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The Groundwater Compact Compliance and Sustainability Fund

C.R.S. § 37-60-134

Rio Grande Water Conservation District

March \_\_, 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 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 2013 to 2022 inclusive, by pumping a minimum of 50-acre-feet in each of the 5 years.
- 2.1.3 Because the purpose of this Program is to support a verifiable reduction in groundwater withdrawals, eligibility does not extend to withdrawals that depend on 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.
- 2.1.4 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, for the parcel of land involved herein, 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 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 2013 to 2022 inclusive, by pumping a minimum of 50-acre-feet in each of the 5 years.

- 2.2.3 Because the purpose of this Program is to support a verifiable reduction in groundwater withdrawals, eligibility does not extend to withdrawals that depend on 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.
- 2.2.4 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, for the parcel of land involved herein, after the closing under this Program.

3. Compensation Schedule for the initial program described in paragraph 2 consists of a payment based on historic pumping:

3.1 A WITHDRAWAL PAYMENT will 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 \$3,000.00 per acre foot of groundwater withdrawn based on the average withdrawals of the five highest years reported to the Colorado Division of Water Resources, during the period from 2013 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.

3.2 There is a TOTAL PAYMENT cap, 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.

3.3 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. The required application form for the initial Program cycle will be posted on the RGWCD website at least 7 days before the first date for application submissions. The first date for application submission, to participate in the initial program, 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 initial Program cycle will be accepted until 5:00 pm, June 30, 2023 but not thereafter. Upon receipt 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 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 as soon as possible but in any event no later than 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 2013 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 considered in calculating the average annual withdrawals in paragraphs 2.1.3, 2.2.3 and 3.2. And, will not be considered in determining if there was a minimum of five years of irrigation at 50 acre feet per year or greater during the period 2013 to 2022 for the parcel to qualify for the Program.
6. Applications for the initial Program cycle where the well permit(s) and decree(s) do not contain the specific acres authorized to be irrigated then 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, after the completion of the initial application cycle all of the funds available from the S 22-028 grant have not been disbursed there will be a second application cycle. The required application form for the second application cycle will be posted on the RGWCD website at least 7 days before the first date for application submissions for the second application cycle. The first date for application submissions for the second application cycle will be announced by the RGWCD at least 7 days in advance. Applications will be accepted, until 5:00 pm on \_\_\_\_\_, 202\_, 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/withdrawals 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 Total Payment for applicants in the Second Cycle will be calculated as the number of acre feet of permanent reduction in withdrawals multiplied by \$3,000.00. No other payments will be made. 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 until funds are exhausted. 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, and related water rights decrees, 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, and related water rights decrees 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, including an appropriate seed mix. 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 of up to 18" of water per acre over 3 years to establish a permanent cover crop, from the transferred well permit(s), over the course of the subsequent three 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 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 Program Payments, 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 the initial Program cycle beginning in \_\_\_\_\_ 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 initial Program cycle will be \_\_\_\_\_, 2023, for action no later than, \_\_\_\_\_ 2023. If there are funds remaining as of \_\_\_\_\_, 2023, the RGWCD will advertise a second application cycle under the Program to commence no later than \_\_\_\_\_ in order to ensure that all funds are committed before June of 2024.
- 10.2 The RGWCD will review each complete initial application, in order of date and time received, to ensure that each initial application complies with the requirements of the Program and will inform each applicant who will receive funding as soon as the review is completed but, in any event, no later than \_\_\_\_\_, 2023. If additional funds remain available on \_\_\_\_\_ 2023 there will be a second application cycle, as described in paragraph 7. Applicant who receives funding in the second cycle will be notified no later than April 30, 2024.