

RULES AND REGULATIONS

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

ADOPTED _____, 2017

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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 “Administrative Fee” has the same definition as in the Plan of Water Management.
- 1.6.2 “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.

- 1.6.3 “Annual Service and User Fee” has the same definition as in the Plan of Water Management.
- 1.6.4 “ARP Year” means May 1st of the then current year through April 30th of the subsequent year.
- 1.6.5 “Board of Directors” means the Board of Directors of the Rio Grande Water Conservation District.
- 1.6.6 “Board of Managers” means the Board of Managers of Special Improvement District No. 2 of the Rio Grande Water Conservation District.
- 1.6.7 “Calendar Year” means January 1st through December 31st of each year.
- 1.6.8 “Contract Fee” means the Contract Administration Fee and the Contract Inclusion Fee.
- 1.6.9 “Contract Inclusion Fee” means a charge that is assessed by the Subdistrict that is in addition to the Administrative Fee and the Pumping Fee. It may reflect an amount required to cover the cost of future replacement obligations associated with the Contract Well.
- 1.6.10 “Contract Well” has the same definition as in the Plan of Water Management.
- 1.6.11 “District” means the Rio Grande Water Conservation District.
- 1.6.12 “Farm Plan” has the same definition as in the Plan of Water Management.
- 1.6.13 “General Manager” means the General Manager of the Rio Grande Water Conservation District.

- 1.6.14 “Measurement Rules” has the same definition as in the Plan of Water Management.
- 1.6.15 “Non-Exempt Well” means those structures making groundwater withdrawals that are subject to the Groundwater Rules.
- 1.6.16 “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.
- 1.6.17 “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.
- 1.6.18 “Pumping Fee” has the same definition as in the Plan of Water Management.
- 1.6.19 “Response Area” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.
- 1.6.20 “Response Functions” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.
- 1.6.21 “Rules and Regulations”, unless referring to rules promulgated by the State Engineer, means Rules and Regulations duly adopted by the Subdistrict Board of Managers and approved by the Board of Directors of the Rio Grande Water Conservation District.
- 1.6.22 “Subdistrict” unless referring to other subdistricts in Division No. 3, means Special Improvement District No. 2 of the Rio Grande Water Conservation District as decreed by the District Court in and for Rio Grande County, Case No. 15CV30050, March 1, 2016.
- 1.6.23 “Subdistrict Land” has the same definition as in the Plan of Water Management.

1.6.24 “Subdistrict Landowners” has the same definition as in the Plan of Water Management.

1.6.25 “Subdistrict Members” has the same definition as in the Plan of Water Management.

1.6.26 “Subdistrict Wells” has the same definition as in the Plan of Water Management.

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

1.6.28 “WDID” means a unique number assigned by the Colorado Division of Water Resources to a water diversion structure to be used as an identification number. The structure identification number and the water district are combined to create an ID number that is unique to each structure throughout the state.

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; to prevent unnecessary interference with the regular discharge of the duties of the District and the Subdistrict; and, to define the method by which the District and Subdistrict will provide public access to records and how requests for information will be handled.

2.2 Official 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 District and 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 to prevent unnecessary interference with the discharge of the duties of the District or Subdistrict.

- 2.3 Inspection of Public Records. All public records of the District shall be open for inspection at the times designated herein, unless prohibited by the Colorado Open Records Act or policies adopted by the Board of Directors in conformance with the Open Records Act.
- 2.4 Records Not Subject To Disclosure. Certain District and Subdistrict records may be privileged or otherwise confidential and protected from disclosure under Colorado law and are not public records. Consequently, records that, in the opinion of the Official Custodian after consultation with the District's general counsel and the District Board, are confidential, privileged, or subject to one or more exemptions set forth in the Open Record Act, will not be disclosed in response to a public records request. Nothing set forth in this Policy shall be construed to abrogate the right of the District or Subdistrict to withhold records that are confidential or protected by the privileges expressly contemplated by the Open Records Act or otherwise established under Colorado law.
- 2.5 Request for Inspection. Request for inspection and for copies of any public records of the District or 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.
- 2.6 Times for Inspection. Inspection of the Subdistrict's public records shall be made, where permitted by law, at the District's office 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.

2.7 Copies, Printouts, or Photographs of Public Records. In any case where a person has the right to inspect a public record of the District or Subdistrict under the control of the Official Custodian and requests in writing that the District or 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 fee which shall not exceed Twenty-Five Cents (\$0. 25) per standard page (8½” x 11”) or the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page, unless a higher fee is permitted by the Open Records Act.

2.8 Requests Requiring Research or Retrieval. If an applicant’s request for public records of the District or Subdistrict requires research or retrieval, the District or Subdistrict may impose a fee of thirty dollars (\$30.00) per hour for time expended conducting research and retrieval or such higher fee permitted by the Open Records Act, which shall include attorney review time. The District or Subdistrict will not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. However, where a requesting party has submitted multiple applications for public records within a thirty-day (30) period, the requesting party is only entitled to one (1) hour of free request time within those thirty (30) days.

2.9 Additional Fes and Charges. To the extent permitted by the Open Records Act, additional fees and charges will be assessed in the amount of actual costs to the District or

Subdistrict of any postage, facsimiles, data manipulation, or similar costs incurred by the District or Subdistrict in responding to a request to copy or inspect public records.

- 2.10 This Section 2.0 will be updated, as necessary, to keep the rules and regulations current with the District's Policy for Access to Public Records.

3.0 MEETINGS AND NOTICE OF DECISION-MAKING

- 3.1 Meeting Location. All regular meetings of the Board of Managers will be held at the principal office of the Rio Grande Water Conservation District; special meetings may be held at any place within the exterior boundaries of the Rio Grande Water Conservation District specified in the notice of the meeting or in such other location as allowed by law.
- 3.2 Regularly Scheduled Meetings. The Annual Meeting of the Board of Managers will be held 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 twenty-four (24) hours before such meeting.
- 3.3 Special Meetings. Special Meetings may be called by the President of the Board of Managers or by any three managers. 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 U.S. Mail, electronic mail or other written electronic communication at least three (3) days in advance of the meeting.

- 3.4 Notice. 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 twenty-four (24) hours before such meeting. Special Meetings shall be advertised once by notice hung outside of the principal office of the District and on the District's website at least twenty-four (24) hours before such 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 and in a local newspaper of general circulation. The proposed Annual Replacement Plan shall also be posted on the District's 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 U.S. Mail or email to everyone on the Division No. 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. 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 July 15th of each year, the District's staff will present a detailed preliminary annual budget for the ensuing Calendar Year to the Board of Managers for review and approval. The preliminary annual budget will be reviewed by the Board of Managers during their August quarterly meeting. The Board of Managers may hold additional meetings on the annual budget, if deemed necessary. On or before September 15th, the

Subdistrict's Board of Managers will submit the annual budget to the District's Board of Directors for their review and approval. The Subdistrict's budget will be included in the District's annual budget which is submitted to the State of Colorado.

- 4.2 The annual budget must contain detailed descriptions, when available, of all anticipated expenditures necessary to meet the goals and objectives of the Plan and to fund the operation of the ARP, which will include: (1) The amount of money allocated to the lease, loan or purchase of water or water rights and/or forbearance agreements to be used for the replacement or remedy of injurious stream depletions resulting from the withdrawal of groundwater from Subdistrict and Contract Wells; (2) The amount of money allocated to a land retirement program; (3) If applicable: (a) identification and description of any works to be constructed; (b) the purpose of the works; (c) the specific location of the works; (d) the estimated capital costs of the works; (e) the estimated operating and maintenance costs associated with the works for the next year; (f) the estimated useful service life of the works; (g) identification of any construction or modifications of works for which construction has previously commenced, including items (b)-(e) above for these works; (4) Identification and description of any activities undertaken to operate the ARP, including the purpose and costs thereof; (5) Itemized administrative costs for the Calendar Year; and, (6) Identification of any other anticipated expenditures including the purpose and costs. The Subdistrict shall limit expenditures in the amounts and for the purposes specified in the annual budget unless an amended budget is adopted, in accordance with the provisions of Colorado Law.
- 4.3 The annual budget will specifically describe the revenues required to fund the anticipated expenditures and the nature and amount of each of the specific fees or assessments

proposed to generate such revenues. If any specific fees or assessments are planned to be allocated to a specific expenditure, the budget will identify the allocation. The total Administrative Fee assessed by the Subdistrict for a given year shall be limited to the amount shown by specific items in the budget as required to fund the administration of the Subdistrict, including, but not limited to: cost of providing staff, engineering, legal and office space; a reasonable reserve fund; and, to repay the District the sum advanced to the Subdistrict for expenses which were incurred after Subdistrict formation but prior to the initial fee collection. The total annual Pumping Fee must be limited to the amount shown by specific items in the ensuing annual budget as required to provide sufficient revenue for the Subdistrict's operations, including: protection of senior surface water rights; funds to support a portfolio of water and/or a fund to assure the remedy of Post-Plan Injurious Stream Depletions; permanent retirement and/or annual fallowing of lands; establishment of a reasonable reserve fund; and, any necessary infrastructure improvements.

- 4.4 To allow the public to review and comment on the Subdistrict's preliminary annual budget, notice will be posted at least ten (10) days prior to any Board of Managers meetings regarding the budget. Notice will 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. The public will also have the opportunity to comment on the Subdistrict's annual budget during the District's Budget Hearing where the District's Board of Directors will consider the Subdistrict's annual budget for approval.

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.

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 ownership information will occur on or before November 1st 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 Annually, the Subdistrict will mail out a request to each Subdistrict Member to update their individual Farm Plan(s). This request will be mailed out by U.S. Mail to each Subdistrict Member, and any designated managers, by January 2nd of each year. Farm Plan updates will be due back to the Subdistrict's office no later than February 15th to allow sufficient time to update the Subdistrict's records before the Annual Service and

User Fees are calculated and before the ARP is prepared. 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.

5.4 The Subdistrict's Board of Managers must certify the amount of Annual Service and User Fees, by individual parcel of Subdistrict Land, to each County Treasurer in every county that encompasses Subdistrict Land by December 1st of the year preceding collection, or otherwise in accordance with the requirements of the counties. The County Treasurer will add the certified Annual Service and User Fees to the property tax rolls for collection in the following year.

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

5.5.1 At the beginning of each Calendar 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 4.2.1.2, during the prior year's ARP. The status of the Subdistrict Well during the prior ARP Year will determine which tier, active or inactive, the Subdistrict Well (WDID) will be classified under. The Board of Managers will set the Administrative Fee per Subdistrict Well at a rate of between \$0 and \$1,000 for each tier annually as part of the budget process described in Section 4.0, above, and may set each tier at the same

rate if there is no measurable cost-benefit to applying two separate tier rates. The Administrative Fee for each Subdistrict Well (WDID) will be calculated based on the tier the well is classified under.

5.5.2 During the review of Subdistrict Wells in 5.5.1, the Subdistrict will also be determining if any Subdistrict Wells (WDIDs) were being combined together with a single meter under a State-approved variance during the last Water Administration Year. 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 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.

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

5.6.1 Prior to the filing of the first Annual Replacement Plan, at a publicly held meeting, 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 years to be included in the running average set by the Board of Managers will always end with the prior Water Administration Year. 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.

5.6.2 No later than February 15th of each Calendar Year, the Subdistrict will download the gross groundwater withdrawals reported to the Division of Water Resources under the Measurement Rules for each Subdistrict Well for each Water Administration Year included in the running average as 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 Measurement Rules must obtain an approved alternative method of measurement from the Board of Managers, as described in Rule 6.0 below, 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 Water Administration Year within the running average will be combined and averaged to establish the average gross groundwater withdrawals per Subdistrict Well.

5.6.3 The Subdistrict will assess the annual Pumping Fee against each Subdistrict Well's average gross groundwater withdrawals using a tier-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. At the time of the Plan's approval, three tiers are being recognized based on application types identified by the Division of Water Resources in the Rio Grande Alluvium Response Area Response Functions for the calculation of the net groundwater consumptive use of the groundwater withdrawn by Subdistrict Wells. These three tiers are currently defined as: 1)

Sprinkler; 2) Flood; and, 3) Other Uses. (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 prior year's 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 Measurement Rules or a Subdistrict-approved alternative method for measurement as described in Rule 6.0 below.

5.6.4 The annual Pumping Fee will be assessed against the average gross groundwater withdrawals for each Subdistrict Well calculated in 5.6.2 above and will range from \$0-\$150 per acre-foot of gross groundwater withdrawn. The Pumping Fee will not be based or assessed on consumptive use of groundwater or net groundwater withdrawal from 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 Section 4.0, above, and may set each tier at the same rate if there is no measurable cost-benefit to applying three separate tier rates.

5.6.5 On or before May 1st of each Calendar Year, prior to the certification of the annual Pumping Fees to the counties, the Subdistrict will send all Subdistrict Members an analysis of the average gross groundwater withdrawals calculated for each Subdistrict Well they own. The purpose of this analysis is to provide

Subdistrict Members with the information the Subdistrict is relying upon to assess the annual Pumping Fees and to allow Subdistrict Members sufficient time to contact the Subdistrict to review the information and appeal, if necessary, before the calculated Pumping Fee is certified to the counties on or before December 1st. Notices will include the gross groundwater withdrawals for each individual year included in the running average for gross groundwater withdrawals, per official records of the State of Colorado, where these records are available, or from records provided to the Subdistrict under an approved alternative method of measurement, and the Subdistrict-calculated average gross groundwater withdrawals that will be the basis for the Subdistrict to assess the annual Pumping Fee for each Subdistrict Well. Notices will also include information regarding the status of the Subdistrict Well for the prior ARP Year (active or inactive) and any information on whether the Subdistrict Well was combined with additional Subdistrict Wells under a State-approved variance for metering, as determined in Section 5.5 above.

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 To administer the Subdistrict, all groundwater withdrawals from Subdistrict Wells must be accurately recorded and reported. Most Subdistrict Wells are required to install totalizing flow meters under the Measurement Rules, but some Subdistrict Wells are exempt from the Measurement Rules. Those Subdistrict Wells that are exempt from the Measurement Rules will be required to measure or calculate the groundwater withdrawals from the well before the well will be covered under the Subdistrict’s Plan or 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 which meets the requirements of the Measurement Rules or submit an alternative method of measurement to the Subdistrict's Board of Managers 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 Board of Manager's approval of an alternative method of measurement for a Subdistrict Well must submit the request in writing and provide any and all information necessary for the Board of Managers to evaluate the request. If any Subdistrict Well is included in the Subdistrict's ARP and has groundwater withdrawals prior to the approval of an alternative method of measurement, the provisions of Rule 6.4 below will apply for any Water Administration Year included in the running average of gross groundwater withdrawals for which there was no metered groundwater withdrawals or an approved alternate method of measurement for the Subdistrict Well.
- 6.4 Any Subdistrict Well with groundwater withdrawals that are 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 based on the maximum rate of groundwater withdrawal as defined in the applicable court decree, or well permit if a decree does not exist, and assuming the rate of groundwater withdrawal was constant for the entire Water Administration Year for that Subdistrict Well, for any Water Administration Year in which the Subdistrict Well was withdrawing groundwater. Gross

groundwater withdrawals reported under an approved alternative method for measurement 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 following the end 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 gross groundwater withdrawals being measured through a Subdistrict-approved alternative method of measurement.
- 6.6 The Board of Managers will accept, reject, or accept with suggested terms and conditions, any request made to the Subdistrict for an alternative method of measurement. Notice of the Board of Manager's final decision regarding the request for an alternative method of measurement will be provided to the requester by U.S. Mail within ten (10) days of the decision.

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 Fees as defined by the Plan in Section 4.2.5, 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.
- 7.1.2 Any other complaint which does not concern the calculation of the Annual Service and User Fee as defined by the Plan.

7.2 Initial Complaint Resolution.

- 7.2.1 Complaints concerning the calculation of the Annual Service and User Fee as defined by section 4.2.5 of the Plan 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 supports the complaint, a specific request for relief or modification and a mailing address and/or an email 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 a designated member of the District's staff, will make a full and complete review of the allegations contained in the complaint, along with any supporting documentation provided by the complainant, and will make a recommendation to the Board of Managers to either accept or deny the complaint within twenty-one (21) days of receiving the complaint and all the supporting documentation from the complainant.
- 7.2.3 The Board of Managers will consider and take action on the recommendation of the General Manager or staff representative during a publicly noticed meeting within thirty-five (35) days of receipt of the complaint. The complainant will be notified of the action taken by the Board of Managers within fourteen (14) days of their action. The notification must be in writing and will provide the complainant a summarization of the action taken by the Board of Managers. The notification must be sent via U.S. Mail.

7.2.4 The Board of Managers may extend the timeframe to consider the recommendation of the General Manager or staff 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 staff 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-five (35) 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.

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 staff 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 a hearing. For good cause shown, the hearing may be later than sixty-three (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 Subdistrict will notify the Complainant of the time, place, and nature of the hearing at least twenty-one (21) days before the hearing. Unless otherwise provided by law, such notice shall be served in person or by U.S. Mail to the address of the person the complainant has designated to receive all notices from the District regarding the complaint. 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 hearing 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 (7) 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 General Manager, or a hearing officer appointed by the Board of Managers, 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 an individual appointed by the General Manager, shall serve as the Hearing Officer. 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, the Hearing Officer 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 Hearing 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 Hearing Officer may ask questions of any representative or witnesses in order to clarify further an issue relevant to the complaint.

7.6.4 The Hearing 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 Hearing 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 Hearing Officer;
- g) Rebuttal by the party upon whom the burden of proof rests;
- h) Surrebuttal by all other parties, upon good cause shown, as determined by the Hearing 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 Hearing Officer, all of the parties may then cross-examine such witness or witnesses in an order determined by the Hearing 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 Hearing 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 Hearing Officer. The parties shall be given an opportunity to respond to non-party evidence in a manner deemed appropriate by the Hearing 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 Hearing 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 Hearing 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 Hearing Officer shall make written findings and an order disposing of the matter and shall mail the findings and order to the complainant by U.S. Mail 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 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 Hearing 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 Hearing 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 Hearing 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 Hearing 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 U.S. 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's Board of Managers may recommend and request that the Board of Directors of the District contract with Non-Exempt Well owners 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. A contract is not necessary if a Non-Exempt Well owner requests, at some time after the formation of the Subdistrict, that the Subdistrict include a well in the ARP which was not included in a petition to join the Subdistrict but is providing benefits to Subdistrict Lands solely. To include a well which does not require a contract in the Subdistrict's ARP, the well owner must provide the Board of Manager's with the same information required by a proposed Contract Well owner in 8.1.7 below.

8.1 Inclusion Process for Wells Pursuant to Contract.

- 8.1.1 The Subdistrict may contract with wells that are not “Subdistrict Wells” as defined by 1.25 of the Plan. 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 same methodology the Subdistrict will use to calculate stream depletions from Subdistrict Wells, or otherwise have a State-approved alternate method for calculating stream depletions from the well, and the inclusion of the well will not alter the location of the ARP’s replacement obligation.
- 8.1.4 A Contract Well’s stream depletions will be calculated in the same manner the stream depletions from Subdistrict Wells are calculated. The Subdistrict will be responsible for replacing injurious stream depletions for Subdistrict and Contract 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 existing 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 or expanded plan for augmentation or other replacement plan that violates this intent.
- 8.1.6 Request For Inclusion in the Subdistrict’s Annual Replacement Plan. Any well owner who desires to have a non-Subdistrict Well included in the Subdistrict’s

Annual Replacement Plan must file a request for inclusion with the Subdistrict's Board of Managers before December 1st of the year preceding the ARP Year in which the well would become 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 groundwater withdrawal records for the previous five Water Administration Years. Required information for the proposed Contract Well must be reported to the Subdistrict on the appropriate form which is available at the District's office or on the District's website.

8.1.8 Post-Plan Injurious Stream Depletions Associated with a Contract Well. The Subdistrict is obligated to remedy Post-Plan Injurious Stream Depletions associated with Subdistrict Contract Wells. The groundwater withdrawn by a Contract Well in any single year will have an ongoing delayed effect.

Accordingly, each approved contract to include a Contract Well will require the Subdistrict to remedy Post-Plan Injurious Stream Depletions associated with the Contract Well going forward for several years.

8.1.9 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 Program 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 Contract Well owner to the Subdistrict for the term of the contract plus eight (8) years.

8.1.10 Notification of Decision to Accept/Deny a Request for Inclusion. The Subdistrict will notify the proposed Contract Well owner by March 15th of the year immediately following the year in which the request for inclusion was filed with the Subdistrict of the Board of Director's decision to either accept or deny the recommendation of the Subdistrict's Board of Managers in regards to a request for inclusion of a well in the Subdistrict's ARP. The Subdistrict's decision to recommend inclusion or exclusion of a proposed Contract Well to the Board of Directors shall not be subject to review. The decision to recommend inclusion or exclusion of the request for inclusion will be made by the Board of Managers in a public session only after the Board of Managers receives advice from the General Manager, Program Manager, its engineers and its legal counsel.

8.1.11 The Subdistrict will assess a Contract Fee of \$_____ for each proposed Contract Well that is included in a request for inclusion filed with the Subdistrict. This Contract Fee is assessed 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. The Contract Fee will be due and payable in full to the Subdistrict at the time the request for inclusion is filed.

8.1.12 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 WATER COURT OR ADMINISTRATIVE CHANGES TO GROUNDWATER RIGHTS OF SUBDISTRICT OR CONTRACT WELL OWNERS

The Subdistrict Board of Manager's requires a Subdistrict or Contract Well owner to notify the Subdistrict if there is a water court or Division of Water Resources administrative change as to the conditions of the groundwater right at the time of joining the Subdistrict. This notice is in addition to any notice that is a requirement of those proceedings to seek a change. The Board of Manager's must be notified in writing and the notice must include: the water rights that are included in the change (WDIDs, permits and/or decrees); legal description of the land the changed water right is benefitting; any details to a change in use of the groundwater; and, any other information the Subdistrict may need to properly adjust their operations in order to satisfy the requirements of the Groundwater Rules.

10.0 ANNUAL REPORT AND ANNUAL REPLACEMENT PLAN REQUIREMENTS

10.1 Annual Replacement Plan.

10.1.1 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 through April 30th of the following year.

10.1.2 The ARP will include, but is not limited, to the following information: a database 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 injurious stream depletions during the ARP Year, including any contractual agreements used for replacement or remedy of injurious stream depletions that will be in place; any information regarding the fallowing of Subdistrict Lands; and, documentation that sufficient funds are or will be available to carry out the operation of the ARP.

10.1.3 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 seven (7) 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.

10.1.4 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 the injurious stream depletions will be replaced or remedied.

10.2 Annual Report.

10.2.1 Preliminary Annual Report.

10.2.1.1 On an annual basis, 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 10.1.2 above.

10.2.2 Final Annual Report.

10.2.2.1 On an annual basis, 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.

10.2.2.2 The analysis included in the final annual report will enable the Subdistrict, 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.

11.0 SUBDISTRICT OPERATIONAL TIMELINES

The following list of Subdistrict activities will occur on an annual basis and at a scheduled time each year:

- 11.1 Farm Plan Updates. Requests for updates to Farm Plans will be sent out by U.S. Mail to each Owner and/or Manager of a Farm Plan on record with the Subdistrict on or before January 2nd each year. These updates will be due back to the Subdistrict no later than February 15th to allow the Subdistrict sufficient time to make updates before the annual fee calculation process begins.
- 11.2 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 method of measurement 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 alternative method of measurement must be submitted to the Subdistrict no later than December 1st following 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.
- 11.3 Annual Subdistrict Fee Calculation Process. The Subdistrict's Annual Service and User Fee calculation process will begin on January 2nd and be finalized before December 1st of each year. The Subdistrict's Annual Service and User Fees will be calculated in the manner described in Rule 5.0 above.

- 11.4 Appeal of Subdistrict Calculations. The Subdistrict will mail out a notice to each Subdistrict Member and contract owner identifying the information the Subdistrict will rely upon for their Annual Service and User Fees calculation in the manner described in 5.6.5 above. Notices will be mailed out no later than May 1st to allow Subdistrict Members and contract owners sufficient time to contact the Subdistrict to review this information and appeal, if necessary, before the Annual Service and User Fee calculation process is complete, if possible. Appeals should be made to the Subdistrict in the manner provided for in Rule 7.0 above.
- 11.5 Certification of the Annual Service and User Fees. The Subdistrict will ask for current ownership records for all Subdistrict 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 Land. All Annual Service and User Fees will be certified to each County Treasurer in every County which encompasses Subdistrict Land. Contract Wells will be assessed per the agreement in each individual contract. The Subdistrict will certify the Annual Service and User Fees to the County Treasurers on or before December 1st each year to be added to the tax rolls. Each County Treasurer will collect the Annual Service and User Fees and remit them to the Subdistrict in the following year.
- 11.6 Subdistrict Annual Budget. The planning process for the annual Subdistrict budget will begin on June 1st of every year. The Subdistrict will project all expenditures anticipated for the ensuing Calendar Year to operate the ARP and the Plan, and those revenues necessary to fund the anticipated expenditures. Subdistrict staff will present a preliminary annual budget to the Board of Managers before July 15th. The Board of Managers will review and approve the budget at their August quarterly meeting. The Subdistrict's

annual budget will then be submitted to the District's Board of Directors for review and approval on or before September 15th for inclusion in the District's overall budget.

- 11.7 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.
- 11.8 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.
- 11.9 Annual Replacement Plan. The Subdistrict's ARP 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 Stream Depletions to replace or remedy. The Subdistrict will submit notice to a newspaper or newspapers which collectively provide general circulation throughout the Subdistrict and the Division No. 3 Substitute Water Supply Plan notification list at least seven (7) days prior to the Subdistrict and the District's consideration of any ARP. The ARP will also be posted to the District's website.
- 11.10 Subdistrict Replacement Operations. The Subdistrict will begin replacing and/or remedying injurious stream depletions beginning on May 1st of the year the first ARP is approved and continuing each ARP Year thereafter. The Subdistrict will begin immediately replacing and/or remedying injurious stream depletions for any well added during the ARP Year to the list of Subdistrict Wells or any Contract Wells regardless of if the well was included in the database of Subdistrict Wells or Contract Wells for that ARP

Year unless the stream depletions for the subject well were replaced or remedied through a valid plan for augmentation or another subdistrict.

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