

## **RULES AND REGULATIONS GOVERNING PARTICIPATION IN AUGMENTATION PLAN**

The Huerfano County Water Conservancy District ("District") adopts the following Rules and Regulations governing participation in the District's Plan for Augmentation pursuant to § 37-45-118 and § 37-45-134, C.R.S.

### **RECITALS**

A. The District is a water conservancy district formed pursuant to Section 32-45-101 *et seq.*, Colorado Revised Statutes.

B. The District has adjudicated a plan for augmentation and appropriate rights of exchange, which decree was entered by the Water Court for Water Division No. 2 on November 14, 2016 in Case No. 13CW3062 ("Augmentation Plan"). The Augmentation Plan was recorded in the real property records of Huerfano County on November 14, 2016 at Reception No. 407501.

C. Colorado law requires that out-of-priority depletions caused by diversion and usage of water be replaced in time, location, and amount pursuant to a valid water court decree or a temporary substitute water supply plan.

D. The Augmentation Plan allows the District to use consumptive use credits to provide augmentation water to replace out-of-priority depletions caused by participating water uses from the Huerfano River and its tributaries ("Replacement Credits") within the District's service area as defined in the Augmentation Plan ("Service Area").

E. There are various types of water uses and proposed water uses within the Service Area that need to be covered by an augmentation plan in order to legally occur. A water user who has applied to be admitted to the Augmentation Plan pursuant to these Rules and Regulations and the Augmentation Plan procedures will hereafter be referred to as the "Applicant." A water user included into the Augmentation Plan will be referred to as a "Participant." The Applicant's or Participant's structure(s) to be used to divert tributary or main stem water from the Huerfano River for beneficial uses under the Augmentation Plan will hereafter be referred to as a "Participating Diversion(s)," which term is consistent with its use in the Augmentation Plan.

F. These Rules and Regulations will govern all Replacement Credits provided to a Participant by augmentation, direct diversion, or exchange for a Participating Diversion, including admission into the Augmentation Plan and the terms and conditions under which the District can or will provide augmentation water for a Participating Diversion under the terms of the Augmentation Plan.

G. Upon inclusion in the Augmentation Plan the Participant will be required to enter into a purchase agreement, lease agreement, or lease/purchase agreement with the District for the supplying of such Replacement Credits ("Agreement"), and that Agreement together with the Augmentation Plan and these Rules and Regulations shall also govern the Replacement Credits provided by the District.

H. These Rules and Regulations will be incorporated by reference into a certificate provided by the District to the Participant upon the Participant's Participating Diversion being included into the Augmentation Plan. Such certificate will represent the Participant's allocation of Replacement Credits provided by the District ("Augmentation Certificate"). The Augmentation Certificate shall be expressly subject to and incorporate these Rules and Regulations, the terms and conditions of the Augmentation Plan, and the Agreement. The Replacement Credits allocated to the Participant's Participating Diversion by the Agreement and represented by the Augmentation Certificate are referred to herein as "Replacement Water."

**NOW, THEREFORE, THE DISTRICT ADOPTS THE FOLLOWING RULES AND REGULATIONS.**

1. Incorporation by Reference. The above recitals are incorporated herein by this reference as if fully set forth herein.

2. Application Process and Registration of a Participating Diversion. The Applicant will be required to complete an application on a form approved and supplied by the District. The form and content of the application may be revised by the District from time to time. The Applicant shall supply the District with a completed form of application and any and all additional information, including, but not limited to, such hydrologic and engineering data and analysis required by the District and the terms of the Augmentation Plan, in order for the District to be able to fully evaluate the feasibility and appropriateness of incorporating the proposed Participating Diversion into the Augmentation Plan ("Application"). Any admission of a Participating Diversion into the Augmentation Plan shall be at the District's discretion and shall be subject to these Rules and Regulations, the terms and conditions of the Augmentation Plan, the Application, the Agreement, the Augmentation Certificate, and the laws, rules, and regulations of the State of Colorado. The Applicant acknowledges receipt of a copy of the Augmentation Plan, these Rules and Regulations, and the Augmentation Plan upon entering into an Agreement with the District. By completing and signing an Application, the Applicant certifies that all information contained in the Application is complete and accurate and may be relied upon by the District. If the Applicant intends to subdivide one property into two or more properties, then the Applicant must submit one Application for each property that will have a Participating Diversion. If one Participating Diversion will serve more than one property owned by different individuals or entities, or if there is one property with multiple owners, then the Applicant shall submit an executed water service agreement, satisfactory to the District, between all parties covering the entire property or all properties to be served. The District will not provide Replacement Water for uses occurring outside of the Service Area.

3. Application Fees and Costs. The Applicant shall be responsible for all the costs and fees incurred by the District in the entire processing of an Application in order to be included in the Augmentation Plan, including legal and engineering fees ("Application Fee"). When the Applicant submits an Application, the District will assess the Application and provide the Applicant with an estimated Application Fee. At that time, the Applicant will have the option to, (1) pay the estimated Application Fee as a deposit ("Application Fee Deposit") and have the District proceed to process the Application, or (2) to decline to have the Application processed, thereby withdrawing the Application and avoiding payment of the Application Fee. The District will endeavor to provide a reasonably accurate estimate for the Application Fee; however, if the Applicant chooses to have the District process the Application, the Applicant is responsible for the actual amount of the Application Fee. It is very possible that circumstances may arise which may cause the Application Fee to increase above the estimated amount. Any amount of the Application Fee that is more than the Application Fee Deposit shall be due and owing to the District upon invoice by the District at the completion of District's processing of the Application or at particular times in the application process as determined by the District. Any amount of the Application Fee that is less than the Application Fee Deposit will be refunded to the Applicant at the completion of District's processing of the Application. If such refund is due the Applicant, the Applicant may request such sum be applied to future costs of inclusion into the Augmentation Plan as opposed to direct payment. Payment of the entire and full Application Fee is required whether or not the Applicant is eventually accepted into the Augmentation Plan.

4. Amount of Replacement Credits. The amount of Replacement Credits required to be provided by the District to augment the Applicant's Participating Diversion will be as set forth in the Agreement and the Augmentation Certificate. The Replacement Credits will be based on information in the Application, information learned independently by the District, the terms and conditions of the Augmentation Plan, transit losses, and the overall operations by the District. Subsequent to the issuance of an Augmentation Certificate, the District may at any time in its discretion, or as is required by the Augmentation Plan administration or other legal determination, revise its methodology or assumptions for determining amount of Replacement Credits needed to replace depletions for Plan Participants, which may result in an increase in the amount of Replacement Water necessary for a Participating Diversion. In such circumstance, the Participant agrees that the District may either: (1) require the Participant to purchase or lease more Replacement Credits; or (2) require the Participant to reduce its depletions caused by its Participating Diversion.

The Agreement and Augmentation Certificate will state whether the Replacement Water is to be provided by the District on a perpetual basis or for a lesser term. The District will issue an Augmentation Certificate to a Participant only upon the conclusion of inclusion proceedings and after the execution of an Agreement between the District and the Applicant. Until an Augmentation Certificate has been issued by the District and accepted by the Applicant, an Applicant shall have no right to receive Replacement Water or any service from District. Once an Augmentation Certificate has been issued

and accepted, the Participant has only a contractual right for the District to provide Replacement Water to replace approved out-of-priority depletions by the approved Participating Diversion. In the event that a Participant uses less than his allocated Replacement Credit as stated in the Augmentation Certificate in a given year, the excess will not carry over to the Participant's benefit to any future year and the amount of unused Replacement Credit will remain fully subject to the District's discretionary uses. The Participant shall use the Replacement Water only for augmentation of the depletions from a Participating Diversion expressly approved by the District for that Augmentation Certificate and for no other purposes. A Participant shall be required to provide a new or amended application in the event of any change to the covered Participating Diversion or by the addition of another structure or use that must be approved by the District.

The Replacement Water provided by the District augments only the depletions from an approved Participating Diversion, therefore, return flows, if any, from the Participant's use of water whose depletions are augmented by the District must be allowed to return to the stream system and remain the property of the District. Therefore, the Participant shall not take any action to intercept or interfere in any way with the accrual of return flows to the affected stream, except for reasonable flood control measures or irrigation practices approved by the District.

The District has the right to supply Replacement Credits from any temporary or permanent water source or supply owned or controlled by the District, now or hereafter acquired by the District.

5. Tiers of Replacement Water. The District has three tiers of Replacement Water: (1) Firm Yield Water is Tier 1 Water; (2) Non-Firm Yield Water is Tier 2 Water; and (3) Annual Water is Tier 3 Water. Tier 1 Water is for replacement of all water uses that cannot or should not be curtailed whose curtailment is likely to result in denying water use for domestic purposes or other non-curtable uses and/or causing injury to senior water rights ("Critical Impacts") as Tier 1 Water should always be available, but for extraordinary times. Those uses replaced with Tier 1 Water include domestic uses and well diversions resulting in lagged depletions to the river system. Tier 2 Water is replacement water that should be available primarily during runoff season approximately eighty (80) percent of the years as estimated from historical records. (Note: this number is an estimate only and not a warranty by the District). Tier 2 Water is for replacement of those uses whose curtailment during drier years can be instantaneous and will not result in Critical Impacts. Such uses qualifying for replacement with Tier 2 Water would be direct surface water diversions for irrigation or filling ponds that do not intercept groundwater. Finally, Tier 3 Water is excess Replacement Credits available to the District determined on a yearly basis that the District will lease out on an annual basis. It is within the discretion of the District to determine if curtailment would result in Critical Impacts and whether a particular requested use may or must obtain Tier 1 Water for replacement of depletions from a Participating Diversion.

6. Purchase, Lease, or Lease/Purchase Price and Augmentation Certificate.

The purchase price, lease price, and lease/purchase price for Replacement Water ("Price") for an approved Participating Diversion, following the procedures of paragraph 13, will be determined by the District and may be changed from time to time and will be set forth in the District's rate and terms schedule, as determined by resolution of the Board of Directors of the District, in effect at the time an application is submitted, except that in special circumstances in the District's discretion the rate at the time of application approval may be changed. Such Price along with any outstanding fees or costs owed to the District shall be due at the closing and issuance of the Augmentation Certificate as provided in Paragraph 14 below. The rate schedule may also limit the amount of replacement water to be supplied for specific uses.

The Replacement Water will be represented by an Augmentation Certificate issued by the District. Each Augmentation Certificate issued by the District for an approved Participating Diversion may contain additional terms and conditions that specifically relate to the approved Participating Diversion's compliance with District requirements, the Augmentation Plan, and/or these Rules and Regulations. District's obligation to provide Replacement Water is expressly subject to the terms and conditions of the Augmentation Certificate, as well as any additional terms and conditions as set forth in Augmentation Plan, the Agreement, and these Rules and Regulations.

The Augmentation Certificate shall be appurtenant to the approved Participating Diversion and the real property which is served by the Participating Diversion (the "Participant's Property"). The Augmentation Certificate does not convey ownership of a water right to the Participant nor title to a water right nor any interest in the Augmentation Plan. Rather, the Augmentation Certificate represents a contractual right to have approved out-of-priority depletions caused by an approved Participating Diversion replaced by the District for the term set forth in the Augmentation Certificate under the terms of the Augmentation Plan, these Rules and Regulations, the Agreement, and the Augmentation Certificate. The Augmentation Certificate shall include a description of the Participant's Property to be served, and shall be recorded in the real property records of Huerfano County, and shall be appurtenant to the Participant's Property and the Participating Diversion. An Augmentation Certificate cannot be transferred separate and apart from the Participant's Property and/or the Participating Diversion without the express written consent of District, which such consent may be granted or withheld at the sole discretion of District.

7. Annual Water Administration Fees. All Participants, upon approval of a Participating Diversion and admission to the Augmentation Plan shall pay an annual water administration fee (the "Annual Fee"). The Annual Fee shall be increased annually based on the U.S. Department of Labor's Consumer Price Index for the Denver/Boulder/Greeley area. The Annual Fee is also subject to further adjustment from time to time at the discretion of the District. The purpose of the Annual Fee is to cover the District's expenses and costs in the administration of the Augmentation Plan, substitute water supply plans, decreed exchanges, and/or administrative exchanges,

and for the provision of Replacement Credits to provide the Participant with Replacement Water. The initial Annual Fee shall be due and payable at the closing and issuance of the Augmentation Certificate as provided in Paragraph 14 below. Thereafter, the Annual Fee shall be as determined by the District. The Annual Fee for all Participating Diversions shall be paid in advance to the District on or before November 1<sup>st</sup> of each year, which is the first day of the new water administration year. The District will bill each customer the Annual Fee, and lease price if applicable, on approximately October 1<sup>st</sup> of each year. The Participant will be required to pay the Annual Fee even if the Participant does not receive the bill. If the District does not receive payment of the Annual Fee by the deadline specified above, the District may, at District's option, declare the Participant to be in default and proceed as set forth in Paragraph 26.

8. Transit Losses. The Participant shall be responsible for any transit losses determined by the District or the Division Engineer's Office from the point of the District's release of the Replacement Credits water to the Participant's point of stream depletion. As such, additional Replacement Credits may be necessary for the Participant's Replacement Water in order to account for the transit loss. The District will determine the point of release of Replacement Credits.

9. Legal and Engineering Advice. The Participant's purchase, lease, or lease/purchase of Replacement Water from the District to augment the Participant's depletions to the Huerfano River system involves complex matters of Colorado water law and water resource engineering. The Participant is strongly encouraged by the District to seek competent legal and engineering advice from professionals experienced in these matters before committing to the purchase, lease, or lease/purchase of Replacement Credits from the District.

10. Responsibilities after District Delivery. Following the District's delivery of Replacement Credits to augment the Participant's out-of-priority depletions, the Participant shall thereafter be responsible for all further administration that may be required in the use of the Participating Diversion.

11. Operational Costs. As part of the processing of an Application, the District will determine the equipment, devices, or structures specific to the Applicant's water needs that will be necessary for the District to properly supply Replacement Water to the Applicant's Participating Diversion, including proper measuring equipment or devices. The cost for the design, purchase, installation, modification, operation, maintenance, and replacement of such equipment, devices, or structures unique and/or specific to the Applicant's water use or provision of Replacement Water shall be the sole responsibility of the Applicant. Those costs shall include any labor costs incurred by the District. Such equipment, devices, or structures shall be maintained in working condition in order for the District to continue supplying Replacement Water. Failure of the Applicant/Participant to design, purchase, install, modify, operate, maintain, or replace equipment, structures, and measuring devices as required for proper



administration of its Participating Diversion as determined by the District, shall be deemed a default.

12. Overages. The Participant shall be responsible for payment to the District for any amount of out-of-priority depletions by the Participating Diversion caused by the Participant over and above the allowed amount set forth in the Augmentation Certificate and the Agreement for which the District provides Replacement Water. The cost for such overages shall be at the then established rate shown on the rate schedule charged by the District for lease of equivalent water plus an incremental penalty. If the District does not have the Replacement Water available to cover such overages, the additional incremental amount will still be charged as a penalty. Such overages even though paid for shall still constitute a breach whether or not such overages are replaced by the District and/or paid for by the Participant.

13. Procedure to Enter Plan - Contingency. The admission of a Participating Diversion into the Augmentation Plan and the issuance of an Augmentation Certificate are expressly conditional upon compliance with the procedures and requirements of the Augmentation Plan and the approval of the Participating Diversion's admission into the Augmentation Plan upon terms and conditions that are acceptable to the District. The process for the admission is as follows:

13.1. The Applicant shall provide a full and thoroughly completed Application to the District. If the Participating Diversion is to be a well, Applicant will provide reliable evidence of the source aquifer and connection to the Huerfano River. If Applicant claims consumptive use is less than 100 percent, Applicant will provide reliable evidence of the amount, location, and timing of return flows. The Applicant will also provide any additional information as requested by the District in order for the Application to be properly evaluated by the District.

13.2. Upon the Applicant agreeing to the processing of the Application and payment of the Application Fee Deposit, the District will perform the necessary analysis as to whether the proposed uses fit within the Augmentation Plan. During this time, the Augmentation Plan provides that the District will consult with the Colorado Division of Water Resources as to the potential inclusion of the proposed Participating Diversion.

13.3. After the District completes the processing of the Application, the District will compile the results of the analysis with the Application materials, including any necessary affidavits, permits, or other information into a Notice of Inclusion that shall be provided to opposers of the Augmentation Plan. Furthermore, a summary of the Notice of Inclusion will be published one time in a local newspaper to provide notice of the Application to the general residents of Huerfano County who were not opposers in the Augmentation Plan. Opposers and residents will be allowed to file comments with District, the State Engineer, and the Division Engineer, within thirty-five (35) days of the Notice of Inclusion for applications for domestic use, and within sixty-three (63) days for all other uses. In the case whereby an Applicant is seeking a domestic use and is

claiming seniority to a Colorado Water Conservation Board ("CWCB") minimum instream flow right pursuant to § 37-92-102(3)(b), C.R.S., the CWCB shall be given sixty-three (63) days to comment.

13.4. For a proposed Participating Diversion that causes depletions within or upstream of a CWCB decreed minimum instream flow right that cannot be instantaneously curtailed, an additional analysis will be required to be conducted with the generation of an additional report addressing how the minimum instream flow right will be protected from injury.

13.5. If there are no comments provided, the District will approve or deny the Application in its discretion based upon whether the Application meets or does not meet the requirements of the District and the Augmentation Plan. Any approval by the District may contain additional terms and conditions. If comments are provided, the District will take into account those comments in approving or denying the Application in its sole discretion.

13.6. The District will provide written notice of the action taken by the District to the Applicant, opposers, and any resident who filed comments. If the District approves the Application in whole or in part, then within sixty-three (63) days after the issuance of the approval notice by the District of a new Participating Diversion, an opposer who filed comments to the Notice of Inclusion, or the State and Division Engineer may file a protest with the Water Court for a *de novo* hearing on District's approval. The Applicant shall be responsible for all fees and costs, including reasonable experts' and attorneys' fees in defending against such protest and any costs and fees imposed by the court. As such, in the case of a protest being filed with the Water Court, the District will provide notice to the Applicant of the protest and an estimate of the fees and costs to defend against the protest and the Applicant shall then have fourteen (14) days to confirm in writing if the Applicant wishes the District to pursue such course of action or would rather withdraw the Application. Failure of the Applicant to provide confirmation within the stated time period shall result in the District deeming the Application withdrawn. If the Applicant wishes to pursue the defense against such protest, the Applicant shall simultaneous with the written confirmation that the District defend against the protest pay to the District a deposit equal to District's estimate of the fees and costs of defense against the protest, or as otherwise agreed between the District and the Applicant. The Applicant will thereafter pay to the District from time to time any additional funds required by the District to defend against the protest, if any. Failure to make any payments as specified within this Subparagraph 13.6 will result in the termination of the defense by the District resulting in denial of the Application. Following the conclusion of the protest proceedings, the District will refund to the Applicant any unspent funds received from the Applicant to defend against the protest.

Though such fees and costs are being borne by the Applicant, the District remains the sole party to such protest and therefore will pursue the case as it deems fit in its discretion not subject to the direction of the Applicant. The District's consultants,



including legal and engineering, represent the District only and not the Applicant. The Applicant can, and should, retain its own legal and engineering counsel to coordinate and consult with the District. The District will pursue the case in a reasonable manner in the best interests of the District, will keep the Applicant informed of the proceedings, will confer with the Applicant from time to time, and will be reasonably receptive to the wishes of the Applicant. However, the protection of the District's interest in the Augmentation Plan is paramount. The District will cease pursuit of the case at any time if so requested by the Applicant, or at any time at the discretion of the District if these Rules and Regulations are not complied with or if there is a risk of impairing the Augmentation Plan.

13.7. In the event that the Water Court upholds the protest to an Application or the judgment from the Water Court imposes terms and conditions upon the Applicant and/or the District that either the Applicant or the District deem to be objectionable, then either the Applicant or the District shall have the right to terminate the Application. In the event of termination, the District shall retain the Application Fee as well as the costs and fees paid by the Applicant in the course of the proceedings and both parties will be relieved of all further rights and obligations. However, all unspent funds received from the Applicant by the District shall be refunded to the Applicant, if any.

13.8. In the event that the District successfully defends against such protest, and the District's approval of the protested Application is affirmed by the Water Court, then the Applicant shall be obligated to close, and to pay the Price in full within thirty-five (35) days of the Water Court's judgment becoming a final, unappealable order of the Water Court.

13.9. The District and its consultants do not guarantee the successful outcome of any defense to a protest and are not responsible for any outcome unfavorable to the Applicant. The District's obligation is only to pursue reasonable efforts to obtain inclusion of a Participating Diversion upon reasonable terms and conditions.

14. Closing – Augmentation Certificate. The Parties shall conduct the closing at a date, time, and location designated by the District. At the closing:

14.1. The District shall execute the Augmentation Certificate, representing the amount of Replacement Credits allocated to the Participant under the Augmentation Plan thus constituting the Replacement Water. The District will record the Augmentation Certificate in Huerfano County and the recording fee shall be included within the Application Fee. Upon return to the District of the original, recorded Augmentation Certificate, the District will deliver the original Augmentation Certificate to the Participant's address as listed in the Application.

14.2. The Participant shall pay to the District the Price in cash or certified funds together with the first Annual Fee along with any outstanding fees and costs as

may have accrued as discussed herein. The Annual Fee for the first year shall be prorated on a daily basis from the date of approval of the Application by the District through October 31<sup>st</sup> of that year, which is the end of the water year (unless such water year has been modified by the Agreement, then proration will be as to that agreed upon date).

15. Cooperation with State Engineer. The Applicant/Participant shall promptly provide all information necessary to the District as may be needed for the State or Division Engineer to make a required determination or administration under Colorado law, rule, or regulation.

16. Measurement and Reporting. All Participants are required at their sole cost to install and maintain in good condition properly calibrated and accurate totalizing flow meters on each well and properly calibrated and accurate appropriate measuring devices for other Participating Diversions as required by the Augmentation Plan, the District, or the State or Division Engineer's Office. The Participant shall provide the District with full and accurate records of The Participant's diversions and water use on at least a monthly basis, or as more frequently required or otherwise directed by the District or by the State or Division Engineer. The Participant shall report such measuring records by electronic mail or as otherwise directed by the District within five (5) days of the end of the applicable reporting period during which diversions were recorded. The Participant further agrees to permit access to representatives of the District or the State or Division Engineer upon the Participant's Property to make meter readings, verify meter readings or other information submitted by the Participant, determine information not provided by the Participant, verify the condition of and extent of use of any Participating Diversion or related equipment or structures, verify irrigated area information supplied by the Participant, verify other use, or verify the nonuse of any wells or other water structures. The District or the State or Division Engineer may curtail all diversions by Participating Diversions, or remove the Participant from the Augmentation Plan, if timely measuring records are not provided to the District as provided in the Augmentation Plan. The Participant agrees to allow immediate access for inspection upon request by the District or the State of Colorado.

The Participant will avoid as best as possible multiple spigots or other outlets for a Participating Diversion. An option is to place the meter on the single service line or a separate meter on each outside spigot line such that all outside water use is measured. In the event that a Participant fails to provide the District with timely measuring records for a Participating Diversion, the District shall have the option, but not the responsibility, of obtaining the measurement. As such, the Participant shall be required to promptly reimburse the District all costs and fees, including legal and engineering fees, associated with District's obtaining the measurement or measuring records for a Participating Diversion. In addition, the District may assess a penalty upon a Participant for each instance that a Participant fails to timely provide a measuring report. The penalty shall be in an amount determined from time to time by the District and shall be set forth in the District's schedule of costs and fees.

17. State and Division Engineer. The Participant shall comply with orders issued by the State Engineer or the Division Engineer.

18. Augmentation Plan. The Participant shall comply with the terms of the Augmentation Plan applicable to the Participant, and all terms and conditions for the use of the Participant's well and any other diversion structure.

19. Compliance with Existing Permit. Admission into the Augmentation Plan does not validate nor signify that a Participant's well or other water structure is operating in compliance with its own permit or decree. If the actual water uses of a Participating Diversion are different than or exceed the uses allowed by a permit or decree, the Participant is required to obtain a new permit or decree for the Participating Diversion.

20. Conditions of Water Use. The District reserves the right to restrict, curtail, or prorate the Participant's water use and the provision of Replacement Water subject to the Replacement Water classifications as set forth in Paragraph 5 and under the following conditions:

20.1. If the District and/or the Division of Water Resources projects that the quantity of Augmentation Credits available to the District may be inadequate to supply the demands of all participants in the Augmentation Plan in any year or portion thereof.

20.2. If a valid call by decreed water rights necessitates curtailment of all or part of diversions under the Augmentation Plan. If the District must replace water to a CWCB instream flow right due to the location of the Participant's diversion point, the Participant shall promptly reimburse the District for all reasonable costs, including costs of delivery of Replacement Water to the affected reach and installation and maintenance of any storage tanks at the delivery site.

20.3. In addition and subject to the availability of water rights within the District's Augmentation Plan under the prior appropriation system, in the event hydrologic conditions such as drought cause the District to experience a shortage of expected augmentation water during any year, and after outdoor uses have been curtailed, the District shall have the authority to require from all participants in the Augmentation Plan that all uses of water for Participating Diversions be reduced as necessary; provided, however, that a demand by the District to reduce domestic use shall apply equally for all domestic water users who are augmented under the Augmentation Plan.

21. Restriction on Transfer of Augmentation Certificate. Once issued by the District, the Augmentation Certificate is for the exclusive benefit of the Participant's Property and the Participating Diversion and may not be transferred to any other property, or modified in use, without the prior written approval of the District, which approval may be withheld or conditional in the District's sole discretion. The Participant agrees not to change the type or amount of water use approved by the District without

the prior approval of District. Moreover, any change of the type or amount of use will generally require the Participant to file a new application or amended application with the District.

22. Transfer of Augmentation Certificate. The Participant agrees to notify the District in writing prior to transfer of an interest in the Participant's Property. To transfer the Augmentation Certificate to the new interest holder of the Participant's Property, the Participant shall execute the Assignment of Augmentation Certificate attached to the Augmentation Certificate and provide the Assignment and Augmentation Certificate to District as well as any other documentation required by the District. The District may require that the original Augmentation Certificate be presented and cancelled. Only transfers recorded upon the books and records of the District shall be recognized by the District for purposes of determining ownership and rights of use to Augmentation Certificates. A copy of the deed or instrument conveying interest in the Participant's Property shall be provided to the District at the time of assignment. The new owner of the Augmentation Certificate will be required to sign an assignment and assumption agreement expressly recognizing the assignment and assuming all rights and responsibilities of the original owner of the Augmentation Certificate including, but not limited to, acceptance of these Rules and Regulations as may be amended from time to time. The District shall have no obligation to recognize a transfer of the Participant's Property or an Augmentation Certificate, or to provide Replacement Water to any attempted assignee, except upon compliance with these provisions. The District will assess a transfer fee in an amount to be determined by the District to cover its costs and expenses for the transfer of the Augmentation Certificate in the District records. Upon receipt of the executed Assignment of Augmentation Certificate, the prior Augmentation Certificate, and a copy of the deed as provided above, the District will cancel the old Augmentation Certificate and issue a new Augmentation Certificate to the transferee. The District shall not approve an assignment if the Participant is in non-compliance with the Agreement, the Augmentation Plan, these Rules and Regulations, or the Augmentation Certificate.

23. Legal and Physical Supply Limits to Augmentation Plan. The District's ability to provide Replacement Water to the Participant's Participating Diversion is subject to many factors beyond District's control. District's ability to provide Replacement Water for the Participant's Participating Diversion is subject to the terms and conditions of the Augmentation Plan, legal and physical availability of the District's water rights and other water rights now or in the future acquired by District, needs for repair and maintenance of the District's facilities within the Augmentation Plan, and the highly variable natural supply of water in the Huerfano River and its tributaries within District. The Participant expressly agrees that by submitting an Application to the District for inclusion into the Augmentation Plan and by acceptance of an Augmentation Certificate, the District shall not be considered in default or liable to the Participant in any manner whatsoever for any damages, claims, liabilities, personal injury or property damage that directly or indirectly results from District's failure or inability to deliver replacement water for the Participant's Participating Diversion due to the above factors or as long as the District has made reasonable attempts to provide such water.

The District shall not be responsible for operating or maintaining a Participant's Participating Diversion and has no responsibility regarding the physical supply of water for the same. A Participant's inability to divert water due for any reason, including but not limited to a lack of physical or legal supply of groundwater or surface water or problems with the Participating Diversion itself, do not relieve a Participating Diversion of the obligation to pay the Annual Fee.

24. Required Purchase. For those Participating Diversions whose operation the District determines results in lagged depletions accruing to the river system over a period of time longer than six (6) years, the Applicant shall be required to purchase or lease/purchase Replacement Water, which shall include Replacement Water to replace all lagged depletions. The option to lease Replacement Water will not be provided by the District because of such long-term lagged depletions.

25. Consequential Damages. The Participant assumes the risks inherent in efforts to receive a water supply in such an arid, over-appropriated water basin as the Huerfano River. The District shall not be liable to the Participant in any event for any consequential damages including, without limitation, any lost profits, revenues, or interruptions in use of water. All such consequential damages are waived by the Participant for full, fair, and adequate consideration received by being allowed to receive an Augmentation Certificate and being provided with Replacement Water.

26. Default. If the Participant fails to make timely and appropriate payment of the Annual Fee or any other fee, cost, lease payment, or assessment levied by the District, or is in any other way in breach of these Rules and Regulations, as may be amended from time to time, the Participant will be considered to be in default and the District may use any and all remedies available under Colorado law to obtain payment, collect damages, cancel the Augmentation Certificate, or seek specific performance for such breach. Interest on all unpaid fees, costs, or assessments, including the Annual Fee, shall accrue at 12% per annum, compounded annually. In addition to the amount owed, the District shall be entitled to collect from the Participant all reasonable attorneys' fees and costs incurred as a result of the Participant's default.

Upon a Participants' default, before the District may use any and all remedies available under Colorado law and before the District may cancel an augmentation certificate and remove a Participating Diversion, the District shall issue a written Notice of Default and Pending Termination to the Participant complying with the requirements of Paragraph 35. The Participant shall have ninety-one (91) days from the Notice of Default and Pending Termination in which to cure such default by providing full performance, including payment to the District of any Annual Fee, other fee, cost, or assessment that is due and owing, or to take any further action as necessary to cure the default. Provided, however, the District in its discretion may cease to provide Replacement Water during the cure period, especially for monetary defaults. Failure to cure such default will result in the District terminating the Augmentation Certificate and the provision of Replacement Water for the Participant and the Participating Diversion.

Furthermore, the District will act to remove the Participating Diversion from the Augmentation Plan and terminate the Agreement and Augmentation Certificate. Upon removal and termination, the Participant will have no further right to the provision of Replacement Water or participation in the Augmentation Plan. Additionally, the State and Division Engineer will be informed that any continued water use by the Participant does not comply with state law. The State or Division Engineer may issue a cease and desist order concerning further water use by the Participant. In the event of removal and termination of the Agreement and Augmentation Certificate by the District, the Participant will immediately cease and desist the diversion of water by a Participating Diversion unless the Participating Diversion is in-priority or has been augmented by another legally approved source. Furthermore, the Participant shall not receive a refund for any amounts paid to the District prior to the default.

27. Lease/Purchase. A Participant has the option to lease/purchase Replacement Water from the District at a rate identified in the rate schedule that is anticipated to be an incremental amount above the then purchase price. Such lease/purchase shall be over the term of five (5) years. During this five (5) year term, the Participant shall make five (5) equal installment payments, one each year, for five consecutive years totaling the lease/purchase price of the Replacement Water, per the rate schedule, at the time of the initiation of the lease/purchase agreement. The Participant is free to make any payments listed in this Paragraph 27 earlier than as set forth. During the time that the Participant is making lease/purchase payments, the Participant will be issued a temporary Augmentation Certificate indicating such status. Upon completion of the fifth and final payment, whether it occurs in year five (5) or at an earlier time, the District will issue an Augmentation Certificate indicating full purchase of the Replacement Water. Applicants must be seeking 1 acre-foot or more of Replacement Water in order to qualify to lease/purchase Replacement Water.

28. Compliance with Law.

28.1. The District retains the right to suspend service during noncompliance and/or terminate an agreement without need for a cure period as set forth in Paragraph 26 for failure to remain in compliance with State law, rules, and regulations as follows:

28.1.1. If the Participant is not in compliance concerning permitting, licensing, or the equivalent, which either directly or indirectly involves the use of Replacement Water from the District; and

28.1.2. If the Participant is conducting activities that are illegal under Colorado law on its property which either directly or indirectly require the use of Replacement Water from the District.

28.2. The District retains the right to terminate an agreement without need for a cure period as set forth in Paragraph 26 for failure to remain in compliance with Federal law, rules, and regulations as follows:



28.2.1. If the Participant is conducting activities that are both illegal under Colorado state law and federal law on its property which either directly or indirectly require the use of Replacement Water from the District.

28.2.2. If the Participant is conducting activities related to the cultivation and sale of marijuana or hemp, when the District has a good faith, reasonable belief that the Participant and/or the District is susceptible to a heightened potential for federal prosecution based on the federal government's desire to:

- 28.2.2.1. Prevent the distribution of marijuana to minors;
- 28.2.2.2. Prevent the revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- 28.2.2.3. Prevent the diversion of marijuana from states where it is legal under state law in some form to other states where it is not legal;
- 28.2.2.4. Prevent state-authorized marijuana activity from being used as a cover or pretext from the trafficking of other illegal drugs or other illegal activity;
- 28.2.2.5. Prevent violence and the use of firearms related to the cultivation and distribution of marijuana;
- 28.2.2.6. Prevent the drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- 28.2.2.7. Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- 28.2.2.8. Prevent marijuana possession or use on federal property.

28.3. The District retains the right to terminate an agreement and suspend service to the Participant without need for a cure period as provided in Paragraph 26 if providing such Replacement Water to the Participant inhibits or prevents or inhibits the ability of the District, in the judgment of the District, to qualify for or to obtain federal funding or grants.

28.4. As no cure period pertains to this Paragraph 28, to effect such termination, the District shall provide notice of such termination to the Participant as provided in Paragraph 35 and shall describe with particularity the basis for the termination.

29. Future Amendment. The Augmentation Plan, including any future amendments, modifications or additions, is incorporated by reference herein and constitutes additional terms and conditions of these Rules and Regulations.

30. Security. If the right to have out-of-priority depletions replaced by the District pursuant to an Augmentation Certificate is used as security for an incurred debt of a Plan Participant, such person or entity so secured shall take subject and subordinate to the terms and conditions of the Agreement, the herein District Rules and Regulations, the Augmentation Certificate, and the Augmentation Plan.

31. Cessation of Use. The Participant must notify the District if the Participant intends to temporarily or permanently cease the use of a Participating Diversion for any period longer than three (3) consecutive months.

32. Term – Merger. Unless terminated or amended by the District, these Rules and Regulations shall be perpetual and any future amendments shall be incorporated as such. The obligations set forth in these Rules and Regulations shall survive the closing of the sale or lease of any Augmentation Certificate and shall not be merged with the Augmentation Certificate.

33. Authorization to Access the Participant's Property: Acceptance of an Augmentation Certificate by a Participant shall constitute (1) agreement to these Rules and Regulations as they then exist and as they may be amended from time to time, and (2) express authorization by the Participant to allow representatives of the District and/or the State and Division Engineer to access the Participant's Property at all times to examine or verify the water uses covered by the Augmentation Certificate.

34. Amendment of Rules and Regulations. These Rules and Regulations may be amended by the Board of Directors of the District at any time by majority vote of said Board of Directors.

35. Waiver. The District's failure, choice, or neglect to enforce any of the requirements of the Rules and Regulations, the Augmentation Certificate, the Augmentation Plan, or the Agreement will not be deemed to be a waiver of the District's rights or of the requirements not enforced.

36. Notice. Any notice required or permitted by these Rules and Regulations shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given.

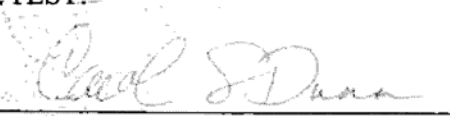
37. Governing Law. These Rules and Regulations shall be governed, construed, and enforced in accordance with the laws of the State of Colorado, without regard to its conflicts of laws rules.

38. Jurisdiction and Venue. The Applicant/Participant and the District agree to personal jurisdiction in any action brought in any court within the County of Huerfano, State of Colorado, or Water Court, Division 2, State of Colorado for water matters, having subject matter jurisdiction over the matters arising under these Rules and Regulations, the Agreement, the Augmentation Plan, and the Augmentation Certificate. Any suit, action, or proceeding shall only be instituted in the County of Huerfano, State of Colorado, or Water Court Division 2, State of Colorado for water matters. The Applicant/Participant and the District waive any objection which either may have now or hereafter to the laying of the venue of such action or proceeding and irrevocably submit to the jurisdiction of any such court in any such suit, action, or proceeding.

Date of Adoption of District Rules and Regulations: September 25, 2017.

**HUERFANO COUNTY WATER CONSERVANCY DISTRICT**

By:   
Scott D. King, President

ATTEST: (SEAL)  
  
Secretary