

PLAN OF WATER MANAGEMENT
Special Improvement District No. 1 of the Rio Grande Water Conservation
District

The Board of Directors of the Rio Grande Water Conservation District (“the District”) on behalf of the Board of Managers of Special Improvement District No. 1 (“the Subdistrict”), submits the following Revised Plan of Water Management (“Plan”) as the official plan of the Subdistrict, subject to Court approval, pursuant to section 37-48-126, C.R.S. The District Court, Water Division No. 3 approved the Plan on May 27, 2010.

1.0 DEFINITIONS

1.1 Annual Replacement Plan or “ARP” means the compilation of data, calculation of stream depletions caused by the withdrawal of groundwater from Subdistrict Wells, and the planned operations to remedy injurious stream depletions during the period covering May 1st of the then current year through April 30th of the subsequent year.

1.2 “ARP Year” or “Plan Year” means the timeframe an ARP is in effect, from May 1st of the then current year through April 30th of the subsequent year.

1.3 “Annual Service and User Fee” means total yearly fee assessed upon Subdistrict Territory consisting of the sum of the Administrative Fee, the CREP Fee, and the Variable Fee.

1.4 “Confined Aquifer” has the same meaning as that term is defined in Rule 4.A.1 of the Rules Governing New Withdrawals of Ground Water in Water Division 3 Affecting the Rate or Direction of Movement of Water in the Confined Aquifer System as such Rules exist now or as they may be amended in the future.

1.5 “CREP” means the Conservation Reserve Enhancement Program as defined and administered by the United States Department of Agriculture – Farm Service Agency (USDA-FSA) through the authority of the 2014 Farm Bill (Conservation Title). In general, CREP allows

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the USDA, in cooperation with a local sponsoring entity, to offer an annual rental payment for a term of fifteen years to producers willing to fallow a parcel(s) of land and forego the use of the associated water right or well during that time. CREP aims to foster land and water conservation through this process.

1.6 “Farm Operator” means an individual or entity actually managing and farming land owned by one or more Farm Owners.

1.7 “Farm Owner” means the individual(s) or entity(s) holding title to tract of land as reflected in the records of the County Treasurer.

1.8 “Farm Unit” means all irrigated lands under the control and management of a Farm Operator.

1.9 “Hydraulic Divide” means a hydrologic separation between the Unconfined Aquifer underlying Subdistrict Lands and the Unconfined Aquifer tributary to the Rio Grande, and defined by the line labeled “Drainage Divide” that appears on Plate 1 of Colorado Water Resources Circular 18, Water in the San Luis Valley, South-Central Colorado (attached as Exhibit 1). Verification of the Hydraulic Divide, in terms of its existence, location, and extent must be based upon written acceptance by the State Engineer.

1.10 “Measurement Rules” means the well measurement rules adopted by the State Engineer and approved by the Water Court, Division 3, Case No. 2005CW12 (August 1, 2006).

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1.11 “Net Groundwater Withdrawn” or “Net Groundwater Withdrawals” means total groundwater withdrawn less the applicable Surface Water Credit. This could result in either a positive or negative value.

1.12 “Non-Benefited Subdistrict Land” means Subdistrict Land that is irrigated only with surface water without an irrigation well in the parcel and/or without the physical ability to receive delivery of groundwater withdrawn from a well on another parcel. In addition, it includes land irrigated with groundwater pursuant to, and in compliance with, the provisions of a validly decreed plan for augmentation. Some land irrigated with groundwater may be only partially covered by a plan for augmentation in which case that land will be Subdistrict Land and will only be treated as non-benefited to the extent valid augmentation exists for groundwater withdrawn. Non-benefited lands will not be assessed by the Subdistrict or subject to Annual Service and User Fees.

1.13 “Proposed Groundwater Rules” means 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’ promulgated by the State Engineer September 23, 2015 and the subject of Case No. 2015CW3024, District Court in and for Water Division No. 3’, as said Rules currently exist or as they may be amended in the future.

1.14 “Special Water” means as described or defined in the decrees for the Rio Grande Canal.

1.15 “Subdistrict Land” means the same as “Subdistrict Territory.”

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1.16 “Subdistrict Members” means individuals or entities that own Subdistrict Territory.

1.17 “Subdistrict No. 1 Response Area” has the same meaning as ‘Response Area No. 1’ as that term is used in the Proposed Groundwater Rules.

1.18 “Subdistrict No. 1 Response Functions” has the same meaning as ‘Response Functions for Response Area No. 1’ as that term is used in the Proposed Groundwater Rules.

1.19 “Subdistrict Territory” means that, pursuant to section 37-48-123(d), C.R.S., all lands within the exterior boundaries of the Subdistrict that were classified as irrigated by the applicable county Treasurers and Assessors as of May 12, 2006.

1.20 “Subdistrict Wells” means wells and irrigation systems used by each Subdistrict landowner or any other wells included under this Plan by contract as described in Section 2.3. Wells included in the Plan and qualified to receive the benefits afforded by the Plan are those wells subject to the Well Measurement Rules adopted by the State Engineer and approved by the Division 3 Water Court in Case No. 2005CW12 (August 1, 2006) (“Measurement Rules”). Wells exempt from the Measurement Rules include wells not exceeding fifty (50) gallons per minute which were in production as of May 22, 1971 that were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of gardens and lawns. *See* § 37-92-602(1)(e), C.R.S.

1.21 “Surface Water Credit” means surface water brought into the Subdistrict No. 1 Response Area that is not consumed through irrigation practices or other beneficial uses and returns to or is

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introduced into the Unconfined Aquifer and to the extent such diversions may increase the Unconfined Aquifer Level. Such Surface Water Credit is used by the Subdistrict for purposes of computing the Variable Fee and has no relationship to Recharge Decrees adjudicated by the Division 3 Water Court. Because the Surface Water Credit is given only for water brought into the Response Area, it necessarily excludes water from structures within the Response Area such as drains or seepage ditches that recapture or redirect surface water within the Response Area or water that is otherwise naturally tributary to the Unconfined Aquifer within the Closed Basin. It does not include water that is only decreed for use on lands outside the Subdistrict, unless an appropriate contract for inclusion has been executed and accepted by the Board of Managers.

1.22 “Sustainable Aquifer” generally refers to a condition where withdrawals from the aquifer match recharge to the aquifer from all sources so that mining of the aquifer is not occurring on a long-term basis.

1.23 “Unconfined Aquifer” means the aquifer composed of sand, gravel, clay and other materials, and not under artesian pressure, located within the Subdistrict.

1.24 “Unconfined Aquifer Storage” means the quantity of water within the Unconfined Aquifer as calculated for Rio Grande Water Conservation District by Davis Engineering Service, Inc. and titled ‘Change in Unconfined Aquifer Storage, West Central San Luis Valley’.

1.25 “Unconfined Aquifer Storage Level” means a five-year running average of the average annual level of the Unconfined Aquifer Storage calculated on a monthly basis.

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1.26 “Variable Fee” means annual assessment of the Net Groundwater Withdrawn multiplied by the Water Value.

1.27 “Water Administration Year” means the period from November 1st to October 31st of the subsequent year.

1.28 “Water Value” means a charge per acre-foot of groundwater withdrawn by Subdistrict Wells. Water Value may be adjusted annually by the Board of Managers within the limitations of this Plan of Water Management and is used to calculate the Variable Fee.

2.0 BACKGROUND AND BASIS FOR THE PLAN OF WATER MANAGEMENT

2.1 Current Situation

2.1.1 Members of the Subdistrict are landowners within the Rio Grande Water Conservation District who rely on groundwater from wells for all or part of their irrigation water supply for lands north of the Rio Grande within part of the area known as the Closed Basin.¹ Current water levels in the Unconfined Aquifer within the Subdistrict have declined significantly. The consumption of groundwater from the Unconfined Aquifer within the Subdistrict has increased over time, and under current conditions, significantly exceeds the total amount of recharge from natural sources and from diversions from the Rio Grande that is necessary to maintain a sustainable water supply in the Unconfined Aquifer. This overdevelopment has adversely affected Subdistrict Lands, resulting in declining water tables, loss of well productivity, and other problems

¹ The legal description of the Subdistrict is contained within the Court’s Order establishing the Subdistrict, in Case No. 2006CV64 dated July 19, 2006.

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for irrigated agriculture. Unless the total consumption of groundwater in the Subdistrict is reduced, these problems will continue and worsen.

2.1.2 The current situation of the Unconfined Aquifer is the direct result of both increased groundwater consumption by Subdistrict Members and/or their predecessors during the last two decades, and reduced water supply caused by sustained drought. Groundwater consumption has increased, due in part to some or all of the following irrigation practices:

2.1.2.1 changing cropping patterns from less water-consumptive to more water-consumptive crops;

2.1.2.2 changing type and frequency of irrigation;

2.1.2.3 increasing the number of acres under irrigation; and

2.1.2.4 connecting sprinklers to wells that were formerly used sporadically as a supplemental supply for flood irrigation and, thereafter, relying on the wells as a primary irrigation source.

2.1.3 The reduced native water supply is the result of the onset of a serious and prolonged drought that has greatly reduced inflows and surface water diversions into the Subdistrict Territory. In order to restore balance between available supplies and current levels of use it will be necessary to permanently reduce the amount of consumptive use per year from the Unconfined Aquifer by up to 80,000 acre-feet per year, which is represented by the reduction of approximately 40,000 acres.

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2.1.3.1 The amount of the reduction in acreage will be periodically reviewed by the Board of Managers and the goals adjusted as necessary to restore and maintain the balance.

2.2 Subdistrict Territory.

2.2.1 Pursuant to C.R.S. § 37-48-123(d), the Subdistrict Territory includes all lands within the exterior boundaries of the Subdistrict that were classified as irrigated by the applicable County Treasurers and Assessors as of May 12, 2006.

2.2.2 Initial inclusion within the Subdistrict was determined by providing a description of the Subdistrict Territory in the Petition, as required by section 37-48-123(d), C.R.S., and requesting that the County Treasurer and/or Assessor of each county in which territory was proposed to be included provide a list of the names of all landowners of property within the territory that was classified as irrigated. To the extent that land classifications change within the Subdistrict, Subdistrict Lands may become Non-Benefited Subdistrict Lands.

2.3 **Contract Authority.** To the extent permitted by law, and in accordance with rules to be adopted by the Subdistrict, the Subdistrict may, at the discretion of the Board of Managers, contract with other well owners either within the Subdistrict exterior boundaries or outside the Subdistrict exterior boundaries to advance the Plan Goals and Overall Objective. In adopting a rule for this purpose, the Subdistrict Board of Managers may only contract with well owners whose wells impacts can be determined using the Subdistrict No. 1 response functions pursuant to the procedures set forth in Appendix 1.

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2.4 Plan Goals and Overall Objective.

2.4.1 The goals of the Subdistrict are to protect senior surface water rights and avoid interference with Colorado's obligations under the Rio Grande Compact and to cause groundwater levels in the Unconfined Aquifer of the Closed Basin to recover, and then to maintain, a sustainable irrigation water supply in the Unconfined Aquifer with due regard for the daily, seasonal and longer term demands on the aquifer. To achieve these goals, reducing and managing overall groundwater consumption is essential.

2.4.2 Subdistrict water users diverting groundwater from the Unconfined Aquifer for irrigation purposes operate pursuant to well permits and decrees recognized under Colorado law. If the Subdistrict is unable to achieve its goals, then groundwater users face the likelihood that the State of Colorado will impose limitations on the use of their wells through administrative rules and regulations.

2.4.3 Accordingly, the overall objective of this Plan is to provide a water management alternative to state-imposed regulations that limit the use of irrigation wells within the Subdistrict, that is, a system of self-regulation using economic-based incentives that promote responsible water use and management and ensure the protection of senior surface water rights. The operation of this Plan will comply with the applicable requirements of SB 04-222, codified at section 37-92-501(4), C.R.S.

2.5 Effect of Subdistrict and Plan.

2.5.1 Neither the creation of the Subdistrict nor this Plan will alter or affect any vested surface or groundwater rights, including aquifer recharge credits associated with water

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rights in any Ditch or Reservoir Company or Irrigation District. Nor shall the creation of the Subdistrict nor this Plan expand any existing beneficial use or allow a water right to be used for a beneficial use not contained in a valid Decree or Permit.

2.5.2 Neither the creation of the Subdistrict nor this Plan will alter or affect the ability of individual producers to exchange, trade, lease, or sell Surface Water Credits from surface water diversions to the extent permitted by the articles of incorporation and bylaws of the participating ditch companies and Colorado law, provided that the exchange, trade, lease, or sale proposed does not expand the amount of irrigation occurring within the Subdistrict. For purposes of this Plan, all water diverted from the Rio Grande and conveyed into the Subdistrict No. 1 Response Area will be treated the same for accounting purposes whether it is diverted pursuant to decrees for direct flow, storage, or for diversion of surface water to be used for groundwater recharge.

2.5.3 All decreed water rights diverted from La Garita and Carnero Creeks into the lands within the Subdistrict No. 1 Response Area for initial beneficial use, together with Rio Grande Canal “Special Water,” will also be treated the same as all other diversions by the Rio Grande Canal, provided that proper devices exist to capture and measure the portion of such water rights diverted to and utilized within the Subdistrict No. 1 Response Area and to the extent such diversions may increase the Unconfined Aquifer Level and a valid Inclusion Contract exists for those lands that are not Subdistrict Territory. “Special Water” diverted from the Rio Grande and measured as a diversion by the persons using

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the “Special Water” will be subtracted from diversion into the Subdistrict No. 1 Response Area attributable to the Rio Grande Canal.²

2.5.4 Water rights purchased or retired by the Subdistrict will only be used to protect and enhance the irrigation water supply for remaining irrigation groundwater users within the Subdistrict including the replacement of injurious depletions to surface water rights. Purchased and/or retired water rights will not be resold or used for purposes inconsistent with this Plan.

2.5.5 If a Farm Owner or Farm Operator elects to temporarily reduce the amount of land under irrigation in a Farm Unit in order to achieve the goals of this Plan, such reduced irrigation will not be considered to be a period of non-use for purposes of abandonment or reductions in the operator’s legal water right.

2.5.6 Only Subdistrict Lands irrigated by groundwater withdrawals from Subdistrict Wells will be subject to assessment.

² Any surface water rights diverted into the Subdistrict that are not specifically mentioned will be recognized for credit by the Board of Managers on a case-by-case basis utilizing these same standards.

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2.6 Effective Date of Plan. The Subdistrict will replace injurious depletions that result from groundwater withdrawals by Subdistrict Wells that occurs on or after May 1, 2012, as well as those delayed depletions impacting a surface stream from groundwater withdrawals in prior years and all delayed depletions that will occur in subsequent years as are capable of quantification using the groundwater model that is part of the Rio Grande Decision Support System.

3.0 DESCRIPTION OF PLAN OF WATER MANAGEMENT

3.1 General Plan Description.

3.1.1 Upon approval of the Plan of Water Management, Subdistrict Members causing a consumptive use of the groundwater which is withdrawn from Subdistrict Wells are required to contribute financially to a program(s) the Board of Managers shall initiate to ensure that continuing consumption of groundwater matches the level of average recharge from all sources. The program shall be implemented in the first year of Subdistrict operation and every year thereafter. The goal will be to generate sufficient revenues to fund the operations of the Subdistrict and to permit the retirement of sufficient acres within the Subdistrict to achieve a sustainable water supply in the Unconfined Aquifer with due regard for the daily, seasonal and longer term demands on the aquifer and to protect senior surface water rights and avoid interference with Colorado's obligations under the Rio Grande Compact. Revenue will be generated in part by the imposition of a Variable Fee.

3.1.2 The Variable Fee will consist of a fee based on the differential between the amount of groundwater withdrawn, measured by using a water flow meter or such other

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method approved by the State Engineer pursuant to the State Measurement Rules for Division 3, and the amount of Surface Water Credit allocated to the parcel from surface water brought into the Subdistrict from the Rio Grande by one of the ditch systems or other water as described in Sections 2.5.3 and 4.6.2.

3.1.2.1 The differential will be multiplied by a Water Value, assigned by the Board of Managers as set forth in Section 4, which will generate sufficient funds to retire existing sources of groundwater consumption necessary to cause the groundwater system to recover to a Sustainable Aquifer at the level required by Section 3.4.2.

3.1.2.2 Further, if necessary, the Variable Fee may be used to restore the Hydraulic Divide and to provide replacement water sufficient to remedy injurious depletions to senior surface water rights.

3.1.2.3 Ultimately, Subdistrict Members using lower quantities of groundwater and who contribute the most surface water to the Subdistrict will pay the lowest fee, and Subdistrict Members who use large quantities of groundwater but who do not have offsetting Surface Water Credits from surface water from the Rio Grande or other stream systems, will pay the highest fee.

3.2 Acts and Improvements.

3.2.1 The Subdistrict intends to implement some or all of the following non-exclusive list of acts or improvements:

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3.2.1.1 a program of temporary fallowing, which may include cooperation with federal programs, to remove sufficient acreage from production, on an ongoing basis, to achieve reduction in water consumption necessary to achieve the goals of the Plan;

3.2.1.2 economic incentives for the permanent removal of lands from irrigation, which may include cooperation with federal programs;

3.2.1.3 replacement of stream depletions and/or increases in groundwater recharge;

3.2.1.4 infrastructure improvements to maximize the diversion and recharge of water available to Colorado under its compact allocation;

3.2.1.5 purchase and retirement of irrigated lands and/or water rights, either within or without the exterior boundaries of the Subdistrict;

3.2.1.6 education and research into water conservation, water use efficiency, improved water management, and public education on agricultural water use;

3.2.1.7 improvement and operation of ditches, headgates, and recharge facilities to make the best use of available water and to improve groundwater recharge;
and,

3.2.1.8 economic incentives provided through a system of fees that recognize efforts to reduce water use through conservation activities.

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3.2.2 The Subdistrict intends to use a combination of these improvements concurrently, or as they become economically viable and physically possible, to achieve the goals of the Plan of Water Management. The Plan will operate for an indefinite period to ensure that a sufficient reduction in consumption continues to occur such that the total consumption within the Subdistrict matches the total inflows from natural sources and from importations by ditch systems.

3.2.3 At such time as the groundwater supply in the Unconfined Aquifer within the Subdistrict is sustainable, with due regard to the daily, seasonal and long-term demands on the groundwater supply, and the operation of the Unconfined Aquifer wells in the Subdistrict are not causing injurious stream depletions or unreasonably interfering with the state's ability to fulfill its obligations under the Rio Grande Compact, and all other purposes for which the Subdistrict has been organized are permanently accomplished and all obligations of the Subdistrict have been satisfied, including the replacement of all delayed stream depletions calculated to occur in subsequent years, the Subdistrict can be dissolved.

3.3 Protection of Senior Surface Water Rights

3.3.1 In order to ensure the protection of senior surface water rights and avoid interference with Colorado's obligations under the Rio Grande Compact, the Subdistrict will utilize a portion of its revenues to attempt to restore and maintain a Hydraulic Divide between the Unconfined Aquifer underlying Subdistrict Territory and the Unconfined

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Aquifer tributary to the Rio Grande and to remedy any depletions calculated to occur to the Rio Grande and its tributaries resulting from the operation of Subdistrict Wells.

3.3.2 In the absence of rules and regulations controlling the methodology for calculating injurious depletions that the Subdistrict must remedy, calculations of depletions to surface water sources will be made using the Subdistrict No. 1 Response Function, unless and until it is supplanted in the future by a superior technology. The Subdistrict will remedy injurious depletions regardless of the state of the Hydraulic Divide. The Subdistrict will ensure that a methodology exists to remedy all injurious depletions resulting from groundwater withdrawals by Subdistrict Wells.

3.3.3 The implementation of many of the strategies set forth in this Plan are consistent with preventing material injury to senior surface water rights. The following activities may be undertaken in an effort to achieve this objective:

3.3.3.1 establish and maintain a network of observation wells as necessary to characterize the existence, location and extent of the Hydraulic Divide, or to assist in refining the RGDSS Groundwater Model or replacement technology;

3.3.3.2 in participation with Subdistrict programs to reduce overall consumptive use of groundwater within the Subdistrict, develop a program to target a reduction in groundwater depletion in the Subdistrict's southwest corner to encourage maintenance of a Hydraulic Divide;

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3.3.3.3 with the voluntary participation of the Rio Grande Canal Water Users Association and the other canal companies, develop a plan to run water in the Rio Grande Canal, Lateral No. 1, or other appropriate canals, to maintain a groundwater mound to prevent groundwater flow from the alluvium of the Rio Grande to the north and east and provide for the cost of such a program;

3.3.3.4 develop new infrastructure, including recharge facilities along the Rio Grande Canal, Lateral No. 1, and at such other locations suggested by the monitoring well network, to assist in the maintenance of the Hydraulic Divide. Provide for the cost to develop and maintain any such recharge facilities;

3.3.3.5 develop a program of water management, including the lease or purchase of sufficient surface water rights, to permit the recharge program along the Hydraulic Divide to operate successfully;

3.3.3.6 purchase or obtain existing surface water rights and/or storage rights to be used as replacement water for any injurious depletions to surface water rights resulting from groundwater withdrawals from Subdistrict Wells; and,

3.3.3.7 enter into agreements with ditch and canal owners which provide for the remedy of injurious depletions by means other than providing water to replace stream depletions.

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3.4 Restoration of Ground Water Levels and Groundwater Storage

3.4.1 In order to ensure that there is recovery and maintenance of groundwater storage in the Unconfined Aquifer at a historically sustainable level, and to assist in the effort to permanently maintain the Hydraulic Divide, the objective of this part of the Plan is to reduce the average amount of consumptive use of groundwater withdrawals in the Subdistrict by up to 80,000 acre-feet per year, in part, by retiring up to 40,000 acres.

3.4.2 Specifically, the program objective is to achieve the recovery of a Sustainable Aquifer level measured at Unconfined Aquifer storage levels between 200,000 and 400,000 acre-feet below the storage level that was projected to exist on January 1, 1976, within 20 years after judicial acceptance of this Plan which will be no later than December 19, 2031.

3.4.3 Until such time as this objective is met and maintained, the following actions shall be implemented:

3.4.3.1 assist in formulating and submitting a CREP Application for 40,000 acres in the Subdistrict and, thereafter, to provide for management of CREP including the payment of incentives for participation as determined by the Board of Managers;

3.4.3.2 encourage participation in CREP by providing the local cost-share and certain additional incentive payments; and,

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3.4.3.3 reduce total consumption from irrigation well withdrawals with the objective of increasing Unconfined Aquifer storage within 20 years to a level between 200,000 and 400,000 acre-feet below the groundwater storage level that existed on January 1, 1976. It is anticipated that to accomplish the Unconfined Aquifer storage goal, a reduction in consumptive use of groundwater withdrawals of up to 80,000 acre-feet per year, the approximate equivalent of the dry-up of up to approximately 40,000 acres of land previously irrigated during calendar year 2000, will be required.

3.4.4 To achieve the intended reductions of well withdrawals and irrigated acreage in a timely manner, up to 20,000 acres of land previously irrigated in 2000 must be withdrawn from irrigation by December 31, 2016 or a reduction in annual consumptive use of groundwater withdrawals in the amount of 40,000 acre-feet per year. In a similar manner, if the goals in Section 3.4.3.3. above are not achieved, up to 30,000 acres in total must be designated for reduction by December 31, 2018 or a reduction in annual consumptive use of groundwater withdrawals in the amount of 60,000 acre-feet per year. If the goals in Section 3.4.3.3. above are not achieved, up to 40,000 acres in total must be designated for reduction by December 31, 2021 or a reduction in annual consumptive use of groundwater withdrawals in the amount of 80,000 acre-feet per year, subject to the provisions of Sections 3.4.3.3, above.

3.4.5 If incremental improvements toward meeting the goal for Unconfined Aquifer storage have not been achieved no later than ten years following the period of time in

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which up to 40,000 acres of annual dry-up or a reduction in annual consumptive use of groundwater withdrawals in the amount of 80,000 acre-feet per year has occurred, the Board of Managers shall adjust the program of fees and charges, within the economic means of the irrigators, in order to provide funding to obtain a further reduction in groundwater consumption during the subsequent years or to take such other steps that may be required to make measurable progress toward the goal(s).

3.4.6 If the Hydraulic Divide is reestablished, the efforts to restore the Unconfined Aquifer Storage Level will continue.

3.4.7 Once the Subdistrict's Unconfined Aquifer Storage Level goal is achieved, and the Hydraulic Divide is maintained in an uninterrupted manner, total consumption from irrigation well withdrawals will be managed in a manner that assures continued maintenance of a Sustainable Aquifer in the Unconfined Aquifer, as determined by the Board of Managers and approved by the State Engineer, necessary to protect senior surface water rights, taken together with, the provision for replacement water supplies and other agreements sufficient to remedy calculated injurious depletions, prevention of interference with the Rio Grande Compact, and the needs of Subdistrict irrigators. All measurements used to gauge success in reaching Unconfined Aquifer Storage goals will be based on a five-year running average of annual storage levels derived from the average of monthly levels.

3.4.8 The Board of Managers of Special Improvement District No. 1 of the Rio Grande Water Conservation District shall provide an annual accounting and reporting structure

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that includes data and information relevant to Plan operations in content, format and scheduling deemed acceptable to the Division III Engineer prior to operation of the Plan of Water Management.

3.4.9 The methodology and procedure for making the annual accounting described above, including the methodology to calculate injurious depletions to surface water rights and their replacement, is fully set forth in Appendices 1 - 5, attached hereto and incorporated hereby.

4.0 SUBDISTRICT COSTS, FEES AND CHARGES

4.1 The Subdistrict is entitled to raise funds by assessment of reasonable Annual Service and User Fees to carry out the purposes set forth in this Plan. The Subdistrict therefore intends to finance its costs by raising sufficient annual revenue, in a fair and equitable matter, through the imposition of variable Annual Service and User Fees (or assessment) as described below.

4.2 The Subdistrict Plan is based on an economic-based incentive mechanism to reduce water consumption and encourage responsible water management through implementation of Plan improvements. The objective of the financing program is to ensure those landowners who use smaller quantities of groundwater, because they contribute larger quantities of river water to the Unconfined Aquifer in the Subdistrict or implement conservation measures, pay a lower assessment, and those landowners who use larger quantities of groundwater and/or do not contribute surface water from the Rio Grande, to pay a higher assessment. The rationale for this proposed differential is that those landowners who use less groundwater and/or deliver more surface water into the Subdistrict make lesser use of the Subdistrict's services for maintaining a

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sustainable groundwater supply than those landowners who use more groundwater and/or do not contribute surface water to the Subdistrict.

4.3 The Subdistrict will also require a source of financing for the operation and management of the Plan of Water Management, including, a stable source of cost-share funding required for participation in CREP.

4.4 The Subdistrict will also require a source of financing for the administration of the Plan of Water Management, and an Administrative Fee will be assessed for that purpose.

4.5 **Description of Fees**

4.5.1 **Annual Service and User Fee** The Annual Service and User Fee is a service and user fee (or assessment) that will consist of three components. Each component will be evaluated, and if appropriate, adjusted by the Board of Managers annually as required by this Plan and in response to the demands of the Annual Replacement Plan. The components are as follows:

4.5.1.1 an Administrative Fee not to exceed five dollars (\$5.00) per acre of Subdistrict Land to provide sufficient revenue to fund the operations of the Subdistrict and to repay any sums advanced by the District during the formation process. The Board of Managers has determined that the cost of Subdistrict operation should be borne equally by all Subdistrict Acres;

4.5.1.2 a CREP Fee not to exceed twelve dollars (\$12.00) per acre of Subdistrict Land to provide sufficient revenue to fund the local cost share components of a

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CREP Program designed to retire a total of 40,000 acres of land from irrigation in the Subdistrict. The Board of Managers has determined that a defined revenue stream is necessary in order to successfully complete and operate the CREP Program and that the benefits of a CREP program in the Subdistrict apply to all Subdistrict Acres. The CREP fee will be used to fund the local cost-share for the CREP Program; and,

4.5.1.3 a Variable Fee based on a Water Value of up to seventy-five dollars (\$75.00) per acre-foot of groundwater withdrawn from the wells on each farm or Farm Unit to provide revenue for Subdistrict improvements, including, permanent retirement and/or annual fallowing of the required acreage, protection of senior surface water rights and to develop necessary infrastructure improvements.

4.5.2 Confined aquifer wells will be subject to the same assessments except as provided in Section 6.0 below.

4.6 Calculation of the Variable Fee. The Variable Fee will be determined as follows:

4.6.1 Determine total gross groundwater withdrawals. No later than May 1 of each year, for each Subdistrict Well, the Subdistrict must:

4.6.1.1 identify wells and irrigation systems used by each Subdistrict Well;

4.6.1.2 read or have reported the readings for the previous Water Administration Year from each totalizing flow meter installed on Subdistrict Wells in accordance with the Measurement Rules or, in the absence of a totalizing meter, cooperate

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with the State Engineer in obtaining the amount of groundwater withdrawn from wells without totalizing meters through the use of power conversion coefficients in accordance with the procedures in the Measurement Rules;

4.6.1.3 calculate the total amount of gross groundwater withdrawn on each farm, Farm Unit, or contract well(s) by totaling the amount of water pumped by all Subdistrict Wells on the farm, Farm Unit or by the contract well(s) for the previous Water Administration Year;

4.6.1.4 provide the amounts calculated in Section 4.6.1.3., above, to the Farm Operator by first-class mail or other acceptable means of transmission, including electronic mail, by February 1 of the following year.

4.6.2 Determine Surface Water Credit

4.6.2.1 examine Surface water diverted into the Subdistrict from the Rio Grande:³

The following ditch systems divert surface water into the Subdistrict:

Rio Grande Canal ⁴	approx. 302 shareholders
San Luis Valley Irrigation Dist.	approx. 147 landowners

³ There are approximately 50 Farm Units that have no surface water ditch affiliation.

⁴ The Rio Grande Canal diversions include part of the water stored by the Santa Maria Reservoir Co., and not all shareholders in the Rio Grande Canal own shares in the Santa Maria Reservoir Co. For purposes of the calculation, any diversions from Carnero or La Garita Creeks meeting the criteria in Section 2.5.3 will be treated in a similar fashion to the listed ditches.

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San Luis Valley Canal	approx. 88 shareholders
Prairie Ditch Company	approx. 67 shareholders
Billings Ditch Company	approx. 17 shareholders

4.6.2.2 Calculate Amount of Surface Water Used: No later than May 1 of each year, for each irrigated landowner within the Subdistrict as defined by current County records, the Subdistrict must:

4.6.2.2.1 calculate the amount of surface water allocated to the farm or Farm Unit by virtue of the shares of the canal or reservoir company attributable to the lands within the farm or Farm Unit or allocable to lands within an irrigation district based upon a five-year running average utilizing the previous Water Administration Year and the four previous Water Administration Years; and,

4.6.2.2.1 calculate the amount of surface water applied directly to irrigation or other beneficial use and not used for recharge and deduct the consumptive share of such water from the surface water value calculated above to determine the Surface Water Credits for each farm or Farm Unit.

4.6.3 Determine Net Groundwater Withdrawn. The Surface Water Credit will be deducted from the total groundwater withdrawn to determine the Net Groundwater Withdrawn.

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4.6.4 Determine Water Value: The charge per acre-foot of groundwater withdrawn shall be set and adjusted as required by Section 4.5.1.3, above.

4.6.5 Calculation: All calculations will be on a farm or Farm Unit basis or by each Contract.

4.6.5.1 The Subdistrict will total all groundwater withdrawals from all wells allocated to the farm, Farm Unit or Contract, as described in 4.6.1.3. above.

4.6.5.2 The Subdistrict will calculate the five-year running average of all surface water creditable to the farm or Farm Unit, with appropriate modification for surface water applied directly to irrigation, as described in 4.6.2.2.1, above.

4.6.5.3 The Subdistrict will subtract the creditable surface water as described in 4.6.2, above, from the gross groundwater withdrawn as described in 4.6.1 to produce the Net Groundwater Withdrawn;

4.6.5.4 The Subdistrict will identify the Water Value per acre foot for the year;

4.6.5.5 The Subdistrict will multiply the total Net Groundwater Withdrawn by the Water Value to determine the basic Variable Fee for the farm or Farm Unit.

4.6.6 Wells must either be Subdistrict Wells or have a valid contract with the Subdistrict to receive Surface Water Credit. Surface Water Credit calculations for non-Subdistrict Wells that have contracted with the Subdistrict pursuant to the Subdistrict's

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Rules and Regulations will be in accord with the individual contract if the contract contains such terms, and if not, pursuant to this section 4.6.

4.7 Total Annual Service and User Fee

4.7.1 The total Annual Service and User Fee for each farm or Farm Unit for any one year will be equal to the total of the Administrative Fee (Section 4.5.1.1) plus the CREP Fee (Section 4.5.1.2), plus the Variable Fee (Section 4.5.1.3). The total Annual Service and User Fee will thereafter be submitted to the District for approval and then to each Subdistrict County for addition to its tax rolls for collection in accordance with Colorado law.

4.7.2 After the Board of Managers adopts, and the Rio Grande Water Conservation District Board of Directors approves, Rules and Regulations addressing phase-in procedures for a change from assessing variable fee based on current year's groundwater withdrawals, all fees will be assessed one-year in arrears to the then owner of Subdistrict Land or holder of a Contract. Until such Rules and Regulations are in place, all fee assessments will continue as approved in the Amended Plan for Water Management approved by the District Court in and for Water District No. 3 in Case Nos. 2006CV64 and 2007CW52 (May 27, 2010). For example, once year in arrears accounting is implemented:

4.7.2.1 The Board of Managers adjusts the Water Value as required by this Plan and provides notice by December 1, 2015 of what the Water Value for 2016 will be.

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4.7.2.2 All groundwater withdrawals for Water Administration Year 2016 are reported to the Colorado Division of Water Resources, Water Division No. 3 in compliance with the Measurement Rules and reports groundwater withdrawals by Subdistrict Wells to the Board of Managers on or before March 31, 2017.

4.7.2.3 The Board of Managers requests that the Colorado Division of Water Resources finalizes diversion records for Water Administration Year 2016 and provide that information to the Board of Managers on or before March 31, 2017.

4.7.2.4 Subdistrict Staff calculates Variable Fee pursuant to this Plan and provides notice of all fees for 2016 to Subdistrict members on or before May 1, 2017.

4.7.2.5 Deadline to file appeals as to 2016 Fees to the Subdistrict is July 1, 2017.

4.7.2.6 Appeals are resolved and Fees are provided to County Assessors by December 1, 2017 for collection in 2018.

4.8 The Fees provided for above and the requirements to measure groundwater diversions will not be applied to lands that are irrigated solely with surface water.

4.9 The Fees provided for above will not be applied to lands that are irrigated solely from the confined aquifer if a landowner's request to be relieved of the obligation has been granted by the Board of Managers in accordance with section 6.0 below. The Board of Managers will not relieve a landowner of the obligation unless the landowner has a decreed augmentation plan or has included the well(s) within another Subdistrict in order to ensure that injurious depletions will be replaced and aquifer sustainability achieved.

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4.10 Subdistrict Lands enrolled in programs that will result in their permanent removal from irrigation shall not be subject to further Subdistrict Fees from the time that the permanent removal has been legally committed and dry up has occurred.

4.11 Whatever financial circumstances may ensue, unless there is remedy of injurious depletions as determined by the RGDSS Groundwater Model, the Subdistrict Wells will not be entitled to the benefit of exemption from curtailment by the State Engineer pursuant to section 37-92-501(4)(c).

4.12 The Board of Managers will adopt rules, regulations and/or guidelines to facilitate the application and use of the full credit for all surface water annually delivered from the river, in a manner consistent with articles and bylaws of the respective ditch companies. The Subdistrict intends to ensure that an equitable procedure be established that provides landowners whose 4.6.2 surface water contributions exceed the amount of groundwater withdrawn, as calculated in 4.6.1.3 for the same period, receive fair compensation from other Farm Owners for any excess. See Appendix 2, attached hereto.

4.13 In order to ensure that all Subdistrict Landowners receive fair and equal treatment, the Board of Managers will consider appeals by such landowners if the Annual Service and User Fee is considered to be inaccurate or in error. However, any request for corrections or error alleged to the quantity of groundwater withdrawn by any well pursuant to Section 4.6.1.4., above, must be received by the Subdistrict prior to July 1 of the year in which the notice of Fees was provided. The Board of Managers may hear any such appeal or may choose to appoint a hearing officer to hear any such appeal and make

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a recommendation to the Board. If it is determined that an error was made, an adjustment will be made in that year's Annual Service and User Fee before the amount is sent to the County for collection. The Board of Managers may adopt regulations to govern any appeal process. In the absence of such regulations the provisions of the Colorado Administrative Procedures act will apply.

4.14 Any funds collected from contracts with non-Subdistrict entities will be applied to advance the Plan Goals and Overall Objective.

4.15 The Subdistrict agrees to comply with applicable rules and regulations promulgated by the State Engineer in Division 3 as they are adopted. To the extent that a provision of this Plan of Water Management is less stringent than applicable rules and regulations or conflicts with adopted rules and regulations, the Subdistrict will comply with the applicable requirements of the properly promulgated and adopted rules and regulations and will seek to amend this Plan accordingly.

5.0 ANTICIPATED BENEFITS

5.1 Subdistrict Benefits. Anticipated benefits to Subdistrict members of implementing the Plan include:

5.1.1 stabilization of the groundwater supply;

5.1.2 higher average groundwater levels resulting in lower withdrawal heads;

5.1.3 sustainable groundwater supply for Subdistrict Wells;

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5.1.4 economic support for landowners who withdraw land from irrigation;

5.1.5 avoid state imposed groundwater regulation and the attendant need to have costly plans for augmentation approved by the Water Court as a condition for the continued operation of wells;

5.1.6 prevent injury to senior surface water rights; and

5.1.7 prevent interference with Colorado's obligations under the Rio Grande Compact.

5.2 Benefits to the San Luis Valley. The resulting stabilization of water levels within the Subdistrict will have broad benefits to the economy of the San Luis Valley as a whole.

6.0 SUBDISTRICT LAND SERVED BY THE CONFINED AQUIFER

6.1 Irrigated land within the Subdistrict that receives all or a portion of its water supply from Confined Aquifer wells or wells partially completed in the Confined Aquifer will be considered to be covered by this Plan, however, at the election of the landowner such land shall be entitled to be reclassified if and when the Confined Aquifer wells are covered by a final decree for a plan of augmentation or inclusion within the Plan of Management of another subdistrict if a separate confined aquifer subdistrict is created.. Until that time, it will be treated just like other lands served with groundwater in recognition of the requirements in this Plan of Water Management in order to remedy injurious depletions occurring to surface water rights.

6.2 Any irrigated land within the Subdistrict receiving its groundwater supply exclusively from the Confined Aquifer may be relieved of the obligation to pay the Fees set forth above if the landowner petitions the Board of Managers for such relief and provides proof that the source

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of groundwater is exclusively from the Confined Aquifer and the Confined Aquifer well(s) have been included in a decreed plan for augmentation or has included the well(s) with another subdistrict in order to ensure that injurious depletions will be replaced and sustainability achieved.

6.2.1 After receiving the request seeking exemption from Annual Service and User Fees for a Confined Aquifer well(s), the Board of Managers will consider any information provided and must conclude that it establishes clearly and convincingly that:

6.2.1.1 the well(s) diverts exclusively from the Confined Aquifer and that the well(s) will provide for replacement of injurious depletions, and;

6.2.1.2 meet any sustainability requirements set forth in law or regulations.

6.2.1.3 if the Board does not so conclude it will refuse to grant relief from the Fees.

6.3 Wells completed into more than one aquifer will not qualify for relief.

6.4 If a separate subdistrict is created for Confined Aquifer wells, Confined Aquifer wells participating in Subdistrict No. 1 may elect to continue as members of Subdistrict No. 1, to change their participation to the Confined Aquifer subdistrict, or to comply with rules and regulations enacted by the State Engineer for such wells.

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7.0 BOARD OF MANAGERS

7.1 The eleven member Board of Managers will be selected in the manner provided for in the Petition.

7.2 This Plan of Water Management for the Special Improvement District No. 1 of the Rio Grande Water Conservation District was submitted on the 15th day of June, 2009 and became effective on the 19th day of December, 2011.

7.3 Amendments to the Plan of Water Management for the Special Improvement District No. 1 of the Rio Grande Water Conservation District are submitted this ___ day of _____, 2017.