

**2020 AMENDED AND RESTATED RULES AND REGULATIONS
OF HEADWATER AUTHORITY OF THE SOUTH PLATTE
FOR WATER DIVISION 2 AUGMENTATION PLAN – ARKANSAS RIVER BASIN**

The Headwater Authority of the South Platte (“HASP”) adopts the following Amended and Restated Rules and Regulations (“Rules”) for customers in the Arkansas River Basin.

RECITALS

A. HASP is the operational entity formed by the Upper South Platte Water Conservancy District and the Center of Colorado Water Conservancy District (the “Districts”) for the purposes of operating a water enterprise, including plans for augmentation in Water Division Nos. 1 and 2, as described herein.

B. The Districts entered into that certain “Agreement Establishing a Water Authority” dated March 21, 2007 establishing HASP.

C. The Districts have adjudicated a plan for augmentation and appropriative rights of exchange in the Water Court for Water Division No. 2 in Case No. 03CW19 (“Augmentation Plan”). The Augmentation Plan was recorded in the real property records of Park County on June 29, 2016 at Reception No. 726279. The Augmentation Plan is incorporated by reference herein and constitutes additional terms and conditions to these Rules.

D. The Districts have obtained a change of water rights in Case No. 12CW214, District Court, Water Division No. 1 and have applied for a conditional water right in Case No. 15CW3146, District Court, Water Division No. 1 for use in Water Division No. 2.

E. The Districts entered into that certain “Amended and Restated Agreement Regarding Grant of Authority to HASP” dated August 6, 2015 authorizing HASP to operate the Augmentation Plan.

F. HASP adopted Rules and Regulations Governing Participation in the Augmentation Plan on November 8, 2017, which were recorded in the real property records of Park County on November 28, 2017, at Reception No. 741544.

G. HASP adopted its 2019 Amended and Restated Rules and Regulations (“2019 Amendment”) on February 13, 2019, which were recorded in the real property of Park County on April 1, 2019, at reception No. 754209.

H. HASP desires to revise the Rules and Regulations in their entirety and fully replace them with these 2020 Amended and Restated Rules and Regulations.

I. Colorado law requires that out-of-priority depletions to be replaced in time, place and amount pursuant to a valid water court decree or substitute water supply plan.

J. The Augmentation Plan allows HASP to provide augmentation water to replace out-of-priority depletions caused by certain uses of water to the Arkansas River Basin and certain tributaries of the Arkansas River, within HASP's boundaries.

K. There are various types of water uses and proposed water uses within HASP's service area in the Arkansas River Basin that are required to have an augmentation plan in order to be approved or to continue in operation. Water users who are admitted into the Augmentation Plan pursuant to these Rules and the Augmentation Plan's procedures will hereafter be referred to as "Applicant". Applicant's proposed structures that will divert tributary water out-of-priority for any beneficial uses will hereafter be referred to as a "Participating Diversion".

L. These Rules govern all augmentation water provided to Applicant for a Participating Diversion in the Arkansas River Basin, including admission into the Augmentation Plan and the terms and conditions under which HASP can or will provide augmentation water for a Participating Diversion.

M. These Rules will be recorded with the Clerk and Recorder for Park County and the specific recording information will be set forth in the Augmentation Certificate.

NOW, THEREFORE, HASP ADOPTS THE FOLLOWING RULES AND REGULATIONS.

1. **Application.** Applicant will be required to complete an application on a form to be supplied by HASP at www.haspwater.com ("Application Form"). The Application Form may be revised by HASP from time to time.

A. Applicant will be required to supply HASP with a completed Application Form and any and all additional information, including but not limited to such title work, encumbrances on the property to be served by HASP, affidavits, permits, deeds, hydrologic studies, engineering reports or other information (collectively "Application"), required by HASP and the terms of the Augmentation Plan in order for HASP to be able to fully evaluate the feasibility of including the proposed Participating Diversion into the Augmentation Plan.

B. If Applicant intends to subdivide one property into two or more properties, then Applicant must submit one Application for each property that will have a Participating Diversion. If one Participating Diversion will serve more than one property, then the Applicant shall submit a water service agreement covering all properties.

C. By completing an Application, Applicant certifies that all information contained in the Application is accurate and may be relied upon by HASP and all parties to the Augmentation Plan.

2. **Application Fee and Supplemental Application Fee.** Applicant shall be required to pay to HASP at the time of Application a one time, non-refundable payment for Applicant's proposed Participating Diversion ("Application Fee"). The amount of the Application Fee is

set forth at www.haspwater.com and may be changed from time to time as determined by HASP in its discretion. The Application Fee is to cover HASP's ordinary costs and expenses associated with processing an Application. HASP reserves the right to charge a supplemental Application Fee, on a case by case basis, based upon the complexity of an Application for a proposed Participating Diversion and the actual costs of reviewing and processing of the Application by HASP's manager, engineers and attorneys ("Supplemental Application Fee").

3. **HASP's Determination of Additional Title Information.** Upon receipt of a completed Application, HASP may require the Applicant to supply HASP with additional information related to title of any property or well to be served by HASP, including without limitation, the Applicant providing an owner and encumbrance report, deeds, and other recorded easements and encumbrances against the property or well to be served by HASP

4. **Volume of Augmentation Water.** Upon receipt of an Application, HASP shall determine the amount of augmentation water needed to replace depletions from the Participating Diversion based on the terms and conditions of the Augmentation Plan and the transit losses associated with delivering augmentation water from HASP's various facilities to Applicant's point of depletion as determined by HASP in its discretion. In addition, HASP will determine whether the Participating Diversion will have any post-pumping depletions. HASP may in its discretion revise its methodology or assumptions for determining amount of augmentation water needed to replace depletions from the Participating Diversion, which may result in an increase in the amount of augmentation water an Applicant may need for the Participating Diversion. In such circumstances, Applicant agrees that HASP may either: require Applicant to purchase or lease more augmentation water; or require Applicant to reduce its depletions from its Participating Diversion.

A. **Transit Loss.** The amount of augmentation water required for Applicant's Participating Diversion shall include an amount to cover Applicant's transit losses, which is that amount of water lost due to natural and other factors between the point of introduction of any replacement water and the point of delivery to the stream. The transit losses associated with a Participating Diversion shall be determined by HASP using its then-current methodology and assumptions. Applicant recognizes that HASP's evaluation of transit losses is based on several factors, including but not limited to: i) the then-current percent transit loss charged by the Division Engineer per mile; ii) the then-current augmentation sources and storage structures owned or controlled by HASP; iii) and the then-current distance between the augmentation source and the point of depletion of the Participating Diversion. Applicant recognizes that HASP may in its discretion revise its methodology or assumptions for determining transit losses from time to time, which may result in an increase in the amount of transit losses attributable to Applicant's Participating Diversion. In such circumstances, to cover the additional transit losses, Applicant agrees that HASP may either: require Applicant to purchase or lease more augmentation water; or require Applicant to reduce its depletions from its Participating Diversion.

B. **Post Pumping Depletions.** If the Participating Diversion is a structure, such as a well, that will have delayed or lagged impacts on the surface stream following termination of use (“Post-Pumping Depletions”), then HASP shall determine the amount of Post-Pumping Depletions associated with the Participating Diversion based on the terms and conditions of the Augmentation Plan for the purposes of paragraphs 9.B. and 18 herein. Unless determined otherwise by HASP, if a Participating Diversion with Post-Pumping Depletions will be temporary, then HASP shall charge Applicant and Applicant shall pay at Closing an amount equal to the sum of the then-current lease price and Annual Fee for as many years as the Applicable Augmentation Plan requires replacement of Post-Pumping Depletions.

5. **Costs of Replacements.** To augment Participating Diversions, HASP may be required to make releases from Storage Reservoirs or Storage Vessels as defined in the Augmentation Plan. In addition, in certain circumstances, HASP must complete a Storage Vessel Plan as described in the Augmentation Plan. Applicant may be responsible for all fees and costs associated with the Storage Reservoirs, Storage Vessels and Storage Vessel Plans as determined by HASP’s Board.

A. If HASP elects or is required to install a Storage Vessel pursuant to a Storage Vessel Plan, HASP may in its sole discretion: A) purchase a Storage Vessel; B) purchase a Storage Vessel and require Applicant to pay a rental fee to lease the Storage Vessel from HASP; or C) allow the Applicant to purchase a Storage Vessel. Whether owned by Applicant or HASP, Applicant shall be required to pay the costs of the trucking water to the Storage Vessel. In addition, Applicant may be required to pay for the installation of the Storage Vessel and to convey a permanent easement for the Storage Vessel to access, install, construct, replace, operate and/or maintain the Storage Vessel on Applicant’s Property at no cost to HASP.

i. If HASP owns the Storage Vessel, then HASP shall be responsible for installing, operating, maintaining, repairing and replacing the Storage Vessel, but HASP may require Applicant to pay a rental fee to lease the Storage Vessel and/or charge Applicant for the cost of installing the Storage Vessel.

ii. If the Applicant owns the Storage Vessel, then Applicant shall be responsible for purchasing, installing, maintaining, repairing and replacing the Storage Vessel, but HASP shall be responsible for operation of the Storage Vessel. Applicant shall maintain the Storage Vessel in good working order. Applicant shall pay an operations fee to be determined by HASP’s Board, which such fee will be less than the rental fee to lease a Storage Vessel and/or the charge for installing the Storage Vessel.

B. If HASP elects or is required to construct a Storage Reservoir, then Applicant may be required to pay costs of the trucking water to the Storage Reservoir. HASP shall be responsible for installing, operating, maintaining, repairing and replacing the Storage Reservoir. HASP may require Applicant to pay a rental fee for leasing space in the Storage Reservoir to make replacements to be determined by HASP’s Board

and/or may require Applicant to pay for some or all of the cost of installing a Storage Reservoir.

C. Before HASP provides the notice described in paragraph 6.A. herein, HASP shall notify Applicant of: A) the estimated costs associated with the Storage Vessel (whether owned by HASP or Applicant) including or Storage Reservoir including installing, operating, maintaining, repairing, replacing, and trucking to the Storage Vessel or Storage Reservoir; and B) whether HASP will need an easement on Applicant's Property for a Storage Vessel. Any easement document would be prepared by HASP at HASP's cost. Applicant shall have 30 days to determine whether or not to proceed with the Application based on such costs or the proposed easement.

6. **Notice and Comment Pursuant to Applicable Augmentation Plans.** The admission of a Participating Diversion into the Augmentation Plan and the issuance of an Augmentation Certificate is expressly conditional upon the procedures and requirements of paragraph 9 of the Augmentation Plan and the approval of the Participating Diversion into the Augmentation Plan upon terms and conditions that are acceptable to HASP and Applicant.

A. **Notice of Application.** Upon Applicant's submission of an Application, HASP shall provide notice of the Application to the parties identified in the Augmentation Plan. If the Participating Diversion will be on a stream reach with a senior instream flow water right owned by the Colorado Water Conservation Board, the notice shall include a Storage Vessel Plan completed by HASP.

B. **Comment Period.** The parties to the Augmentation Plan shall have the following periods during which they can provide comments on the Application: 35 days for non-commercial uses; and 63 days for commercial uses.

C. **HASP Decision on Application.**

i. **No Comments Filed.** If no comments are filed during the comment period, then HASP may approve the Application, deny the Application or approve the Application with conditions at its discretion. If HASP approves the Application without conditions or with conditions acceptable to Applicant, then Applicant shall close within 30 days of such approval.

ii. **Comments Filed.** If comments are filed during the comment period, then HASP may approve the Application, deny the Application or approve the Application with conditions at its discretion. If HASP approves the Application with or without conditions, then HASP shall provide notice to the parties to the Augmentation Plan of its action.

D. **Protest Period.** If a party to the Augmentation Plan filed comments to an Application and HASP approves the Application with or without conditions, the party

who filed comments can protest HASP's action within the protest period, which is 63 days. The protest must be filed with the Water Court for Water Division No. 2.

i. **No Protest Filed.** If no protest to an Application is timely filed, Applicant shall close within 30 days after the end of the protest period.

ii. **Protest Filed.** If a protest to an Application is timely filed, then the following procedures shall govern:

a. **Terminate Application.** Applicant and/or HASP may terminate the Application. HASP will retain the Application Fee and any Supplemental Application Fee.

b. **Defend Protest.** If Applicant elects to proceed with its Application, Applicant shall, within 15 days of receiving notice from HASP that a protest has been filed, request that HASP defend the protest. Applicant shall be responsible to pay to HASP all of the costs and fees, including attorney and engineering fees, incurred by HASP in defending against the protest ("Protest Fees and Costs"). Simultaneous with the request that HASP defend against the protest, Applicant shall pay to HASP a deposit equal to HASP's estimate of the Protest Fees and Costs, or as otherwise agreed between HASP and Applicant. Applicant will pay to HASP from time to time any Protest Fees and Costs required by HASP to defend against the protest. Following the conclusion of the protest proceedings, HASP will refund to Applicant all unspent Protest Fees and Costs received from Applicant.

c. **Decision by Judge.** In the event that the Water Court upholds the protest to an Application or imposes terms and conditions upon Applicant and/or HASP that either Applicant or HASP deem to be objectionable, then either Applicant or HASP shall have the right to terminate the Application. In the event of termination, HASP shall retain the Application Fee, the Supplemental Application Fee, if any, and the spent Protest Fees and Costs and both parties will be relieved of all further rights and obligations. In the event that the Water Court denies the protest, then Applicant shall be obligated to close within 30 days of the Water Court's judgment becoming a final, unappealable order.

7. **Purchase and Lease Prices for Augmentation Water.** The purchase and lease prices of augmentation water to be provided for a Participating Diversion will be determined by HASP based upon HASP's rate schedule in effect at the time an Application is submitted. The rate schedule is posted on www.haspwater.com.

8. **Augmentation Certificate.** The volume of augmentation water required to be provided by HASP for Applicant's Participating Diversion will be represented by an Augmentation Certificate issued by HASP. An Augmentation Certificate will be issued to

Applicant only upon the conclusion of all of the Application and approval proceedings required under the Augmentation Plan. Until an Augmentation Certificate has been issued by HASP and accepted by Applicant, Applicant shall have no right to receive augmentation water or any service from HASP. The Augmentation Certificate will state whether the water is to be provided by HASP on a perpetual basis or for a lesser term. Each Augmentation Certificate issued by HASP for a Participating Diversion may contain additional terms and conditions that specifically relate to the Participating Diversion. HASP's obligation to provide water to Applicant is expressly subject to any additional terms and conditions as set forth in the Augmentation Certificate.

A. **As an Appurtenance.** The Augmentation Certificate shall be appurtenant to and a covenant running with the title of the Participating Diversion and the real property owned by Applicant, which is served by Applicant's Participating Diversion ("Applicant's Property"). The Augmentation Certificate for a perpetual water supply will be recorded in Park County.

i. Applicant shall be required to provide prior written notice pursuant to paragraph 22 herein to HASP of any transfer of the Augmentation Certificate, all or a portion of Applicant's Property and the Participating Diversion. HASP shall within 7 days provide written notice of its approval of the transfer of the Augmentation Certificate, if such transfer is with all of Applicant's Property and the Participating Diversion. An Augmentation Certificate may not be transferred separate and apart from Applicant's Property or a portion thereof and/or the Participating Diversion absent the express written consent of HASP. If HASP's written consent is required, then HASP shall within 10 days following the next quarterly joint meeting: a) approve the transfer; b) approve the transfer with conditions; or c) deny the transfer. HASP shall have no obligation to recognize a transfer of Applicant's Property or a portion thereof or an Augmentation Certificate except upon compliance with this provision.

ii. To transfer the Augmentation Certificate to the new owner of Applicant's Property, Applicant shall execute the Assignment, which is attached to each Augmentation Certificate. Applicant shall provide the original executed Assignment and Augmentation Certificate to HASP along with a copy of the deed conveying title to Applicant's Property. HASP shall charge a transfer fee for the transfer of the Augmentation Certificate in the HASP records according to the rate schedule then in effect. A copy of the rate schedule is posted on www.haspwater.com. Upon receipt of the executed Assignment, the original Augmentation Certificate, a copy of the deed and payment of the transfer fee, HASP will cancel the old Augmentation Certificate, issue a new Augmentation Certificate to the transferee and record the Augmentation Certificate in the appropriate county if it represents a perpetual water supply.

B. **As a Right to Use Water.** Any Augmentation Certificate shall be expressly subject to and incorporate these Rules, the terms and conditions of the Augmentation Plan, the Application, the Augmentation Certificate, and the laws of the State of

Colorado. Applicant acknowledges receipt of a copy of the Augmentation Plan and agrees to be bound by the terms and conditions of the Augmentation Plan. The Augmentation Certificate shall represent a proportionate, undivided interest in the rights, benefits and obligations of then Augmentation Plan in the amount of water set forth in the Augmentation Certificate. The Augmentation Certificate does not convey ownership of a water right to Applicant or title to a water right. Rather, the Augmentation Certificate represents a right of use of the augmentation water stated therein for the term set forth in the Augmentation Certificate. In the event that Applicant uses less than his share of augmentation water as stated in the Augmentation Certificate in a given year, the excess will not carry over to Applicant's benefit to any future year and will be retained by HASP for any purposes.

C. **For a Specific Amount and Beneficial Use**. Applicant shall use the water only for augmentation of the depletions from a Participating Diversion expressly approved by HASP and for no other purposes. Applicant agrees not to change the type or amount of use indicated in the Application without the prior approval of HASP or without obtaining approval of the State Engineer for amendment of any well permit. Applicant shall be required to file a new Application in the event of any change of use or addition of a new proposed Participating Diversion. The augmentation water provided by HASP augments only the depletions from a Participating Diversion, and return flows, if any, from the use of the water must return to the stream. Applicant shall not take any action to intercept or interfere in any way with the accrual of return flows to the affected stream.

9. **Closing**. The Parties shall conduct the closing at the HASP offices, unless otherwise agreed by HASP.

A. **HASP**. At closing, HASP shall execute the Augmentation Certificate, representing the amount of augmentation water allocated to Applicant and the Participating Diversion and a proportional interest in the Augmentation Plan. If the Augmentation Certificate represents a perpetual water supply, then HASP will record the Augmentation Certificate in the appropriate county at Applicant's expense, and the recording fee will be included within the Application Fee. Upon return to HASP of the original, recorded Augmentation Certificate, HASP will deliver by U.S. Priority Mail, with a tracking number, the original Augmentation Certificate to Applicant's address as listed in the Application.

B. **Applicant**. At closing, Applicant shall pay to HASP: i) the Purchase Price; ii) the Supplemental Application Fee, if any; iii) the first Annual Fee described in paragraph 10.A. herein; iv) the cost to replace Post-Pumping Depletions for a non-permanent Participating Diversion, if any, described in paragraph 4.B. herein; v) the cost of the Storage Vessel Plan, if any, described in paragraph 5. herein; vi) the costs associated with purchasing, installing and the initial fill of the Storage Vessel, if any, described in paragraph 5.A. herein; vii) the rental fee and cost of the initial fill associated with the Storage Reservoir, if any, described in paragraph 5.B. herein; and viii) any other costs, if any, incurred by HASP during the Application process. At closing, Applicant shall

also convey to HASP an easement for the Storage Vessel, if applicable, as described in paragraph 5.A. herein. HASP may also require Applicant obtain lienholder consent to the Applicant's Property being encumbered by the Augmentation Certificate and these Rules. Payments owed to HASP equal to or less than \$50,000.00 may be made by cash or certified funds. Any payments in excess of \$50,000.00 must be wire transferred directly to HASP's bank account.

C. **Applicant and HASP.** If the Augmentation Certificate represents a temporary water supply, then Applicant and HASP shall also execute a lease specifying any additional terms and conditions of HASP's provision of water to the Applicant.

10. **Fees and Costs.**

A. **Annual Water Administration Fee.** All Applicants, upon approval of a Participating Diversion and admission into the Augmentation Plan will be required to pay an annual water administration fee (the "Annual Fee"), which Annual Fee may be adjusted from time to time at the discretion of HASP. The initial Annual Fee shall be prorated on a monthly basis from the date of approval of the Application by HASP through October 31 of that year (i.e., the end of the water year). The initial Annual Fee shall be due and payable at the closing and issuance of the Augmentation Certificate as provided in paragraph 9 herein. Thereafter, the Annual Fee shall be determined annually by HASP and shall be paid to HASP on or before November 1 of each year which is the first day of the new water administration year. HASP will bill each customer the Annual Fee on approximately October 1 of each year but the Applicant will be required to pay the Annual Fee even if the bill is not received by the Applicant.

B. **Reimbursement for Costs.** If HASP must deliver water to a Storage Vessel or a Storage Reservoir for release to a senior water right due to the location of Applicant's Participating Diversion, Applicant shall within 30 days of receipt of an invoice reimburse HASP for all reasonable costs, including costs of trucking water to be delivered to the affected reach or to the Storage Vessel or Storage Reservoir.

11. **Removal of Participating Diversion from HASP or Reduction in Augmentation Water.** Any request to remove a Participating Diversion or to reduce the amount of augmentation water dedicated to a Participating Diversion after the Participating Diversion has been included in the Applicable Augmentation Plan, shall occur in accordance with the Augmentation Plan and these 2020 Amended and Restated Rules and Regulations. Whether the Applicant requests the removal or reduction or HASP removes the Participating Diversion, Applicant shall reimburse to HASP, HASP's attorney's fees, and administrative costs and expenses associated with processing the removal or reduction from the Applicable Augmentation Plan. If Applicant fails to reimburse HASP such fees, costs, and expenses, then HASP shall have a lien upon Applicant's Property regardless of ownership or subsequent ownership of Applicant's Property, the Augmentation Certificate and the Participating Diversion pursuant to paragraph 17 herein.

12. **Cooperation with State Engineer.** These Rules, the Application and any information necessitated by the Augmentation Plan shall be provided by HASP to the State or Division Engineer and all of the parties to the Augmentation Plan proceedings for a determination of an applicable decision of the State or Division Engineer, such as an issuance of a well permit. Applicant shall promptly provide all information necessary to HASP for the State or Division Engineer to make a required determination under Colorado law.

13. **Measurement and Reporting.** All Applicants are required to install totalizing flow meters on each Participating Diversion at Applicant's sole cost and expense. All Applicants shall provide HASP with records of their monthly metered diversions by electronic mail or as otherwise directed by HASP. Non-residential Applicants shall also submit such other documentation regarding their monthly uses as is required by HASP and the Applicable Augmentation Plan. All water use data shall be provided no later than 10 days after the end of each month.

A. Any Applicant that fails to provide metered records will receive a notice from HASP within 24 days of the end of the month. If Applicant fails to provide metered records after the first notice, Applicant will receive a second notice from HASP within 38 days of the end of the month that any diversions are out-of-compliance with the Rules and must immediately cease. In addition, HASP will commence the procedures detailed in paragraph 17 herein to remove the Participating Diversion from the Applicable Plan for Augmentation.

B. If Applicant's reporting shows that Applicant's water uses exceed the amount of water identified in Applicant's Augmentation Certificate, then Applicant agrees that HASP may either: require Applicant to purchase or lease more augmentation water; or require Applicant to reduce its depletions from its Participating Diversion.

C. Applicant shall permit access to representatives of HASP or State or Division Engineer upon Applicant's property as described in paragraph 21 herein. The meter or recording device will not be required to be outside of the warm structure; however, Applicant agrees to allow immediate access for inspection upon request by HASP or the State of Colorado.

D. Applicants must have their meters tested and certified by a qualified well tester upon installation at Applicants' sole cost and expense. All meters must be tested and certified every 10 years following the first certification. If a well is not working properly, HASP shall provide Applicant with notice that the meter must be fixed or replaced within 63 days. If the meter is not fixed or replaced within such 63 day period, then Applicant will receive a notice from HASP that any diversions are out-of-compliance with the Rules and must immediately cease. In addition, HASP will commence the procedures detailed in paragraph 17 herein to remove the Participating Diversion from the Applicable Plan for Augmentation.

E. Outdoor water use must be separately metered and reported to HASP. If a sprinkler system or drip system is employed from the main dwelling to the irrigated area, a meter must be placed at the split in the water line. There will be only one outside spigot for each household. Additional spigots will be blocked and sealed. HASP shall receive credit for all lawn irrigation return flows resulting from outdoor irrigation use. Applicant shall not interfere with the ability of return flows to naturally migrate to the stream, such as trenching.

14. **Compliance with Existing Well Permit.** Admission into the Augmentation Plan will not validate any expansion of use that may have occurred for Applicant's Participating Diversion and does not mean that each well is operating in compliance with its permit or decree. If the actual water uses of a Participating Diversion exceed the uses allowed by the permit, Applicant is required to obtain a new permit for the Participating Diversion.

15. **Conditions of Water Use.**

A. **Indoor Use Only.** HASP reserves the right to restrict or curtail all water use to indoor domestic uses only, under the following conditions:

i. If HASP and State and Division Engineers project that the quantity of augmentation water available to HASP may be inadequate to supply the demands of all participants in the Augmentation Plan in any year or portion thereof.

ii. If a valid call for water above any of HASP's storage structures cannot be met by the terms of the Augmentation Plan.

iii. If a valid call for a CWCB instream flow water right necessitates curtailment of all or part of diversions.

B. **Reduced Indoor Use.** In the event hydrologic conditions such as drought cause HASP to experience a shortage of expected augmentation water during any year, and after all uses except indoor domestic uses have been curtailed, HASP shall have the authority to require all participants in the Augmentation Plan to reduce their indoor domestic uses of water as necessary; provided, however, that a call by HASP to reduce indoor domestic uses as provided herein shall apply equally for all indoor water users who are augmented under the Augmentation Plan.

16. **Legal and Physical Supply Limits to Augmentation Plan.**

A. Applicant recognizes that HASP's ability to provide replacement water to Applicant's Participating Diversion is subject to many factors beyond HASP's control. HASP's ability to provide replacement water to Applicant's Participating Diversion is dependent on many factors, including but not limited to: i) the terms and conditions of the Augmentation Plan; ii) legal and physical availability of other water rights now or in the future acquired by HASP; iii) the natural supply of water in the Arkansas River

and its tributaries; iv) and water administration by the Division Engineer. Applicant expressly agrees that by submitting an Application to HASP for inclusion into the Augmentation Plan and by acceptance of an Augmentation Certificate, HASP shall not be liable to Applicant in any manner whatsoever for any damages, claims, liabilities, personal injury or property damage that directly or indirectly results from HASP's failure or inability to deliver replacement water for Applicant's Participating Diversion.

B. HASP shall not be not responsible for operating or maintaining Applicant's Participating Diversion and has no responsibility regarding the physical supply of water for the same. Applicant's inability to divert water for any reason, including but not limited to a lack of physical water supply, a lack of a legal water supply, a lack of power, or problems with the Participating Diversion, do not relieve a Participating Diversion of the obligation to pay the Annual Fee or any other applicable fees or costs.

C. HASP shall have the right to supply the augmentation water from any temporary or permanent source or supply owned or controlled by HASP, now or hereafter acquired by HASP.

17. **Remedies for Applicant's Noncompliance.**

A. HASP may use any and all remedies available under Colorado law to obtain payment from Applicant or any owner or subsequent owner of the Applicant's Property in the event Applicant fails to make timely and appropriate payment of the Annual Fees, reimbursements or any other fee, cost or assessment levied by HASP. Specifically, HASP may:

- i. Declare Applicant to be in default and follow the procedure in paragraph 17 to remove Applicant's Participating Diversion from the Augmentation Plan; or
- ii. Allow the Participating Diversion to remain in the Augmentation Plan and HASP shall have a lien upon Applicant's Property, the Augmentation Certificate and the Participating Diversion pursuant to pursuant to ¶ 16.C.

B. HASP may use any and all remedies available under Colorado law to obtain compliance with these Rules, including but not limited to compliance with the requirement to make timely and appropriate payment of the Annual Fees, reimbursements or any other fee or assessment levied by HASP. Specifically, HASP may withhold augmentation water and cancel an Augmentation Certificate for failure to comply with these Rules. Upon withholding augmentation water and cancelling an Augmentation Certificate, HASP will notify the State Engineer that Applicant's water use is not in compliance with state law. The State Engineer may issue a cease and desist order prohibiting any further use of water by Applicant. If HASP cancels an Augmentation Certificate, Applicant shall immediately cease and desist from diversion of water from a Participating Diversion even if the State Engineer does not issue a

cease and desist order, unless the Participating Diversion is in priority or is properly serviced by an alternate augmentation plan. Applicant will not receive any reimbursement from HASP of any fees, costs, reimbursements or payments, including the purchase price, paid by Applicant for the cancelled Augmentation Certificate.

C. HASP shall have a lien upon Applicant's Property, the Augmentation Certificate and the Participating Diversion in the amount of the unpaid fees, reimbursements, assessments or any amounts due by Applicant. Pursuant to § 37-45-132, C.R.S, the lien shall remain as an encumbrance on Applicant's Property and the Augmentation Certificate until paid in full. HASP shall not be required to commence foreclosure of the lien within any statute of limitations in order to preserve or renew the lien. Interest on all unpaid fees, cost or assessments shall accrue interest at 12% per annum, compounded annually. In addition to the principal and interest owed, HASP shall be entitled to collect from Applicant all attorney fees and costs incurred as a result of Applicant's default in payment of an Annual Fee, reimbursement, or any fees or costs owed by Applicant to HASP as provided herein. At its discretion, HASP may foreclose on the lien against Applicant's Property, the Augmentation Certificate or both.

18. **Procedure to Remove Participating Diversion with Lagged Depletions from the Augmentation Plan.** In the event that Applicant's Participating Diversion is a structure, such as a well, that has Post-Pumping Depletions that must be replaced for a time after the diversions from the Participating Diversion have ceased, replacements of Post-Pumping Depletions shall occur in accordance with the Augmentation Plan and such replacements may continue for up to 13 years after the Participating Diversion has been removed or has withdrawn from the Augmentation Plan. The procedure for removing the Participating Diversion is outlined in the Augmentation Plan.

19. **Cessation of Use.** Applicant must notify HASP if Applicant intends to temporarily or permanently cease the use of a Participating Diversion for any period longer than three consecutive months.

20. **Term – No Merger.** Unless terminated or amended by HASP, these Rules shall be perpetual. The obligations set forth in these Rules shall survive the closing and shall not be merged with the Augmentation Certificate.

21. **Authorization to Access Applicant's Property.** Acceptance of an Augmentation Certificate by Applicant shall constitute express authorization by Applicant to representatives of HASP and/or the State and Division Engineer to access Applicant's Property at all times to make meter readings, verify meter readings submitted by Applicant, verify irrigated area information supplied by Applicant, verify the nonuse of any well or other structure is no longer covered by the Augmentation Plan, or any other purpose associated with confirming compliance with the Augmentation Plan or these Rules.

22. **Notice.** Any notice required or permitted by these Rules shall be in writing and shall be deemed to have been sufficiently given for all purposes if: a) sent by U.S. Priority Mail with a tracking number, postage and fees prepaid, addressed to the party to whom such

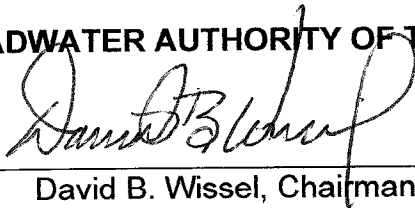
notice is intended to be given at the HASP address and the address set forth in the Application, the Augmentation Certificate or the Transfer of HASP Augmentation Certificate, or at such other address as has been previously furnished in writing to the other party or parties; or b) sent by electronic mail addressed to the party to whom such notice is intended to be given at the email address set forth in the Application, the Augmentation Certificate or the Transfer of HASP Augmentation Certificate, or at such other email address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail or sent by electronic mail.

23. **Governing Law.** These Rules shall be governed by the laws of Colorado. These Rules are entered into pursuant to § 37-45-131, CRS.

Date of Rules and Regulations of Headwater Authority of the South Platte: June 12, 2020.

HEADWATER AUTHORITY OF THE SOUTH PLATTE

By:



David B. Wissel, Chairman