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ROBERT F. HILL (Ret.)

March 14, 2023

Rebecca Mitchell
Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203

Re: Special District No. 4 of the Rio Grande Water Conservation District Loan Approved
January 24, 2023.

Dear Director Mitchell:

The Colorado General Assembly established the Rio Grande Water Conservation District (“RGWCD”) as an appropriate agency for the conservation, use, and development of the water resources of the Rio Grande and its tributaries. The legislation is codified at sections 37-48-101, et. seq., C.R.S. That same legislation provided the RGWCD the ability to create one or more special improvement districts to accomplish specific purposes within a portion of the RGWCD. See § 37-48-108, C.R.S. In response to the drafting and promulgation of the Colorado Division of Water Resources’ 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 (“Groundwater Use Rules”) the RGWCD and the water users within the District moved forward on creating six separate special improvement districts.

Based upon petitions filed by water users in the San Luis Creek area, the RGWCD filed a Petition with the District Court, in and for Saguache County, to establish Special Improvement District No. 4 (“Subdistrict No. 4”). The District Court subsequently granted that petition. *Order Establishing Special Improvement District No. 4 of the Rio Grande Water Conservation District, Saguache Combined Court*, Case No. 2017CV30005 (July 21, 2017). The Board of Managers of Subdistrict No. 4 then drafted a Plan of Water Management, which included a groundwater management plan, as the official plan of the Subdistrict pursuant to section 37-48-126, C.R.S. (“POWM”). The RGWCD Board of Directors approved the POWM February 24, 2020. The Colorado State Engineer approved the POWM pursuant to sections 37-48-126(2) and 37-92-501(4)(c), C.R.S. on March 13, 2020. By Resolution dated June 5, 2018

and pursuant to Article 45.1 of Title 37 of the Colorado Revised Statutes, the Board of Managers of Subdistrict No. 4 established a Water Activity Enterprise.

The Water Court, in and for Water Division No. 3 upheld the Colorado State Engineer's proposed Groundwater Use Rules. *Findings of Fact, Conclusions of Law, Judgement and Decree*, Case No. 2015CW3024, District Court, Water Division 3 (March 15, 2019). In general, the Groundwater Use Rules require that, if a non-exempt well is to continue to withdraw groundwater from within Water Division No. 3, such a well must remedy any injurious depletions to senior surface water users, achieve and maintain sustainable aquifers, and not unreasonably interfere with the State's ability to fulfill its obligations under the Rio Grande Compact. The Subdistrict No. 4 POWM is designed and intended to assure that, through its operations, Subdistrict Wells will comply with the Groundwater Use Rules.

The vast majority of injurious depletions from Subdistrict Wells accrue to San Luis Creek. Remedying those depletions has been accomplished through the use of Well Injury Payment (Forbearance) Agreements. These agreements are voluntary agreements entered into by the Subdistrict No. 4 and the water right owner, which allow Subdistrict No. 4 to remedy injurious stream depletions by means other than providing water. These agreements are temporary and voluntary. If a surface water right owner decides not to enter into an agreement Subdistrict No. 4 would need to have available a reliable source of water sufficient to remedy injurious stream depletions. The Groundwater Use Rules also set forth the metric by which Subdistrict No. 4 must achieve and maintain a sustainable aquifer. Subdistrict No. 4 must maintain their five-year rolling average groundwater withdrawals below the average withdrawals which occurred from 1978-2000. No later than ten years from the effective date of the Groundwater Rules, the State Engineer is to prepare a report detailing the preferred methodologies to maintain a sustainable water supply and manage artesian pressures. Currently, the San Luis Creek Response Area's five-year average groundwater withdrawals are 11,388 acre-feet and average groundwater withdrawals from 1978-2000 were 9,869 acre-feet. This means the total groundwater withdrawals in the response area are 1,519 acre-feet above the sustainability requirement. Additionally, there is a large area of groundwater decline of five feet centered around the property to be purchased.

For these and other reasons, the Subdistrict No. 4 Board of Managers chose to proceed with a plan to acquire several existing wells with adequate historical consumptive use, change a portion of the historical consumptive use of those wells from irrigation to augmentation and replacement, retire the remainder of the historical groundwater withdrawals, and dry-up the previously irrigated acres after establishing drought tolerant cover crops. From 2009-2020 the average annual groundwater withdrawals from the wells were 1,681 acre-feet. Reducing the total groundwater withdrawals in the San Luis Creek Response Area through this purchase will place the Subdistrict within or very near the sustainability

requirement of the 1978-2000 groundwater withdrawals. That portion of the water changed to augmentation would then be transported from the existing wells through a pipeline to San Luis Creek in a manner that would remedy injurious depletions in time, location, and amount. In order to fund the acquisition of the existing groundwater rights and build the necessary infrastructure that will provide a long-term solution to remedy injurious depletions to San Luis Creek and allow the Subdistrict Wells to continue to operate, the RGWCD, for and on behalf of the Subdistrict No. 4 Water Activity Enterprise, applied for a loan from the Colorado Water Conservation Board in the amount of three million, four hundred ninety thousand, five hundred and sixty dollars (\$3,490,560.00) loan. The loan will be repaid of a 40-year term at a blended interest rate of 2.10% per annum.

The loan will be repaid from revenues derived from the fees levied and collected by the Subdistrict. Attached to this letter is a budget projection from the Subdistrict showing that the Subdistrict can maintain its current activities and complete the repayment of the three million, four hundred ninety thousand, five hundred and sixty dollar water acquisition and infrastructure loan sought by the Subdistrict.

Pursuant to its POWM, 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. *POWM* ¶ 4.1. The Subdistrict charges an Administrative Fee per Subdistrict Well to fund its general administrative operations. The Subdistrict also charges a Groundwater Withdrawal Fee based on the five-year average amount of Net Groundwater Withdrawals of a given Farm Unit, assessed one-year in arrears. There is no maximum limit on the Groundwater Withdrawal Fee. Instead, the Fee is set as part of the Subdistrict and District annual budget process and is set at the level necessary to fund the necessary programs and other expenses in the Subdistrict's budget. The revenues collected from the Groundwater Withdrawal Fee may be used to fund the remedy of injurious stream depletions caused by the withdrawal of groundwater from Subdistrict Wells and projects to achieve and maintain a sustainable aquifer. The current Groundwater Withdrawal Fee is \$30.72 for every acre-foot of groundwater withdrawn. The POWM also provides that, should Subdistrict Wells not be allowed to continue to withdraw groundwater because Subdistrict objectives and goals are not being met, the Subdistrict and RGWCD may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied.

The RGWCD, on behalf of the Subdistrict, has the legal authority to acquire real property, which includes water rights. § 37-48-105(1)(b), C.R.S. The RGWCD is authorized to borrow money on behalf of the Subdistrict., § 37-48-105(1)(c), C.R.S.

This letter of opinion is based upon the understanding that the State Engineer will work with the

Ms Rebecca Mitchell
March 14, 2023
Page 4

RGWCD and Subdistrict No. 4 and the agricultural producers within the Subdistrict boundaries to ensure that irrigated agriculture continues to be viable during the term of the loan and is not impaired or restricted while the Subdistrict Wells are in compliance with the Groundwater Use Rules.

Very truly yours,



Peter J. Ampe

cc: Jessica Halvorsen, Program Assistant, CWCB
Cole Bedford, Project Manager, CWCB
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