



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

September 25, 2020

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. 6 OF THE RIO GRANDE  
WATER CONSERVATION DISTRICT**

Dear Mr. Simpson:

Thank you for your September 15, 2020 submission of the Special Improvement District No. 6's proposed Annual Replacement Plan (ARP) for the Partial 2020 Plan Year (**September 25, 2020 through April 30, 2021**).

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

<https://dwr.colorado.gov/division-offices/division-3-office>

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

Enclosed, please find my approval of the 2020 ARP.

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

cc: Division 3



# Subdistrict No. 6 ARP Approval: Plan Year 2020

---

## Review, Findings, and Approval of Subdistrict No. 6's 2020 Annual Replacement Plan - Partial ARP Year

### *Background*

Special Improvement District No. 6 ("Subdistrict"), a political subdistrict of the Rio Grande Water Conservation District ("RGWCD"), formed through Conejos County District Court in Case 2018CV30014, 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. 2019CW3011 on September 25, 2019.

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 September 15, 2020. 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 letters to Peter Ampe & Cleave Simpson 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. To meet this requirement of the Rules, the Subdistrict must be operating under this ARP on September 26, 2020.

### *DWR Review*

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

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

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 are authorized to operate in accordance with the ARP. To that end, the Subdistrict submitted the most current tabulation of the structure identification number (WDID) of each well included in the Subdistrict (see Appendix A of the ARP). The Subdistrict also supplied a spreadsheet to DWR of the list of Subdistrict Wells as a supplement to the 2020 ARP. Appendix A lists 518 wells, which includes 75 wells included by participation contract for 2020.

Contract wells were reviewed for the terms of the contracts, associated permits and decrees for each well, and historical meter records. A number of wells will be accepted as contract wells for this ARP approval, but where there are permitted and/or decreed limits that historical records indicate have been exceeded, will only be accepted for ground water withdrawals up to their respective limits. Owners of these wells, including WDIDs 2105607, 2105903, 2105902, 2012551, will be notified of this conditional acceptance by separate correspondence.

The Subdistrict accepted a contract that included well, WDID 2011663, which is assigned to the Rio Grande Alluvium Response Area. This is likely an oversight as the Subdistrict did not submit additional information to calculate depletions from a well outside the Alamosa La Jara Response Area. DWR finds that the uses of WDID 2011663 cannot be covered by the 2020 ARP.

#### ***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 includes some wells that are either fully or partially augmented by an approved plan for augmentation which is administered separately of the Subdistrict's PWM. These plans for augmentation associate surface rights with these Subdistrict Wells and other non-Subdistrict wells to remedy some portion or all of each well's injurious stream depletions. These wells are included in the Subdistrict's ARP Well List, and if any portion of their legally decreed groundwater withdrawals is not remedied by an individual plan for

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

augmentation, it is subject to Subdistrict fees and the Subdistrict will remedy injurious stream depletions and post-plan injurious stream depletions attributable to the non-augmented portion of a well's total groundwater withdrawals as part of this ARP. "The Subdistrict and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded consumptive use of groundwater which is not within the terms and conditions of a valid permit or decree which was in effect as of October 4, 2018, or for new or expanded plans for augmentation or other replacement plans without the approval of both the Court and the Subdistrict's Board of Managers." (PWM at 2.4.6)

### **San Luis Valley Water Conservancy District Augmentation Certificate No. 773**

The ARP lists one well as a Subdistrict Well that is fully augmented for the existing uses through SLVWCD. This well, WDID 2014260, Permit 77196-F was permitted and drilled under SLVWCD's augmentation plans as an expansion of use of Subdistrict Well WDID 2014260, Permit 45498-F. DWR finds that the uses of WDID 2014260 cannot be covered by the 2020 ARP.

I have reviewed Appendix A and Appendix C of the ARP and consulted with staff and, after adjusting the list for wells DWR determined cannot be covered by the 2020 ARP, find it to be an accurate inventory of Subdistrict Wells that meets the requirements of Rule 11.1.1.

### ***Total Combined Projected Annual Diversion for All Subdistrict Wells (Section 4 of 11.1.1 of the ARP)***

For Subdistrict ARP Wells listed in this ARP, DWR total metered groundwater withdrawals as of August 28, 2020, for the 2019 Water Administration Year were 69,908 acre-feet. In 2018, stream flows were most comparable to the 2020 forecast and in that year, Subdistrict ARP Wells withdrew 114,922 acre-feet. Using this comparison, the Subdistrict ARP Well groundwater withdrawals in 2020 are projected to be 114,922 acre-feet.

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

2011	2012	2013	2014	2015	2016	2017	2018	2019
118,506	112,578	110,476	93,428	86,245	86,626	74,945	114,922	69,908

The majority of metered groundwater withdrawals in the Plan Year will be used for irrigation through center pivot sprinklers, 67 percent. Approximately 16 percent and 17 percent of groundwater withdrawals will be applied to flood irrigation and other uses, respectively.

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

Subdistrict ARP wells are projected to irrigate approximately 60,000 acres during the Plan Year, including 47,200 acres irrigated by center pivot sprinklers and 12,800 acres irrigated by flood application. The Subdistrict made this projection based on review of the breakdown

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

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 are a number of wells with beneficial uses other than irrigation. The Subdistrict utilized information provided by DWR to calculate the consumptive use rates used in the RGDSS Model to calculate stream impacts and returns. Beneficial uses include 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)***

The supplemental information needed to evaluate the 2020 ARP and 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. Resolution from RGWCD approving the Subdistrict 2020 ARP.
5. Resolution from RGWCD to allow the Subdistrict to allocate Closed Basin Project water in the 2020 ARP.

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

Section 2 of the ARP presents the data utilized to project stream depletions to the Conejos River, Alamosa River, and Rio Grande as a result of the Plan Year's groundwater withdrawals from Subdistrict ARP Wells. The Response Function outputs identify total projected stream depletions for the Plan Year, a breakdown of the monthly stream depletions for the Alamosa, two reaches on the Conejos, and three reaches on the Rio Grande rivers and a projection of the Post-Plan Stream Depletions calculated as a result of the predicted Plan Year groundwater withdrawals from Subdistrict ARP Wells. The Subdistrict was directed by

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

DWR to use the current 6P98 Response Functions to calculate projected stream depletions for this ARP.

The April through September streamflow forecasts included in the ARP are made by the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”). The annual streamflow forecasts included in the ARP for the Rio Grande and Conejos River basins are those included in the September 3, 2020 Division Engineer’s Rio Grande Compact Ten Day Report (Appendix D of the ARP). An estimate of the annual streamflow for the Alamosa River generated from DWR stream gage data was provided to the Subdistrict by DWR.

### *2020 Stream Flow Forecast - Conejos River (Section 1 of 11.1.2 of the ARP)*

There was a difference between the NRCS April forecasts and the Division Engineer’s September forecasts as shown in the following table. By the time the ARP was submitted for the partial ARP Year, the actual streamflows are essentially known and there is much less ambiguity in the forecast. The Subdistrict selected the Division Engineer’s Rio Grande Compact Ten-Day Report of the April - September flow for the Rio Grande of 308,000 acre-feet for use in the Response Functions for 2020.

Stream Flow Forecasts- Conejos River, Rio Grande, Alamosa River

Conejos Stream Flow Forecast				
Analysis	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
	(1)	(2)	(3)	
NRCS April 1 <sup>st</sup> Forecast (4/6/2020)				
Conejos River near Mogote	143,000	74%		
Los Pinos River near Ortiz	44,000	60%		
San Antonio River at Ortiz	8,300	53%		
TOTAL	195,300			
Division Engineer, Ten Day, 9/3/2020				
Conejos River near Mogote	108,000	56%		
Los Pinos River near Ortiz	30,400	42%		
San Antonio River at Ortiz	2,400	15%		
TOTAL	140,800		19,200	160,000
Rio Grande Stream Flow Forecast				
Analysis	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
NRCS April 1 <sup>st</sup> Forecast (4/1/2020)				
Division Engineer, Ten Day, 9/3/2020				
	415,000	80%		
	308,000	60%	77,000	385,000
Alamosa Stream Flow Forecast				
Analysis	Apr-Sep Forecast (acre-feet)	% of avg	Estimated Additional (acre-feet)	Annual Estimated Flow (acre-feet)
NRCS April 1 <sup>st</sup> Forecast (4/1/2020)				
	52,000	77%		



## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

DWR stream gage & estimate, 9/2/2020	33,846	50%
---	--------	-----

- (1) projected 30% exceedance streamflow at the gaging station
- (2) NRCS 30-yr Average Flow: Conejos-194,000, Rio Grande-515,000, Alamosa-68,000, Los Pinos-73,000, San Antonio-15,600
- (3) January through March and October through December

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

Subdistrict staff was instructed by the State Engineer's Office to predict stream depletions caused by Subdistrict ARP Wells utilizing the response functions developed for the Alamosa La Jara 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 has elected to use the Response Function spreadsheet for the subset of wells represented by the Subdistrict ARP Wells. The Alamosa La Jara Response Area requires adjustments for both point source return flows and the stream ratios, as listed below.

- Alamosa La Jara Response Area - Reach 3 (Rio Grande from Del Norte to Excelsior Ditch) from the City of Monte Vista.
- Alamosa La Jara Response Area - Reach 5 (Rio Grande from Chicago to State Line) from the City of Alamosa.
- Alamosa La Jara: Reach 1 Calculations Ratio, and Reach 6 Calculations Ratio,

Using the whole Response Area results, adjustments are made on appropriate pages of the Response Function spreadsheet. The Subdistrict ARP Wells do include the Town of Monte Vista and the Town of Alamosa point source return flows. Adjustments for the Ratio Method must be made for Reach 1: Conejos above Seledonia/Garcia and Reach 6: Alamosa River.

Once these preliminary steps are completed, the next step in calculating stream depletions using the Response Functions is updating Table 2.1 to derive the annual net groundwater consumptive use. The consumptive use ratios for sprinkler and flood irrigation used in the Model are standard factors of 83% and 60%, respectively. The consumptive use ratio for "other" wells is specific to the uses of those wells and can vary widely. The "Other

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

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 groundwater withdrawals and consumptive use factors to explain how the composite ratios were determined for the subset wells represented in Table 2.1 of the ARP.

Historical ARP Well groundwater withdrawal values were entered in Table 2.1 for years 2011 through 2019. No adjustments were made by the Subdistrict for groundwater withdrawals of the subset wells for any years prior to 2011. Projected ARP Well groundwater withdrawal values were used for 2020. The Subdistrict has no Recharge that Offsets Groundwater for calculation of the Net Groundwater Consumptive Use. The projected Net Groundwater Consumptive Use for the Plan Year is 86,626 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 the Conejos River, Rio Grande, and Alamosa River 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 7,758 acre-feet, which includes negative depletions of 651 acre-feet on Stream Reach 3 of the Rio Grande. The Response Functions calculated total stream depletions to the Conejos River are 4,202 acre-feet, to the Alamosa River 530 acre-feet, and to the Rio Grande 3,026 acre-feet. The locations of the stream depletions and monthly quantities are also tabulated in Table 2.3.

Post-Plan Stream Depletions are estimated to accrue to impacted streams for approximately 15 years. Based on predictions from the Response Functions, Table 2.4 of the ARP shows there would be a total of 25,881 acre-feet of Post-Plan Stream Depletions. This amounts to 4,011 acre-feet to the Conejos, 19,641 acre-feet to the Rio Grande, and 2,229 acre-feet to the Alamosa.

The Subdistrict will be operating under a partial 2020 ARP Year, beginning September 26, 2020 and lasting through April 30, 2021. The partial ARP Year depletion schedule is shown below.



## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

### Subdistrict No. 6 Monthly Stream Depletions Partial Plan Year (9/26/2020 - 4/30/2021) (Units in acre-feet)

	2020				2021				
Stream Reach	Sep 26 - 30	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total
(1)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
<b>Conejos above Seledonia/Garcia</b>	1	5	4	4	9	8	9	9	48
Non-Irrigation Season			4	4	9	8	9		<b>34</b>
<b>Conejos below Seledonia/Garcia</b>	75	396	327	303	275	228	230	202	2036
Non-Irrigation Season			327	303	275	228	230		<b>1,363</b>
<b>Rio Grande Del Norte-Excelsior</b>	19	123	115	123	128	114	124	104	850
Non-Irrigation Season			115	123	128	114	124		<b>604</b>
<b>Rio Grande Excelsior-Chicago</b>	32	201	199	205	213	198	213	198	1458
Non-Irrigation Season			199	205	213	198	213		<b>1027</b>
<b>Rio Grande Chicago-State Line</b>	-21	-67	-39	22	25	18	42	2	-19
Non-Irrigation Season			-39	22	25	18	42		<b>68</b>
<b>Alamosa River</b>	4	25	3	1	1	1	1	133	170
Non-Irrigation Season			3	1	1	1	1		<b>7</b>
<b>Total</b>	<b>110</b>	<b>683</b>	<b>610</b>	<b>658</b>	<b>650</b>	<b>566</b>	<b>618</b>	<b>648</b>	<b>4,544</b>

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

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

The Subdistrict has assembled a portfolio of water supplies for the replacement of Injurious Stream Depletions and remedies other than water. The ARP identifies the water rights, their availability and their amounts in Table 3.1 of the ARP. Applications for SWSPs 6182 (SLVWCD & Navajo Development transmountain water- initiated by RGWCD) and 6209 (Terrace Reservoir excess augmentation) were submitted by the Subdistrict for replacement sources for the use of water for the purpose of replacing depletions as part of the ARP. SWSPs 6182 & 6209 have been approved and the approval letters are included as an Exhibit to this letter. A new SWSP for change of use for Terrace Reservoir irrigation water in storage was submitted September 16, 2020 and is pending approval potentially in late October 2020. Upon approval, the source can be added for use under the partial 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

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

depletions in place and time. For purposes of review of adequacy of replacement sources, there are three categories defined.

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

**In Season**: Ditch water that will become available to the Subdistrict when in priority during the 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.

This replacement water or remedy will be available to replace Injurious Stream Depletions as directed by the Division Engineer. A summary of the portfolio items is shown in the Replacement Sources tables on the following pages. I will approve up to the full amount itemized in the Replacement Sources tables and stated in the following sections for use in the 2020 ARP.

### Subdistrict No. 6 Replacement Sources: Conejos River (acre-feet)

Sect	Water Right Name	Submitted in ARP	Approved in SWSP's	Remaining 9/26/2020 & Approved for 2020 ARP
	<b>In Storage</b>			
	SWSP 6182- SLVWCD 84CW16	110.7	110.7	110.7
	SWSP 6182- SLVWCD 94CW62	110.7	110.7	110.7
	SWSP 6182- SLVWCD 14CW3011	103.8	103.8	103.8
	SWSP 6163 - BLM Excess Augmentation Credits 02CW38A Stored in 2020	242.2	242.2	242.2
	SWSP 6074 Taos Valley No 3 Stored in 2020	0	0	0
	<b>Total In Storage</b>	<b>567.4</b>		<b>567.4</b>
	<b>In Season</b>			
	None			
		Submitted in ARP	Expected Yield	Approved for 2020 ARP
	<b>On Call- Forbearance (Expected Yield greater than 0)</b>	Limit	Expected Yield	
	Combined ditches, September, October 2020			358
	Combined ditches, April 2021			106
	<b>Total On Call- Forbearance</b>	<b>No limit</b>	<b>450</b>	<b>Up to 464</b>
	CBP Allocation- September 2020	2,600	1,397	
	<b>Total On-Call Non-Irrigation Season</b>		<b>1,397</b>	<b>Up to 2,600</b>

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

### Subdistrict No. 6 Replacement Sources Alamosa River (acre-feet)

Sect	Water Right Name	Submitted in ARP	Approved in SWSP's	Remaining 5/1/2020 & Approved for 2020 ARP
	<b>In Storage</b>			
	SWSP 6209- Terrace Irrigation Co 82CW97 excess augmentation credit - Approval pending	23.85	23.85	23.85
	SWSP - Terrace Irrigation Co water in storage - Request submitted 9/16/2020	60	Approval pending	60
	<b>Total In Storage</b>	<b>83.85</b>		<b>83.85</b>
		<b>Limit</b>	<b>Expected Yield</b>	<b>Approved for 2020 ARP</b>
	<b>On Call- Forbearance (Expected Yield greater than 0)</b>			
	El Viego	No limit		24
	Alamosa Creek Canal	No limit		11
	Terrace Main Canal**	No limit		4
	Capulin Ditch	No limit		15
	Gabino Gallegos	No limit		7
	Garcia Ditch	No limit		3
	Cristobal Revera	No limit		4
	Miller Ditch	No limit		4
	Ramona Ditch	No limit		5
	Head Overflow No 5 Ditch	No limit		15
	Alamosa Spring Creek	No limit		3
	Ortiz Ditch	No limit		7
	San Jose Ditch No. 1	No limit		3
	<b>Total On Call- Forbearance</b>		<b>135</b>	<b>Up to 105</b>

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

## Subdistrict No. 6 ARP Approval: Plan Year 2020

### Subdistrict No. 6 Replacement Sources Rio Grande (acre-feet)

Sect	Water Right Name	Submitted in ARP	Approved in SWSP's	Remaining & Approved for 2020 ARP
	<b>In Storage</b>			
	SMRC-MV (215 shares leased @ 0.8912 af)	141.4	N/A	140.4
	SWSP 6182- Williams Creek Squaw Pass Transbasin Diversion (W-1869-7)	426.3	426.3	426.3
	SWSP 6094- City of Creede 94CW31 & 07CW60-excess augmentation credits	119.9	119.9	119.9
	CPW Tabor Ditch No 2 & Tabor Ditch No 2 Enlargement CA6981	125.0	After Acquired	
	<b>Total In Storage</b>	<b>812.6</b>		<b>686.6</b>
Sect	Water Right Name	Submitted in ARP	Expected Yield	Approved for 2020 ARP
	<b>In Season</b>			
	SWSP 6094- City of Creede 94CW31 & 07CW60-excess augmentation credits (2020) estimated yield 9/27 - 10/31 & 11/1- 12/31	28.4 + 50.0	28.4 + 50.0	28.4 + 50.0
	<b>Total In Season</b>	<b>78.4</b>		<b>78.4</b>
	<b>On Call- Irrigation Season**</b>			
	<b>On Call- Subdistrict No. 1 SMRC-RG</b>	150		
	Rio Grande Canal			
	Farmers Union			
	San Luis Valley Canal			
	Prairie Ditch			
	Billings Ditch			
	<b>Total On Call- Subdistrict No. 1 SMRC-RG</b>	<b>1,500</b>	<b>150</b>	<b>Up to 150</b>
	<b>On Call- Forbearance (Expected Yield greater than 0)</b>	<b>Limit</b>	<b>Expected Yield</b>	<b>Approved for 2020 ARP</b>
	Centennial	No limit		
	Commonwealth-Empire Forbearance	500		
	Excelsior Ditch	154.47		
	Monte Vista Canal Forbearance	300		
	Rio Grande Canal	1,150		
	RG Lariat Ditch Forbearance	500		
	RG Piedra Valley Ditch Forbearance	No limit		
	RG San Luis Ditch	No limit		
	San Luis Valley Canal Forbearance	250		
	<b>Total On Call- Forbearance</b>		<b>196</b>	<b>Up to 196</b>
	<b>Total On Call- Irrigation Season</b>			<b>Up to 346</b>
	CBP Allocation- April 2020	791 + 1295	1,700	
	<b>Total On Call- Non-Irrigation Season</b>	<b>2,086</b>	<b>1,700</b>	<b>Up to 2,086</b>

*\*\*Note: The On-Call Irrigation Season contract for Subdistrict No. 1 SMRC-RG water is for Subdistrict No. 2, Subdistrict No. 3, & Subdistrict No. 6. The expected yield is for Subdistrict No. 6.*

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

### *After Acquired Sources of Remedy (Section 2 of 11.1.3 of the ARP)*

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

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

The ARP states that the Subdistrict's replacement water will be released from Platoro Reservoir, located in the Upper Conejos, Terrace Reservoir, located on the Alamosa River, and Rio Grande, Santa Maria, Continental, and Beaver Park Reservoirs, located in the Upper Rio Grande, at the direction of the Division 3 Engineer, to offset injurious stream depletions on the respective rivers during the Plan Year. This applies to the "In-Storage" water identified in the Replacement Sources tables on the previous pages. All partial Plan Year injurious stream depletions will be replaced in the time, location and amount that they occur, beginning September 26, 2020. The reaches, amounts and time that stream depletions are projected to occur are shown in Table 2.3 in the ARP. These releases of water from storage will be performed under the provisions contained in section 37-87-103, C.R.S.

The ARP notes that Sections 37-80-120, 37-83-104, and 37-83-106, C.R.S., allow for exchanges to occur between reservoirs without a decree and if recognized by the Division Engineer. Appropriate accounting between the Division Engineer's Office and Subdistrict No. 6 will occur on a regular and routine basis if these exchanges do occur. Any reservoir exchanges done in the Plan Year will be documented and reported in the 2020 Annual Report. The Division Engineer's Office will be notified in advance of any reservoir exchanges.

The Subdistrict leased shares of Santa Maria owned by members on the Monte Vista Canal in 2020. The Subdistrict is allowed to release this water from Santa Maria Reservoir to remedy injurious depletions.

The ARP provides a Memorandum of Understanding that at times when the calling water right is in either the Rio Grande Canal, Farmer's Union Canal, San Luis Valley Canal, Prairie Ditch, or the Billings Ditch, Subdistrict No. 6 will pay Subdistrict No. 1 to release Santa Maria Reservoir Company water it currently has in storage to remedy ARP Well injurious stream depletions, pursuant to the decree issued in case 2013CW3002. While the MOU was made for up to 1,500 acre-feet with Subdistricts No. 2, No. 3, and No. 6, the expected yield of all three totals 850 acre-feet.

The ARP provided an agreement with San Luis Valley Irrigation Well Owners, Inc. to lease up to 2,000 acre-feet for Subdistrict No. 3 and up to 2,000 acre-feet for Subdistrict No. 6 of water and/or consumptive use credits from the water rights that are subject to the 2015CW3030 case. The SWSP regarding this lease was approved for up to 1,500 acre-feet total, quantified at the state line ( $\pm 1,622$  acre-feet at the Taos Valley Canal No. 3 headgate) for Subdistrict No. 3 and Subdistrict No. 6. The agreement yielded no water for the 2020 irrigation season.

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

In 2020, the Subdistrict entered into an agreement with Terrace Irrigation Company to lease excess augmentation plan credits generated in 2019 and stored in Terrace Reservoir. These credits may be released to remedy injurious depletions on the Alamosa River. An additional lease was made with Terrace Irrigation Company for irrigation water currently stored in Terrace Reservoir as an additional source of remedy on the Alamosa River. Approval of the SWSP for this source is pending.

In 2020, the Subdistrict made an agreement with the Bureau of Land Management to lease up to 900 acre-feet of Excess Credits as defined in the 2002CW38A decree for use in the ARP. SWSP 6163 allowed storage of the Subdistrict's Excess Credits in Platoro Reservoir as shown in the table of replacement sources and this water can be released as needed.

The ARP provides documentation that the Subdistrict has implemented Forbearance Agreements with a number of ditches located on the Conejos River, the San Antonio River, the Los Pinos, the Alamosa River, and the Rio Grande for the Plan Year. At times when the Conejos, the San Antonio and the Los Pinos are connected, the calling right can be on the San Antonio or the Los Pinos. The majority of the forbearance agreements allow the Subdistrict to exercise these agreements in its sole discretion. A description of the estimated yield analysis of the various forbearance contracts was provided by the Subdistrict on September 23, 2020 as a supplement to the ARP and is included as an Exhibit to this letter.

The Subdistrict, in an effort to build good will with the surface rights holders on the streams affected by depletions from wells, agreed to make forbearance payments for the full ARP Year under the terms of the contracts the Subdistrict procured even though the Subdistrict is only operating under a partial ARP Year. As a result, the Subdistrict has been monitoring the impacts due to Subdistrict depletions for the entire 2020 irrigation season. This practice helps build confidence in estimating the expected yield from these contracts.

The ARP provides an agreement with the Centennial Ditch in the Appendix. The resolution suggests an alternative for circumstances when replacement water needs to be carried below the Excelsior Ditch, but when the Rio Grande can be dry below the headgate. Instead, replacement water will be carried around that dry reach through the Centennial Ditch. The water will be measured and delivered directly to the Rio Grande at the point the Centennial Ditch can return water directly to the Rio Grande. That point is above any water right that may be injured while in priority. The Centennial Ditch must be adequate to efficiently deliver water around the dry stretch of river to the satisfaction of the Division Engineer prior to this being considered a viable option. The Centennial Ditch Company's water rights are senior enough to accomplish this carriage in any foreseeable situation (Priority Nos. 32 and 173).

The Response Functions did not predict stream depletions to streams other than the Conejos River, Alamosa River, and the Rio Grande in amounts above the minimum threshold to reliably predict impacts. Therefore, no replacements to any stream other than the Conejos, Alamosa, and Rio Grande will be made.



## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

Much of the negative depletion amounts that the Response Function output generated on Stream Reach 3 of the Rio Grande reflect the point-source return flow attributed to the City of Alamosa in the RGDSS Model. This negative depletion represented affects the Rio Grande depletions when all three reaches are live to the State line. Should the Rio Grande stream reaches become disconnected hydraulically during the ARP Year, the Division Engineer shall determine if aggregation of these negative depletion amounts for purposes of determining depletions owed on Stream Reaches 1 and 2 of the Rio Grande is appropriate during those periods.

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

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

The ARP mentions the Subdistrict plans to make potential 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. Further, the Subdistrict describes the situation in which the preliminary annual review of the ARP year, reported March 1, 2021, determines one Subdistrict has underpaid depletions and another Subdistrict has overpaid depletions during the prior months of the ARP Year. The Subdistrict proposes they may make a request to the Division Engineer to aggregate the depletions from prior ARP months between Subdistricts to remedy a Subdistrict's underpayment.

The Subdistrict anticipates 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 Closed Basin Project production in those months. Should this occur, the Subdistrict may request 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 provided a summary of the CBP allocation to the various Subdistricts operating under 2020 ARPs compared to the net depletions by Subdistrict as a supplement to the ARP on September 23, 2020. A copy of the summary is included as an Exhibit to this letter.

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

The Subdistrict may 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 will consider such a request when it is made, under the protocol of DWR and in light of the conditions on the particular stream at the time and, if deemed appropriate, approve the request. The Subdistrict will not adopt any change until after 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 this ARP. Section 4.1.5 of the Subdistrict's PWM includes the provision, "the Subdistrict may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied." This allows the Subdistrict to provide a financial guarantee to assure that all Post-Plan Injurious Stream Depletions will be replaced or otherwise remedied if the Subdistrict were to fail or otherwise not be allowed to continue groundwater withdrawals.

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

### *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. 1 Santa Maria Shares Currently Held in Santa Maria & Continental Reservoirs (Section 1 of 11.1.4 of the ARP)*

As of April 1, 2020, the Subdistrict states that Subdistrict No. 1 has a balance of 15,250 acre-feet of fully consumable water held in Santa Maria and Continental Reservoirs. This water was accumulated from the lease of Santa Maria shares from 2011-2019. Subdistrict No. 6 has reached an agreement with Subdistrict No. 1, whereby Subdistrict No. 1 will release Santa Maria Reservoir Company water currently in storage to remedy injurious stream depletions caused by Subdistrict No. 6 ARP Wells when the calling right is a ditch that primarily serves Subdistrict No. 1 and recharges the Closed Basin unconfined aquifer. Subdistrict No. 6 will then pay Subdistrict No. 1 per acre-foot released. The agreement is provided as a Memorandum of Understanding as part of the ARP.

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

### *San Luis Valley Irrigation Well Owner's, Inc. (SLVIWO) - Case No. 2015CW3030 (Section 2 of 11.1.4 of the ARP)*

On December 30, 2015, the SLVIWO filed an Application for Recharge Project and Rights of Substitution and Exchange. The SLVIWO is the owner of the water right and corresponding structures associated with the Taos Valley Canal No. 3. The original decree for the water rights decreed to the Taos Valley Canal No. 3 is the Decree of the Court entered in the Matter of the Adjudication of the Priority of Water Rights in the Conejos and San Antonio Rivers (Water District No. 88), District Court, Conejos County, Colorado (October 3, 1890). In 1975, SLVIWO filed an application for a plan for augmentation including exchange and to change the place and type of use of the Taos Valley No. 3 water right in Case No. W-3394 to include augmentation of any depletions caused by well users of the SLVIWO. The Taos Valley No. 3 water right was changed in Case No. W-3394. Of the 245 c.f.s. decreed to the Taos Valley Canal No. 3, 230 c.f.s. ("Middlemist Water") has been left undiverted by SLVIWO and accounted for as an offset to well depletions pursuant to that decree. The remaining 15 c.f.s. ("Zinn Water") was changed in Case No. W-3394 subject to a reservation by Pete E. and Mercedes Middlemist to divert and use up to that amount for irrigation pursuant to certain terms and conditions contained in that decree. The Zinn Water has continued to be used for irrigation up to and including the 2018 irrigation season.

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

SWSP 6074 was approved for the Subdistrict's use in the 2020 ARP of the Taos Valley No 3 water that is the subject of the SLVIWO's court case. Stream flows on the Conejos River system in the 2020 irrigation season allowed no water to be diverted under the Taos Valley No. 3 priority. Therefore, although this agreement appears in the table of replacement sources and the Subdistrict included the agreement as part of the ARP, it yielded no water in 2020.

### *Rio Grande Water Conservation District's Excess City of Creede Augmentation Credits Stored in Beaver Reservoir (Section 3 of 11.1.4 of the ARP)*

The Rio Grande Water Conservation District leased excess augmentation credits from the City of Creede during the period November 1, 2019 - September 26, 2020. A portion of

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

these credits was allocated to Subdistrict No. 3 in their 2020 ARP. The remainder of the credit is being stored in Beaver Reservoir, after applicable transit losses were deducted and is allocated to Subdistrict No. 6 to remedy injurious depletions to the Rio Grande for their 2020 ARP. RGWCD will continue to store water under this lease through the end of the calendar year and has made that water available for the Subdistrict 2020 ARP.

### *Colorado Parks & Wildlife Tabor Ditch No 2 Held in Rio Grande Reservoir (Section 4 of 11.1.4 of the ARP)*

Colorado Parks & Wildlife has agreed to exchange 125.0 acre-feet of Tabor Ditch No 2 water, through Fish & Wildlife Service, into a Subdistrict pool in Rio Grande Reservoir to be used for the remedy of Subdistrict injurious depletions. The letter describing this exchange is the first step in the plan to make this water available to the Subdistrict for use in the 2020 ARP. Once all pieces of the plan are approved and in place, the Subdistrict may request this water as an "After Acquired" source.

### *Forbearance Agreements (Section 4 of 11.1.4 of the ARP)*

Pursuant to section 37-92-501(4)(b)(I)(B), C.R.S., the Subdistrict has reached agreement with a multitude of ditches whereby they accept that, subject to the specific provisions of the forbearance agreement, injury to their water rights resulting from the use of groundwater by ARP Wells may be remedied by means other than providing water to replace stream depletions, when they are the calling right on the Conejos River system, Alamosa River, or Rio Grande. The majority of these contracts with individual ditches were made for three-year terms.

The Subdistrict reviewed stream flows on the Rio Grande, Conejos and Alamosa Rivers for the current and past years and used the peak and average flows during April and October to calculate the percent of priorities that have agreed to forbearance for the partial Plan Year within those stream flow agreements on each river.

It is noted that the majority of these agreements allow the Subdistrict to remedy injurious stream depletions under the agreement or by providing water at the Subdistrict's sole discretion. Four of the agreements do not allow this flexibility, the Alamo, Ball Bros 1 & 2, Los Sauces, and William Stewart, so are "mandatory" forbearance agreements.

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

### *Closed Basin Project Production (Section 6 of 11.1.4 of the ARP)*

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

According to the information provided in the ARP, the projected production of the Closed Basin Project delivered to the Rio Grande is 7,000 acre-feet during calendar year 2020. The allocation of the Closed Basin Project production in accordance with agreements is 60% to the Rio Grande and 40% to the Conejos River basin over the long term with provision for adjustments in the allocation during individual years. The 2020 allocation of the Closed Basin Project production will be 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 Closed Basin Project 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. 3,742 acre-feet of water is available to Subdistrict No. 6 under this ARP to remedy the injurious stream depletions on the Rio Grande.

The Conejos Water Conservancy District Board submitted a letter to RGWCD on March 25, 2020, to specifically allocate 1,500 acre-feet of the Conejos River's share of the usable yield of the Closed Basin Project to replace the injurious stream depletions for the Subdistrict's 2020 ARP.

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

### ***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 September 25, 2019, the Alamosa La Jara Response Area five-year running average groundwater withdrawals were below the 1978-2000 average groundwater withdrawals for the Alamosa La Jara Response Area.

Subdistrict metered groundwater withdrawals account for approximately 99 percent of the total metered groundwater withdrawals annually over the period 2011-2019 in the Alamosa La Jara Response Area. The current five-year running average groundwater withdrawals for ARP Wells for the period 2015-2019 is 85,729 acre-feet. The previous five-year running average for ARP wells was 90,433 acre-feet. The Subdistrict anticipates the five-year running average groundwater withdrawals for ARP wells to increase in 2020 to 91,464 for 2016-2020 based on the 2020 groundwater withdrawal projection.



## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

Based on the trends of both the Alamosa La Jara Response Area and the Subdistrict's five-year average, the Subdistrict will remain in compliance with the Sustainable Water Supply Requirement of the Rules.

Included in Appendix K 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 3.15 feet, recovering to the 2018 level and the highest level since 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)*

No listing of other proposed actions was submitted with this ARP

## 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. The method implemented by the Subdistrict to project groundwater withdrawals for the ARP Wells for 2020 is consistent with historical pumping information and streamflow forecast from the Division Engineer's projection and the NRCS Forecast.
2. Overall, the Subdistrict inputs to the Response Functions produced a calculation of depletions that DWR considers conservative such that the depletions are covered and no injury will occur. However, closer scrutiny of actual well usage indicates consumptive use percentages for various wells classified as "Other" should be reviewed and updated, as appropriate. DWR will work with the Subdistrict and the Modelers to review the information and incorporate changes, as appropriate, into the inputs to the Model and Response Functions for future ARP's.



## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

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. DWR directed the Subdistrict to utilize 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.
4. The ARP identifies the sources, availability, and amounts of replacement water and remedies that the Subdistrict will use to remedy Injurious Stream Depletions during the coming year and demonstrates the sufficiency of such water to remedy such Injurious Stream Depletions.
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.

### Conejos River

The Subdistrict depletions for the partial ARP Year are 687 acre-feet during the irrigation season on the Conejos. The Subdistrict has 567.4 acre-feet in storage in Platoro Reservoir. The submitted portfolio of water from storage in the 2020 partial ARP Year indicates there is a deficit of 120 acre-feet of firm water to cover Injurious Stream Depletions in the unlikely event that no forbearance is available. The Subdistrict indicates they expect to yield a total of 450 acre-feet from forbearance agreements during September and October 2020 of the irrigation season and April 2021. My staff reviewed the historical calls on the Conejos for the ditches expected to generate forbearance amounts during the irrigation season for the remaining months of the 2020 partial ARP Year as summarized below. The portfolio of water from storage with potentially 120 acre-feet needed from forbearance indicates sufficient water to cover Injurious Stream Depletions for the partial Plan Year.

DWR staff prepared an analysis using the current stream flow numbers and projected flows for the remainder of this irrigation season which consists of 5 days in September and the month of October. The focus of the analysis was to determine which ditches would be the calling priorities. A similar analysis was completed for the irrigation month of April 2021, using average conditions because a reliable 2021 winter forecast is not available. The results indicate that forbearance for the end of September and the month of October would most likely consist of the Priority No. 1 water rights on the river system. The Subdistrict secured forbearance contracts for all of the owners of the Priority 1 ditches. Even if the stream flows are underestimated, the Subdistrict has contracts with the majority of owners of water rights up to Priority No. 20, which would reinforce the analysis.

These agreements for ditches that are likely to be the calling rights on the Conejos for the remainder of the 2020 irrigation season could possibly account for the entire 477 acre-feet owed. A conservative estimate of 75%, or 358 acre-feet was used for the remainder of the 2020 irrigation season. The Subdistrict has forbearance

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

agreements for many of the ditches that are likely to be the calling rights on the Conejos for the month of April 2021. A conservative estimate of 106 acre-feet of the 211 acre-feet owed was the result of the analysis. The total of the estimate is 464 acre-feet.

The Subdistrict depletions are 1,397 acre-feet during the non-irrigation season on the Conejos. The Subdistrict has up to 2,600 acre-feet of Closed Basin Project water available to pay non-irrigation season depletions.

### Alamosa River

The Subdistrict depletions are 162 acre-feet during the irrigation season on the Alamosa. The amount of water in storage in Terrace Reservoir is 23.85 acre-feet. The Subdistrict submitted an SWSP for an additional 60 acre-feet of Terrace Reservoir water in storage which likely can be approved by late October. The submitted portfolio of water from storage in the 2020 partial ARP Year indicates there is a deficit of 78.15 acre-feet of firm water to cover Injurious Stream Depletions in the unlikely event that no forbearance is available. The Subdistrict indicates they expect to yield a total of 135 acre-feet from forbearance agreements during September and October 2020 of the irrigation season and April 2021. My staff reviewed the historical calls on the Alamosa for the ditches expected to generate forbearance amounts during the irrigation season for the remaining months of the 2020 partial ARP Year as summarized below. The portfolio of water from storage, 83.85 acre-feet, and DWR's estimate of forbearance agreements, 104.75 acre-feet, is enough to cover Injurious Stream Depletions for the partial Plan Year.

DWR staff prepared an analysis using the current stream flow numbers and projected flows for the remainder of this irrigation season which consists of 5 days in September and the month of October. The focus of the analysis was to determine which ditches would be the calling priorities. A similar analysis was completed for the irrigation month of April 2021, using average conditions because a reliable 2021 winter forecast is not available. The results indicate that forbearance for the end of September and the month of October would most likely consist of the Priority No. 1 water rights on the river system. The Subdistrict secured forbearance contracts for all owners of the Priority 1 ditches. Even if the stream flows are underestimated, the Subdistrict has contracts with all owners of water rights up to Priority No. 8, which would reinforce the analysis.

These agreements for ditches that are likely to be the calling rights on the Alamosa for the remainder of the 2020 irrigation season could possibly account for the entire 29 acre-feet owed. A conservative estimate of 75%, or 22 acre-feet was used for the remainder of the 2020 irrigation season. The Subdistrict has forbearance agreements for many of the ditches that are likely to be the calling rights on the Alamosa for the month of April 2021. A conservative estimate of 83 acre-feet of the 133 acre-feet owed was the result of the analysis. The total of the estimate is 105 acre-feet.

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

The Subdistrict depletions are 7 acre-feet during the non-irrigation season on the Alamosa. The Subdistrict is not obligated to pay depletions on the Alamosa during the non-irrigation season at this time.

### Rio Grande

The Subdistrict depletions are 590 acre-feet during the irrigation season on the Rio Grande. The Subdistrict has 686.6 acre-feet in storage in Santa Maria, Rio Grande and Beaver Reservoirs and expects to generate 78.4 acre-feet of excess augmentation water from the City of Creede contract. The Subdistrict indicates they estimate to yield 150 acre-feet of Subdistrict No. 1 SMRC-RG water deliverable to ditches bringing surface water into Subdistrict No. 1 boundary and 196 acre-feet from forbearance agreements during September and October 2020 of the irrigation season and April 2021. The total of On-Call replacement sources is 346 acre-feet. The portfolio of water currently in storage and the amount generated by the end of 2020 indicates sufficient water to cover Injurious Stream Depletions for the partial ARP Year in the unlikely event that no forbearance would be available.

The Subdistrict depletions are 1,699 acre-feet during the non-irrigation season on the Rio Grande. The Subdistrict has 2086 acre-feet of Closed Basin Project water allocated to pay non-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 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. In all future years the five year running average of metered total withdrawals must not exceed the average annual withdrawals for the period of 1978 through 2000. The Subdistrict is in compliance with this metric.

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

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

1. This ARP shall be valid for the period of **September 26, 2020 through April 30, 2021**, unless otherwise revoked, modified, or superseded by me, a decree, or order of the court.
2. The Subdistrict must replace or remedy the Injurious Stream Depletions resulting from

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

Subdistrict ARP Well groundwater withdrawals.

3. Contract wells will be covered to the extent of their permitted/decreed uses.
4. Deliveries (including transit losses) of stored water made available for the replacement of Injurious Stream Depletions shall be determined by the Division Engineer pursuant to this ARP and associated decrees.
5. If the limit is reached for any particular forbearance agreement, then the Subdistrict will need to begin replacement of Injurious Stream Depletions to that particular ditch or canal.
6. The Division Engineer shall determine on an ongoing basis whether he can administer the operations under each forbearance agreement. If the Division Engineer cannot, then that operation shall cease. General Forbearance Protocols for the San Luis Valley River Systems for 2020 were prepared by the Division Engineer. A copy of the protocols is included with this letter.
7. The Subdistrict shall provide daily replacement water accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be emailed to the Division Engineer ([Craig.Cotten@state.co.us](mailto:Craig.Cotten@state.co.us)), the Water Commissioners ([sam.riggenbach@state.co.us](mailto:sam.riggenbach@state.co.us)), [rachel.rilling@state.co.us](mailto:rachel.rilling@state.co.us), [tom.stewart@state.co.us](mailto:tom.stewart@state.co.us), [aaron.holman@state.co.us](mailto:aaron.holman@state.co.us), [travis.robinson@state.co.us](mailto:travis.robinson@state.co.us) and the Subdistrict Coordinator ([deborah.sarason@state.co.us](mailto:deborah.sarason@state.co.us)), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
8. The Subdistrict must adhere to the terms and conditions of the SWSP(s) incorporated as part of the ARP. The use and inclusion of any new replacement water within the ARP is subject to SWSP approval or approved by the Water Division No. 3 Water Court for a change of water right. Prior to the use of any new replacement water, the State Engineer will evaluate for use as an amendment under this ARP.
9. In the unlikely event that the SWSP (submitted 9/16/2020) for 60 acre-feet of Terrace Reservoir in storage is not approved or if the forbearance agreements do not yield the amounts needed to cover depletions as expected during the 2020 partial ARP Year, the Subdistrict will invoke its "After Acquired Sources of Remedy" clause in the ARP and will acquire sufficient additional sources to satisfy the depletion schedule approved under this ARP. If the Subdistrict is unable to acquire sufficient additional sources, the Subdistrict will not be able to continue operation under this ARP.
10. All deliveries of replacement water shall be measured in a manner acceptable to the Division Engineer. The Subdistrict shall install and maintain measuring devices as required by the Division Engineer for operation of this approved ARP.

## Subdistrict No. 6 ARP Approval: Plan Year 2020

---

11. The Subdistrict must submit an Annual Review of its ARP pursuant to Rule 12.
12. The Subdistrict must replace or remedy all Injurious Stream Depletions caused by non-augmented pumping associated with Subdistrict ARP Wells.
13. The Subdistrict must comply with the Rules, the Subdistrict PWM, and this ARP.

**Approval of this ARP does not authorize any change, increase, or expanded use of any water right or permit. Any change, increase, or expansion of a water right or permit will need to comply with existing decrees and or permits, the Confined Aquifer New Use Rules, the Measurement Rules, the Rio Grande Basin Groundwater Use Rules, and may require approval of the Water Court.**

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

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

Sincerely,



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

Exhibits:

- A: SWSP 6182- SLVWCD & Navajo Development Transmountain Water
- B: SWSP 6209- Terrace Irrigation Co. 82CW97 Excess Augmentation Water
- C: Forbearance Yield Analysis, submitted 9/23/2020 as supplement to the ARP
- D: CBP Allocation Compared to Depletions\_2020 ARPs, submitted 9/23/2020 as supplement to the ARP
- E: General Forbearance Protocols for the San Luis Valley River Systems for 2020
- F: Table 2.6 for full 2020 ARP Year

ec: 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**





September 24, 2020

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

**Re: Rio Grande Water Conservation District Substitute Water Supply Plan  
Water Division 3, Water Districts 20, 21, 22 and 24  
SWSP ID 6182**

**Approval Period: September 26, 2020 to April 30, 2021**

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

Dear Mr. Ampe:

We have reviewed your letter dated March 18, 2020 in which you request approval of the substitute water supply plan (“SWSP”) on behalf of the Rio Grande Water Conservation District (“RGWCD” or “Applicant”) pursuant to § 37-92-308(5), C.R.S. Notice was provided to all parties who have subscribed to the Division 3 SWSP Notification List on April 2, 2020. Comments were received during the statutory 35-day comment period from Beth Van Vurst, representing the Southwestern Water Conservation District (“SWCD”) and were taken into consideration during the evaluation of this SWSP. The required \$300 filing fee has been received and given receipt no. 10002791.

An application for approval of a change of water right or 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 or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with the water court and the water use plan or change proposed and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years. **This is the first year of operation for this SWSP.**



## **SUBDISTRICT OPERATION**

Case No. 15CW3024 established the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 by order of the court. The Rules described the formation of Subdistricts in the area defined by the Rio Grande Decision Support System Groundwater Model in District Court, Water Division No. 3. Members of Subdistricts are landowners within the RGWCD who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices. The principal goals of Subdistricts are to protect senior surface water rights, to support a sustainable water supply in the confined or unconfined aquifer underlying the Subdistricts' boundaries and to avoid unreasonable interference with the state's ability to fulfill its obligations under the Rio Grande Compact.

This SWSP is being sought in order to provide a part of the water supplies to be used by one or more Subdistricts of the RGWCD to meet the requirements of the Subdistricts' Plans of Water Management ("Plans") as approved by the State Engineer. Subdistrict No 1 (2006CV64 & 2007CW52), Subdistrict No 2 (2015CV30050), and Subdistrict No 3 (2016CV30021) have formed and are operating under their respective Plans. Subdistrict No 4 (2017CV30005), Subdistrict No 5 (2017CV30015) and Subdistrict No 6 (2018CV30014) have formed and have Plans approved by the State Engineer, but are not yet operating under their Plans.

The overall objective of each Subdistrict Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within the Subdistrict; that is a system of self-regulation using economic-based incentives that promote responsible groundwater use and management and ensures protection of senior surface water rights. As part of each Plan, Subdistricts must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions the Subdistricts will take to replace injurious depletions to senior water rights caused by groundwater withdrawal by Subdistrict Wells during the plan year. This SWSP application is intended to provide a part of the water supplies to be used in the Subdistricts' ARPs.

The water that is the subject of this SWSP request was diverted for its decreed purposes under its decreed priorities, and initially stored in Rio Grande Reservoir. The diversions were consistent with the historical operation of the William's Creek-Squaw Pass trans-mountain ditch.

This SWSP is being requested for the purpose of changing the water rights listed below which were diverted while in priority and at a time when there were no other calls on the Piedra or Los Pinos River systems, and will be used as replacement water under the agreements attached by the RGWCD in various Subdistricts' Annual Replacement Plans ("ARP"). The uses include augmentation, replacement, and remedy, including by substitution and exchange. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or the direction of the State and Division Engineers. The Division Engineer may impose reasonable losses on the use or exchange of the water due to evaporation. To the extent this water is not released from storage or otherwise consumed, such amounts may be carried over and used in subsequent ARPs without the need for subsequent SWSPs.

## SWSP OPERATION

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

### 1. 325.28 Acre-Feet of water stored in Platoro Reservoir

This water is controlled by San Luis Valley Water Conservancy District (“SLVWCD” or “District”) and is currently held in Platoro Reservoir. This water is described in a lease dated August 20, 2019 and the water is associated with the following decrees: Case Nos. 84CW16, 94CW62, 14CW3011 and 09CW34 District Court, Water Division 3. After the assessment of 20% transportation loss, the remaining amounts for use are as follows:

- 84CW16: 110.725 acre-feet
- 94CW62: 110.725 acre-feet
- 14CW3011: 103.83 acre-feet
- 09CW34: 0 acre-feet

### 2. 426.26 Acre-Feet of water stored in Rio Grande Reservoir

This water is controlled by the Navajo Development Company, Inc. and Linda and Frances Deture (collectively, “Lessors”), and consists of transmountain water in the Williams Creek Squaw Pass Diversion, decreed in Case No. W-1869-78. The RGWCD has acquired 287.75 acre-feet in one agreement, and 138.51 acre-feet in a second agreement (attached). The total of 426.26 acre-feet is currently stored in the Rio Grande Reservoir.

Water rights listed above that have been diverted from one basin to another, require no reconsideration of the historic return flow patterns from use in the receiving basin and such water is considered fully consumable (*City of Thornton v. Bijou Irrigation Co.*, 926 P. 2d 1 (Colo. 1996); §37-82-106, C.R.S.)

## Conditions of Approval

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

1. This SWSP shall be valid for the period of September 26, 2020 through April 30, 2021 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **January 30, 2021**.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. **This year is the first year of operation under this SWSP.**
3. Approval of this SWSP is for the purposes stated herein. Additional diversion structures and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional structures/uses. The replacement water, which is

the subject of this SWSP, cannot be sold or leased to any other entity during the term of this SWSP without prior approval of the Division Engineer.

4. The Applicant shall provide daily accounting (including, but not limited to the volume of water in storage and release volumes) 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 ([Sam.Riggenbach@state.co.us](mailto:Sam.Riggenbach@state.co.us), [Wayne.Peck@state.co.us](mailto:Wayne.Peck@state.co.us), [Luis.Heredia@state.co.us](mailto:Luis.Heredia@state.co.us), [Rachel.Rilling@state.co.us](mailto:Rachel.Rilling@state.co.us), [Tom.Stewart@state.co.us](mailto:Tom.Stewart@state.co.us), [Jared.DePriest@state.co.us](mailto:Jared.DePriest@state.co.us), [Aaron.Holman@state.co.us](mailto:Aaron.Holman@state.co.us) and [Travis.Robinson@state.co.us](mailto:Travis.Robinson@state.co.us)), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
5. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
6. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.
7. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the RGWCD for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2020 Subdistricts' ARPs must be used to replace injurious depletions under future Subdistricts' ARP's.
8. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioners.
9. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
10. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
11. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation , all use of water under this SWSP must cease immediately.
12. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the

State Engineer concerning an SWSP pursuant to § 37-92-308(5), C.R.S., shall be to the Division 3 Water Judge within thirty days of the date of this decision.

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

Sincerely,



Jeff Deatherage, P.E.  
Water Supply Chief

Attachments: Purchase agreements

ec: Craig Cotten, Division Engineer  
Deborah Sarason, Subdistrict Coordinator  
David Hofmann, Assistant Subdistrict Coordinator  
Pat McDermott, Staff Engineer  
Kevin Boyle, Water Rights Researcher  
Sam Riggensbach, Wayne Peck, Luis Heredia, Rachel Rilling, Tom Stewart, Jared De Priest,  
Aaron Holman and Travis Robinson, Water Commissioners, Water Districts 20, 21, 22, & 24  
Beth Van Vurst, Van Vurst Law

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into between the Rio Grande Water Conservation District ("RGWCD") 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"). 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 RGWCD desires to purchase 138.51 acre-feet of said transmountain water currently being held in storage in the Rio Grande Reservoir from Seller 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. Purchase Agreement. Subject to the terms of this Agreement, the RGWCD agrees to purchase 138.51 acre-feet 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 has not made full payment pursuant to this agreement within ten business day after the Effective Date, then the Agreement will terminate as provided in paragraph 1.5.
  - 1.3. Purchase Price. The purchase price for the 138.51 acre-feet of water is sixty-five dollars (\$65.00) per acre-foot for a total purchase price of nine thousand, three dollars and fifteen cents (\$9,003.15) with all \$9,003.15 due and payable within ten business days after the Effective Date of this agreement.
  - 1.4. Failure to Pay. If the RGWCD fails to pay when due the purchase payment required herein, then this Agreement will terminate in full, Seller shall retain title to the Stored Water and the Option Agreement shall be void.
  - 1.5. Water Subject to the Agreement. The water subject to this Agreement is 138.51 acre-feet of the transbasin 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 and thereafter the RGWCD shall bear all seepage, evaporation and transit losses on the subject water.

JH



1.6. Approvals. 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.

2.3. Notice to Reservoir Owner. Upon RGWCD's payment as specified in paragraph 1.3

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](mailto:navdev@me.com)

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

JHP

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

JHP

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.

JHB

**Seller:**

John A. Parker  
Navajo Development Co., Inc.

3/11/19  
Date

**Accepted:**

**Rio Grande Water Conservation District**

By: Greg Higel  
Greg Higel

3/12/19  
Date

Title: President  
President

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into between the Rio Grande Water Conservation District (RGWCD) and Navajo Development Co., Inc. and Linda and Frances Deture ("Sellers") as the owners of certain water to be diverted and stored in Rio Grande Reservoir during the 2019 irrigation year.

### INTRODUCTORY RECITALS

A. The Sellers hold 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"). This water right will be stored in Rio Grande Reservoir during the 2019 irrigation year.

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

C. The RGWCD desires to purchase the entire volume of transmountain water, in excess of the needs of Sellers' Plan for Augmentation, diverted during 2019 and subsequently held in storage in Rio Grande Reservoir, ("Available Water") from Sellers 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. Purchase Agreement. Subject to the terms of this Agreement, the RGWCD agrees to purchase all Available Water.

1.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Sellers and the RGWCD, which date shall be the "Effective Date." If the RGWCD has not made full payment pursuant to this agreement as provided in paragraph 1.3, then the Agreement will terminate as provided in paragraph 1.4.

1.3. Purchase Price. The purchase price for the water made available to the RGWCD is sixty-five dollars (\$65.00) per acre-foot.

1.3.1 Within 30 days from the date the 2019 diversions of subject water right cease or from Water Division No. 3's end of irrigation season on the Rio Grande, Sellers must provide to the RGWCD a written accounting showing the quantity of Available Water. RGWCD will have 10 days from receipt of said accounting to provide written notice to Sellers that it either accepts such accounting or disagrees with some or all of the accounting.

1.3.2 If there is a dispute between the Parties regarding the accounting required in paragraph 1.3.1, the Parties will attempt, in good faith, to resolve the dispute within 10 days from Sellers' receipt of notice from the RGWCD. If such dispute is not resolved, each Party retains all rights under this agreement and such other rights as it may have.

1.3.3 Within 10 days of the acceptance or resolution of dispute regarding the accounting

required in paragraph 1.3.1, RGWCD must pay to Sellers the total amount due to Sellers under this agreement, as determined by multiplying the total acre-feet of Available Water provided to RGWCD by the per acre-foot Purchase Price, above. Said date of payment is the Transfer Date of the Available Water

1.4. Failure to Pay. If the RGWCD fails to pay the purchase payment required herein when due, then this Agreement will terminate in full, Sellers shall retain title to the Available Water and the Option Agreement shall be void.

1.5. Water Subject to the Agreement. The water subject to this Agreement is the Available Water. After the Effective Date, the Sellers will not be entitled to use or dispose of any Available Water.

1.6. Approvals. RGWCD is responsible for obtaining any approvals necessary for RGWCD's proposed use or delivery of the Available Water.

2. Sellers' Obligations and Representations.

2.1. Seller's Title. Sellers represents that they are the owner of the water subject to this Agreement and that they have full power and authority to enter into this Agreement. Sellers further represents that they are 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. Sellers agree to stand evaporation and seepage losses occurring prior to the Transfer Date of the Available Water.

2.3. Notice to Reservoir Owner. On the Transfer Date of the Available Water, Sellers will notify the owner of Rio Grande Reservoir of the change in ownership of the Available 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 Available 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](mailto:navdev@me.com)

To RGWCD: Cleave Simpson



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

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

5. Remedies. In the event of Sellers' 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, Sellers' 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 Sellers or the RGWCD to one another with respect to this Agreement.

6.2. Survival. Each of the representations and warranties made by Sellers 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 Sellers 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 Sellers 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.

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

18  
287.75 ac-ft

Sellers: John H. Parker  
Navajo Development Co., Inc.

12/17/19  
Date

Linda and Francis Deture  
Linda and Francis Deture

12 17 2019  
Date  
12-17-2019

Accepted: Francis Deture

Rio Grande Water Conservation District

By: Charles Dyer

12-23-19  
Date


Title: General Manager

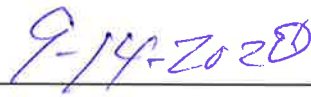
**TO:** Subdistrict No. 6 Board of Managers  
**DATE:** September 14, 2020  
**SUBJECT:** Lease of RGWCD water currently stored in Platoro Reservoir

Dear Board of Managers for Subdistrict No. 6,

The Rio Grande Water Conservation District (RGWCD) has been accumulating a pool of water over the past few years for the purpose of leasing it back to Subdistricts for use in their ARPs as a replacement source to remedy their injurious depletions. Subdistrict No. 6 has made a request to lease up to 325.2 acre-feet of water the RGWCD currently holds in storage in Platoro Reservoir. This water was leased from the San Luis Valley Water Conservancy District during 2019. The Subdistrict will reimburse the RGWCD an amount equal to the costs per acre-foot which the District has paid to lease and store this water. The Subdistrict will only be required to reimburse the RGWCD for the amount of water that is used during the 2020 ARP Plan Year to remedy injurious depletions on the Rio Grande caused by groundwater withdrawals from Subdistrict No. 6 ARP Wells.

If Subdistrict No. 6 does not require the total 325.2 acre-feet to cover their injurious depletions during the 2020 ARP Year, any amount that remains in storage will remain under the control of the Rio Grande Water Conservation District and may be made available for other Subdistricts in future ARP Years. This agreement is for the 2020 ARP only. Any future need to lease some portion of the District's pool of stored water must be made at that time to allow the Board of Director's an opportunity to consider the request.

  
\_\_\_\_\_  
Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

  
\_\_\_\_\_  
Date

Sale of Water from the SLVWCD to the RGWCD and Subsequent Exchange from Rio Grande Reservoir to Platoro Reservoir

Date: August 20, 2019

SALE: The San Luis Valley Water Conservancy District (SLVWCD) will sell 406.6 AF of water at a rate of \$65/AF to the Rio Grande Water Conservation District (RGWCD) for stream depletion replacements by groundwater management subdistricts. The RGWCD or individual subdistrict will utilize the water via a Substitute Water Supply Plan, which will be submitted to the Division of Water Resources. The quantities of water and associated decrees are as follows:

- 110.725 AF 84CW16
- 110.725 AF 94CW62
- 147.63 AF 14CW3011 (pending decree)
- 37.52 AF 09CW34

EXCHANGE: This exchange will occur by means of a release from Rio Grande Reservoir and delivery of water to the State Line. The release will occur on August 22, August 23, and August 24 at a release rate of 68.33 cfs, totaling 135.53 AF per day. The release will be subject to transportation losses necessary to deliver the water from the reservoir to the State Line. The transportation loss as determined by the Division Engineer is 20%, totaling 81.32 AF of losses, which will be subtracted from this pool of water sold by the SLVWCD to the RGWCD. Specifically, the river losses will be comprised of 37.52 AF of 09CW34 and 43.8 AF of 14CW3011.

This delivery will be exchanged into Platoro and replace water currently stored in the Compact Pool. The exchange into Platoro will begin five days after the start of the release from Rio Grande Reservoir, occurring on August 27, August 28, and August 29. Each of the three days, 108.427 AF will be accounted for in storage, totaling 325.28 AF in Platoro Reservoir at the completion of the exchange.

This exchange and delivery protocol was confirmed and provided to the Water Commissioners 24 hours prior to starting this exchange.

Confirmed by:



Craig Cotten, Division Engineer  
Division 3, Colorado Division of Water Resources

August 21, 2019

Date



Heather Dutton, Manager  
San Luis Valley Water Conservancy District

August 20, 2019

Date



Cleave Simpson, General Manager  
Rio Grande Water Conservation District

August 21, 2019

Date

Nathan Coombs

Nathan Coombs, Manager  
Conejos Water Conservancy District

August 21, 2019

Date



8/23/2019

**Exhibit B**





September 24, 2020

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

**Re: Special Improvement District No. 6 (“Subdistrict No. 6”) of the Rio Grande Water Conservation District Substitute Water Supply Plan  
Water Activity Enterprise of Special Improvement District No. 6  
Water Division 3, Water Districts 21, 22 and 24  
SWSP ID 6209**

**Approval Period: September 26, 2020 to April 30, 2021 Contact phone number for Mr. Peter J. Ampe: 303-296-8100; peterampe@hillrobbins.com**

Dear Mr. Ampe:

We have reviewed your letter dated August 13, 2020 in which you request approval of a substitute water supply plan (“SWSP”) on behalf of the Special Improvement District No. 6 (“Subdistrict No. 6” or “Applicant”) of the Rio Grande Water Conservation District pursuant to § 37-92-308(5), C.R.S. Notice was provided to all parties who have subscribed to the Division 3 SWSP Notification List on August 13, 2020. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt number 10005414) has been received.

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

## **SWSP OPERATION**

Subdistrict No. 6 was established by order of the court in Case No. 2018CV30014. Members of Subdistrict No. 6 are landowners within the Rio Grande Water Conservation District (“RGWCD”) who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rio Grande Decision Support System Groundwater Model and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, District Court, Water Division No. 3, Case No. 15CW3024, as the Alamosa La Jara Response Area. The principal goals of Subdistrict No. 6 are to protect senior surface water rights, to support a Sustainable Water Supply in the Confined Aquifer underlying Subdistrict No. 6’s boundaries and to



avoid unreasonable interference with the state's ability to fulfill its obligations under the Rio Grande Compact.

This SWSP is being sought in order to meet the requirements of the Plan of Water Management ("Plan") as approved by the State Engineer in Case No. 2019CW3011. The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within Subdistrict No. 6; that is a system of self-regulation using economic-based incentives that promote responsible groundwater use and management and ensures protection of senior surface water rights. As part of the Plan, Subdistrict No. 6 must submit an Annual Replacement Plan ("ARP") for the State Engineer's review and approval, showing the portfolio of water rights and other actions Subdistrict No. 6 will take to replace injurious depletions to senior water rights caused by groundwater withdrawal by Subdistrict Wells during the plan year. This SWSP application is intended to provide a part of the water supplies to be used in the Subdistrict's ARP.

This SWSP is being requested for the purpose of changing the water rights listed below, to the extent necessary, to include augmentation, replacement, remedy, including by substitution or exchange, for use as part of Subdistrict 6's ARP. The water stored will be used under this SWSP by making reservoir releases at the time required by the ARP and/or the direction of the State and Division Engineers.

#### **CHANGE OF WATER RIGHT**

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

- 1. 23.85 acre-feet of water stored in Terrace Reservoir**

The Terrace Irrigation Company is the owner of a decreed plan for augmentation which includes a portion of the water right as decreed in Case No. 82CW97. This water was produced under the plan for augmentation and stored in Terrace Reservoir in 2019. The Terrace Irrigation Company is leasing 23.85 acre-feet of the stored water to Subdistrict No. 6 (see attached lease). The lease is valid from July 24, 2020 through April 30, 2021.

Subdistrict No. 6 will release this water under the direction of the Division Engineer to remedy injury caused by the withdrawal of groundwater by wells within the Subdistrict No. 6 ARP. This change of water right does not represent all sources of water that Subdistrict No. 6 will use to remedy injurious depletions and does not limit the other actions being taken by Subdistrict No. 6 to meet the requirements of the Plan of Water Management as approved by the State Engineer.

The Division Engineer may impose reasonable losses on the use or exchange of the water under the SWSP due to evaporation or other factors. Subdistrict No. 6 intends that to the extent that these 23.85 acre-feet of water are not released from storage or otherwise consumed, such amounts may be carried over and used in subsequent ARPs without the need for a subsequent SWSP.

## 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 September 26, 2020 through April 30, 2021 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **January 30, 2021**.
2. In accordance with § 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. **This is the first year of approval of this SWSP.**
3. Approval of this SWSP is for the purposes stated herein. Additional diversion structures and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional structures/uses. The replacement water, which is the subject of this SWSP, cannot be sold or leased to any other entity during the term of this SWSP without prior approval of the Division Engineer.
4. The Applicant shall provide daily accounting (including, but not limited to the volume of water in storage and release volumes) 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 ([Rachel.Rilling@state.co.us](mailto:Rachel.Rilling@state.co.us), [Tom.Stewart@state.co.us](mailto:Tom.Stewart@state.co.us), [Jared.DePriest@state.co.us](mailto:Jared.DePriest@state.co.us), [Aaron.Holman@state.co.us](mailto:Aaron.Holman@state.co.us) and [Travis.Robinson@state.co.us](mailto:Travis.Robinson@state.co.us) ), within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
5. If any term or condition of this SWSP conflicts with any of the terms and conditions of the Plan, the terms and conditions of the Plan shall control.
6. Transit loss for delivery of replacement water to the point of injurious depletions is subject to assessment and modification as determined by the Division Engineer.
7. For changed water not retained in storage, the amount of water made available under this SWSP shall only be included as a source of water for replacement of injurious depletions as required by the Subdistrict 6 ARP for the term of the approval of this SWSP, or the term of the agreement or other document which evidences the applicant's right to use the water rights for augmentation, whichever is shorter. Any water stored under this SWSP and not used under the 2020 Subdistrict 6 ARP must be used to replace injurious depletions under future Subdistrict 6 ARP's.
8. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioners.

9. All deliveries for direct replacement, storage, or recharge shall be measured in a manner acceptable to the Division Engineer. The Applicant shall install and maintain measuring devices as required by the Division Engineer for operation of this SWSP.
10. Release of stored water made available for the replacement of injurious depletions shall be at the discretion of the Water Commissioners or the Division Engineer.
11. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
12. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(5), C.R.S., shall be to the Division 3 Water Judge within thirty days of the date of this decision.

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

Sincerely,



Jeff Deatherage, P.E.  
Water Supply Chief

Attachment: Lease Agreement

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

## LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into between the Water Activity Enterprise of Special Improvement District No. 6 (Alamosa-La Jara) of the Rio Grande Water Conservation District ("herein referred to as "Subdistrict"), and Terrace Irrigation Company, a Colorado nonprofit corporation (herein after referred to as "Lessor") as the owner of certain decreed water rights decreed for augmentation use and stored in Terrace Reservoir (collectively "Parties" or in the singular "Party").

### INTRODUCTORY RECITALS

A. The Lessor holds title to a decreed plan for augmentation which includes a portion of the water right, as originally set forth in a change decree entered in Case No. 1982CW97 (Water Division 3) on November 22, 1983. This water right was produced under the plan for augmentation for 2019 and stored in Terrace 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 purposes.

C. The Subdistrict desires to lease 23.85 acre-feet of said augmentation water from Lessor on the terms set forth below.

### AGREEMENT

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

#### I. Lease Agreement.

- I.1. Lease Agreement. Subject to the terms of this Agreement, the Subdistrict agrees to lease 23.85 acre-feet of augmentation water stored in Terrace Reservoir ("Stored Water").
- I.2. Term of Agreement. This Agreement begins on the date of acceptance of this Agreement by both the Lessor and the Subdistrict, which date shall be the "Effective Date" and will end at midnight on April 30, 2021.
- I.3. Lease Price. The lease price for the 23.85 acre-feet of water is two hundred dollars (\$200.00) per acre-foot for a total lease price of four thousand seven hundred seventy dollars (\$4,770.00) with all \$4,770.00 due and payable within ten business days after the Effective Date of this agreement.
- I.4. Failure to Pay. If the Subdistrict fails to pay when due the lease payment required herein, then this Agreement will terminate in full, Lessor shall retain title to the Stored Water and the Agreement shall be void.
- I.5. Water Subject to the Agreement. The water subject to this Agreement is 23.85 acre-feet of the augmentation water which was stored in Terrace Reservoir during 2019. After the Effective Date the Lessor will not be entitled to use or dispose of the 23.85 acre-feet of Stored Water under this lease and, thereafter, the Subdistrict shall bear all seepage, evaporation and transit losses on the subject water. The Subdistrict will retain title to unused water, if any, after the Term of this Agreement.



1.6. Approvals. The Subdistrict is responsible for obtaining any approvals necessary for their proposed use and delivery of the Stored Water.

2. Lessor's Obligations and Representations.

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

2.2. Upon the Subdistrict's payment as specified in paragraph 1.3, Lessor will change control of the Stored Water over to the Subdistrict.

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

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

To Lessor:                               c/o President  
P.O. Box 109  
Monte Vista, CO 81144  
e-mail: [reinkyc@gojade.org](mailto:reinkyc@gojade.org)  
and [kaysbooksr4u@gmail.com](mailto:kaysbooksr4u@gmail.com)  
phone: 719-852-5638

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

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

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



6 Miscellaneous Provisions.

- 6.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. Except for those which are set forth in this Agreement, no representations, warranties, or agreements have been made by the Lessor or the Subdistrict to one another with respect to this Agreement.
- 6.2. Survival. Each of the representations and warranties made by Lessor and the Subdistrict in this Agreement, or in any document or instrument delivered pursuant to this Agreement, must be true and correct in all material respects on the date hereof, and are to be deemed to be made again as and at the date of any payment date, and must then be true and correct in all material respects. All covenants in this Agreement that require performance, or that pertain to the time subsequent to the termination of this agreement, shall survive the termination.
- 6.3. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and shall not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in CRCP 6, then the relevant date will be extended automatically until the next business day.
- 6.4. Non-Severability- Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and is not severable unless by mutual consent of the Lessor and the Subdistrict. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any party or as to all Parties, the entire Agreement will terminate.
- 6.5. Waiver. The failure of a party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment, in any future case, of any of the terms of this Agreement.
- 6.6. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns, if any. The Lessor may not assign its rights or delegate its duties hereunder without the prior written consent of the Subdistrict, which consent shall not be unreasonably withheld. The Subdistrict may not assign its rights hereunder to any other person or entity without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.
- 6.7. Litigation. If the Lessor and/or the Subdistrict litigate any provision of this Agreement or the subject matter of this Agreement, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal.

- 6.8. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of Alamosa County, State of Colorado.
- 6.9. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
- 6.10. Recording. The Subdistrict may record this Agreement or a Memorandum of this Agreement at its own expense.
- 6.11. Time. Time is of the essence in this Agreement.
- 6.12. Legal Counsel. Each party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.
- 6.13. Lessor's Acknowledgment. Lessor certifies that it has read each and every part of this Agreement, and that this Agreement constitutes the entire agreement between the Parties, and that no agreements, promises, representations or warranties, written or oral, except those expressly set forth herein, have been made to Lessor by the Subdistrict, or by its employees, agents, or representatives, and no modifications to this Agreement will be claimed by Lessor except for written amendments or waivers executed by the Parties.

**TERRACE IRRIGATION COMPANY**

By: Kent Reinhardt  
Kent Reinhardt, President

7/13/2020  
Date

**SPECIAL IMPROVEMENT DISTRICT NO. 6  
OF THE RIO GRANDE WATER CONSERVATION  
DISTRICT, WATER ACTIVITY ENTERPRISE**

By: Amber Pacheco  
Amber Pacheco, Program Manager

7/24/2020  
Date

**Exhibit C**

Alamosa La Jara Subdistrict (Subdistrict No. 6)  
2020 ARP Year – Partial: September 26, 2020 through April 30, 2021  
Forbearance Yield Analysis, submitted 9/23/2020 as supplement to the ARP

Additional documentation of the analysis performed by Subdistrict Staff to determine the forbearance included in the 2020 Partial Year ARP for Subdistrict No. 6 and the amount expected to be remedied under the agreement with Subdistrict No. 1 to use their Santa Maria water for a portion of the depletions to the Rio Grande.

### **Alamosa River**

The Subdistrict reviewed the daily average discharge rates for wet years (2017 and 2019), dry years (2012, 2013 and 2018) and average years (2014, 2015 and 2016) on the Alamosa River to determine the average daily range of stream flows on the river in cfs during the months of April and October in those years. The daily average discharge rates were then compared to the list of priorities that have agreed to forbearance for the partial ARP Year. Current year stream flow trends were also considered for October on the Alamosa. Copies of the discharge data and the April and October streamflow graphs are included.

Based on the analysis of this information, it is estimated the five days in September (26th-30th) and the entire month of October will be covered by forbearance as the stream flow on the Alamosa River continues to remain low, and it is anticipated it will remain low unless we receive significant rains in the remainder of the irrigation season. It is anticipated the calling priority for the majority of these five days in the end of September and the entire month of October will be the 1's-the El Viego Ditch and the Alamosa Creek Canal. Both of these ditches have forbearance agreements and the estimated remedy to be made by forbearance during this time is 29 acre-feet. Reviewing wet, dry and average years, the staff estimates that forbearance will cover between 25 to 27 days of depletions in April 2021. The remaining 4 to 6 days would require a release of water from Terrace to cover depletions. Based on the ARP monthly depletions calculated to be 133 acre-feet, staff estimates 27 acre-feet will be required in wet water to cover these non-forbearance ditches for the month of April 2021 and the remaining 106 acre-feet will be remedied with forbearance agreements.

### **Rio Grande River**

The Subdistrict reviewed the daily average discharge rates for a wet year (2019), dry years (2012, 2013 and 2018) and average years (2014, 2015 and 2016) on the Rio Grande River to determine the range of daily average stream flows on the river in cfs during the months of April and October. The daily average discharge rates were then compared to the list of priorities that have agreed to forbearance for the partial ARP Year. Staff also reviewed the call data downloaded from the CDSS website for April and October in each year from 2015-2019. This call data was compared to the daily discharge records to determine an estimate of the amount of forbearance for these months. Based on this comparison, the Subdistrict estimated forbearance would account for no more than what is calculated using lowest average days from this analysis for each month, 67% for April and 58% for October (based on 2019 using daily average discharge rates). Using these percentages, the Subdistrict estimated 340 acre-feet of forbearance for the two months (this analysis does not include the five days for the end of September which the Subdistrict anticipates will be covered by wet water releases).

The Subdistrict estimates that they will use up to 196 acre-feet, or 58% of the total estimated

forbearance for April and October. For the purpose of showing the Subdistrict can remedy the depletions calculated to the Rio Grande for the partial ARP, staff took a conservative approach and estimated the Subdistrict could still cover depletions even with the lowest estimate for forbearance. The acre-feet included in the submitted partial year ARP is a conservative estimate of forbearance and the Subdistrict expects that the actual amount of forbearance may be higher than this estimate.

The Subdistrict also has an agreement with Subdistrict No. 1 to allow Subdistrict No. 6 to use a portion of their Santa Maria water from storage on days when five ditches within Subdistrict No. 1's boundary are the calling rights. Using the calls downloaded from the CDSS site, the Subdistrict calculated the number of days in the years 2015-2019 which the agreement could have been used to determine what percentage of calls in April and October were to one of these ditches. The Subdistrict considered both forbearance and this agreement with Subdistrict No. 1 together to determine the estimated acre-feet from each source because the ditches in this analysis are similar. It is estimated the remainder of the 340 acre-feet calculated as forbearance could be remedied under the agreement with Subdistrict No.1 if not by forbearance. The amount remaining from the forbearance analysis is approximately 150 acre-feet.

### **Conejos River**

For the Conejos River, the Subdistrict is estimating that the river will remain low based on this year's trend and the calling rights will be the shared Number 1 priority for the remainder of September and the entire month of October for Reach 1 and Reach 2. The Subdistrict has forbearance with all three of the ditches that share in this priority. The forbearance agreement with the Guadalupe Ditch is for wet water exchanged in the reservoir from the Subdistrict pool into a pool for this Ditch's use by October 31 in each year water is paid under this agreement. The Guadalupe owns 19.28% of the number 1 priority so the Subdistrict estimates they will forbear on the remaining 80.72% for a total of 385 acre for the five days in September and the entire month of October. The Subdistrict believes this is a conservative estimate because at the time this analysis was prepared, all Reach 2 depletions were covered by forbearance and so there would be no requirement for water for depletions for the majority of the Conejos depletions. Reach 2 depletions amount to over 98% of the total Conejos depletions in the days included in this analysis.

For April 2021, the Subdistrict analyzed the daily discharge averages for 2016 (average year), 2017 (wet year) and 2018 (dry year) in comparison to the priorities included in forbearance agreements. A few of these forbearance agreements within the daily range in these years are only for partial forbearance of the priority. Based on the number of days the cfs average was within the priorities under agreements in these years, the Subdistrict estimates that conservatively 50% of the April 2021 depletions could be covered by forbearance. The Subdistrict believes that this amount is probable, but estimated only 30% would be under forbearance in April 2021 or a total of 65 acre-feet. For the purpose of showing the Subdistrict can remedy the depletions calculated to the Conejos for the partial ARP, staff took a conservative approach and estimated the Subdistrict could still cover depletions even with the lower estimate for forbearance.

In total, Subdistrict No. 6 staff estimates, based on this analysis, the forbearance agreements on all three rivers combined will remedy a total of 781 acre-feet during the Partial Plan Year and the agreement with Subdistrict No. 1 will remedy 150 acre-feet.

**Exhibit D**



**Closed Basin Allocations for 2020 ARPs Compared to Projected Depletions**

<b>Rio Grande-2020</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Totals By SD</b>	<b>SLVWCD Allocation</b>	<b>(Over)/Under</b>
SD 1	(3)	8				5	308	(303)
SD 2	158	179				337	328	9
SD 3	42	42				84	89	(5)
SD 6	275	350				625	791	(166)
<b>Totals by Month</b>	<b>472</b>	<b>579</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,051</b>	<b>1,516</b>	<b>(465)</b>

<b>Rio Grande-2021</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Totals By SD</b>	<b>SLVWCD Allocation</b>	<b>(Over)/Under</b>
SD 1			12	11	4	27	273	(246)
SD 2			179	165	174	518	512	6
SD 3			39	36	41	116	126	(10)
SD 6			366	330	379	1,075	1,295	(220)
<b>Totals by Month</b>	<b>-</b>	<b>-</b>	<b>596</b>	<b>542</b>	<b>598</b>	<b>1,736</b>	<b>2,206</b>	<b>(470)</b>

<b>Conejos-2020/2021</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Totals By SD</b>	<b>CWCD Allocation</b>	<b>(Over)/Under</b>
SD 3	240	212	169	147	153	921	1,100	(179)
SD 6	331	307	284	236	239	1,397	1,500	(103)
<b>Totals by Month</b>	<b>571</b>	<b>519</b>	<b>453</b>	<b>383</b>	<b>392</b>	<b>2,318</b>	<b>2,600</b>	<b>(282)</b>

<b>Total CBP Needs</b>	<b>1,043</b>	<b>1,098</b>	<b>1,049</b>	<b>925</b>	<b>990</b>	<b>5,105</b>	<b>6,322</b>	<b>(1,217)</b>
------------------------	--------------	--------------	--------------	------------	------------	--------------	--------------	----------------

\*\*used SLVWCD allocation as it was the most restrictive on the Rio Grande

\*\* Total CBP production for 2020 is 7,000 acre-feet creditable to the river per Craig's 10-day on Sept. 3, 2020

\*\* 2021 Production is not set until April 2021 but it is estimated the Project could produce approximately 8,500 acre-feet as in past y



**Exhibit E**

## **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.

**Exhibit F**

**Table 2.6**  
**Alamosa/La Jara Response Area Monthly Net Stream Depletions for 2020 Plan Year**  
(units of ac-ft)

Stream Reach	Alamosa/La Jara 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)
Conejos above Seledonia/Garcia	10	10	7	5	5	5	4	4	9	8	9	9	84
Conejos below Seledonia/Garcia	267	413	510	515	452	396	327	303	275	228	230	202	4,118
Rio Grande Del Norte-Excelsior	95	100	99	102	114	123	115	123	128	114	124	104	1,341
Rio Grande Excelsior-Chicago	166	171	187	193	192	201	199	205	213	198	213	198	2,336
Rio Grande Chicago-State Line	-24	-112	-195	-195	-127	-67	-39	22	25	18	42	2	-651
Alamosa River	152	108	51	28	26	25	3	1	1	1	1	133	530
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>666</b>	<b>691</b>	<b>659</b>	<b>647</b>	<b>662</b>	<b>683</b>	<b>610</b>	<b>658</b>	<b>650</b>	<b>566</b>	<b>618</b>	<b>648</b>	<b>7,758</b>

Notes for columns:

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