



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

**RE: 2020 ANNUAL REPLACEMENT PLAN APPROVAL: SPECIAL  
IMPROVEMENT SUBDISTRICT NO. 5 OF THE RIO GRANDE  
WATER CONSERVATION DISTRICT**

Dear Mr. Simpson:

Thank you for your March 4, 2021 submission of the Special Improvement District No. 5's first proposed Annual Replacement Plan (ARP) for the 2020 Plan Year **(March 13, 2020 through April 30, 2021)**.

My staff and I have reviewed the proposed ARP and its appendices. Unfortunately the Proposed ARP, as presented, is insufficient to assure that injurious depletions to Sagauche Creek are remedied.

**Therefore I am not able to approve the Proposed 2020 Plan Year ARP.**

The attached analysis of the presented Plan is provided so that the Subdistrict can consider taking actions or providing information that would rectify any deficiencies in the Plan. If the Subdistrict can provide actions or information that resolve the deficiencies I will reconsider this denial.

This denial of the ARP will be posted to the DWR website next business week.

Enclosed, is the analysis and denial of the Subdistrict No. 5 2020 ARP.

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

cc: Division 3

Delivered electronically: no hardcopy to follow



# Subdistrict No. 5 ARP: Plan Year 2020

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## Review, Findings, and Denial of Subdistrict No. 5's Proposed 2020 Annual Replacement Plan - Partial ARP Year

### **Summary:**

*The Proposed ARP submitted for Subdistrict No. 5 had insufficient sources to remedy all injurious depletions on Saguache Creek to allow groundwater diversions for Plan Year 2020. Therefore the State Engineer is unable to approve the proposed ARP. Below is DWR's review and analysis of the information provided for the ARP for Plan Year 2020.*

### **Background**

Special Improvement District No. 5 ("Subdistrict"), a political subdistrict of the Rio Grande Water Conservation District ("RGWCD"), formed through Saguache County District Court in Case 2017CV30015, 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. 2020CW3002 on March 13, 2020.

The 2020 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 March 4, 2021. 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 2020 ARP. My staff and I have conducted this review of the ARP and comments thereon 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 and were deemed effective as of March 15, 2019 by the Division No. 3 Water Court. As stated in a letter to the RGWCD dated September 4, 2019, Rule 21.1.2.3 requires that a Subdistrict's first ARP be approved by the State Engineer and the Subdistrict be operating under that ARP within one year of the State Engineer's approval of the PWM or the wells under the proposed ARP would be unable to withdraw groundwater. To meet this requirement of the Rules and be allowed to withdraw groundwater during the 2020 Plan year the Subdistrict had to have an approved ARP by March 13, 2021.

### **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

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## Subdistrict No. 5 ARP: Plan Year 2020

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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; the amount of Rio Grande Canal deliveries which will be included as an offset to gross Subdistrict and Contract Well groundwater withdrawals; a calculation of the projected stream depletions resulting from net 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.

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.

### ***11.1.1 Database of All Wells to be Covered by the ARP***

#### ***Structure Identification Number (WDID) (Section 1 of 11.1.1 of the ARP)***

A comprehensive list of wells included in the ARP is necessary in order to allow DWR to verify which wells would be 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 as a supplement to the 2020 ARP. Appendix A lists 213 wells, which includes 33 wells included by participation contract for 2020.

The contract wells accepted by the Subdistrict in 2020 were listed in Appendix B of the submittal. Contract wells were reviewed for the terms of the contracts, associated permits and decrees for each well, and historical meter records. Any wells that are not used within the permitted and/or decreed beneficial uses authorized for those structures cannot be covered by the 2020 ARP and the owners would have been notified by separate correspondence. Wells that have submitted an SWSP and started the process of changing an existing permitted/decreed use to a Non-Exempt use described in the participation contract could have been conditionally accepted. Should the SWSP be denied during the ARP Year, the well could no longer be covered by the ARP and the owners notified.

Should any wells accepted as contract wells for this ARP approval have permitted and/or decreed limits that historical records indicate have been exceeded, they would have only been accepted for groundwater withdrawals up to their respective limits. Owners of these

## Subdistrict No. 5 ARP: Plan Year 2020

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wells would have been notified of this conditional acceptance by separate correspondence. The Subdistrict would have been copied on all separate correspondence sent for these purposes.

### ***Other Well Identification Information (Section 2 of 11.1.1 of the ARP)***

The database of wells the Subdistrict has accepted as part of this ARP was satisfied under 11.1.1.1.

### ***Subdistrict Wells with Plans for Augmentation (Section 3 of 11.1.1 of the ARP)***

The ARP Well List did not include any wells that are either fully or partially augmented by an approved plan for augmentation which is administered separately of the Subdistrict's PWM.

### **Town of Saguache, 2016CW3023**

The Town of Saguache contracted with the Subdistrict to provide remedy for the Town's injurious stream depletions occurring to the Rio Grande and San Luis Creek. The Town's injurious depletions to Saguache Creek will be fully augmented by Case No. 16CW3023. The two wells are WDIDs 2605121 and 2605968, Appendix C.

I have reviewed Appendix A and Appendix C 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 Projected Annual Diversion for All Subdistrict Wells (Section 4 of 11.1.1 of the ARP)***

For Subdistrict ARP Wells listed in this Proposed ARP, DWR total metered groundwater withdrawals as of February 1, 2021, for the 2020 Water Administration Year were 40,844 acre-feet. The groundwater withdrawals were supplied to Subdistrict staff on February 22, 2021 as unpublished data.

Subdistrict Well Metered Pumping (acre-feet)  
from Table 1.1 of the ARP

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
45,667	42,924	37,873	39,006	35,384	37,424	36,918	44,082	31,819	40,844

The majority of metered groundwater withdrawals in the Plan Year were used for flood irrigation, 62 percent. Approximately 37 percent and 1 percent of groundwater withdrawals were applied to irrigation through center pivot sprinklers and other uses, respectively.

### ***Expected Methods of Irrigation, the Combined Projected Number of Acres Irrigated and the Total Projected Acreage by Each Irrigation Method (Section 5 of 11.1.1 of the ARP)***

Subdistrict ARP wells were projected to irrigate approximately 11,971 acres during the Partial Plan Year, including 7,852 acres irrigated by center pivot sprinklers and 4,119 acres

## Subdistrict No. 5 ARP: Plan Year 2020

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irrigated by flood application. The Subdistrict made this estimate based on review of the breakdown of acres in the RGWCD's annual Irrigated Ag Census and information submitted with Participation or Inclusion Contracts.

### ***Non-Irrigation Subdistrict Wells - Calculation of All Projected Withdrawals and Projected Net Groundwater Consumptive Use (Section 6 of 11.1.1 of the ARP)***

Included in the ARP Well List were a number of wells with beneficial uses other than irrigation. The Subdistrict utilized information provided by DWR to estimate consumptive use rates used in the RGDSS Model to calculate stream impacts and returns. Beneficial uses included municipal, domestic, commercial, industrial, and fish. A spreadsheet was prepared by the Subdistrict to calculate the composite Consumptive Use Ratio that is a necessary input in the Response Functions. A spreadsheet of the calculation prepared for use in the 2020 ARP was submitted as supplement to this ARP.

### ***Other Data Necessary to Support the Projected Stream Depletions (Section 7 of 11.1.1 of the ARP)***

No other data was provided.

### ***Other Information Required by the State and Division Engineers and Reasonably Necessary to Evaluate the Proposed ARP (Section 8 of 11.1.1 of the ARP)***

A Resolution from RGWCD, dated March 2, 2021, approving the Subdistrict 2020 ARP was provided with this ARP. The approval by RGWCD is contingent upon the Subdistrict securing a sufficient source of remedy for all injurious depletions projected to occur to all streams prior to the State Engineer's approval of the ARP.

The supplemental information requested to evaluate the 2020 ARP that was not provided to the State Engineer included:

1. An electronic copy of the Response Functions used to prepare the tables included in this ARP.
2. The list of Subdistrict Wells included in the 2020 ARP in spreadsheet format matching the list presented in Appendix A
3. Spreadsheet showing the Subdistrict's breakdown of "Other" wells used to calculate the composite Consumptive Use Ratio in the Response Function.
4. Forbearance Yield Analysis: a description of the Subdistrict's approach to estimate the probable yield of replacement sources for the various forbearance contracts with ditches under WIP agreements

### ***11.1.2 Projected Stream Depletions from the Wells Covered by the ARP based on the Applicable Response Function or Approved Alternative Method***

## Subdistrict No. 5 ARP: Plan Year 2020

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Section 2 of the ARP presents the data utilized to project stream depletions to Saguache Creek, San Luis Creek, and the 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 Saguache Creek, San Luis Creek, and one reach on the Rio Grande 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 used the current 6P98 Response Functions to calculate projected stream depletions for this ARP.

### ***2020 Stream Flow - Saguache Creek (Section 1 of 11.1.2 of the ARP)***

By the time the ARP was submitted for the partial ARP Year, the actual streamflows were known and are shown in the table below. The Subdistrict reported the April - September flow for Saguache Creek of 16,713 acre-feet, for North Crestone Creek of 3,438 acre-feet and for the Rio Grande of 307,808 acre-feet for use in the Response Functions for 2020.

Stream Flow - Saguache Creek, North Crestone Creek, Rio Grande

Saguache Creek Stream Flow Analysis	Apr-Sep (acre-feet)	% of avg	Additional (acre-feet)	Annual (acre-feet)
	(1)	(2)	(3)	
Saguache Creek near Saguache	16,713	52%	10,142	26,855
North Crestone Creek	3,438		709	4,147
Rio Grande	307,808	60%		

(1) actual

(2) NRCS 30-yr Average Flow: Saguache-32,000; Rio Grande 515,000

(3) January through March and October through December

### ***Projected Plan Year Stream Depletions (Section 2 of 11.1.2 of the ARP)***

The ARP next indicates recharge credit as an offset to pumping. The Rio Grande Canal that brings surface water into the Subdistrict has a recharge decree, as detailed in the ARP.

The recharge credit is based upon hydrologic conditions for the 2020 ARP Plan Year using historical diversion records and the terms of the recharge decrees. The process of calculating recharge credit from the recharge decrees was developed for use in the Subdistrict No. 1 ARPs and is followed for the Saguache Subdistrict ARP.

The recharge credits were reduced based on the pro-rata shares of the ditch within the Subdistrict boundary. Further, the projected recharge credits were reduced by the projected consumption attributable to the surface water directly used through sprinkler irrigation (83%) and flood irrigation (60%), which is also outlined in Table 2.2 of the ARP. Historical calculations for years 2011-2019 are included as Appendix E.

## Subdistrict No. 5 ARP: Plan Year 2020

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**Table 2.2**  
**Calculated Recharge Decree Credits for Saguache Subdistrict**  
**During Current Irrigation Year**  
(Units in acre-feet)

	Rio Grande Canal
Total Consumable	67,137.10
% Within Saguache Subdistrict	3.48%
Total Consumable Within Saguache Subdistrict	2,333.73
Surface Water Through Sprinklers @83%	-1,228.85
Surface Water Used for Flood @60%	-598.2
<b>Totals</b>	<b>506.68</b>

Projected recharge decree credits for the Subdistrict for 2020 were calculated as 506.68 acre-feet.

To predict stream depletions caused by Subdistrict ARP Wells Subdistrict staff utilized the response functions developed for the Saguache Creek Response Area under the RGDSS Groundwater Model Phase 6P98. For the Plan Year, stream depletions were calculated using these Response Functions.

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.

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 2019 and predicted values for 2020.

The Subdistrict elected to use the Response Function spreadsheet for the subset of wells represented by the Subdistrict ARP Wells. The Saguache Response Area requires adjustments for the stream ratios, as listed below.

- Saguache: Reach 1 Calculations Ratio, and Reach 3 Calculations Ratio,

Using the whole Response Area results, adjustments are made on appropriate pages of the Response Function spreadsheet. Adjustments for the Ratio Method must be made for Reach 1: Saguache Creek and Reach 3: San Luis Creek below Arthur Young and Kerber Creek.

## Subdistrict No. 5 ARP: Plan Year 2020

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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. The spreadsheet shows the individual well 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 2019. No adjustments were made by the Subdistrict for groundwater withdrawals of the subset wells for any years prior to 2011. Current ARP Well groundwater withdrawal values were used for 2020.

The Subdistrict has several members with Rio Grande Canal Shares with Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use. The Subdistrict applied the same approach as Subdistrict No. 1 to derive the Total Consumable under the Rio Grande Canal for each year. The total number of shares associated with ARP Wells is 248.5 shares, which is 3.48 percent of the total shares in the Rio Grande Canal. The portion of the Total Consumable available to the Saguache Subdistrict is 3.48%. In order to calculate the recharge available to offset groundwater withdrawals, Recharge Credit was reduced by 60% for shares which were applied through flood irrigation, and Recharge Credit for shares applied through sprinkler irrigation was reduced by 83 percent. The projected Net Groundwater Consumptive Use for the Plan Year is 27,742 acre-feet.

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

The Response Functions calculated stream depletions to Saguache Creek, San Luis Creek and the Rio Grande during the Plan Year, due to both past ARP Well groundwater withdrawals and the projected Plan Year ARP Well groundwater withdrawals. The total depletions are 996 acre-feet. The Response Functions calculated total stream depletions to Saguache Creek of 488 acre-feet, to the Rio Grande 297 acre-feet, and to San Luis Creek 211 acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.4.

Post-Plan Stream Depletions were estimated to accrue to impacted streams for approximately 19 years. Based on predictions from the Response Functions, Table 2.5 of the ARP shows there would be a total of 6,793 acre-feet of Post-Plan Stream Depletions. This amounts to 3,343 acre-feet to Saguache Creek, 2,277 acre-feet to the Rio Grande, and 1,173 acre-feet to San Luis Creek.



## Subdistrict No. 5 ARP: Plan Year 2020

If the ARP was approved the Subdistrict would have been operating under a partial 2020 ARP Year, beginning March 13, 2021 and lasting through April 30, 2021. The proposed Plan Year depletion schedule is shown below. The depletions in acre-feet for the partial year on Saguache Creek would have been 48.2 in March, 96.0 in April, on the Rio Grande would have been 10.48 in March, 25.0 in April, and on San Luis Creek would have been 20.6 in March, 42.0 in April.

Subdistrict No. 5 Monthly Stream Depletions for Plan Year  
(Units in acre-feet)

Stream Reach	2020								2021				Total
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Saguache Creek	46	23	19	8	10	31	30	34	32	45	115	96	488
Non-Irrigation Season							30	34	32	45	115		256
Rio Grande Del Norte-Excelsior	28	23	28	22	23	25	25	27	24	22	25	25	297
Non-Irrigation Season							25	27	24	22	25		123
San Luis Creek below Arthur Young & Kerber Creek	2	1	1	1	1	1	1	10	54	48	49	42	211
Non-Irrigation Season							1	10	54	48	49	42	72
<b>Total</b>	<b>76</b>	<b>47</b>	<b>48</b>	<b>31</b>	<b>34</b>	<b>57</b>	<b>56</b>	<b>70</b>	<b>110</b>	<b>115</b>	<b>189</b>	<b>163</b>	<b>996</b>

### ***11.1.3 Description of How Injurious Stream Depletions from Groundwater Withdrawals by Wells Included in the ARP would be Replaced or Remedied***

#### ***Amounts and Sources of Replacement Water for 2020 Partial Plan Year (Section 1 of 11.1.3 of the ARP)***

The Subdistrict 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.

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.

## Subdistrict No. 5 ARP: Plan Year 2020

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**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 2020 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.

Under an approved ARP this replacement water or remedy would 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.

Subdistrict No. 5 Replacement Sources  
Saguache Creek (acre-feet)

Sect	Water Right Name	Submitted in ARP	Approved in SWSP's	Remaining 3/13/2021 & Approved for 2020 ARP
	In Storage			0
	None			
	<b>In Season</b>	Contract Amount	Expected Yield	Approved for 2020 ARP
	Case No 16CW3023 Excess Augmentation Credits upon approval of SWSP 6244 submitted 2/26/2021		1.24	1.24
WDID	<b>On Call- Forbearance</b>	Limit	Expected Yield	Approved for 2020 ARP
	<b>Saguache Creek</b>			
2600510	Campbell Ditch 4 (Priorities 49, 50, 62, 68)	No limit		
2600511	Campbell Ditch 5(Priorities 47, 49, 66, 68)	No limit		
2600512	Campbell Ditch 6(Priority 50)	No limit		
2600616	Nehls Co Ditch(partial of Priorities 32, 55)	No limit		
2600654	Roberts Co Ditch(Priority 32)	No limit		
2600559	Hearn Ditch(Priority 44)	No limit		
	<b>Total On Call- Forbearance</b>		<b>9.76</b>	<b>0</b>

## Subdistrict No. 5 ARP: Plan Year 2020

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### Subdistrict No. 5 Replacement Sources Rio Grande (acre-feet)

Sect	Water Right Name	Contract Amount	Expected Yield	Approved for 2020 ARP
	<b>On Call</b>			
	CBP Allocation			
	<b>Total RG Allocation (all SDs): 3800 acre-feet</b>			
	<b>Total On Call- Irrigation and Non-Irrigation Season</b>	60	50	Up to 60

### Subdistrict No. 5 Replacement Sources San Luis Creek (acre-feet)

Sect	Water Right Name	Submitted in ARP	Approved in SWSP's	Remaining 3/13/2021 & Approved for 2020 ARP
	<b>In Storage</b>			0
	None			
	<b>In Season</b>			0
	None			
<b>WDID</b>	<b>On Call- Forbearance</b>	<b>Limit</b>	<b>Expected Yield</b>	<b>Approved for 2020 ARP</b>
	Kerber Creek			
2500747	1920 Ditch	No limit		
2500541	Clayton Ditch D	No limit		
2500541	Clayton Ditch D	No limit		
2500693	Clayton Ditch FG	No limit		
2500545	Clayton Old Channel Ditch	No limit		
2500546	Cody Ditch	No limit		
2500551	Daniels Fish Arroya Ditch	No limit		
2500552	Daniels Fish Ditch No. 4	No limit		
2500583	Hall Ditch 1	No limit		
2500680	Wells Kerber Ditch	No limit		
2500682	Wells North Ditch	No limit		
2500683	White Ditch	No limit		
	San Luis Creek			
2500713	Dittrich Steel Ditch	No limit		
2500577	Greer Ditch No. 1	No limit		
2500578	Greer Ditch No. 2	No limit		
2500579	Greer Ditch No. 3	No limit		
2500614	Kennedy Ditch 2	No limit		
2500641	San Luis Co Ditch - Blumenhein	No limit		
2500641	San Luis Co Ditch - Frees	No limit		
2500646	Schilling Ditch	No limit		

## Subdistrict No. 5 ARP: Plan Year 2020

2500647	Schultz Dittrich Ditch	No limit		
2500929	Schultz Dittrich Ditch No. 2	No limit		
2500695	Schultz Dittrich No. 14 Ditch - Stagner	No limit		
2500695	Schultz Dittrich No. 14 Ditch - Ridgely	No limit		
2500657	Squires Ditch 1	No limit		
2500661	Steel Ditch No. 2	No limit		
2500668	Tobler Ditch	No limit		
2500669	Tobler Rominger Ditch	No limit		
	Kelly Creek			
2500692	Clayton Ditch ABC	No limit		
2500822	Clayton Ditch ABC ALT	No limit		
	<b>Total On Call- Forbearance</b>		<b>42</b>	<b>Up to 42</b>

### *Proposed Operation of the 2020 Annual Replacement Plan (Section 3 of 11.1.3 of the ARP)*

The Subdistrict’s portfolio of replacement sources does not include any reservoir water.

The ARP provides documentation that the Subdistrict has implemented “well injury payment” (WIP) agreements (also known as forbearance agreements) with a number of ditches located on Kelly Creek, Kerber Creek, San Luis Creek, and Saguache Creek for the Plan Year. At times when Kelly Creek, Kerber Creek, and San Luis Creek, are connected, the calling right can be on Kelly Creek or Kerber Creek. The majority of the WIP agreements allow the Subdistrict to exercise these agreements in its sole discretion.

The Subdistrict entered into an agreement with the Town of Saguache, to use the Excess Augmentation Credits generated under the Town’s Plan for Augmentation, Case No. 16CW3023. This case has not yet been approved by the Water Court. However, the Town is currently applying for a SWSP 6244 submitted 2/26/2021 for the 2021 irrigation season. Upon approval of the Town’s court case and SWSP, they would provide the Subdistrict with a calculation of the Excess Credits available to the Subdistrict. The amount of credits available to the Subdistrict were anticipated to be 1.2 acre-feet for the month of April 2021. Under an approved ARP the Subdistrict would have needed to seek approval from the Division Engineer and Water Commissioner prior to using the Excess Credits as a source of remedy. It is unlikely that the court case and/or SWSP will be approved prior to the beginning of April.

The Subdistrict’s allocation of Closed Basin Project (CBP) water allows this source to be used to replace depletions from March 16<sup>th</sup> to April 30<sup>th</sup>, 2021, both during and outside the irrigation season.

The Response Functions as presented did not predict stream depletions to streams other than Saguache Creek, San Luis Creek, and the Rio Grande in amounts above the minimum threshold to reliably predict impacts. Therefore, no replacements to any stream other than Saguache Creek, San Luis Creek, and Rio Grande would have been needed.

## Subdistrict No. 5 ARP: Plan Year 2020

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The ARP mentions the Subdistrict planned to potentially make requests for aggregation of depletions between Stream Reaches as part of the anticipated operation in 2020. The ARP also mentions the Subdistrict may request to aggregate depletions with other Subdistricts during the 2020 ARP year. For example, the San Luis Creek Subdistrict (Subdistrict No. 4) could remedy depletions to San Luis Creek on behalf of the Saguache Subdistrict for the 2020 ARP Year.

The Subdistrict anticipated a scenario when the depletions owed for all RGWCD Subdistricts combined in any one or more months during the non-irrigation season are greater than the production of the CBP production in those months. Should this occur, the Subdistrict may have requested the Division Engineer allow a portion of the CBP production that is generated during the irrigation season be used to offset the Subdistrict's non-irrigation season depletions.

The Subdistrict proposed to make requests for these types of changes formally to the Division Engineer, providing details of the request and documentation supporting the need to make a change to the approved ARP depletion schedule. The Division Engineer would consider such a request when it was 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 would not adopt any change until after approval by the Division Engineer.

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 an ARP. Section 4.1.5 of the Subdistrict's PWM recognizes that "The Subdistrict will be required to have a portfolio in place which can sufficiently remedy Post-Plan Injurious Stream Depletions as a condition of the Division of Water Resources' approval of any ARP". The 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 to provide a financial guarantee to assure that all Post-ARP Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail.

### ***Anticipated Funding for Plan Year (Section 4 of 11.1.3 of the ARP)***

The Subdistrict submitted sufficient financial information to document the purchase and leases of replacement water for the 2020 Plan Year.

### ***11.1.4 Contractual Arrangements Among Water Users, Water User Associations, Water Conservancy Districts, Subdistricts, and/or the Rio Grande Water Conservation District***

#### ***Subdistrict No. 4 Memorandum of Understanding (Section 1 of 11.1.4 of the ARP)***

## Subdistrict No. 5 ARP: Plan Year 2020

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Anticipating that injurious depletions on San Luis Creek will be remedied through WIP agreements, the Saguache Subdistrict and San Luis Subdistrict (Subdistrict No. 4) both signed WIP agreements with water users on San Luis Creek. Per the MOU, “Subdistrict No. 5 will be responsible for all payments to surface water right holders for any due under any WIP Contract and Subdistrict No. 4 will not be responsible for any such payments” ARP. A copy of the MOU is included as an Exhibit to this letter.

### ***WIP Agreements (Section 2 of 11.1.4 of the ARP)***

Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., the Subdistrict reached agreement with a multitude of ditches whereby they accept that, subject to the specific provisions of the WIP 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 San Luis Creek system. . The Subdistrict has reached agreement with a much lesser number of ditches on the Saguache Creek system. The majority of these contracts with individual ditches were made for one-year terms and with both San Luis Creek Subdistrict and Saguache Subdistrict.

The Subdistrict reviewed stream flows on Saguache, San Luis, Kerber and Crestone Creeks for the current and past years and used the peak and average flows during April to calculate the percent of priorities that have agreed to WIP agreements for the partial Plan Year within those stream flow agreements on each river.

It is noted that the majority of these agreements would have allowed the Subdistrict to remedy injurious stream depletions under the agreement or by providing water at the Subdistrict’s sole discretion. Two of the agreements would not allow this flexibility, the Clayton Ditch ABC and the Clayton Ditch D agreements with Mr. Dragos, so would be “mandatory” forbearance agreements.

### ***Closed Basin Project Production (Section 3 of 11.1.4 of the ARP)***

According to the information provided in the ARP, the projected production of the CBP delivered to the Rio Grande is 6,500 acre-feet during calendar year 2021. The allocation of the CBP 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 2021 allocation of the CBP production is 60% to the Rio Grande and 40% to the Conejos River.

The Rio Grande Water Users Association submitted a letter to RGWCD on March 25, 2020, noting the Board of Directors specifically allocated 4,000 acre-feet of the Rio Grande’s share of the usable yield of the CBP to replace the stream depletions under this ARP and in conjunction with Subdistrict No. 1, No. 2, No. 3 and No. 6 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 March 24, 2020. The total amount of the Rio Grande’s share of the Project’s 2021 usable yield available to Subdistricts No. 1, No.

## Subdistrict No. 5 ARP: Plan Year 2020

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2, No. 3, No. 5, and No. 6 is about 2,250 acre-feet. Therefore, 50 acre-feet of water was available to Subdistrict No. 5 under this ARP as shown above in Table 3.1.

A copy of each letter reporting the approval was provided in Appendix G of the ARP. The resolution from RGWCD allowing the Subdistrict to use CBP water in the 2020 ARP was provided as supplemental information.

### ***Town of Saguache (Section 4 of 11.1.4 of the ARP)***

The Town of Saguache entered into a Participation Contract with Subdistrict No. 5, whereby the Subdistrict has agreed to provide remedy for the Town's injurious stream depletions occurring to the Rio Grande and San Luis Creek. The Town's injurious depletions to Saguache Creek are fully augmented by Case No. 16CW3023. The Subdistrict has also agreed to provide for the proportional responsibility for achieving and maintaining a sustainable water supply in the confined aquifer. The Town would provide its Excess Augmentation Credits on Saguache Creek to the Subdistrict. For 2021 the total amount of credits anticipated was 11.2 acre-feet.

A final ruling has not been made in the Town's court case as of this date, but the Town submitted an SWSP on February 26, 2021 to operate under the terms of their plan for augmentation in the meantime. Once the SWSP is approved, the Town's excess augmentation credits could be made available to the Subdistrict.

### ***11.1.5 Documentation of Progress Towards Achieving and Maintaining a Sustainable Water Supply***

#### ***Water Levels, Pressure Levels, and/or Groundwater Withdrawals (Section 1 of 11.1.5 the ARP)***

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 March 13, 2020, the Saguache Creek Response Area five-year running average groundwater withdrawals were below the 1978-2000 average groundwater withdrawals for the Saguache Creek Response Area.

Subdistrict metered groundwater withdrawals account for approximately 97.6 percent of the total metered groundwater withdrawals annually over the period 2011-2020 in the Saguache Creek Response Area. The current five-year running average groundwater withdrawals for ARP Wells, which includes 33 contract wells, for the period 2016-2020 is 38,218 acre-feet. The previous five-year running average for ARP wells was 37,125 acre-feet.

Based on the trends of both the Saguache Creek Response Area and the Subdistrict's five-year average, the Subdistrict would remain in compliance with the Sustainable Water Supply Requirement of the Rules.

## Subdistrict No. 5 ARP: Plan Year 2020

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Included in Appendix I is the State Engineer's memo dated July 1, 2020, regarding the Composite Water Head for Confined Aquifer Response Area in Division 3: July 2020 Requirement of Division 3 Groundwater Rules Section 8.1.4. The Composite Water Head for 2020 was 2.15 feet, increasing from the 2019 low of 1.41 feet and still higher than the base year of 2015.

### ***Listing of Irrigated Acres Proposed to be Temporarily or Permanently Fallowed and Associated Water Rights (Section 2 of 11.1.5 the ARP)***

The Subdistrict is not currently pursuing fallowing of any irrigated lands within the boundaries of the Subdistrict.

### ***Listing of Water Rights Proposed to be Temporarily or Permanently Retired and Historical Operations of Each Water Right (Section 3 of 11.1.5 the ARP)***

No listing of retired water rights was submitted with this ARP.

### ***Other Proposed Actions to be Taken as Applicable (Section 4 of 11.1.5 the ARP)***

The Subdistrict is currently engaging in meetings with various surface water users on Saguache Creek to determine if a Groundwater Withdrawal Restriction Program is feasible and workable.

## Findings

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

1. The projected groundwater withdrawals are 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. For this partial ARP Year, the groundwater withdrawals for most of the 2020 ARP Year are known.
2. Overall, the Subdistrict inputs to the Response Functions produced a calculation of depletions that DWR considers conservative such that the depletions could be covered and no injury will occur if there were sufficient remedies available. However, closer scrutiny of actual well usage indicates consumptive use percentages for various wells classified as "Other" should be reviewed and updated, as appropriate.
3. 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. The Subdistrict utilized the 6P98 Response Functions in determining stream depletions for the Subdistrict. The full ARP Year depletion schedule is included as an Exhibit to this letter.



## Subdistrict No. 5 ARP: Plan Year 2020

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4. The ARP identifies the sources, availability, and amounts of replacement water and remedies that the Subdistrict would use to remedy Injurious Stream Depletions during the coming year and demonstrates the sufficiency of such water to remedy such Injurious Stream Depletions on San Luis Creek and the Rio Grande. **However, the ARP sources of replacement water and remedies available on Saguache Creek are insufficient to remedy projected Injurious Stream Depletions on Saguache Creek.**
5. The comparison of CBP projected deliveries with all Subdistricts operating under 2020 ARPs indicates the CBP production, at least on an annual basis, is adequate to cover the Non-Irrigation season depletions for all the Subdistricts and the irrigation season depletions of the Saguache Subdistrict on the Rio Grande.

### Saguache Creek

- The Subdistrict depletions for the partial ARP Year are 48.2 acre-feet during March 13-31 and 96 acre-feet during April 2021 of the irrigation season on Saguache Creek. It is anticipated, but not assured, that the irrigation season and therefore the beginning of the time that depletions must be replaced to Saguache Creek will not occur until April 1. The Subdistrict indicates the Town of Saguache would provide 1.24 acre-feet of its Excess Augmentation Credits on Saguache Creek for this partial ARP. This resource would become available to the Subdistrict under the conditions of approval of the Town's court case (16CW3023) and SWSP (submitted on 2/26/2021). The Subdistrict indicates they expect to yield a total of 9.76 acre-feet from WIP agreements during April 2021. My staff reviewed the historical calls on Saguache Creek for the WIP ditches for April 2021 as summarized below (A reference table of WIP agreement ditches is included as an Exhibit.) The analysis indicates that call will be senior to any of the rights included in the WIP agreements. **Therefore available Excess Augmentation Credits and/or the WIP agreements will not be able to appropriately remedy all the injurious depletions during this partial ARP Year on Saguache Creek.**

DWR staff prepared an analysis using the current stream flow numbers and projected flows for the month of April. The focus of the analysis was to determine which ditches would be the calling priorities on all streams where the Subdistrict owes depletions. From the first day of the irrigation season to the end of April, the call on Saguache Creek will most likely be the Priority No. 19 or a more senior water right on the river system. **The Subdistrict secured no forbearance contracts for any of the owners of the priorities at or senior to the projected call(s).** Even if the stream flows are underestimated, the Subdistrict has no contracts with any owners of water rights senior to Priority No. 32, which reinforces the conclusion that forbearance is insufficient to remedy injury through April 30th. **Further, the Subdistrict portfolio of replacement water is insufficient in amount or location where it could remedy injurious depletions to senior surface rights at the predicted Priority No. 19 or more senior call during April of the Plan Year.**

## Subdistrict No. 5 ARP: Plan Year 2020

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- The Subdistrict depletions are 48.2 acre-feet during March 13 through March 30, 2021 of the non-irrigation season on Saguache Creek. The Subdistrict is not obligated to pay depletions on Saguache Creek during the non-irrigation season at this time, and it is anticipated that the irrigation season will not begin on Saguache Creek until April 1.

### San Luis Creek

- The Subdistrict depletions for the partial ARP Year are 42 acre-feet during April 2021 of the irrigation season on San Luis Creek. The Subdistrict indicates they expect to yield a total of 42 acre-feet from WIP payment agreements during April 2021. My staff reviewed the historical calls on San Luis Creek for the ditches expected to generate forbearance amounts during the irrigation season for April 2021 as summarized below (A reference table of WIP agreement ditches is included as an Exhibit.) The potential 42 acre-feet needed for WIP agreements indicates sufficient water to cover Injurious Stream Depletions for the partial Plan Year for both Subdistrict No. 4 and Subdistrict No. 5.

DWR staff prepared an analysis using the current stream flow numbers and projected flows for the month of April. The focus of the analysis was to determine which ditches would be the calling priorities on all streams where the Subdistrict owes depletions. From the first day of the irrigation season to the end of April, the call on San Luis Creek will most likely be the Priority No. 14 or more senior water right on the river system and will most likely be senior to Priority No. 3. The Subdistrict secured numerous forbearance contracts for priorities of all likely projected call(s). Even if the stream flows are underestimated, the Subdistrict has contracts with all owners of water rights senior to Priority No. 33, which would reinforce the analysis of forbearance being a valid option.

- The Subdistrict depletions are 20.6 acre-feet during March 13 through March 30, 2021 of the non-irrigation season on San Luis Creek. The Subdistrict is not obligated to pay depletions on San Luis Creek during the non-irrigation season at this time, and it is anticipated that the irrigation season will not begin on San Luis Creek until April 1.

### Rio Grande

- The Subdistrict depletions for the partial ARP Year are 25 acre-feet during April 2021 of the irrigation season and are 10.5 acre-feet during March 13 through March 30, 2021 of the non-irrigation season on the Rio Grande. The Subdistrict has 60 acre-feet of CBP water allocated to pay irrigation season depletions.
6. 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 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

## Subdistrict No. 5 ARP: Plan Year 2020

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fail or otherwise not be allowed to continue groundwater withdrawals.

7. 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. The Subdistrict is in compliance with this metric.

### **This Proposed ARP is found insufficient to prevent injury on Saguache Creek and therefore cannot be approved:**

The Subdistrict has presented sufficient evidence and engineering analysis to predict where and when Injurious Stream Depletions will occur and has proposed how they will replace those Injurious Stream Depletions to avoid injury to senior surface water rights. However review of the replacement or remedy sources for Saguache Creek indicate that there is insufficient remedy for injurious depletions that occur in April on Saguache Creek. Therefore I must find that this proposed ARP will not prevent injury and therefore I cannot approve the ARP as submitted. If the Subdistrict can provide additional sources to remedy injurious depletions to Saguache Creek during April I will reconsider this denial.

I want to encourage your efforts to continue secure sufficient remedies for Saguache Creek so that I may reconsider this Denial. 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: MOU Between Subdistrict No. 4 and Subdistrict No. 5 Regarding Remedy of Injurious Depletions within San Luis Creek Response Area**

**B: Table 2.6 for full 2020 ARP Year**

**C: Listing of WIP Agreement Ditches by Priority**

**D: General Forbearance Protocols for the San Luis Valley River Systems for 2020**

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

**Exhibit A**

**MEMORANDUM OF UNDERSTANDING BETWEEN SUBDISTRICT NO. 4 AND  
SUBDISTRICT NO. 5 REGARDING REMEDY OF INJURIOUS DEPLETIONS WITHIN  
SAN LUIS CREEK RESPONSE AREA**

**February 17, 2021**

Groundwater withdrawals from Wells included within Special Improvement District No. 5 (“Subdistrict No. 5) may cause injurious stream depletions to San Luis Creek or other streams within the San Luis Creek Response Area, as that area is defined by the Colorado Division of Water Resources. Subdistrict No. 5 and Special Improvement District No. 4 (“Subdistrict No. 4”) agree that it will be more efficient for Subdistrict No. 4 to provide a remedy for injurious depletions to streams within the San Luis Creek Response Area caused by groundwater withdrawals from Wells included in the Subdistrict No. 5 Annual Replacement Plan than have Subdistrict No. 5 attempt to find independent sources to remedy those injurious depletions within the San Luis Creek Response Area.

Subdistrict No. 4 agrees it will provide the remedy for injurious depletions within the San Luis Creek Response Area from Subdistrict No. 5 Well’s groundwater withdrawals under the terms contained in this Memorandum of Understanding.

Subdistrict No. 4 and Subdistrict No. 5 anticipate that the vast majority of the injurious depletions within the San Luis Creek Response Area will be remedied through the application of Well Injury Payment contracts between surface water rights and the individual Subdistricts. Subdistrict No. 5 will be responsible for all payments to surface water right holders for any due under any Well Injury Payment Contract and Subdistrict No. 4 will not be responsible for any such payments.

Within 60 days of the end of each ARP Year, Subdistrict No. 4 will determine the total costs it incurred in remediating injurious depletions under its ARP within the San Luis Creek Response Area, not including costs under Well Injury Payment contracts. Subdistrict No. 4 will also determine the calculated depletions within the San Luis Creek Response Area due to groundwater withdrawals from wells within its ARP and the total calculated depletions due to Wells within the Subdistrict No. 5 ARP. Subdistrict No. 4 will then determine Subdistrict No. 5’s pro-rata share of the injurious depletions and apply that pro-rata share to its costs incurred as determined above. Subdistrict No. 4 will supply an invoice of that pro-rata share of remedy costs to Subdistrict No. 5 and Subdistrict No. 5 will pay said costs as invoiced within 60 days of receipt.

Term: This Memorandum of Understanding will remain in effect until revoked in writing by either Subdistrict No. 4 or Subdistrict No. 5. Such notice of revocation must be provided at least 180 days prior to the start of an ARP Year.

**Signed:**

**Subdistrict No. 4**

By: \_\_\_\_\_  
David Frees, President

\_\_\_\_\_  
Date

**Subdistrict No. 5**

By: \_\_\_\_\_  
David Schmittel, President

\_\_\_\_\_  
Date

**Exhibit B**

**Table 2.4**  
**Subdistrict No. 5 Monthly Stream Depletions for Plan Year**  
**(Units in acre-feet)**

Stream Reach	Saguache Response Area Total												Total
	2020								2021				
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Saguache Creek	46	23	19	8	10	31	30	34	32	45	115	96	488
Rio Grande Del Norte- Excelsior	28	23	28	22	23	25	25	27	24	22	25	25	297
San Luis Creek below Arthur Young and Kerber Creek	2	1	1	1	1	1	1	10	54	48	49	42	211
	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	76	47	48	31	34	57	56	70	110	115	189	163	<b>996</b>

Explanation of Columns

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



**Exhibit C**

## SAGUACHE CREEK LISTING OF WELL INJURY PAYMENT AGREEMENT DITCHES, BY PRIORITY

page 1 of 1  
updated 6/1/2020

WDID	DITCH	RIVER	ALL PRIORITIES	Priority No	Ditch cfs	Forbearing Priorities	Forbear cfs
2600654	Roberts Co Ditch	Saguache Creek	32	<b>32</b>	2.4	32	2.4
2600616	Nehls Co Ditch	Saguache Creek	32,55	<b>32</b>	1.4	32 of 32,55	?
2600559	Hearn Ditch	Saguache Creek	14,44	<b>44</b>	1.0	44	1.0
2600511	Campbell Ditch 5	Saguache Creek	47,49,66,68	<b>47</b>	0.6	47 of 47,49,66,68	0.6
2600511	Campbell Ditch 5	Saguache Creek	47,49,66,68	<b>49</b>	4.0	49 of 47,49,66,68	4.0
2600510	Campbell Ditch 4	Saguache Creek	49,50,62,68	<b>49</b>	2.5	49 of 49,50,62,68	2.5
2600512	Campbell Ditch 6	Saguache Creek	50	<b>50</b>	3.05	50	3.05
2600510	Campbell Ditch 4	Saguache Creek	49,50,62,68	<b>50</b>	3.05	50 of 49,50,62,68	3.05
2600616	Nehls Co Ditch	Saguache Creek	32,55	<b>55</b>	7.72	55 of 32,55	?
2600510	Campbell Ditch 4	Saguache Creek	49,50,62,68	<b>62</b>	1.6	62 of 49,50,62,68	1.6
2600511	Campbell Ditch 5	Saguache Creek	47,49,66,68	<b>66</b>	1.56	66 of 47,49,66,68	1.56
2600511	Campbell Ditch 5	Saguache Creek	47,49,66,68	<b>68</b>	6.0	68 of 47,49,66,68	6.0
2600510	Campbell Ditch 4	Saguache Creek	49,50,62,68	<b>68</b>	1.9	68 of 49,50,62,68	1.9

## SAN LUIS CREEK LISTING OF WELL INJURY PAYMENT AGREEMENT DITCHES, BY PRIORITY

page 1 of 2  
updated 3/10/2021

WDID	DITCH	RIVER	ALL PRIORITIES	Priority No	Ditch cfs	Forbearing Priorities	Forbear cfs
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>1</b>	2.8	1 of 1,9,42,60,63,81,94	2.8
2500682	Wells North Ditch	Kerber Creek	1,44,45,46	<b>1</b>	0.4	1 of 1,44,45,46	0.4
2500713	Dittrich Steel Ditch	San Luis Creek	2	<b>2</b>	0.1	2	0.1
2500641	San Luis Co Ditch - Blumenhein	San Luis Creek	2,16,33,48	<b>2</b>	1.0	2 of 2,16	1.0
2500647	Schultz Dittrich Ditch	San Luis Creek	2,30,73	<b>2</b>	2.1	2 of 2,30,73	2.0
2500661	Steel Ditch No. 2	San Luis Creek	3,35	<b>3</b>	1.6	3 of 3,35	1.6
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>9</b>	2.0	9 of 1,9,42,60,63,81,94	2.0
2500583	Hall Ditch 1	Kerber Creek	9,35,50,74,82	<b>9</b>	2.0	9 of 9,35,50,74,82	2.0
2500693	Clayton Ditch FG	Kerber Creek	11,87	<b>11</b>	0.8	11 of 11,87	0.8
2500695	Schultz Dittrich No. 14 Ditch - Stagner	San Luis Creek	14,35	<b>14</b>	2.8	14	1
2500695	Schultz Dittrich No. 14 Ditch - Ridgely	San Luis Creek	14,35	<b>14</b>	2.8	14 of 14,35	1.8
2500641	San Luis Co Ditch - Blumenhein	San Luis Creek	2,16,33,48	<b>16</b>	5.47	16 of 2,16	1.01
2500641	San Luis Co Ditch - Blumenhein Wells	San Luis Creek	2,16,33,48	<b>16</b>	5.47	16 of 2,16	4.46
2500541	Clayton Ditch D - Dragos	Kerber Creek	19	<b>19</b>	3.4	19	1.0
2500541	Clayton Ditch D - Wagner	Kerber Creek	19	<b>19</b>	3.4	19	1.7
2500545	Clayton Old Channel Ditch	Kerber Creek	19,38,127	<b>19</b>	1.0	19 APD of 19 APD,38,127	1.0
2500546	Cody Ditch	Kerber Creek	19,38,127	<b>19</b>	1.0	19 of 19,38 APD,127	1.0
2500646	Schilling Ditch	San Luis Creek	23	<b>23</b>	2.8	23	2.8
2500668	Tobler Ditch	San Luis Creek (Spring)	29,85	<b>29</b>	0.4	29 of 29,85	0.4
2500577	Greer Ditch No. 1	San Luis Creek	30	<b>30</b>	2.8	30	2.8
2500647	Schultz Dittrich Ditch	San Luis Creek	2,30,73	<b>30</b>	5.4	30 of 2,30,73	5.3
2500551	Daniels Fish Arroya Ditch	Kerber Creek	31,56,96	<b>31</b>	2.0	31 of 31,56,96	2.0
2500614	Kennedy Ditch 2	San Luis Creek	33	<b>33</b>	4.0	33	4.0
2500657	Squires Ditch 1	San Luis Creek	33,1997	<b>33</b>	1.0	33	1.0
2500578	Greer Ditch No. 2	San Luis Creek	35	<b>35</b>	3.2	35	3.2
2500661	Steel Ditch No. 2	San Luis Creek	3,35	<b>35</b>	2.2	35 of 3,35	2.2
2500583	Hall Ditch 1	Kerber Creek	9,35 APD,50,74,82	<b>35</b>	1.0	35 APD of 9,35,50,74,82	1.0
2500695	Schultz Dittrich No. 14 Ditch - Ridgely	San Luis Creek	14,35	<b>35</b>	1	35 of 14,35	1

WDID	DITCH	RIVER	ALL PRIORITIES	Priority No	Ditch cfs	Forbearing Priorities	Forbear cfs
2500669	Tobler Rominger Ditch	San Luis Creek	36	<b>36</b>	10.0	36	10.0
2500545	Clayton Old Channel Ditch	Kerber Creek	19,38,127	<b>38</b>	2.4	38 of 19 APD,38,127	2.4
2500546	Cody Ditch	Kerber Creek	19,38,127	<b>38</b>	2.4	38 of 19,38 APD,127	2.4
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>42</b>	0.72	42 of 1,9,42,60,63,81,94	0.72
2500682	Wells North Ditch	Kerber Creek	1,44,45,46	<b>44</b>	0.3	44 of 1,44,45,46	0.3
2500682	Wells North Ditch	Kerber Creek	1,44,45,46	<b>45</b>	0.08	45 of 1,44,45,46	0.08
2500579	Greer Ditch No. 3	San Luis Creek	45	<b>45</b>	3.2	45	3.2
2500682	Wells North Ditch	Kerber Creek	1,44,45,46	<b>46</b>	0.16	46 of 1,44,45,46	0.16
2500692	Clayton Ditch ABC	Kelly Creek	47,101	<b>47</b>	6.4	47 of 47,101	3
2500822	Clayton Ditch ABC ALT (AP)	Kelly Creek	47,101				
2500641	San Luis Co Ditch - Frees	San Luis Creek	2,16,33,48	<b>48</b>	3.64	48	3.64
2500583	Hall Ditch 1	Kerber Creek	9,35 APD,50,74,82	<b>50</b>	5.3	50 of 9,35,50,74,82	5.3
2500551	Daniels Fish Arroya Ditch	Kerber Creek	31,56,96	<b>56</b>	3.2	56 of 31,56,96	3.2
2500552	Daniels Fish Ditch No. 4	Kerber Creek	56,2012	<b>56</b>	2.8	56 of 31?,56	2.8
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>60</b>	2.0	60 of 1,9,42,60,63,81,94	2.0
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>63</b>	2.26	63 of 1,9,42,60,63,81,94	2.26
2500647	Schultz Dittrich Ditch	San Luis Creek	2,30,73	<b>73</b>	3.0	73 of 2,30,73	3.0
2500583	Hall Ditch 1	Kerber Creek	9,35 APD,50,74,82	<b>74</b>	2.0	74 of 9,35,50,74,82	2.0
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>81</b>	4.0	81 of 1,9,42,60,63,81,94	4.0
2500583	Hall Ditch 1	Kerber Creek	9,35 APD,50,74,82	<b>82</b>	2.4	82 of 9,35,50,74,82	2.4
2500668	Tobler Ditch	San Luis Creek (Spring)	29,85	<b>85</b>	1.0	85 of 29,85	1.0
2500693	Clayton Ditch FG	Kerber Creek	11,87	<b>87</b>	2.0	87 of 11,87	2.0
2500683	White Ditch	Kerber Creek	90	<b>90</b>	0.4	90	0.4
2500680	Wells Kerber Ditch	Kerber Creek	1,9,42,60,63,81,94	<b>94</b>	1.8	94 of 1,9,42,60,63,81,94	1.8
2500551	Daniels Fish Arroya Ditch	Kerber Creek	31,56,96	<b>96</b>	2.8	96 of 31,56,96	2.8
2500692	Clayton Ditch ABC	Kelly Creek	47,101	<b>101</b>	3.6	101 of 47,101	1.8
2500545	Clayton Old Channel Ditch	Kerber Creek	19,38,127	<b>127</b>	0.3	127 of 19 APD,38,127	0.3
2500546	Cody Ditch	Kerber Creek	19,38,127	<b>127</b>	0.3	127 of 19,38 APD,127	0.3
2500747	1920 Ditch	Kerber Creek	152	<b>152</b>	7.65	152	7.65
2500929	Schultz Dittrich Ditch No. 2	San Luis Creek	1995	<b>1995</b>	8	1995	6

**Exhibit D**

## **General Forbearance Protocols For San Luis Valley River Systems**

Subdistricts No. 1 (RA No 1), No. 2 (Rio Grande Alluvium) and No. 3 (Conejos) will begin to replace depletions to their affected streams on May 1<sup>st</sup>, the beginning of the 2020 ARP year. Along with these 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 2020 ARP year:

- 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 available 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.
- If it is certain that the owner(s) of a ditch would have declined to take water in their ditch on a given day that they were in the priority to take water, for instance if that owner cannot take their full priority due to a break in the ditch bank, or 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 in order to meet the entire replacement obligation of the Subdistrict.

- A ditch may operate under a partial forbearance contract with the understanding that the ditch company, subdistrict or other appropriate party will manage the partial flow and partial forbearance at the heading and down ditch to the satisfaction of all water rights owner in that ditch that are in priority on that day. The manager of the ditch with partial forbearance must inform the water commissioner, prior to any operations, the manner and the capability in order to be in compliance, otherwise a water delivery will be required.
- Ditch with a forbearance contract must have accurate, reliable and operational measurement devices on the ditch.
- On a day when water could be placed into the river system for replacement of injurious depletions, and a section(s) of the stream is dry such that this replacement water would not have made it to the calling priority ditch, forbearance by that ditch(es) will not be allowed. During times of dry stretch(es) on the river system, each live stretch will be treated as its own calling system. Only the stretch(es) that includes an RGDSS modelled stream reach will have the ditch(es) eligible for forbearance. If water delivery could not make it physically to any structure in a particular RGDSS reach, then no forbearance is allowed and a water delivery will be required
- 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.