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ROBERT F. HILL (Ret.)

March 25, 2025

Lauren Ris
Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203

Re: Special District No. 2 of the Rio Grande Water Conservation District Loan
Approved by the Colorado Water Conservation Board March 20, 2025.

Dear Director Ris:

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 Rio Grande Alluvium Response Area, the RGWCD filed a Petition with the District Court, in and for Rio Grande and Alamosa Counties, to establish Special Improvement District No. 2 ("Subdistrict No. 2"). The District Court subsequently granted that petition. *Order Establishing Special Improvement District No. 2 of the Rio Grande Water Conservation District*, Case No. 2015CV30050, District Court, Rio Grande

County, (March 1, 2016). The Board of Managers of Subdistrict No. 2 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 October 10, 2017, and the Colorado State Engineer approved the POWM pursuant to sections 37-48-126(2) and 37-92-501(4)(c), C.R.S. on August 9, 2018. By Resolution dated August 2, 2016, and pursuant to Article 45.1 of Title 37 of the Colorado Revised Statutes, the Board of Managers of Subdistrict No. 2 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. 2 POWM is designed and intended to assure that, through its operations, Subdistrict Wells will comply with the Groundwater Use Rules.

The injurious depletions from Subdistrict Wells accrue to the Rio Grande. Remediating those depletions has presented numerous challenges for the Subdistrict. To-date, Subdistrict No. 2 has been able to replace all injurious depletions on these rivers through forbearance agreements and other temporary replacement sources. Subdistrict No. 2 continues to seek reliable replacement sources to remedy all current and future injurious depletions on the Rio Grande. Subdistrict No. 2 has worked with the community to find replacement sources to remedy depletions on the Rio Grande, and the community has worked very well with the Subdistrict to provide temporary replacement sources to allow Subdistrict No. 2 time to secure more permanent or long-term replacement sources. The long-term goal of Subdistrict No. 2 is to secure permanent replacement sources.

For these and other reasons, the Subdistrict No. 2 Board of Managers has chosen to proceed with a plan to acquire surface and groundwater rights, and with adequate historical consumptive use, change the use of those water rights from irrigation to augmentation and

replacement, and dry-up the previously irrigated acres these water rights serviced. That water would then be transported by ditch or pipeline to the Rio Grande in a manner that would remedy injurious depletions in time, location and amount. In order to fund the acquisition of the existing water rights and maintain the necessary infrastructure that will provide a long-term solution to remedy injurious depletions to the Rio Grande and allow the Subdistrict Wells to continue to operate, the RGWCD, for and on behalf of the Subdistrict No. 2 Water Activity Enterprise, applied for a loan from the Colorado Water Conservation Board in the amount of a seven hundred twenty-three thousand one hundred sixty-dollar (\$723,160.00) loan (\$716,000 for Project costs and \$7,160 for the 1% service fee). The loan will be repaid on a 30-year term at a blended interest rate of 2.25% 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 seven hundred twenty-three thousand one hundred 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 Pumping Fee based on the annual amount of Groundwater Withdrawals of a given Farm Unit, based on a five-year average, assessed one-year in arrears. There is a \$150 per acre-foot limit on the Pumping Fee. 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 Pumping Fee may be used to fund the remedy of injurious stream depletions caused by the withdrawal of groundwater from Subdistrict Wells. The current Pumping Fee is based on the type of use: wells for sprinkler application are assessed \$67 on every acre-foot of groundwater withdrawn; wells for flood application are assessed \$49 on every acre-foot; and, wells that are used for other uses, such as, commercial, industrial, municipal and fish applications, were assessed a variable Groundwater Withdrawal Fee based upon the RGDSS Groundwater Model consumptive use.

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 RGWCD and Subdistrict No. 2 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 Ampe

cc: Kaylee Salazar, Contracts, CWCB
Matthew Stearns, Project Development Engineer, CWCB
Zachary Salin, Project Manager, CWCB
Cleave Simpson, General Manager, RGWCD
Amber Pacheco, Deputy General Manager, RGWCD
Greg Higel, President, RGWCD
Karla Shriver, President, Subdistrict No. 2
Angelo Bellah, Program Manager, Subdistrict No. 2

Subdistrict No. 2
2025 Preliminary Budget

	2022 Ending Balance Actual (Audited)	2023 Ending Balance Actual (Audited)	2024 Budget	2024 Year to Date 8.31.2024	2024 Estimated to End	2024 Estimated Ending	2025 Budget
Beginning Fund Balance							
Administrative Fee	\$ 22,038.67	\$ 11,450.33	\$ 3,857.84	\$ 1,468.95	\$ 1,468.95	\$ 1,468.95	\$ 3,518.59
Pumping Fee	453,410.97	565,322.24	490,405.15	491,388.40	491,388.40	491,388.40	357,060.63
Total Beginning Fund Balance	475,449.64	576,772.57	494,262.99	492,857.35	492,857.35	492,857.35	360,579.22
Proposed Revenue (Assessed in 2024 and collected in 2025)							
Administration Fees	\$ 76,570.15	\$ 80,983.61	\$ 87,000.00	\$ 80,495.73	\$ 6,075.15	\$ 86,570.88	\$ 99,000.00
Pumping Fees	555,439.88	611,350.66	745,000.00	706,973.92	32,124.29	\$ 739,098.21	786,000.00
Interest on Fees	619.45	669.78	1,000.00	1,063.54	381.99	\$ 1,445.53	1,000.00
Contract Inclusion Fee	2,000.00	1,000.00	500.00	-		\$ -	300.00
Total Proposed Revenue	634,629.48	694,004.05	833,500.00	788,533.19	38,581.43	827,114.62	886,300.00
Proposed Transfer In from Rio Grande Water Conservation District General Fund	\$ -	\$ -	\$ -			\$ -	\$ -
Proposed Administrative Expenditures							
General Administration							
Salaries and Benefits	\$ 39,454.86	\$ 56,348.84	55,000.00	33,877.64	16,940.00	50,817.64	58,000.00
Office Expense (Postage, Office Supplies, etc.)	4,057.38	752.98	1,000.00	909.92	454.96	1,364.88	1,300.00
Building Expense (Building Repayment)	4,238.00	4,238.00	4,238.00	4,238.00	-	4,238.00	4,238.00
Building Operating Expense	1,482.01	1,534.24	1,500.00	-	1,842.48	1,842.48	1,800.00
Treasurer Fees (1% of all assessments collected by counties)	6,045.69	6,670.03	6,850.00	7,988.78	381.99	8,370.77	8,850.00
Accounting Services & Audit	2,130.00	2,150.00	3,000.00	2,325.00	-	2,325.00	3,000.00
Services (GIS/GPS Authority-Land Updates)	-		250.00	-		-	250.00
Total Administration	57,407.94	71,694.09	71,838.00	49,339.34	19,619.43	68,958.77	77,438.00
Professional							
Routine Legal and Engineering Expense	\$ 17,683.15	\$ 8,440.68	\$ 7,500.00	\$ 4,508.00	\$ -	\$ 4,508.00	\$ 10,000.00
Total Professional	17,683.15	8,440.68	7,500.00	4,508.00	-	4,508.00	10,000.00
Reimbursement to General Fund							
Subdistrict Formation Costs Owed to RGWCD (annual for some fixed term)	\$ 14,686.85	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ -	\$ 12,500.00	\$ 12,500.00
Total Reimbursement to General Fund	14,686.85	12,500.00	12,500.00	12,500.00	-	12,500.00	12,500.00
Total Proposed Administrative Expenditures	\$ 89,777.94	\$ 92,634.77	\$ 91,838.00	\$ 66,347.34	\$ 19,619.43	\$ 85,966.77	\$ 99,938.00
Proposed Operations Expenditures							
	2022 Ending Balance Actual (unaudited)	2023 Approved Budget	2024 Budget	2024 Year to Date	2024 Estimated to End	2024 Estimated Ending	2025 Budget

Professional							
Legal/Engineering Services	\$ 3,653.01	\$ 44,319.57	50,000.00	13,583.93	32,000.00	45,583.93	45,000.00
Total Professional	\$ 3,653.01	\$ 44,319.57	\$ 50,000.00	\$ 13,583.93	\$ 32,000.00	\$ 45,583.93	\$ 45,000.00
Water Management							
Water Storage Expense	\$ 142,506.49	\$ 165,239.88	225,000.00	23,866.35	200,000.00	223,866.35	225,000.00
Forbearance Agreements	37,074.66	160,455.87	170,000.00	149,178.77	8,500.00	157,678.77	160,000.00
Remedy Portfolio Expenses (Current)	260,294.45	315,269.18	391,500.00	146,296.93	300,000.00	446,296.93	374,500.00
Remedy Portfolio Expenses (Future and Post Plan)	-	-	338,500.00		-	-	338,500.00
Total Water Management	\$ 439,875.60	\$ 640,964.93	\$ 1,125,000.00	\$ 319,342.05	\$ 508,500.00	\$ 827,842.05	\$ 1,098,000.00
Other Financing Sources and Expenditures							
Funds of Loan Payable to Subdistrict No. 6	-	742,269.00				-	
Funds of Loan			5,000,000.00				
Expenditures for Water Rights Purchased	-	(742,269.00)	(5,000,000.00)				
Total Other Financing Sources and Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reimbursement to General Fund							
Water Management Expenses Owed to RGWCD		-					
Total Reimbursement to General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Proposed Operations Expenditures	\$ 443,528.61	\$ 685,284.50	\$ 1,175,000.00	\$ 332,925.98	\$ 540,500.00	\$ 873,425.98	\$ 1,143,000.00
Total Subdistrict Expenditures	\$ 533,306.55	\$ 777,919.27	\$ 1,266,838.00	\$ 399,273.32	\$ 560,119.43	\$ 959,392.75	\$ 1,242,938.00
Ending Fund Balance							
Administrative Fee	11,450.33	1,468.95	519.84			3,518.59	3,880.59
Pumping Fee	565,322.24	491,388.40	60,405.15			357,060.63	60.63
Total Ending Fund Balance	\$ 576,772.57	\$ 492,857.35	\$ 60,924.99			\$ 360,579.22	\$ 3,941.22