



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

April 18, 2012

John W. Hickenlooper  
Governor  
Mike King  
Executive Director  
Dick Wolfe, P.E.  
Director/State Engineer

Mr. Peter J. Ampe, Esq.  
Hill & Robbins, P.C.  
100 Blake Street Building  
1441 Eighteenth Street  
Denver, CO 80202-1256

**Re: Special Improvement District No. 1 ("Subdistrict No. 1") of the Rio Grande Water Conservation District Substitute Water Supply Plan Use of Transbasin Water as a Replacement Source to Replace Depletions caused by Subdistrict Wells, Pursuant to § 37-92-308(5), C.R.S. Water Division 3, Water Districts 20, 26, & 27**

**Approval Period: May 1, 2012 to April 30, 2013**  
*Contact phone number for Mr. Peter J. Ampe: 303-296-8100*

Dear Mr. Ampe:

We have reviewed your letter dated March 15, 2012 in which you request approval of a substitute water supply plan ("SWSP") on behalf of the Special Improvement District No. 1 ("Subdistrict No. 1") of the Rio Grande Water Conservation District ("Subdistrict No. 1" or "Applicant") pursuant to § 37-92-308(5), C.R.S. Subdistrict No. 1 is requesting approval of this substitute water supply plan for the purpose of changing/using Transmountain Diversion water purchased/leased from the Navajo Development Co. Inc., San Luis Valley Irrigation District, San Luis Valley Water Conservancy District and Colorado Division of Parks and Wildlife to include augmentation by substitution or exchange and recharge, to be used as replacement water source in the Annual Replacement Plan. This substitute water supply plan is being sought in order to conform with the requirements of the Amended Plan of Water Management ("Amended Plan") as approved by the Water Court in Case Nos. 2006CV64 and 2007CW52 and upheld by the Colorado Supreme Court in Case No. 10SA224. Notice of the request for approval of the SWSP was provided to all parties who have subscribed to the Division 3 SWSP Notification List and all parties of record in Case Nos. 2006CV64 and 2007CW52 on March 15, 2012. The State Engineer's Office ("SEO") received comments from the Colorado Parks and Wildlife and Navajo Development Co. during the statutory 30-day comment period. The required \$300 filing fee (receipt number 3654419) has been received.

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

Office of the State Engineer

1313 Sherman Street, Suite 818 • Denver, CO 80203 • Phone: 303-866-3581 • Fax: 303-866-3589  
[www.water.state.co.us](http://www.water.state.co.us)

## **SWSP Operation**

Members of Subdistrict No. 1 within the Rio Grande Water Conservation District ("RGWCD") rely on wells for all or part of their irrigation water supply for land north of the Rio Grande within part of the area known as the Closed Basin. In accordance with the Amended Plan the Subdistrict No. 1 goals are first to place a priority on replacement of depletions to the river and second to recover the Unconfined Aquifer of the Closed Basin. As part of the Amended Plan, Subdistrict No. 1 must submit an Annual Replacement Plan for the State Engineer's review and approval, showing the Subdistrict Well depletions during the plan year and the sources of replacement water that will be used to replace injurious depletions to senior water rights caused by groundwater withdrawal by Subdistrict Wells. Paragraph 49 of the decree in Case Nos. 2006CV64 and 2007CW52 states that: "The Amended Plan provides that the Subdistrict may purchase or obtain existing surface water rights and/or storage rights to be used as replacement water for any injurious depletions to surface water rights resulting from pumping of the Subdistrict wells". Therefore in order to meet the requirement of the Amended Plan, the Subdistrict No. 1 is seeking this SWSP to be able to use water previously placed in storage to remedy injurious depletions of Subdistrict No. 1 Wells by making releases from certain reservoirs at the time required by the Annual Replacement Plan and/or the direction of the State and Division Engineers. This SWSP does not represent all sources of water Subdistrict No. 1 will use in the Annual Replacement Plan, instead this SWSP is one portion of the overall action taken by Subdistrict No. 1 to assure the Annual Replacement Plan conforms with the requirements of the Amended Plan.

## **Change of Water Rights**

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

**1. Williams Creek Squaw Pass Transbasin Diversion currently held in Rio Grande Reservoir in the amount of 1,000 acre-feet:**

This water right was originally decreed on April 19, 1962 (Water District 29, San Juan River), by Archuleta County District Court as part of Case Nos. 73 and 308, awarded priority 310, with a priority date of September 9, 1937, for supplemental and/or additional irrigation water for 600 acres of land situated in Water District 20. A decree changing at least a portion of the water right from irrigation to municipal (including commercial, industrial, domestic and sewage treatment), recreation and replacement was entered on February 28, 1979 in case no. W-1869-78. The amount of water under this water right is 10 cfs, and the amount of the water right that was changed to non-irrigation uses is currently being evaluated. The Williams Creek Squaw Pass Diversion provides transmountain water from the Williams Creek Drainage, a tributary to San Juan River (Water District No. 29), to the water shed of Rio Grande River (Water District 20). This water right has historically been used for multiple purposes including augmentation uses consistent with the decree in Case No. W-1869-79. This water is stored under the decree held by Navajo Development Co. Inc. in Rio Grande Reservoir and may be used to replace injurious depletions in the Annual Replacement Plan. A Purchase-Option Agreement between the RGWCD and Navajo Development Co. Inc was provided with this SWSP and is attached to this letter.

**2. Williams Creek Squaw Pass Transbasin Diversion currently stored in Rio Grande Reservoir in the amount of 794.03 acre-feet:**

Information about this water is described in Item No. 1 above.

This water is held by the San Luis Valley Irrigation District in Rio Grande Reservoir and may be used to replace injurious depletions in the Annual Replacement Plan. The Invoice for purchasing this water was provided with the SWSP request and is attached to this letter.

**3. Tabor Ditch No. 2 Transbasin Diversion stored in Rio Grande Reservoir in the amount of 487.76 acre-feet:**

These water rights are held by San Luis Valley Irrigation District ("SLVID") in Rio Grande Reservoir. Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement were originally decreed on March 30, 1960 by the Montrose County District Court as part of Case No. CA-6981. The Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement derive their supply of water from a fork of Cebolla Creek, a tributary of Gunnison River, in Water District 62, and transport the water across the Continental Divide into the Rio Grande River drainage area in Water District 20 where it is used to supply supplemental irrigation of about 800 acres of land situated in Section 31 and 32, Township 40 North, Range 5 East of the NM P.M. The amount of water under Tabor Ditch No. 2 is 6.2 cfs, Priority No. 339 with an appropriation date of July 23, 1910 and the amount of water for Tabor Ditch No. 2 Enlargement is 15.21 cfs, Priority No. 395 with an appropriation date of May 15, 1950. These water rights were subsequently changed through a decree entered on December 29, 1979 in Case No. 3549 in the District Court for Hinsdale County. Colorado Division of Parks and Wildlife ("CPW") is the sole owner of these water rights. SLVID obtained the 487.76 acre-feet from the CPW after that water had been stored in the Rio Grande Reservoir. Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement were originally decreed for irrigation purposes and in Case No. W-3549 were changed from irrigation to the following uses: maintain conservation pools and reservoirs owned by CPW, augmentation for wells owned and controlled by CPW, evaporation charges on reservoirs owned or controlled by CPW, refill post Rio Grande Compact reservoirs, and to maintain and develop big game range and wetland areas for the benefit of wildlife habitat. In the April 13, 2012 comment letter received from the CPW, it was noted that the that augmentation uses sought under this SWSP for Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement including the water purchased from the San Luis Valley Irrigation District, are as a matter of law "successive" uses and should be considered in accordance with the Section 37-82-106 C.R.S., not to administratively change the initial use of a transmountain water right. Therefore for the purpose of this SWSP and in accordance with Section 37-82-106 C.R.S. these water rights may be used for replacement of injurious depletions in the Annual Replacement Plan. The Invoice for purchasing this water was provided with the SWSP request and is attached to this letter.

**4. Pine River Weminuche Pass Ditch Transbasin Diversion held in Rio Grande Reservoir in the amount of 500 acre-feet:**

This water is controlled by San Luis Valley Water Conservancy District and is currently held in the Rio Grande Reservoir. This water was decreed on March 7, 1966 (Appropriation Priority No. 1965-13) by the La Plata County District Court as part of Case No. CA-1248-B. Subsequent decrees were approved in Case Nos. 1984CW16 and 1994 CW62. The Pine River Weminuche Pass Ditch derives its supply of water from Pine River Drainage Area in Water District No. 31 across Weminuche Pass of the Continental Divide into the Drainage Area of the Rio Grande in Water District No. 20 and delivered into Weminuche Creek, a tributary of the Rio Grande. The amount of water under this water right is 6 cfs for storage and irrigation purposes of the lands situated in Water District 20. For the purpose of this SWSP this water is approved for

augmentation purposes to be used for replacement of injurious depletions in the Annual Replacement Plan. The Invoice for purchasing this water was provided with the SWSP request and is attached to this letter.

**5. Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement Transbasin Diversion held in Rio Grande Reservoir in the amount of 1000 acre-feet:**

This water is stored under the decrees held by Colorado Parks and Wildlife ("CPW") in Rio Grande Reservoir. Information about Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement is described in Item No. 3 above.

Also as described in Item No. 3 above and in accordance with Section 37-82-106 C.R.S. these water rights may be used for replacement of injurious depletions in the Annual Replacement Plan. A copy of the Lease Agreement between Colorado Parks and Wildlife and RGWCD was submitted to this office on April 13, 2012 and is attached to this letter.

The water rights listed above will be released from storage to augment injurious depletions of the Subdistrict No. 1 Wells in the Annual Replacement Plan. This SWSP is intended to change the purpose of use for the above listed water rights. Because the water rights listed above have been diverted from one basin to another, there is no requirement to consider 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.)

At the discretion of the Division Engineer and the appropriate water commissioners, Beaver Park Reservoir may be used as a re-regulating reservoir to more appropriately time replacement water to avoid injurious depletions. Such releases may also be made by exchange from Rio Grande Reservoir to Beaver Park Reservoir. Colorado Parks and Wildlife owns Beaver Park Reservoir and has consented to Subdistrict No. 1's use of Beaver Park Reservoir in this manner.

The water rights that are subject to this SWSP may also be diverted inside Subdistrict No. 1 through appropriate ditches and canals for recharge for the confined and unconfined aquifers if the Board of Managers of Subdistrict No. 1 determines that such practice is necessary.

**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, 2012 through April 30, 2013**, unless otherwise revoked, modified, 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.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years. This approval is for the first year of operation.
3. Approval of this SWSP is for the purposes stated herein (changing/using Transmountain Diversion water purchased/leased from the Navajo Development Co. Inc., San Luis Valley Irrigation District, San Luis Valley Water Conservancy District and Colorado Parks

and Wildlife to include augmentation by substitution or exchange and recharge). 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](mailto:Craig.Cotten@state.co.us)) and the Water Commissioners ([James.Swanson@state.co.us](mailto:James.Swanson@state.co.us) and [Steve.Baer@state.co.us](mailto:Steve.Baer@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 Amended Plan of Water Management ("Amended Plan") as approved by the Water Court in Case Nos. 2006CV64 and 2007CW52 and upheld by the Colorado Supreme Court in Case No. 10SA224, the terms and conditions of the Amended Plan shall control.
6. The exchange of releases from Rio Grande Reservoir to Beaver Park Reservoir described in this SWSP may only occur to the extent that there is a continuous live stream between the exchange from and exchange to points and to the extent this exchange can be operated without injury to intervening water rights. This exchange may only be operated with the **prior** approval of the water commissioner or division engineer.
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 Annual Replacement Plan 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.
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 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.
10. This SWSP may be revoked or modified at any time should it be determined that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a change of water right, all use of water under this SWSP must cease immediately.
11. The decision of the State Engineer shall not create any presumptions, shift the burden of proof, or serve as a defense in the pending water court case or any other legal action that may be initiated concerning the substitute water supply plan. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other plans or in any proposed renewal of this plan. Any appeal of the decision made by the State Engineer concerning this substitute water supply plan pursuant to 37-92-308(5) shall be to the Division 3 water judge within thirty days of the date of this decision and shall be consolidated with the application for approval of the plan for augmentation.

Mr. Peter J. Ampe, Esq.  
April 18, 2012

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12. Release of stored transbasin water made available for the replacement of injurious depletions shall be at the discretion of the water commissioners or the Division Engineer.

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

Sincerely,



Kevin G. Rein, P.E.  
Deputy State Engineer

Attachments: Purchase-Option Agreement between Navajo Development and RGWCD  
Invoices from San Luis Valley Irrigation District, San Luis Valley Water  
Conservancy District  
Lease Agreement from Colorado Division of Parks and Wildlife

cc: Craig Cotten, Division Engineer

Water Commissioners, Water Districts 20, 26, & 27

Counsel of Record, Case Nos. 2006CV64 and 2007CW52

Division 3 SWSP Notification List

KGR/idc/Subdistrict No. 1 308(5) SWSP

## PURCHASE-OPTION AGREEMENT

This Purchase-Option Agreement ("Agreement") is entered into between the Rio Grande Water Conservation District ("RGWCD"), for the use and benefit of its Special Improvement District No. 1, and Navajo Development Co., Inc. ("Seller") as the owner of certain water in storage in the Rio Grande Reservoir.

### INTRODUCTORY RECITALS

A. The Seller holds title to an absolute water right for transmountain water in the Williams Creek Squaw Pass Diversion, as set forth in a change decree entered in Case No. W-1869-78 (Water Division 7) on February 28, 1979 ("Decree"). A copy of the Decree is attached hereto as Exhibit 1. Water from this water right is currently stored in Rio Grande Reservoir.

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

C. The Seller desires to grant an option to the RGWCD to purchase 1,000 acre-feet ("a.f.") of transmountain water currently being held in storage in the Rio Grande Reservoir on the terms set forth below.

### AGREEMENT

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

1. Purchase and Option Agreement.

- 1.1. The Seller hereby grants to the RGWCD, subject to the terms of this Agreement, an option to purchase 1,000 a.f. of transmountain water currently in storage in Rio Grande Reservoir ("Stored Water").
- 1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Seller and the RGWCD, which date shall be the "Effective Date." If the RGWCD exercises its Option to purchase the Stored Water, the Agreement will continue until title to the Stored Water has been transferred to the RGWCD. If the RGWCD has not exercised its Option to purchase the Stored Water as of midnight on July 1, 2012, the Agreement shall terminate.
- 1.3. Option Payment. Within ten business days after acceptance of this Agreement the RGWCD must pay to Seller \$3,500.00 as a non-refundable Option Payment to secure its option to purchase the Stored Water. If the RGWCD fails to make the Option Payment within this period of time, then this Agreement automatically terminates.
- 1.4. Exercise of Option. On or before July 1, 2012, the RGWCD must notify the Seller in writing of if its desire to exercise its option under this Agreement.

1.5. Purchase Price.

- 1.5.1. The purchase price for the 1,000 a.f. of water being optioned under this Agreement is \$50,000.00.
- 1.5.2. The RGWCD shall receive credit for its option payment of \$3,500 at the time of purchase.
- 1.5.3. The RGWCD must pay the full Purchase Price within ten business days of its exercise of the Option.

1.6. If the RGWCD fails to pay when due the purchase payment required herein, then this Agreement will terminate and Seller shall retain the option payment and title to the Stored Water.

1.7. Water Subject to the Agreement. The water subject to this Agreement is 1,000 a.f. of water in storage in the Rio Grande Reservoir. After the Effective Date the Seller will not be entitled to use or dispose of the Stored Water while the Agreement remains in effect.

1.8. During the term of this Agreement Seller shall bear any seepage or evaporation losses on the subject water. Upon the exercise of the option a total of 1,000 a.f. will be transferred to the RGWCD and thereafter the RGWCD shall bear all seepage, evaporation and transit losses on the subject water.

1.9. RGWCD is responsible for obtaining any approvals necessary for RGWCD's proposed use and delivery of the Stored Water.

2. Seller's Obligations and Representations.

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

2.2. Evaporation and Seepage Losses. Seller agrees to stand evaporation and seepage losses occurring prior to the transfer of the Stored Water. If the RGWCD elects to exercise its option under this Agreement, Seller will deliver a total of 1,000 a.f. of water to the RGWCD.

2.3. No Use of Water. Seller agrees that during the term of this Agreement it is not entitled to use or dispose of the Stored Water subject to this Agreement, and that Seller will not call for the release of the same.

2.4. Notice to Reservoir Owner. Upon RGWCD's exercise of the Option, Seller will notify the owner of Rio Grande Reservoir of the change in ownership of the Stored Water.



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

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

To Seller: John H. Parker, II  
2043 S. Washington Street  
Denver, CO 80210  
Fax: 720-570-7960  
E-mail: navdev@me.com

To RGWCD: Steve Vandiver  
District Manager, Rio Grande Water Conservation District  
10900 E US Highway 160  
Alamosa, CO 81101  
Email: svandiver@usbr.gov

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

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

6. Miscellaneous Provisions.

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

6.2. Survival. Each of the representations and warranties made by Seller and the RGWCD in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date

hereof, and are to be deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.

- 6.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and shall not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 6.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Seller and the RGWCD. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.
- 6.5. Waiver. The failure of a party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment, in any future case, of any of the terms of this Agreement.
- 6.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Seller may not assign its rights or delegate its duties hereunder without the prior written consent of the RGWCD, which consent shall not be unreasonably withheld. The RGWCD may not assign its rights hereunder to any other person or entity without the prior written consent of the Seller, which consent shall not be unreasonably withheld.
- 6.7. Litigation. If the Seller and/or the RGWCD litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal.
- 6.8. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado.

- 6.9. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
- 6.10. Recording. The RGWCD may record this Agreement or a Memorandum of this Agreement.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.
- 6.13. Seller's Acknowledgment. Seller certifies that it has read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made to Seller by the RGWCD, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Seller except for written amendments or waivers executed by the Parties.

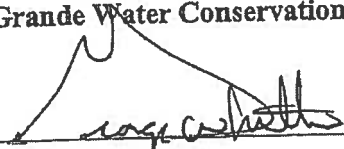
**Seller:**

\_\_\_\_\_  
 Navajo Development Co., Inc.

\_\_\_\_\_  
 Date

**ACCEPTED:**

**Rio Grande Water Conservation District**

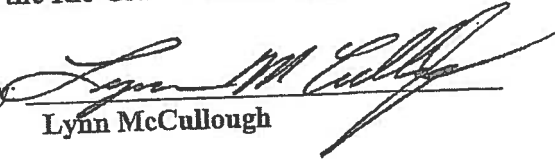
By:   
 \_\_\_\_\_  
 George Whitten

8-3-11  
 \_\_\_\_\_  
 Date

Title: \_\_\_\_\_  
 President

Acknowledgement:

Special Improvement District No. 1  
of the Rio Grande Water Conservation District

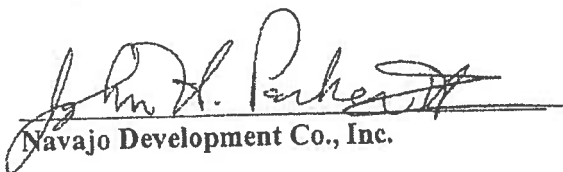
By:   
Lynn McCullough

8/4/11  
Date

Title: \_\_\_\_\_  
President

- 6.9. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
- 6.10. Recording. The RGWCD may record this Agreement or a Memorandum of this Agreement.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.
- 6.13. Seller's Acknowledgment. Seller certifies that it has read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made to Seller by the RGWCD, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Seller except for written amendments or waivers executed by the Parties.

**Seller:**

  
 Navajo Development Co., Inc.

Date 8/4/11

**ACCEPTED:**

**Rio Grande Water Conservation District**

By: \_\_\_\_\_  
 George Whitten

\_\_\_\_\_  
 Date

Title: \_\_\_\_\_  
 President

# Bill Payment Stub

Check Date:	8/3/2011
Check No.:	20497
Check Amount:	3,500.00

RIO GRANDE WATER CONSERVATION DISTRICT  
10900 HWY 160 EAST  
ALAMOSA, CO 81101

Paid To: Navajo Development Co., Inc.  
2043 S. Washington Street  
Denver, CO 80210

Date	Type	Reference	Original Amt.	Balance	Discount	Payment
8/3/2011	Bill	Option Contract	3,500.00	3,500.00		3,500.00

Rio Grande Water Conservation District

1005

Navajo Development Co., Inc.

3/5/2012

Date      Type    Reference  
3/5/2012    Bill    water contract

Original Amt.  
46,500.00

Balance Due  
46,500.00

Discount  
Check Amount

Payment  
46,500.00  
46,500.00

PAYMENT  
RECORD

Alamosa State Bank- water contract-transmountain water

46,500.00



007851



007851



007851

San Luis Valley Irrigation  
296 Miles Street/P.O. Box 637  
Center, CO 81125-0637

INVOICE

Date	Invoice #
3/5/2012	S2012-01

Bill To:

Rio Grande Water Conservation District

TERMS Net 30

Date	Description	Unit	Quantity	Rate	Amount
3/5/2012	SLVID/Tabor TM	AF	487.76	250.00	121,940.00
3/5/2012	SLVID/Squaw TM	AF	794.03	250.00	198,507.50

Total \$320,447.50

PA & Dingell

TRAVIS Smith

3-9-12



Rio Grande Water Conservation District

1007

San Luis Valley Irrigation District

Date	Type	Reference
3/5/2012	Bill	Water Lease

Original Amt.
320,447.50

Balance Due
320,447.50

3/5/2012	Discount
	Check Amount

Payment
320,447.50
320,447.50

PAYMENT  
RECORD

Alamosa State Bank- Inv# S2012-01

320,447.50



SLV WATER CONSERVANCY DISTRICT

415 SAN JUAN AVENUE  
ALAMOSA, CO 81101

Phone # 719-589-2230

Date	Invoice #
3/13/2012	2012-ONE 1

Bill To
RIO GRANDE WATER CONSERVATION STEVE VANDIVER 10900 HWY 160 EAST ALAMOSA, CO 81101

Description	Amount
500 ACRE FEET OF TRANSMOUNTAIN WATER @ \$250 PER ACRE FOOT  Pd CK # 1010 3.13.12	125,000.00
<del>PLEASE INDICATE CERTIFICATE NUMBER ON YOUR CHECK</del>	<b>Total</b>
	\$125,000.00

San Luis Valley Conservancy District

3/12/2012

Date 3/12/2012 Type Bill Reference TM Water Lease

Original Amt. 125,000.00

Balance Due 125,000.00

Discount  
Check Amount

Payment  
125,000.00  
125,000.00

PAYMENT RECORD

Alamosa State Bank- 2012 Purchase of Water- 500 af

125,000.00



CRB117-3

S.L.V. WATER CONSERVANCY DISTRICT  
415 SAN ROBERTO BLVD  
ALAMOSA, CO 81101  
(719) 589-2230

**CASH RECEIPT**

Date MARCH 13, 2012 003019

Received From RIO GRANDE WATER CONSERVANCY DISTRICT

Address 10900 E. HWY 160, ALAMOSA, CO 81101

For ONE HUNDRED & TWENTY-FIVE THOUSAND Dollars \$ 125,000  
500 AF OF TRANSMOUNTAIN WATER.

ACCOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID		CHECK	<input checked="" type="checkbox"/>
BALANCE DUE		MONEY ORDER	<input type="checkbox"/>
		CREDIT CARD	<input type="checkbox"/>

By Michael P. [Signature]

**LEASE AGREEMENT  
FOR USE OF TRANSMOUNTAIN WATER**

This Lease Agreement for Use of Transmountain Water (“Lease Agreement”) is entered into this 13<sup>th</sup> day of April, 2012 (hereinafter the “Effective Date”), by and between the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Board (“CPW”) and Special Improvement District No. 1 of the Rio Grande Water Conservation District (“Subdistrict No. 1”) (collectively, the “Parties”).

**RECITALS**

- A. Subdistrict No. 1 is a political subdivision of the State of Colorado, organized and existing under Article 48 of Title 37, C.R.S., for the purpose of carrying out water planning and water management functions within the San Luis Valley.
- B. Subdistrict No. 1 seeks 1,000 acre-feet of fully consumable water in order to help satisfy the requirements of its Annual Replacement Plan for the Plan of Water Management for Subdistrict No. 1 decreed by the Division No. 3 Water Court in Case Nos. 2006CV64 and 2007CW52 on May 27, 2010.
- C. CPW is a division of the Colorado Department of Natural Resources organized and existing under and pursuant to Articles 1, 9 and 10 of Title 33, C.R.S.
- D. CPW owns the absolute transmountain water rights decreed to the Tabor Ditch No. 2 and Tabor Ditch No. 2 Enlargement (collectively the “Tabor Ditch No. 2 Water Rights”), which originate in Water Division No. 4 and are used in Water Division No. 3. The Tabor Ditch No. 2 Water Rights were originally decreed on March 30, 1960 in Case No. CA6981 in the District Court for Montrose County. Such water rights were subsequently changed through a decree entered on December 29, 1979 in Case No. 3549 in the District Court for Hinsdale County.
- E. Subject to the terms and conditions of this Lease Agreement and in exchange for monetary compensation from Subdistrict No. 1, CPW is willing to lease to Subdistrict No. 1 1,000 acre-feet of transmountain water previously stored in Rio Grande Reservoir under the Tabor Ditch No. 2 Water Rights.

**AGREEMENT**

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

1. **Consideration.** Subject to the terms and conditions contained in this Lease Agreement, CPW grants Subdistrict No. 1 the right to re-use or successively use 1,000 acre-feet of fully-consumable transmountain water previously diverted under the Tabor Ditch No. 2 Water Rights

and stored in Rio Grande Reservoir. In exchange for and on the Effective Date, Subdistrict No. 1 shall pay CPW \$250,000 for the 1,000 acre-feet of leased water. No further payment, monetary or otherwise, is required by either Party. The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease Agreement.

2. **Term of Lease Agreement.** This Lease Agreement is for a term of one year commencing on May 1, 2012 and terminating on April 30, 2013. This Lease Agreement is for a single term only and not renewable.

3. **Agreement to Lease 1,000 acre feet of Tabor Ditch No. 2 Water Rights.** Subject to the terms and conditions in this Lease Agreement, CPW agrees to deliver 1,000 acre-feet of transmountain water that was previously diverted and stored under CPW's Tabor Ditch No. 2 Water Rights. The 1,000 acre-feet of water that is the subject of this Lease Agreement is currently stored in Rio Grande Reservoir.

A. **Delivery of Tabor Ditch No. 2 Water.** CPW shall deliver to Subdistrict No. 1 the 1,000 acre-feet of Tabor Ditch No. 2 Water Rights leased herein at Rio Grande Reservoir on the Effective Date.

B. **Limitations on Use of Leased Water.**

i. **Preservation of CPW's Tabor Ditch No. 2 Water Rights.** Subdistrict No. 1's use of CPW's transmountain water right is not intended to, and does not, transfer any legal or equitable title or interest to any part of the Tabor Ditch No. 2 Water Rights to Subdistrict No. 1. Furthermore, the Parties understand and agree that by permitting Subdistrict No. 1 to use and fully consume the 1,000 acre-feet of transmountain water leased herein, CPW does not intend to abandon, and does not abandon, relinquish, or forfeit any other amount of the Tabor Ditch No. 2 Water Rights.

ii. **Use, Re-Use and Successive Use of the 1,000 acre-feet of Stored Tabor Ditch No. 2 Water Rights.** Subdistrict No. 1 shall use the leased water to satisfy some of the replacement obligations for Special Improvement District No. 1. Subdistrict No. 1 shall not jeopardize CPW's Tabor Ditch No. 2 Water Rights by taking any action that causes or could potentially cause a reopening of the Tabor Ditch No. 2 Water Rights Decree, including but not limited to applying for an administrative or judicial change of water right. Subdistrict No. 1 acknowledges that, prior to entering into this Lease Agreement, it included the use of the water leased herein in its applications for approval of a Substitute Water Supply Plan ("SWSP") and Annual Replacement Plan. In order to satisfy the terms and conditions of this Lease Agreement, Subdistrict No. 1 shall work cooperatively with CPW to make clear to the Division of Water Resources that Subdistrict No. 1 did not seek an administrative change of any portion of the Tabor Ditch No. 2 Water Rights but, instead, seeks the right to re-use and successively use the 1,000 acre-feet of water leased herein. The "Tabor Ditch No. 2 Water Rights Decree" means that decree entered on December 29, 1979 in Case No. 3549 in the District Court for Hinsdale County, attached hereto as **Exhibit A**. To that end, Subdistrict No. 1's use

of the 1,000 acre-feet of water leased herein shall be limited to the following: (a) any of the uses explicitly set forth in the Tabor Ditch No. 2 Water Rights Decree; and (b) any re-use or successive use. Subdistrict No. 1 be solely responsible for tracking, accounting for, and receiving any necessary administrative or judicial approvals for the use, re-use or successive use of the 1,000 acre-feet of water leased herein.

iii. Assessment of Evaporation, Seepage and Transit Losses. Beginning on the Effective Date, Subdistrict No. 1 shall bear all seepage, evaporation and transit losses on the 1,000 acre-feet of water leased herein.

4. Remedies. In the event CPW defaults in the performance of this Lease Agreement, Subdistrict No. 1's sole and exclusive remedies shall be specific performance and, if such performance is impossible, refund of any advance payments that have yet to be earned by CPW. In the event of Subdistrict No. 1's default, CPW's sole and exclusive remedies shall be to retain all payments made by Subdistrict No. 1 prior to the date of default and, if any amounts remain outstanding, use of any water not yet paid for by Subdistrict No. 1.

5. Subdistrict No. 1's Representations. This Lease Agreement has been duly authorized and executed by Subdistrict No. 1, is the legal, valid and binding obligation of Subdistrict No. 1, and is enforceable against Subdistrict No. 1 according to its terms. No other consent is required for the execution, delivery or performance of this contract by Subdistrict No. 1.

6. Notices and Representatives. Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

CPW:

Rick Basagoitia, Area Wildlife Manager
CPW
Monte Vista Office
0722 South Rd 1 East
Monte Vista, CO 81144
Rick.Bassagoitia@state.co.us

**SUBDISTRICT NO. 1:**

Steve Vandiver, District Manager
SUBDISTRICT NO. 1
10900 East Hwy. 160
Alamosa, CO 81101
(719) 589-6301
steve@rgwcd.org

**7. General Provisions.**

- A. **Assignment.** Subdistrict No. 1 shall not assign, transfer or sub-lease its rights or obligations under this Lease Agreement without the advanced written consent of the CPW.
- B. **Binding Agreement.** This Lease Agreement binds and benefits the Parties and their respective successors and assigns.
- C. **Binding Arbitration Prohibited.** CPW does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in the Lease Agreement or incorporated herein by reference shall be null and void.
- D. **Captions.** The captions and headings in the Lease Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- E. **Compliance with Applicable Laws.** At all times during the performance of this Lease Agreement, Subdistrict No. 1 shall adhere to all applicable Federal and state laws, rules, and regulations then in effect. In addition:
  - i. The signatories affirm that they are familiar with 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences) and 18-8-401, et seq., C.R.S. (Abuse of Public Office), and that no violation of such provisions has occurred in connection with the negotiation and signing of this Agreement; and
  - ii. The signatories affirm that to the best of their knowledge, no State employee, who is not a stockholder in the Subdistrict No. 1, has any personal or beneficial interest whatsoever in the service or property described herein. To the extent that state employees may be stockholders in the Subdistrict No. 1, those state employees have not and do not receive any benefit from this Agreement different in kind than that received by any other stockholder in the Subdistrict No. 1.
- F. **Counterparts.** This Lease Agreement may be executed in counterparts, each of which (or combination of which), when signed by both Parties shall be deemed an original, but both together shall constitute one agreement.
- G. **CORA Disclosure.** To the extent not prohibited by federal law, this Lease Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are

subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

- H. **Entire Understanding.** This Lease Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- I. **Governing Law and Venue.** This Lease Agreement shall be governed and enforced in accordance with the laws, and rules and regulations issued pursuant thereto, of the State of Colorado. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Venue for any action regarding this Lease Agreement shall be in the District Court for Rio Grande County, Colorado or Water Court as appropriate.
- J. **Governmental Immunity.** No term or condition of this Lease Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.
- K. **Legal Counsel.** Each Party to this Lease Agreement has engaged legal counsel to negotiate, draft and/or review this Lease Agreement. Therefore, in the construction and interpretation of this Lease Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.
- L. **Litigation Reporting.** Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Lease Agreement or which may affect Subdistrict No. 1's ability to comply with the terms and conditions of this Lease Agreement, Subdistrict No. 1 shall notify CPW of such action and deliver copies of such pleadings to CPWs' principal representative as identified herein.
- M. **Modification.**
  - i. **By the Parties.** Except as specifically provided in the Lease Agreement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto.
  - ii. **By Operation of Law.** This Lease Agreement is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing



regulations. Any such required modification shall be automatically incorporated as part of the Lease Agreement on the effective date of such change, as if fully set forth herein.

- N. **Order of Precedence.** The provisions of the Lease Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between the Lease Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
- i. The provisions of the main body of this Lease Agreement.
  - ii. Exhibits.
- O. **Prior Agreements.** This Lease Agreement cancels and supersedes all prior agreements between the Parties related to Subdistrict No. 1's use of CPW's transmountain water supplies.
- P. **Recording.** This Lease Agreement may be recorded by either Party, and may be disclosed and utilized in any Water Court or administrative proceeding related to Subdistrict No. 1's Plan for Water Management, SWSPs and related matters.
- Q. **Third Party Enforcement.** The terms and conditions of this Lease Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Lease Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Lease Agreement. Any person and/or entity, other than the Parties, receiving services or benefits under this Lease Agreement shall be deemed an incidental beneficiary only.
- R. **Waiver.** A waiver of a breach of any provision of this Lease Agreement shall not waive any subsequent breach of the same or different provision of this Lease Agreement. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Lease Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Lease Agreement. Any express wavier of a term of this Lease Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

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

**COLORADO DIVISION OF PARKS and WILDLIFE and the PARKS and WILDLIFE COMMISSION,**

By: Thomas J. Spezza  
Tom Spezza, Regional Manager

Date: April 13, 2012

**SPECIAL IMPROVEMENT DISTRICT NO. 1 OF THE RIO GRANDE WATER CONSERVATION DISTRICT**

By: Steve E. Vandiver  
Steve Vandiver, General Manager

Date: April 13, 2012