

RULES AND REGULATIONS

SPECIAL IMPROVEMENT DISTRICT NO. 2 OF THE RIO GRANDE WATER CONSERVATION DISTRICT

ADOPTED _____, 2017

Table of Contents

1.0	SCOPE OF THESE RULES AND REGULATIONS	1
2.0	PUBLIC RECORDS	4
3.0	MEETINGS AND NOTICE OF DECISION-MAKING	6
4.0	BUDGETING AND ACCOUNTING	7
5.0	TIMING AND CALCULATION OF ANNUAL service and user FEE ASSESSMENTS...	8
6.0	ALTERNATIVE METHOD OF MEASUREMENT FOR SUBDISTRICT WELLS NOT METERED UNDER THE STATE'S GROUNDWATER MEASUREMENT RULES FOR WATER DIVISION NO. 3	13
7.0	HEARING AND APPEALS PROCEDURES REGARDING CHALLENGES TO CALCULATION OF ANNUAL SERVICE AND USER FEES	14
8.0	CONTRACTS	23
9.0	ANNUAL REPORT AND ANNUAL REPLACEMENT PLAN REQUIREMENTS	26

1.0 SCOPE OF THESE RULES AND REGULATIONS

1.1 Authority. These Rules and Regulations are adopted by the Board of Managers of Special Improvement District No. 2 of the Rio Grande Water Conservation District in accordance with section 37-48-112(2) of the Colorado Revised Statutes and were approved by the Rio Grande Water Conservation District Board of Directors on _____, 2017.

1.2 Effectiveness. These Rules and Regulations become effective on and after the date of adoption, and supersede all former Rules and Regulations which are or may be in conflict with these Rules and Regulations.

1.3 Amendment. These Rules and Regulations may be amended from time to time in accordance with the law.

1.4 Titles. Titles used in these Rules and Regulations are for convenience only and shall not be considered in interpreting their meaning or scope.

1.5 Severability. If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application, and to this end, the various provisions of these Rules are declared to be severable.

1.6 Definitions. As used in these Rules and Regulations, unless the context otherwise requires:

1.6.1 “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.

- 1.6.2 “Board of Directors” means the Board of Directors of the Rio Grande Water Conservation District.
- 1.6.3 “Board of Managers” means the Board of Managers of Special Improvement District No. 2 of the Rio Grande Water Conservation District (“Subdistrict No. 2”).
- 1.6.4 “Contract Administration Fee” means a charge that is assessed by the Subdistrict to an applicant for a contract to permit a non-Subdistrict well to be included in the Subdistrict’s Plan of Water Management that is in addition to the Administrative Fee for the Subdistrict.
- 1.6.5 “Contract Fee” means the Contract Administration Fee and the Contract Inclusion Fee.
- 1.6.6 “Contract Inclusion Fee” means a charge that is assessed by the Subdistrict that is in addition to the Administrative Fee, the CREP Fee and the Variable Fee. It may reflect an amount required to cover the cost of future replacement obligations associated with the Contract Well.
- 1.6.7 “Contract Well” is a well that is included via a formal agreement between the Subdistrict and the well owner to include a groundwater well that is not a Subdistrict Well, as defined by the Plan of Water Management, within the Annual Replacement Plan of the Subdistrict. To be included, a Contract Well must not alter the location of the ARP’s replacement obligations and must agree to pay fees assessed by the Subdistrict.
- 1.6.8 “District” means the Rio Grande Water Conservation District.

- 1.6.9 “General Manager” means the General Manager of the Rio Grande Water Conservation District.
- 1.6.10 “Groundwater Measurement Rules” has the same definition as in the Plan of Water Management.
- 1.6.11 “Plan of Water Management” or “Plan” means the official plan of the Subdistrict, subject to Court approval, pursuant to section 37-48-126, C.R.S.
- 4.6.12 “Program Manager” means the person employed by the District to manage, among other things, the Subdistrict’s Plan of Water Management, under the direction and supervision of the General Manager.
- 1.6.13 “Response Area” has the same meaning as that defined by the State’s Groundwater Rules.
- 1.6.14 “Response Function” has the same meaning as that defined by the State’s Groundwater Rules.
- 1.6.15 “Subdistrict” or “Subdistrict No. 2” means Special Improvement District No. 2 of the Rio Grande Water Conservation District.
- 1.6.16 “Subdistrict Lands” means all lands within the exterior boundaries of the Subdistrict as decreed by the District Court in and for Rio Grande County, Case No. 15CV30050, March 1, 2016.
- 1.6.17 “Subdistrict Member” has the same definition as in the Plan of Water Management.
- 1.6.18 “Subdistrict Wells” has the same definition as in the Plan of Water Management. Wells qualified to receive the benefits afforded by the Plan are those wells subject to the Rules Governing the Withdrawal of Groundwater in Water Division No. 3

(Rio Grande Basin) and Establishment of the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights as promulgated by the Colorado Division of Water Resources September 23, 2015 and as may be decreed by the Water Court in and for Water Division No. 3 and as they may be modified in the future (“Groundwater Rules”). At the time of the adoption of these Rules and Regulations, wells exempt from the Groundwater 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 garden and lawns.

1.6.19 “Water Administration Year” has the same definition as in the Plan of Water Management.

2.0 PUBLIC RECORDS

2.1 Enactment. The District and the Subdistrict have adopted this section 2.0, pursuant to the provisions of the Colorado Open Records Act, for the protection of the public records of the District and the Subdistrict and in order to permit their inspection by persons entitled to examine and copy the information therefrom in an orderly fashion and free from unnecessary interference with the regular discharge of the duties of the official custodian of the District and the Subdistrict.

2.2 Custodian. The Board of Directors shall designate the official custodian of the public records of the District and the Subdistrict. The official custodian may make policies with reference to the inspection of the public records of the Subdistrict, not inconsistent with the Colorado Open Records Act and these Rules and Regulations, as are reasonably

necessary for the protection of such records and the prevention of unnecessary interference with the discharge of the duties of the custodian.

- 2.3 Inspection of Public Records. All public records of the District will be open for inspection at the times designated herein, except as provided in the Colorado Open Records Act.
- 2.4 Request for Inspection. Request for inspection and for copies of any public records of the Subdistrict must be made to the official custodian in writing and set forth the particular documents or record desired to be inspected or copied. If such document or record is available for inspection and copying, the official custodian will notify the applicant of the date, time and location where the material can be inspected or copied. If such public record is not available from the Subdistrict, the applicant shall be notified of this fact.
- 2.5 Times for Inspection. Inspection of the Subdistrict's public records may be made at the District's office only during the hours from 9:00 a. m. to 4:00 p.m., Monday through Friday, except on holidays, at an hour specifically set by the official custodian for each particular request for inspection.
- 2.6 Copies, Printouts, or Photographs of Public Records. In any case where a person has the right to inspect a public record under the control of the official custodian, and requests in writing that the Subdistrict furnish copies, printouts or photographs thereof, the official custodian shall notify the applicant if such record is available for copying, and may furnish such copies, printouts, or photographs for a reasonable fee, to be set by the official custodian, which fee shall not exceed One Dollar and Twenty-Five Cents (\$1. 25) per page, unless the actual cost exceeds that amount, in which case the actual cost may be charged. For 8 ½ x 11 paper copies, the fee shall be Fifty Cents (\$.50) per page.

2.7 Exemptions. No person shall be permitted to inspect or copy any records of the District if, in the opinion of the official custodian, such inspection or copying would come within the prohibition of one or more exceptions stated in section 24-72-204 of the Colorado Open Records Act.

3.0 MEETINGS AND NOTICE OF DECISION-MAKING

3.1 Meeting Location The Subdistrict Board of Managers will meet at the principal office of the District unless another location is designated and noticed.

3.2 Regularly Scheduled Meetings. The Annual Meeting of the Board of Managers will be on the first Tuesday in February. Quarterly meetings will be held on the first Tuesday of February, May, August and November. Whenever the date set for a regular meeting of the Board of Managers falls upon a legal holiday, that meeting shall be held on the Wednesday following such holiday at the hour and place specified for the regular meeting. Meetings of the Board of Managers are public and proper minutes of the proceedings of said board must be preserved and will be open to any elector of the District during business hours. Regularly scheduled meetings shall be advertised by notice published once in a newspaper or newspapers which collectively provide general circulation throughout the District at least ten days before such meeting.

3.3 Special Meetings. Special Meetings may be called by the President of the Board of Managers or by any three directors. Such meetings will be considered to be properly held if all members of the Board of Managers received written notice of the time and place of such meeting by regular United States mail at least three (3) days in advance of the meeting. Notification by E-mail may also be substituted for mail if a Board member so specifies in writing.

- 3.4 Notice. Public notice of all regular and special meetings will be given by posting the same in the manner provided by law at least twenty-four hours before the meeting.
- 3.5 Notice Regarding Annual Replacement Plan Meeting(s). The Subdistrict must publish notice of a meeting to take action on the terms or the approval of any Annual Replacement Plan at least seven (7) days before the meeting is to be held on the District's website (www.rgwd.org) and in a local newspaper of general circulation. The proposed Annual Replacement Plan shall also be posted on the website, with the understanding that modifications of the proposal may occur during the meeting. A copy of the proposed Annual Replacement Plan and the Notice described above shall be provided either by first class mail or email to everyone on the Division 3 substitute supply plan notification list established pursuant to section 37-92-308(6).
- 3.6 Agendas. The Subdistrict, at the time it posts notice of each regularly scheduled or special meeting, must post a draft agenda of the meeting outside of the principal office of the District and on its website (www.rgwd.org). Paper copies of the draft agenda will be available on request at the District's office.

4.0 BUDGETING AND ACCOUNTING

- 4.1 On or before September 15th of each year, the Subdistrict Board of Managers must submit a detailed annual budget to the District's Board of Directors for review and approval. Once approved, the Subdistrict budget will be included in the District's annual budget which is filed with the State of Colorado.
- 4.2 A preliminary annual budget must be prepared by the staff of the District and presented to the Board of Managers for review by July 15th of each year. The preliminary budget will be reviewed by the Board of Managers at a public meeting on or before the August quarterly meeting of the Board of Managers. The Board of Managers may hold additional

meetings on the budget, if deemed necessary, before submitting the budget to the District Board of Directors.

4.3 To allow for public comment on the Subdistrict's annual budget, notice must be posted at least ten days prior to any Board of Managers meetings regarding the budget. Notice must be published once in a newspaper or newspapers which collectively provide general circulation throughout the Subdistrict and also on the District's website. Paper copies of the annual budget will be available on request at the District's office.

4.4 The annual budget must contain detailed descriptions of all anticipated expenditures and revenues necessary to meet the goals and objectives of the Plan and for the operation of the ARP. The Subdistrict shall limit expenditures and revenues to the amounts specified in the annual budget unless amended.

4.5 If the Board of Managers deems it necessary to amend the budget, it will be done in accordance with the provisions of Colorado Law. If an amended budget is prepared, the Subdistrict will post notice in the same manner as for the annual budget and allow for public comment before submitting the amended budget to the District for approval.

5.0 TIMING AND CALCULATION OF ANNUAL SERVICE AND USER FEE ASSESSMENTS

5.1 The Subdistrict requires sufficient revenues to fund the annual costs of managing and operating the Subdistrict Plan of Water Management and Annual Replacement Plan. The Subdistrict will assess an Annual Service and User Fee, comprised of the Administration Fee and the Pumping Fee, upon all Subdistrict Members in the manner described for in Section 4.0 of the Plan of Water Management.

5.2 All Annual Service and User Fees will be assessed one year in-arrears and will be assessed to the then current owners of Subdistrict Lands at the time the Fees are certified

to the County Treasurers. The Subdistrict will update ownership information for all Subdistrict Lands on an annual basis by requesting the then current information from the Assessor of each county which encompasses some portion of the land within the Subdistrict's Boundary. The request for updated information will occur in October of each year to allow the Subdistrict time to update the records before the Annual Service and User Fees are certified to the counties.

- 5.3 The Subdistrict will mail out a request for Farm Plan updates to each Subdistrict Member on record with the Subdistrict by February 1st of each year. Subdistrict Members will be asked to update the following information: Subdistrict Land ownership; Subdistrict Well ownership; Subdistrict Well application types (Sprinkler, Flood, Other); allocation percentages for each well that can legally benefit multiple parcels of land within the Subdistrict's boundaries and/or is owned by multiple Subdistrict Members; and, any other information that is deemed necessary for the Subdistrict to properly assess the Annual Service and User Fees. Farm Plan updates will be due back to the Subdistrict office no later than March 31st of each year to allow the Subdistrict sufficient time to update records before the Annual Service and User Fees are completed for that year.
- 5.4 The Subdistrict Board of Managers must certify the amount of the Annual Service and User Fees, as well as any Contract Fees, if any, assessed against Subdistrict Lands to the counties for collection by December 1 of the year preceding collection, or otherwise in accordance with the requirements of the counties.
- 5.5 The Subdistrict will review the list of Subdistrict Wells at the beginning of each ARP year and compare it to the then current records of the Division of Water Resources. Any

change to any Subdistrict Well will be applied to the Subdistrict's Well List before beginning the process to calculate the then current year's assessments.

5.6 Calculation of the Annual Administration Fee. The following steps will be followed when calculating the annual Administrative Fees for the Subdistrict:

5.6.1 At the beginning of each year, the Subdistrict will review the records of the Division of Water Resources to determine the status of every Subdistrict Well (WDID), as defined in the Plan in section 4.5.1.2, during the prior year's ARP. The status of the Subdistrict Well during any ARP Year will determine which tier, active or inactive, the Subdistrict Well (WDID) will be classified under. On an annual basis, the Board of Managers will establish a separate Administrative Fee of between \$0 and \$1,000 for each tier. The Administrative Fee for each Subdistrict Well (WDID) will be calculated based on the tier the well is classified under.

5.6.2 At the same time as the review of the status of Subdistrict Wells, the Subdistrict will also determine if any Subdistrict Wells (WDIDs) are being combined together with a single meter under a State-approved Variance. If multiple Subdistrict Wells (WDIDs) are allowed to be combined through a single meter, then the Subdistrict will consider that group of wells to be one Subdistrict Well (WDID) for the purpose of assessing the Administrative Fee. If a Subdistrict Well (WDID) is not required to be metered, that well will be assessed the Administrative Fee per WDID.

5.7 Calculation of the annual Pumping Fee. The following steps will be followed when calculating the annual Pumping Fee for the Subdistrict:

- 5.7.1 Prior to the filing of the first Annual Replacement Plan, the Board of Managers will set the number of years of gross groundwater withdrawals that will be included in the running average used to calculate the average gross groundwater withdrawals for each Subdistrict Well. The running average will cover between one and five-years. The Board of Managers may modify the running average if they deem it necessary to effectively administer the Subdistrict's Plan. The running average can be modified only after a public hearing to discuss the change and to allow for public comment. Any modification to the running average must also be ratified by the Rio Grande Water Conservation District's Board of Directors.
- 5.7.2 No later than May 1st of each year the Subdistrict will download the gross groundwater withdrawals reported to the Division of Water Resources under the Groundwater Measurement Rules for each Subdistrict Well for each Water Administration Year included in the running average set by the Board of Managers. Subdistrict Wells that are not required to report gross groundwater withdrawals to the Division of Water Resources under the Groundwater Measurement Rules must obtain an approved alternative method of measurement from the Board of Managers as described in Rule 6.0 above and report the measurements to the Subdistrict on an annual basis in a manner approved by the Board of Managers. The gross groundwater withdrawals from each year within the running average will be combined and averaged to establish the average gross groundwater withdrawals per Subdistrict Well.

5.7.3 The Subdistrict will assess the annual Pumping Fee against each Subdistrict Well's average gross groundwater withdrawals on a tiered-based system which broadly classifies each Subdistrict Well based on the consumptive use of the application type(s) utilized for that particular Subdistrict Well as recognized in the Groundwater Rules. The tiers include the following application types: sprinkler, flood and other use (other uses include, but are not limited to: fish, commercial, municipal, industrial, etc.). Each Subdistrict Well will be classified based on information received from each Subdistrict Member in the annual Farm Plan Update, the Division of Water Resources' well records database, and/or from any other source that is available to the Subdistrict to assist in properly classifying each Subdistrict Well's application type. Subdistrict Wells with multiple application types will be classified into the highest applicable consumptive use tier for that particular Subdistrict Well unless the Subdistrict Well Owner can meter each application type separately utilizing a totalizing flow meter approved under the Groundwater Measurement Rules or a Subdistrict-approved alternative method for measurement as described in Rule 6.0 below.

5.7.4 The annual Pumping Fee will be assessed against the average gross groundwater withdrawals for each Subdistrict Well calculated in 5.7.2 above and will range from \$0-\$150 per acre-foot. The annual Pumping Fee will not be based on consumptive use or net depletion to the aquifer(s). The Board of Managers will set the per acre-foot rate for each tier annually as part of the budget process required in Rule 4, above, and may set each tier at the same rate if there is no measurable cost-benefit to applying three separate tier rates.

5.7.5 Each year, following the calculation of the annual Pumping Fees, the Subdistrict will send all Subdistrict Members a breakdown of the average gross groundwater withdrawals for each Subdistrict Well they own by U.S. Mail, first class postage pre-paid. The purpose of this notice is to allow Subdistrict Members sufficient time to contact the Subdistrict to review the information they are being provided and appeal if necessary before the calculated Pumping Fee is certified to the Counties on or before December 1st of each year.

6.0 ALTERNATIVE METHOD OF MEASUREMENT FOR SUBDISTRICT WELLS NOT METERED UNDER THE STATE'S GROUNDWATER MEASUREMENT RULES FOR WATER DIVISION NO. 3

6.1 In order to obtain information needed to administer the Subdistrict, all groundwater withdrawals from Subdistrict Wells must be accurately recorded and reported to the Subdistrict. Many Subdistrict Wells are required to install totalizing flow meters under the Measurement Rules. Those Subdistrict Wells that are exempt from the Groundwater Measurement Rules must also measure or calculate the groundwater withdrawals from the well before the well will be covered under the Subdistrict's Plan and any Annual Replacement Plan.

6.2 Those Subdistrict Wells that do not have a totalizing flow meter installed to record the groundwater withdrawals will be required by the Subdistrict to either install a totalizing flow meter on the well that meets the requirements of the Measurement Rules or submit an alternative method of measurement that can demonstrate that the alternative method will produce a measurement or calculation of groundwater withdrawals within the accuracy of the standards for a totalizing flow meter under the Groundwater Rules.

6.3 Any Subdistrict Member requesting the approval of an alternative method of measurement for a Subdistrict Well from the Board of Managers must submit the request

in writing and provide all information necessary for the Board of Managers to evaluate the request. If the well is included in the Subdistrict's ARP and groundwater is withdrawn prior to approval of an alternative method of measurement, the provisions of Rule 6.4, below, will apply for the entirety of the Water Administration Year.

6.4 Any Subdistrict Well that is not being measured by either a State-approved totalizing flow meter or with a Subdistrict-approved alternative method of measurement will be assessed the annual Pumping Fee on the maximum decreed rate of pumping as defined in the applicable court decree and/or permit for that Subdistrict Well for any Water Administration Year in which the Subdistrict Well was withdrawing groundwater and the withdrawals will be included in the Subdistrict's ARP.

6.5 The annual amount of groundwater withdrawals recorded under an approved alternative method of measurement must be reported to the Subdistrict no later than December 1st of the Water Administration Year in which the groundwater withdrawals occurred. The Board of Managers will approve a formal method for the annual reporting of the gross groundwater withdrawals being measured through any alternative method of measurement.

6.6 The Board of Managers will accept, reject or reject with suggested terms and conditions any application to approve an alternative method of measurement in writing that is provided to the applicant.

7.0 HEARING AND APPEALS PROCEDURES REGARDING CHALLENGES TO CALCULATION OF ANNUAL SERVICE AND USER FEES

7.1 Application of the Rule. The hearing and appeal procedures established by these rules shall apply to all complaints concerning the calculation of the Annual Service and User Fee as defined by the Plan of Water Management in Section 4.5.5, as it now exists or may

hereafter be amended. The hearing and appeal procedures established by these rules shall not apply to the following complaints:

7.1.1 Complaints that arise with regard to personnel matters. These complaints shall be governed by the Rio Grande Water Conservation District's personnel rules.

7.1.2 Any other complaint which does not concern the calculation of the Annual Service and User Fee as defined by the Plan of Water Management.

7.2 Initial Complaint Resolution.

7.2.1 Complaints concerning the calculation of the Annual Service and User Fee as defined by section 4.5 of the Plan of Water Management governing Subdistrict No. 2 must be presented in writing to the General Manager of the District. The complaint must include a specific statement of the factual claims asserted, copies of any documentation that support the complaint, and a specific request for relief or modification and a mailing address for communications from the Subdistrict. The Complaint must be received on or before _____ of the year in which the Fee is to be paid or all objections to the assessed fees are deemed waived. All timelines hereafter shall run from the receipt of all of the information specified in this paragraph.

7.2.2 Upon receipt of a complaint, the General Manager or designated representative will make a full and complete review of the allegations contained in the complaint and any supporting documentation, and will make a recommendation to the Board of Managers regarding the accuracy of the calculation of the Annual Service and User Fee that is the subject of the complaint within twenty-one (21) days.

7.2.3 The Board of Managers will convene to consider the recommendation of the General Manager or representative and will take action within thirty-five (35) days of receipt of the complaint. The complainant will be notified of the recommendation and action taken by the Board of Managers within fourteen (14) days of their action. The notification must be in writing and shall summarize the action taken by the Board of Managers. The notification must be sent via U.S. Mail, first class postage pre-paid.

7.2.4 The Board of Managers may extend the timeframe to consider the recommendation of the General Manager or representative beyond thirty-five (35) days of the receipt of the complaint upon good cause shown. Good cause includes a determination by the General Manager or representative that the press of other District or Subdistrict business will not allow the complaint to be fully considered and acted upon in the thirty day time frame. An extension will not be longer than ninety-one (91) days from the date the complaint is received, and the General Manager or representative will notify the complainant in writing of the extension via U.S. Mail, first class postage pre-paid.

7.3 Hearing.

7.3.1 In the event the decision of the Board of Managers is deemed unsatisfactory by the complainant, a written request for hearing may be submitted to the General Manager or designated representative within twenty-one (21) days from the date written notice of the decision was mailed to the complainant.

7.3.2 If receipt of the request is timely, and if all other prerequisites prescribed by these rules and regulations have been met, the Board of Managers will direct the

General Manager, or a hearing officer appointed by the Board of Managers, to conduct a hearing at the Subdistrict's convenience. Every effort will be made to conduct the hearing within sixty-three (63) days after the receipt of the request. For good cause shown, the hearing may be later than sixty (63) days after the receipt of the request. The hearing shall be conducted in accordance with and subject to all pertinent provisions of these rules and regulations.

7.4 Hearing Notice.

7.4.1 The Complainant will be notified of the time, place, and nature of the hearing by the Subdistrict. Unless otherwise provided by law, such notice shall be served personally or by mailing by U.S. Mail, first-class postage pre-paid, to the last address furnished to the District by the person to be notified at least twenty-one (21) days before the hearing. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

7.4.2 An amended notice may be issued by the Subdistrict at any time prior to the hearing without necessitating a continuance of the hearing date, provided the original notice is not substantially altered to the prejudice of any party. If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the Subdistrict.

7.4.3 The Subdistrict may continue a hearing to another date by issuing written notice to that effect any time before the date, time and place of the original hearing.

7.5 Prehearing Submissions. Seven days before the hearing, or at such other time as stated in the hearing notice, each party shall present one copy to every other party, including the presiding officer, a prehearing statement which shall contain:

- a) a specific statement of the factual and legal claims asserted;
- b) copies of all exhibits to be introduced or used at the hearing;
- c) a list of witnesses to be called and a brief description of their testimony, or written testimony for each witness if required by the hearing notice; and
- d) proposed findings of fact and conclusions of law, unless a later date for this submission is specified in the hearing notice.

7.6 Conduct of Hearing. At the hearing, the General Manager or appointed hearing officer shall preside. The complainant and representatives of the District and/or Subdistrict shall be permitted to appear in person, and the complainant may be represented by any person of his choice, including legal counsel.

7.6.1 Every party to the proceeding has the right to present its case or defense by oral and documentary evidence and to submit rebuttal evidence. Where the hearing notice provides, a person conducting the hearing may receive all or part of the evidence in written form.

7.6.2 The complainant or his representatives and the District and/or Subdistrict representatives have the right to present evidence and arguments in the form specified in the hearing notice; the right to cross-examine any person; and the right to oppose any testimony or statement that may be relied upon in support of or in opposition to the matter complained. The presiding officer may receive and

consider any evidence which has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

- 7.6.3 The presiding officer may ask questions of any representative in order to clarify further an issue relevant to the complaint.
- 7.6.4 The presiding officer may allow the parties to submit evidence not previously submitted as specified by the hearing notice, but only for good cause shown, such as where necessary for purposes of rebuttal.
- 7.6.5 The presiding officer will cause the hearing to be recorded by a reporter or by an electronic recording device. Any party may request, at their own expense, to have the hearing transcribed. Upon agreement of the parties, parties may agree to split any transcription costs. If the Subdistrict acquires a copy of the proceedings, its copy of the transcription must be made available to any party at reasonable times for inspection and study.
- 7.6.6 All hearings will be conducted in the following order unless otherwise directed by the Hearing Notice:
- a) Call to order, introductory remarks, and action on applications for party status;
 - b) Presentation of any stipulations or agreements of the parties;
 - c) Opening statements by the party upon whom the burden of proof rests;
 - d) Opening statements by all other parties
 - e) Presentation of case-in-chief by party upon whom the burden of proof rests;

- f) Presentation by all other parties wishing to offer evidence in the order to be determined by the presiding officer;
- g) Rebuttal by the party upon whom the burden of proof exists;
- h) Surrebuttal by all other parties, upon good cause shown, as determined by the presiding officer;
- i) Closing statement by party upon whom the burden of proof rests;
- j) Closing statements of all other parties;
- k) At the conclusion of any witness' testimony, or at the conclusion of the party's entire presentation, as may be determined by the presiding officer, all of the parties may then cross-examine such witness or witnesses in an order determined by the presiding officer;
- l) Any person, not a party to the proceedings, who wishes to present testimony, may do so by indicating his or her desire in writing, including a brief statement as to the nature of the testimony to be given. A sign-up form will be available for this purpose prior to the commencement of the hearing. The presiding officer has the discretion to allow or prohibit such testimony. Voluntary testimony not specifically requested per the written form may still be allowed at the discretion of the presiding officer. The parties shall be given an opportunity to respond to non-party evidence in a manner deemed appropriate by the presiding officer to avoid prejudice.
- m) All briefs and memoranda of law which counsel or the parties choose to file shall be served all parties seven (7) days before the hearing, unless otherwise specified by the Hearing Notice.

- n) The presiding officer, after receipt of the evidence, may allow or require parties to present oral or written summations of the facts and the law, or both, either at the hearing, or subsequent thereto, as deemed appropriate.
- o) The presiding officer shall determine whether clear and convincing grounds exist to alter or amend the action taken regarding the calculation of the Annual Service and User Fee that is the subject of the complaint. The decision shall be based upon evidence presented at the hearing.
- p) The burden of showing that the required grounds exist to alter or amend the action taken regarding the calculation of the Annual Service and User Fee shall be upon the complainant.

7.7 Findings. Subsequent to the hearing, the presiding officer shall make written findings and an order disposing of the matter and shall mail the findings and order to the complainant no later than twenty-one (21) days after the date of the hearing.

7.8 Appeals to the Board of Directors.

7.8.1 In the event the complainant disagrees with the findings and order of the General Manager or hearing officer, the complainant may, within twenty-one (21) days from the date of mailing of the findings and order, file with the District a written request for an appeal to the Board of Directors of the Rio Grande Water Conservation District. The request and appeal shall set forth, with specificity, the facts or exhibits presented at the hearing upon which the complainant relies and shall contain a brief statement of the complainant's reasons for the appeal. In response, the presiding officer shall compile a written record of the hearing consisting of:

- a) Minutes of the hearing;
- b) All exhibits or other physical evidence offered and reviewed at the hearing; and
- c) A copy of the written findings and order.

The presiding officer may submit additional written comments that further clarify the hearing findings and order in response to the request for appeal.

7.8.2 The Board of Directors will consider the complainant's written request for appeal and the written record of the hearing at the next regularly scheduled meeting held not earlier than fourteen (14) days after the filing of the complainant's request for appeal. Such consideration shall be limited exclusively to a review of the record of the hearing, any written clarifying comments by the presiding officer, and complainant's written request for appeal. No further evidence may be presented by any party to the appeal and there is no right to a hearing de novo before the Board of Directors. The Board of Directors may accept oral argument from complainant and the presiding officer or their representatives in the sole discretion of the Board of Directors.

7.9 Board of Directors' Finding. The Board of Directors must make written findings and issue an Order concerning the disposition of the appeal. A notice of the decision shall be sent by mail to the complainant within twenty-one (21) days after the meeting at which the appeal was considered by the Board of Directors. Findings of the Board of Directors are final.

8.0 CONTRACTS

To the extent permitted by law, and in accordance with these Rules and Regulations, the Subdistrict Board of Managers may recommend and request that the Board of Directors of the District contract with non-exempt well owners whom are not members of the Subdistrict to include a well if the Board of Manager's believe inclusion of the well would further the Goals and Objectives of the Subdistrict's Plan.

8.1 Inclusion Process for Wells Pursuant to Contract.

8.1.1 The Subdistrict may include wells that are not "Subdistrict Wells" as defined by 1.24 of the Plan of Water Management. Wells included by contract are "Contract Wells" as defined by 1.6 of the Plan.

8.1.2 A Contract Well may be located inside or outside of the exterior boundaries of the Subdistrict.

8.1.3 The Board of Managers may only allow a contract with a well owner to include a well in the Subdistrict if the impacts from the well can be determined using the methodology the Subdistrict will use to calculate injurious depletions from Subdistrict wells, or otherwise have a State-approved alternate method of calculating injurious depletions from the Contract Well.

8.1.4 A Contract Well's injurious depletions to surface water sources will be calculated in the same manner that the injurious depletions from all Subdistrict Wells are calculated. The Subdistrict will be responsible for replacing injurious depletions from both Contract and Subdistrict Wells.

8.1.5 It is not the intent of the Subdistrict to allow or assist in the expansion of historical consumptive use of groundwater above that currently exist under valid

permits or decrees as of March 1, 2016. The Subdistrict, the Plan of Water Management or the ARP cannot be used as a source of water for a new plan for augmentation or other replacement plan that violates this intent.

- 8.1.6 Petition to Include a Well in the Subdistrict's Annual Replacement Plan. The owner of a well who desires to be included in the Subdistrict's Annual Replacement Plan must petition the Subdistrict Board of Managers for inclusion by December 1 of the year preceding the ARP for which the well may be covered by the Subdistrict.
- 8.1.7 For each proposed Contract Well, the well owner must supply the following data to the Subdistrict: the Well ID number (WDID); permit and/or decree number; the well location; well ownership; the legal description of the land benefitted by the well; and, the aquifer from which the well withdraws water, if applicable. The well owner must also supply pumping records for the previous five Water Administration Years. Requested information for the proposed Contract Well must be reported to the Subdistrict on the Petition for Inclusion form that is available at the District's office or on the District's website.
- 8.1.8 Post-Plan Injurious Depletions Associated with a Contract Well. The Subdistrict is obligated to remedy post-plan injurious depletions associated with Subdistrict Wells and Contract Wells. The pumping by a Contract Well in any single year will have up to an eight year effect. Accordingly, each approved contract to include a Contract Well will require the Subdistrict to remedy post-plan injurious depletions associated with the Contract Well going forward for up to eight years.

8.1.7 Letter of Credit/Security Document. The Subdistrict will require appropriate security to protect against the owner(s) of Contract Well(s) declaring bankruptcy or otherwise defaulting on their obligations to the Subdistrict after the Contract Well is included in the Subdistrict's ARP. The form of security must be accepted by the General Manager and approved by the Board of Managers before any contract to include a well is approved. At a minimum, the form of security must be sufficient to fund the obligations of the well owner to the Subdistrict for the term of the contract plus eight (8) years.

8.1.8 Notification from the Subdistrict of Approval of a Petition for Inclusion. The Subdistrict will notify the owner of the proposed Contract Well by March 15 of the year immediately following the year in which the Petition for Inclusion was filed with the Subdistrict whether the proposed Contract Well is accepted by the District to be included in the Subdistrict's next ARP. The Subdistrict's decision to include or exclude a proposed Contract Well shall not be subject to review. The decision by the Board of Managers will be made in a public session and reasons for deciding to include or not include the proposed Contract Well will be stated after the Board of Managers receives advice from the General Manager, its engineers and its legal counsel.

8.1.9 The Subdistrict will assess a Contract Fee of \$_____ for each proposed Contract Well that is included in a Petition for Inclusion filed with the Subdistrict. This Contract Fee is charged to cover the costs incurred by the Subdistrict to review the information provided to the Subdistrict for each proposed Contract Well which includes any legal and engineering costs. The Contract Fee will be

charged regardless of the Board's approval/disapproval to include the proposed Contract Well. Contract Fees may be collected by the Counties as provided by law, if appropriate. If Contract Fees are certified to the Counties for collection, they will be assessed against the parcel(s) of land that is benefitted by the Contract Well.

8.1.10 Contract Wells will be assessed Annual Service and User Fees, consisting of the annual Pumping Fee and the annual Administrative Fee, based on the terms included in each individual contract, and will be calculated in the same manner as other Subdistrict Wells as is described in Rule 5.0 above. Contract Wells may be assessed an annual Administrative Fee and/or Pumping Fee amount different than that assessed to Subdistrict Wells if agreed to by all parties to the individual contract. Fees may be certified to and collected by the Counties as provided by law, if appropriate. If the Annual Service and User Fees are not collected by the counties, they will be payable to the Subdistrict in the manner defined in the individual contract.

9.0 ANNUAL REPORT AND ANNUAL REPLACEMENT PLAN REQUIREMENTS

9.1 Annual Replacement Plan ("ARP").

9.1.1 On an annual basis, and before April 15th, the Subdistrict will prepare and submit an ARP to the State and Division Engineers for approval. The purpose of the ARP is to provide details of the projected Subdistrict operations for the ARP Year which runs from May 1st of the then current year to April 30th of the following year.

9.1.2 The ARP will include but is not limited to the following information: a list of Subdistrict Wells that will be covered by the ARP; a projection of the

groundwater withdrawals from Subdistrict Wells during the then current Water Administration Year; a calculation of the projected stream depletions resulting from ground water withdrawals from Subdistrict Wells; a forecast of the flows for Division No. 3 streams; detailed information regarding the methods that will be utilized to replace or remedy stream depletions during the ARP Year, including any contractual agreements used for replacement or remedy of stream depletions that will be in place; any information regarding the fallowing of Subdistrict Lands; and, documentation that sufficient funds are or will be available to carry out the operation of the ARP.

9.1.3 The ARP will be considered by the Board of Directors of the Rio Grande Water Conservation District at a public meeting before it is sent to the State Engineer for approval. The meeting will be noticed no less than 10 days before the meeting date in a newspaper of general circulation, in a posting outside of the office of the Rio Grande Water Conservation District, by e-mail to the Division No. 3 Substitute Water Supply Plan notification list, and on the District's website. Copies of the draft ARP will be available by request at the District's office or on the District's website.

9.1.4 The State Engineer must approve the ARP before Subdistrict Wells are allowed to continue making groundwater withdrawals in any Water Administration Year. The State Engineer will only approve the ARP if the Subdistrict has provided sufficient evidence and engineering analysis to predict when and where stream depletions will occur and how those stream depletions will be replaced or remedied.

9.2 Annual Report.

9.2.1 Preliminary Annual Report.

9.2.1.1 On an annual basis, on or before March 1st of the then current ARP Year, the Subdistrict must submit a preliminary Annual Report to the State and Division Engineers analyzing the operation of the then current ARP year-to-date. The Subdistrict will prepare the analysis utilizing actual data for all information which was predicted in the ARP as listed in 9.1.2 above.

9.2.2 Final Annual Report.

9.2.2.1 On an annual basis, on or before July 1st, the Subdistrict must submit a final Annual Report to the State and Division Engineers analyzing the operation of the previous ARP. This final report will finalize the analysis that was completed in the preliminary Annual Report.

9.2.2.2 The analysis included in the final Annual Report will enable the State and Division Engineers, as well as other interested parties, to review and evaluate the effectiveness of the Subdistrict's ARP on an annual basis. It also enables the Subdistrict to assess the effectiveness of its operations on an annual basis.

10.0 SUBDISTRICT OPERATIONAL TIMELINES

The following identified Subdistrict activities occur on an annual basis and at a scheduled time of the year:

10.1 Farm Plan Updates. Requests for updates to Farm Plans will be mailed by U.S. Mail postage pre-paid to the each Owner and/or Manager of a Farm Plan on record with the Subdistrict on or before February 1st each year. These updates will be due back to the

Subdistrict no later than March 31st to allow the Subdistrict sufficient time to make updates before the annual fee calculation process begins.

10.2 Submittal of Groundwater Withdrawals From Wells Not Required To Be Metered. Any Subdistrict Member who owns and/or manages a Subdistrict or Contract Well that is not required to be metered under the State's Measurement Rules must have an alternative measurement method approved by the Subdistrict before any groundwater withdrawals occur. Any Subdistrict Well groundwater withdrawals for the prior Water Administration Year that are being measured by a Subdistrict-approved method must be submitted to the Subdistrict no later than December 1st of the Water Administration Year in which the groundwater withdrawals occurred. Measurements must be submitted to the Subdistrict in a manner approved by the board of Managers.

10.3 Annual Subdistrict Fee Calculation Process. The Subdistrict fee calculation process will begin on January 2nd and end on May 31st of each year. Subdistrict Fees will be calculated in the manner described in Rule 5.0 above.

10.4 Appeal of Subdistrict Calculations. The Subdistrict will mail out a notice to each Subdistrict Member when the fee calculation process is complete in the manner described in 5.7.5 above. Notices will identify the groundwater withdrawals and well status that will be used by the Subdistrict for assessing the Annual Service and User Fees. Notices will be mailed out no later than May 31st to allow Subdistrict Members and contract members sufficient time to contact the Subdistrict to review this information and appeal if necessary. Appeals should be made to the Subdistrict in the manner provided for in Rule 7.0 above.

- 10.5 Certification of the Annual Service and User Fees. The Subdistrict will ask for current ownership records for all Subdistrict and Contract Lands from the County Assessor on or before November 1st each year. All Annual Service and User Fees will be assessed to the then current owner of the Subdistrict or Contract Land and will be certified to the County Treasurers on or before December 1st each year.
- 10.6 Subdistrict Annual Budget. The process for preparing the annual Subdistrict budget will begin on June 1st of every year. The Subdistrict will project all expenditures required in the ensuing calendar year to operate the ARP and this Plan and those revenues necessary to fund these expenditures. The Subdistrict's annual budget will be submitted to the District's Board of Directors on or before September 15th for their review and approval.
- 10.7 Preliminary Annual Report. The preliminary Annual Report for the then current ARP Year is due to the State and Division Engineer by March 1st. At this time, the Subdistrict will also post the preliminary Annual Report on the District's website.
- 10.8 Final Annual Report. The final Annual Report for the prior ARP Year is due to the State and Division Engineers by July 1st. At this time, the Subdistrict will also post the final Annual Report on the District's website.
- 10.9 Annual Replacement Plan. The Annual Replacement Plan for the Subdistrict is due to the State and Division Engineers by April 15th of every year that the Subdistrict is in operation, including any year that the Subdistrict does not allow continued groundwater withdrawals from Subdistrict Wells or Contract Wells but does have post-plan injurious depletions to remedy. The Subdistrict will submit notice to the Valley Courier, and/or another publication with Valley-wide coverage, and the Division No. 3 Substitute Water Supply Plan notification list at least 10 days prior to the Subdistrict and the District's

consideration of any Annual Replacement Plan. The ARP will also be posted to the District's website.

- 10.10 Subdistrict Replacement Operations. The Subdistrict will begin replacing and/or remedying stream depletions beginning on May 1st of the year the first ARP is approved and continuing each ARP Year thereafter.

DRAFT