



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

June 3, 2019

Paul Weiss, P.E.  
Williams & Weiss Consulting, LLC  
5255 Ronald Reagan Boulevard, Suite 220  
Johnstown, CO 80534

**Re: Journey Ventures Pit, Substitute Water Supply Plan (WDID 0102541)  
DRMS File No. M-2008-080 (WDID 0110849)  
Section 7, T5N, R64W of the 6<sup>th</sup> P.M.  
Water Division 1, Water Districts 1 and 3, Weld County  
All Plans ID: 5579**

**Approval Period: April 1, 2019 through March 31, 2020**

*Contact Information for Mr. Paul Weiss: 970-221-5159; [pswwater@msn.com](mailto:pswwater@msn.com)*

Dear Mr. Weiss:

This letter is in response to your application of February 1, 2019 requesting a substitute water supply plan ("SWSP") for a sand and gravel pit operated by J-2 Contracting Company ("J-2" or "Applicant") in accordance with § 37-90-137(11), C.R.S. The required fee of \$257.00 for the renewal of this substitute supply plan has been submitted (receipt no. 3690401). The original supply plan was approved on May 19, 2015 and was most recently renewed on February 28, 2018 for operations through March 31, 2019. The Applicant shall be responsible for compliance with this SWSP, but the State Engineer's Office may also pursue the landowner for eventual compliance.

### **SWSP Operations**

This SWSP submittal addresses the projected depletions from expected operations at the Journey Ventures Pit from April 1, 2019 through March 31, 2020. The Journey Ventures Pit is located in the SE ¼ of Section 7, Township 5 North, Range 64 West of the 6<sup>th</sup> P.M. The sand and gravel operation is south of the South Platte River near the town of Kersey as shown on the attached Map 1. This SWSP seeks to replace depletions resulting from the mining of sand and gravel at the Journey Ventures Pit. The depletions that result from the mining operation over the period of this SWSP include evaporation from exposed groundwater outside of the approved slurry wall, dust suppression and water lost with the mined product. A slurry wall was constructed around the mining area in the winter of 2015-2016, however the slurry wall initially did not perform as expected. Repairs were completed in the fall of 2018 and the slurry wall liner was approved on December 7, 2018 by the State Engineer's Office. The proposed replacement of depletions for this site will come from a lease of fully consumable water from the Central Colorado Water Conservancy District. The proposed reclamation of the site is a lined reservoir through the construction of a slurry wall around the mining area. The surface area of the reservoir at the completion of mining is expected to be between 33 acres to 38 acres.



## Depletions

The anticipated net depletions for this SWSP are 37.65 acre-feet. A total of 2.15 acres of water surface is exposed at the site in settling/recharge ponds for wash water and a sump for pumping water to the batch plant. Gross annual evaporation at the gravel pit location is estimated to be 46.0 inches per year and the monthly distribution is as depicted on the attached Table 1. Net evaporation is defined as gross evaporation less the consumptive use of water by vegetation that naturally occurred at the site prior to construction of the pit. The historical consumptive use by vegetation was assumed to be equal to the effective precipitation, which was estimated based on the data from the Kersey weather station. The net evaporation for the exposed water surface is 38.4 inches per year, with a monthly distribution as shown on the attached Table 1. Using the estimated exposed water surface area of 2.15 acres, the total annual stream depletion resulting from the exposure of groundwater is estimated to be 6.89 acre-feet.

You have provided a monthly breakdown of the annual depletions, which include 6.89 acre-feet of net evaporative loss, 15.78 acre-feet of water lost with the mined product (which represents 825,000 tons of mined product) and 7.6 acre-feet of water used for dust control (Table 2). The material will be mined below the groundwater table but in a dewatered state, and 30% (247,500 tons) will be washed.

The IDS AWAS stream depletion model, using the alluvial aquifer option, was used to determine the lagged depletions from evaporation and operational losses to the South Platte River. The following parameters were used in the model: transmissivity (T) = 100,000 gallons per day per foot, distance (X) from the centroid of the surface of the exposed ground water to the river = 4,766 feet, distance (W) from the aquifer boundary through the exposed ground water to the river channel = 9,500 feet, and specific yield (SY) = 0.2. The lagged depletions due to mining operations during the SWSP period are shown in Table 3 and are estimated to total 37.65 acre-feet during this approval period.

## Dewatering

Dewatering began in October 2015 and occurred until the approval of the slurry wall liner in December of 2018. Dewatering water that was pumped to the silt pond and the recharge pond was assumed to return to the stream in the same timing as the dewatering depletions. Any dewatering water that was placed into the silt pond and recharge pond cannot be used for any purpose by the operator, and must be allowed to accrete to the stream. **Should it be determined by the water commissioner or division engineer that water within the silt pond and the recharge pond is being diverted for any purpose by the operator, and accounting is not adequate to show the recharge of previous dewatering water is occurring, the Applicant will need to account for any lagged dewatering depletions at the site once dewatering stopped.**

## Replacements

The operator proposes to provide replacement for this pit using fully consumable water leased from the Central Colorado Water Conservancy District ("CCWCD"). A copy of the lease agreement with CCWCD for 43.1 acre-feet for one year from April 2019 through March 2020 was provided to this office with the SWSP request and is attached to this letter. The leased water includes additional water to cover transit losses. Transit losses were estimated at 0.25 percent per mile for 8.7 miles

from the Geisert Pit to the Journey Venture Pit. Ideally the transit loss should be based on 0.25 percent per mile for 7.7 miles from Geisert Pit to the confluence of the South Platte and Cache La Poudre rivers and 0.25 percent per mile during the non-irrigation season and 0.50 percent per mile during the irrigation season along the South Platte for 1 mile from the confluence to the Journey Venture Pit. Due to the small variation in the transit loss numbers for the irrigation and non-irrigation season, the estimated transit loss of 1.47 acre-feet is accepted in this SWSP.

The Ogilvy Ditch headgate on the Cache la Poudre River is a potential summer dry-up point that is located between Geisert Pit and the location of the Journey Venture Pit depletion point, in the SE ¼ of Section 7, Township 5 North, Range 64 West of the 6<sup>th</sup> P.M. Central has a by-pass structure at the Ogilvy Ditch headgate to pass augmentation flows by the Ogilvy at times when the Ogilvy is diverting the entire flow of the Cache la Poudre River. Central must include in their accounting the amount of water delivered through Central's by-pass structure for use in this plan.

### Long Term Augmentation

In accordance with the letter dated April 30, 2010 (copy attached) from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of groundwater. The DRMS letter identifies four approaches to satisfy this requirement.

In accordance with approach nos. 1 and 3, of the DRMS April 30, 2010 letter the Applicant obtained a bond for \$487,550 through the DRMS for the current mining phases; TR3; and 1, 2, 3 and 4 of this site to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, that would lead to the abandonment of the Pit.

### Conditions of Approval

I hereby approve the proposed SWSP in accordance with § 37-90-137(11), C.R.S. subject to the following conditions:

1. This SWSP is approved with the effective date of **April 1, 2019 and shall be valid through March 31, 2020** unless otherwise revoked or superseded by a decree. If this plan is not decreed in water court by the SWSP expiration date, a renewal request must be submitted to this office with the statutory fee of \$257 no later than **February 1, 2020**.
2. Well permit no. 79057-F was obtained for the current use and exposed pond surface area at the Journey Venture Pit, in accordance with § 37-90-137(2) and (11), C.R.S., and this permit remains valid.
3. The total surface area of the groundwater exposed at the Journey Ventures site must not exceed 2.15 acres, which results in a maximum annual evaporative loss of 6.89 acre-feet.
4. The annual amount of water used at the Journey Ventures Pit, in addition to evaporation, is limited to 23.38 acre-feet (approximately 7.60 acre-feet for dust control purposes and 15.78 acre-feet of water lost with an estimated 825,000 tons of mined product per year).

5. Total consumption at the Journey Ventures Pit must not exceed these aforementioned amounts unless an amendment is made to this SWSP.
6. Approval of this SWSP is for the purposes as stated herein. This office must first approve any additional uses for the water. Any future historical consumptive use credit given (e.g., agricultural water transfer) for this site must consider all previous credits given.
7. All pumping for dust control shall be measured in a manner acceptable to the division engineer.
8. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing, and locations.
9. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley ([DNR\\_Div1Accounting@state.co.us](mailto:DNR_Div1Accounting@state.co.us)) and the water commissioners (Evan Snyder at [Evan.Snyder@state.co.us](mailto:Evan.Snyder@state.co.us) and Mark Simpson at [Mark.Simpson@state.co.us](mailto:Mark.Simpson@state.co.us)), and Brent Schantz at [Brent.Schantz@state.co.us](mailto:Brent.Schantz@state.co.us)) on a monthly basis. All amounts shall be in acre-feet. All submitted accounting must conform to the Administration Protocol *"Augmentation Plan Accounting - Division One, South Platte River"* (attached).

In addition, the Applicant shall verify that the entity making replacements has included the Applicant on their accounting and submitted their accounting to the division office and the water commissioner; for this SWSP, that entity is the Central Colorado Water Conservancy District.

10. Conveyance loss for delivery of augmentation water to the point of depletion on the South Platte River is subject to assessment and modification as determined by the division engineer.
11. The division engineer, or his designated representative, will administer all such water transported in the South Platte River or its tributaries under this SWSP, including water for replacement of depletions, past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversion, use or other interference by intervening water rights and to assure that such water remains available and suitable for Applicant's uses under this SWSP, except when any intervening headgate is diverting the entire flow of ("sweeping") the river. In the event that delivery past headgates which sweep the river requires the installation of a bypass structure or the use of an existing bypass structure by agreement with a third-party, Applicant is responsible for either installing a new bypass structure with a continuous recording measuring device(s) as approved by the water commissioner or securing an agreement with a third-party to use an existing bypass structure and providing such information and agreement to the division engineer.
12. The Division of Water Resources will not be responsible for any enforcement or administration of third party agreements that are not included in a decree of the water court.
13. The name, mailing address, and phone number of the contact person who will be responsible for operation and accounting of this plan must be provided on the accounting forms to the division engineer and water commissioner.
14. All releases of replacement water must be sufficient to cover all out-of-priority depletions in time, place, and amount and must be made under the direction and/or the approval of the water commissioner. Notice must be provided and approval made by the water commissioner

at least 48 hours prior to the release of replacement water, or as required by the water commissioner.

15. The release of replacement water may be aggregated to maximize beneficial use. The water commissioner and/or the division engineer shall determine the rate and timing of an aggregated release.
16. The approval of this SWSP does not relieve the Applicant and/or landowner of the requirement to obtain a Water Court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after gravel mining operations have ceased. If reclamation of the mine site will produce a permanent water surface exposing groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 1 Water Court at least three (3) years prior to the completion of mining to include, but not be limited to, long-term evaporation losses and lagged depletions. If a lined pond results after reclamation, replacement of lagged depletions shall continue until there is no longer an effect on stream flow.
17. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all excavation of the product from below the water table, and all other use of water at the pit, must cease immediately.
18. In accordance with amendments to § 25-8-202-(7), C.R.S. and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether the substitute supply is of a quality to meet requirements of use to which the senior appropriation receiving the substitute supply has normally been put. As such, water quality data or analyses may be requested at any time to determine if the requirement of use of the senior appropriator is met.
19. The decision of the state engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other plans or in any proposed renewal of this plan, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant.

If you have any questions concerning this approval, please contact Ailis Thyne in Denver at (303) 866-3581 or Michael Hein in Greeley at (970) 352-8712.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Deatherage".

for Jeff Deatherage, P.E.  
Chief of Water Supply

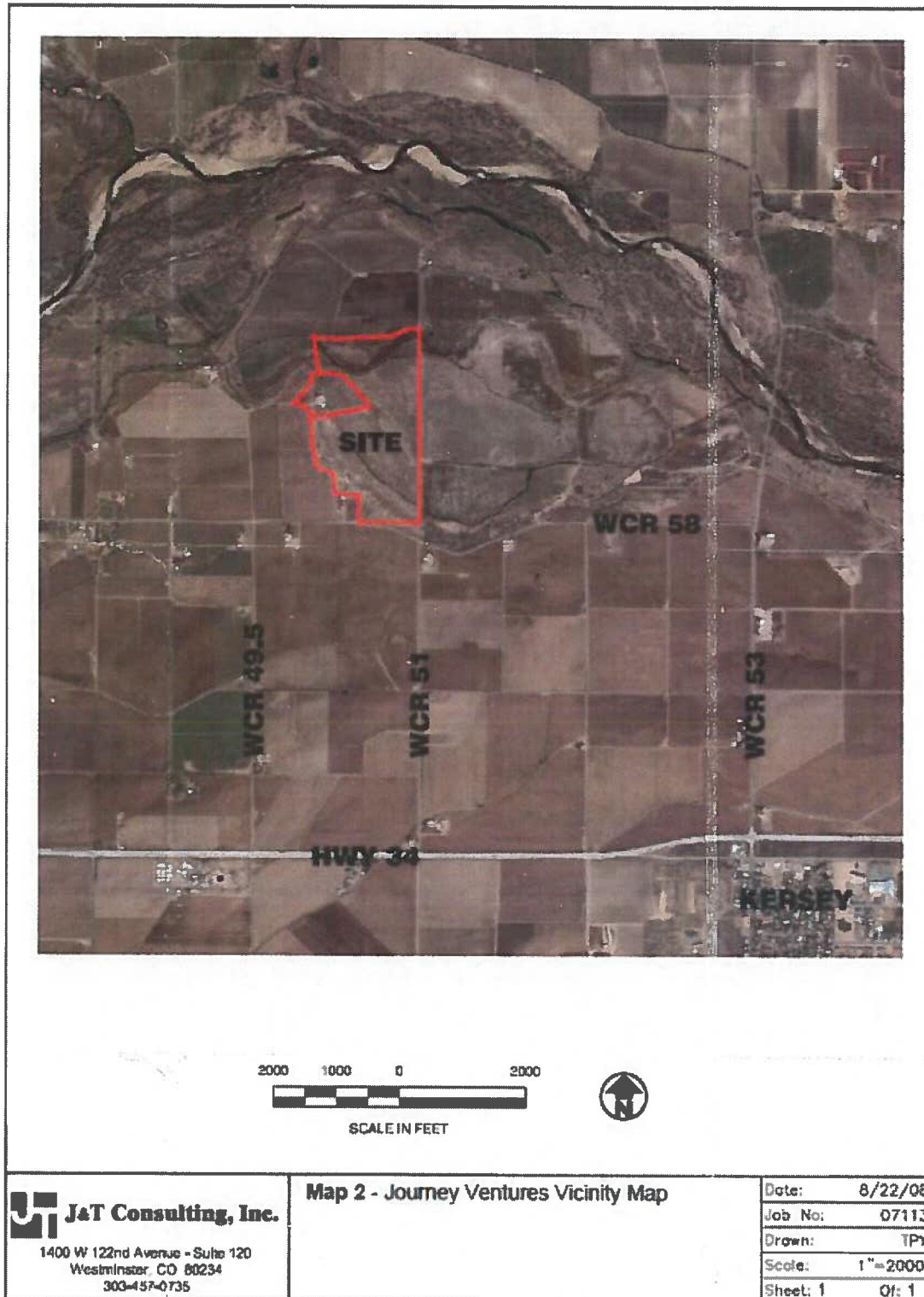
Attachments: Map 1 and Map 3  
Tables 1, 2 and 3  
CCWCD Lease  
Letter from DRMS dated April 30, 2010  
Accounting Protocol

cc: Michael Hein, Lead Assistant Division Engineer, [Michael.Hein@state.co.us](mailto:Michael.Hein@state.co.us)  
Evan Snyder, Water Commissioner, District 1, [Evan.Snyder@state.co.us](mailto:Evan.Snyder@state.co.us)  
Mark Simpson, Water Commissioner, District 3, [Mark.Simpson@state.co.us](mailto:Mark.Simpson@state.co.us)  
Brent Schantz, River Operations & Compact Coordinator, [Brent.Schantz@state.co.us](mailto:Brent.Schantz@state.co.us)  
Peter S. Hays, Division of Reclamation Mining and Safety, [Peter.Hays@state.co.us](mailto:Peter.Hays@state.co.us)





Map 2



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**Journey Ventures Pit  
Evaporative Losses  
Table 1**

Williams and Weiss Consulting, LLC



Submitted by:  
Paul Weiss  
5255 Ronald Reagan Boulevard, Ste. 220  
Johnstown, CO 80534 Ph: 970-221-5159

Total Exposed Water Surface Area<sup>1</sup> = 2.150 acres

		2019								2020				
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Totals
Distribution of Annual Evaporation <sup>2</sup>		0.09	0.12	0.15	0.15	0.14	0.10	0.07	0.04	0.03	0.03	0.04	0.06	1.00
Pond Evaporation <sup>3</sup>	inches	4.14	5.52	6.67	6.90	6.21	4.60	3.22	1.84	1.38	1.38	1.61	2.53	46.0
Effective Precipitation <sup>4</sup>	inches	1.18	1.03	0.99	0.71	0.58	0.20	0.07	0.07	0.10	0.29	1.00	1.35	7.6
Net Pond Evap	af/acre	0.25	0.37	0.47	0.52	0.47	0.37	0.26	0.15	0.11	0.09	0.05	0.10	3.20
Net Evaporation	acre-feet	0.53	0.80	1.02	1.11	1.01	0.78	0.56	0.32	0.23	0.20	0.11	0.21	6.89

**Notes:**

<sup>1</sup> See Map 2b of SWSP for the delineation of the de-watering pond exposed water surface area at Journey Ventures Pit

<sup>2</sup> Distribution of Annual Evaporation per DWR Guidelines for gravel pits at elevations below 6,500 feet.

<sup>3</sup> Annual evaporation rate are taken from NOAA Technical Report NWS 33.

<sup>4</sup> Effective Precipitation = 0.7 \* Avg. Precip.. Monthly Precip. (Kersey Weather Station (1992 - 2013) from CoAgMet)

**Journey Ventures Pit  
Operational Losses  
Table 2**

Williams and Weiss Consulting, LLC

Submitted by:  
Paul Weiss  
5255 Ronald Reagan Boulevard, Ste. 220  
Johnstown, CO 80534 Ph: 970-221-5159

Month	Aggregate Production (tons)	Water Retained in Product (ac-ft)	Water Used for Dust Control (ac-ft)	Water Pumped for Batch Plant (ac-ft)	Total Operational Consumptive Use (ac-ft)
Apr-19	80,000.00	1.53	0.50	0.00	2.03
May-19	80,000.00	1.53	0.70	0.00	2.23
Jun-19	80,000.00	1.53	1.00	0.00	2.53
Jul-19	85,000.00	1.63	1.50	0.00	3.13
Aug-19	85,000.00	1.63	1.50	0.00	3.13
Sep-19	80,000.00	1.53	1.00	0.00	2.53
Oct-19	70,000.00	1.34	0.50	0.00	1.84
Nov-19	65,000.00	1.24	0.30	0.00	1.54
Dec-19	50,000.00	0.96	0.10	0.00	1.06
Jan-20	40,000.00	0.77	0.10	0.00	0.87
Feb-20	40,000.00	0.77	0.10	0.00	0.87
Mar-20	70,000.00	1.34	0.30	0.00	1.64
Year 1 Total	825,000.00	15.78	7.60	0.00	23.38

**Journey Ventures Pit**  
**Summary of Operational Losses and Lagged Depletions**  
**Table 3**

Willson and Weiss Consulting, LLC

Submitted by:  
Paul Weiss  
5255 Ronald Reagan Boulevard, Ste. 220  
Johnstown, CO 80534 Ph: 970-221-5159

Month	Operational Losses (ac-ft)	Evaporative Losses (ac-ft)	Total Losses (ac-ft)	Lagged Depletions <sup>1</sup> (ac-ft)	Percent of Month Under Call Conditions	Net Augmentation Requirement (ac-ft)
Apr-19	2.03	0.53	2.56	3.07	100%	3.07
May-19	2.23	0.80	3.03	3.15	100%	3.15
Jun-19	2.53	1.02	3.55	3.06	100%	3.06
Jul-19	3.13	1.11	4.23	3.21	100%	3.21
Aug-19	3.13	1.01	4.14	3.30	100%	3.30
Sep-19	2.53	0.79	3.32	3.28	100%	3.28
Oct-19	1.84	0.56	2.40	3.42	100%	3.42
Nov-19	1.54	0.32	1.86	3.26	100%	3.26
Dec-19	1.06	0.23	1.29	3.25	100%	3.25
Jan-20	0.87	0.20	1.06	3.10	100%	3.10
Feb-20	0.87	0.11	0.97	2.75	100%	2.75
Mar-20	1.64	0.21	1.85	2.80	100%	2.80
<b>Total</b>	<b>23.38</b>	<b>6.89</b>	<b>30.27</b>	<b>37.65</b>		<b>37.65</b>
Month	CCWCD Delivery at Geisert Pit (ac-ft)	Alt. CCWCD Delivery (ac-ft)	Transit Losses <sup>2</sup> (ac-ft)	Supplemental Water (ac-ft)	Water Balance (ac-ft)	Dewatering (ac-ft)
Apr-19	3.50	0.00	0.12	0.00	0.31	0.00
May-19	3.60	0.00	0.12	0.00	0.33	0.00
Jun-19	3.50	0.00	0.12	0.00	0.32	0.00
Jul-19	3.70	0.00	0.13	0.00	0.36	0.00
Aug-19	3.80	0.00	0.13	0.00	0.37	0.00
Sep-19	3.70	0.00	0.13	0.00	0.29	0.00
Oct-19	3.90	0.00	0.13	0.00	0.35	0.00
Nov-19	3.70	0.00	0.13	0.00	0.31	0.00
Dec-19	3.70	0.00	0.13	0.00	0.32	0.00
Jan-20	3.60	0.00	0.12	0.00	0.38	0.00
Feb-20	3.20	0.00	0.11	0.00	0.34	0.00
Mar-20	3.20	0.00	0.11	0.00	0.29	0.00
<b>Total</b>	<b>43.10</b>	<b>0.00</b>	<b>1.47</b>	<b>0.00</b>	<b>3.98</b>	<b>0.00</b>

<sup>1</sup>Lagged Depletions calculated with AWAS; w=9500 ft, x=4766 ft, T=100,000 gpd/ft, S=0.20

<sup>2</sup>Transit Losses are calculated as 1/4% per mile. The distance from CCWCD's Geisert Pit to the Journey Ventures Pit is 6.8 miles.

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## **WATER LEASE AGREEMENT**

THIS WATER LEASE AGREEMENT (“Agreement”) is entered into on this 28th day of March, 2019 (“Effective Date”) by and between the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District, whose address is 3209 W. 28th Street, Greeley, Colorado 80634 (“**Lessor**”) and Journey Ventures LLC, a Colorado Limited Liability Company whose address is at 105 Coronado Ct. Unit A-101 Fort Collins, CO 80525 (Journey Ventures) and J-2 Contracting Company, a Colorado Corporation whose address is 105 Coronado Ct. Unit A-101, Fort Collins CO 80525 (J-2) (Journey Venture and J-2 shall be collectively referred to as “**Lessee**”). Lessor and Lessee may individually be referred to as a “Party” or collectively as “Parties.”

### **RECITALS**

**WHEREAS**, Lessor and Lessee are parties to that Purchase and Sale Agreement (“PSA”) dated March 19, 2019, by which Lessor is agreeing to purchase and Lessee is agreeing to sell certain Property, as defined in the PSA, on which Property is situated a gravel pit known as the Journey Venture Pit (“Pit”); and

**WHEREAS**, as contemplated in the PSA, Lessor and Lessee will enter into a Mining Lease, which is included as Exhibit A to the PSA; and

**WHEREAS**, pursuant to the terms of the Mining Lease, Lessor has agreed to provide Lessee with up to 50 acre-feet of augmentation water per year, or a lesser amount as required by the substitute water supply plan associated with Lessee’s mining permit for the Pit; and

**WHEREAS**, Lessee has a need for augmentation water prior to the PSA Closing Date of May 15, 2019; and

**WHEREAS**, Lessor agrees to lease to Lessee such augmentation water upon the terms and conditions in this Lease Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. **AUGMENTATION WATER LEASE**. Lessor hereby agrees, during the Term of this Agreement, to lease to Lessee, up to 43.1 acre-feet of water (“Augmentation Water”), pursuant to the monthly delivery schedule attached hereto as **Exhibit 1**.

2. **TERM OF LEASE**. The term of this lease is from the Effective Date through May 15, 2019, or the actual PSA Closing Date if extended pursuant to paragraph 3.1 of the PSA. If the PSA does not close, the term of this lease shall terminate one year from the Effective Date.

3. CONSIDERATION. Lessee agrees to pay Lessor Three Hundred and 00/00 Dollars (\$300.00) per acre-foot of Augmentation Water delivered pursuant to **Exhibit 1**, to be paid by Lessee pursuant to the terms of the PSA and Mining Lease. Should, for any reason, the PSA not close, then Lessee agrees to pay Lessor the \$300 per-acre-foot within 30 days of receiving an invoice for the same from Lessor. Payment to be provided at the Lessor address in paragraph 5 below.

4. FURTHER APPROVAL. Lessee shall be responsible for obtaining such approvals as are necessary for Lessee to use the Augmentation Water in its or substitute water supply plans and shall be responsible for accounting for its use of the Augmentation Water to the appropriate State water administration officials, water court and/or other parties who may be entitled to that information. Lessee shall provide Lessor with copies of its accounting which illustrate Lessee's use of the Excess Augmentation Credits as reasonably requested by Lessor.

5. NOTICES. Any notices, demands or other communications required or desired to be given under provision of this Agreement shall be given in writing, delivered personally, or sent by certified or registered mail, return receipt requested, postage prepaid, address as follows:

To Lessor: Ground Water Management Subdistrict of the Central Colorado Water Conservancy District  
3209 W. 28th Street  
Greeley, CO 80634

To Lessee: J-2 Contracting Co.  
105 Coronado Ct. Unit A-101  
Fort Collins, CO 80525

6. AMENDMENT. This Agreement may be modified, amended, changed or terminated in whole or in any part only by an agreement in writing duly authorized and executed by all the Parties with the same formality as this Agreement.

7. WAIVER. The waiver of any breach or any of the provisions of this Agreement by any Party shall not constitute a continuing waiver of any subsequent breach by said Party, by either of the same or any other provision of this Agreement.

8. HEADINGS FOR CONVENIENCE ONLY. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision of this Agreement.

9. NON-SEVERABILITY. Each paragraph of this Agreement is related with the other and is not severable unless by mutual consent of the Parties hereto.

10. BINDING EFFECT. This Agreement and rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; however, this Agreement shall not be assigned except with the prior written approval of the non-assigning party which approval shall not be unreasonably withheld.

11. GOVERNING LAW. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. Venue for the trial of any action under this Lease shall be in Weld County District Court.

12. MULTIPLE ORIGINALS. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same agreement. Signatures may be evidenced by facsimile. Documents with original signature shall be provided to the other Party upon request by the other Party.

13. NO ATTORNEY'S FEES. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Agreement, each Party agrees to be responsible for its own attorneys' and other professional fees, costs and expenses associated with any such proceedings.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties relating to the subject hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

**Lessor:**

**Ground Water Management Subdistrict of the Central Colorado Water Conservancy District**

By   
\_\_\_\_\_  
District Engineer

**Lessee:**

**J-2 Contracting**

By   
\_\_\_\_\_  
President



# EXHIBIT 1

Month	CCWCD Delivery at Geisert Pit (ac-ft)
Apr 2019	3.5
May 2019	3.6
Jun 2019	3.5
Jul 2019	3.7
Aug 2019	3.8
Sep 2019	3.7
Oct 2019	3.9
Nov 2019	3.7
Dec 2019	3.7
Jan 2020	3.6
Feb 2020	3.2
Mar 2020	3.2
Total	43.10

# ADMINISTRATION PROTOCOL

## Augmentation Plan Accounting

### Division One – South Platte River

This protocol establishes the accounting and reporting process required to enable the division engineer's office to confirm that depletions from all out-of-priority diversions are being replaced so as to prevent injury to vested water rights. The accounting must comport with established "cradle to grave" accounting standards, which allow an audit of the information to track exactly how the data is manipulated as it is translated from raw input data to the resultant impact on the river. While this protocol is subordinate to any decreed language addressing specific accounting requirements, it generally addresses the minimum requirements of such accounting.

The accounting must use the standard convention where a depletion is "negative" and an accretion or other replacement source is "positive". The sum of the impacts will then result in either a "negative" or "positive" impact on the stream.

Wells in plans that have a negative stream impact must provide additional replacement water, curtail pumping or both until the impact is no longer negative. Plans with a negative stream impact that fail to curtail pumping will be ordered to stop pumping until such time as the projected impact of the wells is no longer negative.

1. Accounting must be submitted electronically to the water commissioner ([call 970-352-8712 to obtain email address](tel:970-352-8712)) and division engineer at [Div1Accounting@state.co.us](mailto:Div1Accounting@state.co.us) within 30 days of the end of the month for which the accounting is being submitted.
2. The accounting must provide the **contact information** including name and address for:
  - a. the owner(s) of each well
  - b. the person responsible for submitting the accounting
  - c. the plan administrator and/or the plan attorney.
3. All **input data** must be in one location, such as an "Input" worksheet, etc. The accounting must show all pumping. Input data includes the information listed below.
  - a. The required input data for each **well** is:
    - i. the monthly meter reading for wells that use a **presumptive depletion factor** (PDF) to determine the associated consumptive use (CU); or
    - ii. the monthly CU in acre-feet (AF) for wells that have a decree or approved SWSP that allows the wells to use a **water balance methodology** to determine the CU of the well. The analysis used to determine the CU must be included with the accounting.
    - iii. Wells that are decreed as an **alternate point of diversion** (APOD) to a surface water right must report pumping on a daily basis if any of the diversion during the month is claimed as being "in priority". (See *Administration Protocol – APOD Wells* for more details.)

- iv. The well meter serial readings for each meter shall be included if there is more than one meter on a well.
- b. Each **recharge site** must comply with the *Administration Protocol - Recharge* and must report the:
  - i. daily volume in AF diverted into the site;
  - ii. monthly volume in AF released from the site;
  - iii. monthly net evaporative loss in AF;
  - iv. volume of water in AF remaining at the end of the month.
- c. The accounting must identify each source of **fully consumable replacement water** actually delivered to the location impacted by the depletions. To demonstrate the water was actually delivered to the required location will require the following information:
  - i. the originating source of the water, date released and volume of water released;
  - ii. transportation losses to point of diversion or use, if any, using stream loss factors approved by the water commissioner;
  - iii. the volume of water actually delivered on a daily basis past any surface water diversion that was sweeping the river as corroborated by the water commissioner.

(See *Administration Protocol – Delivery of Water* for more details on delivering water.)
- d. For each source of **replacement water that has been “changed”** for use as a source of augmentation, such as changed reservoir shares, ditch bypass credits or credits from dry-up, etc., the following input information must be reported:
  - i. the basis and volume of the return flow obligation;
  - ii. the location the changed water was historically used; this will be the location used to determine the timing of the return flow impact on the river.
- 4. The accounting must include a monthly **projection** of the plan’s operation at least through March 31 of the next calendar year.
- 5. The accounting must include all input and output files associated with **modeling the delayed impact** of diversions. The output from the modeling must report to a summary table that shows, by month, the ongoing depletions associated with pumping, return flow obligations, etc. and accretions from recharge operations.
- 6. A **net impact** summary must show the out-of-priority depletions, accretions from each recharge site, volume of replacement water actually delivered to the location of the depletions and the resultant net impact on **a daily basis**. If necessary, the net impact must be done by river reach.

While **modeling** may use a **monthly step function** to determine the depletions from pumping and accretions from recharge, the monthly result must then be **divided by the number of days in the month** in order to **simulate a daily impact**, as water rights are administered on a daily and not monthly basis.

Replacement water must be provided such that the **daily net impact** (using the simulated daily numbers from the modeling) **is not negative**. If a well is out-of-priority for 15 days during a month, replacement must be made only for the 15 days the well is out-of-priority. The replacement must be made, however, on a daily basis as opposed to, for instance, making an aggregated release equal to the volume of the out-of-priority depletions. Likewise, the simulated daily accretion will only count toward replacing the depletion on the days the well is out-of-priority. The accretions that report to the river when the well is in priority cannot be used to replace the out-of-priority depletions.

The **accretions that impact the river when the well is in priority** are not considered “excess” unless the cumulative net impact of the well is not negative for the entire irrigation year to date. (The irrigation year for this purpose is April 1 thru the following March 31.) Until such time as the cumulative net impact is not negative, the accretions must simply be released to the river and cannot be leased to other plans or recaptured. Plans that show a positive cumulative net impact are still required to make replacements on a daily basis; the cumulative analysis only effects whether or not accretions reporting to the river when the well is in priority are considered “excess” and are, therefore, able to be recaptured.

7. The basis for determining that the depletions are **out-of-priority** must be clearly established and all steps in the calculation included in the accounting. The analysis may be done, unless otherwise limited by decree, for each well or groups of wells, provided the most junior water right associated with the group of wells is used as the reference water right for the group’s out-of-priority status.
8. Accounting must include **actual information** for the irrigation year through the month for which the accounting is being submitted **AND projections** of the plan operation through March 31 of the next calendar year.
9. The following **naming convention** must be used for all files submitted pursuant to item 1:

“Plan**WDID**\_YYMMDD”

where: PlanWDID is the WDID assigned by the division engineer’s office  
YYMMDD corresponds to the date the accounting is submitted.

As an example, the assigned WDID for the former GASP plan was 0103333. If accounting using Excel® was submitted for that plan on May 15, 2004, the file name would be:

“0103333\_040515.xls”

The name of the file must be in the subject line of the email.

10. All accounting must be reported using the **WDID** for the structure, at a minimum. Other information such as well name, permit number, etc. may also be included as desired. All wells must be decreed by the water court, permitted by the state engineer or included in a decreed plan for augmentation. Unregistered and undeclared wells cannot, in the opinion of the division engineer, be effectively administered because of the need to know the location, allowable diversion rate and use of the well - information that is only available from the decree or permitting process.

11. If a well is covered in multiple SWSP's or augmentation plans, the monthly meter readings must be the same in the accounting for each plan covering the subject well. The accounting for every plan covering the well shall state the proportionate pumping amount covered by each plan to assure all out-of-priority depletions are replaced.
12. The following additional accounting is required for sources of replacement water used for more than one plan. The water right owner of the replacement water is responsible for accounting for the total replacement amount and how much each plan is using of that total amount. The accounting for portions of the replacement water by other users must match the accounting of the water right owner. The amount of replacement water used by the water right owner and other users together shall not exceed the total replacement amount available.

(See *Administration Protocol – Use Of Unnamed Sources For Replacement* for additional requirements concerning required notice and approval of sources of replacement not specifically described in a SWSP or augmentation plan)