and/or Subdistrict No. 3 and/or Subdistrict No. 6 and/or Trinchera litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys’ fees and court costs, incurred by the successful litigant at trial and on any appeal.

5.10. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado. Neither SLVIWO nor Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, or Trinchera agree to binding arbitration by any extra-judicial body or person.

5.11. Governmental Immunity. To the extent allowed by law and as otherwise consistent with this Agreement, Subdistrict No. 1, Subdistrict No. 2, Subdistrict No. 3, Subdistrict No. 6, and/or Trinchera agree to indemnify and hold SLVIWO harmless from any and all damage which may result from its operation and use of the ARP Water under this Agreement. No term or condition in this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, sections 24-10-101, *et seq.* C.R.S., as applicable now or hereafter amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act, sections 24-10-101, *et seq.* C.R.S., and the risk management statutes, sections 24-30-1501, *et seq.* C.R.S., as amended.

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

5.13. Force Majeure. No Party will be liable for failure to perform the Party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, tornado, blizzard, extreme hot or cold weather or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, internet or telephone service. No Party is entitled to terminate this Agreement under such circumstances. If a Party asserts Force Majeure as an excuse for failure to perform the Party's obligation, then the nonperforming Party must prove it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Parties were timely notified of likelihood or actual occurrence of the event described herein. Performance shall resume as soon as possible upon removal, resolution, or cessation of the Force Majeure event.

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

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

5.16. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.

5.17. Acknowledgment. The Parties certify that they have read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made by the Parties to each other, or by their employees, agents, or representatives, and no modifications to this Agreement will be claimed by the Parties except for written amendments or waivers executed by the Parties.

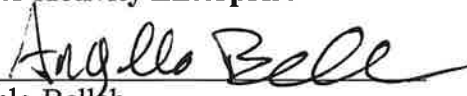
5.18. Captions. The captions and headings in the Lease Agreement are for convenience of reference only and will not be used to interpret, define, or limit its provisions.

SLVIWO

By: 
Monty Smith
San Luis Valley Irrigation Well Owners, Inc.


4/3/24
Date

**Special Improvement District No. 2
Water Activity Enterprise**

By: 
Angelo Bellah
Program Manager
Special Improvement District No. 2 of the
Rio Grande Water Conservation District,
Water Activity Enterprise

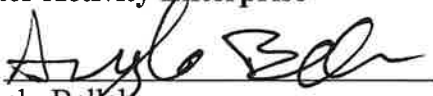
4/2/2024
Date

**Special Improvement District No. 3
Water Activity Enterprise**

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


4/2/2024
Date

**Special Improvement District Subdistrict No. 6
Water Activity Enterprise**

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

4/2/2024
Date

**Ground Water Management Subdistrict of
The Trinchera Water Conservancy District**

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

4/3/24
Date



AGRO ENGINEERING

“COMPREHENSIVE AGRICULTURAL AND WATER RESOURCE CONSULTING”

0210 ROAD 2 SOUTH, ALAMOSA, CO 81101 PHONE (719) 852-4957 FAX 852-5146

November 14, 2023

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

Re: Request for Renewal Substitute Water Supply Plan for the 2024 water year for the purpose of temporarily approving the use of the San Luis Valley Irrigation Well Owners, Inc. Taos Valley No. 3 water right for reservoir storage and use for replacement of depletions by ground water management subdistricts pursuant to section 37-92-308(4), C.R.S.

Dear Mr. Rein,

The San Luis Valley Irrigation Well Owners, Inc. (“SLVIWO”) submit this request to approve a renewal of a Substitute Water Supply Plan (“SWSP”), to run from April 1, 2024 to November 1, 2024. See SWSP ID 6093.

This SWSP requests approval for the operation of the substitutions and exchanges described in the bifurcated Case No. 15CW3030A. The operation of the substitutions and exchanges will allow for storage of water owned by SLVIWO during the 2024 Irrigation Season to be used in future, approved Annual Replacement Plans by parties with whom SLVIWO contracts.

I. Case No. 2015CW3030, District Court, Water Division No. 3.

On December 30, 2015, the SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange. The SLVIWO is the owner of the water right and corresponding structures associated with the Taos Valley Canal No. 3. The original decree for the water rights decreed to the Taos Valley Canal No. 3 is the Decree of the Court entered in the Matter of the Adjudication of the Priority of Water Rights in the Conejos and San Antonio Rivers (Water District No. 88), District Court, Conejos County, Colorado (October 3, 1890). In 1975, SLVIWO filed an application for a plan for augmentation including exchange and to change the place and type of use of the Taos Valley No. 3 water right in Case No. W-3394 to include augmentation of any depletions caused by well users of the SLVIWO. The Taos Valley No. 3 water right was changed in Case No. W-3394.

Of the 245 cfs decreed to the Taos Valley Canal No. 3, 230 cfs (“Middlemist Water”) has been left un-diverted by SLVIWO and accounted for as an offset to well depletions pursuant to that decree. The remaining 15 cfs (“Zinn Water”) was changed in Case No. W-3394 subject to a reservation by Pete E. and Mercedes Middlemist to divert and use up to that amount for irrigation pursuant to certain terms and conditions contained in that decree. The Zinn Water has continued to be used for irrigation up to and including the 2023 irrigation season.

In Case No. 2015CW3030, SLVIWO seeks to utilize the Middlemist Water and the Zinn Water for augmentation by leaving the water in the San Antonio River as decreed in Case No. W-3394, by diverting water at the Taos Valley Canal No. 3 and continuing to store water in Cove Lake Reservoir for subsequent release to the San Antonio River, by recharging the confined and unconfined aquifers via a groundwater recharge project, by delivering water to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year and to divert and store the water in several reservoirs including Platoro Reservoir, either directly or via exchange, for later release to the San Antonio River, Conejos River and the Rio Grande for augmentation purposes.

Cove Lake Reservoir is a reservoir constructed prior to 1929 and is therefore exempt from the restrictions set forth in Article VII of the Rio Grande Compact. At the time of the Compact, Cove Lake had a capacity of 9,710 acre-feet, which amount is claimed in the 2015CW3030 case to be transferrable to other reservoirs free from the aforementioned Compact restrictions.

Various parties timely filed statements of opposition in Case No. 2015CW3030. The matter remains before the referee. On January 25, 2019, SLVIWO filed an Unopposed Motion to Bifurcate Case No. 15CW3030. In that Motion, SLVIWO seeks to bifurcate the claimed exchange to the Martinez Ditch and the Recharge Project from the other claims in the application. Unopposed Motion to Bifurcate at ¶ 3. As of the date of this SWSP request, that Referee has not issued an order on that Motion. No trial date has been set.

II. Project Description.

Case No. W-3394 established a methodology for determining the amount the Taos Valley No. 3 water right is available in the San Antonio River for augmentation purposes. No additional quantification is necessary.

This request for renewal of the previous approval of a SWSP is being submitted pursuant to section 37-92-308(4), C.R.S. for the purpose of approving the change of the water rights listed above to include requested uses in Case No. 2015CW3030 including augmentation, exchange, storage by substitution or exchange in Platoro Reservoir and the other reservoirs described in 15CW3030A. Subsequently, stored water will be released and delivered to satisfy compact obligations, by substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year. This SWSP does not include the claimed exchange to the Martinez Ditch and the Recharge Project described in

bifurcated Case No. 15CW3030B. Storage in Platoro Reservoir will occur pursuant to the terms of a storage agreement between the SLVIWO and the Conejos Water Conservancy District. Storage in any other reservoir, other than in Cove Lake Reservoir will only occur under the terms of a separate agreement with the owner of such reservoir.

III. Change of Water Right.

This SWSP will approve the use of the water right subject of case in 2015CW3030A identified in part II. above for the purpose of storing water available under the Taos Valley No. 3 water right by substitution and exchange in the aforementioned reservoirs during the 2024 Irrigation Season for future use in approved Annual Replacement Plans. This SWSP will also approve the use of Taos Valley No.3 water delivered, above what is stored, for the use by Subdistrict 1, Subdistrict 2, Subdistrict 3, Subdistrict 5, Subdistrict 6 and the Trinchera Subdistrict for augmentation use for the replacement of depletions. When the San Antonio River is in connection with the Conejos River depletions will be replaced on reach 2 of the Conejos and when exchange to reach 1 of the Conejos is possible as determined by the Division of Water Resources replacement of depletions on reach 1 of the Conejos. When the amount of water in priority exceeds storage potential for both the Conejos and Rio Grande Rivers and daily depletions on the Conejos River and when the Conejos River is in connection with reach 3 of the Rio Grande River water will be delivered to reach 3 of the Rio Grande River for replacement of depletions. When exchange to reaches 1 and/or 2 of the Rio Grande River is possible as determined by the Division of Water Resources water may be exchanged for replacement of depletions on these reaches.

IV. Operation of Plan.

SLVIWO will place the portion of the water right to beneficial use as claimed in the Application for Recharge Project and Rights of Substitution and Exchange, Case No. 2015CW3030. Any portion of said water available for substitution, exchange, and subsequent storage shall be stored pursuant to any agreement between SLVIWO and the reservoir owners.

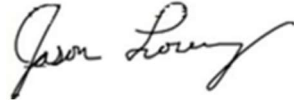
SLVIWO understands that the Division Engineer may impose reasonable losses on the use or exchange of the water under the SWSP due to stream delivery losses, evaporation or other factors.

Future use of this stored water for replacement of well depletions will be pursuant to the terms of one or more annual replacement plans approved by the Engineers in 2021/2022 or future years.

Water not stored will be available to Subdistricts listed above for replacement of depletions, if they have submitted with their Annual Replacement Plans a current contract with SLVIWO for such use.

SLVIWO hereby requests that the State Engineer approve this Substitute Water Supply Plan which is submitted in compliance with section 37-92-308(4), C.R.S.

Kevin Rein, P.E.
November 14, 2023
Page 4

A handwritten signature in cursive script that reads "Jason Lorenz".

SLVIWO Engineer
Jason Lorenz, P.E.

Enclosures
Cc: SLVIWO Board of Directors

Exhibit A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2023 true and correct copies of the foregoing, Substitute Water Supply Plan Request , were duly served via CCE in Division 3, Case No. 15CW3030 upon the following:

Alpha Hay Farms Llc	Opposer	Alan E Curtis (White & Jankowski, LLP) David C Taussig (White & Jankowski, LLP)
City of Alamosa	Opposer	Erich Schwiesow (Erich Schwiesow PC)
Colorado Division of Park And Wildlife	Opposer	Elizabeth M Joyce (CO Attorney General)
Colorado Division of Parks And Wildlife	Opposer	Elizabeth M Joyce (CO Attorney General)
Conejos Water Conservancy District	Opposer	Richard John Mehren (Moses, Wittemyer, Harrison and Woodruff, P.C.)
Division 3 Engineer	Division Engineer	Division 3 Water Engineer (State of Colorado DWR Division 3)
Rio Grande Water Conservation District	Opposer	Peter J Ampe (Hill and Robbins PC)
Rio Grande Water Users Association	Opposer	Mason Hamill Brown (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
San Luis Valley Irrigation District	Opposer	Tod Jay Smith (The Law Office of Tod J Smith)
San Luis Valley Irrigation Well Owners	Applicant	Bradley Charles Grasmick (Lawrence Jones Custer Grasmick LLP) P Andrew Jones (Lawrence Jones Custer Grasmick LLP)
State Engineer	State Engineer	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources)

Trinchera Groundwater Management Subdist	Opposer	John Joseph Cyran (Confluence Water Law LLC)
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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

April 11, 2022

President, Leroy Salazar
Program Manager, Amber Pacheco
Subdistrict No. 3

RE: Agreement to sell 200 acre feet of Santa Maria/MVC water

This notification is sent to inform you that the Board of Managers for Subdistrict No.1 approved the sell of 47.66 acre feet of Santa Maria water and 152.34 acre feet of Santa Maria water (Monte Vista Canal shares) and payment for past storage costs, on April 5, 2022, based on the prices reflected in the attached invoice.

I will coordinate with the Superintendent of Santa Maria and Amber on the logistics of switching this water over to Subdistrict No.3. Also, I've placed the payment due date for July 1st, please let me know if that works with your budget, if not that date can be adjusted.

Subdistrict No.1 appreciates the opportunity to help Subdistrict No.3 and wants to thank you for the mutual benefit that has occurred from this collaborative agreement!

Marisa Fricke, Program Manager

Enc: Original MOU
Counter Offer Correspondences
Invoice prepared by Amber Pacheco

To: Board of Managers-Subdistrict No. 1
From: Board of Managers-Subdistrict No. 3
Date: January 3, 2022
Subject: Response to Subdistrict No. 1's December 14, 2021, offer to sell 200 ac-ft. of stored Santa Maria water for use by Subdistrict No. 3

Thank you for your Board's consideration and response to the offer Subdistrict No. 3 submitted to Subdistrict No. 1 Board of Managers on September 9, 2021, to purchase 200 ac-ft. of water Subdistrict No. 1 has stored in Santa Maria Reservoir. In the offer, Subdistrict No. 3 offered to pay \$250 per acre-foot of water and also agreed to pay the 2021 Santa Maria Reservoir Company storage charges for the 200 ac-ft. if the offer was accepted. Storage would add an additional \$70 an ac-ft. to the amount paid by Subdistrict No. 3.

On December 14, 2021, Subdistrict No. 3 received an e-mail from Marisa Fricke, Program Manager, notifying the Board the Subdistrict No. 1 Board of Managers had met and considered the offer from Subdistrict No. 3. The e-mail stated Subdistrict No. 1 agreed to sell 200 ac-ft. to Subdistrict No. 3. The breakdown of the 200 ac-ft. of water being offered from Subdistrict No. 1 included 165 shares of water leased from Monte Vista Canal shareholders in 2011 at a yield of 0.9233 ac-ft./share for a total of 152.34 ac-ft and the remaining amount of 47.66 ac-ft. would be from other Santa Maria water Subdistrict No. 1 currently stored in Santa Maria/Continental Reservoir.

Subdistrict No. 3's Board of Managers met on December 16, 2021, and discussed the offer they received from Subdistrict No. 1. The Board discussed the different requirements placed on shares of water leased from the Monte Vista Canal shareholders based on the Santa Maria Reservoir Company's Augmentation Decree. Per the decree, a fairly large portion of the water from each share leased from Monte Vista Canal shareholders has to be delivered back into the Monte Vista Canal as loss to the ditch and as historical return flows recharged to the system.

Based on the calculations included in the augmentation decree, a total of 36.63 ac-ft. is required to be delivered back to the Monte Vista Canal based on the 152.34 ac-ft. Subdistrict No. 1 leased in 2011. Another requirement under the decree is to release an additional amount of water for the transit loss to cover the loss to the river to carry the 36.63 ac-ft. from the reservoir to the Monte Vista Canal diversion point. Transit loss in the river amounts to another 4.07 ac-ft. In total, 40.70 ac-ft. of the Monte Vista Canal water being offered to Subdistrict No. 3 would need to be used to meet the requirements of the augmentation decree before the remainder of the Monte Vista Canal water becomes consumable water. Based on the decree, Subdistrict No. 3 would have 111.64 ac-ft. of water remaining to be used as replacement water.

Another matter the Subdistrict No. 3 Board of Managers had to consider was access to the recharge locations listed in the Santa Maria Reservoir Augmentation Decree. The decree only lists two locations where recharge can occur for those Monte Vista Canal shares. One location is likely not acceptable for recharge because it is privately owned and the owner uses the recharge pit to hold other sources of water which he uses for irrigation of his crops. It would be difficult to

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MF

lease the pit and prove recharge if the pit is used for other water at the same time when the Monte Vista Canal recharge would need to occur (water can only be released to the recharge pits when the Monte Vista Canal is in their most senior priority which is Priority No. 224). It would also take additional infrastructure at this specific recharge site to be able to divert water from the Monte Vista Canal to the recharge pit. The second pit listed in the decree is currently leased by Subdistrict No. 6. Subdistrict No. 6 lease shares from the Monte Vista Canal shareholders each year and they have to meet these same requirements to use the water they lease in their Annual Replacement Plan. The timing for the recharge of the water they lease may make it difficult for Subdistrict No. 3 to have access to the pond at the same time because of size limits on both the pond and the headgate at the recharge site.

Finally, the Subdistrict No. 3 Board had to consider the cost per ac-ft. of consumable water which would remain as a replacement source for Subdistrict No. 3 depletions to the Rio Grande. The offer Subdistrict No. 3 originally made was to pay \$250 per ac-ft. for 200 ac-ft. of water. The Subdistrict No. 3 Board was assuming they would receive 200 ac-ft. of consumable water, less a small portion that would be required to be left in the river for accretions, if the water they purchased was originally leased by Subdistrict No. 1 from Rio Grande Canal shares. The original offer would amount to \$50,000 for the water and \$14,000 for 2021 storage for a cost of \$320 per ac-ft. (not accounting for the reduction of 3% of the water required to pay accretions on the Rio Grande). If Subdistrict No. 3 calculates the cost of the water Subdistrict No. 1 has offered based on the consumable amount of water remaining after meeting the decree, the cost per ac-ft. goes up to \$401.75 ac-ft. when including 2021 storage costs. Based on the requirements of the Santa Maria Reservoir Company's Augmentation Decree, Subdistrict No. 3 will also incur additional costs above what is being paid to Subdistrict No. 1 if Subdistrict No. 3 accepted the offer being made. This increased per ac-ft. amount is considerably higher than any amount currently being paid for replacement water Subdistrict No. 3 is leasing from other sources, including their forbearance contracts. Under the offer from Subdistrict No. 1, Subdistrict No. 3 would be paying 60% more for this water than they pay under their highest dollar amount forbearance contracts on the Rio Grande and almost 200% more than the wet water sources they are currently leasing.

Subdistrict No. 3 is in full agreement and willing to pay \$250/ac-ft. and the \$70/ac-ft. storage charge for the 47.66 ac-ft. of water that comes without the restrictions imposed by the augmentation decree on the Monte Vista Canal shares. However, because of the conditions imposed by the decree and the additional costs which will be incurred to make the other 152.34 ac-ft. usable to our subdistrict, the Board felt the Subdistrict could only afford to pay \$100/ac-ft. for the Monte Vista Canal shares plus the \$70 ac-ft. storage costs. If Subdistrict No. 1 is accepting of this change in the offer, the total payment from Subdistrict No. 3 would be \$27,149 for the water and \$14,000 for the 2021 storage for a total of \$41,149. Subdistrict No. 3 will also accept the added restriction that the water purchased from Subdistrict No. 1 under this offer can only be used to replace depletions to the Rio Grande Canal, Billings Ditch, Farmer's Union Canal, San Luis Valley Canal or Prairie Ditch.

Subdistrict No. 3 is fully aware of the expense Subdistrict No. 1 has in this water which your Board secured early on in Subdistrict No. 1's operations. The Subdistrict No. 3 Board and the Subdistrict Members can appreciate Subdistrict No. 1's position on the value which you have placed on your water. Subdistrict No. 3 wants to continue to work together with your Board and

all other Subdistricts to find ways to meet individual Subdistrict goals and objectives through mutually beneficial projects.

If you should need any additional information from Subdistrict No. 3 regarding this response, please feel free to reach out to Amber Pacheco, Program Manager for Subdistrict No. 3, or to LeRoy Salazar, President of Subdistrict No. 3. If you should need someone to attend your next meeting, please let Amber know and she can arrange to have someone from Subdistrict No. 3 attend your meeting. Again, Subdistrict No. 3 appreciates all the time your Board and the Subdistrict No. 1 staff have invested in this process.

Amber Pacheco
5/30/2022
2022 ARP Year

Seller: Subdistrict No. 1
8805 Independence Way
Alamosa, CO 81101

Buyer: Subdistrict No. 3
8805 Independence Way
Alamosa, CO 81101

Date: Approved and Accepted by Sub1 Board of Managers on April 5, 2022

Request to Purchase 200 acre-feet of Subdistrict No. 1's Stored Santa Maria Reservoir Company Water for Use by Subdistrict No. 3 as a Replacement Source in an Approved Annual Replacement Plan

Description	Total Acre-Feet	Price Per Acre-Foot	Total Cost
Subdistrict No. 1 Stored Santa Maria Water	47.66	\$250.00	\$11,915.00
Subdistrict No. 1 Stored Santa Maria Water (specifically, 165 MVC Shares leased in 2011 at a yield of .9233 af/share)	152.34	\$100.00	\$15,234.00
Storage Costs (Santa Maria Charges in 2021)	200.0	\$70.00	\$14,000.00 *
Total Amount Due for Water and Storage			\$41,149.00

***Special Conditions of this purchase**

All water leased under this agreement will be used by Subdistrict No. 3 to replace depletions owed on the Rio Grande and only to the Rio Grande Canal, Billings Ditch, Farmer's Union Canal, San Luis Valley Canal or the Prairie Ditch.

Subdistrict No. 3 will be responsible for all storage costs incurred beginning on January 1, 2022.

* The only adjustment made to this invoice will be to the \$14,000 to accurately reflect number of months from January 1, 2021 to day water is in Subdistrict 3 ownership. MF

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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.

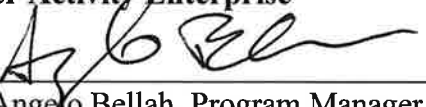
Alamosa Spring Creek Ditch

By: 

03/24/2023
Date

APPROVED:

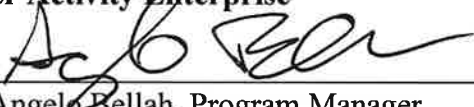
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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>
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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will 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

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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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

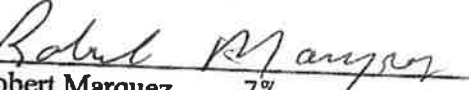
Cristobal Rivera Ditch Owner

By: 
Alan Miller ~~XXX~~ ~~XX~~ 30%

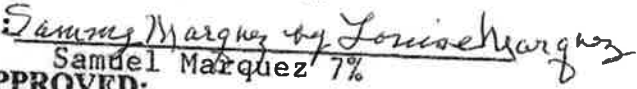
3/13/24
Date

By: 
Gerald Faucette 56%

3/13/24
Date

By: 
Robert Marquez 7%


3/23/24
Date

By: 
Samdel Marquez 7%

Date Mar 23 - 24

APPROVED:

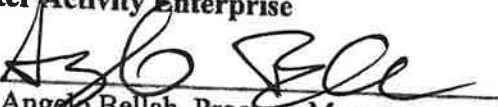
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
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: 
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 Jct Tara, 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 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

Flintham Ditch

By:  _____

2-14-2024
Date

APPROVED:

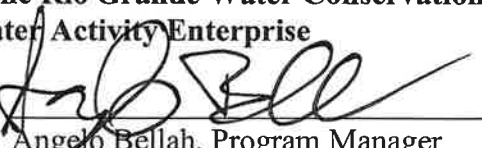
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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~~ ²⁰³³ 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is

not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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.

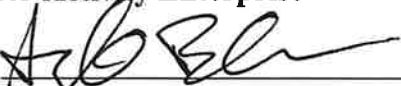
Gabino Gallegos Ditch

By: 

03/26/2023
Date

APPROVED:

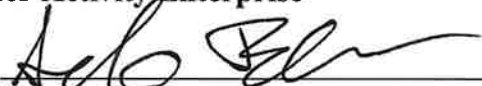
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 Ditch

Address to mail payment to: 10418 County Road Y
La Jara, CO 81140

If payments are to be split, please indicate the following:


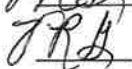
Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023, between the 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, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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:


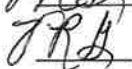
Names and addresses of each individual/entity and percentage of payment each should receive:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: _____

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, 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 Lujan 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of ~~this~~ ^{N/A DCM} 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

Lowland Overflow Ditch Company

By: Ray M. Mantz

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

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:

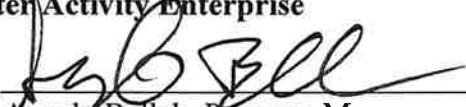
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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:

- _____ 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)
- 2/2/24 Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forbear 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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
719-580-2062

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:

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 15th.

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 31st 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, 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 ^{ZU})

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Owner.**

2.1. During the term of this Agreement, the Owner will forebear from requiring the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

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.

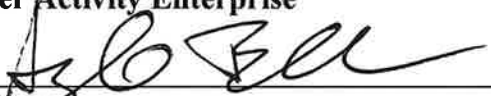
Zach Muniz, Owner

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 Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
BF 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the 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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is

not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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.

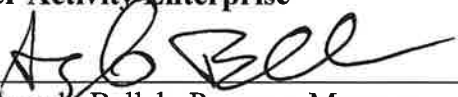
Ortiz Ditch

By: 

03/24/2023
Date

APPROVED:

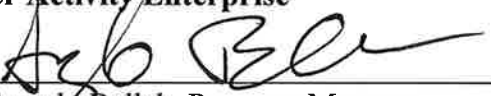
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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. Gallegos

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.

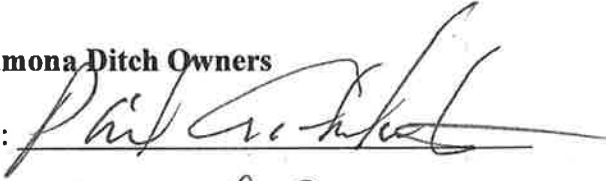
8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over 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:



Date

4-25-23

By:



Date

7/25/23

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

Date

4/26/2023

APPROVED:

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

By:


Angelo Bellah, Program Manager

Date

4/26/2023

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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

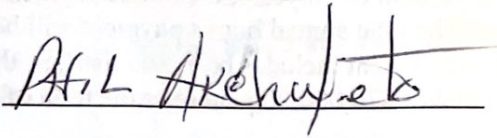
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 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 31st of each year for the term of the Agreement.

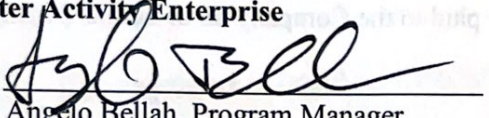
San Jose Ditch No. 1 Owner

By: 

4-6-2023
Date

APPROVED:

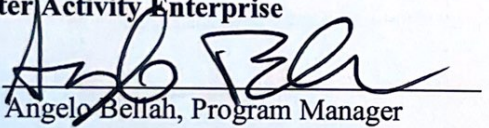
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/6/2023
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: _____

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

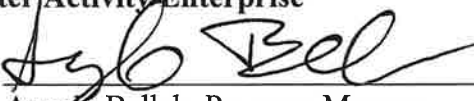
Scandinavian Canal

By: 

1-26-2024
Date

APPROVED:

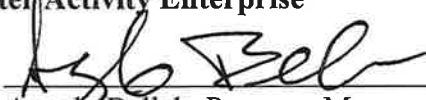
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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^{KR} 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^{KR} 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 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 ¼ SE ¼ 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

Silva Farm & Ranch LLC/West 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 31st 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:

[Handwritten initials]

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 P 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, 2023 between the Willett Dairy and Cattle 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:

TW Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"

RECITALS

A. The Company owns and operates a portion of the Alamo Ditch ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the SW¼ SE¼ of Section 12, Township 35 North, Range 10 East, 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, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

_____ Five Years (May 1, 2023 through April 30, 2028)

JW Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 are 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 Being Forborne</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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

Willett Cattle Co.
20785 CR 28
Sanford, CO 81151

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.

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 31st of each year for the term of the Agreement.

Ditch Owner

By: Toby Willett
Toby Willett, ~~President~~ President

3-26-2023
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/28/2023
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 CR 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 30th 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 1st 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 \$ 31.⁰⁰ 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 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 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 31st 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**

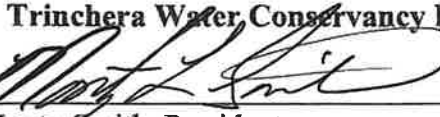
By: 
Angelo Bellah, Program Manager

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 30th 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 1st 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 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 31st of each year for the term of the Agreement.

Cannon Irrigating Ditch Owner

By: 


Print Name: Wayne E. Quinton

4/10/24

Date

APPROVED:

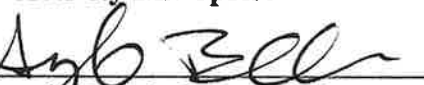
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/10/24
Date

APPROVED:

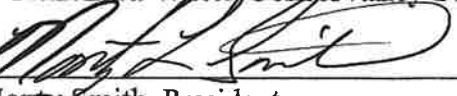
**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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, 2023 between the Willett Dairy and Cattle 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:

TW Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"

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 divert water from the Conejos River in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10 and/or the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Township 35 North, Range 11 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 42.00 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, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

_____ Five Years (May 1, 2023 through April 30, 2028)

JW Ten Years (May 1, 2023 through April 30, 2033)

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the 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 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 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 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the 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:

Willet Cattle Co.
20785 CR 28
Sanford, CO 81151

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.

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 31st of each year for the term of the Agreement.

Ditch Owner

By: Toby Willett
Toby Willett, President

3-26-2023
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/28/2023
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 CR 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

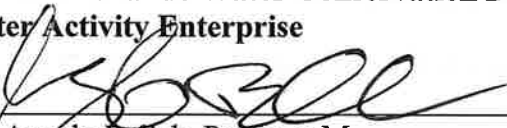
Bernardo Romero Ditch

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)
- 8755 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

Branch Ditch Owner

By: 

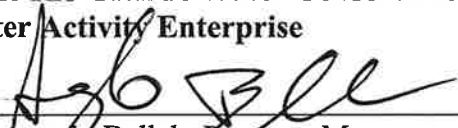
4-24-2023
Date

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 30th 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 1st 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~~ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 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 31st 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:

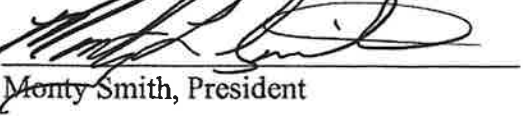
**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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
Atlanta, GA 31120

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is

not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 Bagnell

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%

<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. 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.

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.

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

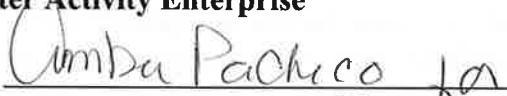
Date: 2023.03.23 15:31:13 -06'00'

By: _____

Date

ACCEPTED:


**The Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Cleave Simpson, General Manager

3/27/2023
Date

APPROVED:

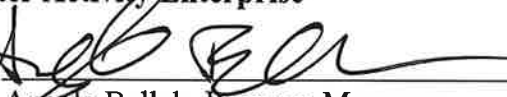
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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**


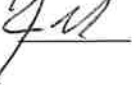
By: 
Angelo Bellah, Program Manager

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the

Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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:

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 15th.

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:

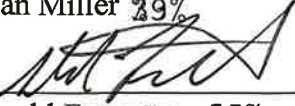
Names and addresses of each individual/entity and percentage of payment each should receive:

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

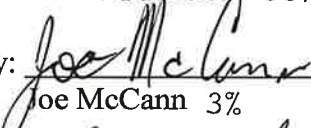
El Viejo Ditch Owner

By: 
Alan Miller 79%

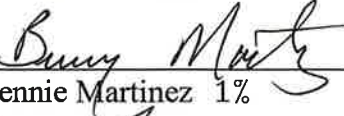
3/13/24
Date

By: 
Gerald Faucette 55%

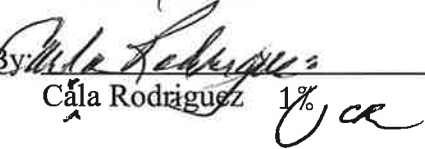
3/13/24
Date

By: 
Joe McCann 3%

3/13/24
Date

By: 
Bennie Martinez 1%

3/13/24
Date

By: 
Cala Rodriguez 1%

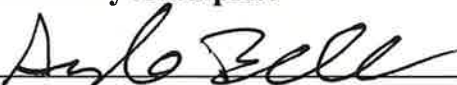
4/8/24
Date

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 31st 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
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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 \$ 40⁰⁰ 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 \$ 70⁰⁰ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the 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.

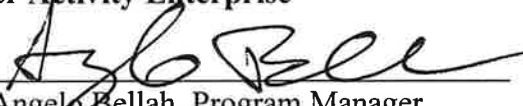
Gabriel Martinez Ditch

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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>
Guadalupe Main	
1	13.46
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
Brazo Del Norte	
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 5th 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 5th 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to _____ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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, 2023 between the Los Sauces Ditch Company ("Company") and the Special Improvement District No. 3 ("Subdistrict") of the Rio Grande Water Conservation District Water Activity Enterprise, (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 NE¼ NW¼ of Section 9, Township 35 North, Range 11 East, 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, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

 _____ Five Years (May 1, 2023 through April 30, 2028)

70 X Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace 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 are 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 \$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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the

Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

Los Sauces Ditch Company
17970 County Road 28
Sanford, CO 81151

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.

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 31st of each year for the term of the Agreement.


Los Sauces Ditch Company

By: 
Toby Willett, President

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

3/28/2023
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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 Forbared</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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th 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 1st 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 31st of each year for the term of the Agreement.

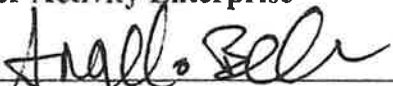
Maes Ditch

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:

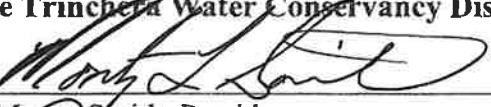
**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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>
Manassa Ditch No. 3	
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	
Manassa Westfield Ditch	
98	30.00
112	24.00
162	85.00
Manassa Eastfield Ditch	
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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the 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:

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 30th 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 1st 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 \$ 35⁰⁰ 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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

(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 31st of each year for the term of the Agreement.

Martinez, Lopez, Fuerticitios, and Cordova Ditch Owner

By: Ricardo Espinoza

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will 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 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of 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>
9	12.67

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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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. _____

5.

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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 30th 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 1st 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 31st of each year for the term of the Agreement.

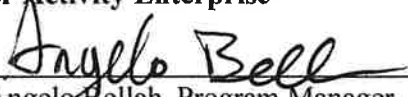
Mogote Ditch and the Northeastern Consolidated Ditch Company

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

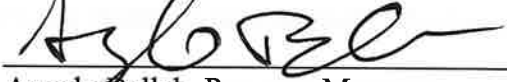
New JB Romero D Owner

By: 

4/6/2023
Date

APPROVED:

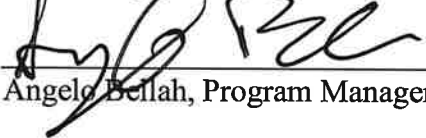
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: Ken Salazar

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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.

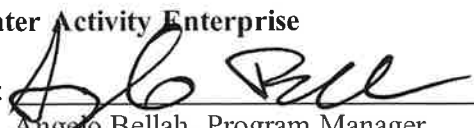
Richfield Canal

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, 2024 between the Romero Irrigation 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 Romero Ditch (“Ditch”) and the water rights decreed thereto. The Ditch diverts water from the Conejos River in the NE¼ SE¼ of Section 24, T33N, R8E, N.M.P.M., in Conejos County, Colorado, and has decreed priorities totaling 257.8 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 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 30th 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 1st 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. 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>
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 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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:

Romero
P.O. Box 491
Manassa CO 81141

To the Trinchera Subdistrict:

Monty Smith, President
Trinchera Water Conservancy District
610 Main Street
Blanca, CO 81123
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 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 31st of each year for the term of the Agreement.

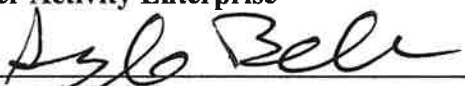
Romero Irrigation Company

By: 
Print Name: Jim Paine

Mar 27, 2024
Date

APPROVED:

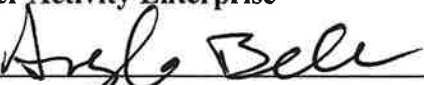
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/1/24
Date

APPROVED:

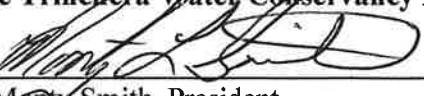
**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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: Romero Irrigation Company

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 30th 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 1st 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 31st of each year for the term of the Agreement.

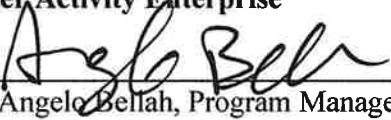
Sabine School Section Ditch

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is

not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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. 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.

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.

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

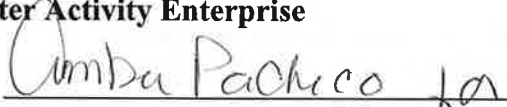
Date: 2023.03.23 15:31:13 -06'00'

By: _____

Date

ACCEPTED:


**The Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Cleave Simpson, General Manager

3/27/2023
Date

APPROVED:

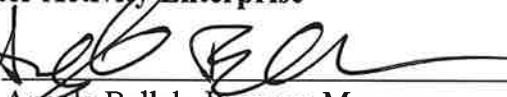
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forbear from requiring the Subdistrict to replace up to 0.12 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 \$ 25⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th 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 1st 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 276 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 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 31st of each year for the term of the Agreement.

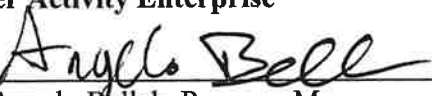
Servietta Ditch Owner

By: 
Rick Espinoza

3-27-2024
Date

APPROVED:

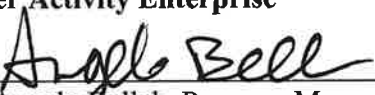
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/1/24
Date

APPROVED:

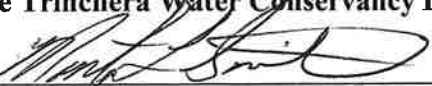
**Special Improvement District No. 6
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights. 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 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights. 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 LaSara 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, 2023 between the Willett Dairy and Cattle 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:

TW Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"

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 NE¼ NW¼ of Section 8, Township 35 North, Range 11 East, 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, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

_____ Five Years (May 1, 2023 through April 30, 2028)

 TR Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the 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 are 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

Willett Cattle Co.
20785 CR 28
Sanford, CO 81151

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.

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 31st of each year for the term of the Agreement.

Ditch Owner

By: Toby Willett
Toby Willett, ~~is~~ President

3-26-2023
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/28/2023
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 CR 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

5. Notice. All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and

delivered in person, by express courier, or by First Class U.S. Mail, postage prepaid. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through U.S. Mail shall be effective three days after deposit in the U.S. Mail. Notice shall be given to the receiving party at the following addresses:

To Company:

____ 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 31st 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: AB 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: AB 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, 2023 between the Centennial Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- JH Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
JH Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
JH Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Centennial Ditch ("Ditch") and the water rights decreed thereto. The Centennial Ditch diverts water from the Rio Grande in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T39N, R8E, N.M.P.M., and has decreed priorities totaling 82.4 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
_____ Three Years (May 1, 2023 through April 30, 2026)
_____ Five Years (May 1, 2023 through April 30, 2028)
 JH Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement the Company will agree to forebear from requiring each Subdistrict to replace injurious stream depletions to the water rights of the Company that are diverted from the Rio Grande at the headgate of the Centennial Ditch Company while Priority 173 is the calling water right and ongoing through the irrigation season for Priority 32 with approval by Ditch Superintendent at least 48 hours in advance of Priority 32 approaching on Call status on the Rio Grande. Each Subdistrict may choose to remedy injurious stream depletions under this agreement or by providing water, in its sole discretion.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. At any time while Priority 32 is the calling water right on the Rio Grande and the ditch is in forbearance with one or more Subdistricts, the Ditch Superintendent can request a wet water replacement of estimated injurious depletions to the ditch within 24 hours or such greater time as may be required for transit of water from storage to the ditch headgate during the irrigation season. For purposes of this paragraph 2.5, the maximum rate of daily depletions caused by wells operating under the Subdistricts ARPs will be determined by dividing the number of days in the month into the estimated monthly stream depletions to the Rio Grande contained in each Subdistrict's ARP, as approved by the State and Division Engineers.

2.5. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
32	47.4
173	35.0

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company an amount equal to the per acre-foot price Subdistricts are paying in each year of this agreement for temporary leases of water. This rate will be paid for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

Centennial Ditch Company
118 Washington Street
Monte Vista, CO 81144

To the Subdistricts:

District Manager
Rio Grande Water Conservation District

8805 Independence Way
Alamosa, CO 81101

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

7.2. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are 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 NW¹/₄ of Section 33, T39N, R8E, N.M.P.M., and has decreed priorities totaling 505.92 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

_____ One Year (May 1, 2024 through April 30, 2025)

_____ Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

L.C. Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring each of the Subdistricts to replace up to 500 acre-feet of injurious stream depletions to the water rights of the Ditch diverted from the Rio Grande River at the headgate of the Ditch under priority nos. 236A, 310A, 335A, 361A and 361B by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the

top of the affected Stream Reach, and both the Company and the Subdistricts will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Empire Canal during the term of this Agreement equals 500 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Empire Canal.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
236A	312.30
310A	6.00
335A	2.30
361A	92.00
361B	93.32

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$ 20. per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

Commonwealth Irrigation Company
P.O. Box 993
Alamosa, CO 81101

To the Subdistricts:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$7,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

Commonwealth Irrigation Company

By: Lawrence Crowder

3-14-2024
Date

Print Name: Lawrence Crowder

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

APPROVED:

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

By: Angelo Bellah
Angelo Bellah, Program Manager

3/22/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Commonwealth Irrigation Company

Address to mail payment to: P.O. Box 993
Alamosa, CO 81101

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024 between the Excelsior Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- RO Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
RO Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
RO Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Excelsior Ditch ("Ditch") and the water rights decreed thereto. The Excelsior Ditch diverts water from the Rio Grande in the SE1/4 NW1/4 of Section 6, T38N, R9E, N.M.P.M., and has decreed priorities totaling 89.70 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of their ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- RO One Year (May 1, 2024 through April 30, 2025)
_____ Three Years (May 1, 2024 through April 30, 2027)
_____ Five Years (May 1, 2024 through April 30, 2029)
_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring each of the Subdistricts to replace any of the injurious stream depletions to the water rights of the Ditch diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
163	45.7
249	6.2
262	29.4

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of

the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

Excelsior Ditch Company
118 Washington Street
Monte Vista, CO 81144

To the Subdistricts:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the

Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

Excelsior Ditch Company

By: Roy Oliver

4-3-24
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

APPROVED:

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

By: Angelo Bellah
Angelo Bellah, Program Manager

4/8/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Excelsior Ditch Company

**Address to mail payment to: 118 Washington Street
Monte Vista, CO 81144**

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023, between the Monte Vista Water Users' Association ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Monte Vista Canal ("Ditch") and the water rights decreed thereto. The Monte Vista Canal diverts water from the Rio Grande in the NE¼ SW¼ of Section 6, T39N, R7E, N.M.P.M., and has decreed priorities totaling 340.77 c.f.s. from the Rio Grande

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP for Plan Years 2022, 2023 and 2024.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 300 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistricts providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistricts will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistricts' respective ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistricts' ARPs as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 300 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
224	132.20
358	125.30
1903-24A	13.35
1903-30A	20.58
1903-34A	9.44
1903-37	3.75
1903-41	1.63
1903-45A	10.42
1903-46A	5.21
1903-49B	14.33
1903-52A	4.56

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 3 will pay the Company an amount equal to the per acre-foot fee assessed to sprinkler use in Subdistrict No. 2 annually for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company an amount equal to the per acre-foot fee assessed to sprinkler use in Subdistrict No. 2 annually for every acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company:

President, Monte Vista Water Users' Association
147 Washington Street
P.O. Box 288
Monte Vista, CO 81144

To the Subdistricts:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 for a total of \$5,000.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

Monte Vista Water Users' Association

By: 

3-22-23

Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 

Angelo Bellah, Program Manager

3/30/23

Date

APPROVED:

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

By: 

Angelo Bellah, Program Manager

3/30/23

Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Monte Vista Water Users

Address to mail payment to: 147 Washington St
Monte Vista, CO 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 3 (Conejos) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

 X One Year (May 1, 2024 through April 30, 2025)

 Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 150 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream

depletions to the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 150 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

"Special Water" Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

(signatures on following page)


Rio Grande Canal Water Users' Association

By: 

3/16/2024
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

3/20/24
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Canal Water Users

Address to mail payment to: 1217 Washington St.
Monte Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between David Toews (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- DWT ✓ Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
DWT ✓ Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
DWT ✓ Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- DWT Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running

total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
198	19.59	6.6%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

DAVID W TOEWS
42756 COUNTY RD E
DEL NORTE CO. 81132

To the Subdistricts:

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

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

6. Remedies. In the event of Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Owner for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Owner and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 — If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

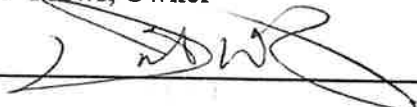
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

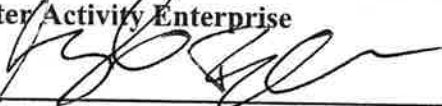
David Toews, Owner

By: 

APRIL 11, 2023
Date


APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date


**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

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

By: 
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: DAVID W TOEWS

Address to mail payment to: 42756 COUNTY RD E
DEL NORTE Co. 91132

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between the Rio Grande Lariat Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
- Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande Lariat ("Ditch") and the water rights decreed thereto. The Rio Grande Lariat diverts water from the Rio Grande in the NE¼ SW¼ of Section 22, T39N, R7, N.M.P.M., and has decreed priorities totaling 106.78 c.f.s.

B. The Subdistrict is responsible for implementing the Plan of Water Management ("Plan") through their Annual Replacement Plan ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP for all Plan Years in which this agreement is in effect.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- X Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 500_____ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in paragraph 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals _____ acre-feet, the Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
217	53.02
1903-12A	2.61
1903-17	3.62
1903-24B	15.76
1903-30B	2.28
1903-34B	10.42
1903-37A	3.981
1903-41A	2.04
1903-45B	3.26
1903-46B	0.65
1903-49C	2.61
1903-52B	.65
1903-22A	5.86

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$35.00 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: Lariat Ditch Company
118 Washington Street
Monte Vista CO 81444

To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District

8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement

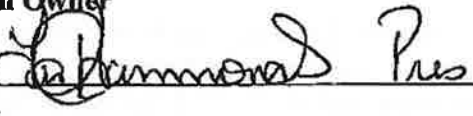
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 for a total of \$5,000.00 paid over the term of the Agreement.

8.01.04 If this agreement is for a term of 10 years, the bonus payment will be \$1,000 for each year of the term of the agreement. The total annual bonus payment will be \$10,000 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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


Ditch Owner

By: 

4/14/2023
Date

APPROVED:

Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:


Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:

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

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande
Lariat 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 the Rio Grande Piedra Valley Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
- Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
- Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande Piedra Valley Ditch and the water rights decreed thereto ("Ditch"). The Ditch diverts water from the Rio Grande River in the SW1/4 SE1/4 of Section 8, Township 39 North, Range 7 East, N.M.P.M. in Rio Grande County, Colorado, and has decreed priorities totaling 94.48 c.f.s.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
146	42.90
241	32.80
1903-24	0.38
1903-30	0.85
1903-34	1.14
1903-45	1.91
1903-46	0.57
1903-49	3.00
1903-52	3.05
1903-57	4.46
1903-61	3.42

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$25.00 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this

Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

Rio Grande Valley Ditch CO.
1604 County Rd. 28
Monte Vista, CO 81144

To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement

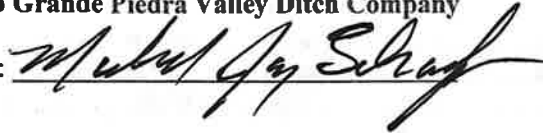
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

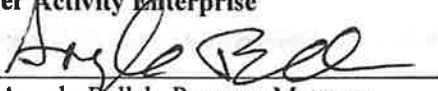
Rio Grande Piedra Valley Ditch Company

By: 

4-13-23
Date

APPROVED:

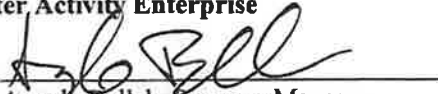
Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:


Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

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

By: 
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Valley Ditch Company

Address to mail payment to: 1604 Cty Rd 28
Monte Vista, CO 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 3 (Conejos) of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict”) and the Rio Grande Canal Water Users’ Association (“Company”), (sometimes collectively referred to as the “Parties”).

RECITALS

A. The Company owns and operates the Rio Grande Canal (“Ditch”) and the water rights decreed thereto. The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M., and has decreed priorities totaling 1,648.50 c.f.s., including special water rights delivered in the Rio Grande Canal, of which Rio Grande Canal Water Users Assn. are partial owners of some of these special water rights. This agreement does not include the winter recharge rights.

B. The Subdistrict is responsible for implementing the Plan of Water Management (“Plan”) through their Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

 X One Year (May 1, 2024 through April 30, 2025)

 Three Years (May 1, 2024 through April 30, 2027)

_____ Five Years (May 1, 2024 through April 30, 2029)

_____ Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistricts to replace up to 150 acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistricts will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream

depletions to the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of a Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals 150 acre-feet, that Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

"Special Water" Priorities

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
176	2.80	100.00%
178	11.20	18.64%
197	20.00	83.05%
198	19.60	57.07%

Rio Grande Canal Water User's Assn. Priorities	
<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
216-A	318.40
276-A	22.80
288-A	22.70
312-A	26.00
338 ½-A	33.60
344	24.40
358-A	16.60
363-A	43.40
363-B	52.00
365	293.70
1903-24C	45.00
1903-30C	84.96
1903-34C	48.99
1903-37B	38.74
1903-41B	41.34
1903-45C	88.14
1903-46C	81.71
1903-49D	183.60
1903-52C	82.68
1903-57A	44.92
1903-61A	43.62

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

President, Rio Grande Canal Water Users' Association
147 Washington Street
P.O. Box 288

Monte Vista, CO 81144

To the Subdistrict:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the total annual bonus payment will be \$200.00 paid over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.

8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 for each year of the term of the Agreement. The total annual bonus payment will be \$1,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 for each year of the term of the Agreement. The total annual bonus payment will be \$3,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

(signatures on following page)

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande Canal Water Users

Address to mail payment to: 1217 Washington St.
Monte Vista, Co. 81144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2024, between Special Improvement District No. 3 (Conejos) of the Rio Grande Water Conservation District Water Activity Enterprise ("Subdistrict") and the San Luis Valley Irrigation District ("Company"), (sometimes collectively referred to as the "Parties"),

RECITALS

- A. The Company owns and operates the Farmers Union Canal ("Ditch") and the water rights decreed thereto. The Ditch diverts water from the Rio Grande River in the NE¼ SW¼ of Section 36, T40N, R6E, N.M.P.M., and has decreed priorities totaling 801.36 c.f.s.
- B. The Subdistrict is responsible for implementing the Plan of Water Management ("Plan") through their Annual Replacement Plan ("ARP"), as approved by the State Engineer.
- C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.
- D. The Company, acting through its members and/or governing body is willing to enter into this Agreement as an agreement of the type contemplated by section 37-92-501(4)(b)(I)(B), C.R.S., pursuant to which injury to the Company's water right is remedied by means other than providing water to replace injurious stream depletions.
- E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP for all Plan Years in which this agreement is in effect.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2024 through April 30, 2025)
 Three Years (May 1, 2024 through April 30, 2027)
 Five Years (May 1, 2024 through April 30, 2029)
 Ten Years (May 1, 2024 through April 30, 2034)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 2.5 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 566 acre-feet of water stored in the Reservoir.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this

Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

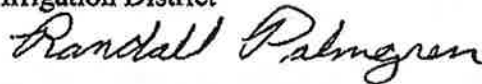
No payment for a maximum of 25 acre-feet of unreplaced injurious depletions will be required to the District, however, the accounting of the unreplaced injurious depletions to the water rights of the District needs to be provided.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

San Luis Valley Irrigation District
c/o President
P.O. Box 637
Center, CO 81125



To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement.


8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement.

8.01.04 If this agreement is for a term of 10 years, the bonus payment will be \$1,000 for each year of the term of the agreement. The total annual bonus payment will be \$10,000 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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


San Luis Valley Irrigation District

By: 
Robert Phillips

2/22/2024
Date

APPROVED:

**Special Improvement District No. 3
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 the Rio Grande Lariat Ditch Company ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande Lariat ("Ditch") and the water rights decreed thereto. The Rio Grande Lariat diverts water from the Rio Grande in the NE¼ SW¼ of Section 22, T39N, R7, N.M.P.M., and has decreed priorities totaling 106.78 c.f.s.

B. The Subdistrict is responsible for implementing the Plan of Water Management ("Plan") through their Annual Replacement Plan ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Agreement, the Subdistrict would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistrict desires to enter into this Forbearance Agreement as part of the ARP for all Plan Years in which this agreement is in effect.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistrict and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- X _____ Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 500_____ acre-feet of injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in paragraph 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below. When the total amount of the Subdistrict's estimated unreplaced depletions to the Ditch during the term of this Agreement equals _____ acre-feet, the Subdistrict will begin replacement of all injurious stream depletions to the Ditch.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
217	53.02
1903-12A	2.61
1903-17	3.62
1903-24B	15.76
1903-30B	2.28
1903-34B	10.42
1903-37A	3.981
1903-41A	2.04
1903-45B	3.26
1903-46B	0.65
1903-49C	2.61
1903-52B	.65
1903-22A	5.86

On such days the amount of water that must be provided by the Subdistrict to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistrict calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$35.00 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARP, and not later than March 15, the Subdistrict will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistrict will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Ditch; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: Lariat Ditch Company
118 Washington Street
Monte Vista CO 81444

To the Subdistrict:

Deputy General Manager
Rio Grande Water Conservation District

8805 Independence Way
Alamosa, CO 81101
amber@rgwcd.org
(719) 589-6301 ext. 1842

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistrict's remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistrict's default hereunder, Company's remedies will be to retain all payments made by the Subdistrict prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistrict, and to require the Subdistrict to pay the Company for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistrict, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistrict to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00. If the Agreement includes both Subdistricts, the total bonus will be \$400.00 over the term of the Agreement

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 for each year of the term of the Agreement. The total annual bonus payment will be \$900.00 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$600.00 for a total of \$1,800.00 paid over the term of the Agreement

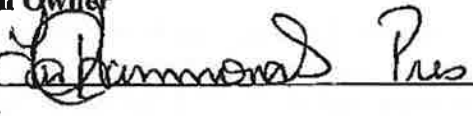
8.01.03 If this agreement is for a term of five years, the bonus payment will be \$500 for each year of the term of the agreement. The total annual bonus payment will be \$2,500 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$1,000.00 for a total of \$5,000.00 paid over the term of the Agreement.

8.01.04 If this agreement is for a term of 10 years, the bonus payment will be \$1,000 for each year of the term of the agreement. The total annual bonus payment will be \$10,000 paid over the term of the Agreement. If the Agreement includes both Subdistricts, the total annual bonus payment will be \$2,000.00 for a total of \$20,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by the Subdistrict regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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


Ditch Owner

By: 

4/14/2023
Date

APPROVED:

Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:


Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

APPROVED:

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

By: 
Angelo Bellah, Program Manager

4/24/2023
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande
Lariat Ditch Company

Address to mail payment to: 118 Washington Street
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 Eric Ellithorpe (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- E.E. Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
E.E. Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
E.E. Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
- Three Years (May 1, 2023 through April 30, 2026)
- Five Years (May 1, 2023 through April 30, 2028)
- Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running

total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
178	11.21	17.5%
198	19.59	16.3%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the

payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

Eric Ellthorpe
P.O. Box 1108
Center, CO 81125

To the Subdistricts:

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

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

6. Remedies. In the event of Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to

require the Subdistricts to pay the Owner for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Owner and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.


8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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


Eric Ellithorpe, Owner

By: 

4-10-2023
Date

APPROVED:


Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angela Bellah, Program Manager

4/11/2023
Date

APPROVED:

Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise

By: 
Angela Bellah, Program Manager

4/11/2023
Date

APPROVED:

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

By: 
Angela Bellah, Program Manager

4/11/2023
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Eric Ellithorpe

Address to mail payment to: P.O. Box 1108
Center, CO 81125

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between Mike Kruse (“Owner”) and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the “Parties”):

Please initial next to your selections:

- MK Water Activity Enterprise of Special Improvement District No. 2 “Subdistrict No. 2”
MK Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
MK Water Activity Enterprise of Special Improvement District No. 6 “Subdistrict No. 6”

RECITALS

- A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal (“Ditch”). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.
- B. The Subdistricts are responsible for implementing their respective Plans of Water Management (“Plan”) through their respective Annual Replacement Plans (“ARP”), as approved by the State Engineer.
- C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.
- D. The Owner is willing to enter into this Agreement as an agreement of the type contemplated by section 37-92-501(4)(b)(I)(B), C.R.S., pursuant to which injury to the Owner’s water rights are remedied by means other than providing water to replace injurious stream depletions.
- E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

_____ One Year (May 1, 2023 through April 30, 2024)

_____ Three Years (May 1, 2023 through April 30, 2026)

_____ Five Years (May 1, 2023 through April 30, 2028)

MR Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Owner.**

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

2.2. This Agreement applies on each day during the term of the Agreement that the Owner is the calling water right, except as provided in paragraph 2.4 below. The calling water right each day will be deemed to be the last priority served on that day as identified in the Preliminary Rio Grande Daily Report ("Daily Report") prepared and issued by the Colorado Division of Water Resources. On days when no Daily Report is

issued, the parties will use the last priority served from the most recent Daily Report until a new Daily Report is issued.

2.3. The number of acre-feet of injurious depletions to the water right of the Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
178	11.21	58.1%
198	19.59	20.0%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$250 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

To the Subdistricts:

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

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

6. Remedies. In the event of Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Owner for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

7.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. Any exhibits to this Agreement

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Owner and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the

length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

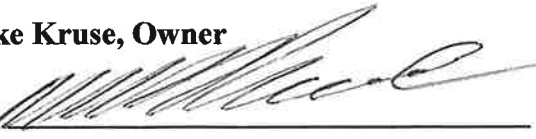
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

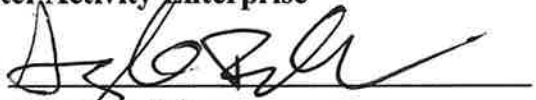
Mike Kruse, Owner

By: 

3/29/23
Date

APPROVED:


**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
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, 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: _____

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 Rio Grande San Luis Ditch ("Company") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
 Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
 Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Company owns and operates the Rio Grande San Luis Ditch and the water rights decreed thereto ("Ditch"). The Ditch diverts water from the Rio Grande River in the NE1/4 SW1/4 of Section 22, Township 39 North, Range 7 East, N.M.P.M. in Rio Grande County, Colorado, and has decreed priorities totaling 53.24 c.f.s.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Ditch may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Ditch at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARP.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Ditch will be calculated each day the Ditch is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Company and the Subdistrict will keep a

running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Ditch would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's 2020 ARP as approved by the State and Division Engineers. The actual amount of injurious depletions to the Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Ditch are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>
156	1.00
204	14.60
217	0.38
220	5.50
298	9.52
1903-22D	19.06
1903-30E	0.54
1903-34B	2.48
1903-57E	0.16

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Ditch to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Company \$ 50 per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate

the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Ditch would have been able to divert if all unreplaced injurious depletions to the Ditch had been replaced during the term of this Agreement, and provide the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Company: Rio Grande San Luis Ditch
118 Washington Street
Monte Vista CO 8144

To the Subdistricts:

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

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

6. Remedies. In the event of Company's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific

performance. In the event of the Subdistricts' default hereunder, Company's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Ditch for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any

other person or entity without the prior written consent of the Company, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Company and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.


8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$7,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

Rio Grande San Luis Ditch

By: 

4-11-23
Date

APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By: 
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

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

By: 
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: Rio Grande San Luis Ditch

Address to mail payment to: 118 Washington Street
Monte Vista CO 8144

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effective May 1, 2023 between David Toews ("Owner") and the following Water Activity Enterprises of the Rio Grande Water Conservation District, (sometimes collectively referred to as the "Parties"):

Please initial next to your selections:

- DWT ✓ Water Activity Enterprise of Special Improvement District No. 2 "Subdistrict No. 2"
DWT ✓ Water Activity Enterprise of Special Improvement District No. 3 "Subdistrict No. 3"
DWT ✓ Water Activity Enterprise of Special Improvement District No. 6 "Subdistrict No. 6"

RECITALS

A. The Owner owns a portion of decreed water rights being diverted in the Rio Grande Canal ("Ditch"). The Rio Grande Canal diverts water from the Rio Grande in the NW¼ of Section 30, T40N, R6E, N.M.P.M.

B. The Subdistricts are responsible for implementing their respective Plans of Water Management ("Plan") through their respective Annual Replacement Plans ("ARP"), as approved by the State Engineer.

C. The quantity of water available for diversion from the Rio Grande River by the Owner may be reduced by the stream depletions caused by wells that are covered by the ARPs. Without this Agreement, the Subdistricts would make replacement water available for diversion by the water rights decreed to the Owner at the top of the Stream Reach in order to remedy injurious stream depletions.

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

E. The Subdistricts desire to enter into this Forbearance Agreement as part of the ARPs.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the Subdistricts and the Owner agree as follows:

- 1. Term of Agreement.** This Agreement will be in effect from:

Please initial next to your selection:

- _____ One Year (May 1, 2023 through April 30, 2024)
- _____ Three Years (May 1, 2023 through April 30, 2026)
- _____ Five Years (May 1, 2023 through April 30, 2028)
- DWT Ten Years (May 1, 2023 through April 30, 3033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Owner.

2.1. During the term of this Agreement, the Owner will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Owner diverted from the Rio Grande River at the headgate of the Ditch under priority nos. listed in 2.4 below by supplying water to the top of the affected Stream Reach. Instead, the Subdistrict will remedy injurious stream depletions under this Agreement, in their sole and individual discretion, as long as forbearance is allowed by the Colorado Division of Water Resources.

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

2.3. The number of acre-feet of injurious depletions to the water right of the Owner will be calculated each day the Owner is the calling water right, in whole or in part, and injurious depletions are not remedied by the Subdistrict providing replacement water to the top of the affected Stream Reach, and both the Owner and the Subdistrict will keep a running

total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Owner would have been able to divert, but for the depletions caused by wells operating under the Subdistrict's ARP. The maximum rate of daily depletions will initially be determined by dividing the number of days in the month into the estimated monthly stream depletions to the affected Stream Reach as contained in the Subdistrict's respective ARP's as approved by the State and Division Engineers. The actual amount of injurious depletions to the Owner during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Agreement will apply only on days when the following priorities decreed to the Owner are the last priority served and the injurious depletions are not remedied by actual water:

<u>Priority No.</u>	<u>Amount (c.f.s.)</u>	<u>% Owned</u>
198	19.59	6.6%

On such days the amount of water that must be provided by the Subdistricts to replace the injurious stream depletions to the Owner is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by the Subdistricts calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Owner to divert the full amount of last priority served on that day.

3. Payment:

Subdistrict No. 2 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 3 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

Subdistrict No. 6 will pay the Owner \$ 250⁰⁰ per acre-foot of remedy of injurious stream depletions that are not required to be made available at the top of the Stream Reach pursuant to the terms of this Agreement.

3.1. Following the end of each irrigation season in which this Agreement was included in the Subdistrict's ARPs, and not later than March 15, the Subdistricts will recalculate the injurious stream depletions in accordance with the requirements of each ARP. The Subdistricts will then calculate the amount of water that the Owner would have been able to divert if all unreplaced injurious depletions to the Owner had been replaced during the term of this Agreement, and provide the Owner with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Owner; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Owner will have fourteen days after the receipt of the calculations to notify the Subdistricts of any errors therein.

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

4. No Subordination or Waiver of Right to Call. The forbearance by the Owner under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Owner will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Owner will not require the Subdistricts to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistricts under their ARPs.

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

To Owner:

DAVID W TOEWS
42756 COUNTY RD E
DEL NORTE CO. 81132

To the Subdistricts:

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

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

6. Remedies. In the event of Owner's default in the performance of this Agreement, the Subdistricts' remedies will include, but not be limited to, the remedy of specific performance. In the event of the Subdistricts' default hereunder, Owner's remedies will be to retain all payments made by the Subdistricts prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by the Subdistricts, and to require the Subdistricts to pay the Owner for all unreplaced injurious depletions not paid for in accordance with the terms of this Agreement.

7. Miscellaneous Provisions.

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

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

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

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Owner and the Subdistricts. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Owner may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistricts, which consent shall not be unreasonably withheld. The Subdistricts may not assign its rights hereunder to any other person or entity without the prior written consent of the Owner, which consent must not be unreasonably withheld.

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

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

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

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

7.11. Covenant. This Agreement touches and concerns the real property that is subject to this Agreement and will bind any future owners of the water rights for the length of the Agreement but will have no force or effect after the expiration of this Agreement.

8. Bonus Payment.

8.01 The Subdistricts, in recognition of the cooperation of the Owner and its individual members in the ongoing efforts by the Subdistricts to protect the agricultural economy of the San Luis Valley, hereby include a bonus payment in the amount of:

8.01.01 — If this Agreement is for a term of one year, the bonus payment will be \$200.00 from each Subdistrict selected above. If the Agreement includes all three Subdistricts, the total bonus will be \$600.00 over the term of the Agreement.

8.01.02 If this Agreement is for a term of three years, the bonus payment will be \$300.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$900.00 for a total of \$2,700.00 paid over the term of the Agreement.

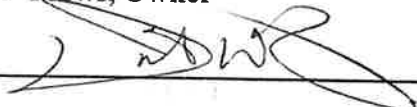
8.01.03 If this Agreement is for a term of five years, the bonus payment will be \$500.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$1,500.00 for a total of \$4,500.00 paid over the term of the Agreement.

8.01.04 If this Agreement is for a term of ten years, the bonus payment will be \$1,000.00 from each Subdistrict selected above for each year of the term of the Agreement. If the Agreement includes all three Subdistricts, the total annual bonus payment will be \$3,000.00 for a total of \$30,000.00 paid over the term of the Agreement.

8.02 The Bonus payment in this Paragraph 8 will be paid by each Subdistrict selected above regardless of whether there is any payment due for forbearance, as calculated in paragraphs 2 and 3 above, and will be in addition to any such calculated payment.

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

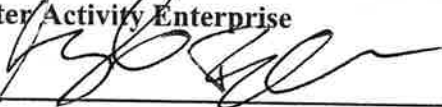
David Toews, Owner

By:  _____

APRIL 11, 2023
Date


APPROVED:

**Special Improvement District No. 2
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date:


**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date

APPROVED:

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

By:  _____
Angelo Bellah, Program Manager

4/11/23
Date

To ensure payments are made correctly, please fill in the following:

Checks should be made in the name of: DAVID W TOEWS

Address to mail payment to: 42756 COUNTY RD E
DEL NORTE Co. 91132

If payments are to be split, please indicate the following:

Names and addresses of each individual/entity and percentage of payment each should receive:

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

Please initial next to your selection:

- One Year (May 1, 2023 through April 30, 2024)
 Three Years (May 1, 2023 through April 30, 2026)
 Five Years (May 1, 2023 through April 30, 2028)
 Ten Years (May 1, 2023 through April 30, 2033)

If a ten-year term is selected, the Ditch may review its forbearance price no sooner than five years following the first date the agreement is included in an ARP. If the Ditch requests a change in the price, the Subdistrict reserves the right to not accept that amount and if not accepted the forbearance will end on April 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: 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
(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]* *[Signature]*
Angelo Bellah, Program Manager~~

~~*[Signature]*
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. _____

Florida

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. **Forbearance by the Company.**

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: 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
(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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

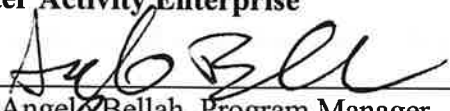
Galvis Ditch

By: 

4-1-2023
Date

APPROVED:

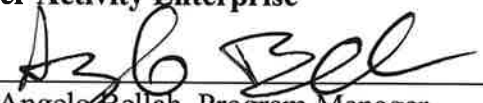
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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 Lucco, 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st of each year for the term of the Agreement.

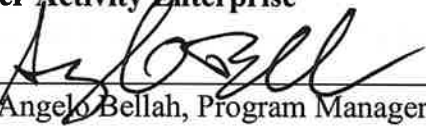
Jaramillo Overflow No. 2 Ditch

By: 

4-6-23
Date

APPROVED:

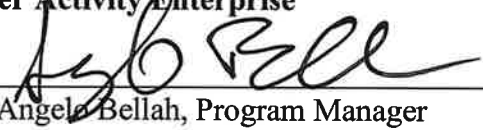
**Special Improvement District No. 3
of the Rio Grande Water Conservation District,
Water Activity Enterprise**

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, 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)

X 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 30th 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 1st 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights 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
(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 31st 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

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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 May1, 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace any of the injurious stream depletions to the water rights of the Company diverted from the Rio 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company:

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 31st 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. Sajs. 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 SW¹/₄ SW¹/₄ 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the Company.

2.1. During the term of this Agreement, the Company will forebear from requiring the Subdistrict to replace up to 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 15th.

4. No Subordination or Waiver of Right to Call. The forbearance by the Company under this Agreement is not a subordination of its water rights to any junior water rights, and is not an agreement to reduce the call of its water rights on the Ditch. Under this Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require the Subdistrict to make water available for diversion at the headgate of the Ditch to offset depletions that would otherwise have to be replaced by the Subdistrict under their Annual Replacement Plan.

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

To Company: 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
(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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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.

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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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: 

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, 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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 15th.

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	<i>D. J.</i>	Water Activity Enterprise of Special Improvement District No. 3 “Subdistrict No. 3”
RR	<i>D. J.</i>	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 30th of that ARP Year in which the price increase was requested. If a new rate is accepted by the Subdistrict, that rate will become effective on the first May 1st following the date the new price was accepted by the Subdistrict.

For a five-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

For a ten-year Agreement, the Ditch or Subdistrict may request to cancel the Agreement after providing the other party notice of the request to cancel the Agreement. The canceling party must provide at least 3 years notice prior to the date they want the Agreement to end.

2. Forbearance by the 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 Forbared</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 forbared 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 15th.

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

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 black ink, appearing to read "N. Coombs". The signature is fluid and cursive, with a prominent loop at the end.

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

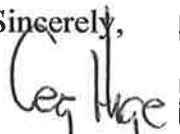
reaches or excessive losses in deliveries. In those circumstances, the Water Users believe Project Water is an appropriate replacement source but intend that the use of the allocation described herein be minimized during the irrigation season.

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



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.

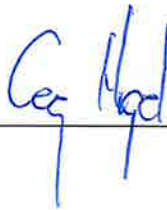
NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Centennial Ditch Company authorizes to allow Subdistrict Nos. 2, 3 and 6 of the Rio Grande Water Conservation District to convey water through the Centennial Ditch to replace injurious depletions under the Annual Replacement Plan and subject 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.

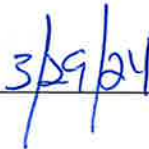
The forgoing resolution was passed by the Board of Directors of the Centennial Ditch Company this 29 day of March, 2024.

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 CDWR¹. 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 plan², 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.

¹ 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)

² 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	0.37
	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



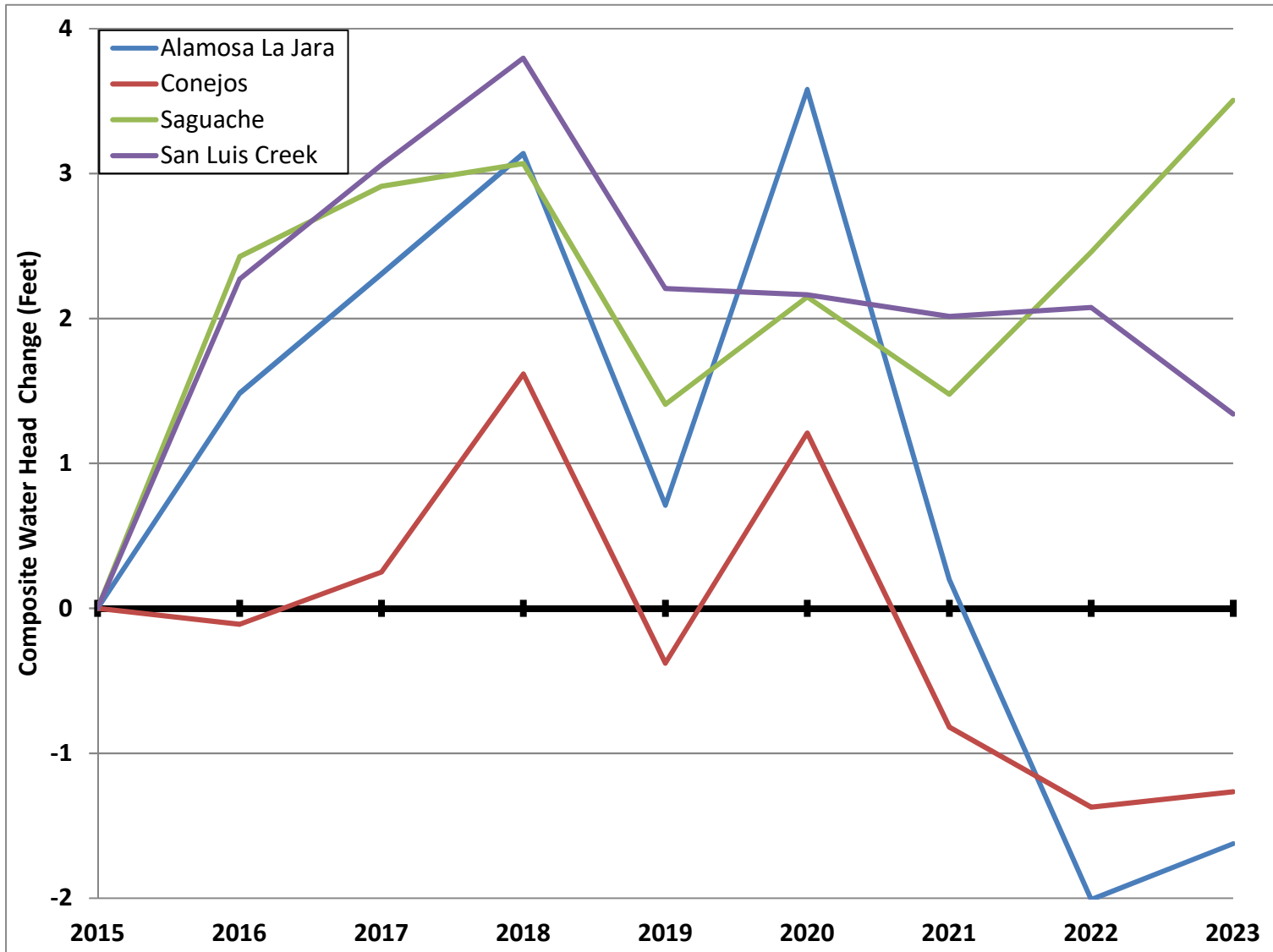


Figure 1. Composite Water Head by Response Area





**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. 3
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. 3 of the Rio Grande Water Conservation District (“Subdistrict No. 3”) 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. 3 and to remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and


WHEREAS, Subdistrict No. 3 is operating under an approved Plan of Water Management which requires the development of an Annual Replacement Plan showing, among other things, the predicted injurious depletions caused by Subdistrict Well groundwater withdrawals and the manner in which the Subdistrict will remedy those depletions; and


NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District on the 15th day of April, 2024 that:

The District hereby accepts and approves the Subdistrict No. 3 2024 Annual Replacement Plan.

ATTEST:

RIO GRANDE WATER CONSERVATION
DISTRICT

By: 
Zeke Ward
Secretary/Treasurer

By: 
Greg Higel,
President

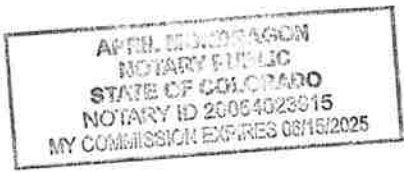
COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 15th day of April, 2024, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District

Witness my hand and seal.

My commission expires: 6-15-25

Asi Omandiagu
Notary Public



**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

**TO ALLOW SPECIAL IMPROVEMENT DISTRICT NO. 3 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. 3 of the Rio Grande Water Conservation District (“Subdistrict No. 3”) 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. 3 and to remedy injurious depletions caused by groundwater withdrawals from Subdistrict Wells; and

WHEREAS, Subdistrict No. 3 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.

R E S O L U T I O N

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. 3 cannot deliver water to the Rio Grande below the Chicago Ditch due to intervening dry stream reaches or excessive losses in deliveries. In those circumstances, the District believes Project Water is an appropriate replacement source, but intends that its use during the irrigation season be minimized.

2. The inclusion of 1,160 acre-feet of water from the production of the Closed Basin Project as a source of supply in the Subdistrict No. 3 2024 Annual Replacement Plan and the use of said water under the 2024 ARP to remedy injurious stream depletions is approved.

ATTEST:

RIO GRANDE WATER
CONSERVATION DISTRICT

By: Zeke Ward
Zeke Ward
Secretary/Treasurer

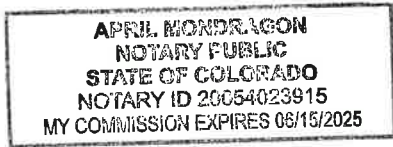
By: Greg Higel
Greg Higel
President

COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 15th day of April, 2024, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District.

Witness my hand and seal.

My commission expires: 10-15-25



April D Mondragon
Notary Public