

# **Plan of Water Management**

## **Special Improvement District No. 2 of the Rio Grande Water Conservation District**

**Effective Date: \_\_\_\_\_, 20\_\_**

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The Board of Directors of the Rio Grande Water Conservation District (“District”) on behalf of the Board of Managers of Special Improvement District No. 2 (“Subdistrict”), submits the following Plan of Water Management (“Plan”) as the official Plan of the Subdistrict, subject to Court approval, pursuant to section 37-48-126, C.R.S. This Plan is consistent with a Groundwater Management Plan as defined in and meets the requirements laid out in the Groundwater Rules.

## **1.0 DEFINITIONS**

1.1 “Administrative Fee” means a fee assessed by the Board of Managers on a per-well WDID or per-groundwater meter basis and used to fund the administrative costs of the Subdistrict Plan of Water Management and Annual Replacement Plan and other costs not directly dependent upon the quantity of groundwater withdrawn by Subdistrict Wells.

1.2 “Annual Service and User Fee” means total yearly fee assessed upon Subdistrict Land consisting of the sum of the Administrative Fee and the Pumping Fee.

1.3 “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 1<sup>st</sup> of the then current year through April 30<sup>th</sup> of the subsequent year.

1.4 “ARP Year” means May 1<sup>st</sup> of the then current year through April 30<sup>th</sup> of the subsequent year.

1.5 “Calendar Year” means January 1<sup>st</sup> through December 31<sup>st</sup> of each year.

1.6 “Contract Well” means a well that is included by the process outlined in Section 4.2.4 via a formal agreement between the Subdistrict and the well owner to include a groundwater well that is not currently a Subdistrict Well.

1.7 “CREP” means the Conservation Reserve Enhancement Program as defined and administered by the United States Department of Agriculture – Farm Service Agency (USDA-FSA) through the authority of the 2014 or subsequent Farm Bill (Conservation Title). In general, CREP allows the USDA, in cooperation with a local sponsoring entity, to offer an annual rental payment for a term of fourteen or fifteen years to producers willing to fallow a parcel(s) of land and forego the use of the associated water right or well during that time. CREP aims to foster land and water conservation through this process.

1.8 “Farm Plan” means all lands and wells under the control and management of an Owner and/or Operator.

1.9 “Groundwater Rules” means the rules promulgated by the State Engineer titled Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (The Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights (Case No. 15CW3024, District Court, in and for Water Division No. 3) as currently promulgated or as they may exist in the future.

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

1.11 “Non-Benefited Subdistrict Land” means Subdistrict Land with no facility to receive delivery of groundwater withdrawn from a well or where the water consumed on the Subdistrict Land is only surface water or consumptive use of groundwater pursuant to, and in compliance with, the provisions of a validly decreed plan for augmentation. Some groundwater consumption may be only partially covered by a plan for augmentation in which case that land will be Subdistrict Land and will only be treated as non-benefited to the extent valid

augmentation exists for groundwater withdrawn. Non-benefited Subdistrict Land will not be assessed by the Subdistrict or subject to Annual Service and User Fees.

1.12 “Non-Exempt Well” means those structures making groundwater withdrawals that are subject to the Groundwater Rules.

1.13 “Post-Plan Injurious Stream Depletions” means injurious stream depletions caused by the withdrawal of groundwater by Subdistrict Wells and calculated by the appropriate Response Functions or by some other method approved by the State Engineer, that occur after the end of the ARP Year in which the groundwater withdrawal took place.

1.14 “Pumping Fee” means the fee assessed per acre-foot of groundwater withdrawals through Subdistrict Wells by the Board of Managers.

1.15 “Response Area” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.

1.16 “Response Functions” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.

1.17 “RGDSS” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.

1.18 “RGDSS Groundwater Model” has the same meaning as that defined by the State of Colorado’s Groundwater Rules.

1.19 “Rio Grande Alluvium Response Area” means the areal extent as defined by the Groundwater Rules.

1.20 “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.

1.21 “Subdistrict” 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.

1.22 “Subdistrict Land” means that, pursuant to C.R.S. § 37-48-123(d), all lands that are 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.

1.23 “Subdistrict Landowners” means the individual(s) or entity(s) holding title to tract of Subdistrict Land as reflected in the records of the County Assessor.

1.24 “Subdistrict Members” means individuals or entities that own Subdistrict Land.

1.25 “Subdistrict Wells” means wells used by Subdistrict Members that were included in a Petition to Join the Subdistrict, or as such Wells may be lawfully changed in the future.

1.26 “Unconfined Aquifer” has the same meaning as that defined by the State of Colorado’s Groundwater Rules and includes only that portion located within the Subdistrict.

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

1.28 “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 BACKGROUND AND BASIS FOR THE PLAN OF WATER MANAGEMENT.**

### **2.1 Current Situation**

2.1.1 Members of the Subdistrict are landowners within the Rio Grande Water Conservation District who rely on groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the RGDSS Groundwater Model and the Groundwater Rules, as the Rio Grande Alluvium Response Area. The RGDSS Groundwater Model has calculated stream depletions occurring to surface water streams caused by the use of wells withdrawing water from the groundwater system within the Rio Grande Alluvium Response Area that may cause injury to senior surface water rights and/or unreasonably interfere with the state's ability to fulfill its obligations under the Rio Grande compact, codified in section 37-66-101, C.R.S. In order to remedy the injury or interference, the State Engineer has promulgated Groundwater Rules (pending court approval as of the date of this Plan of Water Management, Case No. 15CW3024, District Court in and for Water Division No. 3) that will have a direct impact on the future use of groundwater within the Rio Grande Alluvium Response Area.

2.1.2 The Colorado State Engineer, through the Groundwater Rules has determined that the unconfined aquifer within the Rio Grande Alluvium Response Area is an alluvial aquifer tied directly to the Rio Grande itself, and so no separate sustainability requirement is necessary to comply with section 37-92-501(4)(a)(I). This determination does not restrict the ability of the Board of Managers to expend funds or otherwise take action within the powers of the Board of Managers to reduce groundwater withdrawals in order to improve Unconfined Aquifer levels or reduce stream depletions.

## **2.2. Subdistrict Land**

2.2.1 Subdistrict Land is limited to lands served by non-exempt wells that withdraw groundwater for a beneficial use that is located within Water Division No. 3. Where a well is used as a source of water for augmentation, substitution or exchange for another water right, such other water right must be diverted within Water Division 3 for a beneficial use located within Water Division No. 3.

2.2.2 To the extent permitted by law, and in accordance with rules to be adopted by the Subdistrict, the Subdistrict may, at the discretion of the Board of Managers, contract or enter into cooperative agreements with other well owners, water users, mutual ditch or reservoir companies, water user's associations, subdistricts, governmental entities and other persons or entities within or without the boundaries of the Subdistrict to advance the Plan goals and overall objective. In adopting a rule for this purpose, the Subdistrict Board of Managers may contract with well owners whose well impacts are not determined by the Rio Grande Alluvium Response Area Response Functions but can be determined by methods accepted under the Groundwater Rules, and whose impacts are similar to those of Subdistrict Wells.

2.2.3 Subdistrict Land will remain a part of the Subdistrict for as long as the Subdistrict is in existence.

## **2.3 Plan Goals and Overall Objective**

2.3.1 The principal goals of the Subdistrict are to protect senior surface water rights and to avoid unreasonable interference with the state's ability to fulfil its obligations under the Rio Grande Compact. To achieve these goals, reducing and managing overall groundwater consumption is necessary.

2.3.2 Subdistrict Members that divert groundwater from the underlying Unconfined Aquifer presently operate pursuant to well permits and/or decrees recognized under Colorado law. If the Subdistrict is unable to achieve its goals as described above, the State of Colorado, through its administrative rules and regulations, may impose limitations on the diversion of groundwater, including complete curtailment of withdrawal of groundwater through Subdistrict Wells.

2.3.3 The overall objective of the Plan is to provide a water management alternative to individual plans for augmentation or state-imposed regulations that limit the use of wells within the Subdistrict; that is a system of self-regulation using economic-based incentives that promote responsible groundwater use and management and ensure protection of senior surface water rights. The operation of this Plan will comply with the applicable requirements of Senate Bill 04-222, codified at section 37-92-501(4), C.R.S and any future amendments to this legislation.

## **2.4 Effect of Subdistrict and Plan**

2.4.1 Neither the creation of the Subdistrict nor this Plan will alter or affect any vested surface or groundwater rights. Nor shall the creation of the Subdistrict or this Plan expand any existing beneficial use or allow a water right to be used for a beneficial use not contained in a valid Decree or Permit.

2.4.2 Neither the creation of the Subdistrict nor this Plan will alter or affect the ability of individual water users to exchange, trade, lease, or sell surface water from surface water diversions to the extent permitted by the articles of incorporation and bylaws of the participating ditch companies and Colorado law, provided that the exchange, trade, lease, or sale proposed does not expand the amount of water consumption.

2.4.3 Water rights purchased, leased or retired by the District on behalf of the Subdistrict will only be used to replace injurious stream depletions resulting from the withdrawal of groundwater by Subdistrict Wells and/or to protect and enhance the water supply for the groundwater users within the boundaries of the Rio Grande Water Conservation District. Purchased and/or retired water rights will only be used for purposes consistent with this Plan.

2.4.4 If a Subdistrict Member elects to temporarily reduce the amount groundwater irrigation or otherwise reduce the consumptive use of water on Subdistrict Land and the Subdistrict Board of Managers authorizes such reduced irrigation or reduced consumptive use for conservation purposes and to assist in the mitigation of injurious stream depletions to senior water rights from Subdistrict Wells, this period of non-use will not be considered for purposes of abandonment or reductions in the water right, as provided by law.

2.4.5 Only Subdistrict Lands will be subject to assessment by the Subdistrict. Non-benefited Subdistrict Land will not be assessed Annual Service and User Fees. Groundwater withdrawals outside of an approved plan for augmentation, but otherwise within a permit or decree, will be subject to Annual Service and User Fees.

2.4.6 In remedying the injurious stream depletions from Subdistrict Wells, it is not the intent of the Subdistrict to allow or assist in the expansion of historic consumptive use of groundwater above that currently existing under valid permits or decrees. The Subdistrict and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded plans for augmentation or other replacement plans.

## **2.5 Effective Date of Plan**

2.5.1 This Plan is only effective after approval of the Board of Directors of the Rio Grande Water Conservation District and the State Engineer pursuant to section 37-48-126,

C.R.S. If any objections are filed with the Court against the State Engineer and/or District's approval of the Plan, the Plan will become effective only after the Court issues an order approving the Plan as pursuant to section 37-48-126 (3)(c), C.R.S.

2.5.2 The Subdistrict will remedy injurious stream depletions that occur as a result of Subdistrict Well groundwater withdrawals on or after the State Engineer's approval of the Subdistrict's first Annual Replacement Plan , as well as Post-Plan Injurious Stream Depletions impacting a surface stream from Subdistrict Well pumping in prior years and all Post-Plan Injurious Stream Depletions that will occur in subsequent years, as are capable of quantification using the RGDSS Groundwater Model as it currently exists or as it may exist in the future.

### **3.0 DESCRIPTION OF PLAN OF WATER MANAGEMENT**

#### **3.1 General Plan Description**

3.1.1 Upon approval of the Plan, Subdistrict Landowners withdrawing and/or consumptively using groundwater that is withdrawn from Subdistrict Wells are required to contribute financially to a program(s) the Board of Managers will initiate to ensure injurious stream depletions to senior surface water rights resulting from Subdistrict Well groundwater withdrawals are replaced or otherwise remedied, and, if necessary, to reduce the total amount of groundwater consumption occurring within the Subdistrict. Program(s) may be implemented in the first year of Subdistrict operation or any year thereafter. The Plan will generate sufficient revenues to fund the operations of the Subdistrict, including, without limitation, replacing or otherwise remedying any injurious stream depletions calculated to occur to senior surface water rights as the result of groundwater withdrawals from Subdistrict Wells, and, if necessary, to permit the retirement or temporary fallowing of sufficient water use within the Subdistrict, to protect senior surface water rights and to avoid interference with Colorado's obligations under

the Rio Grande Compact, as may be required under Colorado law. Revenue will be generated by the imposition of an Annual Service and User Fee.

### **3.2 Acts and Improvements**

3.2.1 To further the goals and objectives of the Plan, the Subdistrict intends to implement some or all of the following non-exclusive list of acts or improvements, in the discretion of the Board of Managers:

3.2.1.1 Calculation and replacement or remedy of injurious stream depletions.

3.2.1.2 Recommend and request the Board of Directors of the Rio Grande Water Conservation District purchase, rent, lease and/or retire irrigated lands and/or purchase, rent and/or lease water rights and/or reservoir storage, either inside or outside the exterior boundaries of the Subdistrict for the benefit of Subdistrict Wells.

3.2.1.3 A program of temporary fallowing, including economic incentives for temporary fallowing, potentially in cooperation with federal programs such as CREP, to remove acreage from production, on an ongoing basis, to achieve reduction in groundwater consumption necessary to achieve the goals of the Plan.

3.2.1.4 Economic incentives for the permanent removal of lands from irrigation, and, if applicable, providing a cost-share to potential federal programs such as CREP.

3.2.1.5 Provide economic incentives for Subdistrict Members or non-Subdistrict members to provide replacement water, land, or facilities for the benefit of the Subdistrict.

3.2.1.6 Calculation of increases and decreases in groundwater recharge.

3.2.1.7 Infrastructure improvements to maximize the diversion, use and recharge of water available to Colorado under its Compact allocation.

3.2.1.8 Education and/or research into water conservation, water use efficiency, improved water management, and agricultural water use.

3.2.1.9 Support and/or fund improvement and operation of ditches and headgates, to make the best use of available water.

3.2.1.10 Data collection and analysis programs designed to verify and improve RGDSS predictions, further refine the calculation of stream depletions caused by groundwater withdrawals, or otherwise help the Subdistrict achieve Plan objectives.

3.2.1.11 Work, in cooperation with USDA-NRCS and other entities, to develop annual water supply forecasts based on SNOTEL and snow course data to include development of new and improved technologies. Determine historical stream flow volumes based on paleo dendrochronology or other methods to correlate precipitation to rim inflows.

3.2.1.12 Provide economic credit to Subdistrict Well owners who provide replacement water, land or facilities for the benefit of the Subdistrict.

3.2.2 The Subdistrict intends to use a combination of these acts and improvements concurrently, or as they become economically viable and physically possible, to achieve the goals of the Plan. The Plan will operate for an indefinite period to ensure the remedy of injurious stream depletions resulting from groundwater withdrawals by Subdistrict Wells.

3.2.3 At such time as the operation of Subdistrict Wells is not causing injurious stream depletions, and all other purposes for which the Subdistrict has been organized are permanently accomplished, and all obligations of the Subdistrict have been satisfied, the Subdistrict can be dissolved.

### **3.3 Other Management Tools**

The Board of Managers will adopt Rules and Regulations, policies, and/or guidelines to facilitate the operation of the Subdistrict, subject to the approval of the Board of Directors of the Rio Grande Water Conservation District. Certain Rules and Regulations have been developed by the Board of Managers in conjunction with this Plan. In order to manage water use within the Subdistrict, the Subdistrict may use some or all of the following acts and policies:

3.3.1 Annual groundwater withdrawal allocations and/or limits. By petitioning land into the Subdistrict, landowners explicitly authorized and agreed to abide by any groundwater allocations or limits imposed by the Board of Managers either by individual Subdistrict Well or by Farm Plan. This covenant, as specifically set forth in the Individual Petition, will run with the land petitioned into the Subdistrict and bind all current and future owners of Subdistrict Lands.

3.3.2 Enactment of an economic stimulus to reduce excessive or inefficient groundwater use as may be reasonably necessary to further the goals and objectives of the Plan and/or ARP or to comply with Colorado law.

3.3.3 Economic or other penalties for violating Subdistrict rules or regulations.

3.3.4 Monthly, quarterly or bi-annual groundwater meter reporting to the Subdistrict.

3.3.5 Contracts with government or other public entities to allow such governments or other entities to become members of the Subdistrict and have the responsibilities and benefits of other members of the Subdistrict.

3.3.6 Contracts with persons or entities who irrigate lands solely with surface water to allow such persons or entities to have the responsibilities and benefits of other members of the Subdistrict.

### **3.4 Protection of Senior Surface Water Rights**

3.4.1 To ensure the protection of senior surface water rights and to avoid unreasonable interference with Colorado's obligations under the Rio Grande Compact, the Subdistrict will utilize a portion of its revenues to remedy any injurious stream depletions determined to occur to the Rio Grande and its tributaries resulting from the operation of Subdistrict Wells.

3.4.2 As required by the Rules Governing the Withdrawal of Groundwater, the Subdistrict will utilize the then current Response Functions developed by the State for the Rio Grande Alluvium Response Area to calculate the amount, timing and location of stream depletions caused by the withdrawal of groundwater by Subdistrict Wells or Contract Wells unless and until the Response Functions are supplanted in the future by a superior technology.

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

3.4.3.1 establish and maintain a network of observation wells as necessary to assist in refining the RGDSS Groundwater Model or replacement technology;

3.4.3.2 encourage participation in a Subdistrict program(s) that targets a reduction in groundwater withdrawals from Subdistrict Wells by reducing overall consumptive use of groundwater .

3.4.3.3 purchase, lease or otherwise obtain existing surface water rights and/or storage rights to be used as replacement water for any injurious stream depletions to surface water rights resulting from pumping of Subdistrict Wells; and,

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

### **3.5 Contracting Authority**

3.5.1 The Subdistrict may recommend and request that the Board of Directors of the Rio Grande Water Conservation District contract with willing surface water rights holders on behalf of the Subdistrict to purchase or lease water and temporarily or permanently change the surface water rights so as to be legally able to be used for recharge, storage, or other means of augmentation or replacement to replace injurious stream depletions from the operation of Subdistrict Wells, and purchase or lease lands associated with such water. The Subdistrict may also recommend and request that the Board of Directors of the Rio Grande Water Conservation District contract with surface water right holders to purchase or lease any available surplus augmentation credits from qualifying court approved plans for augmentation to advance the Plan goals and overall objectives.

3.5.2 Any funds collected from contracts with non-Subdistrict entities will be applied to advance the Plan goals and overall objective and/or as an offset of the administrative costs of managing the Subdistrict.

## **4.0 SUBDISTRICT COSTS, FEES AND CHARGES**

### **4.1 General Description**

4.1.1 The Subdistrict is entitled to raise funds by assessment of reasonable Annual Service and User Fees to carry out the goals and overall objective set forth in this Plan. The Subdistrict intends to finance its costs by raising sufficient revenue, in a fair and equitable manner, through the imposition of Annual Service and User Fees. Annual Service and User Fees will consist of two components, an annual Administrative Fee and an annual Pumping Fee. Each

component will be evaluated annually, and if appropriate, will be adjusted by the Board of Managers as required by this Plan and in response to the demands of the Annual Replacement Plan.

4.1.2 The Subdistrict's Plan of Water Management is founded on a program of economic-based incentives to reduce groundwater consumption and encourage responsible groundwater management through the implementation of improvements while remedying injurious stream depletions caused by the withdrawal of groundwater through Subdistrict Wells.

4.1.3 The Subdistrict will require a source of financing for Plan of Water Management and Annual Replacement Plan operations and will assess an annual Pumping Fee for this purpose. 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.

4.1.4 The Subdistrict will also require a source of financing for administration of the Plan of Water Management and Annual Replacement Plan and other costs not directly dependent upon the quantity of groundwater withdrawn by Subdistrict Wells. The Subdistrict will assess an annual Administrative Fee for this purpose. The total annual Administrative Fee charged by the Subdistrict must be limited to the amount shown by specific administrative expenditures in the ensuing annual budget, 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 agreed upon by the

Subdistrict and the District for expenses which are incurred after Subdistrict formation but prior to the initial fee collection and paid up front by the District.

## **4.2 Description of Annual Service and User Fees**

### **4.2.1 Administrative Fee**

4.2.1.1 On an annual basis, the Subdistrict Board of Managers will establish an Administrative Fee between \$0 and \$1,000 per Subdistrict Well (WDID). Where multiple wells (WDIDs) are combined through a single meter, providing a single groundwater withdrawal amount, the Subdistrict will consider the combined system a single Subdistrict Well for purposes of assessing the Administrative Fee. Meters used to record only surface water diversions will not be assessed an Administrative Fee. Only meters that are used to record use of groundwater or that record both surface water diversions and the use of groundwater will be assessed an annual Administrative Fee.

4.2.1.2 The Subdistrict will assess the Administrative Fee based on a tiered-system consisting of two tiers. Tiers are defined as: 1) active wells and 2) inactive wells. The Subdistrict will use Division No. 3 records to classify each Subdistrict Well into one of these two tiers on an annual basis. Inactive wells are those wells that have filed required paperwork and have been granted inactive status by the Division of Water Resources pursuant to its Measurements Rules. Wells must have been classified inactive for the entirety of the prior ARP Year. If a well is active for any portion of the prior ARP Year, it will be considered an active Subdistrict Well for the purpose of assessing the Administrative Fee. Wells with no groundwater withdrawals but classified as active by the Division of Water Resources will be considered active for fee calculation purposes.

4.2.1.3 Non-exempt wells that are not required to have a meter under the State of Colorado's Measurement Rules will be assessed an Administrative Fee per well and are subject to the same terms as those for other wells with meters set forth in paragraph 4.2.1.2, above.

4.2.1.4 When the Subdistrict calculates the annual Administrative Fee, inactive wells will be assessed a reduced Administrative Fee only if the Subdistrict can determine the actual administrative costs for inactive Subdistrict Wells are less than the actual administrative costs for active Subdistrict Wells. If the difference in administrative costs is minimal and is outweighed by the cost to classify each Subdistrict Well into one of these two tiers, the Subdistrict will assess every Subdistrict Well (WDID), or meter where multiple Subdistrict Wells (WDIDs) are combined through a single meter, whether active or inactive, the same Administrative Fee.

4.2.1.5 To reduce the potential for error in the fee calculation process, annual Administrative Fees will be assessed one-year in arrears to allow the Subdistrict sufficient time to properly review and classify each Subdistrict Well's status for purposes of classifying them into one of the two tiers defined above and to determine if there was a measureable difference in administrative costs between the two tiers. Annual Administrative Fees will be assessed upon the Subdistrict Lands at the time the Fees are placed on the tax rolls of each County.

4.2.1.6 If, after the first Subdistrict assessments have been made, a Subdistrict Well is approved for inactive status and then returned back to an active well status at some later time, the Subdistrict may assess a penalty. A penalty will only be assessed if the Subdistrict determines that the change in status increased the Subdistrict's costs to administer the Subdistrict Well. The Subdistrict will make such determination on a case-by-case basis.

4.2.1.7 The Board of Managers may amend the method of calculation of the annual Administrative Fee if the Board of Managers finds that the above-described method is not sufficiently effective in providing the Subdistrict with the necessary funds required to administer the Plan and Annual Replacement Plan. The Board of Managers may only change the method used to calculate the annual Administrative Fees after proceeding through a public process that allows Subdistrict Well Owners to understand the need to amend the method and to participate in the process. Any amendments to the method for calculating the Administrative Fee must also be ratified by the Board of Directors of the District. The process for amending the method used to calculate the annual Administrative Fees is defined in the Rules and Regulations for Subdistrict No. 2.

#### **4.2.2 Pumping Fee**

4.2.2.1 On an annual basis, the Subdistrict Board of Managers will establish a Pumping Fee per acre-foot of groundwater withdrawn of between \$0 and \$150. The Pumping Fee will be based on gross groundwater withdrawals as reported to the Colorado Division of Water Resources or reported to the Subdistrict by such other data-recording method acceptable to the Subdistrict. The Pumping Fee will not be based or assessed on consumptive use of groundwater or net groundwater withdrawal from the aquifer.

4.2.2.2 The Subdistrict will assess the Pumping Fee on a tiered-system which is a broad classification of differing consumptive uses based on application types and the net impacts on surface streams and senior surface water rights by the withdrawal of groundwater from Subdistrict Wells, with the tier with the highest percentage of consumptive use per acre-foot withdrawn being charged the highest fees. At the time of this 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. The tiers are currently defined as: 1) Sprinkler; 2) Flood; and, 3) Other Uses. A Subdistrict Well may be classified into two or more tiers if the amount of groundwater that is applied toward each tier can be separately measured by a method that is acceptable to the Subdistrict. If the different applications cannot be separately measured based on official records of the Colorado Division of Water Resources, the Subdistrict will classify all of the groundwater use at the highest consumptive use tier based on the application types for that particular Subdistrict Well. For example, if a Subdistrict Well withdraws groundwater for sprinkler and flood applications that cannot be separately measured, the gross groundwater withdrawals for that Subdistrict Well will be assessed at the Sprinkler tier. Tiers may be added or removed by the Board of Managers if the then current Response Functions recognize and/or remove application types in the calculation of the net consumptive use of groundwater withdrawn from Subdistrict Wells.

4.2.2.3 Annual Pumping Fees will be calculated on a running average of gross groundwater withdrawals per Subdistrict Well per Water Administration Year of not more than five years. The length of the running average must be set in the first Subdistrict ARP and will continue until modified by the Board of Managers of the Subdistrict only after allowing public comment at a hearing held on any proposal to change the length of the running average. Any amendments to the running average must also be ratified by the Board of Directors of the District. Gross groundwater withdrawals from Subdistrict Wells will be determined by using official records of the State of Colorado where these records are available.

4.2.2.4 Non-exempt wells that are not required to have a meter under the State of Colorado's Measurement Rules and are not inactive during the prior ARP Year will be assessed

an annual Pumping Fee calculated on average gross groundwater withdrawals. The Subdistrict Member who uses such a well must provide the Subdistrict the amount of water withdrawn through said well during each Water Administration Year using a method acceptable to the Subdistrict and approved prior to any withdrawal of groundwater through the well. Such wells that withdraw groundwater without a Subdistrict approved method for measurement will be in violation of this Plan of Water Management and the applicable ARP. Such wells are otherwise subject to the same terms as those for wells with meters set forth in paragraph 4.2.2.2, above.

4.2.2.5 Wells that have received a variance under the Measurement Rules will be evaluated by the Subdistrict on a case-by-case basis to determine the best available method to determine the gross amount of groundwater withdrawn through such well and such wells are otherwise subject to the same terms as those for wells with meters set forth in paragraph 4.2.2.2, above.

4.2.2.6 To reduce the potential for error in the fee calculation process, annual Pumping Fees will be assessed one-year in arrears. This will allow the Subdistrict time to properly review and classify each Subdistrict Well's groundwater use into the proper tier(s) and assure any discrepancies regarding meter records are resolved with the Division of Water Resources so Pumping Fees are more accurately assessed.

4.2.2.7 Annually, the Subdistrict will determine if there is a measureable cost-benefit to classifying groundwater use into the three defined tiers. If there is only a minimal benefit to setting three separate tier rates, the Subdistrict may assess every acre-foot of groundwater withdrawn from a Subdistrict Well at an equal per acre-foot rate regardless of the application type.

4.2.2.8 Although Pumping Fees may be calculated on a multi-year running average of gross groundwater withdrawals and one-year in arrears, the annual Pumping Fees will be assessed upon the Subdistrict Lands at the time the Fees are placed on the tax rolls of each County.

4.2.2.9 The above-described method for calculation of the annual Pumping Fees can be amended if it is found that this method is ineffective in providing the Subdistrict with the necessary funds required to operate and manage the Plan or Annual Replacement Plan. The Board of Managers will only be allowed to change the method used to calculate the annual Pumping Fees after proceeding through a public process that allows Subdistrict Well Owners to understand the need to amend the method and to allow them to participate in the process. Any amendments to the method for calculating the Pumping Fee must also be ratified by the Board of Directors of the District. The process for amending the method used to calculate the annual Pumping Fees is defined in the Rules and Regulations for Subdistrict No. 2.

### **4.2.3 Wells Covered by Plans for Augmentation**

4.2.3.1 A Subdistrict Well which is currently or at some time in the future becomes fully or partially augmented under a court-approved plan for augmentation for the remedy of the well's injurious stream depletions to senior surface water rights, both current year injurious stream depletions and any Post-Plan Injurious Stream Depletions, will be considered under the following criteria set out specifically for dealing with wells covered by plans for augmentation for Annual Service and User Fee calculations.

4.2.3.2 Subdistrict Wells that are only partially augmented under a court-approved plans for augmentation will be assessed an annual Administrative Fee similar to that assessed to all Subdistrict Wells as described in Section 4.2.1 above.

4.2.3.3 Subdistrict Wells that are only partially augmented under a court-approved plan for augmentation will be assessed an annual Pumping Fee on only the amount of average gross groundwater withdrawals that are not included within a court-approved plan for augmentation but are otherwise legal withdrawals as of the time this Plan is approved. Annually, the Subdistrict will consult with the Division of Water Resources' staff to determine the amount of groundwater that was withdrawn through Subdistrict Wells and not covered under plans for augmentation. The amount of average non-augmented gross groundwater withdrawals will be used by the Subdistrict in the calculation of the annual Pumping Fee as described under Section 4.2.2 above.

4.2.3.4 As stated in paragraph 2.4.6 above, it is not the intent of the Subdistrict to allow or assist in the expansion of historic consumptive use of groundwater above that currently existing under valid permits or decrees. The Subdistrict and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded plans for augmentation.

4.2.3.5 Subdistrict Lands receiving benefits from Subdistrict Wells that become fully augmented, including all Post-Plan Injurious Stream Depletions, by a court-approved plan for augmentation after they have been included in the Subdistrict will no longer be subject to Annual Service and User Fee assessments and will be classified as Non-Benefitted Subdistrict Lands for all Subdistrict purposes.

#### **4.2.4 Contract Wells**

4.2.4.1 To the extent permitted by law, and in accordance with Rules and Regulations adopted by the Subdistrict and approved by the District, the Subdistrict may recommend and request that the Board of Directors of the District contract with non-exempt well owners whom are not Subdistrict Members to allow the well(s) to be covered under the Plan and

ARP if the Board of Manager's believe coverage of the well(s) would further the goals and objectives of the Subdistrict's Plan.. Wells that may contract with the Subdistrict are those non-exempt wells which are not Subdistrict well(s) and are permitted or decreed for use on lands that are not Subdistrict Lands. Rules and Regulations adopted for this purpose provide that the Subdistrict Board of Managers may only contract with well owners to include wells in the Subdistrict if the impacts from the wells can be determined using the methodology the Subdistrict will use to calculate stream depletions from Subdistrict Wells, or otherwise have an approved alternate method of calculating injurious stream depletions, and the inclusion of the well will not alter the location of the ARP's replacement obligations..

4.2.4.2 Such contracts may be subject to a contract fee. This contract fee would be in addition to any Annual Service and User Fees the Subdistrict may assess based on terms outlined in each individual contract. Contract Wells may be assessed an annual Administrative Fee and/or Pumping Fee amount different than those assessed to Subdistrict Wells.

4.2.4.3 Additional terms and conditions may be included in contracts if the Board of Managers deems it necessary or desirable to meet the goals of the Subdistrict.

4.2.4.4 As stated in paragraph 2.4.6 above, it is not the intent of the Subdistrict to allow or assist in the expansion of historic consumptive use of groundwater above that currently existing under valid permits or decrees and this Plan of Water Management or ARP cannot be used as a source of water for new or expanded plans for augmentation or other replacement plans.

#### **4.2.5 Appeal Procedures**

In order to ensure that all Subdistrict Landowners receive fair and equal treatment, the Board of Managers will consider appeals by such Subdistrict Landowners and Contract Well

owners who believe the Annual Service and User Fees are inaccurate or in error. The Board of Managers may hear any such appeal or may choose to appoint a hearing officer to hear any such appeal and make a recommendation to the Board of Managers. If it is determined that an error was made, an adjustment will be made to correct the current calculation of the Annual Service and User Fees in cases where the fees have not yet been certified to the Counties for placement on the tax roll. If the fees have already been certified to the Counties, the Board of Managers will allow a refund in an amount equal to the error. The Board of Managers will adopt Rules and Regulations to govern the appeal process, including time limits on the ability to file an appeal; in the absence of such Rules and Regulations, the provisions of the Colorado Administrative Procedures Act will apply.

## **5.0 ANTICIPATED BENEFITS**

### **5.1 Subdistrict Benefits**

Anticipated benefits to Subdistrict Members because of the implementation of the Plan include:

- 5.1.1 remedy injury to senior surface water rights; and
- 5.1.2 prevent unreasonable interference with Colorado's obligations under the Rio Grande Compact.
- 5.1.3 higher average groundwater levels;
- 5.1.4 economic support for landowners who withdraw land from irrigation;
- 5.1.5 avoiding state imposed groundwater regulation and the attendant need to have costly plans for augmentation approved by the Water Court as a condition for the continued operation of wells;

## **5.2 Benefits to the San Luis Valley**

Compliance with the Groundwater Rules and the resulting groundwater withdrawals within the Subdistrict will have broad benefits to the economy of the San Luis Valley as a whole.

## **6.0 STATE OF COLORADO REPORTING REQUIREMENTS**

### **6.1 Annual Replacement Plan**

6.1.1 On an annual basis, as required under the Groundwater Rules, the Subdistrict must prepare and submit an ARP to the State and Division Engineers for approval. The report details Subdistrict operations for the ARP Year which runs from May 1<sup>st</sup> of the then current year to April 30<sup>th</sup> of the following year.

6.1.2 The ARP will include: a list of Subdistrict Wells that will be covered by the ARP; a projection of the groundwater withdrawals from Subdistrict Wells during the 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.

6.1.3 The State Engineer must approve the ARP for Subdistrict Wells to be 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.

## **6.2 Annual Report**

### **6.2.1 Preliminary Annual Report**

6.2.1.1 On an annual basis, as required under the Groundwater Rules, the Subdistrict must submit a preliminary report to the State and Division Engineers analyzing the operation of the then current ARP. The Subdistrict will prepare this analysis utilizing actual data for any and all information which was a prediction in the ARP.

### **6.2.2 Final Annual Report**

6.2.2.1 On an annual basis, as required under the Groundwater Rules, the Subdistrict must submit a final 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.

6.2.2.2 The analysis included in the 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.

## **7.0 BUDGET AND ACCOUNTING PLAN**

**7.1** The Board of Managers will prepare and submit a detailed annual budget for the ensuing Calendar Year to the District's Board of Directors for review and approval. The Subdistrict will post notice of the annual budget prior to the Board of Manager's meeting to review and submit the annual budget to the District Board of Directors to allow for public comment from Subdistrict Members. Once approved by the District Board of Directors, the Subdistrict's annual

budget will be included in the District's annual budget which is approved and submitted to the State of Colorado. The annual budget process is further defined in the Rules and Regulations for Subdistrict No. 2.

7.1.1 The annual Subdistrict budget will include detailed descriptions of the activities to be undertaken in the Calendar Year for the purpose of operating and administering the ARP and this Plan and details of the amount and type of revenues that are required to fund these budgeted expenditures.

7.1.2 The annual Subdistrict budget will contain a detailed description of the anticipated expenditures for operation of the ARP and this Plan, including: expenses for the lease, loan or purchase of water or water rights to be used to replace or remedy injurious stream depletions; expenditures for contracts to replace or remedy injurious stream depletions; expenses for any Subdistrict programs set up by the Board of Managers to reduce the overall withdrawal of groundwater from Subdistrict Wells; any amounts necessary to establish a reserve fund; and, itemized administrative expenses for the ensuing year.

7.1.3 The annual Subdistrict budget will contain a detailed description of the anticipated revenues necessary to fund the annual budget including details regarding the assessments for the annual Administrative Fee and Pumping Fee.

7.1.4 The Subdistrict shall limit the expenditures and revenues to the amounts specified in the annual budget unless an amended budget is adopted, after proper notice, in accordance with the provisions of Colorado Law.

## **8.0 ANNUAL OPERATIONAL TIMELINE**

**8.1** The following identified Subdistrict activities occur on an annual basis.

### **8.1.1 Farm Plan Updates**

Farm Plans are used by the Subdistrict to identify which Subdistrict Member owns and/or manages Subdistrict Lands and Wells. Information recorded in the Farm Plan is utilized during the Subdistrict's fee calculation process to direct where the Annual Service and User Fees should be allocated. Requests for updates to Farm Plans will be mailed to each Owner and/or Manager of a Farm Plan on record with the Subdistrict on an annual basis. Further definition of the Farm Plan and the process to update it is included in the Rules and Regulations for Subdistrict No. 2.

### **8.1.2 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 each year. The process for securing a Subdistrict-approved method to measure these types of wells is defined in the Rules and Regulations for Subdistrict No. 2.

### **8.1.3 Annual Subdistrict Fee Calculation Process**

During the annual fee calculation process, the Subdistrict will download the records kept by Division No. 3 to calculate average groundwater withdrawals for each Subdistrict or Contract Well for up to the previous five Water Administration Years. The Subdistrict will use the State's records, along with the withdrawals reported to the Subdistrict in 8.1.2 above, to calculate the

average gross groundwater withdrawals that will be used to calculate the annual Pumping Fee for each Subdistrict or Contract Well as described in 4.2.2 above.

The Subdistrict will also review the status for each Subdistrict or Contract Well during the prior ARP Year for purposes of calculating the Administrative Fee as described in 4.2.1 above.

#### **8.1.4 Appeal of Subdistrict Calculations**

The Subdistrict will mail out a notice to each Subdistrict Member and Contract Well owner when the fee calculation process is complete. Notices will identify the average gross groundwater withdrawals, including the diversion records for each year used in the average, and the 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 31<sup>st</sup> to allow Subdistrict Members and contractors sufficient time to contact the Subdistrict to review this information and appeal if necessary. Appeals should be made to the Subdistrict in the manner defined in the Rules and Regulations for Subdistrict No. 2.

#### **8.1.5 Certification of the Annual Service and User Fees**

The Subdistrict will ask for current ownership records for all Subdistrict Lands from the County Assessor during the annual fee calculation process. 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.

#### **8.1.6 Subdistrict Annual Budget**

During the process for preparing the annual Subdistrict budget, the Board of Managers 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 for approval as described in 7.1 above.

#### **8.1.7 Preliminary Annual Report**

The preliminary annual report for the current ARP Year will be submitted to the State and Division Engineers in accordance with the Groundwater Rules. The Subdistrict will post the preliminary Annual Report on the District's website.

#### **8.1.8 Final Annual Report**

The final annual report for the prior ARP Year will be submitted to the State and Division Engineers in accordance with the Groundwater Rules. The Subdistrict will post the final annual report on the District's website.

#### **8.1.9 Annual Replacement Plan**

The Annual Replacement Plan for the Subdistrict will be submitted to the State and Division Engineers in accordance with the Groundwater Rules. The Subdistrict will submit notice as required by the then current laws of Colorado and any other then current rules and regulations prior to the Subdistrict and the District's consideration of the Annual Replacement Plan. The ARP will be posted to the District's website.

#### **8.1.10 Subdistrict Replacement Operations**

The Subdistrict will begin replacing and/or remedying injurious stream depletions, to include any Post-Plan Injurious Stream Depletions accruing to the stream from prior Subdistrict and Contract Well withdrawals, following the approval of the first ARP in accordance with the Groundwater Rules and continuing for each ARP Year thereafter.

## **9.0 SUBDISTRICT GOVERNANCE**

The Subdistrict is a political subdivision of the District. A seven-member Board of Managers has been selected in the manner provided for in the Petition for Establishment of Special Improvement District No. 2 of the Rio Grande Water Conservation District (Petition for Establishment), as approved by the District Court in and for Rio Grande County, Case No. 15CV30050 (March 1, 2016), and will govern the Subdistrict. Future appointments to the Board of Managers will be in accordance with the procedures set out in the Petition for Establishment. The Board of Managers adopted by-laws, which were approved by the District's Board of Directors, to outline the roles and responsibilities of the Board of Managers.