



October 16, 2017

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Rio Grande Water Conservation District  
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Peter Ampe  
Hill & Robbins, P.C.  
1441 18th St #100  
Denver CO 80202

Re: Approval of the Second Amended Plan of Water Management for the Rio Grande Water Conservation District Subdistrict No. 1 (submitted August 2017)

Dear Messrs. Simpson and Ampe,

Thank you for providing the Second Amended Plan of Water Management (Second Amended Plan) prepared by the Board of Managers (BOM) of Special Improvement District No. 1 (Subdistrict) of the Rio Grande Water Conservation District (RGWCD) and approved by the RGWCD Board of Directors on June 28, 2017. We appreciate your patience given the delay in responding to your submittal.

In the July 2016 transmittal letter of the then-draft amendments, you provided a general description of the proposed amendments. That description is still a good synopsis of the changes incorporated into the Second Amended Plan:

“First, there are some general clean-up changes: numbering each paragraph for ease of reference, defining some terms that are used in the Plan of Water Management that were not previously defined and combining or eliminating some defined terms that weren’t used, or weren’t used consistently.

Next, the [Second] Amended Plan adds the ability for those within the Subdistrict Response Area, but outside the boundaries of the Subdistrict itself, to receive Surface Water Credit if they contract with the Subdistrict and the recharged surface water benefits the unconfined aquifer under the Subdistrict. Currently, only those who recharge within the Subdistrict boundaries can receive Surface Water Credit. This is intended to put those who are outside the Subdistrict boundaries on the same footing as those within.



Third, reductions in pumping will also be used to gage the Subdistrict's efforts towards a sustainable aquifer. Currently, only reductions in irrigated acreage are used, because at the time of the current Plan of Water Management, there wasn't a mandatory well metering program the Subdistrict could use. Reductions in pumping are a more direct way to determine steps toward aquifer recovery than simply reductions in irrigated acres.

Finally, any pumping fees will be based on a 'year-in-arrears' system, i.e. pumping from 2018 will appear on the 2020 property tax bill. This will mean a longer delay between when the pumping occurs, but will allow the Subdistrict to rely on the annual meter reporting to the Division of Water Resources and eliminate the need for reporting water use to the Subdistrict at the end of October and then a reconciliation between that report and the final report from the Division Engineer after the fact. This new timing should make the Subdistrict fee assessment process easier and more accurate for everyone."

Division of Water Resources (DWR) staff reviewed and provided comments to a July 2016 draft of the Second Amended Plan. DWR sent a letter with comments, suggestions, recommendations, and requirements to the Subdistrict on November 8, 2016. In this latest version of the Second Amended Plan, the BOM has responded to or incorporated many of those comments. To provide continuity between the Plan of Water Management and the Second Amended Plan, this approval letter builds upon the November 8, 2016 letter. In this letter, each comment from the November 8, 2016 letter has been retained and a follow-up notation regarding resolution of the comment has been added. Additional comments have been added in this letter, where appropriate, to note changes incorporated in the Second Amended Plan beyond those items addressed in the November 8, 2016 comments letter.

To avoid confusion, DWR has used the terms "Second Amended Plan" to refer to the August 2017 submittal and the term "Plan of Water Management" to refer to the 2009 First Amended Plan of Water Management as approved by the State Engineer and decreed by the water court.

### **Section 1: Definitions:**

- (New) Section 1.1 Annual Replacement Plan. This term has been added to the Definitions Section.
  - *This is consistent with the effort to define terms that are used in the Plan of Water Management that were not previously defined. **No action is requested.***
- (New) Section 1.2 "ARP Year". This term has been added to the Definitions Section.
  - *This is consistent with the effort to define terms that are used in the Plan of Water Management that were not previously defined. **No action is requested.***



- Section 1.2: The addition to the definition of “Confined Aquifer” may add clarity under 4.5.2 with regards to assessments. However, for consistency it would be simpler to use the definition for Confined Aquifer found in Rule 4.A.1 in 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” (Confined Aquifer New Use Rules).
  - *Approval of the [Second] Amended Plan is contingent on the incorporation of the Confined Aquifer New Use Rule 4.A.1 definition of Confined Aquifer. **The request has been incorporated into the Second Amended Plan.***
  
- Section 1.5: This is clarification that a Farm Owner may also be an entity(s).
  - *The Plan of Water Management described the Farm Owner as “the individual”. This [Second] Amended Plan recognizes that county records may reflect individuals and or entities on the title of a tract of land. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 1.9: Use of the term “groundwater withdrawn” instead of “groundwater pumped” clarifies that groundwater use may not necessarily be the result of pumping.
  - *This terminology is consistent with 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” (Proposed Groundwater Rules) adopted September 23, 2015. **No action requested by DWR in November 8, 2016 comments letter. The term defined in Section 1.9 in the July 2016 draft has been changed to “Net Groundwater Withdrawn” from “Net Groundwater Pumped.” The revised term is now Section 1.11 in the version submitted in August 2017 and is consistent with the revised definition. No further action is requested.***
  - *The term ‘Proposed Groundwater Rules’ is recommended several times in this letter. For clarity, DWR recommends including in Section 1 of the [Second] Amended Plan the following definition: “ 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” adopted September 23, 2015. **The suggestion has been incorporated into the Second Amended Plan.***
  
- Section 1.10: Has been amended to recognize the status of lands partially covered by augmentation plans.
  - *Per 2007CW52, this amendment will help clarify the status of those lands and water uses. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 1.12 through 1.14: Clarification of the terms Subdistrict Land, Subdistrict Member, and Subdistrict Territory.
  - *These changes help clarify the meanings of specific terms used in the [Second] Amended Plan. **No action requested by DWR in November 8, 2016 comments letter.***



- Section 1.16 amends the definition of Surface Water Credit to reflect the boundaries of the Response Area No. 1 rather than the political boundary of the Subdistrict.
  - *DWR's analysis is based on the term 'Subdistrict No. 1 Response Area' and means 'Response Area No. 1' as illustrated in exhibit D of the Proposed Groundwater Rules. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 1.16 amends the explanation of which waters are eligible for Surface Water Credits.
  - *This amendment clarifies which waters brought into the Response Area are eligible for Surface Water Credits. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 1.17: the definition of “Sustainable Aquifer” has been amended to include the terms “from all sources” and “on a long-term basis”.
  - *This amendment clarifies that recharge to an aquifer may occur from several sources and that aquifer mining is defined on a long term basis. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 1.19:
- The definition of “Unconfined Aquifer Storage” has been more clearly defined as “the quantity of water within the Unconfined Aquifer” in conjunction with the suggestion made in the November 8, 2016 comments letter regarding “storage level” in Section 1.20. (“Unconfined Aquifer Storage” is now Section 1.24). **No action is requested.**
- Section 1.20:
  - *DWR suggests that the term “storage level in the Unconfined Aquifer” be amended to “level of the Unconfined Aquifer Storage” to be clear that the basis of the calculation is the Davis Engineering Service, Inc. study as noted in Section 1.19. **The suggestion has been incorporated into the Second Amended Plan.***
- Section 1.22 attempts to amend the definition of “Water Value” to reflect adjustments made by the BOM.
  - *The added language is confusing and appears circular with respect to Section 1.21 and Section 1.22. DWR recommends clarification of this provision prior to final approval of the [Second] Amended Plan. **The recommended clarification has been incorporated into the Second Amended Plan.***

## • **Section 2: Background and Basis:**

- Section 2.1.3 is amended to describe the need for a permanent reduction in Consumptive Use (80,000 acre-feet) to restore balance in the Unconfined Aquifer. Previously, the Plan of Water Management used reduction of irrigated acres (up to 40,000 acres) to describe the need to reduce consumption in the Subdistrict to recover the aquifer and attain sustainable levels of use.



- *Review of Exhibit 27 (07CW52) indicates the reduction of up to 40,000 irrigated acres to recover the unconfined aquifer to acceptable levels was based on an engineering analysis that determined that a reduction in consumption from the aquifer was necessary. The needed reduction in groundwater consumption (80,000 acre-feet) was expressed as acres irrigated (40,000 acres) in the Plan of Water Management. The basis for conversion of the needed reduction in consumption was 2.0 acre-feet per acre. Since the goal of recovering the aquifer is ultimately a reduction in consumption from the aquifer, this amendment more accurately reflects the goals of the [Second] Amended Plan. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 2.1.3.1 indicates that the BOM will adjust the acreage goals as necessary to achieve sustainability.
  - *This language is consistent with Paragraph 54 of the ruling in 07CW52, in which the court recognized that the estimate of 40,000 acres may require adjustment over time. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 2.2.2 clarifies that through the county land classification process some Subdistrict Lands may become Non-Benefited Subdistrict Lands. Previously this section indicated that the Subdistrict would request the county to add or delete land that is reclassified.
  - *This clarification recognizes the county processes and relieves the Subdistrict of the duplicative process of requesting that the county do what it already does. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 2.3 clarifies that contracts for groundwater use outside of the Subdistrict can only occur if the stream impacts can be determined using the Subdistrict No.1 Response Functions.
  - *DWR understands the term “Subdistrict No. 1 Response Functions” to mean the same as “Response Functions for Response Area No. 1”. To avoid confusion between the [Second] Amended Plan and the Proposed Groundwater Rules, DWR suggests that the following definition be added to and used in the [Second] Amended Plan: “Response Area No. 1 Response Functions are the Response Functions referred to under the Proposed Groundwater Rules as adopted and as they may be amended in the future.” **The suggestion has been incorporated into the Second Amended Plan.***
- Section 2.4.3: The bolding of selected text in this section was part of the 2007 and 2009 Plans of Water Management. Bolding has been removed from this section however, in this section and Sections 2.1.3 and 1.12 underlining has been added in limited areas.
  - *DWR concludes that the underlining is a simple clerical oversight from the drafting of the Second Amended Plans of Water Management. **The Subdistrict has clarified that the underlining is intentional and is used to emphasize the importance of the item.***
- Section 2.5.3: Regarding calculation of Surface Water Credit for Rio Grande Canal “Special Water” and for water rights from La Garita and Carnero Creeks used on lands



within the Subdistrict, this section is amended to include lands within Response Area No. 1. The section allows for such diversions to be treated the same as all other diversions by the Rio Grande Canal under certain circumstances. The amendment requires that an inclusion contract exist for those lands not in the Subdistrict Territory and allows for the same treatment to the extent that such diversions may increase the Unconfined Aquifer level.

- *In this review DWR understands that the term “Subdistrict No. 1 Response Area” means the same as “Response Area No. 1”. To avoid confusion between the [Second] Amended Plan and the Proposed Groundwater Rules, DWR suggests that the following definition be added to and used in the [Second] Amended Plan. “Response Area No. 1 is the Response Area No. 1 depicted in Exhibit D of the Proposed Groundwater Rules as promulgated or as may be amended in the future.”*  
**The suggestion has been incorporated into the Second Amended Plan.**
- *As in previous approvals, DWR recognizes that the treatment of diversions under water rights referred to in this section concerns only Surface Water Credit accounting by the Subdistrict for its assessment purposes. This section does not confer a water right for recharge to these water rights and such water shall not be counted as recharge that offsets groundwater withdrawals for purposes of an ARP.*  
**This recognition has not changed and is incorporated into the approval of the Second Amended Plan.**
- *DWR has received several comments on the requirement in section 2.5.3 “...to the extent such diversions may increase the Unconfined Aquifer Level...”. The commenter’s state that the limitation to diversions recharging only the Unconfined Aquifer is unfair and that it would be more appropriate for the [Second Amended] Plan to allow for compensation for diversions that recharge both the Confined and Unconfined Aquifers. The issue of confined and unconfined aquifers was discussed in the May 2010 decree for 07CW52. The court recognized that in order to recover the Confined Aquifer artesian pressures within the Subdistrict, it will be necessary to recover the Unconfined Aquifer in the Subdistrict and that there could eventually be a subdistrict for Confined wells (May 2010 decree 07CW52, Para 310). However DWR notes that the amended provision is consistent with the specific goal to recover the Unconfined Aquifer as expressed on both the Plan of Water Management and the [Second] Amended Plan.*  
**No action requested by DWR in November 8, 2016 comments letter.**
- Section 2.5.4 has been amended to state that water rights purchased by the Subdistrict will also be used to protect the irrigation supply by replacement of injurious depletions to surface water rights.
  - *This amendment clarifies that water purchases can be used as replacement sources such that the practice protects and enhances the irrigation supply for groundwater users in the Subdistrict. DWR cautions that approval of this [Second] Amended Plan does not eliminate the need to pursue any needed change of use for those water rights.*  
**DWR reiterates that this (October 2017) approval does not eliminate the**



**need to pursue any needed change of use for water rights used to remedy injurious depletions.**

- Section 2.5.6 has been amended to include the terms “Subdistrict Lands” and “groundwater withdrawals.”
  - *This amendment eliminates potential confusion caused by previous imprecise language. No action requested by DWR in November 8, 2016 comments letter.*
- Section 2.6 is amended to reflect the requirement to address injurious depletions caused by past groundwater withdrawals in accordance with the May, 2010 decree in 2007CW52, as well as post-plan (delayed) stream depletions that will occur in subsequent years as determined by the RGDSS groundwater model.
  - *This amendment is consistent with the ruling on these issues in 07CW52. No action requested by DWR in November 8, 2016 comments letter.*

**Section 3: Description of the Plan of Water Management:**

- Section 3.1.1 has been updated to use the newer terminology from Section 1.
  - *This amendment eliminates potential confusion caused by previous imprecise language. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.1.2 was amended to include surface water as noted in sections 2.5.3 and 4.6.2.
  - *This clarifying amendment will avoid confusion for the users in calculating of the Variable Fee. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.1.2.1 now references the Water Value process in Section 4 and Sustainable Aquifer levels required in 3.4.2.
  - *This amendment clarifies the process for setting the Water Value and identifies the specific section related to Sustainable Aquifer Level. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.1.2.3 deletes the statement “...as calculated by the Subdistrict Board of Managers...”.
  - *This deletion removes redundant language regarding the calculation of Surface Water Credits which is specifically addressed in Section 4. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.2.1.8 has been added to the Acts and Improvements section. This new subsection references economic incentives for conservation activities.
  - *This addition provides another tool for the Subdistrict to advance the goals of the [Second] Amended Plan. No action requested by DWR in November 8, 2016 comments letter.*



- Section 3.2.3 has been amended to include the requirement that delayed stream depletions calculated to occur in subsequent years must be replaced prior to dissolution of a Subdistrict.
  - *This addition is consistent with the findings of the court regarding lagged depletions in the May 2010 Decree in 07CW52 and is consistent with the Proposed Groundwater Rules. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.3.1 has changed ‘replace’ to ‘remedy’.
  - *This amendment is consistent with §37-92-501(4)(b)(I)(B) and the Proposed Groundwater Rules. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.3.2 refers to how depletions are calculated in the absence of Rules and has been amended to require the Subdistrict to ensure a methodology exists to remedy all injurious depletions from Subdistrict pumping.
  - *DWR is unclear about the meaning of this statement. Will the Subdistrict ensure that it has a way to remedy injurious depletions or is the Subdistrict ensuring that there will be a methodology to calculate depletions? The Second Amended Plan has clarified that the Subdistrict will ensure that it has a method to remedy injurious depletions.*
- Section 3.3.3.1 describing a monitoring network for the Hydraulic Divide, which is one of the activities the Subdistrict has undertaken, has been amended to include “...or to assist in refining the RGDSS Groundwater Model or replacement technology.”
  - *The addition of ‘or’ indicates the decision may be made to not maintain the network of Hydraulic Divide Wells. DWR notes that in the 2009 Plan of Water Management the activity could be considered optional (may be undertaken) and this amendment is consistent with the court’s recognition and cautions concerning efforts regarding the Hydraulic Divide (May 2010 07CW52 Paragraph 48). DWR notes that continued monitoring and reporting on the Hydraulic Divide, as identified by the Water Court in 2007CW52, remains unchanged in the Appendix 1- Section 8 and in Appendix 5 of the Second Amended Plan. No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.3.3.7 has been added to recognize agreements which remedy injurious depletions by means other than providing water.
  - *This addition is consistent with §37-92-501(4)(b)(I)(B). No action requested by DWR in November 8, 2016 comments letter.*
- Section 3.4 has been amended in various areas to reflect the need to reduce consumptive use of groundwater by 80,000 acre-feet/year rather than the narrower objective of reducing acreage by 40,000 acres.
  - *The phrases “reduce the average amount of groundwater withdrawals” and “reduction in annual groundwater withdrawal” are inconsistent with section 2.1.3 and 3.4.3.3. DWR recommends clarifying that the reduction is in consumptive use by*



*inserting the term ‘consumptive use of’ between ‘amount of’ and ‘groundwater withdrawals’ in the 4<sup>th</sup> line of 3.4.1, the 3<sup>rd</sup>, 6<sup>th</sup> and 9<sup>th</sup> lines in 3.4.4, and in the 3<sup>rd</sup> line of 3.4.5 to be consistent”. **The Second Amended Plan incorporates this requirement.***

- Section 3.4.1 amending the section to clarify that reduction of 80,000 acre-feet/year of consumptive use is consistent with the retirement of 40,000 acres.
  - *See needed correction listed in 3.4 above. **The Second Amended Plan has incorporated the above changes.***
  
- Section 3.4.2 has been amended to note that the storage level of January 1, 1976 was a projected value.
  - *This amendment clarifies that the Davis Engineering Inc. initial starting point for the Unconfined Aquifer Storage Levels is the basis for measurement of the Sustainable Aquifer Level. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 3.4.2 has been amended to reflect the timeline per 2007CW52.
  - *This clarifies to the users the dates required under this objective. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 3.4.3.1 has been amended to include the operation and maintenance of a CREP program.
  - *The 2009 Plan of Water Management merely required an application for such program. Since an application has been made and approved this amendment states that the program will be managed and paid for going forward. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 3.4.3.3 has been amended to require a reduction in consumptive use of groundwater withdrawals of up to 80,000 acre feet/year, which is approximately equivalent to 40,000 acres of dry-up.
  - *As noted in section 2.1.3, this amendment restates the original metric in terms of consumptive use of groundwater. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 3.4.4 which sets out benchmarks for reducing the number of irrigated lands has been amended to include the alternative of reducing groundwater consumption in each 5 year increment.
  - *See three needed corrections listed in 3.4 above. **The Second Amended Plan has incorporated the above changes.***
  
- Section 3.4.5 amends the section to clarify that a reduction in groundwater consumption of 80,000 acre-feet/year is consistent with the retirement of 40,000 acres.
  - *See needed correction listed in 3.4 above. **The Second Amended Plan has incorporated the above changes.***



- Section 3.4.7 uses the defined term Sustainable Aquifer to replace sustainable level and adds some language broadening the considerations with managing the sustained aquifer.
  - *This provides that consistent terms are used in the document. The addition of other management considerations, including replacement water supplies and agreements to remedy injurious depletions, are pertinent to the long term management of the aquifer. **No action requested by DWR in November 8, 2016 comments letter.***

#### **Section 4: Subdistrict Costs, Fees and Charges:**

- Section 4.1, 4.2, and 4.3
  - *Edits to these sections clarify terms and appear mostly editorial. **No action requested by DWR in November 8, 2016 comments letter.***
- Section 4.5.1 this section has been amended to recognize that fee adjustments will be as required by the [Second] Amended Plan and in response to the demands of the ARP.
  - *Since economic and water demands can fluctuate year to year the demands of the ARP will be a consideration in any adjustment to the Annual Fee. **No action requested by DWR in November 8, 2016 comments letter.***
  - *The term “Annual Fee” has been changed to “Annual Service and User Fee”. **This change makes the term consistent throughout the document. No action is requested.***
- Section 4.5.1.1 and 4.5.1.2 the term ‘Subdistrict Acre’ is capitalized.
  - *This term has not been defined. **The Second Amended Plan has addressed this issue in some, but not all, places by referring to “an acre of Subdistrict Land”. DWR considers this a clerical oversight that has no other meaning.***
- Section 4.6 amends the calculation year for assessments. Currently the District collects data in the fall, calculates use, determines assessments and submits data to the county by December 1. DWR understands that this has been a difficult process due to the very short timeframe to collect and process the data. The proposed amendments indicate that the Subdistrict will be doing the assessment one year in arrears.
  - *Implementation of this [Second] Amended Plan indicates that the Subdistrict could have no income for a year. Please provide information on the Phase in of this program to assure financial stability during the implementation of the [Second] Amended Plan. **Review of the Subdistrict #1 portfolio of water (2017 ARP) indicates sufficient water to remedy injurious depletions under current conditions for at least one year. However DWR has not reviewed the annual financial commitments of the Subdistrict. Therefore the approval of this Second Amended Plan is contingent upon the Subdistrict to:***
    - **approve and implement Rules and Regulations to transition to the new process and**
    - **assure DWR that the Subdistrict has sufficient funding sources to operate during the transition year.**



- Section 4.6.1 amends this section to reflect changes to the year/billing practice changing from October 31 and setting May 1 as the date to determine Total Groundwater Pumping.
  - *This section should be clarified to reflect that the data collected on May 1 is from the previous Water Administration Year pumping data (Nov 1- Oct 31). **The Second Amended Plan now utilizes the term Water Administration Year in this section.***
  
- Section 4.6.1.3 has been amended to include contract well data.
  - *This amendment is consistent with the amendments recognizing the Response Area No. 1 and the Subdistrict's contracting authority. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 4.6.1.4 is added to provide notice of total groundwater pumped for each farm.
  - *DWR recommends that the term 'withdrawn' be substituted for 'pumped' for consistency in the [Second] Amended Plan. **The Second Amended Plan has utilized the term 'withdrawn' in the referred section 4.6.1.3.***
  
- Section 4.6.2.2 has been amended from October 31 to reflect a date of May 1 similar to the change in Section 4.6.1
  - *This clarification is consistent with the intent of this section. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 4.6.2.2.1 for calculating the 5 year average, this section still references the current water year plus the 4 previous years.
  - *Since data for the current water administration year will not be available May 1, DWR suggests this section be amended to calculate the 5 year average based on the previous 5 years. **The Second Amended Plan incorporates this suggestion.***
  
- Section 4.6.2.2.2 the section following the previous (Section 4.6.2.2.1) has the same section number and should be renamed. DWR has determined that, for this approval, the duplicate section numbering is a clerical oversight and has no other meaning.
  
- Section 4.6.3 this section capitalizes the term "Total Groundwater Pumped".
  - *This term is not defined. DWR notes that the term "groundwater pumped" is used in multiple areas. Given other areas where "pumped" has been changed to "withdrawn", DWR suggests, for clarity, consolidating language to use "withdrawn" for "pumped" or to define Groundwater Pumped as groundwater withdrawn. (see: 4.12, 4.6.1.3, 4.6.5.1,4.6.5.3). **The Second Amended Plan incorporates these suggested changes.***
  
- Section 4.6.5.2 references Section 4.6.2.2.1, which there are currently two sections with this number, the reference should be made to Section 4.6.2.2.1 and Section 4.6.2.2.2. DWR has determined that, for this approval, the duplicate section numbering is a clerical oversight and has no other meaning.



- Section 4.6.6 has been added to require that in order to receive Surface Water Credit, Wells must either be Subdistrict Wells or have a contract with the Subdistrict.
  - *This amendment will clarify the process the Subdistrict will use to recognize potential Surface Water Credits in the area between the original Subdistrict No 1 Boundary and the Response Area No. 1 boundary. **No action requested by DWR in November 8, 2016 comments letter.***
  
- Section 4.7.2 notes that fees will be assessed one year in arrears.
  - *Implementation of this [Second] Amended Plan suggests that the Subdistrict could have no income for a year. DWR has received comments suggesting this issue should be clarified. Please provide information on the phase-in of this program to assure financial stability of the transition from the Plan of Water Management to the [Second] Amended Plan. **The Second Amended Plan section 4.7.2 requires that the Subdistrict must adopt, and the RGWCD must approve, Rules and Regulations addressing Phase-in procedures for this change. The section indicates that assessments will continue under the current system until the Rules and Regulations are adopted and approved. After adoption, fees will be assessed under the new procedure. DWR recognizes that the Rulemaking process is specifically directed to resolve the phase-in question noted in our November 8, 2016 comment. DWR approval of this proposed assessment schedule is conditional upon implementation of Section 4.7.2 as noted in the conditions of approval below. DWR notes that approval of an Annual Replacement Plan (ARP) under this Second Amended Plan may be contingent on the Subdistrict’s demonstrating availability of funds and water or remedies sufficient to operate the ARP through the fee transition year.***
  
- Section 4.7.2.2 is part of the example fees process. This section states that all groundwater withdrawals for the calendar year are reported to DWR.
  - *This is inconsistent with DWR’s water administration year data collection and may present problems in calculations when pumping has occurred in November of a calendar year. DWR recommends this reference be changed to “Water Administration Year.” **The Second Amended Plan incorporates this recommendation.***
  
- Section 4.7.2.3 has been added as part of the example on how fees will be assessed.
  - *This statement requires DWR to provide the BOM with information by a certain deadline. DWR suggests that this statement be modified to have the BOM request and receive available information by a certain date that meets the BOM’s needs. **The Second Amended Plan incorporates this suggestion.***
  
- Section 4.9 has been amended to note that the BOM will not release a Confined Aquifer well from the Subdistrict unless that well has a decreed plan for augmentation or has been included in another Plan of Water Management.
  - *This is consistent with the goals of the Plan of Water Management as enumerated in paragraph 374 (5) of the May 2010 decree for 07CW52 and in Section VI of Plan of*



**Water Management. No action requested by DWR in November 8, 2016 comments letter.**

- Section 4.13, appeals of assessments, has been amended to require that that Subdistrict be notified of appeals within a certain time period.
  - *This amendment is consistent with the financial operation of the [Second] Amended Plan. No action requested by DWR in November 8, 2016 comments letter.*

### **Section 5: Anticipated Benefits**

There were no amendments to this section.

### **Section 6: Subdistrict Lands Served by the Confined Aquifer**

- Section 6.1 and 6.2 require that irrigated land within the Subdistrict that receives all or a portion of its water supply from the Confined Aquifer will be considered as part of the Plan of Water Management; however the owners of that land may elect to have that land reclassified. This section has been amended to clarify that reclassification will be allowed when those lands have a final decreed plan for augmentation or have been included in another Plan of Water Management to replace injurious stream depletions and achieve sustainability.
  - *This clarification is consistent with the paragraph 374 (5) of the May 2010 decree for 07CW52 and is consistent with the Plan of Water Management Section VI which recognized that lands may be entitled to be reclassified “if and when augmentation is required...” No action requested by DWR in November 8, 2016 comments letter*

### **Appendices 1 – 5:**

- Appendix 1: Annual Replacement Plan:
  - *This section should be updated to reflect the use of the Response Area No. 1 Response Functions and the timeframe for Model/Response Function updates consistent with the Proposed Groundwater Rules. **The Second Amended Plan has revised Appendix 1 consistent with the November 8, 2016 recommendations. This appendix originally included a section entitled “Use of the RGDSS Groundwater Model to Derive Response Functions.” That section has been eliminated and, as a substitute, the Second Amended Plan now relies on the Response Functions as provided under the Groundwater Rules promulgated by DWR and currently before the Water Division 3 Water Court. DWR notes that the derivation process originally outlined in the Plan of Water Management - Appendix 1 is the same process used in developing the Response Functions under the Proposed Groundwater Rules. The Appendix also reflects that the Response Functions will be updated pursuant to the Proposed Groundwater Rules.***
- Appendix 2: Surface Water Credit:
  - *It appears that the new timeframes for calculating Surface Water Credit and Budgets will change with this [Second] Amended Plan. These changes should be incorporated*



*into this Appendix. The Second Amended Plan has revised Appendix 2 consistent with the November 8, 2016 recommendation. Specifically, the Appendix has been amended to provide for the Board of Managers to annually calculate the Surface Water Credit allocated to each Farm or Farm Unit by May 1 rather than October 1 and to require contracts of exchange, trade, lease or sale of Surface Water Credits between water users to be reported with the water users' annual Farm Unit Data by June 1 rather than April 15.*

- Appendix 3: Subdistrict Wells.
  - *Paragraph 84 of the May 2010 decree for 07CW52 indicates that the List of Subdistrict Wells will change in the future and that “The Subdistrict must report each Plan Year’s updated Subdistrict Well Database to the State and Division Engineers as part of any Annual Replacement Plan and must incorporate all of the changes to the Subdistrict Well Database.” Also requirement 11 of the decree recognizes that the Subdistrict well list will change and be provided with each ARP. As part of this [Second] Amended Plan the Subdistrict must attach an updated Subdistrict Well list to this Plan. DWR recognizes that the November 8, 2016 comment above may have been confusing regarding attaching an updated Subdistrict Well list to this Second Amended Plan. In its February 2009 Order, the Court held that any Amended Plan must include an inventory of Subdistrict Wells and that “[t]his inventory should include the standard identifications used in the State Engineer’s Hydrobase, such as well permit number or State Engineer receipt, adjudication case(s), Aquamap/GPS and legal descriptions of location, depth, aquifer(s) from which it draws, decreed amount, date of priority, use, irrigated acreage, crop patterns, irrigation practices and such other specific identification data as the subdistrict and State Engineer believe appropriate” (2007CW52 pg 28). The Plan of Water Management - Appendix 3 contained the baseline information required by the court decree. The Second Amended Plan - Appendix 3 contains a list of wells by WDID<sup>1</sup>. The State Engineer considers that the Second Amended Plan is relying on the Plan of Water Management well list as amended by the Second Amended Plan - Appendix 3 list of wells covered by the Second Amended Plan. The baseline information for each WDID is relatively static. Therefore the State Engineer is comfortable that the submitted list is a subset of the Plan of Water Management - Appendix 3 and is sufficient for the purposes of considering the Second Amended Plan.*
  
- Appendix 4: Budget and Accounting.
  - *This Appendix should be revised to reflect the ‘year in arrears’ concept embodied in the Second Amended Plan. The Second Amended Plan has revised Appendix 4 to remove obsolete provision 3. DWR has further reviewed DWR’s November 8, 2016 comment and determined that the comment was unnecessary as the Plan of Water Management - Appendix 4 and Second Amended Plan - Appendix 4 both include section 2c which provides for amending the means by which revenue is generated.*

<sup>1</sup> WDID: a unique identifier used by DWR to tabulate structures in its database.



- *Appendix 5: Operational Timelines.*
  - *This Appendix should be revised to reflect the amended timelines. Specifically, Fee Calculation Timelines should be amended to reflect the process in the [Second] Amended Plan. The section titles “Use of RGDSS Groundwater Model to Derive Response Functions” should be updated to reflect the process and timelines in the Proposed Groundwater Rules. **The Second Amended Plan has revised Appendix 5 schedules as follows:***
    - **The “Fee Calculation Requirements” schedule has been amended to incorporate the planned revised diversion records accounting cycle. Under the item “Obtain following data for previous year from Division of Water Resources”, ‘well pumping’ records has been added. The Timeline items pertaining to obtaining preliminary ditch diversion records and requesting Subdistrict Well Owners to submit early well meter readings have been deleted. DWR considers the term ‘well pumping’ to mean ‘well withdrawals’ for consistency with terminology used in the Second Amended Plan.**
    - **The section “Use of RGDSS Groundwater Model to Derive Response Functions” was amended to delete the detailed Response Function derivation procedures and now relies on the Response Functions as developed for the Proposed Groundwater Rules. DWR notes that the remaining language “Determination of stream depletions for purposes of deriving response functions by use of the Subdistrict No. 1 Response Functions” should read “Determination of stream depletions by use of the Response Area No. 1 Response Functions.” DWR considers the undeleted words “for purposes of deriving response functions” to be an editorial oversight of no consequence.**
    - **The schedule “Procedure and timelines to replace stream depletions” was amended to include mention of forbearance agreements within the Apr 1 through Nov 30 replacement to the Rio Grande schedule.**

### Approval Conditions

**Pursuant to Colorado Revised Statute section 37-92-501(4)(c) the Office of the State Engineer has considered the amendments to the Plan for Water Management and hereby approves the Second Amended Plan subject to the following terms and conditions:**

1. Section 2.5.3: As in previous approvals, DWR recognizes that treatment of diversions under the water rights referred to in this section concerns only Surface Water Credit accounting by the Subdistrict for its assessment purposes. This section does not confer a water right(s) for recharge to these water rights and such water shall not be counted as recharge that offsets groundwater withdrawals for purposes of an ARP.
2. Section 2.5.4: Approval of the Second Amended Plan does not eliminate the need for the Subdistrict to pursue any needed change of use for water rights purchased by the Subdistrict to remedy injurious depletions as described in this section.



3. In Section 4.5.1.1 and 4.5.1.2 the term ‘Subdistrict Acre’ is capitalized, although the term has not been defined in Section 1. However, ‘Subdistrict Land’ is a defined term and the term ‘an acre of Subdistrict Land’ has replaced some, but not all, uses of the term ‘Subdistrict Acre’. DWR considers this a clerical oversight that does not have a substantial effect on the Second Amended Plan.
4. The Second Amended Plan sections 4.6 and 4.7 provide for changing the fee assessment schedule. Section 4.7.2 requires that the Subdistrict must adopt, and the RGWCD must approve, Rules and Regulations addressing phase-in procedures for this change. The section states that assessments will continue under the current system until the Rules and Regulations are adopted and approved. After adoption, fees will be assessed under the new procedure. It is unclear if or how the phase-in will provide revenue in the transition year. DWR recognizes the Rulemaking process is specifically directed to resolve the phase-in question noted here and in our November 8, 2016 comment. The Second Amended Plan is approved under the existing assessment schedule. Approval of the proposed assessment schedule is conditional upon implementation of Rules and Regulations addressing implementation of Section 4.7.2 in a manner which assures the Subdistrict continues to meet its obligations to remedy injurious depletions and recover the aquifer. DWR notes that approval of an Annual Replacement Plan (ARP) under this Second Amended Plan may also be contingent on the Subdistrict demonstrating availability of funds and water or remedies sufficient to operate the ARP through the fee transition year..
5. There are two sections numbered as 4.6.2.2.1. DWR considers this a clerical oversight that does not have a substantial effect on the Second Amended Plan.
6. Appendix 3: Subdistrict Wells. In its February 2009 Order, the Court held that any Amended Plan include an inventory of Subdistrict Wells and that “[t]his inventory should include the standard identifications used in the State Engineer’s Hydrobase, such as well permit number or State Engineer receipt, adjudication case(s), Aquamap/GPS and legal descriptions of location, depth, aquifer(s) from which it draws, decreed amount, date of priority, use, irrigated acreage, crop patterns, irrigation practices and such other specific identification data as the subdistrict and State Engineer believe appropriate.” (2007CW52 pg 28). Paragraph 84 of the May 2010 decree in 07CW52 indicates that the List of Subdistrict Wells will change in the future and that “[t]he Subdistrict must report each Plan Year’s updated Subdistrict Well Database to the State and Division Engineers as part of any Annual Replacement Plan and must incorporate all of the changes to the Subdistrict Well Database.” Also, requirement 11 of the decree recognizes that the Subdistrict Well list will change and must be provided with each ARP. The Plan of Water Management - Appendix 3 contained the information required by the court decree. The Second Amended Plan - Appendix 3 contains a list of wells by WDID. The State Engineer considers that the Second Amended Plan is relying on the Plan of Water Management – Appendix 3 well list as amended by the Second Amended Plan - Appendix 3 list of WDID’s submitted. The base information for each WDID is relatively static. The State Engineer concludes that the submitted list is a subset of the



Plan of Water Management Appendix 3 and is sufficient for the purposes of approving the Second Amended Plan.

The Office of the State Engineer will publish notice of this approval in the same manner as approved by the Water Court in the May 22, 2009 order in newspapers in Alamosa County, Saguache County, Rio Grande County, Conejos County, and Costilla County and in the Water Court Resume for Water Division 3.

The Second Amended Plan, operated under the conditions above, are improvements in the Plan of Water Management and should facilitate the future operations of Subdistrict No. 1. Thank you for your efforts to update and amend Subdistrict No. 1's Plan of Water Management.

Sincerely,



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

cc: Division 3

