

Mr. Andy Stine, Director  
CDE Office of Capital Construction  
1580 Logan Street, Suite 310  
Denver, CO 80203

**RE: School District Formal Response to Cure Notice Mandated for BEST Funding**

Dear Director Stine:

Please accept this letter as a formal response to the Notice of Cure Period/BEST Project issued by the Colorado Department of Education on March 6, 2020. The school district wishes to clarify and resolve all matters addressed under the First and Second Demands for Cure through this formal response, and the additional letter by Lee Johnson and a VE Report from FCI.

In addressing the First Demand for Cure and Sierra Grande's design-stage obligations to satisfy the mandated request, the school district's plan for satisfying this request is as follows.

**First Demand for Cure: Response / Plan**

Demand: Sierra Grande does not currently have a plan to provide the building with enough domestic water to meet its needs.

Research / Studies:

- The school district tested current domestic well which is over 60 years old (not paid for by BEST) and initiated studies of legal water rights and overall school water needs
- Through studies and calculations by design team engineers it has been determined the school water needs at 2,000 gallons daily in domestic use
- Through studies and calculations by design team engineers it has been determined the school water needs at 250,000 gallons weekly in irrigation use for twenty-six weeks annually.
- Through studies and calculations by design team engineers it has been determined a new well is needed to address the instability of current well, rate of flow, legal status, future water needs, and limit additional storage capacity
- Through studies and calculations by design team engineers it has been determined the total school water needs to exceed 20 acre feet on an annual basis
- The school district received information that in 2016, Blanca Potato successfully transferred a portion of the irrigation water in a nearby well for use in their potato warehouse/plant. In doing so, Blanca Potato created an excess in their water portfolio and after hearing of the school district's needs approached the superintendent and have offered to sell the school district the excess water credits which have already been approved for transfer through water court. Blanca Potato has offered to sell up to 30 acre feet of water at \$2,500 an acre foot for a total cost of \$75,000.
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Response / Plan:

1. The school district retained the services of a qualified water rights attorney to represent the school district in not only developing a long-term water plan, but to also assist in the evaluation and negotiation of water acquisition.

2. The school district looked at various options/methods to purchase additional water, including purchasing additional water from Fort Garland Water and Sanitation, purchasing water rights and abandoning the well through case change, and purchasing water credits and transferring those credits to a new well at the school district site.
3. The school district retained water attorney, Lee Johnson of Carlson, Hammond & Paddock reviewed the water decree and committed due diligence to ensure the offer and legal ability to purchase the water and transfer its use is achievable.
4. The Board of Education approved the solution of purchasing water credits from Blanca Potato, LLC for 30 acre feet of water through the use of transfer credits at a total cost of \$75,000
5. The water attorney, Lee Johnson addressed the order of actions and timeline in the overview letter (supporting document) to proceed with this solution.
6. The school's attorney Bruce Anderson in collaboration with Lee Johnson is developing a purchase agreement with Blanca Potato, LLC for the sale of up to 30 acre feet of water pumping credits to be transferred to the school district's well for domestic/irrigation purposes (purchase closing estimated at 45 days)
7. Upon closing the purchase, file an application with water court for an alternate point of diversion of the purchased water to the new well on district property at a flow rate at 300 gallons per minute.
8. Parallel to filing an application for alternate point of diversion, the water attorney will work with engineers to file a Substitute Water Supply Plan (SWAP) with the Colorado State Engineer (approved 60-90 days after filing anticipated approval Fall of 2020)
9. The district will continue to retain Attorney Lee Johnson who will pursue the final water decree through water court with an application for transferring water to the school site and an augmentation plan (application filed end of June or early July) which could take up to 2 years before a final decree is issued. Additionally, we have selected a Water Resource Engineer, Matt Welsh of Element Water to support the development of the water court process and to work with Lee Johnson on the augmentation plan and the permitting of a new well. He has already been engaged in the process in working with Diversified Consulting Services and Lee Johnson. The Board of Education will take action on the agreement with Element Water on April 29, 2020. Once the plan is filed with the court, the school district will have the right to operate under the provisions of the plan while the paperwork makes its way through the process. We have been advised the risks of the application not being approved has been significantly reduced due to the preceding decree and transfer.
10. The school district will acquire permits and drill/develop a new well in the fall of 2020.
11. The school district has established a budget of 1 million dollars to address the water issues, including meeting the design obligations listed in the cure notice. Any and all other costs of engineering and construction will be funded through the other budget allocations within the Grant.

Water Plan Budget:

- Attorneys and Water Resource Engineering Services	100,000.00
- Water Acquisition of 30 acre feet (\$2,500 an acre foot)	75,000.00
- New Well (drilling and development)	150,000.00
- New Storage Tanks (driven by fire flow)	500,000.00
- New Treatment and Distribution	150,000.00
- Unallocated Contingency	25,000.00

In addressing the Second Demand for Cure and Sierra Grande's design-stage obligations to satisfy the mandated request, the school district's plan for satisfying this request is as follows.

### **Second Demand for Cure: Response / Plan**

Demand: Sierra Grande applied for and received financial assistance for a project of 84,389 square feet at an all-in construction cost of no more than \$39,743,777.53. The State demands that Sierra Grande reduce the scope of the project to the agreed-upon size and budget before moving forward to construction.

Processes Currently Taking Place:

- At present time the project is slightly under budget with the GMP goal and there has been no allocation of the Project Hard Cost Contingency (\$2,782,064.43), and appropriate and customary contingency for design/bidding and construction within the GMP Estimate
- Cunningham Group has submitted the "foundation package" of permit drawings to the State for review
- CM/GC plans to break ground in the next couple weeks
- Diversified Consulting Solutions is in the process of bidding the abatement and demolition scopes of the project and the school district should have a proposal to evaluate before May 1<sup>st</sup>.

Response/Plan:

1. The school district in collaboration with the Owner Representative Diversified Consulting Services established a budget goal for the GMP at \$38,903,777.
2. An adjusted DD Estimate from March 25th for the work which includes a reduction in Scope, accepted Value Engineering items and potential alternates lowered the budget to \$38,869,545 which is \$34,232 below the GMP budget goal. The VE Report (supporting document) outlines such budget reductions and additions which assisted the school district in bringing the project within the prescribed budget.
3. Diversified Consulting Services is currently working with the Cunningham Group and FCI Construction in finalizing a Guaranteed Maximum Price Amendment (completed in the next few weeks).

### **School District General Response: Additional Information to Consider**

The school district has placed due diligence in working with professional consultants. This has been especially tough to manage for everyone during the COVID-19 pandemic. In addition, the school district has shifted gears to remote learning which has made it even more difficult to keep the school project moving at full speed. In spite of the distractions, the school district is managing the many different moving parts and the superintendent, E-DAG, Board of Education, along with professional consultants are moving the project forward and are currently in-line with the Master Project Schedule.

It should be noted that it is the perception of the school district that much of the communication directed from CDE has been from a punitive nature and there has really been little assistance and support communicated from field representative Meg Donaldson to the district. It should also be noted that CDE has been invited to attend planning meetings and become as involved in the process as you feel comfortable with. To our understanding, Owner Representative John Sattler reviewed the detailed budget

track with Meg Donaldson, demonstrating how the entire grant budget was being allocated and adjusted to meet the unforeseen conditions of the water issues. Perhaps moving forward, it would create a better system of communication if CDE addressed design obligations through greater engagement with the superintendent in a more proactive approach rather than communicating through a punitive nature.

In closing, I trust this responses and plans for cure provided will meet your needs and keep the Grant funds flowing for the important and necessary work that must be completed. Thank you for all your assistance in bringing the Notice of Cure to a resolution.

Sincerely,

Darren Edgar  
Superintendent of Schools, Sierra Grande School District R-30