

**LOAN FEASIBILITY STUDY FOR  
NAVAJO DEVELOPMENT, INC'S WILLIAMS CREEK SQUAW PASS  
TRANSMOUNTAIN DIVERSION WATER RIGHT PURCHASE**

Prepared

January 31, 2025

Sponsored By

The Rio Grande Water Conservation District, acting for and on behalf of:  
Special Improvement District No. 2 of the Rio Grande Water Conservation District,  
acting by and through its Water Activity Enterprise  
8805 Independence Way  
Alamosa, Co 81101

In consultation with

Davis Engineering Service, Inc.  
P.O. Box 1840, 1314 11<sup>th</sup> Street  
Alamosa, Colorado 81101

**Feasibility Study Approval**

Pursuant to Colorado Revised Statutes 37-60-121 & 122, and in accordance with policies adopted by the Board, the CWCB staff has determined this Feasibility Study meets all applicable requirements for approval.

*Zachary Salin*  
Signed

03/21/2025  
Date

## **Executive Summary**

As of May 1<sup>st</sup>, 2019, Special Improvement District No. 2 (“Subdistrict No. 2” and/or “Subdistrict”) of the Rio Grande Water Conservation District (“RGWCD” and/or “District”) was required to remedy injurious stream depletions from groundwater wells that are part of the Subdistrict. If the Subdistrict is unable to remedy these injurious stream depletions, then approximately 270 Subdistrict Wells will be forced to shut off until the depletions can be remedied. Subdistrict No. 2 of the RGWCD is situated in the alluvial area along the south side of the Rio Grande, stretching primarily from Alamosa to Del Norte.

The RGWCD, acting for and on behalf of the Subdistrict, is requesting a loan in the amount of **\$722,428** to purchase Navajo Development, Inc’s (“Navajo”) remaining uncommitted interest in the Williams Creek Squaw Pass Diversion (“WCSPD”) water right and associated infrastructure for the purpose of securing a supply of water to remedy the injurious stream depletions caused by the groundwater withdrawals from Subdistrict wells.

The Subdistrict will assess its members an annual Pumping Fee (per ac-ft) in an amount sufficient to cover both the loan and interest payments and the operation and maintenance costs for the project. The Subdistrict is required to prepare and approve an annual budget, which is then made part of the RGWCD’s official budget. The Subdistrict’s Board of Managers will set the annual Pumping Fee rate during the budget process at a rate sufficient to make the required payments on the loan and any operation and maintenance costs.

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**Attachments**

Attachment 1 – Case No. 2020CW3016’s Final Order Judgement and Decree

Attachment 2 – Case No. 2020CW3016’s Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree

Attachment 3 – Signed Purchase and Sale Agreement Between Navajo and the Subdistrict

Attachment 4 – Navajo’s Water Report of the WCSPD Water Right

Attachment 5 – Schedule of Revenue and Expenditures

## Introduction

### 1.1 Purpose of the WCSPD Water Right and Infrastructure Purchase

Members of Special Improvement District No. 2 of the Rio Grande Water Conservation District are landowners within the boundaries of Subdistrict No. 2 who rely upon groundwater for all or part of their commercial, municipal, industrial and/or irrigated agricultural practices within the area defined by the Rules Governing the Withdrawal of Groundwater in Water Division 3, District Court, Water Division No. 3, Case No. 15CW3024 ("Groundwater Rules") as the Rio Grande Alluvium Response Area. Under the Groundwater Rules, non-exempt wells can continue groundwater withdrawals only if they have either: 1) an individual Plan for Augmentation, 2) an approved Substitute Water Supply Plan, or 3) their well is included in a Subdistrict's Groundwater Management Plan and Annual Replacement Plan ("ARP"). Subdistrict No. 2's ARP must demonstrate a sufficient source of supplies available to remedy injurious stream depletions resulting from Subdistrict No. 2 Well groundwater withdrawals and any wells outside the Subdistrict that have a contract with the Subdistrict. Figure 1, below, shows a map of the Rio Grande Alluvium Response Area ("Response Area").

The Rio Grande Decision Support System ("RGDSS") Groundwater Model calculates stream depletions occurring to surface water streams caused by wells withdrawing water from the groundwater system within the Response Area that may cause injury to senior surface water right 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. The Subdistrict has also contracted with certain wells in the Rio Grande alluvium above the boundary of the RGDSS Groundwater Model to remedy depletions from those wells. Those depletions are determined by a separate model, previously approved by the State Engineer.

The water right and associated infrastructure for which this loan is being sought are for sale by Navajo Development, Inc. ("Navajo"). Navajo and the Subdistrict prosecuted Case No. 20CW3016 in Water Division No. 3 (Attachment 1 and 2) as co-applicants wherein they sought to confirm appropriative right of exchange and, additionally, seek to add or confirm the following beneficial uses of the WCSPD water right: augmentation, replacement, remedy of injurious depletions as part of a subdistrict's approved Annual Replacement Plan, storage of the WCSPD water right in Rio Grande Reservoir and to confirm the quantification of the Historical Consumptive Use ("HCU") of the WCSPD water right, based on previous decrees in Case Nos. W-1869-78 (Water Div. 7) and W-3930 (Water Div. 3). Case No. 20CW3016 concluded with the Water Court's entry of a final decree on December 27, 2024.

The Water Report provided by Navajo to the Subdistrict (Attachment 4) indicates the water right to be purchased by Subdistrict No. 2 consists of 54.1 ac-ft of HCU. Subdistrict No. 2 is seeking a \$722,428 loan from the CWCB Water Project Loan Program to fund the purchase of Navajo's remaining uncommitted interest in the WCSPD water right and to maintain the necessary infrastructure needed to run the various existing augmentation plans associated with the WCSPD water right. Subdistrict No. 2 intends to use the water right to remedy a portion of its injurious stream depletions occurring to the Rio Grande. Funding for the purchase of water right from Navajo will allow Subdistrict No. 2 to continue operation of its

Groundwater Management Plan and Annual Replacement Plans, which allows Subdistrict No. 2 Wells to continue to operate.

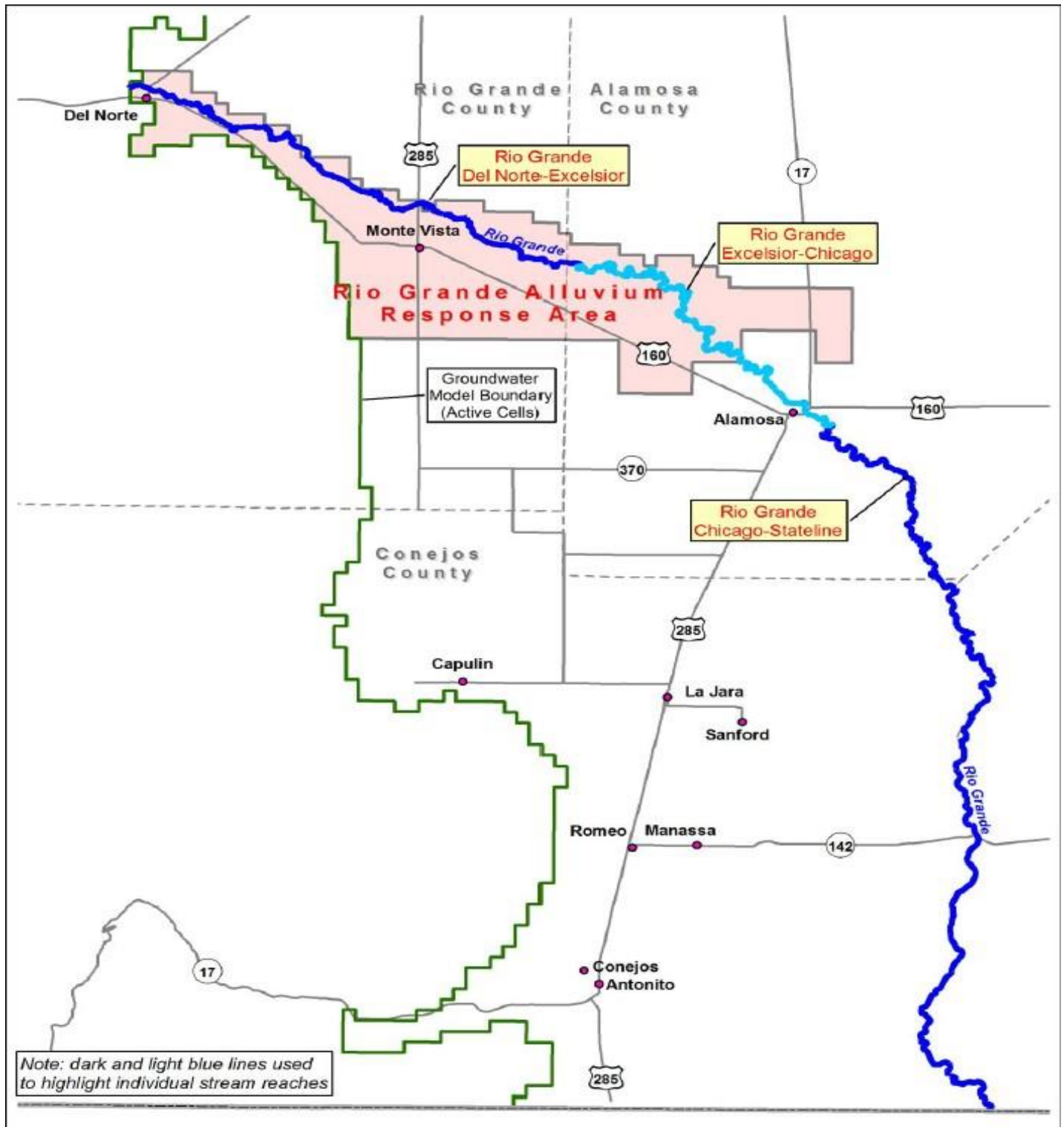


Figure 1 – Rio Grande Alluvium Response Area

The WCSPD water right diverts water from the Williams Creek drainage in Water Division 7 into Squaw Creek in Water Division 3 and then into WCSPD infrastructure. Since 1987, Navajo has operated an exchange by which WCSPD transmountain water is delivered down Squaw Creek to the Rio Grande, and then exchanged on the Rio Grande from its confluence with Squaw Creek into the Rio Grande Reservoir. The Rio Grande Reservoir is located in Hinsdale County. The WCSPD is adjudicated and decreed as Ditch No. 236, Priority No. 310, for 10 cfs. In Case No. W-1869-78, at least 17.011 acre-feet of the WCSPD right was changed to allow municipal, recreation and augmentation uses, in addition to the initially decreed irrigation use. In addition to diversions under these decrees, Navajo has historically diverted additional transmountain water each year through the WCSPD under free river conditions on Williams Creek. The WCSPD Right is divided into internal priorities (“Pools”) reflecting past purchases of portions of the water right for augmentation purposes. Subdistrict No. 2’s purchase of Navajo’s uncommitted WCSPD Interest consists of water in Pool 3. Based on a Water Report provided by Navajo to Subdistrict No. 2, the WCSPD right available for Subdistrict No. 2 to purchase consists of 54.1 acre-feet of HCU. This amount of HCU is how the price of the WCSPD right is being determined and makes up the vast majority of the loan the Subdistrict is seeking. The purpose of the purchase is to secure a source of water which can be used to remedy a portion of the injurious stream depletions on the Rio Grande from Subdistrict No. 2 Wells.

The intent is to continue to operate the exchange as described above and maintain the WCSPD infrastructure in order to deliver the necessary water associated with its augmentation plans in the same manner that Navajo has since 1987<sup>1</sup>. The decreed uses of the WCSPD water right may be made directly, by exchange into Rio Grande Reservoir, or following release from storage in Rio Grande Reservoir.

## **1.2 Project Sponsor – RGWCD acting for and on behalf of Subdistrict No. 2**

The RGWCD was created by the Colorado General Assembly and formed in 1967 by a vote of the people residing within its boundaries. The RGWCD was created to protect, enhance, and develop water resources in the Rio Grande Basin. The RGWCD encompasses a five-county region, which includes Alamosa, Rio Grande, Conejos, and those portions of Saguache and Mineral Counties within the Rio Grande Basin, including the Closed Basin. The RGWCD is a body corporate and a political subdivision. In order to accomplish its mission, the RGWCD is authorized to levy an ad valorem tax on all real property located within the District and collect fee assessments and surcharges. In addition, the RGWCD is also authorized to contract with federal, state, and local agencies, as well as individuals. Under section 37-48-108, C.R.S., the District is authorized to form Special Improvement Districts (“subdistricts”), which address specific needs and purposes for groups of water users in the RGWCD.

Beginning in the early 2000’s, the RGWCD began the process of forming subdistricts to address the needs of water users in various regions of the District and aid them in complying with the pending Groundwater Rules.

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<sup>1</sup> Subdistrict No. 2 will be responsible for operations of the entire water right, including meeting the requirements of the other Pools and the plans for augmentation to which that water is committed to.



Special Improvement District No. 2 was established by the Rio Grande County District Court on March 1, 2016, in Case 2015CV30050. The overall purpose of this subdistrict is to provide a community-oriented water management alternative to individual augmentation plans or state-imposed regulations limiting the use of wells in Water Division No. 3. That is, to provide a mechanism through which a group of well users in the Rio Grande Alluvium Response Area can work collaboratively to develop and implement a system of self-regulation using economic-based incentives and other management tools that promote responsible groundwater management and that remedies the injury to senior surface water right that result from groundwater use from Subdistrict No. 2 Wells and those Subdistrict No. 2 contracts with. Subdistrict No. 2 currently consists of 270 wells that withdraw an average of 13,472.27 ac-ft. of groundwater annually. As noted above, there are also additional well owners outside of the RGDSS Groundwater model boundary who have contracted with Subdistrict No. 2 to remedy their injurious stream depletions.

To fund their operations, Subdistrict No. 2 assesses Annual Service and User Fees by special assessments placed on their members and contract holders' property taxes. The fees assessed by Subdistrict No. 2 are a per-well Administrative Fee and a per ac-ft. Pumping Fee. A portion of the per ac-ft. Pumping Fee will be used to fund repayment of the WCSPD water right purchase. In 2024, the Pumping Fee for wells located in the Rio Grande Alluvium Response Area were assessed \$67 per ac-ft. if applied through sprinkler irrigation and \$49 per ac-ft. if applied through flood irrigation. Wells located outside the RGDSS Groundwater Model boundary were assessed at \$81 per ac-ft. if applied through sprinkler irrigation and \$59 per ac-ft. if applied through flood irrigation. Subdistrict No. 2 Wells used for purposes other than irrigation are assessed at different rates based on the consumptive uses of those wells, also known as "other" Subdistrict No. 2 Wells.

### **1.3 Project Area**

The Project Area is located in the southeast portion of Hinsdale County, specifically approximately 8.5 miles south of the Rio Grande Reservoir and 62.5 miles southwest of Creede in Mineral County. The economy in this area is predominately controlled by the service industry. Some of the other economic sectors include construction, government, school districts, medical centers, and banks.

Subdistrict No. 2 is located in the San Luis Valley. The San Luis Valley is a large intermountain basin covering approximately 3,200 square miles of land in southern Colorado and northern New Mexico. The valley is bordered by the Sangre de Cristo Mountains to the east and northeast, the San Juan and La Garita Mountains to the west and northwest, and the Taos Plateau to the south, creating one of the largest intermountain valleys in the world and the largest alpine valley in North America. Snowmelt from the mountains around the valley is responsible for most of the area's stream flow in the associated watershed, including the Rio Grande, Alamosa River, and Conejos Rivers. Approximately 56 percent of the valley is in private ownership. The remaining acres are protected and managed by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and the State of Colorado. Most of the private land and wetland habitat occurs on the valley floor.

## 1.4 Land Use

Land use in Subdistrict No. 2 is predominately irrigated agriculture, with a small amount of municipal, fish culture, and commercial use. The main crops grown in Subdistrict No. 2 are grass hay, grass pasture, alfalfa and grain crops. Subdistrict No. 2 Wells withdraw an average of 13,472 ac-ft. annually, with approximately 86 percent of withdrawals used for sprinkler irrigation, 5 percent for flood irrigation, and 9 percent for other uses.

## 2.0 Water Demands and Water Rights Included in the WCSPD Water Right Purchase

### 2.1 Water Supply Demands

The water supply demands are determined by the RGDSS Groundwater Model and Subdistrict No. 2's Response Area Response Functions for the wells within the Rio Grande Alluvium Response Area, and an Upper Rio Grande groundwater model for those wells outside the RGDSS Groundwater Model boundary. These tools are used to calculate depletions from groundwater withdrawals to the Rio Grande on a monthly basis, which is then divided by the number of days in that month to establish the daily remedy obligation. The magnitude of Subdistrict No. 2's depletions to the Rio Grande varies from approximately 144 ac-ft./month to 212 ac-ft./month. The Response Functions evaluate three unique stream flow conditions. Table 1 shows the depletions for the current ARP Year which is considered an Average Year based on the projected April-September streamflow of 445,000 ac-ft.

**Table 1 – Subdistrict No. 2 Remedy Needs**

| Stream Reach                     | Combined Stream Depletions for RGA and URG Response Functions |       |       |       |       |       |       |       |       |       |       |       | Total   |
|----------------------------------|---|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------|
|                                  | 2024  |       |       |       |       |       |       |       | 2025  |       |       |       |         |
|                                  | May   | Jun   | Jul   | Aug   | Sep   | Oct   | Nov   | Dec   | Jan   | Feb   | Mar   | Apr   |         |
| (1)                              | (2)   | (3)   | (4)   | (5)   | (6)   | (7)   | (8)   | (9)   | (10)  | (11)  | (12)  | (13)  | (14)    |
| Upper Rio Grande above Del Norte | 6.9   | 8.8   | 11.8  | 13.5  | 13.7  | 13.7  | 12.3  | 11.4  | 9.7   | 7.9   | 7.7   | 6.5   | 123.7   |
| Rio Grande Del Norte-Excelsior   | 131.8   | 122.1 | 121.7 | 121.8 | 118.2 | 131.9 | 139.7 | 151.2 | 152.9 | 138.4 | 137.9 | 128.8 | 1,596.4 |
| Rio Grande Excelsior-Chicago     | 52.6  | 44.8  | 40.8  | 28    | 30.3  | 38    | 44.3  | 51.5  | 52.2  | 49.6  | 56.6  | 49    | 537.7   |
| Rio Grande Chicago-State Line    | 7.6   | -1.3  | -6.7  | -18.9 | -12.4 | -8.3  | -5.3  | -1.7  | -5.9  | -3.5  | 0.2   | -3.5  | -59.7   |
| Total                            | 198.9   | 174.4 | 167.6 | 144.4 | 149.8 | 175.3 | 191.0 | 212.4 | 208.9 | 192.4 | 202.4 | 180.8 | 2,198.1 |

Table 1: Projected Subdistrict No. 2 stream depletions by month and reach for the Rio Grande from the 2024 Approved ARP

## **2.2 Water Rights Included in the WCSPD Water Right Purchase**

The water supply for the WCSPD is as follows: The WCSPD water right is a transmountain diversion out of Williams Creek (in Water District No. 78, Water Division No. 7) decreed on April 19, 1962, Civil Action No. 1751 (Water Division 7) for 10 cfs, absolute, into Squaw Creek, a tributary of the Rio Grande in Water District No. 20 (Water Division No. 3), being adjudicated and decreed as Ditch No. 236, Priority No. 310, with decreed Priority Date of September 9, 1937, from three tributaries of Williams Creek, where water is diverted at three points: (i) on the left bank of the south fork of the east fork of Williams Creek; (ii) on the left bank of the middle fork of the west fork of Williams Creek; and, (iii) on the left bank of the north fork of the west fork of Williams Creek, all as set forth on the maps, filings and decree, such point of diversion situate approximately in Section 21 of un-surveyed Township 39 North, Range 3 West, N.M.P.M. In addition to diversions under these decrees, water may be diverted through the WCSPD under free river conditions on Williams Creek.

The following details the location of the structures involved with this purchase:

- Exchange-from point: Confluence of the Rio Grande and Squaw Creek in the SE¼NE¼ of Section 13, Township 40 North, Range 4 West, N.M.P.M.
- Exchange-to point: Rio Grande Reservoir, located in Sections 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16, Township 40 North, Range 4 West, and Sections 31 and 32 of Township 41 North, Range 4 West, of the N.M.P.M., Hinsdale County, Colorado.

## **3.0 Project Description**

### **3.1 Purpose and Background of the WCSPD Water Right Purchase**

The groundwater wells within Subdistrict No. 2 have been remedying all their injurious depletions since May 1st, 2019. Subdistrict No. 2 owes injurious depletions to the Rio Grande. To date, Subdistrict No. 2 has been able to remedy all injurious depletions on this river through forbearance agreements, water rights used under a Substitute Water Supply Plan, and other temporary sources. Subdistrict No. 2 continues to seek reliable permanent sources to remedy those injurious depletions. Subdistrict No. 2 has worked with the community to find sources to remedy its injurious depletions. The community has worked very well with the Subdistrict to provide temporary sources to allow Subdistrict No. 2 time to secure more permanent or long-term sources. The long-term goal of Subdistrict No. 2 is to secure permanent remedy sources. The following alternatives have been considered to remedy injurious depletions on the Rio Grande.

### **3.2 Analysis of Alternatives**

#### **3.2.1 Alternative 1 – Purchase Navajo’s uncommitted interest in the WCSPD water right.**

This alternative would include purchasing a portion of the WCSPD water right and maintaining the infrastructure needed to get the water to the Rio Grande.

Location of Land the Water Right Legally Service

The WCSPD water right was originally decreed in CA1751, Water Division 7, for irrigation use. The WCSPD water right (for at least 17.011 acre-feet) was changed in Case No. W-1869-78, Water Div. 7 (February 28, 1979), from irrigation use to allow municipal and recreation use, and for augmentation uses in the augmentation plan decreed in Case No. W-3930.

#### Advantages and Disadvantages

The advantages to this alternative would be that it provides a permanent source of water to remedy a portion of Subdistrict No. 2's injurious depletions to the Rio Grande. This project does not provide enough permanent water to cover all the required depletions on the Rio Grande caused by groundwater withdrawals from wells within Subdistrict No. 2 and wells contracted with Subdistrict No. 2, so other sources of remedy will still be needed. This purchase does, however, help Subdistrict No. 2 move towards its goal of acquiring permanent remedy solutions.

Another advantage of this alternative is the location of the diversion in respect to the Rio Grande. The location of the WCSPD would permit Subdistrict No. 2 to repay depletions to all reaches of the Rio Grande.

The only disadvantage of this alternative is the greater up-front cost Subdistrict No. 2 Members may have to incur during the period of the loan.

#### **3.2.2 Alternative 2- Continue to Operate with Temporary Remedy Sources**

Temporary remedy sources Subdistrict No. 2 has used to date have been, 1) temporarily changed water right as a part of the SWSP process, and 2) multiple Forbearance Agreements with water rights the Rio Grande. Forbearance Agreements have been particularly useful to Subdistrict No. 2 but are temporary with no guarantee that a particular canal/ditch will renew a Forbearance Agreement on an annual basis. Additionally, as the value/cost of water continues to increase, Forbearance Agreements and short-term water leases will likely become cost-prohibitive in future years.

The community has been willing to cooperate with Subdistrict No. 2 to find temporary remedy sources to this point, therefore, Subdistrict No. 2 has been able to operate successfully under multiple approved ARPs, but Subdistrict No. 2 needs to acquire permanent remedy sources. It is understood by Subdistrict No. 2 that some of these temporary remedy sources have been made available to get the Subdistrict started and keep the agricultural lands operating, but that these sources may not be available in the future, or not available at a cost the Subdistrict Members can afford. Additionally, without filing for a permanent change, water rights may only operate under a SWSP for five years, thus limiting the ability to use those water rights as a source of remedy. For this reason, this alternative is not a preferred alternative.

### **3.2.3 Alternative 3- No Action**

No action would result in approximately 270 commercial, municipal, industrial and irrigation wells being shut off throughout Subdistrict No. 2's Response Areas. The economic impact would be devastating to the area; therefore, this is not a preferred alternative.

## **4.0 Engineering Analysis for the Preferred Alternative-Alternative 1**

### **4.1 Source of Water for the Project**

The source of water for the project is surface water. The WCSPD water right is a transmountain diversion out of Williams Creek (in Water District No. 78) decreed on April 19, 1962, Civil Action No. 1751 (Water Division 7) for 10 cfs, absolute, into Squaw Creek, a tributary of the Rio Grande in Water District No. 20 (Water Division No. 3).

The W-1869-78 decree required that the annual diversion of water under the WCSPD water right "not exceed the average annual amount of historic use" (which was found in the decree entered in Case No. W-3930 to be 168 AF of imported water per year), with specified adjustment for annual yield forecasts. The decreed amount of historical use continues to control pursuant to C.R.S. § 37-92-305(3)(e).

The total amount of HCU available from the WCSPD water right purchase that is not being used by an existing augmentation plan to remedy depletions is 54.1 ac-ft.

### **4.2 Hydrologic Evaluation**

There is no groundwater sources associated with this project.

## **5.0 Project Cost**

The estimated project cost for the WCSPD purchase is \$715,275. The detailed estimated cost for the project is shown in Table 2 below.

The total purchase price of \$715,275 for the water right will be paid for by Subdistrict No. 2 and will be funded using the CWCB loan.

**Table 2 – WCSPD Water Right Project Cost Estimate**

| Item   | Units | Quantity | Unit Cost | Total Cost |
|--|-------|----------|-----------|------------|
| Purchase of Water Right                                    | AF    | 54.1     | \$15,000  | \$811,500  |
| Infrastructure to get WCSPD water to the Rio Grande        | l.s.  | 1        | \$0       | \$0        |
| Credit for Previous Water Lease Payments                   |       |          |           | -\$119,625 |
| PSA Earnest Money Deposit                                  |       |          |           | \$15,000   |
| Total Cost (TC)  |       |          |           | \$706,875  |
| Legal and Engineering Costs for Infrastructure Maintenance |       |          |           | \$7,000    |
| Contingency @ 20% Infrastructure Cost                      |       |          |           | \$1,400    |
| Total Project Cost   |       |          |           | \$715,275  |
| 1% Origination Fee   |       |          |           | \$7,153    |
| Total Project Costs with 1% Origination Fee                |       |          |           | \$722,428  |

## 6.0 Permitting, Change of Water Right

The United States Forest Service (“USFS”) will transfer Navajo’s existing Special Use Permit to the RGWCD to allow the RGWCD to maintain and operate the infrastructure portions of this project. The RGWCD has been in contact with the USFS concerning the process of attaining said permit and foresees no obstacles or issues. Williams Creek will be used to deliver the water to the Rio Grande. No other construction will take place, only the maintenance of existing structures. The RGWCD will obtain any necessary permits if the need arises.

The water right involved in this project has been adjudicated through water court Case No. 20CW3016 for an appropriative right of exchange, and for a change of water right to add and confirm beneficial uses of the WCSPD water right, and to confirm the quantified HCU of the WCSPD water right based on previous decrees in Case Nos. W-1869-78 (Water Div. 7) and W-3930 (Water Div. 3) for its use as a source of remedy for injurious stream depletions by subdistricts.

## 7.0 Implementation Schedule

Subdistrict No. 2 wishes to close on the water right purchase on or before May 1, 2025, under the current Purchase and Sale Agreement with Navajo (Attachment 3). Infrastructure associated with the purchase is already installed and annual ditch maintenance will have been completed which would allow Subdistrict No. 2 to begin replacing depletions with the purchased water right under the 2025 ARP.

## 8.0 Institutional Considerations

The new uses and confirmation of the exchange were decreed by the District Court, Water Division No. 3 on December 27, 2024 in Case No. 20CW3016. The RGWCD has existing contracts for storage in Rio Grande Reservoir. As stated above, the USFS will need to transfer the Special Use permit to the RGWCD, which can take place only after closing and recordation of the new deed. The RGWCD will make that request and supply all necessary documentation after closing on the WCSPD water right.

## **9.0 Social and Environmental Impacts of the Project**

The environmental impacts of maintaining the infrastructure necessary to get HCU to the Rio Grande is very minimal. The increased flows in the Rio Grande should have a positive impact on wildlife in the area. The river depletions caused by groundwater withdrawals will be mitigated as well.

The social impacts for the area will be positive. The project will remedy depletions to the Rio Grande. Diversions on the Rio Grande should benefit from this project. Care will need to be taken to avoid negatively impacting other augmentation plan water users that own an interest in the WCSPD, but if properly implemented then it should not be an issue.

## **10.0 Financial Feasibility**

### **10.1 Financial Repayment**

The RGWCD, for and on behalf of Subdistrict No. 2, is applying for a loan in the amount of \$722,428 from the Colorado Water Conservation Board Water Project Loan Program with a 30-year repayment period and an interest rate of not more than 2.1%. Subdistrict No. 2 currently consists of 270 wells that withdraw an average of 13,472 ac-ft. of water per year. Subdistrict No. 2 assesses a Pumping Fee on each ac-ft. withdrawn from Subdistrict No. 2 Wells based on the previous five-year average. Subdistrict No. 2 will fund the WCSPD Water Right Purchase through its Pumping Fees. In 2024, the assessed Pumping Fees for wells located in the Rio Grande Alluvium Response Area were \$67 per ac-ft. of groundwater applied through sprinkler irrigation and \$49 per ac-ft. of groundwater applied through flood irrigation. The Pumping Fees assessed by contract in 2024 for wells located outside the RGWCD Groundwater Model were \$81 per ac-ft. of groundwater applied through sprinkler irrigation and \$59 per ac-ft. of groundwater applied through flood irrigation. The total Pumping Fees assessed in 2024 were \$815,330.65 (Attachment 5). It is anticipated that groundwater withdrawals in Subdistrict No. 2 will continue to fluctuate year to year, near historic values. The Schedule of Revenue and Expenditures is included as Attachment 5.

### **10.2 Credit Worthiness**

Subdistrict No. 2 is entitled to raise funds by assessment of reasonable Annual Service and User Fees to carry out the goals and overall objectives set forth in the Plan of Water Management. Subdistrict No. 2 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 the Plan of Water Management and in response to the demands of the ARP. 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 right; 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; achievement and maintenance of a Sustainable Water Supply; and, any necessary infrastructure improvements.

As a subdistrict of the Rio Grande Water Conservation District, Subdistrict No. 2's finances are included in those of the District. Copies of the last four years of the District's Annual Audit Reports are included with the loan application.

#### **11.0 Conclusions and Recommendations**

1. The WCSPD Water Right Purchase by the RGWCD, for and on behalf of Subdistrict No. 2, will allow Subdistrict No. 2 to remedy a portion of their injurious stream depletions owed to senior surface water users on the Rio Grande caused by groundwater withdrawals from Subdistrict No. 2 Wells. The change of water right allows the water right to be used for augmentation and will result in a total of  $\pm 54.1$  ac-ft. for the remedy of injurious stream depletions by either a direct-flow basis or exchanged into the Rio Grande Reservoir for storage and subsequent beneficial uses consistent with the terms of the WCSPD Water Right Decree, and carry water over in storage from year-to-year only for the intended beneficial uses consistent with said Decree.
2. This water will become a permanent source of remedying injurious depletions for Subdistrict No. 2 and assist with their long-term goals.
3. Subdistrict No. 2 has the legal ability to budget and assess an amount sufficient to cover the annual payment required for this loan through their annual Pumping Fee.



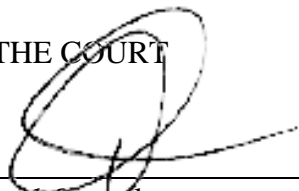
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|---|--|
| District Court, Water Division 3, State of Colorado<br>Court Address: 8955 Independence Way, Alamosa, CO 81101<br>Phone Number: (719) 589-4996  |  |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF:<br><br><b>NAVAJO DEVELOPMENT CO., INC., RIO GRANDE WATER CONSERVATION DISTRICT, AND SPECIAL IMPROVEMENT DISTRICT NO. 2 OF THE RIO GRANDE WATER CONSERVATION DISTRICT</b><br><br><b>IN HINSDALE COUNTY</b> | DATE FILED<br>December 27, 2024 9:59 AM<br>CASE NUMBER: 2020CW3016<br><br><hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 2020CW3016<br><br>Div.: 3 |
| JUDGMENT AND DECREE   |  |

The Court finds that no protest has been filed to the Findings and Ruling of the Referee in this case within the time provided by law and that said Findings and Ruling of the Referee should be confirmed, approved, and adopted.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Findings and Ruling of the Referee entered herein on December 5, 2024, is incorporated herein by reference and confirmed, approved and adopted as the Judgment of this Court.

DONE this December 27, 2024.

BY THE COURT


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 Michael Gonzales  
 Water Judge  
 Water Division No. 3

|  |   |
|--|---|
| DISTRICT COURT, WATER DIVISION NO. 3<br>ALAMOSA COUNTY, STATE OF COLORADO<br>8955 Independence Way<br>Alamosa, CO 81101<br>(719) 589-4996  | DATE FILED<br>December 5, 2024 1:14 PM<br>CASE NUMBER: 2020CW3016<br><br><p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> |
| CONCERNING THE APPLICATION FOR<br>WATER RIGHTS OF<br><br><b>NAVAJO DEVELOPMENT CO., INC., RIO<br/> GRANDE WATER CONSERVATION DISTRICT,<br/> AND SPECIAL IMPROVEMENT DISTRICT NO. 2<br/> OF THE RIO GRANDE WATER CONSERVATION<br/> DISTRICT</b><br><br>IN HINSDALE COUNTY, COLORADO |   |
| <p style="text-align: center;"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND<br/> DECREE</b></p>  |   |

This matter comes before the Water Referee upon the Application of Navajo Development Co., Inc. (“Navajo”), Rio Grande Water Conservation District (“RGWCD”), and Special Improvement District No. 2 of the Rio Grande Water Conservation District (“Subdistrict”) (collectively, “Co-Applicants”) for adjudication of an appropriative right of exchange, and for a change of water right to add and confirm beneficial uses of the Williams Creek Squaw Pass Diversion (“WCSPD”) water right, and to confirm the quantified historical consumptive use of the WCSPD water right based on previous decrees. The Water Referee, having considered the Application and other documents filed herein, and being otherwise fully advised in the premises, hereby enters the following findings and ruling in accordance with C.R.S. § 37-92-303(1):

### **FINDINGS OF FACT**

1. Application. The Application was filed on December 16, 2020, with the Water Clerk, Water Division 3, and an Amended Application was filed on July 29, 2022. The Applicants are:

Navajo Development Co., Inc.,  
c/o Mr. John Parker,  
2043 S. Washington Street,  
Denver, Colorado 80210

Rio Grande Water Conservation District, and  
Special Improvement District No. 2 of the Rio Grande Water Conservation District  
c/o District Manager  
Rio Grande Water Conservation District  
8805 Independence Way  
Alamosa, Colorado 81101

2. Statements of Opposition. Timely Statements of Opposition to Navajo's initial Application were filed by Rio Grande Water Conservation District ("RGWCD"), Wolf Creek Ski Corporation ("Wolf Creek"), San Luis Valley Irrigation District ("SLVID"), Colorado Division of Parks and Wildlife and Parks and Wildlife Commission ("CPW"), Rio Grande Water Users Association ("RGWUA"), Southwestern Water Conservation District ("SWCD"), and San Luis Valley Water Conservancy District ("SLVWCD"). Upon the Court's Order dated August 5, 2022, RGWCD, acting for and on behalf of the Subdistrict, was realigned as a Co-Applicant in this matter by virtue of its contractual interest in purchasing the remaining uncommitted portion of the WCSPD water right and the entirety of the WCSPD infrastructure. No other Statements of Opposition were filed, and the time period for filing statements of opposition has passed.

3. Stipulations. Navajo has entered into stipulations with:

- 3.1. RGWCD on November 17, 2021;
- 3.2. Wolf Creek on April 5, 2022 and November 8, 2022; and
- 3.3. RGWUA on April 11, 2022 and November 16, 2022.

The Co-Applicants entered into stipulations with:

- 3.4. San Luis Valley Irrigation District on August 21, 2024;
- 3.5. CPW on October 28, 2024;
- 3.6. SWCD on February 21, 2024; and
- 3.7. SLVWCD on August 21, 2024.

These stipulations have been approved by the Water Court and are incorporated herein by reference.

4. Notice and Jurisdiction. Timely and adequate notice of the Application, the Amended Application, and these proceedings has been given as required by law. Navajo has complied with C.R.S. § 37-92-302(2)(b) by providing evidence that it has notified affected landowners within the time period required by law. The Water Court has jurisdiction over the Application (as amended) and the subject matter of these proceedings, and over all persons who have standing to appear as parties, whether or not they have appeared.

5. Consultation Report: The Division Engineer for Water Division No. 3 filed his Consultation Report/Recommendation with the Water Referee on May 12, 2021. This Report did not require a response.

6. Purpose of Application. Navajo is the owner of the Williams Creek Squaw Pass Diversion ("WCSPD") water right, which diverts water from the Williams Creek drainage in Water Division 7 into Squaw Creek in Water Division 3, and the WCSPD infrastructure. Navajo has entered into

a contract with RGWCD, acting for and on behalf of the Subdistrict, to sell its remaining uncommitted interest in the WCSPD water right to the Subdistrict, together with the WCSPD infrastructure. Since 1987, Navajo has operated an exchange by which WCSPD transmountain water is delivered down Squaw Creek to the Rio Grande River, and then exchanged on the Rio Grande River from its confluence with Squaw Creek into Rio Grande Reservoir in Hinsdale County.

- 6.1. Co-Applicants now seek judicial confirmation of this existing absolute appropriative right of exchange, and seek to confirm and add the beneficial uses of the WCSPD water right described below in Paragraph 8.4. The decreed uses of the WCSPD water right may be made directly, by exchange into Rio Grande Reservoir, or following release from storage in Rio Grande Reservoir. Co-Applicants also seek to confirm the quantification of the historical consumptive use of the WCSPD water right, based on previous decrees in Case Nos. W-1869-78 (Water Div. 7) and W-3930 (Water Div. 3).
- 6.2. Co-Applicants recognize that portions of the WCSPD water right have been dedicated to existing and future plans for augmentation, and those portions of the WCSPD water right will continue to be used in compliance with the terms and conditions of the decrees authorizing such plans. Wolf Creek is entitled to 0.5 acre-feet per year from the WCSPD water right, which was approved for use in Wolf Creek's decreed augmentation plan in Case No. 87CW7, and that interest is not in any way affected by the application or this decree.

7. Description of Appropriative Right of Exchange.

7.1. Name of Exchange: WCSPD – Rio Grande Reservoir Exchange.

7.2. Location of Structures Involved:

7.2.1. Exchange-from point: Confluence of the Rio Grande and Squaw Creek in the SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 13, Township 40 North, Range 4 West, N.M.P.M.

7.2.2. Exchange-to point: Rio Grande Reservoir, located in Sections 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16, Township 40 North, Range 4 West, and Sections 31 and 32 of Township 41 North, Range 4 West, of the N.M.P.M., Hinsdale County, Colorado.

7.3. Source: Rio Grande River.

7.4. Exchange Reach: The exchange reach is from the point where Squaw Creek enters the Rio Grande, as described in Paragraph 7.2.1 above, to Rio Grande Reservoir, as described in Paragraph 7.2.2 above. The length of the exchange reach is approximately 0.84 miles.

7.5. Appropriation:

7.5.1. Date of Appropriation: May 1, 1987, when the exchange of WCSPD water into Rio Grande Reservoir was initially operated. Pursuant to C.R.S. § 37-92-305(10), this appropriation date shall be recognized and preserved as the priority date of this existing exchange. Such recognition and preservation is consistent with the manner in which the exchange has been administered.

7.5.2. How Appropriation was Initiated: By operating an exchange to store WCSPD water in Rio Grande Reservoir.

7.6. Exchange Rate Claimed: 10 c.f.s., absolute.

7.7. Source of Substitute Supply Water: Williams Creek Squaw Pass Diversion, in Water District No. 78 (former Water District No. 29), Water Division 7 of the State of Colorado, being adjudicated and decreed as Ditch No. 236, Priority No. 310, with decreed Priority Date of September 9, 1937, for 10 cubic feet of water per second of time from three tributaries of Williams Creek, where water is diverted at three points: (i) on the left bank of the south fork of the east fork of Williams Creek; (ii) on the left bank of the middle fork of the west fork of Williams Creek; and, (iii) on the left bank of the north fork of the west fork of Williams Creek, all as set forth on the maps, filings and decree, such point of diversion situate approximately in Section 21 of unsurveyed Township 39 North, Range 3 West, N.M.P.M. In Case No. W-1869-78, Water Div. 7, at least 17.011 acre-feet of the WCSPD right was changed to allow municipal, recreation and augmentation uses, in addition to the initially decreed irrigation use. Several augmentation plans, replacement plans and substitute water supply plans for use of the WCSPD right have been approved in Water Division 3, including Navajo's augmentation plans in Case No. W-3930 and subsequently in Case No. 01CW3. In addition to diversions under these decrees, water is diverted through the WCSPD under free river conditions on Williams Creek.

7.8. Uses: Waters diverted or stored under the appropriative right of exchange described herein will be used for all beneficial uses described below in paragraph 8.4.

7.9. Water Quality. Pursuant to C.R.S. § 37-92-305(5), the substituted water provided by Navajo for the exchange herein is of a quality, quantity, and continuity to meet the requirements of use for which the receiving senior appropriators have normally used such water.

8. Change of Purpose of Use of WCSPD Water Right:

8.1. Description of Water Right. The WCSPD water right is described above in Paragraph 7.7. The WCSPD water right is a transmountain diversion out of Williams Creek (in Water District No. 78) decreed on April 19, 1962, Civil Action No. 1751 (Water Division 7) for 10 cfs, absolute, into Squaw Creek, a tributary of the Rio Grande in Water District No. 20 (Water Division No. 3).

8.2. Previous Change of WCSPD Water Right. The WCSPD water right was originally decreed in CA1751, Water Division 7, for irrigation use. The WCSPD water right (for at least 17.011 acre-feet) was changed in Case No. W-1869-78, Water Div. 7 (February 28, 1979), from irrigation use to allow municipal and recreation use, and for augmentation uses in the augmentation plan decreed in Case No. W-3930, Water Div. 3. SWCD disputes whether this change was for the entire WCSPD water right or was limited to the 17.011 acre-feet committed to Navajo's augmentation plan; this decree does not resolve that dispute.

8.3. Historical Consumptive Use. The W-1869-78 decree required that the annual diversion of water under the WCSPD water right "not exceed the average annual amount of historic use" (which was found in the decree entered in Case No. W-3930 to be 168 AF of imported water per year), with specified adjustment for annual yield forecasts. The decreed amount of historical use continues to control pursuant to C.R.S. § 37-92-305(3)(e). Co-Applicants will comply with the terms and conditions stated in the W-1869-78 decree.

8.4. Changed Uses of WCSPD Water Right:

8.4.1. The uses of 17.011 acre-feet of the WCSPD water right are hereby confirmed to have been previously decreed in Case Nos. W-1869-78 (Water Div. 7) and W-3930 (Water Div. 3) for the following uses: municipal (including commercial, industrial, domestic and sewage treatment), recreation, and augmentation uses in the augmentation plan decreed in Case No. 01CW3, which amended and replaced Navajo's previous augmentation plan decreed in Case No. W-3930, in addition to the initially decreed irrigation use.

8.4.1.1. The change of the WCSPD water right decreed in Case Nos. W-1869-78 (Water Div. 7) and W-3930 (Water Div. 3) included the ditch-wide quantification of historical consumptive use and resulting annual diversion limitation discussed in paragraph 8.3. The Co-Applicants contend that this change included the entire WCSPD water right. SWCD disputes that contention. This decree does not resolve that dispute, and the parties acknowledge that nothing herein precludes a separate court action if necessary to further interpret these decrees in a future dispute.

8.4.1.2. Additional portions of the WCSPD water right have been decreed for augmentation use in the plans for augmentation decreed in Case Nos. W-3598, 83CW95, 84CW95, 86CW05, 87CW7, 91CW15, 08CW05, and 15CW3025, Water Division 3.

8.4.2. In addition to the previously decreed uses of the WCSPD water right, the uses of the entire WCSPD water right are hereby changed to include augmentation and replacement of depletions from a series of ponds adjacent to Miners Creek and

filled from the Miners Creek Ditch, and use in Annual Replacement Plans pursuant to the Rules Governing Withdrawal of Groundwater in Water Division 3, including for the remedy of injurious depletions, either directly by the Subdistrict or through a lease to another Special Improvement District or Subdistrict within Water Division No. 3.

8.4.3. The WCSPD water right may also be exchanged into and stored in Rio Grande Reservoir under the appropriative right of exchange adjudicated herein, pursuant to separate agreement with the owner of that reservoir. The decreed uses of the WCSPD water right may be made directly, by exchange into Rio Grande Reservoir, or following release from storage in Rio Grande Reservoir.

8.5. Additional portions of the WCSPD water right have been conveyed to third parties, including for use in augmentation plans that have been separately decreed by the Water Court, Water Division 3 (including, but not limited to, Wolf Creek's augmentation plan decreed in Case No. 87CW7 and the other augmentation plan decrees recited in Paragraph 8.4.1.2). Those portions of the WCSPD water right will continue to be used in compliance with the terms and conditions of such plans, and the entry of a decree in this matter does not alter or amend any of those augmentation plan decrees.

8.6. Additional portions of the WCSPD water right may be changed pursuant to future decrees entered in Water Division 3, including for use in plans for augmentation, and may also be temporarily changed for use in substitute water supply plans approved by the State Engineer, without further proceedings in Water Division 7. The decreed amount of historical use of the WCSPD water right, as confirmed in this decree, shall continue to control in such proceedings and shall not be subject to requantification. The water judge may, however, "without requantifying the historical consumptive use, impose such terms and conditions on the future use of that portion of the water right that is the subject of the change as needed to limit the future consumptive use of that portion of the water right to the previously quantified historical consumptive use." C.R.S. § 37-92-305(3)(e).

9. Names and addresses of owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure is or will be constructed, or upon which water will be stored. To the best of the Co-Applicants' knowledge, the owners of the underlying lands on which the existing storage structure listed above is located are as set forth below. No construction of new structures or modification of existing structures is contemplated in connection with this appropriation.

9.1. Rio Grande Reservoir is owned by the San Luis Valley Irrigation District ("SLVID"), 296 Miles St., Center, CO 81125; and is located on lands owned by SLVID and the U.S. Forest Service, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, CO 81144.

- 9.2. Storage of Navajo's and RGWCD's WCSPD water in Rio Grande Reservoir will be made in accordance with and subject to the terms and conditions of their respective storage leases with SLVID.

10. Terms and Conditions for the Operation of the Co-Applicants' Exchange. The exchange adjudicated in this Decree will be operated consistent with the above findings and the following additional terms and conditions, which the Court finds adequate to prevent injury to any owner or lawful user of water under a vested water right or decreed conditional water right:

- 10.1. Navajo is a party to a Storage Lease Agreement with SLVID, effective June 6, 2020, as such Agreement may be amended from time to time. RGWCD is a party to a separate Storage Lease Agreement with SLVID, effective January 18, 2021, as such Agreement may be amended from time to time. Nothing in this Decree changes, modifies, or amends any element of either of these Storage Lease Agreements.
- 10.2. The exchange will only operate during the irrigation season (between April 1 through October 31, or as otherwise established by the Division Engineer for Water Division 3), at a maximum rate of 10 cfs.
- 10.3. The exchange shall be operated only at times when a continuous live stream exists between the exchange-from point and the exchange to-point during the exchange.
- 10.4. The Santa Maria Reservoir Company and the San Luis Valley Irrigation District adjudicated several appropriative rights of exchange in Case No. 90CW42, including exchanges from Santa Maria Reservoir and Continental Reservoir into Rio Grande Reservoir ("90CW42 Exchanges to Rio Grande Reservoir"). Pursuant to the decree entered in Case No. 90CW42, a portion of these exchanges were awarded 1990 priorities, and a portion were awarded priorities senior to the 1987 priority claimed by Navajo herein. Table 1 below describes the 90CW42 Exchanges to Rio Grande Reservoir and the portions of those exchanges with a priority senior to the 1987 priority sought by Navajo herein.
- 10.4.1. The Co-Applicants' exchange shall not operate at any time the portions of the 90CW42 Exchanges to Rio Grande Reservoir that are senior to 1987 (described in Table 1 below) are calling.
- 10.4.2. At any time the portions of the 90CW42 Exchanges to Rio Grande Reservoir with a 1990 priority (described in Table 1 below) are calling but not able to divert at their full decreed rate, and either the Santa Maria Reservoir Company or the San Luis Valley Irrigation District notifies the Co-Applicants that it will exchange water into Rio Grande Reservoir under these priorities, the Co-Applicants shall limit their rate of exchange of WCSPD water into Rio Grande Reservoir to 1 cfs.



**TABLE 1 – 90CW42 Exchanges to Rio Grande Reservoir**

| <b>90CW42 Exchange</b>                        | <b>Rate (cfs)</b> | <b>Volume (AF/year)</b>        |                      |
|---|-------------------|--------------------------------|----------------------|
|   |                   | <b>Priority Senior to 1987</b> | <b>1990 Priority</b> |
| Santa Maria Reservoir to Rio Grande Reservoir | 300               | 11,521                         | 32,304               |
| Continental Reservoir to Rio Grande Reservoir | 250               | 3,596                          | 19,083               |

10.5. The San Luis Valley Water Conservancy District has adjudicated several appropriative rights of exchange into Rio Grande Reservoir including exchanges decreed in Case Nos. Case Nos. 03CW41, 05CW13, 07CW63, and 09CW47. These decrees were awarded priority dates junior to the 1987 priority date claimed by Navajo. Table 2 below describes the SLVWCD's exchanges to Rio Grande Reservoir.

10.5.1 At any time the SLVWCD's exchanges described in Table 2 below into Rio Grande Reservoir are calling but not able to divert at their full decreed rate, and the SLVWCD notifies the Co-Applicants that it will exchange water into Rio Grande Reservoir under these priorities, the Co-Applicants will limit their rate of exchange of WCSPD water into Rio Grande Reservoir to 1 cfs.

**TABLE 2 – SLVWCD Exchanges into Rio Grande Reservoir**

| <b>Decree</b> | <b>Priority Date</b> | <b>Rate (cfs)</b> | <b>Volume (af)</b> |
|---------------|----------------------|-------------------|--------------------|
| 03CW41        | 12/12/2001           | 3.72              | 93.40              |
| 05CW13        | 12/12/2001           | 3.16              | 107.55             |
| 07CW63        | 12/12/2001           | 0.54              | 25.24              |
| 09CW34        | 12/31/2009           | 8.07              | 478                |

10.5.2 The SLVWCD will coordinate timing of its exchanges with the Co-Applicants to facilitate the full operation of each Parties' exchanges, and will exchange its water to other decreed locations including Santa Maria, Continental, Beaver Park, or Shaw Reservoirs to avoid impletion of the limitation set forth above in paragraph 10.5.1, if, in the SLVWCD's sole discretion, when exchange capacity to one or more of those Reservoirs is available, and such alternative exchanges can be exercised without reducing the volume of SLVWCD water that can be

exchanged or interfering with the current and future operation of its Augmentation Program.

- 10.6. The Co-Applicants shall install and maintain adequate measuring devices, recorders, or flow meters and will keep records as reasonably required by the Division 3 Engineer to administer the exchange decreed herein.
  - 10.7. The amount of water diverted at the exchange-to point shall not be greater than the amount of water physically introduced at the exchange-from point.
  - 10.8. Any transit loss shall be determined and accounted for by the Division Engineer for water delivered into Rio Grande Reservoir under the exchange decreed herein.
  - 10.9. At a minimum, the accounting for the exchange and subsequent storage will include: daily accounting of exchanges into storage; monthly reservoir accounting including WCSPD water stored, released, transferred between accounts, or carried over into a subsequent water year. Accounting will also include information on location and beneficial use of WCSPD water released by the Co-Applicants. The Applicants will provide an annual summary of water exchanged, stored, carried over, released, and ultimate place and amount of use to Southwestern Water Conservation District. Daily accounting of the exchange will be maintained by the Division 3 Engineer's Office.
  - 10.10. The exchange shall not interfere with, provide for any reduction in water to, or otherwise affect any other exchanges operating within the reach that are senior to the exchange priority decreed herein.
  - 10.11. Free River Diversions. All diversions of water through the WCSPD under free river conditions shall comply with the Division of Water Resources' Written Instruction 2015-02: Instructions Concerning the Administration of Diversions of Water During Free River or any subsequent amendment thereto.
  - 10.12. This Decree does not in any way modify Navajo's decree for the WCSPD water right decreed in Case No. W-1869-78 or Navajo's augmentation plans in Case Nos. W-3930 and 01CW3, Wolf Creek's decree in Case No. 87CW7, or any decree for the Rio Grande Reservoir. The description of or reference to structures and water rights herein, other than the proposed exchange described in this Decree, does not in any way amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.
11. Terms and Conditions for Operation of Changed WCSPD Water Right.
    - 11.1. Co-Applicants shall comply with the terms and conditions stated in the W-1869-78 decree, including the limitation that the annual diversion of water under the

WCSPD water right shall not exceed the average annual amount of historic use (168 AF of imported water, as confirmed by the W-3930 Decree), with an annual adjustment for the percentage deviation from normal yield forecast in the basin of origin as determined by the Division 7 Engineer.

- 11.2. In addition to the annual diversion limitation provided in Paragraph 11.1, Co-Applicants shall not divert water under the WCSPD water right in excess of 1,680 AF over any period of 10 consecutive years (an annual average of 168 AF per year).
- 11.3. Storage of Navajo's and RGWCD's WCSPD water in Rio Grande Reservoir will be made in accordance with and subject to the terms and conditions of their respective storage leases with SLVID, described more particularly in Paragraph 10.1, above.
- 11.4. Until closing of the contract described in Paragraph 6 ("Closing"), Navajo shall remain responsible for operating and maintaining the WCSPD Ditch. Upon Closing, RGWCD shall assume Navajo's responsibility for operating and maintaining the WCSPD Ditch as set forth in this Paragraph 11.4. In so doing, Navajo, and then RGWCD:
  - 11.4.1. Shall install and maintain adequate measuring devices, recorders, or flow meters and keep records as reasonably required by the Division 3 Engineer to administer the changes of water right decreed herein;
  - 11.4.2. Shall comply with the Division 7 Engineer's administration to ensure that total diversions under the WCSPD water right do not exceed the annual and ten-year volumetric limits set forth in Paragraphs 11.1 and 11.2;
  - 11.4.3. Shall maintain daily accounting of the diversion that at a minimum includes: amount of water diverted under free river conditions, amount of water diverted under WCSPD water right, the amount of water delivered directly to water users, and the place and amount of ultimate beneficial use by the Co-Applicants.
  - 11.4.4. Shall not increase the carrying capacity of the WCSPD Ditch beyond the 10 cfs decreed for the WCSPD water right; provided, however, that they remain entitled to maintain the WCSPD Ditch such that the ditch may continue to divert the entirety of its decreed 10 cfs; and
  - 11.4.5. Shall only divert water to the extent that such water is or will be used on either a direct-flow basis or exchanged into Rio Grande Reservoir for storage and subsequent beneficial uses consistent with the terms of this Decree, and carry water over in storage from year-to-year only for intended beneficial uses consistent with this Decree.

12. No injury. If operated pursuant to the terms and conditions set forth above, the changes of the fully consumable transmountain WCSPD water right confirmed by and approved in this Decree, and the Co-Applicants' exchange of water from the WCSPD water right to Rio Grande Reservoir, will not cause injury to other water rights.

### **CONCLUSIONS OF LAW**

13. The Water Court and Referee have jurisdiction over this proceeding pursuant to C.R.S. §§ 37-80-120, 37-92-203, and 37-92-302 through 37-92-305. The procedures of these sections have been complied with, and full and adequate notice of the Co-Applicants' claims has been given in the manner required by law. No additional notice is required.

14. The Application herein is one contemplated by law, and the Water Court has exclusive jurisdiction over this proceeding pursuant to C.R.S. § 37-92-203. Absent injurious effects to the owners of or persons entitled to use water under vested water rights or decreed conditional water rights, this Court shall approve such exchange rights and the changed uses sought by the Co-Applicants. C.R.S. § 37-92-305(3).

15. Co-Applicants' change of the WCSPD water right and appropriative right of exchange are contemplated by law, and if administered according to the terms and limitations set forth herein, will not injuriously affect the owners of or persons entitled to use water under vested water rights or conditional water rights.

16. The decreed amount of historical use of the WCSPD water right was determined in previous decrees. Under the W-1869-78 Decree, the annual diversion of water under the WCSPD water right "will not exceed the average annual amount of historic use," with specified adjustment for annual yield forecasts. The decree entered in Case No. W-3930 confirmed that the historical average annual use of the WCSPD water right was 168 AF of imported water per year. The amount of historical use of the WCSPD water right, as decreed in Case Nos. W-1869-78 and W-3930, continues to control pursuant to C.R.S. § 37-92- 305(3)(e).

17. Pursuant to C.R.S. § 37-80-120(4), Co-Applicants are entitled to adjudicate an appropriative right of substitution or exchange.

18. Pursuant to C.R.S. § 37-92-302(2)(b), Co-Applicants provided notice of the Application and the Amended Application by certified mail, return receipt requested to the owners of land upon which diversion and storage structures involved in the Application lie.

19. The exchange decreed herein is an appropriative water right with a date of appropriation and, like other appropriative water rights, must be administered within the priority system.

20. The diversions by exchange at the upstream point take on the character of the water right used as a source of downstream substitute supply. *See Centennial Water & Sanitation Dist. v. City & Cnty. of Broomfield*, 256 P.3d 677, 684 (Colo. 2011). Because exchanges involve a delivery of substitute supply water to the stream and continuity with an upstream diversion, a non-injurious

diversion at the upstream point takes on the character of the water right used as a source of downstream supply. *Id.* at 686.

21. “If an application filed under C.R.S. § 37-92-302 for approval of an existing exchange of water is approved, the original priority date or priority dates of the exchange shall be recognized and preserved unless such recognition or preservation would be contrary to the manner in which such exchange has been administered.” C.R.S. § 37-92-305(10). Applicant is therefore entitled to have the original priority date of its existing exchange recognized.

22. No retention of jurisdiction on the question of injury is legally required with respect to the appropriative right of exchange decreed herein. *See City of Florence v. Bd. of Waterworks of Pueblo*, 793 P.2d 148, 153 (Colo. 1990). The change of water right decreed herein shall be subject to reconsideration by this Court “on the question of injury to the vested rights of others for such period after entry of such decision as is necessary or desirable to preclude or remedy any such injury.” C.R.S. § 37-92-304(6).

23. The State Engineer and Division Engineer shall administer the Co-Applicants’ exchange in the manner set forth herein and as senior in priority to all rights with priority dates junior to the Co-Applicants’ exchange decreed herein.

24. The Co-Applicants have met all required standards and burdens of proof necessary to adjudicate the requested change of water right and appropriative right of exchange. They are entitled to a decree confirming and approving their requested change of the WCSPD water right and their requested appropriative right of exchange.

### **RULING OF THE REFEREE AND DECREE**

The Referee does, therefore, conclude that the Application should be granted as follows:

25. The foregoing Findings of Fact and Conclusions of Law are incorporated into this Decree of the Water Court.

26. The Co-Applicants’ appropriative right of exchange is such as is contemplated by law, and, if administered according to the terms and limitations set forth herein, will not injuriously affect the owners of or persons entitled to use water under vested water rights or conditional water rights. The Co-Applicants’ existing exchange is hereby approved and awarded the priority date as set forth in Paragraph 7.5.1 above pursuant to C.R.S. § 37-92-305(10). The Division Engineer for Water Division 3 shall administer the Co-Applicants’ exchange in accordance with this Decree and the priority awarded herein.

27. The Court hereby recognizes and decrees an appropriative right of exchange as follows:

27.1. Name of Exchange: WCSPD – Rio Grande Reservoir Exchange.

27.2. Source: Rio Grande River.

- 27.3. Exchange Reach: The exchange reach is from the point where Squaw Creek enters the Rio Grande, as described in Paragraph 7.2.1 above, to Rio Grande Reservoir, as described in Paragraph 7.2.2. above.
- 27.4. Exchange Rate: 10 c.f.s., absolute.
- 27.5. Priority Date for Administration of this Decree: This exchange is an absolute water right with an existing exchange priority date of May 1, 1987, when the exchange of WCSPD water into Rio Grande was initially operated. Pursuant to C.R.S. § 37-92-305(10), this appropriation date shall be recognized and preserved as the priority date of this existing exchange. Such recognition and preservation is consistent with the manner in which the exchange has been administered.
28. Existing Exchange Priority. The Co-Applicants' exchange decreed herein is an existing exchange that has been operating since May 1, 1987. Accordingly, and pursuant to C.R.S. § 37-92-305(10), this exchange is not subject to the postponement doctrine, and the original 1987 priority date is hereby recognized and preserved as the priority date of this exchange.
29. The Court hereby recognizes and confirms that the uses of 17.011 acre-feet of the WCSPD water right were previously decreed for municipal (including commercial, industrial, domestic and sewage treatment), recreation, and augmentation in the augmentation plan decreed in Case No. 01CW3, which amended and replaced Navajo's previous augmentation plan decreed in Case No. W-3930, in addition to the initially decreed irrigation use. The Court decrees that, in addition to the previously decreed uses of the WCSPD water right, the uses of the entire WCSPD water right are hereby changed to include augmentation and replacement of depletions from a series of ponds adjacent to Miners Creek and filled from the Miners Creek Ditch, and use in annual replacement plans pursuant to the Rules Governing Withdrawal of Groundwater in Water Division 3, including remedy of injurious depletions, either directly by the Subdistrict or through a lease to another Special Improvement District or Subdistrict within Water Division No. 3. Additional portions of the WCSPD water right may be changed pursuant to future decrees entered in Water Division 3, including for use in plans for augmentation, and may also be temporarily changed for use in substitute water supply plans approved by the State Engineer, without further proceedings in Water Division 7. The decreed amount of historical use of the WCSPD water right, as confirmed in this decree, shall continue to control in such proceedings and shall not be subject to requantification. The water judge may, however, "without requantifying the historical consumptive use, impose such terms and conditions on the future use of that portion of the water right that is the subject of the change as needed to limit the future consumptive use of that portion of the water right to the previously quantified historical consumptive use." C.R.S. § 37-92-305(3)(e). The WCSPD water right may also be exchanged into and stored in Rio Grande Reservoir pursuant to the appropriative right of exchange confirmed herein, pursuant to Co-Applicants' separate agreements with the owner of that reservoir. The decreed uses of the WCSPD water right may be made directly, by exchange into Rio Grande Reservoir, or following release from storage in Rio Grande Reservoir.
30. The amount of water stored through exercise of the appropriative right of exchange confirmed herein shall be limited to that which is reasonably necessary to accomplish the

beneficial uses described above in paragraph 8.4, including amounts reasonably necessary for carryover storage to accomplish such uses in future years.

31. The previously decreed amount of historical use for the WCSPD water right, as set forth in Case Nos. W-1869-78 and W-3930, continues to control the WCSPD water right as changed herein. The total volume of water diverted under the WCSPD water right shall not exceed 168 acre-feet in any one year, as adjusted pursuant to paragraph 11.1 for the annual forecast. The total volume of water diverted under the WCSPD water right shall not exceed 1,680 acre-feet in any 10 consecutive years.

32. In consideration of the specific findings and conclusions made herein, and in accordance with C.R.S. § 37-92-304(6), the portions of the decree authorizing the changes of water right will be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others that may result from operation of the changes of water right for a period of ten years from date of the Court's entry of the decree herein. In accordance with C.R.S. § 37-92-304(6), the ten-year period of retained jurisdiction may be extended upon further decision by the Water Judge that the nonoccurrence of injury has not been conclusively established. Any party who wants the Court to reconsider the question of injury must file a petition under the caption and case number of this Decree. The party that files such a petition must plead sufficient facts which, if proved, meet its burden of going forward to show that injury has occurred or is likely to occur based on operational experience involving the changes of water rights decreed herein. If the petition alleges such facts, the Court will conduct additional proceedings. In such additional proceedings, the petitioner has the burden of going forward with sufficient evidence that injury has occurred or is likely to occur because the existing decree is inadequate to preclude or remedy injury. If the petitioner meets its burden of going forward, the burden of establishing non-injury and the existence of adequate provisions in the existing decree to preclude and remedy injury will rest upon Co-Applicants. Following presentation of the parties' evidence, the Court will make findings of fact and conclusions of law on the issues of non-injury and, if appropriate, amend the decree for the purpose of precluding and remedying injury. If the Court finds that insufficient operational experience exists to permit it to consider the question of injury or to conclusively establish non-injury, it will extend the period of retained jurisdiction by an additional specified period in the amended decree. C.R.S. § 37-92-304(6).

33. Measurement Devices and Reporting. Co-Applicants shall install and maintain adequate measuring devices, recorders, or flow meters and keep records as reasonably required by the Division 3 Engineer to administer the exchange and changes of water right decreed herein.

34. Accounting. Consistent with current practice in Water Division 3, the Division 3 Engineer shall continue to maintain official records for the administration of the WCSPD water right and any water diverted under free river conditions, including (1) total daily diversions through the WCSPD; (2) water exchanged into and stored in Rio Grande Reservoir; (3) water used directly to replace depletions or to meet other downstream decreed demands; and (4) WCSPD water released from storage and the final place of beneficial use. One or both Co-Applicants shall maintain and provide the Division Engineer separate accounting of the following information: (1) the amount

of water diverted through the WCSPD in priority or under free river conditions; (2) the amounts stored in Rio Grande Reservoir of WCSPD water diverted in priority or under free river conditions; (3) each Co-Applicant's pro rata portion of evaporation from Rio Grande Reservoir as determined by SLVID; (4) the volumetric limits for WCSPD water diverted in priority; (5) the amount of water carried forward into the subsequent year, and (6) such other information as the Division Engineer may reasonably request from time to time relevant to the proper administration of the change of water right and exchange approved herein. Accounting maintained by Co-Applicants shall be made available to Opposers upon request. Opposers may contact the Division 3 Engineer to request review of any accounting maintained by the Division 3 Engineer's Office.

35. This decree does not in any way modify any of Navajo's or Wolf Creek's decrees for the WCSPD water right. The description of or reference to structures and water rights herein, other than the exchange described in this decree, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.

36. The carrying capacity of the WCSPD Ditch shall not be increased beyond 10 cfs for any reason; provided, however, that Co-Applicants remain entitled to maintain the WCSPD Ditch such that the ditch may continue to divert the entirety of its decreed 10 cfs.

37. Water shall only be diverted through the WCSPD Ditch at times and to the extent that such water will be used, on either a direct-flow basis or exchanged into Rio Grande Reservoir, for storage and subsequent decreed beneficial uses consistent with the applicable terms of this Decree or the Division of Water Resources' Written Instruction 2015-02: Instructions Concerning the Administration of Diversions of Water During Free River or any subsequent amendment thereto.

37. Notice to Division Engineer's Office. The Co-Applicants shall provide the Division Engineer's Office with contact information for those who should receive official communications from either the Division or State Engineer concerning the water right confirmed in this decree. This information shall be updated in the event of any change, and on an annual basis by March 15th of each year. The Co-Applicants' accounting forms provided to the Division Engineer and Water Commissioner shall also include contact information for the individual responsible for operations and accounting under this decree.

38. No Precedent. The findings of fact, conclusions of law and decree were completed as a result of substantial discussions, negotiations, and compromises by, between and among Co-Applicants and the stipulating opposers pertaining to all parts of the findings, conclusions, judgment, and decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence by the parties to a stipulated decree under the specific factual and legal circumstances of this matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, or laches, nor to any administrative practice or precedent, by or against any of the parties hereto in any other matter, case or dispute; nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. All parties stipulate and agree that



they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these findings, conclusions, judgment, and decree.

Based on the foregoing, the Referee GRANTS the Application and ORDERS that this Ruling shall be filed with the Water Court subject to judicial review, and a copy of this Decree shall be filed with the Division Engineer and the State Engineer.

DATED: December 5, 2024

BY THE WATER REFEREE:

A handwritten signature in black ink, appearing to read 'Nicholas Sarmiento', is written over a horizontal line.

Nicholas Sarmiento  
Water Referee  
Water Division 3

No protest was filed in this matter. The foregoing Findings of Fact, Conclusions of Law and Ruling of Referee are confirmed and approved, and are made the Judgment and Decree of this Court.

DATED:

BY THE COURT:

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Michael A. Gonzales  
Water Judge  
Water Division 3



June 24, 2022

***Via U.S.P.S. Priority Mail***

***Tracking #9405 5036 9930 0281 7340 75***

Rio Grande Water Conservation District  
ATTN: Amber Pacheco  
8805 Independence Way  
Alamosa, CO 81101

RE: Purchase Agreement - Navajo Development Co., Inc. and RGWCD

Dear Ms. Pacheco:

Enclosed please find an original *Purchase Agreement* bearing the signature of John H. Parker, II, in the above-referenced matter.

Sincerely,

Pam Brunson  
Legal Secretary

Enclosure

cc: John H. Parker, II  
Stephen H. Leonhardt, Esq.  
April D. Hurst, Esq.



## **PURCHASE AGREEMENT**

**THIS PURCHASE AGREEMENT** (this "Agreement") is made this \_\_\_ day of July, 2022 (the "Effective Date"), by and between Navajo Development Co., Inc. ("Grantor"), and the Rio Grande Water Conservation District, for and on behalf of the Water Activity Enterprise of Special Improvement District No. 2 of the Rio Grande Water Conservation District, a body corporate and politic and a political subdivision of the state of Colorado whose principal address is 8805 Independence Way, Alamosa, Colorado 81101 (the "District"). Grantor and the District may be referred to herein, individually as a "Party" or collectively as the "Parties".

### **RECITALS**

**A. WHEREAS**, Grantor is the owner in fee-simple of an absolute water right for transmountain water in the Williams Creek Squaw Pass Diversion and the associated ditch rights in the Williams Creek Squaw Pass ditch ("WCSPD Right") as set forth in a change decree entered in Case No. 2-1869-78 (Water Division No. 7) on February 28, 1979; and,

**B. WHEREAS**, Grantor desires to sell its remaining uncommitted interest in the WCSPD Right, including water that may be diverted under free river conditions (the "WCSPD Interest") and the diversion structure for the WCSPD Right to the District and the District wishes to purchase the WCSPD Interest and diversion structure from Grantor under the terms set forth herein; and,

**C. WHEREAS**, Grantor is currently prosecuting a case wherein Grantor seeks a decreed appropriative right of exchange for the WCSPD Right (Concerning the Application for Water Rights of Navajo Development Co., Inc., District Court, in and for Water Division No. 3, Case No. 20CW3016); and,

**D. WHEREAS**, Grantor is willing to amend the application in Case No. 20CW3016 to include a change of use to augmentation and replacement, including use in Annual Replacement Plans and to confirm the quantification of the historical consumptive use of the WCSPD Right; and,

**E. WHEREAS**, the District desires to purchase the WCSPD Interest, including such decreed changed historical consumptive use under the WCSPD Right that Grantor has not already committed to other persons or entities or to Grantor's own decreed augmentation plan.

**NOW THEREFORE**, for good consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### **TERMS AND CONDITIONS**

The Recitals are hereby incorporated into the Terms and Conditions of this Agreement as if fully set forth herein.

1. **Purchase Price.** The purchase price for the decreed portion of Grantor's WCSPD Interest shall be Fifteen Thousand and 00/100 dollars (\$15,000.00) per acre-foot of decreed historical consumptive use transferred to the District (the "Purchase Price"). The total purchase price will be determined after a final unappealable decree is entered in Case No. 20CW3016. Within ten

(10) days of the Effective Date of this Agreement, the District shall pay to Grantor an earnest money deposit in the amount of Fifteen Thousand and 00/100 dollars (\$15,000.00), which shall be non-refundable to the District except as set forth in paragraph 16. The balance due at closing shall be the Purchase Price minus the total amount paid by the District to Grantor pursuant to the Parties' Permanent Lease Agreement, dated April 7, 2022 ("Permanent Lease Agreement Price"), including any renewal thereof for subsequent lease terms, and the earnest money deposit in the amount of \$15,000.00.

1.1 Free River Water. In addition to Grantor's annual diversions of the decreed WCSPD Water Right described above, Grantor has historically diverted additional transmountain water each year through the WCSPD diversion structure under free river conditions ("Free River Water"). In addition to the Purchase Price set forth above for the decreed portion of Grantor's WCSPD Interest, the District agrees to pay Grantor a continuing royalty fee in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00) per acre foot of water diverted through the WCSPD diversion structure under free river conditions. In the event that the District obtains a supplemental decreed water right in Water Division 7 for its diversions of water through the WCSPD, the District shall pay to Grantor a one-time price of Five Thousand and No/100 Dollars (\$5,000.00) per acre-foot of the adjudicated supplemental water right, in lieu of future annual royalty payments.

1.2 Shortage. The total amount of water available for diversion pursuant to the WCSPD Right and under free river conditions may vary due to circumstances beyond Seller's control, including drought, fire, or flood. The District acknowledges that Grantor divides the ownership interests in the WCSPD Right into internal priorities ("Pools"), and that the District's purchase of Grantor's uncommitted WCSPD Interest consists of water in Pool 3. The District further agrees that, during times of shortage, the quantity of water that each WCSPD Pool 3 interest owner receives shall be reduced proportionately with other interests in Pool 3 water.

2. Grantor's Disclosures and Due Diligence. Grantor shall disclose to the District all easements, liens (including, without limitation, governmental improvements approved, but not yet installed), agreements or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Grantor has actual knowledge concerning the WCSPD Right. Not later than ten (10) business days after the Effective Date, Grantor shall make available for the District's inspection, review and copying, those documents that exist and are within Grantor's possession or control which fall within the types of documents identified in Schedule 1 and are related to the WCSPD Right (collectively, the "Due Diligence Materials"). Many of the Due Diligence Materials are public records available to the District from the Rio Grande or Mineral County Clerk and Recorder or the Colorado Division of Water Resources, and to the extent they are publicly available, Grantor is not required to obtain or otherwise procure copies of those records for the District if they are not already in the possession or control of Grantor. Grantor shall make the Due Diligence Materials available at the Rio Grande Water Conservation District, or at any other location the parties agree to. If this Agreement terminates prior to closing for any reason, the District shall return the Due Diligence Materials, and any copies thereof, to Grantor as soon as reasonably possible. Prior to termination, the District agrees to confer with Grantor and discuss options to cure the District's objections, including the amendment of this Agreement, as may be necessary or appropriate.

3. Compliance with Obligations. During the pendency of Case No. 20CW3016, Grantor shall comply on a timely basis with all of its legal and contractual obligations with respect to the WCSPD Right, including the payment of storage fees except to the extent such obligations are expressly assumed by the District in writing.

4. WCSPD Diversion Structure. The United States Forest Service ("USFS"), pursuant to the Federal Land Policy and Management Act, has granted to Grantor a special use permit for the use of National Forest System lands for maintaining a water diversion ditch and associated measurement facilities for the WCSPD Right ("USFS Permit"). The USFS Permit is nontransferable and not assignable, and will terminate upon a change of ownership of the diversion structure. The USFS Permit provides that, upon receipt of proper documentation, the USFS may issue a permit to the party who acquires ownership of the improvements authorized under the permit.

4.1 In accordance with the terms of the USFS Permit, Grantor shall notify the authorized officer of the USFS that a sale of the diversion structure is pending, and shall cooperate with the USFS and the District in providing any information necessary to assist the District in obtaining the necessary permit from the USFS for the WCSPD diversion structure.

4.1.1 The Parties acknowledge that despite their best efforts, there is no guarantee that the District will obtain a special use permit from the USFS for maintaining the WCSPD diversion ditch and measurement facilities. If the District is unsuccessful in obtaining the necessary USFS permit, the District may either: 1) terminate this Agreement, in which event the earnest money deposit will be returned to the District, while Grantor retains ownership of the WCSPD Interest and all other funds previously paid to Grantor by the District; or 2) maintain this Agreement in full force and effect, and enter into a lease with Grantor for a term of at least 99 years under the same terms agreed upon in the Parties' Permanent Lease Agreement referenced in Section 1 above, except that Grantor shall retain ownership of the WCSPD Interest and will continue to operate under the existing USFS Permit, as such permit may be renewed by Grantor in the future. In the event that the USFS does not approve Grantor's renewal of the USFS Permit upon its expiration, the Parties' long-term lease pursuant to this Section 4.1.1 shall terminate. During the term of the lease, the District will exercise its best efforts to obtain the necessary permit from the USFS, with Grantor's assistance and cooperation. If and when the District obtains the necessary permit for the WCSPD diversion structure, Grantor shall convey the WCSPD diversion and measurement structures and the WCSPD Interest to the District, upon the terms set forth in this Agreement.

4.2 After the Closing Date, the District shall assume all responsibility for the operation, maintenance, and replacement of the WCSPD diversion structure. The District agrees to operate the diversion structure in compliance with all applicable regulations of the State of Colorado and the Colorado Division of Water Resources and to maintain the diversion structure in good and adequate condition to enable delivery of water to all parties that own portions of the WCSPD Right. The District shall be entitled to bill the WCSPD interest owners for all costs associated with the operation, repair, and maintenance of the

WCSPD diversion structure on a pro rata basis. Each owner's pro rata share shall be calculated based on the ratio of that owner's total interest to the total amount of water diverted through the diversion structure per year. The total amount of water diverted through the WCSPD diversion structure depends upon the date that the structure is turned on for the season each spring. The District acknowledges that maximizing the total diversions through the WCSPD diversion structure is critical to all WCSPD interest owners, including the District and Grantor.

5. Closing. Unless otherwise agreed by the Parties in writing, the closing date for the purchase of the Property shall be on a mutually agreed date within 60 days of the entry of a final unappealable decree in Case No. 20CW3016 (the "Closing Date"); provided, however, that Seller reserves the right to postpone the Closing Date until January 1, 2023. The parties may further extend the Closing Date, by mutual agreement evidenced in writing signed by both Parties. Following the entry of a final unappealable decree in Case No. 20CW3016, the Parties will cooperate in good faith to negotiate the necessary closing documents, which will or may include warranty deeds, special warranty deeds, bills of sale, etc., and which will transfer to the District all of Grantor's WCSPD Interest.

6. Purchase of WCSPD Right.

6.1 Right of Purchase. On the Closing Date, the District will purchase from Grantor, and Grantor will sell and convey to the District the WCSPD Interest, in accordance with the terms and conditions contained in this Agreement.

6.2 Payment of Purchase Price. Subject to the full and timely performance by the parties hereunder, the Purchase Price for the Property will be payable to Grantor by the District, on the relevant Closing Date, as follows:

6.2.1 The Permanent Lease Agreement Price will be applied to the Purchase Price; and

6.2.2 The balance of the Purchase Price, subject to Closing Adjustments (defined below), if any, will be paid by cashier's check, wire transfer or other good funds.

6.3 Closing Adjustments. Customary proration shall be made as of the Closing Date, as applicable, and applied as adjustments to the Purchase Price.

6.4 Conveyance of the Property. On the Closing Date, Grantor will convey to the District fee simple title to the WCSPD Right by a bargain and sale deed conveying the WCSPD Right to the District free and clear of any and all taxes, assessments, liens, and encumbrances.

6.5 Closing Documents. The Parties shall execute and deliver at Closing all other documents required under this Agreement to close the transaction.

7. Case No. 20CW3016 (Water Division No. 3).

7.1 Grantor agrees to: Move to amend the application in Case No. 20CW3016 to request a change of all or part of the WCSPD Right (including at least the WCSPD

Interest). The requested change of use shall include, at a minimum, the additional beneficial uses of augmentation, replacement, and remedy of injurious stream depletions as part of any Annual Replacement Plan of Special Improvement District No. 2 of the Rio Grande Water Conservation District, including by exchange, and storage of said water rights in Rio Grande, Santa Maria, and/or Beaver Reservoirs under separate agreement with the owners of such reservoir(s). Grantor further agrees to continue to prosecute the requested change and exchange in the Water Court to the best of its ability.

7.2 The District agrees to: Realign its party status in Case No. 20CW3016 to a co-applicant, and cooperate with Grantor in the prosecution of the case in the Water Court to the best of its ability.

7.3 Costs and fees: Grantor shall pay any filing fees necessary for the amendment of the Application. Grantor and the District shall each bear their own costs and fees, including attorneys' fees and expert witness fees, for the joint prosecution of the Amended Application in Case No. 20CW3016.

8. Water Rights Report. Within 30 days of the entry of a final unappealable decree in Case No. 20CW3016, Grantor must cause to be furnished to the District, at Grantor's sole expense a written report, prepared under the supervision of Stephen H. Leonhardt of Burns, Figa & Will, P.C., or another licensed Colorado attorney acceptable to the District ("the Water Rights Report"). The Water Rights Report will be based upon the records of the Rio Grande and Mineral County Clerks and Records and vesting deeds from August 15, 1972, to two days before the date of the Water Rights Report. The Water Rights Report will report whether the documents examined reveal any recorded conveyance(s) of all or a part of the WCSPD Right, during the time period examined and the date of such conveyance(s), from the record owner or purported owner of an interest in the WCSPD Right. The Water Rights Report shall state that it is being provided for the benefit of the District and that it may be relied upon by the Enterprise.

9. District Review of Water Rights Report. For a period of 7 days after the Water Rights Report is delivered to the District, the District will have the right to investigate the title to the WCSPD Right, and to provide written notice identifying any specific title defect or defects to Grantor. Grantor will have 7 days from the receipt of the notice of title defects in which to cure said title defects. If Grantor fails, or is unable, to cure said title defects, then Grantor must give notice in writing to the District, and the District will have 7 days from the receipt of notice from Grantor to elect to terminate this Agreement or to waive said title defects by providing written notice to Grantor of its election. If the District elects to terminate this Agreement pursuant to this paragraph 16, then the District shall be entitled to a return of fifty percent (50%) of its earnest money deposit.

### Miscellaneous

10. Representation and Warranties. Grantor represents and warrants to the District that, as of the Effective Date: Grantor, except as noted above, is the sole owner in fee-simple of the WCSPD Right; Grantor is authorized to and has the full legal power to enter into this Agreement; the WCSPD Right is not subject to any encumbrances or other agreements that could affect District's



use or possession of the WCSPD Right; this Agreement constitutes a valid and binding obligation of Grantor, and is enforceable in accordance with its terms; Grantor is not the subject of any bankruptcy, insolvency or probate proceeding; and to the best of Grantor's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings, or any other proceedings affecting or that could affect the WCSPD Right, or any portion thereof, in law or in equity, before any court or governmental agency. The District represents and warrants that this Agreement has been duly authorized and executed by the District, is the legal, valid, and binding obligation of the District, and is enforceable against the District according to its terms; no other consent is required for the execution, delivery, or performance of this Agreement by the District; and to the best of the District's knowledge, there is no pending or threatened litigation or administrative proceeding against the District that would prevent it from purchasing the WCSPD Right.

11. Indebtedness. No provision, covenant or agreement contained in this Agreement, nor any obligations herein, shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

12. Subject to Annual Budget and Appropriation. The District does not intend to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever as a product of this Agreement. The performance of those obligations of the District requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

13. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither Party shall be deemed or constitute a partner, joint venture, or agent of the other Party.

14. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights and actions relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

15. Governmental Immunity. Nothing in this Agreement or any actions taken by the Parties pursuant to this Agreement shall be construed or interpreted as a waiver, express or implies, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time may be amended.

16. Statutory Liability Protection. The Parties may rely on, and do not waive or intend to waive, any liability protections or any other rights, immunities, limitations, or protections provided by law to the Parties and their respective officers, agents, fiduciaries, representatives, and employees.

17. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to a Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered or mailed to the Party to whom it is addressed in the United States mail, first-class postage prepaid, return receipt requested, addressed to:

**If to Grantor:**

John H. Parker II  
2043 S. Washington Street  
Denver, CO 80210

Email: navdev@me.com

With a copy to:

Burns, Figa, & Will P.C.  
Attn: Stephen H. Leonhardt  
6400 S. Fiddler's Green Circle  
Greenwood Village, CO 80111

**If to the District:**

Special Improvement District No. 2  
Rio Grande Water Conservation District  
Attn: Program Manager  
8805 Independence Way  
Alamosa, CO 81101

**With a copy to:**

Hill & Robbins, P.C.  
Attn: Peter J. Ampe, Esq.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264

18. **Default and Remedies.** If any payment or any other condition hereof is not made, tendered, or performed as herein provided, there will be the following remedies. In the event the District fails to perform any covenant or agreement hereof as provided herein, and such failure is not cured within thirty (30) days after written notice thereof, then this Agreement will be null and void and of no effect, and both parties hereto will, thereupon be released from all obligations hereunder, except for obligations that expressly survive termination hereof, and the earnest money deposit paid hereunder will be retained by Grantor as liquidated damages as Grantor's sole and exclusive remedy hereunder. These are the only conditions under which Grantor may terminate. In the event that Grantor fails to perform any covenant or agreement hereof as provided herein, and such failure is not cured within thirty (30) days after written notice thereof, then the District may, at its election, treat this Agreement as terminated, and all payments made hereunder, including the earnest money deposit, will be returned to the District; provided, however, that the District may, at its election, treat this Agreement as being in full force and effect with the right to an action for specific performance, provided such action for specific performance must be brought within ninety (90) days of the expiration of the 30-day cure period provided above. Notwithstanding the foregoing to the contrary, if the alleged default provided for in such notice is not capable of being fully cured within the 30-day period, such party will not be in default hereunder, provided that party has commenced to cure the default within the 30-day period and thereafter diligently pursues such cure to full completion within a reasonable period of time.

19. **Compliance with Laws, Ordinances and Regulations.** In performing the obligations, covenants and conditions of this Agreement, Grantor and The District will comply with all applicable laws, ordinances, and regulations.

20. **Assignment.** This Agreement will be binding upon and will inure to the benefit of Grantor and the District and their respective successors and assigns. The District may not assign this Agreement to any party, in whole or in part, without first obtaining Grantor's prior written

consent. The District may assign this Agreement to a related or affiliated entity only upon obtaining Grantor's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

21. Headings. The headings and captions in the Agreement are intended solely for the convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

22. Controlling Law and Venue. This Agreement is made and performed in Colorado. The laws of the state of Colorado shall be applied in the interpretation, construction, execution, and enforcement of this Agreement. Venue for any dispute arising under this Agreement shall be in the District Court in and for Rio Grande County, Colorado.

23. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

25. Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

26. Severability. The invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of any other portion of this Agreement. Any invalid or unenforceable portion or provision of this Agreement shall be deemed severed from this Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated portion or provision in order to carry out the intent of the Parties in entering into this Agreement.

27. Further Instruments. Each party hereto will, from time to time execute and deliver such further instruments as the other party or its counsel or the Title Company may reasonably require effectuating the intent of this Agreement.

28. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

29. Recordation. Either Grantor or the District may execute and record this Agreement in the records of the County Clerk and Recorder for Rio Grande County, Colorado. Following the expiration of this Agreement as a result of the District's failure to close on the transaction, or in the event of termination of this Agreement as a result of a default of either party, Grantor may unilaterally record a release of this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS HEREOF, the Parties have executed this Purchase Agreement effective as of the date set forth above.

**GRANTOR**

NAVAJO DEVELOPMENT CO., INC.

John H. Parker

By: John H. Parker

Title: President

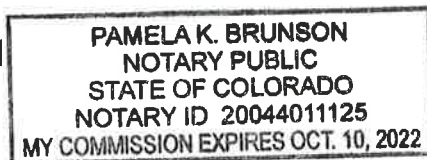
STATE OF COLORADO )

) ss

COUNTY OF ARAPAHOE )

The foregoing Purchase Agreement was acknowledged before me this 24<sup>th</sup> day of June 2022, by John H. Parker. Witness my hand and official seal.

[seal]



Pamela K. Brunson

Notary Public

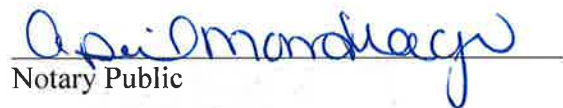
My Commission Expires: October 10, 2022

**WATER ACTIVITY ENTERPRISE  
SPECIAL IMPROVEMENT DISTRICT NO. 3  
RIO GRANDE WATER CONSERVATION DISTRICT**

Cleave Simpson  
General Manager  
Rio Grande Water Conservation District

STATE OF COLORADO )  
 ) s  
COUNTY OF ALAMOSA )

The foregoing Lease and Purchase Agreement was acknowledged before me this 11 day of July 2022, by Cleave Simpson, General Manager, Rio Grande Water Conservation District. Witness my hand and official seal.



My Commission Expires: 6-15-25

SCHEDULE 1  
DUE DILIGENCE MATERIALS

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- 
- Records of surface diversions and well pumping rate, total depth, static water level and pumping level to the extent they are in the possession or control of the Grantor;
- 
- Copies of Water Court decrees for the Water Rights to the extent they are in the possession or control of the Grantor;
- Copies of orders issued by the Colorado Division of Water Resources (DWR) State Engineer's Office or Division 3 Office pertaining to the Water Rights to the extent they are maintained by and in the possession or control of the Grantor;
- 
- Repair and maintenance records for headgate and measuring device to the extent they are maintained by and in the possession or control of the Grantor;
- 
- Environmental, water, mineral, cultural or wildlife surveys, studies, or reports to the extent they are in the possession or control of the Grantor;
- Leases or agreements, pertaining to or affecting the ownership or use of the WCSPD Right to the extent they are in the possession or control of the Grantor; and
- such other materials pertaining to the WCSPD Right, which must derive from or relate to one of the categories set forth above, as may be reasonably requested by the District, its counsel, or its consultants during the Due Diligence Period.



## **MEMORANDUM**

TO: Rio Grande Water Conservation District  
Peter J. Ampe, Esq.

FROM: April Hendricks, Esq.  
Pete Jaacks, Esq.

DATE: January 24, 2025

SUBJECT: Water Rights Report for Navajo Development Co. Inc.'s Williams Creek, Squaw Pass Diversion Water Right

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This Water Rights Report was prepared pursuant to Paragraph 8 of the Purchase Agreement between Navajo Development Co., Inc. ("Navajo"), and the Rio Grande Water Conservation District ("District"), for and on behalf of the Water Activity Enterprise of Special Improvement District No. 2 of the Rio Grande Water Conservation District ("Enterprise"), dated July 19, 2022 for the purchase of Navajo's remaining uncommitted interest in the Williams Creek Squaw Pass Diversion Water Right ("WCSPD Right") as set forth in a change decree entered in Case No. W-1869-78 (Water Division No. 7) on February 28, 1979 (the "Purchase Agreement"). Per the requirements of Paragraph 8 of the Purchase Agreement, this Report is being provided for the benefit of the District and may be relied upon by the Enterprise.

### **I. Williams Creek Squaw Pass Diversion Right**

The Williams Creek Squaw Pass Diversion right was originally decreed in Case No. CA308 (1967) in the District Court for the County of Archuleta (Water Division 7). It is generally described as follows:

The Williams Creek, Squaw Pass Diversion in former Water District No. 29, Division 7 of the State of Colorado, being adjudicated and decreed as Ditch No. 236, Priority No. 310, which decreed Priority Date of September 9, 1937, for 10 cubic feet of water per second of time from three tributaries of Williams Creek, such diversion having headgates E, D and C, respectively, on the left bank of the south fork of the east fork of Williams Creek, and on the left bank of the middle fork of the west fork of Williams Creek and on the left bank of the north fork of the west fork of Williams Creek, all as set forth on the maps, filings and decree, such points of diversion situate approximately in Section 21 of unsurveyed Township 39 North, Range 3 West, N.M.P.M.

Navajo changed the WCSPD Right in Case No. Case No. W-1869-78 (Water Division No. 7) from irrigation uses to municipal (including industrial, commercial, domestic and sewage treatment), recreation, replacement and augmentation uses. Navajo also adjudicated the augmentation plan in Case No. 01CW3 (replacing the original plan decreed in Case No. W-3930), which uses 18.899 acre-feet of water from the WCSPD Right as a replacement source in a commercial area, a residence, and several subdivisions (Creede Haven Nos. 1-5, Rivercrest Acres, and Bristol Head Acres Nos. 4, 6, and 7), as described below.

## **II. Conveyances of the WCSPD Right by Navajo**

Pursuant to Paragraph 8 of the Purchase Agreement, we conducted a review on behalf of Navajo of our files and the records of the Rio Grande and Mineral County Clerks and Records for vesting deeds from August 15, 1972 to January 23, 2025, to determine recorded conveyances of all or a part of the WCSPD Right during the specified time period, from the record owner of an interest in the WCSPD Right.

In 1972, Navajo purchased the entire WCSPD Right from Lauren Sanderson via a deed recorded in Mineral County on August 15, 1972. Navajo subsequently conveyed portions of the WCSPD Right in two priority “pools.” Navajo conveyed the rights in Pool 1 between 1976 and 1983. The Pool 1 rights have the first priority and are satisfied first. Navajo conveyed the rights in Pool 2 between 1986 and 1991. Water remaining after the interests in Pool 1 and Pool 2 are satisfied is “Pool 3,” and this water is currently owned by Navajo, with exception of the sale discussed in Section II.D below. Pool 1 and 2 interests, including dates of conveyance and current owners (to the best of Navajo’s knowledge, based on Navajo’s own files and publicly available records) are depicted in the following two tables below.



**A. Pool 1 – 50.399 acre-feet total**

| Current Owner of Record   |   | Amount           | Decree | Original Conveyance From Navajo          | Date of Original Conveyance, Reception No., Recording Date  |
|---|---|------------------|--------|--|---|
| Consumptive use water allocated to Navajo Development under Case No. W-3930 (replaced by Case No. 01CW3). |   | 18.899 acre-feet | 01CW3  |  |   |
|   | Rivercrest Acres  | 1.74 acre-feet   | 01CW3  | Rivercrest Acres HOA                     | 09/25/2000 (Rec. No. 59978, Mineral County 03/22/2002)  |
|   | Creede Haven #1 c/o Deep Creek  | 0.96 acre-feet   | 01CW3  | Deep Creek Water and Sanitation District | 06/12/2008 (Rec. No. 65038, Mineral County, 06/18/2008)   |
|   | Commercial Area c/o Deep Creek  | 2.82 acre-feet*  | 01CW3  | Deep Creek Water and Sanitation District | 12/2/2010 (Rec. No 66731, Mineral County, 12/6/2010)  |
|   | Navajo Dev. Co. (Creede Haven #4)   | 1.50 acre-feet   | 01CW3  |  | Still owned by Navajo   |
|   | MVE POA c/o Deep Creek (Two conveyances (1) Creede Haven #2 and (2) Creede Haven #3 and #5) | 3.59 acre-feet*  | 01CW3  | Deep Creek Water and Sanitation District | Creede Haven #3 and #5 - 12/5/2013 (Rec. No. 68481, Mineral County, 12/9/13); Creede Haven #2 4/16/2010 (Rec. No. 66259, Mineral County, 4/28/2010) |
|   | Bristol Head 4 & 6  | 2.29 acre-feet   | 01CW3  |  | Still owned by Navajo   |
|   | Bristol Head 7  | 0.20 acre-feet   | 01CW3  |  | Still owned by Navajo   |
|   | Steven and Barbara Ann McCann**   | 0.03 acre-feet   | 01CW3  | Steven and Barbara Ann McCann            | 11/17/2021 (Rec. No. 73952, Mineral County, 12/9/2021)**  |
|   | Innerarity Family Investments, Inc.   | 3.88 acre-feet   | 01CW3  | Innerarity Family Investments, Inc.      | 04/26/2019 (Rec. No. 103433, Mineral County, 5/3/2019)  |

|   |                |                   |                           |   |
|---|----------------|-------------------|---------------------------|---|
| Elk Valley  | 3 acre-feet    | W-3598            | W. L. Hubbard             | 06/28/1976 (Rec No. 38536, Mineral County, 07/23/1976) (Hubbard owns Elk Valley)  |
| Sue Jensen  | 1 acre-foot    |                   | Nancy McFarlane           | 11/23/1979 (Rec. No. 41407, Mineral County, 11/26/1979) (Conveyance from McFarlane to Larry and Sue Jensen and Bill and Janice Johnston– 08/26/1983, Rec No. 46732, Mineral County, 09/23/1983) (From Johnstons to Jensens and Wymers – 03/13/1986, Rec. No. 47836, Mineral County, 03/19/1986) (Corrected via warranty deed dated 02/15/2012 Rec. No. 67507, Mineral County, 03/14/2012) (Fully conveyed to Sue Jensen Trust via quitclaim deed dated January 23, 2024, Rec. No. 106349, Mineral County, 04/12/2024) |
| Wolf Creek Ski Area                                       | 0.50 acre-feet | 87CW7             | Lake Peak Corporation     | 11/15/1981 (Rec. No. 45102, Mineral County, 02/12/1982) (No available recorded conveyance but the decree in Case No. 87CW7 confirms Wolf Creek's ownership).  |
| Reed Remington Graff Trust IV                             | 2 acre-feet    | 84CW95            | Richard and Theresa Inman | 06/24/1983 (Rec. No. 74561, Mineral County, 07/07/1983) (Conveyed to RRG T IV on 02/14/2017, Rec. No. 70243, Mineral County, 02/15/2017)  |
| Industrial Building Corporation d/b/a Little Squaw Resort | 2 acre-feet    | 84CW95            | Richard and Theresa Inman | 06/24/1983 (Rec. No. 74561, Mineral County, 07/07/1983) (Conveyed to LSR on 01/09/2017, Rec. No. 102400, Mineral County, 3/30/2017)   |
| Creede 240 LLC/Crooked Creek                              | 1 acre-foot    | 84CW95 and 08CW05 | Richard and Theresa Inman | 06/24/1983 (Rec. No. 74561, Mineral County, 07/07/1983) (Conveyance to Creed 240 LLC – 01/09/2017, Rec. No. 70303, Mineral County, 03/30/2017)  |

|                              |              |        |                               |  |
|------------------------------|--------------|--------|-------------------------------|--|
| Town of South Fork           | 5 acre-feet  |        | Daniels/Gravestock***         | 09/6/1983 (Rec. No. 74945, Hinsdale County, 09/12/1983)  |
| Navajo Development Co., Inc. | 5 acre-feet  |        | Daniels/Gravestock****        | 09/6/1983 (Rec. No. 74945, Hinsdale County, 09/12/1983)  |
| TMW                          | 12 acre-feet | 83CW95 | Alan Simpson & Larry Mitchell | 09/27/1983 (Rec. No. 46736, Mineral County, 09/28/1983)(Conveyed from Mitchell and Simpson to TMW 07/23/1984, Rec No. 47486, Mineral County, 08/07/1984) |

\* The Special Warranty Deed to Deep Creek Water and Sanitation District that conveys the water allocated to the “Commercial Area” references 4.48 acre-feet of consumptive use, however only 2.82 acre-feet of the consumptive use is augmented by the WCSPD Right. The irrigation use is augmented with water from Big Ruby Reservoir per Paragraph 21(a) of the 01CW3 Decree. The same is true of the water allocated for indoor use to Creede Haven Nos. 2, 3, and 5, which totals 3.59 acre-feet.

\*\* The water conveyed to the McCanns was originally conveyed from Navajo to two Trusts, then from the Trusts to the McCanns. To correct an erroneous legal description of the WCSPD Right, Navajo executed a quitclaim deed (listed in the Pool 1 Table) directly to the McCanns. This water is referred to as the “Parker Residence” under the 01CW3 Decree.

\*\*\* Navajo initially conveyed 10 acre-feet of the WCSPD Right to Charles Lindy Daniels, Athalene Daniels, Eleanor Gravestock, and Mary Douglas. Then 5 acre-feet was subsequently conveyed to just Charles Lindy Daniels and Athalene Daniels via a warranty deed recorded on April 5, 1985, at Reception No. 77190 in Hinsdale County. The Daniels conveyed a portion of the 5 acre-feet to Vernon Rominger and adjudicated the decree in Case No. 86CW5, which dedicated the entire 5 acre-feet of the WCSPD Right as an augmentation source for the augmentation plan subject of that decree. The Daniels also entered into a contract with Rominger, recorded at Reception No. 329966 in Rio Grande County on July 30, 1991, that gave Rominger possession of the 5 acre-feet for use in the Riviere Estates central water system as an augmentation source. The water was subsequently conveyed to High Mountain Water LLC via Personal Representative’s Deed dated October 9, 2014 recorded in Rio Grande County at Reception No. 201400422289 on October 14, 2014. High Mountain Water LLC conveyed the

January 24, 2025

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water to the Town of South Fork via a bargain and sale deed recorded on April 26, 2019 in Rio Grande County at Reception No. 201900435626 as part of a water system transfer agreement.

\*\*\*\*Navajo initially conveyed 10 acre-feet of the WCSPD Right to Charles Lindy Daniels, Athalene Daniels, Eleanor Gravestock, and Mary Douglas. Then 5 acre-feet was subsequently conveyed to just Eleanor Gravestock and Mary Douglas via a warranty deed recorded on April 5, 1985, at Reception No. 77191 in Hinsdale County. In 2001, Eleanor Gravestock, as Personal Representative of Mary Douglas, conveyed Mary Douglas's interest in the 5 acre-feet to herself via a Personal Representative's Deed recorded on March 6, 2001 at Reception No. 91402 in Hinsdale County. At that time, Eleanor Gravestock was the sole owner of the 5 acre-feet. On June 18, 2003, the co-personal representatives of the estate of Eleanor Gravestock quitclaimed the entire 5 acre-feet to John H. Parker II via quitclaim deed recorded at Reception No. 00378783 in Rio Grande County on July 29, 2003. Parker conveyed the water to the JHP Living Trust via a warranty deed recorded in Hinsdale County on August 16, 2005 at Reception No. 94661. The Trust quitclaimed the 5 acre-feet back to Navajo on August 5, 2014, via a quitclaim deed recorded in Hinsdale County at Reception No. 100921 on August 8, 2014.

**B. Pool 2 – 38.5 acre-feet total**

| <b>Current Owner of Record</b> | <b>Amount</b>  | <b>Decree</b> | <b>Original Conveyance From Navajo</b> | <b>Date of Original Conveyance</b>  |
|--------------------------------|----------------|---------------|--|---|
| MRPR Holdings L.P.             | 24 acre-feet   | 15CW3025      | Wagon Wheel Gap Associates LTD.        | 12/18/1986 (Rec. No. 49741, Mineral County, 12/19/1986) (Wagon Wheel assigned its interest to La Garita, LLC on 10/28/2014, Rec. No 68936, Mineral County, 10/29/2014) (Conveyed from La Garita LLC to MRPR on 11/29/2018, Rec. No. 71414, Mineral County, 12/6/2018)   |
| MRPR Holdings L.P.             | 10 acre-feet   | 15CW3025      | Rominger Hardware                      | 12/27/1986 (Rec. No. 49750, Mineral County, 12/27/1986) (Conveyed to B&R, LLC, on 10/9/2014, Rec. No. 101062, Hinsdale County, 10/10/2014)(Conveyed from B&R to La Garita on 02/04/2017, Rec. No. 102311, 2/10/2017) (Conveyed from La Garita LLC to MRPR on 11/29/2018, Rec. No. 71414, Mineral County, 12/6/2018) |
| Kid Peak HOA                   | 1.25 acre-feet | 91CW15        | Cougar Development Inc.                | 12/15/1989 (Rec. No. 51583, Mineral County, 02/1/1990) (Date of Conveyance to Kid Peak - 10/8/1992 (Rec. No. 53428, Mineral County, 10/30/1992))  |
| Frances and Linda DeTure       | 3.25 acre-feet |               | Frances and Linda DeTure               | 7/31/1991 (Rec. No. 52656. Mineral County, 8/1/1991)  |

### **C. Jordan-Hague Conveyances**

In 1988, Navajo conveyed certain lands in Mineral County to Herbert Jordan and Betty Lou Jordan via warranty deed dated March 26, 1988, and recorded on March 28, 1988 at Reception No. 50385 in the records of Mineral County. The legal description of the deed included “any and all water rights owned by the Grantor,” without any clarification of those water rights as being appurtenant to the land described by the deed. The Jordans subsequently conveyed the same lands in Mineral County to Ronald Hague via a warranty deed dated September 24, 1997 and recorded at Reception No. 56660 on October 2, 1997 in Mineral County. The deed to Ronald Hague contained the same legal description as the deed to the Jordans, including the “any and all water rights owned by the Grantor” language.

To clarify the ambiguity in the Jordan-Hague deeds, Navajo obtained a quitclaim deed from Ronald Hague on April 7, 2023. The deed quitclaims “any and all interest in any water rights for the Williams Creek Squaw Pass Diversion” from Hague to Navajo to ensure that neither Hague nor any of his successors have any claim to the WCSPD Right due to the ambiguity of the legal description language in the deed to the Jordans. The quitclaim deed confirms no conveyance of any of the WCSPD Right to the Jordans. The deed from Hague to Navajo is recorded at Reception No. 74826 on April 11, 2023, in Mineral County.

### **D. Deacon Purchase**

In 2022, Navajo entered into a Purchase and Sale Agreement with Deacon Family Investments, LP for the purchase of 25 acre-feet of Pool 3 water from the WCSPD Right. The water was conveyed to Deacon on January 15, 2025. The conveyance to Deacon Investments, LP is the only conveyance of Pool 3 water as of the date of this Report.

## **III. Conclusion**

Between 1976 and October 2024, Navajo conveyed approximately 88.9 acre-feet of water from the WCSPD Right in two separate pools: 50.399 acre-feet in Pool 1, conveyed between 1976 and 1983; and 38.5 acre-feet in Pool 2, conveyed after 1983. On January 15, 2025, Navajo conveyed 25 acre-feet of water from Pool 3 of the WCSPD Right. The water remaining after the interests in Pools 1, 2, and 3 discussed above are satisfied is Navajo’s “uncommitted interest” in the WCSPD Right.