

The Groundwater Compact Compliance and Sustainability Fund

C.R.S. § 37-60-134

Rio Grande Water Conservation District

February __, 2023

The Rio Grande Water Conservation District (“RGWCD”) is a political subdivision of the State that was established by the Colorado General Assembly in 1967.

1. In accordance with the provisions of CRS § 37-60-134, also referred to as S 22- 028, the following requirements must be met in order to access funds made available by this law:
 - 1.1 The Board of Directors of the RGWCD in collaboration with the Colorado Water Conservation Board (“CWCB”) and the state engineer, may establish eligibility and application criteria for disbursement of money from the fund. The board of directors shall post on its website any criteria established pursuant to this subsection.
 - 1.2 CWCB shall disburse money from the fund based on recommendations from the board of directors of the RGWCD, which recommendation must first be approved by the state engineer. **Any disbursement of these funds must support a verifiable reduction in groundwater withdrawals from non-exempt wells that are subject to aquifer sustainability requirements as outlined in the State’s Rules and Regulations for Groundwater Withdrawals in Colorado Water Division No. 3 (Regulations).**
2. Types of Projects that will be considered ‘eligible’ for funding under this program to secure a reduction in groundwater withdrawals in order to achieve aquifer sustainability (Program):
 - 2.1 PERMANENT SUSPENSION. Disbursement may be made to qualified non-exempt well owners in Water Division 3 who are subject to a sustainability requirement under the Regulations and who agree to a permanent suspension of all groundwater withdrawals on a tract of irrigated land in accordance with the following conditions:
 - 2.1.1 Permanent suspension shall require a transfer of all of a participating well owner’s well permit(s) and associated water right decrees, that are assigned to the wells that can irrigate the tract of land, to the RGWCD in exchange for the compensation schedule described below. An applicant seeking to participate in this portion of the Program will be responsible for

the cost of any abandonment activities required for the participating well(s).

- 2.1.2 Although the description of the Program utilizes a tract of land described as a quarter section or 160 acres, it is the intention of the RGWCD that the Program will be available to both smaller and larger contiguous parcels of land where all of the requirements and benefits described can be made available, on a pro-rated basis, so long as each of the objectives stated herein can be met. As more fully described in Paragraph 6.
- 2.1.3 The initial requirement for participation in the Program is that a participating well owner must have irrigated the submitted quarter section with the well(s) for 5 years out of the period 2009 to 2022 inclusive, by pumping a minimum of 50-acre-feet in each of the 5 years.
- 2.1.4 Because the purpose of this Program is to support a verifiable reduction in groundwater withdrawals, eligibility does not extend to wells that are used to pump, in whole or in part, surface water recharged to the groundwater system pursuant to a recharge decree or plan of management or plan of augmentation, thereby creating a quantified recharge credit, unless the recharge credit derived from that practice can be permanently assigned to the RGWCD. It is the responsibility of the applicant to provide the RGWCD with evidence that the ditch company, subdistrict or augmentation decree will permit the assignment together with evidence that the assignment will occur at closing. After assignment the RGWCD will use the recharge credit to improve the sustainability of the groundwater system. In the event a recharge credit is assigned as described herein the RGWCD or one of its benefitted subdistricts will assume responsibility for paying any ditch assessments associated with the recharge credit.
- 2.1.5 Eligibility does not extend to parcels of land and associated wells that do not currently have the right to pump water for irrigation (or other purposes) due to enrollment in separate, federally funded irrigation reduction programs, such as CREP and EQIP. Participation in this Program may not be linked to or combined with other federally funded irrigation reduction programs. As described in Paragraph 5 this prohibition will not apply to parcels of land and associated well(s) that have participated in voluntary conservation programs recognized by the state engineer and the RGWCD or its subdistricts where a year of non-use is not counted for purposes of the determining the average withdrawals from the well(s). In no event may applicants receive payments under any other groundwater conservation program after the closing under this Program.

2.2 GROUNDWATER CONSERVATION EASEMENTS. Disbursement for a Groundwater Conservation Easement (GWCE) will be made only to qualified GWCE holders who have encumbered the tract of land and all associated wells by creating a perpetual GWCE which permanently restricts the withdrawal of groundwater from non-exempt wells that are subject to the Regulations in accordance with the following conditions:

2.2.1 In order to receive the full benefits of the Program described in Paragraphs 3.1 and 3.2 the GWCE must require the permanent suspension of all groundwater withdrawals on the tract of land.

2.2.2 Although the description of the Program utilizes a tract of land described as a quarter section or 160 acres, it is the intention of the RGWCD that the Program, as applicable to a GWCE, will be available to both smaller and larger contiguous parcels of land where all of the requirements and benefits described can be made available, on a pro-rated basis, so long as each of the objectives stated herein can be met. As more fully described in Paragraph 6.

2.2.3 The initial requirement for participation in the Program through a GWCE is that a participating well owner must have irrigated the submitted quarter section with the well(s) for 5 years out of the period 2009 to 2022 inclusive, by pumping a minimum of 50-acre-feet in each of the 5 years.

2.2.4 Because the purpose of this Program is to support a verifiable reduction in groundwater withdrawals, eligibility does not extend to wells that are used to pump, in whole or in part, surface water recharged to the groundwater system pursuant to a recharge decree or plan of management or plan of augmentation, thereby creating a quantified recharge credit, unless the recharge credit derived from that practice is restricted by the GWCE to the land encumbered by the easement where the recharged water must be used to improve the sustainability of the groundwater system. It is the responsibility of the applicant to provide the RGWCD with evidence that the ditch company, subdistrict or augmentation decree will permit the encumbrance required by the GWCE together with evidence that the encumbrance will occur at or before closing. After encumbrance the GWCE will use the recharge credit to improve the sustainability of the groundwater system. In the event a recharge credit is encumbered as described herein the easement holder will assume any ditch assessments associated with the recharge credit.

2.2.5 Eligibility does not extend to parcels of land and associated wells that do not currently have the right to pump water for irrigation (or other purposes) due to enrollment in separate, federally funded irrigation reduction programs, such as CREP and EQIP. Participation in this

Program may not be linked to or combined with other federally funded irrigation reduction programs. As described in Paragraph 5 this prohibition will not apply to parcels of land and associated well(s) that have participated in voluntary conservation programs recognized by the state engineer and the RGWCD or its subdistricts where a year of non-use is not counted for purposes of the determining the average withdrawals from the well(s). In no event may applicants receive payments under any other groundwater conservation program after the closing under this Program

3. Compensation Schedule consists of 2 parts:
 - 3.1 A BASE PAYMENT of \$250,000.00 per groundwater irrigated quarter section. This payment is based on the irrigation of the submitted quarter section regardless of the number of wells with the legal ability to irrigate the submitted quarter section. This payment is dependent on the transfer of all well permits and associated water right decrees, with the legal ability to irrigate the submitted quarter section, to the RGWCD, as well as any recharge credits if applicable. Upon the receipt of this payment the participating well owner must suspend groundwater withdrawals from all wells irrigating the submitted quarter section and must transfer all of those well permits, associated water rights decrees or other interests to RGWCD at closing. In the case of a GWCE this payment will be conditioned on the satisfaction of all conditions associated with the GWCE.
 - 3.2 A WITHDRAWAL PAYMENT will also be made to the participating well owner for each participating well, or participating wells, utilized on the submitted quarter section at a compensation rate of \$2,000.00 per acre foot of groundwater withdrawn based on the average withdrawals of the five highest years on the annual average withdrawals reported to the Colorado Division of Water Resources, during the ~~highest 5-year~~ period from 2009 to 2022, inclusive. To qualify, wells must have at least 5 years of reported withdrawals at a minimum rate of 50-acre-feet per year for each of the 5 years.
 - 3.3 There is a TOTAL PAYMENT cap, which includes both the Base Payment and the Withdrawal Payment, for each quarter section of \$650,000.00 which will be calculated as the sum of both payments described in paragraphs 3.1 and 3.2.
 - 3.4 CLOSING on any disbursement under the Program will occur at the time and place agreed to by the applicant and the staff of the RGWCD at which time the compensation will be transferred to the applicant and all well permits and associated water rights decrees, will be assigned to the RGWCD or, in the case of a GWCE, a copy of the recorded GWCE meeting all of the requirements of this Program will be provided to the RGWCD.

4. An sample application form will be posted on the RGWCD website at least 7 days before the initial date for application submissions. The initial date for application submission will be announced at least 7 days in advance, after the terms and conditions of the Program have been reviewed and approved by the state engineer and the CWCB. In any regard, all applications to the Program will be accepted until 5:00 pm, June 15, 2023 but not thereafter. All applications will first be reviewed for completeness. Applications that are incomplete or inaccurate will be returned to the applicant for correction and will not be date stamped until resubmitted and determined to be complete. All complete applications ~~with~~ will be stamped with the date and time of receipt by the RGWCD. A log of all accepted, stamped applications will be maintained by the RGWCD. All complete applications, which meet all of the conditions and requirements of the Program, will then be fully paid through the disbursement of funds, which will be done on a first come, first served basis. The date and time stamp will serve as the means for determining the timing and eligibility of each application for receipt of funds. Applicants seeking funding based upon a Permanent Suspension or a GWCE will be treated the same in all cases. The RGWCD will act on all submitted complete applications before December 31, 2023.
5. If a parcel of land or a portion of a parcel has not been irrigated for a portion of the period 2009 to 2022, because it has been enrolled in a voluntary conservation program operated by the RGWCD or its subdistricts, but is not participating in federally sponsored or sanctioned conservation programs for which compensation is provided through the federal program (CREP and EQIP as examples), the period of voluntary conservation enrollment will not be treated as a zero in calculating the average annual withdrawals in paragraphs 2.1.3, 2.2.3 and 3.2. In this situation if there has been at least a minimum of five years of irrigation at 50 acre feet per year or greater during the period 2009 to 2022 then the parcel will qualify for the Program.
6. Applications that seek to include parcels of property that are either larger or smaller than a standard quarter section (160 acres) will receive a prorated base payment that will rely on the decreed and/or permitted irrigated acres for the serving well(s), using \$250,000 for 160 acres as the base. [For example: a half quarter at 80 acres would have a base payment of \$125,000 or a parcel of 240 acres would have a base payment of \$375,000]. In the event the well permit(s) and decree(s) do not contain the specific acres to be irrigated the application must be supplemented with an aerial photograph of sufficient clarity to show both the location of the well(s) and the acres claimed to be irrigated.
7. **POTENTIAL SECOND APPLICATION CYCLE.** If, as of December 31, 2023, all of the funds available from the S 22-028 grant have not been disbursed there will be a second application cycle. Under no circumstances will the disbursement amounts under the Program change for a Second Application Cycle. All payments will remain the same as -those described as the Base Payment (Paragraph 3.1), the Withdrawal Payment (Paragraph 3.2) and the Total Payment (Paragraph 3.3). If there are funds remaining,- the RGWCD will accept applications from January 2, 2024 until 5:00 pm on February 1,

2024, from individuals or entities that are based on alternate plans to achieve sustainability as contemplated by the Program. The application must demonstrate a quantifiable and verifiable permanent reduction in groundwater withdrawals, including partial permanent reduction of withdrawals, that result in the reduction in pumping authorized by a permit and/or decree. To be accepted an application must require the reissuance of the permit(s) by the Colorado Division of Water Resources to reflect that permanent reduction and an appropriate modification to the language of any related water rights decree. The owners of municipal and industrial wells -are authorized to apply to the Program at this time. All applications will be reviewed for completeness and incomplete or inaccurate applications will be returned to the applicant for correction and will not be date stamped until complete. All complete applications will be stamped with the date and time of receipt by the RGWCD. All complete applications, which meet all of the conditions and requirements of the Program, will then be fully paid through the disbursement of funds, which will be done on a first come, first served basis. The date and time stamp will serve as the means for determining the timing and eligibility of each application for receipt of funds. The RGWCD will act on all submitted applications under this portion of the Program by March 31, 2024.

8. All well permits, related water rights decrees and recharge credits, except those associated with a GWCE, for which compensation has been paid under the Program shall be conveyed to the RGWCD, without restriction. In each instance the RGWCD will include these permits and related water rights decrees in its groundwater conservation program and ensure that the water supply represented by the conveyance is protected from abandonment, or future appropriation or claim for credit under a separate or independent program, including plans for augmentation, plans involving substitution or exchange, -plans of management or separate efforts to meet sustainability obligations by individuals or entities. All well permits, related water rights decrees and recharge credits included with a GWCE will be perpetually managed in accordance with the GWCE terms.

9. Additional Considerations:

- 9.1 All applicants under the Program, involving retirement of irrigated land, will be required to implement an appropriate re-vegetation plan. The proposed re-vegetation plan must accompany the application and will be a condition of any disbursements under the Program. The RGWCD will cooperate with each applicant to establish appropriate vegetative cover on the retired acreage and will consider permitting the use of a limited water supply from the transferred well permit(s) over the course of the subsequent two growing seasons to assist in the accomplishment of that goal. Re-vegetation responsibilities, when a GWCE is involved, will be the responsibility of the applicant and the easement holder. Under all circumstances the cost and implementation of any re-vegetation activities will be the sole responsibility of the applicant/landowner and will not

become an added responsibility of the RGWCD. Failure to carry out the re-vegetation plan can result in action to require compliance.

- 9.2 In order to further incentivize continued participation in this program other entities, such as Subdistricts, Water Conservancy Districts, Soil Conservation Districts or interested non-governmental conservation organizations, are welcome to offer further incentives above and beyond the Base Payment, or the Withdrawal Payment or the Total Payment. The Program payments described above represent the maximum amount that will be contributed under the Program itself.
- 9.3 No entity, public or private, may participate in the Program to facilitate any effort to advance a scheme or proposal to export water from the San Luis Valley.
- 9.4 Payments under this program will be limited to those that are demonstrably necessary to contribute to the aquifer sustainability requirements of the Regulations.
- 9.5 The Trinchera Water Conservancy District subdistrict is eligible for participation under the terms and conditions applicable to all participants in the Program.

10. Timeline:

- 10.1 The RGWCD will advertise this program beginning in March 2023 and will provide notice of the application form and the first day on which applications will be accepted by the RGWCD as set forth in Paragraph 4. The deadline for all applications under the Program will be June 15, 2023, for action before December 31, 2023. If there are funds remaining as of December 31, 2023, the deadline for the second phase proposals under the Program will be February 1, 2024 in order to ensure that all funds are committed before June of 2024.
- 10.2 The RGWCD will review each application, in order of date and time received, to ensure that each application complies with the requirements of the Program and will inform each applicants who will receive funding as soon as the review is completed but in any event no later than September 30, 2023. If additional funds remain available on December 31, 2023- the second phase applicants will be notified no later than April 30, 2024.