



COLORADO
Division of Water Resources
Department of Natural Resources

Division 3
1313 Sherman Street, Room 821
Denver, CO 80203

May 1, 2019

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

**RE: 2019 ANNUAL REPLACEMENT PLAN APPROVAL: SPECIAL
IMPROVEMENT SUBDISTRICT NO. 3 OF THE RIO GRANDE WATER
CONSERVATION DISTRICT**

Dear Mr. Simpson:

Thank you for your April 15, 2019 submission of the Special Improvement District No. 3's proposed Annual Replacement Plan (ARP) for the 2019 Plan Year (**May 1, 2019 through April 30, 2020**).

My staff and I have reviewed the proposed ARP and its appendices. A number of the referenced documents will not be attached to this letter but are available on the DWR website at:

<http://water.state.co.us/DivisionsOffices/Div3RioGrandeRiverBasin/Pages/SubdistrictARP.aspx>

All information and data related to this approved ARP are available on our website.

Enclosed, please find my approval of the 2019 ARP.

Very Sincerely,

Kevin Rein, P.E.
State Engineer
Director of Division of Water Resources

cc: Division 3



Subdistrict No. 3 ARP Approval: Plan Year 2019

Review, Findings, and Approval of Subdistrict No. 3's 2019 Annual Replacement Plan

Background

Special Improvement District No. 3 (“Subdistrict”), a political subdistrict of the Rio Grande Water Conservation District (“RGWCD”), formed through Conejos County District Court in Case 2016CV30021, timely submitted its proposed Annual Replacement Plan (“ARP”) pursuant to its Plan of Water Management (“PWM”) approved by the State Engineer and noticed through Division No. 3 Water Court in Case No. 2018CW3013.

The 2019 Plan Year ARP and its appendices were available for download through a link on the RGWCD website. The ARP, its appendices, and resolutions were provided to the State and Division Engineers on April 15, 2019. Copies of the ARP were made available for viewing at the State and Division Engineers’ offices. The ARP, its appendices, resolutions, the Subdistrict’s Response Functions, and this letter are posted on DWR’s website. There were no letters, comments, or other objections submitted regarding the 2019 ARP. My staff and I have conducted this review of the ARP in accordance with the operational timelines specified in 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 (“Rules”), Case 2015CW3024. The Rules were approved as promulgated by the March 15, 2019 by ruling the Division No. 3 Water Court.

DWR Review

As set forth in the Rules, I must determine whether the ARP presents “sufficient evidence and engineering analysis to predict where and when Stream Depletions will occur and how the Subdistrict will replace or Remedy Injurious Stream Depletions to avoid injury to senior surface water rights.” (Rules 11.3). Also, The ARP will include: a database of Subdistrict and Contract Wells that will be covered by the ARP; a projection of the groundwater withdrawals from Subdistrict and Contract Wells during the current Water Administration Year; a calculation of the projected stream depletions resulting from groundwater withdrawals from Subdistrict and Contract Wells; a forecast of the flows for Division No. 3 streams; detailed information regarding the methods that will be utilized to replace or remedy injurious stream depletions during the ARP Year, including any contractual agreements used for replacement or remedy of injurious stream depletions that will be in place; any information regarding the fallowing of Subdistrict Lands; information to document progress towards achieving and maintaining a Sustainable Water Supply; and, documentation that sufficient funds are or will be available to carry out the operation of the ARP.” (Subdistrict PWM, Section 6.1.2). Finally, I must review the ARP pursuant to the statutory mandates, constitutional requirements, rules and regulations adopted in Division No. 3, and any letters, comments, or other objections submitted by water users regarding the adequacy of the ARP.

Subdistrict No. 3 ARP Approval: Plan Year 2019

With the foregoing in mind, I turn to a review of the ARP. It would be unwieldy to include in my review every detail of the thorough ARP, so for the purpose of this letter, I incorporate it and its supplements by reference.

Database of ARP Wells (Section 1.0 of the ARP)

A comprehensive list of wells included in the ARP is necessary in order to allow DWR to verify which wells are authorized to operate in accordance with the ARP. To that end, the Subdistrict submitted the most current tabulation of the structure identification number (WDID) of each well included in the Subdistrict (see Appendix A of the ARP). The Subdistrict also supplied a spreadsheet to DWR of the list of Subdistrict Wells on April 24, 2019 as a supplement to the 2019 ARP. Appendix A lists 141 wells, all included in the Subdistrict Well List by petition when the Subdistrict was formed 1/27/2017.

Augmentation Wells (Section 1.1 of the ARP)

At the time of the submittal of this ARP, the Subdistrict staff is unaware of any ARP Wells being fully or partially augmented by a plan for augmentation. “The Subdistrict and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded plans for augmentation or other replacement plans without the approval of both the Court and the Subdistrict’s Board of Managers.” (PWM at 2.4.6)

I have reviewed Appendix A of the ARP and consulted with staff and find it to be an accurate inventory of Subdistrict Wells that meets the requirements of Rule 11.1.1.

Total Irrigated Acres (Section 1.2 of the ARP)

Subdistrict ARP wells are projected to irrigate approximately 23,500 acres during the Plan Year, including 15,500 acres irrigated by center pivot sprinklers and 8,000 acres irrigated by flood application. The Subdistrict made this projection 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.

Calculations of Projected Plan Year Stream Depletions Resulting from ARP Well Groundwater Withdrawals (Section 2.0 of the ARP)

Section 2 of the ARP presents the data utilized to project stream depletions to the Conejos River, Alamosa River, and Rio Grande as a result of the Plan Year’s groundwater withdrawals from Subdistrict ARP Wells. The Response Function outputs identify total projected stream depletions for the Plan Year, a breakdown of the monthly stream depletions for the Alamosa, two reaches on the Conejos, and three reaches on the 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 ARP Wells. The Subdistrict was directed by DWR to use the current 6P98 Response Functions to calculate projected stream depletions for this ARP.

Subdistrict No. 3 ARP Approval: Plan Year 2019

2019 Stream Flow Forecasts (Section 2.1 of the ARP)

The April through September streamflow forecasts included in the ARP are made by the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”). The annual streamflow forecasts included in the ARP for the Rio Grande and Conejos River basins are those included in the April 4, 2019 Division Engineer’s Rio Grande Compact Ten Day Report (Appendix B of the ARP).

2019 Conejos River Stream Flow Forecast (Section 2.1.1 of the ARP)

The April 1st NRCS forecast for Conejos stream flows (projected 50% exceedance streamflow at the Conejos River near Mogote, Los Pinos River near Ortiz, and San Antonio River at Ortiz gaging stations for the period April-September) was used to estimate groundwater consumption attributable to ARP Wells based upon hydrologic conditions for the current Plan Year. In addition to the NRCS Forecast, the Division No. 3 Division Engineer’s estimate of the annual flow of the Conejos River at the index gage identified in the April 4th, 2019 Rio Grande Compact Ten-Day Report was also reviewed to assist Subdistrict staff in projecting hydrologic conditions of the Conejos River for the current Plan Year.

The NRCS and the Divisions Engineer’s forecasts were the same. The Subdistrict estimates the annual flow for the Conejos of 400,000 acre-feet for 2019.

Conejos Stream Flow Forecast

Analysis	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
	(1)		(2)	
NRCS April 1st Forecast				
Conejos River near Mogote	250,000	129%		
Los Pinos River near Ortiz	98,000	134%		
San Antonio River at Ortiz	23,000	147%		
TOTAL	371,000			
Division Engineer, Ten Day, 4/4/2019				
Conejos River near Mogote	250,000	129%		
Los Pinos River near Ortiz	98,000	134%		
San Antonio River at Ortiz	23,000	147%		
TOTAL	371,000		29,000	400,000

(1) projected 50% exceedance streamflow at the gaging station

(2) January through March and October through December

Projected 2019 Groundwater Withdrawals (Section 2.2 of the ARP)

For Subdistrict ARP Wells listed in this ARP, DWR total metered groundwater withdrawals as of March 15th, 2019, for the 2018 Water Administration Year were 33,754 acre-feet

Subdistrict No. 3 ARP Approval: Plan Year 2019

Subdistrict Well Metered Pumping (acre-feet) from Table 2.1 of the ARP

2011	2012	2013	2014	2015	2016	2017	2018
29,308	38,710	41,096	31,659	24,202	23,583	19,724	33,754

Based on projected Subdistrict operations, weather predictions and antecedent conditions, the ARP anticipates that Plan Year ARP Well groundwater withdrawals will decrease to 19,724 acre-feet. This projection matches the pumping in 2017, a similar stream flow year. It is projected that the majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers, 62 percent. Approximately 23 percent and 15 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

Projected Stream Depletions (Section 2.3 of the ARP)

Subdistrict staff was instructed by the State Engineer's Office to predict stream depletions caused by Subdistrict ARP Wells utilizing the response functions developed for the Conejos Response Area under the RGDSS Groundwater Model Phase 6P98. For the Plan Year, stream depletions were calculated using these Response Functions. A copy of the Response Function spreadsheet was provided to DWR on April 12, 2019 in advance of receipt of the 2019 ARP.

The Response Function 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 are included with this letter.

The first step in using the current 6P98 Response Function 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 2018 and predicted values for 2019. DWR met with the Subdistrict to discuss application of the Response Functions and provided preliminary draft historical data for the Response Area February 6, 2019.

The Subdistrict has elected to use the Response Function spreadsheet for the subset of wells represented by the Subdistrict ARP Wells. The Conejos Response Area requires adjustments for both 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,

Subdistrict No. 3 ARP Approval: Plan Year 2019

Using the whole Response Area results, adjustments are made on appropriate pages of the Response Function spreadsheet. The Subdistrict ARP Wells do not include the Town of Antonito point source return flow. Adjustments for the Ratio Method must be made for Reach 1: Conejos above Seledonia/Garcia and Reach 6: Alamosa River.

Once these preliminary steps are completed, the next step in calculating stream depletions using the Response Functions is updating Table 2.1 to derive the annual net groundwater consumptive use. The consumptive use ratios for sprinkler and flood irrigation used in the 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 provided a spreadsheet of “Other” wells included in the Subdistrict ARP Well list as a supplement to the ARP on April 19, 2019. The spreadsheet shows the individual well groundwater withdrawals and consumptive use factors to explain how the composite ratios were determined for the subset wells represented in Table 2.1 of the ARP.

Historical ARP Well groundwater withdrawal values were entered in Table 2.1 for years 2011 through 2018. Projected ARP Well groundwater withdrawal values were used for 2019. The Subdistrict has no Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use.

Following determination of the Net Groundwater Consumptive Use, the data was incorporate in the Response Functions Table 2.2 to calculate stream depletions for the Plan Year and projected into the future.

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 3,227 acre-feet. The Response Functions calculated total stream depletions to the Conejos River are 2,684 acre-feet, to the Alamosa River 101 acre-feet, and to the Rio Grande 442 acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.

Post-Plan Stream Depletions are estimated to accrue to impacted streams for approximately 19 years. Based on predictions from the Response Functions, Table 2.4 of the ARP shows there would be a total of 6,857 acre-feet of Post-Plan Stream Depletions. This amounts to 5,014 acre-feet to the Conejos, 1,469 acre-feet to the Rio Grande, and 374 acre-feet to the Alamosa.

The 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. Section 4.1.5 of the Subdistrict’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

Subdistrict No. 3 ARP Approval: Plan Year 2019

remedied.” This allows the Subdistrict to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail or otherwise not be allowed to continue groundwater withdrawals.

If the Subdistrict were to fail, the individual well owners in the Subdistrict would have to obtain plans for augmentation or take other measures to comply with the Rules. Presumably, those plans would be required to replace Post-Plan Injurious Stream Depletions into the future. In the interim, the Subdistrict or the Rio Grande Water Conservation District will remedy Post-Plan Injurious Stream Depletions by supplying water or through agreements pursuant to which injury to water rights is remedied by means other than providing water to replace stream depletions.

Amounts and Sources of Replacement Water for 2019 Plan Year (Section 3.0 of the ARP)

The Subdistrict has assembled a portfolio of water supplies for the replacement of Injurious Stream Depletions and remedies other than water. The ARP identifies the water rights, their availability and their amounts in Table 3.1 of the ARP. Applications for SWSPs were submitted by the Subdistrict for replacement sources described in Sections 3.1 through 3.8 for the use of water for the purpose of replacing depletions as part of the ARP. SWSP numbers are noted in the following review of these sections and approval letters are included as Exhibits to this letter.

The adequacy of replacement sources for the ARP Year are dependent upon contracted amounts the Subdistrict has acquired as well as the availability of the source to pay depletions in place and time. For purposes of review of adequacy of replacement sources, there are three categories defined.

In Storage: Reservoir water in storage under the control of the Subdistrict. This water is available for release at the direction of the Subdistrict.

In Season: Ditch water that will become available to the Subdistrict when in priority during the 2019 irrigation season in the amount of depletion owed to streams daily by the Subdistrict. For some sources, water not used to pay daily depletions may be stored for Subdistrict use later.

On Call: Remedies, such as forbearance, that are available in the amount of depletion owed to streams daily by the Subdistrict, limited to when the forbearance ditch is the calling water right. I note that forbearance depends on climate and actual days when a ditch is the calling water right and the exact yield per year is indeterminate. It is also noted that the amount of forbearance water usable by the Subdistrict is limited by their depletions owed daily to streams. In addition, several Subdistricts are seeking forbearance agreements with the same ditches. This further complicates the availability of a firm supply under these agreements.

This replacement water or remedy will be available to replace Injurious Stream Depletions as directed by the Division Engineer. A summary of the portfolio items is shown in the Replacement Sources tables on the following pages. I will approve up to the full amount

Subdistrict No. 3 ARP Approval: Plan Year 2019

itemized in the Replacement Sources tables and stated in the following sections for use in the 2019 ARP.

Subdistrict No. 3 Replacement Sources Conejos River (acre-feet)

Section	Water Right Name	Submitted in 2019 ARP	Approved in SWSP's	Remaining 5/1/2019 & Approved for 2019 ARP
	In Storage			
3.4	SWSP 6061- SLVWCD 84CW16 & 94CW62	1046.23	1046.23	1046.23
3.5	SWSP 6061- SLVWCD Bear Creek 05CW13/07CW63	7.1	34.6	7.1
3.6	SWSP 6061- SLVWCD BAR Cattle 03CW41	61.51	61.51	61.51
3.7	SWSP 6061- SLVWCD Anaconda 09CW34	122.6	122.6	122.6
	Total In Storage	1,237.44	1,264.94	1,237.44
	In Season			
3.1	SWSP 6056- BLM Excess Augmentation Credits, Case 02CW38A	800	Approval was for storage	Up to 800
3.2	SWSP 6074- Taos Valley No. 3 (after transit loss)	2,000	Up to 1,850	Up to 1,850
	Total In Season	2,800		Up to 2,650
		Submitted in ARP	Expected Yield	Approved for 2019 ARP
3.10	On Call- Forbearance (Expected Yield greater than 0)			
1.1	Alamo	107	107	
1.2	Antonito	2	2	
1.3	Ball Bros 1 & 2	2	2	
1.4	Branch	29	29	
1.10	Gabriel Martinez	16	16	
1.12	Heads Mill- Alpha Hay & Quinlan	81	81	
1.14	La Del Rio	5	5	
1.15	Los Ojos 1- BLM	1	1	
1.16	Los Ojos 2- BLM	1	1	
1.17	Los Sauces	58	58	
1.18	Manassa Land & Irrigation	202	202	
1.19	Mecitos	25	25	
1.20	Mogote & Northeastern	19	19	
1.21	Overflow	8	8	
1.22	Richfield	6	6	
1.23	Romero	205	205	
1.25	Salazar	9	9	
1.26	San Juan Rafael	4	4	
1.27	Sanford	18	18	
1.28	Servietta	58	58	
	Total On Call- Forbearance	856	856	Up to 856
3.11	CBP Allocation- March 2019	1,000	888	Up to 1,000
	Total On-Call Non-Irrigation Season	1,000	888	Up to 1,000

Subdistrict No. 3 ARP Approval: Plan Year 2019

Subdistrict No. 3 Replacement Sources Alamosa River (acre-feet)

Section	Water Right Name	Submitted in 2019 ARP	Approved in SWSP's	Remaining 5/1/2019 & Approved for 2019 ARP
	In Storage			
3.3	SWSP 6066- Expo, LLC	22	22	22
	Total In Storage	22	22	22
	In Season			
3.8	SWSP 6070- El Viego Ditch	84	84	84
	Total In Season	84	84	84
		Submitted in ARP	Expected Yield	Approved for 2019 ARP
3.10.	On Call- Forbearance (Expected Yield greater than 0)			
3.9	Terrace Irrigation Company Forbearance**	33	33	
3.8	Scandinavian Forbearance	1	1	
3.7	Ortiz Forbearance	1	1	
3.6	North Alamosa Forbearance	1	1	
3.5	Morganville Forbearance	1	1	
3.3	Gabino Gallegos	2	2	
3.2	Flintham	1	1	
3.1	Arroya	3	3	
3.4	Lowland Overflow	6	6	
	Total On Call- Forbearance	49	49	Up to 49

***Note: All ditch rights of Terrace Irrigation Company are allowed to participate in a forbearance, however, Priority 110 for storage in Terrace Reservoir is excluded from participation. See Section 3.1 of this Approval Letter.*

Subdistrict No. 3 ARP Approval: Plan Year 2019

Subdistrict No. 3 Replacement Sources Rio Grande (acre-feet)

Section	Water Right Name	Submitted in 2019 ARP	Approved in SWSP's	Remaining & Approved for 2019 ARP
	In Storage			
3.4	SWSP 6061- SLVWCD 84CW16 & 94CW62	200	200	
	Total In Storage			200
Section	Water Right Name	Submitted in 2019 ARP	Expected Yield	Remaining & Approved for 2019 ARP
	On Call- Irrigation Season**			
3.9	On Call- Subdistrict No. 1 SMRC			
	Rio Grande Canal			
	Farmers Union			
	San Luis Valley Canal			
	Prairie Ditch			
	Billings Ditch			
	Total On Call- Subdistrict No. 1 SMRC	155	155	
3.10.	On Call- Forbearance (Expected Yield greater than 0)			
4.4	Commonwealth-Empire Forbearance	500	36	
4.1	Farmers Union Forbearance	250	14	
4.3	Monte Vista Canal Forbearance	300	21	
4.6	RG Lariat Ditch Forbearance	500	4	
4.2	San Luis Valley Canal Forbearance	200	7	
	Total On Call- Forbearance		82	
	Total On Call- Irrigation Season			Up to 213
4.10	CBP Allocation, March 2019	300	300	
	Total On Call- Non-Irrigation Season			Up to 300

***Note: The On-Call Irrigation Season expected yield has been adjusted to exclude ditches that appear on both the SMRC and Forbearance lists.*

United States Bureau of Land Management (BLM) Excess Augmentation Credits in Case No. 2002CW38A on the San Antonio River (Section 3.1 of the ARP)

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

Subdistrict No. 3 ARP Approval: Plan Year 2019

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.

SWSP- 6056 BLM Excess Augmentation Credits 02CW38A	
DATE PURCHASED	AMOUNT (AF)
April 2019	Up to 800
TOTAL	Up to 800

Note: Table 3.1 lists 800 acre-feet balance of this source as of 5/1/219. This source will be accumulated over the irrigation season up to 800 acre-feet.

San Luis Valley Irrigation Well Owner's, Inc. (SLVIWO) - Case No. 2015CW3030 (Section 3.2 of the ARP)

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 c.f.s. decreed to the Taos Valley Canal No. 3, 230 c.f.s. ("Middlemist Water") has been left undiverted 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 ARP Approval: Plan Year 2019

SWSP 6074- San Luis Valley Irrigation Well Owners 15CW3030	
DATE PURCHASED	AMOUNT (AF)
April 2019 (after transit losses)	Up to 1,850
TOTAL	Up to 1,850

Excess Augmentation Water owned by Expo, LLC currently stored in Terrace Reservoir (Section 3.3 of the ARP)

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.

SWSP 6066- Expo, LLC Excess Augmentation Water	
DATE PURCHASED	AMOUNT (AF)
February 2019	22
TOTAL	22

San Luis Valley Water Conservancy District Fully Consumable Water under Case Nos. 1984CW16 and 1994CW62 currently stored in Platoro Reservoir and 200 acre-feet currently stored in Beaver Park Reservoir (Section 3.4 of the ARP)

This fully consumable water purchased from San Luis Valley Water Conservancy District was decreed in Case Nos. 1984CW16 and 1994CW62 for storage and augmentation purposes. Water purchased by the Subdistrict was exchanged from Rio Grande Reservoir and Continental Reservoir on the upper Rio Grande into Platoro Reservoir for use on the Conejos. The Subdistrict retained 200 acre-feet in storage in Beaver Park Reservoir for use on the Rio Grande.

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

Subdistrict No. 3 ARP Approval: Plan Year 2019

Bear Creek (Case Nos. 2005CW13 and 2007CW63) under the control of San Luis Valley Water Conservancy District currently stored in Platoro Reservoir (Section 3.5 of the ARP)

This water, controlled by San Luis Valley Water Conservancy District, is currently held in Platoro Reservoir. This water was decreed to the Grubb Ditch Nos. 1, 2 and 3, Priority Nos. 60, 62 and 286, respectively, and the Bassett Ditch, priority No. 1916-51. The portion of the water rights owned by the San Luis Valley Water Conservancy District were changed by the Water Court in and for Water Division No. 3, Case No. 2005CW13 and Case No. 2007CW63, for use in the Conservancy District's Augmentation Program and for exchange to Rio Grande, Santa Maria and Continental Reservoirs. As part of the 2005CW13 and 2007CW63 Decrees, the Water Court determined the historical consumptive use attributable to the changed portions of the water rights.

SWSP 6061- SLVWCD Bear Creek 05CW13 & 07CW63	
DATE PURCHASED	AMOUNT (AF)
June 2018	34.6
TOTAL	34.6

B.A.R. Cattle Credit Water (Case Nos. 2003CW41) under the control of San Luis Valley Water Conservancy District currently stored in Platoro Reservoir (Section 3.6 of the ARP)

This water, controlled by San Luis Valley Water Conservancy District, is currently held in Platoro Reservoir. This water was changed by Case No. 1986CW30 from irrigation use and decreed in that case as "credit water" for beneficial use for "long-term leases, sale to and use by another, dedication of the credit water to use in a judicially-approved plan for augmentation, or any other means of actual beneficial use of water." The portion of the water rights owned by the San Luis Valley Water Conservancy District were changed by the Water Court, in and for Water Division No. 3, Case No. 2003CW41 to allow for use in the Conservancy District's Augmentation Program and for exchange to Rio Grande, Santa Maria and Continental Reservoirs. As part of the 2003CW41 Decree, the Water Court determined the historical consumptive use attributable to the changed portions of the water rights, known as the B.A.R. Cattle Credit Water. This water, along with additional water leased from SLVWCD, was exchanged from Beaver Park Reservoir to Platoro Reservoir.

SWSP 6061- SLVWCD Bear Creek 05CW13 & 07CW63	
DATE PURCHASED	AMOUNT (AF)
June 2018	61.51
TOTAL	61.51

Subdistrict No. 3 ARP Approval: Plan Year 2019

Anaconda Ditch (Case No. 2009CW34) under the control of San Luis Valley Water Conservancy District currently stored in Platoro Reservoir (Section 3.7 of the ARP)

This water, controlled by San Luis Valley Water Conservancy District, is currently held in Platoro Reservoir. This water was changed by Case No. 2009CW34, where the Court decreed a change to the type of use for a portion of the Anaconda Ditch rights to use under the Conservancy District's Augmentation Program for augmentation of in-house domestic, domestic, including lawn and landscape irrigation, irrigation of golf courses and parks, sewage treatment, exchange, augmentation and replacement, storage, substitute supply, municipal, commercial, industrial, pond evaporation, agricultural irrigation, and stock watering uses. This water, along with additional water leased from SLVWCD, was exchanged from Beaver Park Reservoir to Platoro Reservoir.

SWSP 6061- SLVWCD Anaconda 09CW34	
DATE PURCHASED	AMOUNT (AF)
June 2018	122.66
TOTAL	122.66

Lease with Gerald and Joyce Faucette to temporarily fallow land historically irrigated with El Viego Ditch, Priority No. 1, on the Alamosa River (Section 3.8 of the ARP)

For 2019, the Subdistrict has entered into a lease agreement with Gerald and Joyce Faucette to temporarily fallow approximately 85 acres of previously irrigated land under the El Viego Ditch, Priority No. 1 on the Alamosa River, to allow the Subdistrict to use the consumptive use credit for the replacement of injurious stream depletions on the Alamosa River under the 2019 ARP. Any additional consumptive use credit that is not required for the 2019 ARP may be stored in Terrace Reservoir for future ARPs only after a storage agreement is reached with Terrace Reservoir.

SWSP 6070- Faucette Temporary Fallow	
DATE PURCHASED	AMOUNT (AF)
February 2019	84
TOTAL	84

Subdistrict No. 1 Santa Maria Reservoir Company (SMRC) Shares (Section 3.9 of the ARP)

As of April 1, 2019, Subdistrict No. 1 has a balance of 16,337 acre-feet of fully consumable water held in Santa Maria and Continental Reservoirs. This water was accumulated from the lease of Santa Maria shares from 2011-2019. Subdistrict No. 3 has reached an agreement with Subdistrict No. 1, whereby Subdistrict No. 1 will release Santa Maria Reservoir Company water currently in storage to remedy injurious stream depletions caused by Subdistrict No. 3 ARP Wells when the calling right is a ditch that primarily serves Subdistrict No. 1 and recharges the Closed Basin unconfined aquifer. Subdistrict No. 3 will then pay Subdistrict No.

Subdistrict No. 3 ARP Approval: Plan Year 2019

1 per acre-foot released. This agreement with Subdistrict No. 1 is projected to account for 152 acre-feet of injurious stream depletion replacement during the Plan Year, based on current hydrologic conditions. The agreement is provided as a Memorandum of Understanding as part of the ARP.

Forbearance Agreements (Section 3.10 of the ARP)

Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., the Subdistrict has reached agreement with a multitude of 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. At times when the Conejos and San Antonio Rivers are connected, the calling right can be on the San Antonio River. When these conditions exist, the injury can occur on the San Antonio River and forbearance agreements may be utilized to remedy the injurious stream depletions.

The projected acre-feet of forbearance was 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 2019. 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.

I note that the “multitude” of forbearance agreements made with the Subdistrict and especially those at rates of \$1 to \$10 per acre-foot demonstrate the support of the community for the Subdistrict goals. A summary of the ditches contracted and the expected yield (for expected yields greater than 0) are found in the table of Replacement Sources above. The Subdistrict may generate additional replacement water during the irrigation season from those ditches that have forbearance agreements but whose expected yield is 0. It is also noted that the majority of these agreements allow the Subdistrict to remedy injurious stream depletions under the agreement or by providing water at the Subdistrict’s sole discretion. Four of the agreements do not allow this flexibility, the Alamo, Ball Bros 1 & 2, Los Sauces, and William Stewart, so are “mandatory” forbearance agreements. The agreement with the Llano D was provided as a supplement to the ARP on April 24, 2019.

The Subdistrict made an agreement with the Guadalupe and Brazos Del Norte Ditches to store in Platoro Reservoir the amount of depletion owed daily when the Ditches are the calling priority. The stored water is to be released later by the Conejos Water Conservancy District at the discretion of the Ditches. Exercise of this agreement is at the sole discretion of the Subdistrict. The Subdistrict estimates the amount of this agreement to yield 225 acre-feet of water per Section 3.10.1.11. seems. As stated in the agreement, any releases of this water will be in compliance with the legal and physical restrictions on such releases.

Subdistrict No. 3 ARP Approval: Plan Year 2019

Closed Basin Project Production of Calendar Year 2019 (Section 4.10 of the ARP)

According to the information provided in the ARP, the projected production of the Closed Basin Project delivered to the Rio Grande is 8,500 acre-feet during calendar year 2019. The allocation of the Closed Basin Project production in accordance with agreements is 60% to the Rio Grande and 40% to the Conejos River basin over the long term with provision for adjustments in the allocation during individual years. The 2019 allocation of the Closed Basin Project production will be 50% to the Rio Grande and 50% to the Conejos River.

At a meeting of Rio Grande Water Users Association held on March 28, 2019, the Board of Directors passed a motion to specifically allocate 1,600 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 and No. 2. Similarly, the Board of Directors of the San Luis Valley Water Conservancy District agreed to the allocation as stated in their letter to the Rio Grande Water Conservation District on April 1, 2019. 300 acre-feet of water is available to Subdistrict No. 3 under this ARP to remedy the injurious stream depletions outside the irrigation season.

The Conejos Water Conservancy District Board passed a motion in March to specifically allocate 1,000 acre-feet of the Conejos River's share of the usable yield of the Closed Basin Project to replace the injurious stream depletions that occur outside of irrigation season for the Subdistrict's 2019 ARP.

A copy of each letter reporting the approval was provided in Appendix F of the ARP. The resolution from RGWCD allowing the Subdistrict to use Closed Basin Project water in the 2019 ARP was provided April 24, 2019 as supplemental information.

After Acquired Sources of Remedy (Section 3.12 of the ARP)

DWR recognizes the Subdistrict will continue to work to acquire additional sources of remedy and may, with approval from the Division Engineer, use those sources to remedy injury under this ARP.

Operation of the 2019 Annual Replacement Plan (Section 4.0 of the ARP)

The ARP states that the Subdistrict's replacement water will be released from Platoro Reservoir, located in the Upper Conejos, Terrace Reservoir, located on the Alamosa River, and Rio Grande, Santa Maria, Continental, and Beaver Park Reservoirs, 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, 2019. The reaches, amounts and time that stream depletions are projected to occur are shown in Table 2.3 above. These releases of water from storage will be performed under the provisions contained in section 37-87-103, C.R.S. The Response Functions did not predict stream depletions to streams other than the Conejos River, Alamosa River, and the Rio Grande in amounts above the minimum threshold to reliably predict injury. Therefore, no

Subdistrict No. 3 ARP Approval: Plan Year 2019

replacements to any stream other than the Conejos, Alamosa, and Rio Grande will be made.

The ARP notes that 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 2019 Annual Report. The Division Engineer's Office will be notified in advance of any reservoir exchanges.

The ARP provides a Memorandum of Understanding that at times when the calling water right is in either the Rio Grande Canal, Farmer's Union Canal, San Luis Valley Canal, Prairie Ditch, or the Billings Ditch, Subdistrict No. 3 will pay Subdistrict No. 1 to release Santa Maria Reservoir Company water it currently has in storage to remedy ARP Well injurious stream depletions, pursuant to the decree issued in case 2013CW3002.

The ARP provided an agreement with the Bureau of Land Management to lease up to 900 acre-feet of Excess Credits as defined in the 2002CW38A decree for use in the ARP to satisfy a portion of the Subdistrict's annual obligation to remedy injurious depletions included in the 2019 ARP. SWSP 6056 allowed storage of the Subdistrict's unused Excess Credits. This agreement was not mentioned in the Operations Section 4 of the ARP. Table 3.1 shows a limit of 800 acre-feet and the court decree states, "total water deliveries pursuant to this decree shall not exceed a maximum of eight hundred fifty-three acre-feet in any year."

The ARP provided an agreement with San Luis Valley Irrigation Well Owners, Inc. to lease up to 2,000 acre-feet (1,850 acre-feet after transit losses) of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case. This water will be allowed to flow through the Lobatos Gage and pay the Rio Grande Compact. DWR will then use this Compact payment to reduce the curtailment on the Conejos River System. The reduction in curtailment will be used as replacement of injurious stream depletions for Subdistrict No. 3 on the Conejos River.

The ARP provided a lease agreement with the owner of water rights on the El Viego Ditch, Priority No. 1 on the Alamosa River. The owner will fallow approximately 85 acres during May, June, and July that would have been a barley crop irrigated by El Viego surface water through a center pivot sprinkler. The consumptive use credits generated from this agreement will be kept in the Alamosa River to remedy injurious stream depletions. Return flows will be delivered and measured into a recharge pond near the fallowed field and ditch losses will be carried in the ditch as they have been in the past. At times when the consumptive use credits generated by this agreement are greater than the injurious stream depletions, the Subdistrict has reached a separate agreement with Terrace Reservoir Company to store the amount exceeding the injurious stream depletions. This stored water may then be released at a later date to remedy injurious stream depletions when the lease agreement is no longer supplying sufficient water to remedy all injurious stream depletions. The Terrace Reservoir agreement to store this water was supplied as a supplement to the ARP April 29, 2019.

Subdistrict No. 3 ARP Approval: Plan Year 2019

The ARP provides documentation that the Subdistrict has implemented Forbearance Agreements with a number of ditches located on the Conejos River, on the San Antonio River, on the Alamosa River, and on the Rio Grande for the Plan Year. In its sole discretion, the Subdistrict will exercise these agreements, except as noted in this review.

The ARP provides an agreement with the Centennial Ditch in Appendix G. The resolution suggests an alternative for when replacement water needs to be carried below the Excelsior Ditch, but when the Rio Grande can be dry below the headgate. Instead, replacement water will be carried around that dry reach through the Centennial Ditch. The water will be measured and delivered directly to the Rio Grande at the point the Centennial Ditch can return water directly to the Rio Grande. That point is above any water right that may be injured while in priority. 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 this 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).

Further, the ARP indicates that at times when there is no requirement to deliver water to the Lobatos Gage to meet the requirements of the Rio Grande Compact, no water will be delivered to the lower reach of the Rio Grande for replacement of Injurious Stream Depletions to the Rio Grande Compact from the Subdistrict. The ARP indicates that the Closed Basin Project may continue to deliver salvaged water to the stream as directed by the CBP Operating Committee or other laws or policies.

In the alternative, the DWR agrees that the Subdistrict may replace these Injurious Stream Depletions after the irrigation season or when Compact deliveries are being made. The only instances where the Subdistrict is not required to replace these Stream Depletions are when there is an excess of 150,000 acre-feet of credit for Colorado or Elephant Butte Reservoir has spilled. In these instances, water passing the Lobatos Gage will not result in Compact credit to Colorado. In all other circumstances, the replacement of Injurious Stream Depletions to the Rio Grande Compact will result in credit being given to Colorado, either for the current year or for future years.

The ARP mentions potential requests for aggregation of depletions between Stream Reaches as part of the anticipated operation in 2019 as well as potential aggregation of depletions owed by other Subdistricts. It is appropriate to provide notice in the ARP that this is the Subdistrict's intention. This Approval Letter includes the depletions schedule produced in Table 2.3 by the Subdistrict with the expectation that the Subdistrict has agreed to the schedule and plans to comply with it for the ARP Year. Should the Subdistrict feel a need to recalculate the depletions or otherwise follow a different schedule, the Subdistrict will make a request for such a change to the Division Engineer, providing details of the request and documentation supporting the need to make a change. The Division Engineer will consider such a request when it is made, under the protocol of DWR and in light of the conditions on the particular stream at the time and, if deemed appropriate, approve the request. The Subdistrict will not adopt any change until after it is approved by the Division Engineer.

Subdistrict No. 3 ARP Approval: Plan Year 2019

Progress Towards Sustainability (Section 5.0)

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 are currently below the 1978-2000 average groundwater withdrawals for the Conejos Response Area. The current five-year running average groundwater withdrawals for ARP Wells for the period 2014-2018 is 26,584 acre-feet. The previous five-year running average for ARP wells was 28,052 acre-feet. The five-year running average groundwater withdrawals for ARP wells decreased even though 2018 was one of the driest periods on record.

The ARP states the Subdistrict continues to monitor groundwater withdrawals for the purpose of meeting the Sustainable Water Supply requirements in the Rules and will propose remedies, if necessary, as part of the ARP process. A portion of the Subdistrict 2019 fees was assessed to build up revenues to fund future programs to meet these requirements, if necessary. For 2019, groundwater withdrawal amounts will be monitored following the first Subdistrict assessments to determine if there is any effect. The Subdistrict 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 Rules.

Additional Information to Evaluate 2019 ARP (Section 6.0 of the ARP)

The Subdistrict provided separately an electronic copy of the Response Functions used in this ARP to the DWR. After the submission of the ARP on April 15, 2019, the DWR requested additional information as discussed above. **In future ARPs, it would be helpful if the supplemental information routinely needed for the DWR analysis of the ARP is supplied with the ARP in the same submittal package.** The supplemental information requested to evaluate the 2019 ARP and provided to the State Engineer included:

1. Resolution from RGWCD approving the Subdistrict 2019 ARP.
2. The list of Subdistrict Wells included in the 2019 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 2019 ARP.
4. Spreadsheet showing the Subdistrict's breakdown of "Other" wells used to calculate the composite Consumptive Use Ratio in the Response Function.

Information Provided that Could Not be Reviewed:

1. Appendix C- Groundwater Withdrawal Prediction - Regression Analysis.
No analysis supporting the chart provided in Appendix C was provided.
2. Appendix H- Water Levels of Wells Used to Generate Conejos Response Area Composite Water Head

Subdistrict No. 3 ARP Approval: Plan Year 2019

No analysis supporting the chart provided in Appendix H was provided

Anticipated Funding for Plan Year (Section 7.0 of the ARP)

The Subdistrict submitted sufficient financial information to document the purchase and leases of replacement water for the 2019 Plan Year.

Findings

Based on the information provided in the ARP and discussed above, I make the following findings:

1. The projected groundwater withdrawals is based upon the inventoried Subdistrict Wells, their historical pumping, and projected stream flows. The inventory of wells is consistent with the information in DWR's databases. The historical pumping associated with the Wells is based on diversion records on file with the DWR. The method implemented by the Subdistrict to project groundwater withdrawals for the ARP Wells for 2019 is consistent with historical pumping information and streamflow forecast from the Division Engineer's projection and the NRCS Forecast.
2. Projected stream depletions are calculated based on Response Functions generated from RGDSS Groundwater Model runs. The Response Functions are based on the RGDSS Model version 6P98, which was approved by the PRT. DWR directed the Subdistrict to utilize the 6P98 Response Functions in determining stream depletions for the Subdistrict.
3. The ARP identifies the sources, availability, and amounts of replacement water and remedies that the Subdistrict will use to remedy Injurious Stream Depletions during the coming year and demonstrates the sufficiency of such water to remedy such Injurious Stream Depletions:

Conejos River

- The Subdistrict depletions are 1,796 acre-feet during the irrigation season on the Conejos. The Subdistrict has 1,237.5 acre-feet in storage in Platoro Reservoir and agreements to generate up to 2,650 acre-feet during the irrigation season. The BLM Excess Credits and Taos Valley No. 3 supplies will overlap in their availability to remedy depletions because there will be times during the irrigation season when both are in priority. If there is no opportunity to store either source, a portion of the expected yield will be lost. Through consultation with Division 3 staff, it is expected the water rights under contract to the Subdistrict from the Taos Valley No. 3 will yield at least 1,850 acre-feet during 2019 that would be available to cover the amount of depletions owed by the Subdistrict that are not available from storage. The Subdistrict indicates they expect to yield a total of 856 acre-feet from forbearance agreements during the 2019 irrigation season. The portfolio of water from storage and generated during the irrigation season in the 2019 Plan Year ARP

Subdistrict No. 3 ARP Approval: Plan Year 2019

indicates sufficient firm water to cover Injurious Stream Depletions in the event that no forbearance is available.

- The Subdistrict depletions are 888 acre-feet during the non-irrigation season on the Conejos. The Subdistrict has 1,000 acre-feet of Closed Basin Project water available to pay non-irrigation season depletions.

Alamosa River

- The Subdistrict depletions are 101 acre-feet during the irrigation season on the Alamosa. The Subdistrict has 22 acre-feet in storage in Terrace Reservoir and agreements to generate up to 84 acre-feet through temporary dry-up of irrigated lands during the irrigation season. The Subdistrict indicates they expect to yield a total of 49 acre-feet from forbearance agreements during the 2019 irrigation season. The portfolio of water from storage and generated during the irrigation season in the 2019 Plan Year ARP indicates sufficient firm water to cover Injurious Stream Depletions in the event that no forbearance is available.
- The Subdistrict depletions are 0 acre-feet during the non-irrigation season on the Alamosa.

Rio Grande

- The Subdistrict depletions are 254 acre-feet during the irrigation season on the Rio Grande. The Subdistrict has 200 acre-feet in storage in Beaver Reservoir. The Subdistrict indicates they expect to yield 152 acre-feet of Subdistrict No. 1 SMRC water deliverable to Subdistrict No. 1 ditches and 82 acre-feet from forbearance agreements during the 2019 irrigation season. The Subdistrict has forbearance contracts with the Farmers Union and San Luis Valley Canal, two ditches that are also named in the Subdistrict No. 1 SMRC MOU. The availability of these sources depends on the specific ditch being the calling priority and no separate expected yield was described in the ARP for the SMRC sources. It is assumed the yield expected from these two ditches would overlap in their availability, so the amount of expected yield is deducted from the total approved. The total of On-Call replacement sources is 213 acre-feet. The portfolio of water from storage in the 2019 Plan Year ARP indicates there is a deficit of 54 acre-feet of firm water to cover Injurious Stream Depletions in the event that no Subdistrict No. 1 SMRC water or forbearance is available. The Subdistrict has replacement sources in the Conejos portfolio that could be moved by exchange and used to supplement the amount of firm water that is short on the Rio Grande should it be needed.
 - The Subdistrict depletions are 188 acre-feet during the non-irrigation season on the Rio Grande. The Subdistrict has 300 acre-feet of Closed Basin Project water available to pay non-irrigation season depletions.
4. Section 4.1.5 of the Subdistrict'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 the

Subdistrict No. 3 ARP Approval: Plan Year 2019

Subdistrict to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail or otherwise not be allowed to continue groundwater withdrawals.

5. Upon approval of the Subdistrict's PWM, it was concluded the Subdistrict is already operating within the 5-year 1978-2000 average as amended by the CAS stipulation. In all future years the five year running average of metered total withdrawals must not exceed the average annual withdrawals for the period of 1978 through 2000. The Subdistrict is in compliance with this metric.

The Subdistrict has presented sufficient evidence and engineering analysis to predict where and when Injurious Stream Depletions will occur and how they will replace those Injurious Stream Depletions to avoid injury to senior surface water rights under the following Terms and Conditions.

This ARP is hereby approved pursuant to the following Terms and Conditions:

1. This ARP shall be valid for the period of **May 1, 2019 through April 30, 2020**, unless otherwise revoked, modified, or superseded by me, a decree, or order of the court.
2. The Subdistrict must replace or remedy the Injurious Stream Depletions resulting from Subdistrict ARP Well groundwater withdrawals.
3. Deliveries (including transit losses) of stored water made available for the replacement of Injurious Stream Depletions shall be determined by the Division Engineer pursuant to this ARP and associated decrees.
4. If the limit is reached for any particular forbearance agreement, then the Subdistrict will need to begin replacement of Injurious Stream Depletions to that particular ditch or canal.
5. The Division Engineer shall determine on an ongoing basis whether he can administer the operations under each forbearance agreement. If the Division Engineer cannot, then that operation shall cease. General Forbearance Protocols for the Conejos River System for 2019 were prepared by the Division Engineer. A copy of the protocols is included with this letter.
6. The Subdistrict shall provide daily replacement water accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us), the Water Commissioners (sam.riggenbach@state.co.us), rachel.rilling@state.co.us, tom.stewart@state.co.us, aaron.holman@state.co.us, travis.robinson@state.co.us and the Subdistrict Coordinator (deborah.sarason@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.

Subdistrict No. 3 ARP Approval: Plan Year 2019

7. The Subdistrict must adhere to the terms and conditions of the SWSP(s) incorporated as part of the ARP. The use and inclusion of any new replacement water within the ARP is subject to SWSP approval or approved by the Water Division No. 3 Water Court for a change of water right. Prior to the use of any new replacement water, the State Engineer will evaluate for use as an amendment under this ARP.
8. All deliveries of replacement water shall be measured in a manner acceptable to the Division Engineer. The Subdistrict shall install and maintain measuring devices as required by the Division Engineer for operation of this approved ARP.
9. The Subdistrict must submit an Annual Review of its ARP pursuant to Rule 12.
10. The Subdistrict must replace or remedy all Injurious Stream Depletions caused by non-augmented pumping associated with Subdistrict ARP Wells.
11. The Subdistrict must comply with the Rules, the Subdistrict PWM, and this ARP.

The approval of this ARP is made with the understanding that if the ARP proves insufficient to remedy Injurious Stream Depletions, the State Engineer has the authority to invoke the retained jurisdiction of the Division No. 3 Water Court.

I want to thank you for your cooperation and compliance with this approved ARP and for your continued cooperation and compliance in the future. Your efforts are greatly appreciated. If you have any questions do not hesitate to contact any of my staff in Denver or Alamosa.

Sincerely,



Kevin G. Rein, P.E.
State Engineer
Director of the Division of Water Resources

Exhibits:

A: How to Use the Application Workbook for a Subset (individual/group) of Wells, Colorado Division of Water Resources, 9/23/2015

B: How to Adjust the Application Workbook for use with a Subset of Wells, Colorado Division of Water Resources, 10/15/2015

C: SWSP 6056- BLM Lovato Water

D: SWSP 6074- SLV Irrigation Well Owners

E: SWSP 6061- SLVWCD Augmentation

F: SWSP 6066- Expo LLC

Subdistrict No. 3 ARP Approval: Plan Year 2019

G: SWSP 6070- Faucette Temporary Fallow

H: General Forbearance Protocols for the Conejos River System for 2019

I: Resolution from RGWCD approving Subdistrict No. 3 2019 ARP

J: Resolution from RGWCD allowing Subdistrict No. 3 to allocate Closed Basin

Project water in the 2019 ARP.

K. Llano D Forbearance Agreement

L. Terrace Water Storage Agreement

ec: Craig Cotten, Division Engineer
Chad Wallace, Assistant Attorney General
David W. Robbins, Hill & Robbins
Peter Ampe, Hill & Robbins
Allen Davey, Davis Engineering Service, Inc.
DWR electronic notification lists
Division 3 Water Court

Exhibit A

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.

Exhibit B

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.

Exhibit C



March 15, 2019

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

**Re: Special Improvement District No. 3 ("Subdistrict No. 3") of the Rio Grande Water Conservation District Substitute Water Supply Plan
United States of America Bureau of Land Management
Water Division 3, Water Districts 21, 22 and 24
SWSP ID 6056**

Approval Period: May 1, 2019 to April 30, 2020
Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated February 15, 2019 in which you request approval of a 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 and the U.S. Bureau of Land Management 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 February 15, 2019. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3690601) 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 operation for this plan.

SWSP Operation

Subdistrict No. 3 was established by order of the court in Case No. 2016CV30021. Members of Subdistrict No. 3 are landowners within the Rio Grande Water Conservation



District ("RGWCD") who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos Response Area. The principal goals of Subdistrict No. 3 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 3's 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 meet the requirements of the Plan of Water Management (Plan) as approved by the State Engineer in Case No. 2018CW3013. The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 3; 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 the Plan, Subdistrict No. 3 must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions Subdistrict No. 3 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's ARP.

This SWSP is being requested for the purpose of changing the water right listed below to include storage in Platoro Reservoir by exchange. No other changes to the original decrees are being requested. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or the direction of the State and Division Engineers.

Change of Water Right

The United States of America Bureau of Land Management ("BLM") owns one-quarter interest in the Lovato Ditch, which was quantified in Case No. 90CW48 and the subject of a plan for augmentation in Case No. 02CW38. Case No. 02CW38 was bifurcated to address the change of water right in Case No. 02CW38A and the plan for augmentation in Case No. 02CW38B. The 02CW38A case changed the use of the Lovato Ditch interest to irrigation, augmentation, recreation, fisheries, wildlife and wildlife habitat, including the replacement of evaporative losses associated with those uses. The first use of the water decreed therein is for replacement of out-of-priority depletions associated with those uses. Water not needed for the plan for augmentation was deemed "excess credits". Excess credits are available as a source of supply for approved plans of water management.

The exchange requested in this SWSP is from the confluence of the San Antonio River and the Conejos River to Platoro Reservoir. The exchange has been named the BLM Lovato Ditch exchange. Excess credits will be exchanged using the BLM Lovato Ditch exchange when the exchange can be physically and legally operated with the permission of the Division Engineer, and shall be subject to transit losses. The availability of water is subject to the diversion and volumetric limitations specified in Case No. 02CW38A.

Conditions of Approval

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

1. This SWSP shall be valid for the period of May 1, 2019 through April 30, 2020 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than February 1, 2020.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. This year is the first year of operation under 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 Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners (Rachel.Rilling@state.co.us , Tom.Stewart@state.co.us, Jared.DePriest@state.co.us, Aaron.Holman@state.co.us, and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
5. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
6. 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 exchange is 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.
7. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.

8. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 ARP for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2019 Subdistrict 3 ARP must be used to replace injurious depletions under future Subdistrict 3 ARP's.
9. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.
10. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP. The availability of water is subject to the diversion and volumetric limitations specified in Case No. 02CW38A.
11. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the water commissioners or the Division Engineer.
12. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
13. 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.

Peter Ampe
March 15, 2019
Page 5 of 5

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

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

cc: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Rachel Rilling, Tom Stewart, Jared De Priest, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 21, 22, & 24

Exhibit D



April 29, 2019

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

**Re: Special Improvement District No. 3 (“Subdistrict No. 3”) of the Rio Grande Water Conservation District Substitute Water Supply Plan
SLVIWO Taos Valley No. 3 Water Rights
Water Division 3, Water Districts 21, 22 and 24
Case No. 15CW3030A, SWSP ID 6074**

Approval Period: May 1, 2019 to April 30, 2020

Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated March 8, 2019 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 pursuant to § 37-92-308(4), C.R.S. Notice was provided to all parties who have subscribed to the Division 3 SWSP Notification List and also to the opposers in Case No. 15CW3030 on March 7, 2019. On March 11, 2019, the court application was bifurcated into Case Nos. 15CW3030A and 15CW3030B. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3690895) has been received.

Subdistrict Operation

Subdistrict No. 3 was established by order of the court in Case No. 2016CV30021. Members of Subdistrict No. 3 are landowners within the Rio Grande Water Conservation District (“RGWCD”) who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos Response Area. The principal goals of Subdistrict No. 3 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 3’s 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 meet the requirements of the Plan of Water Management (“Plan”) as approved by the State Engineer in Case No. 2018CW3013. The overall



objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 3; 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 the Plan, Subdistrict No. 3 must submit an Annual Replacement Plan (“ARP”) for the State Engineer’s review and approval, showing the portfolio of water rights and other actions Subdistrict No. 3 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’s ARP.

SWSP Operation

The applicant has filed a case in water court for a recharge project and rights of substitution and exchange. The water right that is the subject of the case is the Taos Valley Canal No. 3, which was originally decreed in the District Court of Conejos County on October 3, 1890. In 1975, the San Luis Valley Irrigation Well Owners, Inc., (“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 to augment depletions caused by well users of the SLVIWO, in Case No. W-3394. 245 cfs were decreed to the Taos Valley No. 3, of which 230 cfs have been left undiverted and accounted for as an offset to well depletions pursuant to that decree. This water is referred to as the “Middlemist” water. The remaining 15 cfs were reserved for irrigation and are referred to as the “Zinn” water.

This SWSP request has been submitted for a change of water rights for the Middlemist water in compliance with the pending court case to allow augmentation, exchange, storage by exchange in Platoro, Rio Grande, Continental, and Trujillo Meadows Reservoirs, delivery of water to satisfy compact obligations, substituting water delivered to satisfy the compact in exchange for depletions and water diverted at other structures during different times within a year. Storage to any structure other than Cove Lake Reservoir will only occur under the terms of a separate agreement with the reservoir owner.

Conditions of Approval

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

1. This SWSP shall be valid for the period of May 1, 2019 through April 30, 2020 unless otherwise revoked or superseded by decree. 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 **February 1, 2020. This is the first year of operation of this plan.**
2. 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.

3. The Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners Tom.Stewart@state.co.us, Aaron.Holman@state.co.us and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
4. At the first opportunity in which the Taos Valley Canal No. 3 water right is in priority, 2,000 acre-feet of water will be delivered from the Taos Valley No. 3 Canal heading to the Conejos compact gages near La Sauses, minus delivery losses of 150 acre-feet. The 1,850 acre-feet of water delivered to the compact will be credited as a depletion bank which will be used throughout the Compact Year to pay back depletions owed to the 2 reaches on the Conejos River designated by the response functions. The compact curtailment percentage has been adjusted to make the timing work throughout the irrigation season.
5. The applicant will be charged a 7.5% delivery loss from the Taos No. 3 heading to the compact gages. This loss was an agreement with the Division Engineer staff and was conveyed to the Subdistrict No. 3 staff and the applicant's engineer.
6. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
7. The amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 ARP for the term of the Compact year. Any water banked under this SWSP and not used under the 2019 Subdistrict 3 ARP will be relinquished to the Compact by December 31, 2019; end of the Compact year.
8. Prior to the operation of any exchange, the Applicant is required to notify the water commissioner and obtain the water commissioner's approval for the operation of the exchange at least 48 hours prior to operation, or less if allowed by the water commissioner. The applicant is required to obtain the water commissioner's approval on a daily basis or other interval as required by the water commissioner. The proposed exchanges are limited to operating only at times there is a continuous live stream between the exchange from and exchange to points and at times sufficient exchange potential exists to operate the exchange without injury to other water users.
9. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.

10. All deliveries for augmentation, exchange, or storage shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
11. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
12. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
13. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(4), C.R.S., shall be to the Division 3 Water Judge within thirty days of the date of this decision and shall be combined with the pending court case, 15CW3030A.

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

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

cc: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Tom Stewart, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 22, & 24

Exhibit E



COLORADO
Division of Water Resources
Department of Natural Resources

April 15, 2019

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

**Re: Special Improvement District No. 3 ("Subdistrict No. 3") of the Rio Grande Water Conservation District Substitute Water Supply Plan
Use of Stored Water as a Replacement Source to Replace Injurious Depletions caused by Subdistrict No. 3 Wells, Pursuant to § 37-92-308(5), C.R.S.
Water Division 3, Water Districts 21, 22 and 24
SWSP ID 6061**

Approval Period: May 1, 2019 to April 30, 2020
Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated February 25, 2019 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 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 February 25, 2019. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3690714) 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 operation for this plan.



SWSP Operation

Subdistrict No. 3 was established by order of the court in Case No. 2016CV30021. Members of Subdistrict No. 3 are landowners within the Rio Grande Water Conservation District ("RGWCD") who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos Response Area. The principal goals of Subdistrict No. 3 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 3's 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 meet the requirements of the Plan of Water Management ("Plan") as approved by the State Engineer in Case No. 2018CW3013. The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 3; 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 the Plan, Subdistrict No. 3 must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions Subdistrict No. 3 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's ARP.

This SWSP is being requested for the purpose of changing the water rights listed below, to the extent necessary, to include storage, augmentation or replacement, including by substitution or exchange, and to the extent necessary, changing the place of use. This water is all for use by Subdistrict 3 in its ARP. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or the direction of the State and Division Engineers.

Change of Water Rights

The water rights made available to the Applicant and requested to be changed by this SWSP are as follows:

- 1. Bear Creek Water Rights held in Beaver Reservoir in the amount of 34.60 acre-feet**

This water is controlled by San Luis Valley Water Conservancy District ("SLVWCD" or "District") and is currently held in Beaver Reservoir. This water was decreed to the Grubb Ditch Nos. 1, 2 and 3; Priority Nos. 60, 62 and 286, respectively. The portion of the water rights owned by the SLVWCD were changed by the Division 3 Water Court in Case Nos. 05CW13 and 07CW63, for use in the District's augmentation program and for exchange to the Rio Grande, Santa Maria and Continental Reservoirs. As part of

those decrees, the Water Court determined the historical consumptive use attributable to the changed portions of the water rights.

B.A.R. Cattle Credit Water held in Beaver Reservoir in the amount of 61.51 acre-feet

This water is controlled by the SLWCD and is currently held in Beaver Reservoir. This water was changed by Case No 86CW30 from irrigation use and decreed in that case as "credit water" for beneficial use for *"longterm leases, sale to and use by another, dedication of the credit water to use in a judicially-approved plan for augmentation or any other means of actual beneficial use of water."* The portion of the water rights owned by the SLWCD were changed by the Division 3 water court in Case No. 03CW41 for use in the District's augmentation program and for exchange to the Rio Grande, Santa Maria and Continental Reservoirs. As part of that decree, the Water Court determined the historical consumptive use attributable to the changed portions of the water rights, known as the B.A.R. Cattle Credit Water.

2. Fully consumable water stored in Platoro and Beaver Reservoirs in the amount of 1246.23 acre-feet.

This fully consumable water was decreed in Case No.s 84CW16 and 94CW62 for storage and augmentation purposes. 541.23 acre-feet of this water is stored in Beaver Reservoir, and 705 acre-feet is stored in Platoro Reservoir 50 acre-feet from the original lease from the SLWCD was deducted as transit loss when the water was exchanged into Platoro Reservoir.

3. Anaconda Ditch held in Beaver Reservoir in the amount of 122.66 acre-feet.

This water is controlled by SLWCD and is currently held in Beaver Reservoir. This water was changed in Case No. 09CW34 to enable the use under the District's augmentation program for augmenting domestic, irrigation of lawns, landscape, golf courses and parks; sewage treatment, exchange, augmentation and replacement, storage, substitute supply, municipal, commercial, industrial, pond evaporation, agricultural irrigation and stock watering.

The water rights listed above will be released from storage under the direction of the Division Engineer for Water Division 3 to augment injurious depletions of the Subdistrict No. 3 Wells in the ARP. This SWSP is intended to change the purpose of use for the above listed water rights. Water rights listed above that have been diverted from one basin to another, require no reconsideration of the historic return flow patterns from use in the receiving basin and such water is considered fully consumable (*City of Thornton v. Bijou Irrigation Co.*, 926 P. 2d 1 (Colo. 1996); §37-82-106, C.R.S.)

Conditions of Approval

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

1. This SWSP shall be valid for the period of May 1, 2019 through April 30, 2020 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than February 1, 2020.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. This year is the first year of operation under 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 Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners (Rachel.Rilling@state.co.us, Tom.Stewart@state.co.us, Jared.DePriest@state.co.us, Aaron.Holman@state.co.us and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
5. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
6. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.
7. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 ARP for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2019 Subdistrict 3 ARP must be used to replace injurious depletions under future Subdistrict 3 ARP's.
8. 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.

9. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
10. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
11. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation , all use of water under this SWSP must cease immediately.
12. 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 Craig Cotten, Division Engineer, in our Division 3 office in Alamosa at (719) 589-6683.

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

ec: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Rachel Rilling, Tom Stewart, Jared De Priest, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 21, 22, & 24

Exhibit F



COLORADO
Division of Water Resources
Department of Natural Resources

April 15, 2019

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

**Re: Special Improvement District No. 3 ("Subdistrict No. 3") of the Rio Grande Water Conservation District Substitute Water Supply Plan
Water Activity Enterprise and Expo LLC
Water Division 3, Water Districts 21, 22 and 24
SWSP ID 6066**

Approval Period: May 1, 2019 to April 30, 2020
Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com

Dear Mr. Ampe:

We have reviewed your letter dated February 27, 2019 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 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 February 27, 2019. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3690765) 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 operation for this plan.**



SWSP Operation

Subdistrict No. 3 was established by order of the court in Case No. 2016CV30021. Members of Subdistrict No. 3 are landowners within the Rio Grande Water Conservation District ("RGWCD") who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos Response Area. The principal goals of Subdistrict No. 3 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 3's 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 meet the requirements of the Plan of Water Management (Plan) as approved by the State Engineer in Case No. 2018CW3013. The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 3; 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 the Plan, Subdistrict No. 3 must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions Subdistrict No. 3 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's ARP.

This SWSP is being requested for the purpose of changing the water rights listed below, to the extent necessary, to include augmentation, replacement, remedy, including by substitution or exchange, for use as part of Subdistrict 3's ARP. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or the direction of the State and Division Engineers.

Change of Water Right

The water right made available to the Applicant and requested to be changed by this SWSP are as follows:

1. 22.0 acre-feet of water stored in Terrace Reservoir

Expo, LLC is the owner of water originally decreed in Case No., 82CW97, which was subsequently changed in part in Case Nos. 14CW3027 and 16CW3019 in the Division 3 Water Court. The original decree was for an augmentation plan for two developments that never were built. Expo, through purchase and the subsequent decrees, has 22.0 acre-feet of water stored in Terrace Reservoir that will be leased to Subdistrict No. 3 for use in the 2019/2020 ARP (lease attached). To the extent necessary, any return flow obligations under the original use of this water were addressed by the decree in Case No. 82CW97.

Conditions of Approval

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

1. This SWSP shall be valid for the period of May 1, 2019 through April 30, 2020 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than February 1, 2020.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. This year is the first year of operation under 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 Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners (Rachel.Rilling@state.co.us, Tom.Stewart@state.co.us, Jared.DePriest@state.co.us, Aaron.Holman@state.co.us and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
5. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
6. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.
7. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 ARP for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2019 Subdistrict 3 ARP must be used to replace injurious depletions under future Subdistrict 3 ARP's.
8. 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.

9. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
10. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
11. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
12. 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 Craig Cotten, Division Engineer, in our Division 3 office in Alamosa at (719) 589-6683.

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

Attachment: Lease Agreement

cc: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Rachel Rilling, Tom Stewart, Jared De Priest, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 21, 22, & 24

LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into between the Rio Grande Water Conservation District Water Activity Enterprise ("RGWCD"), for the use and benefit of its Special Improvement District 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 2019 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 RGWCD 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 RGWCD 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 RGWCD, which date shall be the "Effective Date" and will end at midnight on April 30, 2020. Unless one Party provides Notice to the other Party prior to January 1, this Agreement will be automatically renewed from May 1 of that same year until April 30 of the following year. As an example, this Agreement will automatically renew for the term May 1, 2020 through April 30, 2021 unless Notice of nonrenewal is provided prior to January 1, 2020.
- 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. For subsequent renewals, payment will be due by May 15 of each renewal year.
- 1.4. Failure to Pay. If the RGWCD 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 will be stored in Terrace Reservoir during 2019. 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 RGWCD shall bear all seepage, evaporation and transit losses on the subject water. The RGWCD will retain title to unused water, if any, after the Term of this Agreement.

1.6. Approvals. RGWCD is responsible for obtaining any approvals necessary for RGWCD'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 RGWCD'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 RGWCD.

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

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

To Lessor: EXPO, LLC
C/O: Alex Miller, CFO
15 Washington Street
Monte Vista, CO 81144
Fax: _____
E-mail: _____

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

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

5. **Remedies.** In the event of Lessor's default in the performance of this Agreement, the RGWCD's remedies shall include, but not be limited to, the remedy of specific performance. In the event of the RGWCD's default hereunder, Lessor's sole and exclusive remedy shall be to retain all payments made by the RGWCD prior to the date of the default, and to retain any water not paid for by the RGWCD.
6. **Miscellaneous Provisions.**
 - 6.1. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. Except for those which are set forth in this Agreement, no representations, warranties, or agreements have been made by the Lessor or the RGWCD to one another with respect to this Agreement.
 - 6.2. **Survival.** Each of the representations and warranties made by Lessor and the RGWCD in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.
 - 6.3. **Amendment - Interpretation.** This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and shall not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
 - 6.4. **Non-Severability- Effect of Invalidity.** Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Lessor and the RGWCD. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.
 - 6.5. **Waiver.** The failure of a party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment, in any future case, of any of the terms of this Agreement.
 - 6.6. **Binding Effect and Assignability.** This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Lessor may not assign its rights or delegate its duties hereunder without the prior written consent of the RGWCD, which consent shall not be unreasonably withheld. The RGWCD may not assign its rights 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 RGWCD litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal.
- 6.8. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado.
- 6.9. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
- 6.10. Recording. The RGWCD may record this Agreement or a Memorandum of this Agreement 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 RGWCD, 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.

EXPO, LLC

By: Alex Miller
Alex Miller, CFO

2/25/19
Date

RIO GRANDE WATER CONSERVATION DISTRICT
WATER ACTIVITY ENTERPRISE

By: Greg Higel
Greg Higel, President RGWCD

2/26/19
Date

Exhibit G



COLORADO
Division of Water Resources
Department of Natural Resources

April 15, 2019

Mr. Clinton M. Phillips, P.E.
Davis Engineering Services, Inc.
P.O. Box 1840
Alamosa, CO 81101

Re: Special Improvement District No. 3 (“Subdistrict No. 3”) of the Rio Grande Water Conservation District Substitute Water Supply Plan Water Activity Enterprise and Gerald and Joyce Faucette Water Division 3, Water Districts 21, 22 and 24 SWSP ID 6070

Approval Period: May 1, 2019 to August 15, 2019
Contact phone number for Mr. Clinton M. Phillips: 719-589-3004; clinton@daviseng.com

Dear Mr. Phillips:

We have reviewed your letter dated March 1, 2019 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 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 March 1, 2019. Comments were submitted by the City of Alamosa during the statutory 35-day comment period. The required \$300 filing fee (receipt number 3690799) 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 operation for this plan.



SWSP Operation

Subdistrict No. 3 was established by order of the court in Case No. 2016CV30021. Members of Subdistrict No. 3 are landowners within the Rio Grande Water Conservation District ("RGWCD") who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Conejos Response Area. The principal goals of Subdistrict No. 3 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 3's 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 meet the requirements of the Plan of Water Management ("Plan") as approved by the State Engineer in Case No. 2018CW3013. The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 3; 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 the Plan, Subdistrict No. 3 must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions Subdistrict No. 3 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's ARP.

Change of Water Rights

The applicant has obtained a lease agreement with Gerald and Joyce Faucette ("Owners"), who own 54.78% of the El Viejo Ditch water right. The agreement allows the applicant to lease up to 84 acre-feet of historical consumptive use ("HCU") credit associated with the fallowing of one of the Owners' fields from May 1, 2019 to July 31, 2019 in order to use that HCU credit pursuant to this SWSP. The Owners' Field 2 will be fallowed under this request. Field 2 consists of 85.6 acres within the S½ of Section 2, Twp. 35N, Rng. 8E, NMPM.

This SWSP is being requested for the purpose of changing a portion of the Owner's El Viejo Ditch water right, to the extent necessary, to include augmentation, replacement, remedy, including by substitution or exchange, and for storage in Terrace Reservoir for use as part of Subdistrict No. 3's ARP. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or under the direction of the State and Division Engineers. This SWSP is for the purpose of changing the use of the water to the direct uses of replacement and augmentation, and for replacement and augmentation uses subsequent to storage in Terrace Reservoir, including by exchange if necessary. The request is made for approval to run from May 1 to July 31, 2019. The changed water will be used as a replacement water source in the ARP as a portion of the water supplies for the remedy of injurious depletions to the Alamosa River resulting from operation of wells in Subdistrict No. 3.

Storage of water under this SWSP will occur only under separate agreement with the Terrace Reservoir Company and the applicant understands that such storage can only occur under a separate agreement. Additionally, the applicant notes that to the extent that water remains in storage and is not used to meet the requirements of the 2019 ARP, it may remain in storage and be used in future years.

Change of Water Right

The water right made available to the applicant and requested to be changed by this SWSP is listed below:

Structure Name	WDID	Location	Decree	Appropriation Date	Amount (cfs)	Decreed Use	WD
El Viejo Ditch	2100520	NE ¼ NW ¼ 1-35N-7E NMPM	07/11/1888	8/1/1867	14.4 (remaining)	Irrigation	22

To support this proposal, the applicant prepared a HCU analysis for both fields that would potentially be used (denoted as Field 1 and Field 2). Crops grown on the fields were determined by using the Historical Irrigated Agricultural Survey Data, collected by the Rio Grande Water Conservation District from 2005 through 2017. The crop types are summarized in Table 2 in the request. StateCU was used to develop an Irrigation Water Requirement ("IWR") for each crop described in Table 2. The applicant used the Manassa climate station. The applicant noted that in an effort to be conservative, a corn crop was given a small grains designation as StateCU did not provide an IWR value for corn in the Rio Grande Basin. The yearly crop consumptive use for each field was calculated by taking the monthly irrigation water requirement and multiplying it by the total irrigated acres for that year.

It is the understanding of the Division of Water Resources ("DWR") that the Applicant has decided to use Field 2 for this change, therefore, this SWSP will be limited to that specific field.

DWR has noted several deficiencies with this requested SWSP. First, this request is limited to a single field where the subject water rights were used and not a farm-wide analysis. There are multiple ditches and wells that form the water supply on this farm. Second, the request did not demonstrate that supply was sufficient to meet demand in every month, or that an oversupply would not cause return flow amounts to exceed those claimed in the application. The applicant did not evaluate the timing of return flows to the river system.

Under the limitations incurred by the lease agreement, DWR believes the applicant is only entitled to claim consumptive use credits from the partial loss of a crop during the 2019 irrigation season. From conversations with the Owners, DWR believes that the potential crop

on Field 2 in 2019 would have been a barley (small grain) crop, planted in April and harvested in August. The field would have then been planted in alfalfa.

Using the DWR Lease Fallow Tool, which inputs crop ET and precipitation from the RGDSS StateCU model, DWR modeled the consumptive use and return flows associated with a barley crop that would have been planted in April on the 85.6 acre Field 2 during the effective period of the plan and compared this to the estimated consumption of irrigation water stored in soil moisture from a temporarily fallowed field. The model results are shown below.

Table 1. Estimated Consumptive Use and Return Flows for Fallowing of Faucette Field 2

Item:	May	June	July	Total (AF)
On-Farm Return Flows (AF)	10.7	7.7	8.1	26.6
Ditch Losses (AF)	4.4	4.3	4.5	13.2
Consumptive Use Barley (AF)	19.1	52.0	35.8	106.9
Consumptive Use Fallow (AF)	4.2	8.1	2.1	14.4
Net Reduction in Consumptive Use (AF)	14.8	43.9	33.8	92.5

The terms of the Temporary Fallow Agreement between the Applicant and the Owners state that the Applicant is allowed to generate up to 84 acre-feet of credits during May through July, subject to availability, and according to the schedule portrayed in the analysis. If the Applicant is only able to utilize 84 acre-feet of consumptive use credit under this plan, the respective return flow, ditch loss, and credit amounts may be proportionally decreased to imitate a reduced area or a deficit irrigated crop. Therefore, the following table shows return flow requirements and consumptive use credits under the terms of the Applicant's lease agreement.

Table 2. Credit and Return Flow Requirements for Fallowing of Faucette Field 2

Item:	May	June	July	Total (AF)
Return Flow Requirement (AF)	10	7	7	24
Ditch Loss Requirement (AF)	4	4	4	12
Consumptive Use Credit (AF)	13	40	31	84

As shown in Table 2, over the course of the 92-day effective period of this plan (May 1, 2019 through July 31, 2019), a total of 120 acre-feet of water must be dedicated in order to

accrue 84 acre-feet of credit. This equates to an average of 1.3 acre-feet per day or 0.71 cfs per day. Daily delivery of El Viejo Ditch water must be made per the following schedule.

Table 3. Daily Allocation of El Viejo Ditch water

Item:	May	June	July
Return Flow Requirement	0.16 cfs	0.12 cfs	0.12 cfs
Ditch Loss Requirement	0.06 cfs	0.07 cfs	0.07 cfs
Consumptive Use Credit	0.22 cfs	0.67 cfs	0.50 cfs

For example, under this schedule each day in May, the Owner must take 0.22 cfs (0.16 + 0.06) at the headgate, leave 0.06 cfs in the ditch to cover ditch losses to other owners on the ditch, deliver 0.16 cfs to a recharge pit located near Field 2, and forego diversion of 0.22 cfs at the river headgate in order for the Applicant to utilize 0.22 cfs for the purposes stated in this SWSP. The total amount of return flow requirements must be recharged by July 31, 2019.

Return flows will be measured and delivered to an infiltration pit near the field to maintain the timing of groundwater return flows similar to what would have occurred if the field had been irrigated. Up to 0.04 cfs of May return flows may be passed at the river headgate rather than delivered to the infiltration pit if approved by the Division Engineer. If other ditch users are not receiving their full expected amounts, the indicated ditch loss requirement amounts will also be delivered to the other ditch users. Once return flow and ditch loss requirements are met, the consumptive use credit amount will be determined as the minimum of the diversion amount returned to the river and the credit amount in Table 1. All measurements and operations must meet the requirements of the Division 3 Engineer.

DWR notes that according to the calculations in the Applicant's request, it was estimated that 108.12 acre-feet was needed to account for return flow, ditch loss and credit amounts. While the terms of the Temporary Fallow Agreement state that the Applicant is allowed to generate up to 84 acre-feet of credits, it is unclear what diversion total the Owner agreed to dedicate to this plan. If the Applicant is only able to utilize 108.12 acre-feet of diversion under this plan, that water must accrue from the start of the plan as this analysis was intended and the respective return flow, ditch loss, and credit amounts must be proportionally decreased to imitate a deficit irrigated crop. If only 108.12 acre-feet are dedicated to this plan that would be akin to ~82% deficit irrigated barley crop. The resulting table would be as follows:

Table 4. Credit, Return Flow, and Ditch Loss Requirements for Fallowing of Faucette Field 2 if only 108.12 acre-feet are dedicated to the Plan

Item:	May	June	July	Total (AF)
Return Flow Requirement (AF)	8.8	6.3	6.6	21.7
Ditch Loss Requirement (AF)	3.6	3.5	3.7	10.8
Consumptive Use Credit (AF)	12.1	35.9	27.6	75.6

Conditions of Approval

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

1. This SWSP shall be valid for the period of May 1, 2019 through August 15, 2019 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than January 2, 2020.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. This year is the first year of operation under 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 Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer (Craig.Cotten@state.co.us) and the Water Commissioners (Rachel.Rilling@state.co.us, Tom.Stewart@state.co.us, Jared.DePriest@state.co.us, Aaron.Holman@state.co.us and Travis.Robinson@state.co.us), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.

5. The 85.6 acres in temporarily fallowed Field 2 will not be irrigated by any water sources in 2019 until after August 15, 2019.
6. The Applicant must be able to recharge the full amount of return flows and provide the requisite amount of water to cover ditch losses as shown in either Table 2 or 3 in order to be able to use the full associated credits for the purposes in this SWSP.
7. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
8. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.
9. Storage of water in the Terrace Reservoir under this SWSP may occur only under separate agreement with the Terrace Reservoir Company. Applicant must provide a copy of the storage agreement to the Division Engineer and Water Commissioners.
10. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 3 ARP for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2019 Subdistrict 3 ARP must be used to replace injurious depletions under future Subdistrict 3 ARPs.
11. 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.
12. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
13. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
14. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
15. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated

Clinton M. Phillips, P.E.
April 15, 2019
Page 8 of 8

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 Craig Cotten, Division Engineer, 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 flourish at the end.

Jeff Deatherage, P.E.
Chief of Water Supply

Attachment: Lease Agreement

cc: Craig Cotten, Division Engineer
Deborah Sarason, Subdistrict Coordinator
David Hofmann, Assistant Subdistrict Coordinator
Pat McDermott, Staff Engineer
Kevin Boyle, Water Rights Researcher
Rachel Rilling, Tom Stewart, Jared De Priest, Aaron Holman and Travis Robinson,
Water Commissioners, Water Districts 21, 22, & 24
Eric Schwiesow, Attorney for City of Alamosa

LEASE-TEMPORARY FALLOW AGREEMENT

On this 28th day of February, 2019, this Lease Agreement ("Agreement") is entered into between Special Improvement District No. 3 of the Rio Grande Water Conservation District's Water Activity Enterprise ("Subdistrict No. 3"), and Gerald and Joyce Faucette ("Faucette") as the owner of certain decreed water rights decreed for irrigation and used within the Alamosa River system (collectively "Parties" or in the singular "Party").

INTRODUCTORY RECITALS

- A. Faucette holds title to various surface water rights, including but not limited to a portion of the El Viego Ditch. Faucette owns and irrigates various fields, including 72.5 acres located in the NE1/4 of Section 3, T.35N., R.8E., N.M.P.M. ("Field 1") and 85.6 acres in the S1/2 of Section 2, T.35N., R.8E., N.M.P.M. ("Field 2"). Both Field 1 and Field 2 have historically been irrigated with Faucette's El Viego Ditch rights.
- B. Subdistrict No. 3 desires water for augmentation and replacement purposes to comply with its approved Plan of Water Management and the anticipated approval of its Annual Replacement Plan for 2019/2020 ("ARP").
- C. In order to supply augmentation and replacement water to Subdistrict No. 3, and for water conservation purposes, Faucette is willing to temporarily fallow Field 1 or Field 2 for a portion of the 2019 irrigation season and lease the historical consumptive use credits ("HCU") from Field 1 or Field 2 during the Term of this Agreement to Subdistrict 3 for its use as part of the ARP or subsequent years' ARPs.

AGREEMENT

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

1. Term. This Agreement will begin on **May 1, 2019** and continue in effect until **July 31, 2019**. However, any of the up to 84 acre-feet of HCU generated during this Term and not used, lost or otherwise consumed by Subdistrict No. 3 will remain under the use and control of Subdistrict No. 3 after this Term expires for future use in its sole discretion.
2. Designation of Temporarily Fallowed Field. Faucette will chose to temporarily fallow either Field 1 or Field 2 in his sole discretion ("Designated Field"). Faucette must provide Notice to Subdistrict 3 prior to April 1, 2019 as to which field will be temporarily fallowed under the terms of this agreement. A map showing the location and areal extent of Field 1 and Field 2 is attached as Exhibit A.
3. Fallow Agreement. During the Term of this agreement, Faucette must not apply any irrigation water to the Designated Field. After the expiration of the Term, Faucette may take such actions as he desires in his sole discretion.
4. Lease Agreement.
 - 4.1. Lease Agreement. Subject to the terms of this Agreement, Subdistrict No. 3 agrees to lease up to 84 acre-feet of HCU generated from the Designated Field during the Term of this Agreement.

- 4.2. Determination of HCU Credit and Administrative Approval. Subdistrict No. 3 is responsible for the determination of HCU under this Agreement and is solely responsible for obtaining administrative or other legal approval for the use of the water and/or HCU as part of the ARP. Faucette agrees to reasonably cooperate with Subdistrict No. 3 in accomplishing these objectives by providing information necessary or desirable to Subdistrict 3 in accomplishing these objectives.
- 4.3. Lease Price. The lease price for temporarily fallowing the Designated Field is \$288.00 per acre. Total payment is due to Faucette on or before May 1, 2019.
- 4.4. Failure to Pay. If Subdistrict No. 3 fails to pay the lease price when due, then this Agreement will terminate in full, Faucette will retain title to the HCU and the Agreement will be void.
- 4.5. Water Subject to the Agreement. The water subject to this Agreement is up to 84 acre-feet of HCU generated from the temporary fallowing of the Designated Field.

4. Lessor's Obligations and Representations. Faucette represents that he is the owner of the water subject to this Agreement and that it has full power and authority to enter into this Agreement. Faucette 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.

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. No other consent is required for the execution, delivery or performance of this contract by the Subdistrict No. 3, however consent from the Rio Grande Water Conservation District Board of Directors is required and Subdistrict No. 3 believes it will obtain such consent. If such consent is not given, Subdistrict No. 3 must immediately provide Notice to Faucette and this Agreement will be void as of the date of that Notice. To the best of the Subdistrict No. 3's knowledge, there is no pending or threatened litigation or administrative proceeding against Subdistrict No. 3 that would prevent it from purchasing the Stored Water.

6. 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 Faucette:	Address: P.O. Box 312 Sanford, CO 81151
	Phone: (719) 588-1379
	E-mail: gerald070@centurytel.net

To Subdistrict No. 3: Cleave Simpson
 Subdistrict No. 3
 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.

7. Remedies. In the event of Lessor's default in the performance of this Agreement, Subdistrict No. 3's remedies include, but are not limited to, the remedy of specific performance. In the event of the Subdistrict No. 3's default hereunder, Faucette's sole and exclusive remedy shall be to retain all payments made by Subdistrict No. 3 prior to the date of the default, and to retain any water/HCU not paid for by Subdistrict No. 3.

8. Miscellaneous Provisions.

8.1. 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 Faucette or Subdistrict No. 3 to one another with respect to this Agreement.

8.2. Survival. Each of the representations and warranties made by Faucette and Subdistrict No. 3 in this Agreement, or in any document or instrument delivered pursuant to this Agreement, are true and correct in all material respects on the date hereof, and are to be deemed to be made again as and at the date of any payment date. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.

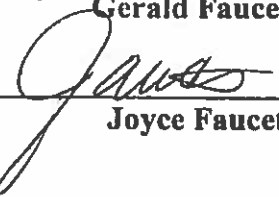
8.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement.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

8.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Faucette and 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.

- 8.5. 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.
- 8.6. 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. Faucette may not assign his rights or delegate his duties hereunder without the prior written consent of Subdistrict No. 3, which consent will not be unreasonably withheld. Subdistrict No. 3 may not assign its rights hereunder to any other person or entity without the prior written consent of Faucette, which consent will not be unreasonably withheld.
- 8.7. Litigation. If Faucette and/or Subdistrict No. 3 litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant must pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal.
- 8.8. 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.
- 8.9. 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.
- 8.10. Recording. Subdistrict No. 3 may record this Agreement or a Memorandum of this Agreement at its own expense and may also file this Agreement with the Division Engineer, Water Division No. 3.
- 8.11. Time. Time is of the essence in this Agreement.
- 8.12. 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.
- 8.13. Faucette's Acknowledgment. Faucette certifies that he has read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made to Faucette by Subdistrict No. 3, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Faucette except for written amendments or waivers executed by the Parties.

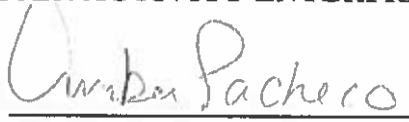
By: 
Gerald Faucette

2/28/19
Date


Joyce Faucette

2/28/19
Date

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

By: 
Amber Pacheco, Program Manager

2/28/19
Date

Exhibit H

General Forbearance Protocols

For the Conejos River System

During the 2019 Irrigation Season

Subdistrict #3 (the Conejos Subdistrict) will begin to replace depletions to their affected streams in May of 2019. Along with this replacement of stream depletions, the State and Division Engineer may allow the owners of the calling ditch to 'forbear', or choose to not take the water that otherwise would have been allocated to that ditch in exchange for receiving payment in some other form. This forbearance is authorized under Colorado Revised Statute 37-92-501 (4)(b)(1)(B) which states that the State Engineer shall "Recognize contractual arrangements among water users, water user associations, water conservancy districts, ground water management subdistricts, and the Rio Grande water conservation district, pursuant to which... injury to senior surface water rights resulting from the use of underground water is remedied by means other than providing water to replace stream depletions."

In order to assist the Subdistrict, water users, and Water Commissioners in determining whether a forbearance contract will be allowed, the following are general guidelines regarding those forbearance contracts for the 2019 irrigation season:

- A water right must be the calling water right in order to forbear. In other words, the ditch must be legally and physically entitled and able to receive and divert the replacement water that would have been placed into the river or stream reach if that ditch owner would have decided to take the water instead of forbearing.
- The owner of a ditch that cannot physically divert all of the water under its priorities due to an inadequate ditch size or other physical restrictions cannot forbear for the amount that the ditch is not able to divert. However, this ditch may be able to forbear in the amount that it is physically and legally able to divert.
- The owner of a ditch that physically is not able to divert the replacement water entitled to it at certain times of the year (for instance during low flow periods) due to an inadequate diversion dam or headgate, or other reasons, cannot forbear during that time of year unless and until the ditch or associated structures are repaired and physically able to take water at that time.
- If it is certain that the owner of a ditch would have declined to take water in his ditch on a given day if he were in priority to take that water, for instance if that owner never takes his full priority, due to a break in the ditchbank, if the owner has not called for that water right in the ditch, etc., the ditch owner cannot forbear for that water right on that day.
- Forbearance will be allowed on water rights that are not large enough to cover the entire daily replacement amount. A ditch may be forbearing only a portion of the total daily replacement

amount due to the size of the water right. In such cases there may be several water rights in various ditches that are forbearing at the same time.

- Ditches cannot forbear a portion of the replacement water and on the same day take a portion of the replacement water.
- Ditches with a forbearance contract must have accurate, reliable, and operational measurement devices on the ditch.
- A forbearance that results in a section of the river drying up, cannot be used to create a futile call. The river must be administered to replicate what conditions would have taken place had a continuous deliverance of water taken place.

Exhibit I

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
RIO GRANDE WATER CONSERVATION DISTRICT**

April 12, 2019

**APPROVING 2019 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 12, 2019, 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 12th day of April, 2019 that:

The District hereby accepts and approves the Subdistrict No. 3 2019 Annual Replacement Plan.

ATTEST:

RIO GRANDE WATER CONSERVATION
DISTRICT

By: 
Dwight Martin
Secretary/Treasurer

By: 
Greg Higel,
President

COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 12th day of April, 2019, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District

Witness my hand and seal.

My commission expires: 7/16/2021

Linda S. Ramirez
Notary Public

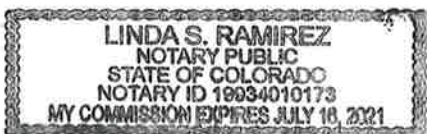


Exhibit J

**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 2019 ANNUAL REPLACEMENT PLAN**

The Board of Directors of the Rio Grande Water Conservation District at a special meeting held on April 12, 2019, 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 2019 ARP.

RESOLUTION

NOW, THEREFORE, be it resolved by the Board of Directors of the Rio Grande Water Conservation District that:

1. The District anticipates that the vast majority of this Project Water will be used to replace non-irrigation season depletions from November 1 through March 31. There may be circumstances during the irrigation season when Subdistrict No. 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 1,300 acre-feet of water from the production of the Closed Basin Project as a source of supply in the Subdistrict No. 3 2019 Annual Replacement Plan in the amount of 300 acre-feet to the Rio Grande River and 1,000 acre-feet to the Conejos River and the use of said water under the 2019 ARP to remedy injurious stream depletions is approved.

ATTEST:

RIO GRANDE WATER
CONSERVATION DISTRICT

By: *Dwight Martin*
Dwight Martin
Secretary/Treasurer

By: *Greg Higel*
Greg Higel
President

COUNTY OF ALAMOSA)
) ss
STATE OF COLORADO)

Subscribed and sworn to me this 12th day of April, 2019, by Greg Higel, President, Board of Directors of the Rio Grande Water Conservation District.

Witness my hand and seal.

My commission expires: 7/16/2021

Linda S. Ramirez
Notary Public

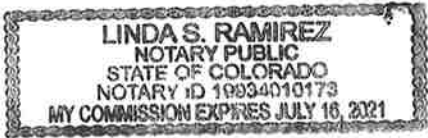


Exhibit K

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into effect May 1, 2019 between Special Improvement District No. 3 of the Rio Grande Water Conservation District Water Activity Enterprise (“Subdistrict No. 3”) and the Llano Ditch Company (“Company”), (collectively “the Parties”).

RECITALS

A. The Company owns and operates the Llano Ditch and the water rights decreed thereto. The Llano Ditch diverts water from the Los Pinos River in the NE1/4 of Section 26, Township 32 North, Range 8 East, N.M.P.M. in Conejos County, Colorado, and has decreed priorities totaling 31.18 c.f.s.

B. Subdistrict No. 3 is responsible for implementation of the Plan of Water Management (“Plan”) approved on August 27, 2018, through its Annual Replacement Plan (“ARP”), as approved by the State Engineer.

C. The quantity of water available for diversion from the Los Pinos River by the Llano Ditch may be reduced by the stream depletions caused by wells that are covered by the ARP. Without this Forbearance Agreement, Subdistrict No. 3 would make replacement water available for diversion by the water rights decreed to the Llano Ditch to remedy injurious stream depletions.

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

E. Subdistrict No. 3 desires to enter into this Forbearance Agreement as part of its ARP for Plan Year 2019.

AGREEMENT

In consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, Subdistrict No. 3 and the Company agree as follows:

1. **Term of Agreement.** This Agreement will be in effect from May 1st, 2019 through April 30th, 2020.
2. **Forbearance by the Company.**

2.1. During the term of this Agreement the Company will forebear from requiring Subdistrict No. 3 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 Llano Ditch under priority no. 4. Subdistrict No. 3 may remedy injurious stream depletions under this agreement or by providing water in its sole discretion.

2.2. This Forbearance Agreement applies on each day during the term of the Agreement that the Llano 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 Company will be calculated each day the Llano Ditch is the calling water right and injurious depletions are not remedied by Subdistrict No. 3 providing replacement water, and both the Company and Subdistrict No. 3 will keep a running total of said depletions. The daily injurious depletions in acre-feet will be the amount of water that the Llano Ditch would have been able to divert, but for the depletions caused by wells operating under Subdistrict No. 3'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 Los Pinos River contained in the Subdistrict's 2019 ARP approved by the State and Division Engineers. The actual amount of injurious depletions to the Llano Ditch during the term of this Agreement will be determined pursuant to paragraph 3.2 below.

2.4. This Forbearance Agreement will apply on days when the following priorities decreed to the Llano 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>
4	31.18

On such days the amount of water that must be provided by Subdistrict No. 3 to replace the injurious stream depletions to the Llano Ditch is the lesser of either (1) the daily rate of stream depletions otherwise required to be replaced by Subdistrict No. 3 calculated in accordance with paragraph 2.3, or (2) the amount of water necessary to allow the Company to divert the full amount of last priority served on that day.

3. Payment. The Subdistrict will pay the Company \$70 per acre-foot of replacement of injurious stream depletions that are not required to be made available for diversion at the Llano Ditch pursuant to the terms of this Agreement.

3.1. After the end of each irrigation season, and not later than March 15, of the following calendar year, Subdistrict No. 3 will recalculate the injurious stream depletions in accordance with the requirements of the Plan. Subdistrict No. 3 will then recalculate the amount of water that the Llano Ditch would have been able to divert if all unreplaced injurious depletions to the Llano Ditch had been replaced during the term of this Agreement, and provided the Company with (1) a full accounting showing the unreplaced injurious depletions to the water rights of the Company; and (2) a calculation of the amount of the payment due under paragraph 3.2 below. The Company will have fourteen days after the receipt of the calculations to notify the Subdistrict of any errors therein.

3.2. Subdistrict No. 3 will pay the Company \$70 per acre-foot for each acre-foot of injurious stream depletions to the Llano Ditch caused by wells operating under the Subdistrict No. 3 ARP during the term of this Agreement and not replaced with water.

3.3. The payment required by subparagraph 3.2, will be due within 35 days of the date that Subdistrict No. 3 provides the company with an accounting of the unreplaced injurious depletions to the water rights of the Company and the amount of the payment due, but not later than April 15, 2020.

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 Llano Ditch. Under this Forbearance Agreement the Company will continue to call for all water legally and physically available for diversion under its water rights. Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., during the term of this Agreement the Company will not require Subdistrict No. 3 to make water available for diversion at the headgate of the Llano Ditch to offset depletions that would otherwise have to be replaced by Subdistrict No. 3 under its 2019 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 Llano Ditch

To Subdistrict No. 3:

c/o Program Manager
Rio Grande Water Conservation District
8805 Independence Way

Alamosa, CO 81101

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

6. Remedies. In the event of Company's default in the performance of this Agreement, Subdistrict No.3's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 3's default hereunder, Company's remedies shall be to retain all payments made by Subdistrict No. 3 prior to the date of the default, to require full replacement of all injurious stream depletions from and after the date of default by Subdistrict No. 3, and to require Subdistrict No. 3 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 Subdistrict No. 3 to one another with respect to this Agreement.

7.2. Survival. Each of the representations and warranties made by the Parties in this Forbearance Agreement, or in any document or instrument delivered pursuant to this Forbearance 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. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.

7.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Company and Subdistrict No. 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.

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

7.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Company may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 3, which consent shall not be unreasonably withheld. Subdistrict No. 3 may not assign its rights hereunder to any other person or entity without the prior written consent of the Company, which consent shall not be unreasonably withheld.

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

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

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

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

Llano Ditch Company

By: Phil Vohlg - President

04/11/2019
Date

ACCEPTED:

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

By: Amber Pacheco
Amber Pacheco, Program Manager

4/11/19
Date

Exhibit L

WATER STORAGE AGREEMENT
(El Viego Ditch Water)

This Agreement is made and entered into this 11th day of April, 2019, by and between the Terrace Irrigation Company, a Colorado nonprofit corporation (hereinafter referred to as "Terrace"), and Special Improvement District No. 3 of the Rio Grande Water Conservation District's Water Activity Enterprise ("Subdistrict No. 3").

RECITALS

WHEREAS, Terrace is the owner of Terrace Reservoir, located in parts of Sections 8, 9, 10, 14, 15, 16 and 23 in Township 36 North, Range 6 East, N.M.P.M., Conejos County, Colorado, as well as the Creek Ditch (also known as the Alamosa Creek Canal), which diverts water from the Alamosa River below Terrace Reservoir; and

WHEREAS, Terrace operates Terrace Reservoir to provide water for beneficial uses to its shareholders and other lawful users; and

WHEREAS, Subdistrict No. 3 has entered into an agreement with Gerald and Joyce Faucette to lease up to 84 fully consumptive acre-feet per year from a portion of the water right decreed for irrigation use to the El Viego Ditch out of the Alamosa River ("Leased Water"), and has requested the use of the Leased Water in a substitute water supply plan ("SWSP") to provide replacement water for well depletions to the Alamosa River as part of the Subdistrict's Annual Replacement Plan for 2019/2020 ("ARP"); and

WHEREAS, Terrace is willing to allow Subdistrict No. 3 to store the Leased Water in Terrace Reservoir and release that water to the Alamosa River for use in the SWSP and ARP, subject to the terms and conditions of this Agreement;

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

1. It is anticipated that water will be stored under the Terrace Reservoir priorities during the winter season, although water may be stored at any time the water right is in priority, and the Leased Water will be stored in such amounts as directed by Subdistrict No. 3 under the priority of the El Viego Ditch between May 1, 2019 and July 31, 2019 on a space-available basis.
2. Subdistrict No. 3 may call for the release of the Leased Water from Terrace Reservoir into the Alamosa River immediately below the dam ("Delivery Point") from which water can be delivered downstream as needed by Subdistrict No. 3. Requests for release of the Leased Water shall be made to Terrace by the Program Manager for Subdistrict No. 3, with notice to the water commissioner. Terrace's obligation to deliver the Leased Water pursuant to this Agreement is limited to delivering it to the Delivery Point.

3. Terrace shall be solely responsible for all operation, maintenance and related costs associated with Terrace Reservoir, and shall maintain full control of its daily operations. Terrace shall have the final decision on when Leased Water can or will be delivered, provided however, that Terrace shall make reasonable efforts to deliver the leased Water at times requested by Subdistrict No. 3 during the normal irrigation season of each year, subject to coordination with the Division Engineer's Office. Subdistrict No. 3 and Terrace each agree that the most preferable time for delivery of the Leased Water is between April 1 and October 31. Each party agrees to make reasonable efforts to effect the delivery of the water within such time-frame, unless another time for delivery is agreed to between the parties. Any of the Leased Water not released by October 31, 2019 may be carried over until the following year, subject to release on or before April 30, 2020. Any water not released by that date shall revert to Terrace. The Leased Water shall be the first to spill from Terrace Reservoir in the event of a spill.

4. Subdistrict No. 3 shall be responsible for carriage or transit losses associated with delivery of its Leased Water below the Delivery Point.

5. Terrace shall be responsible for accounting for storage and release of the Leased Water from Terrace Reservoir. Terrace shall perform such accounting and share it with Subdistrict No. 3 in such a manner that Subdistrict No. 3 is able to comply with accounting obligations reasonably imposed by the Division Engineer in the SWSP and ARP. Subdistrict No. 3 shall be responsible for all other accounting requirements associated with its SWSP and ARP. Upon request, Subdistrict No. 3 shall provide Terrace copies of its accounting for storage, delivery and use of this Leased Water.

6. The compensation to be paid by Subdistrict No. 3 to Terrace to store the Leased Water and deliver the Leased Water to the Delivery Point shall be as follows:

- a. Subdistrict No. 3 shall pay an annual administrative fee of TEN DOLLARS (\$10.00) per acre-foot for each acre-foot of Leased Water stored in Terrace Reservoir. In calculating this fee, the amount stored shall be rounded up to the nearest half an acre-foot. For example, storage of 70.3 acre-feet shall be rounded up to 70.5 acre-feet to calculate this annual fee. Terrace shall invoice Subdistrict No. 3 no later than December 15th for the annual fee applicable to storage during the prior water year. Subdistrict No. 3 shall pay the invoice within 30 days of receipt.

7. The term of this Agreement is for one year commencing on May 1, 2019 and ending on April 30, 2020.

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

Subdistrict No. 3:

c/o Program Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101
e-mail: amber@rgwcd.org
phone: 719-252-7420

Terrace:

c/o President
P.O. Box 109
Monte Vista, Colorado 81144
e-mail: reinkvc@gojade.org
and kaysbooksr4u@gmail.com
phone: 719-852-5638

9. By virtue of entering into this Agreement, assumes no liability for Subdistrict No. 3's use of the Leased Water. Subdistrict No. 3 is responsible at its sole cost and expense for obtaining any and all local, state, or federal permits or approvals, if any, required for its storage and use of the Leased Water.
10. Subdistrict No. 3's use of Terrace's facilities shall not create any rights of ownership or other property interests outside of this Agreement.
11. This Agreement does not and shall not be construed to modify any other agreements regarding storage in Terrace Reservoir.
12. Remedies. In the event of default in the performance of this Agreement by Terrace, Subdistrict No. 3's remedies shall include, but not be limited to, the remedy of specific performance. In the event of Subdistrict No. 3's default hereunder, Terrace's remedies shall be to retain all payments made by Subdistrict No. 3 prior to the date of the default, specific performance or damages.
13. Miscellaneous Provisions.
- a. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. Except for those that are set forth in this Agreement, no representations, warranties, or agreements have been made by Terrace or Subdistrict No. 3 to one another with respect to this Agreement.

- b. Survival. Each of the representations and warranties made by the Parties in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date, and are to be deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects.
- c. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a “holiday” as such term is defined in Colo.R.Civ.P. 6, then the relevant date will be extended automatically until the next business day.
- d. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of Terrace and 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.
- e. Waiver. The failure of a party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment, in any future case, of any of the terms of this Agreement.
- f. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. Terrace may not assign its rights or delegate its duties hereunder without the prior written consent of Subdistrict No. 3, which consent shall not be unreasonably withheld. Subdistrict No. 3 may not assign its rights hereunder to any other person or entity without the prior written consent of Terrace, which consent shall not be unreasonably withheld.
- g. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado.

- h. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
- i. Time. Time is of the essence in this Agreement.
- j. Joint Draft. The Parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, draft this Agreement jointly.

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

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

By: Amber Pacheco 4/11/19
Amber Pacheco, Program Manager Date

Terrace Irrigation Company

By: Kent Reinhardt 4/10/2019
Date