



COLORADO
Division of Water Resources
Department of Natural Resources

November 2, 2023

Wes Hogan, P.E.
Applegate Group, Inc.
Transmission via email: weshogan@applegategroup.com

Re: Extension of DPG Gravel Pit Substitute Water Supply Plan to December 31, 2023
(WDID 0302587, Plan ID 6243)
DRMS Permit No. M-2019-028 (WDID 0307924)
SE¼ Section 1 and NE¼ Section 12, T5N, R65W, 6th P.M.
Water Division 1, Water Districts 2 and 3, Weld County

Dear Mr. Hogan:

In accordance with Condition of Approval No. 9 of the SWSP approval dated May 12, 2023, a copy of a water lease between the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District and Holcim - WCR, Inc. was provided to this office. The lease provides for up to 43.0 acre-feet of augmentation water for the term of October 1, 2023 through December 31, 2023, distributed monthly as shown in the attached release schedule. The leased water is sufficient to replace projected depletions in time, location, and amount. Therefore, in accordance with Condition of Approval No. 1 of the SWSP approval dated May 12, 2023, the expiration date of the SWSP is hereby extended to December 31, 2023. Should you have any questions or comments regarding this matter, please contact me at (303) 866-3581 ext. 8249 or by email at sarah.brucker@state.co.us.

Sincerely,

Sarah Brucker, P.E.
Water Resources Engineer

Attachments: Water Lease Agreement
Release schedule

Cc: Michael Hein, Assistant Division Engineer, Michael.Hein@state.co.us
1809 56th Avenue, Greeley, CO 80634



Alec Hernandez, Lead Water Commissioner, District 2, Alec.Hernandez@state.co.us

Mark Simpson, Lead Water Commissioner, District 3, Mark.Simpson@state.co.us

Louis Flink, Tabulation/Diversion Records Coordinator, Louis.Flink@state.co.us

Dawn Ewing, Accounting Coordinator, Dawn.Ewing@state.co.us

Robert D. Zuber, Division of Reclamation Mining and Safety, Rob.Zuber@state.co.us

WATER LEASE AGREEMENT

THIS WATER LEASE AGREEMENT ("Agreement") is entered into on this 6 day of October 2023 ("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 Holcim – WCR, Inc., 1687 Cole Blvd, Suite 300, Golden, CO. 80401 ("Lessee"). Lessor and Lessee may individually be referred to as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, Lessor has storage and direct flow water rights in the Cache la Poudre basin and South Platte basin. Lessee has a Substitute Water Supply Plan (SWSP) filed with the State Engineer pursuant to 37-92-308(4) C.R.S.

WHEREAS, Lessee has a need for augmentation water for the DPG Pit (aka Scout Island Pit) at the confluence of the South Platte River and Cache la Poudre River; 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 43.0 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 October 1, 2023 to December 31, 2023.
3. **CONSIDERATION**. Lessee agrees to pay Lessor Thirty-Four Thousand Four Hundred Dollars (\$34,400.00) (\$800.00 per acre-foot of Augmentation Water), to be delivered pursuant to **Exhibit 1**, to be paid by Lessee by October 15, 2023. Payment to be provided at the Lessor address in paragraph 5 below. Failure to make Payment by October 15, 2023 will result in termination of this Agreement.
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: Holcim – WCR, Inc.
1687 Cole Blvd, Suite 300
Golden, CO 80401

With a copy to Holcim (US)
8700 W. Bryn Mawr Ave, Suite 300
Chicago, IL 60631
Attn: Legal

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.

15. EXCLUSION OF DAMAGES/LIABILITY LIMITATION. In no event shall Lessee be responsible for any special, consequential, indirect, punitive, or liquidated damages. Notwithstanding anything contained herein, Lessee's total liability hereunder shall be limited to the total price paid to Lessor hereunder.

Lessor:

Ground Water Management Subdistrict of the Central Colorado Water Conservancy District

A large, stylized handwritten signature in black ink, likely belonging to William Mihelich, PE.

By: William Mihelich, PE
District Engineer

Lessee:

Holcim – WCR, Inc.

By: Neil E. Whitmer
Neil E. Whitmer

Its: Director of L&E

STATE OF
COLORADO

Brucker - DNR She Her, Sarah <sarah.brucker@state.co.us>

RE: SWSP Water Lease

1 message

Wes Hogan <weshogan@applegategroup.com>
To: "Brucker - DNR She Her, Sarah" <sarah.brucker@state.co.us>
Cc: Jared Dains <jareddains@applegategroup.com>

Thu, Nov 2, 2023 at 9:03 AM

Yes absolutely. Here is the release schedule we sent to CCWCD.

Month	Requested substitute Releases (ac- ft)
Oct-23	19.0
Nov-23	14.0
Dec-23	10.0
Total	43.0

The copy of the lease that I sent you is all I have from CCWCD, but let me know if you need anything else.

Thanks,

Wes Hogan, PE**Applegate Group, Inc.**

1490 West 121st Avenue, Suite 100
Denver, CO 80234

Cell: (630) 246-0262

Office: (303) 452-6611
Fax: (303) 452-2759

From: Brucker - DNR She Her, Sarah <sarah.brucker@state.co.us>
Sent: Wednesday, November 1, 2023 4:08 PM

To: Wes Hogan <weshogan@applegategroup.com>
Cc: Jared Dains <jareddains@applegategroup.com>
Subject: Re: SWSP Water Lease

Could you also provide the delivery schedule referenced as Exhibit 1 in the lease? Thanks,

Sarah Brucker
Assistant State Engineer



P 303-866-3581 x 8249
1313 Sherman St., Suite 821 Denver CO 80203
sarah.brucker@state.co.us | <https://dwr.colorado.gov>

On Wed, Nov 1, 2023 at 10:43 AM Wes Hogan <weshogan@applegategroup.com> wrote:

Hi Sarah,

Please see the attached CCWCD water lease for the DPG Pit. This lease was a condition of approval for the current SWSP (also attached).

Thank you,

Wes Hogan, PE

Applegate Group, Inc.

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Denver, CO 80234

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