

- d. Colorado Agriculture Preservation Association;
 - e. CPW, Inc.;
 - f. East Cheyenne Ground Water Management District (“East Cheyenne”);
 - g. Frenchman Ground Water Management District;
 - h. Lower South Platte Water Conservancy District;
 - i. Marks Butte Ground Water Management District;
 - j. Sandhills Ground Water Management District;
 - k. Sedgwick County Well Users, Inc.;
 - l. The Jim Hutton Educational Foundation;
 - m. Tri-State Generation and Transmission Association, Inc.; and,
 - n. W-Y Ground Water Management District.
4. The following parties filed statements of opposition in support of the Rules:
- a. Colorado Parks and Wildlife;
 - b. 4M Feeders, Inc.;
 - c. 4M Feeders, LLC;
 - d. Happy Creek, Inc.;
 - e. Republican River Water Conservation District; and,
 - f. Yuma County Water Authority Public Improvement District.

5. The Court has jurisdiction over the Rules pursuant to section 37-92-501, C.R.S., and *Kuiper v. Gould*, 583 P.2d 910, 913 (Colo. 1978).

6. For the statements of opposition listed in paragraph 3, all parties except for East Cheyenne either withdrew their statement of opposition or stipulated to the Court's approval of the Rules.

7. Beginning on January 31, 2022, the Court held a trial to consider East Cheyenne's protest.

8. By order dated February 20, 2022, the Court found East Cheyenne did not present sufficient evidence to meet its burden of proof and the Court dismissed its protest as a matter of law pursuant to C.R.C.P. 41(b)(1). *See Order Granting Motion to Dismiss Under C.R.C.P. 41(b)(2)* at 2 (Feb. 20, 2022). That order is hereby incorporated as if fully set forth herein.

9. The effective date of the Rules is "the date on which all protests have been resolved." Rule 18.

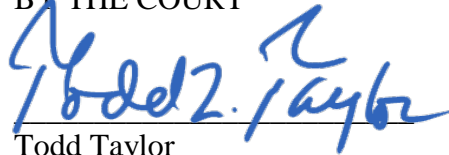
10. All protests to the Rules have now been resolved.

11. The Court finds that the Rules meet the required statutory criteria and are presumed valid. *See* § 37-80-104, C.R.S. (Compact rules of the State Engineer must be "legal and equitable . . . among the appropriators within Colorado obligated to curtail diversions to meet compact commitments."); *Simpson v. Cotton Creek Circles, LLC*, 181 P.3d 252, 261 (Colo. 2008) (regulations of the State Engineer are presumed to be valid until shown otherwise by a preponderance of the evidence).

12. Based upon the foregoing, the Court ORDERS that the Rules are hereby APPROVED in the form as finally submitted by the State Engineer and attached hereto and shall become effective on issuance of this Final Judgment.

So Ordered this 4th day of March 2022:

BY THE COURT



Todd Taylor
Water Judge
Water Division 1

Rules and Regulations Governing the Diversion and Use of Water Resources in the
Republican River Compact Administration Groundwater Model Domain for
Compliance with the Republican River Compact

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ORDER OF THE STATE ENGINEER

BY THIS ORDER the State Engineer adopts the following Rules and Regulations Governing the Diversion and Use of Water Resources in the Republican River Compact Administration Groundwater Model Domain for Compliance with the Republican River Compact.

1. Title

The title of these rules is “Rules and Regulations Governing the Diversion and Use of Water Resources in the Republican River Compact Administration Groundwater Model Domain for Compliance with the Republican River Compact.” The short title of these rules is “Republican River Compact Rules,” and may be referred to herein collectively as the “Rules” or individually as a “Rule.”

2. Authority

These Rules are adopted by the State Engineer pursuant to sections 37-80-102(1) and 37-80-104, C.R.S., to assist the State Engineer in fulfilling the duties under Article IX of the Republican River Compact as codified in sections 37-67-101 through 102, C.R.S.

3. Purpose and Scope

- 3.1.** The purpose of these Rules is to provide the procedures by which the State Engineer will evaluate, approve, and administer plans for compliance to ensure that Colorado’s use of water meets the requirements of the Republican River Compact and the terms and conditions of the Final Settlement Stipulation. Participation in a plan for compact compliance in accordance with the terms and conditions contained in these Rules is required in order to divert or use water within the Republican River Compact Administration Groundwater Model Domain.
- 3.2.** Except as specifically excluded in Rule 3.3 below, these Rules apply to groundwater diversions within the Republican River Compact Administration Groundwater Model Domain within Colorado and surface water diversions within the area naturally drained by the tributaries of the Republican River within Colorado. The Republican River Compact Administration Groundwater Model Domain within Colorado is shown in Exhibit 1.

3.3. These Rules do not apply to:

3.3.1. Use of water from structures described in paragraphs (b) to (g) of section 37-92-602(1), C.R.S.; paragraphs (a) to (f) of section 37-90-105(1), C.R.S.; and Subsection III.B.1.c to f, and h, of the Final Settlement Stipulation.

3.3.2. Non-Federal Reservoirs less than 15 acre-feet of storage as excluded by Section II of the Final Settlement Stipulation.

3.3.3. Adjudicated surface water rights that were appropriated prior to December 31, 1942.

3.3.4. Designated basin groundwater wells with final permits with appropriation dates prior to December 31, 1942.

3.3.5. Water diversions operated pursuant to a decreed plan of augmentation that remedies depletions entirely with water rights described under Rule 3.3.3.

3.3.6. Non-irrigation diversions less than 50 acre-feet per year, as excluded from the definition of Computed Beneficial Consumptive Use in Section II of the Republican River Compact Administration Accounting Procedures.

3.4. These Rules, and any compliance with their provisions, are not intended to determine and are not to be interpreted as determining whether any groundwater meets the definition of “Designated Groundwater” found in section 37-90-103(6)(a), C.R.S., or whether any groundwater diversion is causing or will cause material injury to water rights in the state of Colorado.

3.5. These rules do not relieve any Water User of any obligation to comply with the terms of any applicable permit, rule, or decree.

4. Definitions

4.1. “Alternative Compliance Plan” means a plan, other than the RRWCD Plan, to offset CBCU by delivery of replacement water to the Republican River and its tributaries and may also reduce CBCU by reducing Beneficial Consumptive Use of water in compliance with the State of Colorado’s Compact obligation.

4.2. “Alternative Compliance Plan Replacement Requirement” or “Plan Replacement Requirement” is the amount of water that an Alternative Compliance Plan must deliver to one or more Compact Accounting Points. The Alternative Compliance Plan Replacement Requirement is calculated by multiplying the Alternative Compliance Plan’s Proportional Share by the Total Statewide Replacement Requirement.

- 4.3.** “Beneficial Consumptive Use” or “BCU” means that use by which the water supply of the Republican River Basin is consumed through the activities of man and has the same meaning in these Rules as it does in the Final Settlement Stipulation.
- 4.4.** “Compact Accounting Points” means the USGS gage at the North Fork Republican River at Colorado-Nebraska (06823000), USGS gage at the Arikaree River at Haigler, Nebraska (06821500), and the USGS gage at the South Fork Republican River near Benkelman, Nebraska (06827500), or future accounting points approved by the Republican River Compact Administration.
- 4.5.** “Computed Beneficial Consumptive Use” or “CBCU” means the streamflow depletion resulting from activities of man as listed in the definition of Computed Beneficial Consumptive Use in Section II of the Republican River Compact Administration Accounting Procedures or, for the CBCU of an Alternative Compliance Plan, as defined further in 4.10.
- 4.6.** “Final Settlement Stipulation” or “FSS” means the Final Settlement Stipulation in *Kansas v. Nebraska & Colorado*, No. 126 Original (December 15, 2002), approved by the United States Supreme Court on May 19, 2003.
- 4.7.** “Notice” means transmittal of notice to interested Persons on the Notification List.
- 4.8.** “Notification List” means the electronic contact information of interested Persons established by the State Engineer. After the effective date of these Rules, interested Persons must request in writing that the State Engineer include their name and contact information on the Notification List.
- 4.9.** “Person” or “Persons” means an individual, a partnership, an association, a corporation, a municipality, the State of Colorado, the United States, or any other legal agency or entity, public or private.
- 4.10.** “Proportional Share,” to be calculated by the State Engineer’s Office, means the factor used to calculate the Alternative Compliance Plan Replacement Requirement. The Proportional Share is calculated as the ratio of the CBCU of water use in an Alternative Compliance Plan to Colorado’s total CBCU of water. The CBCU of surface water included in the Alternative Compliance Plan is calculated as in the RRCA Accounting. The CBCU of groundwater included in the Alternative Compliance Plan (CBCUi) is calculated as the Beneficial Consumptive Use of the groundwater of the Alternative Compliance Plan (BCUi) divided by the total statewide Beneficial Consumptive Use (BCUt) times the total statewide Computed Beneficial Consumptive Use (CBCUt) or $CBCUi = (BCUi/BCUt)*CBCUt$.

- 4.11.** “Republican River Compact” or “Compact” means the compact entered into between the States of Colorado, Kansas, and Nebraska, as codified at sections 37-67-101 and 37-67-102, C.R.S., and consented to by the Congress of the United States, Act of May 26, 1943, ch. 104, 57 Stat. 86.
- 4.12.** “Republican River Compact Administration” or “RRCA” means the administrative body and process established pursuant to Art. IX of the Compact.
- 4.13.** “RRCA Accounting” or “RRCA Accounting Procedures” means the accounting procedures adopted by the RRCA as those procedures exist now or as they may be modified in the future.
- 4.14.** “RRCA Groundwater Model” means the groundwater model developed under the provisions of Subsection IV.C. of the FSS and adopted by the RRCA, as it exists now or as it may be modified in the future.
- 4.15.** “RRCA Groundwater Model Domain” means the area within Colorado represented by active cells in the RRCA Groundwater Model. The greatest areal extent of the RRCA Model Domain as of the Effective Date of these Rules is shown on the attached Exhibit 1.
- 4.16.** “Republican River Water Conservation District” or “RRWCD” means the Conservation District established by the Colorado General Assembly under Article 50, Title 37, C.R.S.
- 4.17.** “RRWCD Compact Compliance Pipeline” or “CCP” means the wells, pipeline and associated infrastructure that provide water to the North Fork of the Republican River to assist the State of Colorado to comply with its compact commitments.
- 4.18.** “RRWCD Plan” means the actions undertaken by the RRWCD to remove lands from irrigation or other actions to reduce the consumptive use of groundwater and also to construct and operate the CCP in conformance with the Resolution by the Republican River Compact Administration Approving Operation and Accounting for the Colorado Compact Compliance Pipeline and Colorado’s Compliance Efforts in the South Fork Republican River Basin (August 24, 2016) or under such other operational plan as may be approved by the RRCA in the future. Absent such approval by the RRCA, the operation of the CCP will be under the RRWCD Plan as agreed to between the RRWCD and the State Engineer.
- 4.19.** “Total Statewide Replacement Requirement” means the total statewide CBCU in excess of Colorado’s total statewide Compact allocation, using a five-year rolling average, estimated each year in accordance with the RRCA Accounting.

- 4.20.** “Water User” means a Person diverting groundwater within the RRCA Groundwater Model Domain within Colorado or diverting surface waters within the area naturally drained by the tributaries of the Republican River within Colorado.

5. Principles and Findings

- 5.1.** These Rules are necessary to assist the State of Colorado to comply with the Republican River Compact and the FSS. The Compact and FSS allocate to Colorado water from the Republican River Basin. Colorado’s CBCU could exceed its Compact allocation and result in failure to meet its Compact commitments.
- 5.2.** These Rules have been developed in accordance with the Compact, the FSS, the RRCA Accounting Procedures, and the RRCA Groundwater Model. They are designed to assist the State Engineer in meeting the State of Colorado’s Compact commitments in a unique situation under Colorado law, where surface water within the Republican River Basin and designated groundwater within the RRCA Groundwater Model Domain must both be accounted for under the Compact and administered for Compact compliance, even though surface water and designated groundwater operate in completely independent administrative regimes under Colorado law.
- 5.3.** The Colorado Supreme Court has held that rules for achieving compact compliance promulgated under the State Engineer’s compact rule power set forth in section 37-80-104, C.R.S., must be promulgated and approved in accordance with the procedures set forth in the Water Right Determination and Administration Act of 1969, §§ 37-92-101 to -602, C.R.S.
- 5.4.** Article I of the Compact recognizes that “[t]he physical and other conditions peculiar to the Basin constitutes the basis for this [C]ompact” and declares that the Compact does not “establish[] any general principle or precedent with respect to any other interstate stream.” The State Engineer further finds that these Rules, which are necessary for the State of Colorado’s administration of the Compact, are limited to the items and actions described herein, and do not establish any general principle or precedent with respect to any rules necessary for the administration of any other compact, or for any other administrative actions or requirements for the Compact not specifically incorporated in these Rules.
- 5.5.** Tributary water rights are administered under the Water Right Determination and Administration Act of 1969, §§ 37-92-101 to -602, C.R.S. Except to the extent that tributary water rights are subject to these Rules, they shall continue to be administered under the Water Right Determination and Administration Act of 1969.
- 5.6.** Designated groundwater rights are administered under the Colorado Groundwater Management Act, §§ 37-90-101 to -143, C.R.S. Except to the extent that designated

groundwater rights are subject to these Rules, they shall continue to be administered under the Colorado Groundwater Management Act.

- 5.7.** Under § 37-80-104, C.R.S., the State Engineer has the exclusive authority and the duty to administer all water rights that are subject to the Compact if such administration is necessary to meet the requirements of the Compact, and the State Engineer has determined that such administration as described in these Rules is necessary.
- 5.8.** Under § 37-80-104, C.R.S., the State Engineer's compact rules must "be legal and equitable to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments, so as to restore lawful use conditions as they were before the effective date of the compact insofar as possible."
- 5.9.** Water rights vested prior to the date of the Compact are included in the RRCA Accounting to determine Colorado's compliance with the Compact. However, the State Engineer has determined that the lawful use of both adjudicated surface water rights that were appropriated prior to the effective date of the Compact, and of groundwater rights for designated groundwater basin wells with Final Permits with appropriation dates prior to the effective date of the Compact, are not subject to these Rules.
- 5.10.** The RRCA Groundwater Model was designed to assist with the RRCA Accounting. It was not designed, calibrated, or intended to identify at any particular location on a stream or any particular stream segment the depletions from the Beneficial Consumptive Use of any specific groundwater rights or structures operated by a Water User or group of Water Users. Consequently, the RRCA Groundwater Model cannot be used to determine depletions associated with a particular Alternative Compliance Plan's groundwater uses. Impacts from Surface Water uses are, however, directly accounted for in the RRCA Accounting. Because of the difference in how stream impacts are determined for surface water versus groundwater in the RRCA Accounting, and to balance surface water and groundwater impacts to the Total Statewide Replacement Requirement, all plans are required to replace their Plan Replacement Requirement, which is their Proportional Share multiplied by the Total Statewide Replacement Requirement.
- 5.11.** The State Engineer's Compact administration must be conducted, to the extent possible, within the existing framework of Colorado law. Surface water and designated groundwater operate in completely independent administrative regimes under Colorado law.
- 5.12.** For the reasons stated in Rule 5.10 and Rule 5.11, these Rules do not provide for integrated priority administration of both surface water and designated groundwater.

- 5.13.** The State Engineer has determined that these Rules are both “legal and equitable” under § 37-80-104, C.R.S., because the Rules require both surface water users and groundwater users to contribute to Compact compliance through the RRWCD Plan or an Alternative Compliance Plan, while maintaining the separate administrative regimes required under state law.
- 5.14.** Through these Rules, Colorado strives to achieve Compact compliance by voluntary action to reduce consumption of water, by delivering water directly to the stream system to offset CBCU, and by such other methods as may be approved by the State Engineer pursuant to these Rules, before imposing involuntary curtailment.
- 5.15.** The Colorado General Assembly established the RRWCD with a primary purpose of assisting the State of Colorado in carrying out the State’s duty to comply with the limitations and duties imposed upon the State by the Republican River Compact. The RRWCD Plan may assist Colorado in the following ways:
- 5.15.1.** The RRWCD Compact Compliance Pipeline offsets CBCU by delivery of replacement water to the North Fork of the Republican River for the purpose of assisting Colorado in achieving Compact compliance. The RRWCD Compact Compliance Pipeline has been approved by the RRCA pursuant to the August 24, 2016 RRCA Resolution.
- 5.15.2.** The RRWCD has removed from irrigation previously irrigated lands, which reduces Colorado’s CBCU and Total Statewide Replacement Requirement. The RRWCD plans to continue to remove from irrigation additional lands to further reduce Colorado’s CBCU and Total Statewide Replacement Requirement, and may develop other measures to reduce Colorado’s CBCU, thereby assisting this State to carry out the State’s duty to comply with the limitations and duties imposed upon the State by the Republican River Compact.
- 5.16.** The State Engineer hereby approves the RRWCD Plan under these Rules for those Water Users and well structures that are included in the RRCWD Plan, so long as the RRWCD Plan is operated in accordance with Rule 8.1 herein.
- 5.17.** The State Engineer has determined that Alternative Compliance Plans are also necessary to ensure that Water Users subject to these Rules that are not covered by the RRWCD Plan replace their Plan Replacement Requirement, which is the Alternative Compliance Plan’s Proportional Share multiplied by the Total Statewide Replacement Requirement, so the State of Colorado can fulfill its commitment to comply with the limitations and duties imposed upon the State by the Republican River Compact.

6. Requirement for Water Use

6.1. Water diversions and uses subject to these Rules must be either:

6.1.1. Covered by the RRWCD Plan operating pursuant to Rule 8.1, or

6.1.2. Covered by an Alternative Compliance Plan operating pursuant to Rule 9.

7. Total Statewide Replacement Requirement Calculations

7.1. By April 10 of each year the State Engineer will calculate and provide Notice of the estimated Total Statewide Replacement Requirement.

7.2. By September 10 of each year the State Engineer will recalculate and provide Notice of the estimated Total Statewide Replacement Requirement.

8. Annual Replacement Requirements for the RRWCD Plan

8.1. The RRWCD Plan must continue to operate according to the terms of the August 24, 2016 RRCA Resolution, or under such other operational plan as may be approved by the RRCA in the future. If, in the future, the RRWCD Plan does not have the approval of RRCA, then with the prior approval of the State Engineer the RRWCD Plan may still operate under these Rules in a manner consistent with the operations and accounting requirements set forth in the August 24, 2016 RRCA Resolution, under such other operational plan as may be approved by the RRCA in the future, or in another manner as may be agreed to between the RRWCD and the State Engineer. The State Engineer's approval of RRWCD Plan operations under these Rules, so long as RRWCD Plan operations achieve Compact compliance, shall not be unreasonably withheld.

8.1.1. Prior to January 1 of each year, and by subsequent amendment during the calendar year if necessary to provide updates or make corrections, the RRWCD will provide the State Engineer with a documented list with sufficient information to identify diversion structures and irrigated acres or other place and type of consumptive use that will be covered by the operations of the RRWCD Plan for that year. The RRWCD will provide such information in a form acceptable to the State Engineer. The State Engineer will not unreasonably withhold consent as to the form of transmission.

8.2. If the State Engineer approves an Alternative Compliance Plan, the annual CCP deliveries may be reduced by the cumulative Plan Replacement Requirements calculated annually for each Alternative Compliance Plan.

9. Annual Replacement Requirements for Alternative Compliance Plans

9.1. The State Engineer will annually calculate and provide Notice of the Proportional Share for each Alternative Compliance Plan.

9.1.1. Each year an Alternative Compliance Plan must provide information and data to the State Engineer to calculate its Proportional Share.

9.2. The State Engineer will annually calculate the Alternative Compliance Plan Replacement Requirement.

9.3. Each year an Alternative Compliance Plan must deliver its calculated Plan Replacement Requirement as required by the Alternative Compliance Plan.

9.4. Each Alternative Compliance Plan must be operated according to the terms and conditions of its approval.

10. Application Requirements for an Alternative Compliance Plan

10.1. Each application for an Alternative Compliance Plan must demonstrate how the Alternative Compliance Plan will deliver the Alternative Compliance Plan Replacement Requirement at the applicable Compact Accounting Point(s).

10.2. Each Alternative Compliance Plan application must provide sufficient data for the State Engineer to evaluate whether the Alternative Compliance Plan meets the requirements of these Rules, including, at a minimum:

10.2.1. Water diversions, uses, or rights covered under the Alternative Compliance Plan, including information sufficient to identify the legal right to that water, such as permit numbers or decrees.

10.2.2. The total Computed Beneficial Consumptive Use of water covered by the Alternative Compliance Plan.

10.2.2.1. Documentation of all relevant details supporting the calculation of Computed Beneficial Consumptive Use covered by the Alternative Compliance Plan including but not limited to any assumptions, calculations, and supporting data.

10.2.2.2. Calculation of the Computed Beneficial Consumptive Use covered by the Alternative Compliance Plan must use RRCA Accounting Procedures.

10.2.2.3. If the RRCA Groundwater Model is used in the development of the proposed Alternative Compliance Plan, the applicant must provide documentation to the satisfaction of the State Engineer that the RRCA Groundwater Model has been appropriately applied in development of the Alternative Compliance Plan.

10.2.3. The source, sufficiency, availability, and amounts of replacement water to offset CBCU by delivery of replacement water to the Republican River and its tributaries under the Alternative Compliance Plan to meet its Replacement Requirement during and after the term of the Alternative Compliance Plan.

10.2.4. The method, location, and timing of replacement water to offset CBCU by delivery of replacement water to the Republican River and its tributaries under the Alternate Compliance Plan to meet its Replacement Requirement.

10.2.5. Any RRCA accounting changes required for implementation of the Alternative Compliance Plan.

10.2.6. Removal of lands from irrigation or other reductions in Beneficial Consumptive Use may reduce the Proportional Share and can be included in an Alternative Compliance Plan. For removal of lands from irrigation or reductions in diversions or Beneficial Consumptive Use the Alternative Compliance Plan must provide the following information:

10.2.6.1. The water right(s) associated with the lands removed from irrigation or reductions in Beneficial Consumptive Use, including proof of ownership or authority to use the water right(s).

10.2.6.2. A description of the plan to remove lands from irrigation or reduce consumption.

10.2.6.3. Calculation of the amount of reduced Computed Beneficial Consumptive Use using the RRCA Accounting.

10.3. As soon as possible after the complete application is filed, the State Engineer shall provide Notice of the application, including a copy of the application and any exhibits, or information on where they are available to be reviewed. The State Engineer will consider comments on pending applications if they are received within 30 days after Notice of the application has been provided. The State Engineer will also provide Notice of any hearing on an application and of any decision approving or denying an application.

10.4. Within ninety (90) calendar days of the receipt of an application, the State Engineer will provide the applicant or his or her designated agent with a written decision that

may be in the form of approval, denial, or approval with terms and conditions and shall provide Notice of the same. If the State Engineer requires additional information from the applicant to evaluate the application, the State Engineer shall notify the applicant and provide Notice of the same. The applicant shall have up to 90 calendar days from the date of that Notice to provide the additional information to the State Engineer and the time for the State Engineer to provide a written decision on the application shall be extended for 90 calendar days from the date of the receipt of the additional information.

- 10.5.** In making the determinations necessary to approve or deny an application, the State Engineer shall not be required to hold or conduct a hearing, but the State Engineer may hold or conduct a hearing if he determines a hearing is necessary or useful to make any such determination. All hearing procedures will be guided by the State Engineer's Procedural Regulations for adjudicatory procedures (2 CCR 402-5), where applicable.

11. State Engineer Review and Approval of Alternative Compliance Plans

- 11.1.** The State Engineer will annually review all Alternative Compliance Plans to ensure that each Alternative Compliance Plan is administrable and together all Alternative Compliance Plans and the RRWCD Plan will assist the State of Colorado in carrying out the State's duty to comply with the limitations and duties imposed upon the State by the Republican River Compact and the FSS.

- 11.2.** The State Engineer's review of an application for an Alternative Compliance Plan must include the following, at a minimum:

11.2.1. The State Engineer will review and evaluate an Alternative Compliance Plan using the principles and methods contained in the Compact, FSS, RRCA Accounting Procedures, RRCA Groundwater Model, if applicable, and Rules 9 and 10.

11.2.2. Any use of the RRCA Groundwater Model to develop or evaluate an Alternative Compliance Plan must be within the intended purpose and appropriate use of the RRCA Groundwater Model and subject to the limitations of the RRCA Groundwater Model.

11.2.3. The State Engineer will review an Alternative Compliance Plan's Proportional Share and Plan Replacement Requirement.

11.2.4. The State Engineer will review the Alternative Compliance Plan's operation to ensure it delivers its Plan Replacement Requirement to assure Compact compliance.

11.2.5. The State Engineer will review an Alternative Compliance Plan to determine if any approval by the RRCA is required before operation of an Alternative Compliance Plan.

11.2.5.1. The State Engineer, in his capacity as Colorado Commissioner to the RRCA, may submit the relevant parts of an Alternative Compliance Plan to the RRCA for approval.

11.3. State Engineer approval or denial of an Alternative Compliance Plan:

11.3.1. The State Engineer shall approve or deny an application for an Alternative Compliance Plan in writing based upon its review of the application as set forth in this Rule 11, and, if approved, will include terms and conditions that must be met in order for the Alternative Compliance Plan to be effective.

11.3.2. Such approval may be revoked in the event the terms and conditions of the approved Alternative Compliance Plan are not complied with.

12. Orders/Violations

If a Water User diverts water in violation of these Rules then the Water User will be subject to an order by the State or Division Engineer and may be subject to court proceedings and the State's costs, including reasonable attorney fees, and any fine or other remedy authorized by law. Orders issued under this Rule shall be enforced in the Division One Water Court following the procedures set forth in section 37-92-503, C.R.S.

13. Variances

13.1. When the strict application of any provisions of these Rules would cause undue hardship, the State Engineer may grant a variance. No variance will waive the requirement to comply with Rule 6. If the State Engineer finds that the request for variance is justified, the State Engineer will issue a written order granting the variance and setting forth the terms and conditions on which the variance is granted and provide Notice of the same.

13.2. Any requested variance must be served in writing to the State Engineer, in a format as prescribed by the State Engineer, and must contain the following:

13.2.1. The Rule or Rules from which a variance is sought,

13.2.2. A description of the proposed variance,

13.2.3. The reason for requesting the variance, and

13.2.4. Any other information the Water User believes is relevant to the evaluation of the variance request.

13.3. The Water User must provide Notice of any such request for a variance from any requirement of these Rules and must publish additional notice in a newspaper(s) or other news format of general circulation within the RRCA Groundwater Model Domain within Colorado.

13.4. The State Engineer will adjudicate the request in accordance with the procedures in 2 CCR 402-5. If a provision of these Rules conflicts with 2 CCR 402-5, then the provision of these Rules will control.

13.4.1. Any interested Person may seek to obtain party status in the adjudicatory hearing by filing an application to be made a party with the State Engineer and the applicant within 35 days of the notice as required in this Rule 13.

13.4.2. The Water User requesting a variance has the burden of proof to show by a preponderance of the evidence that the requested relief is necessary and the Water User will still comply with the substantive requirements of the Rules including assuring Compact compliance.

13.4.3. Because the FSS and RRCA Accounting does not include any *de minimis* calculation or exemption, demonstration of a *de minimis* impact by diversion, use, or storage shall not meet the burden of proof required by Rule 13.4.2, above.

14. Process to Appeal a Decision Under These Rules

14.1. Administrative review of a decision by the State or Division Engineer under these Rules shall be available if timely requested as provided below. Such review will be conducted in accordance with the adjudicatory procedures and reconsideration procedures of the State Engineer's Procedural Regulations (2 CCR 402-5).

14.2. The Person adversely affected or aggrieved by the State Engineer's or Division Engineer's decision may file a request for an adjudicatory hearing under 2 CCR 402-5 provided the request is filed by the end of the month following the month in which the State Engineer gave notice of the decision to the Person. The State Engineer may refer the matter to a hearing officer.

14.3. The intent of this Rule is to provide a Person adversely affected or aggrieved by a decision of the State or Division Engineer with a timelier and less expensive alternative to judicial review. Judicial review of a decision by the State or Division Engineer under these Rules shall proceed in the Division One Water Court, following

the procedures set forth in §24-4-106, C.R.S. and nothing in this Rule is intended to preclude such judicial review.

15. Phase-in

In order to allow Water Users the time necessary to come into compliance with these Rules, a Water User shall not be in violation of Rule 6 if the Water User has filed an application for an Alternative Compliance Plan that meets the requirements of these Rules by the later of (1) two years after publication of these Rules in accordance with section 37-92-501, C.R.S.; or (2) one year after the date that all protests filed with respect to these Rules pursuant to section 37-92-501, C.R.S., have been resolved.

16. Notice of Changes

When substantial updates to the RRCA Groundwater Model or RRCA Accounting are approved by the RRCA, the State Engineer will provide Notice of the updates.

17. Severability

If Rule or part thereof is found to be invalid by a court of law, the remaining Rules shall remain in full force and effect, including any part thereof not found to be invalid.

18. Effective Date

These Rules will take effect sixty days after publication in accordance with section 37-92-501, C.R.S., and will thereafter remain in effect until amended as provided by law. In the event that protests are filed with respect to these Rules pursuant to section 37-92-501, C.R.S., the effective date of these Rules is the date on which all protests have been resolved, and the Rules will remain in effect thereafter until amended in the manner provided by law.

IT IS FURTHER ORDERED that any person who wishes to protest these proposed Rules may do so by filing a protest in writing with the Division 1 Water Clerk in Greeley, Colorado, in the same manner as for the protest of a ruling of the referee. Any such protest must be filed by the end of the month following the month in which these Rules are published.

Dated this 11th day of January, 2019.



Kevin G. Rein
State Engineer/Director
Colorado Division of Water Resources

Exhibit 1

RRCA Ground Water Model Domain

