



August 14, 2014

Via Electronic Mail

Scott A. Verhines, State Engineer
State of New Mexico
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Mike Hamman, Area Manager
U.S. Bureau of Reclamation
mhamman@usbr.gov

RE: Middle Rio Grande Conservancy District's Water Bank

Dear State Engineer Verhines and Area Manager Hamman:

I am writing to express our concerns regarding the continued operation of the Middle Rio Grande Conservancy District ("District's") Water Bank and request that your agencies rein in the District's illegitimate water uses that impact both flows in the Rio Grande and deliveries to senior water rights in the Middle Rio Grande.

As you may recall, both the State of New Mexico and the U.S. Bureau of Reclamation ("Reclamation") have expressed numerous reservations with regard to the District's Water Bank. Such misgivings are understandable given the lack of oversight and accountability generally within the Middle Rio Grande and particularly in light of the District's continued actions that suggest it believes that it is above the law.

Federal and state agencies can no longer look the other way while the District increases its use and depletions within the Middle Rio Grande. The Water Bank—as it exists without the necessary approvals by the State and Reclamation—continues to serve as an additional stress on the river and threatens not only the river's health, but also uses water that could otherwise benefit the six Middle Rio Grande Pueblos, pre-1907 water rights holders, the Bosque del Apache and Valle del Oro National Wildlife Refuges, and serve to help the State meet its obligations under the Rio Grande Compact.

We call on the State and Reclamation to provide strict oversight over the District's Water Bank and ask the agencies to use their respective authorities to shut down the Water Bank until such a time that the District provides the necessary assurances to the agencies and the public that such use is not contrary to the public welfare, the needs of the river and the conservation of water within the state.

I. Water Bank Operations Must Cease Unless Authorized by the State and Reclamation

In 1997, prior to its existence, both the State and the Reclamation raised substantive concerns about the operation of the District's Water Bank in the Middle Rio Grande. In a letter dated July 28, 1997, State Engineer Turney refused to "formally sign off on the Water Bank" citing confusion and uncertainty

over the purpose of the Water Bank and as to the assets of the Bank. *See* Letter from State Engineer dated July 28, 1997, included as **Attachment A**. The State Engineer emphasized that in order for it to authorize the Water Bank it would need certain information and assurances that the State could meet its various obligations in the basin, including that: (1) only water rights perfected by actual beneficial use would be included as the assets of the Water Bank; (2) no greater amount of water would be claimed for the Water Bank than was actually applied to irrigated acreage within the District during any one calendar year; (3) formal applications would be submitted to the State if a change in point of diversion from surface to groundwater was sought; (4) changes in location of lands to be irrigated must be provided to the State and Reclamation; (5) separate accounting must be made for San Juan-Chama water; and (6) proof of beneficial use (“PBU”) must be submitted prior to receiving approval of the Water Bank. *Id.* Most importantly, the State Engineer stressed “that the [District’s] water use inventory for the Water Bank would provide a ready means for identifying all lands on which water rights have been perfected under state law and would provide the necessary factual basis for the PBU.”

Despite this clear direction at the time by the State Engineer, the District refused to submit PBU to the State providing evidence of lands where the District’s water rights have been beneficially used historically for irrigation. The original permit received by the District—subsequently transferred to Reclamation—required the filing of PBU by August 20, 1935. The District and/or Reclamation have requested numerous extensions of the deadline for filing such PBU over the past 80 years. As of the date of this letter, the District has still not provided PBU to the State. In an unadjudicated river system, PBU serves the critically important role of providing parameters by which the District’s water rights can be evaluated to ensure—at least at a preliminary level—that the District’s water use does not increase the overall depletions to the river basin.

The fact that the District’s water rights have not been proven up through PBU remains even more consequential today based on the composition of the assets of the Water Bank. Although the Water Bank rules include a provision for individuals to deposit their pre-1907 water rights into the Water Bank, “no person or entity has ever deposited water into the Water Bank.” *See* Letter dated June 18, 2014 from Subhas K. Shah to WildEarth Guardians. Thus, the District’s unquantified and unapproved water rights serve as the basis of the Water Bank. Without a showing that these rights were used historically and to what extent, any operation of the Water Bank will create entirely new depletions to the river.

The State and Reclamation cannot continue to allow operation of the Water Bank *under the assumption* that the bank’s water is based on some speculative amount of water associated with formerly irrigated acreage within the District. The State clearly indicated in 1997 that “[o]nce the PBU is received and approved, [the State] will issue and appropriate license.” *See* June 28, 1997 Letter. We request that the State Engineer permanently curtail deliveries under the Water Bank until such time that the State conducts a critical analysis of the Water Bank policies and assets—based on the filing of PBU by the District—and decides whether to approve the Water Bank.

Allowing the continued operation of the Water Bank, prior to receiving the assurances requested by the State in 1997: (1) undercuts the ability of the District, Reclamation and the Pueblos to store and deliver water within the basin, both to meet the needs of senior water right holders and meet the agencies’ obligation to endangered species, (2) threatens the ability of the State of New Mexico to ensure compliance with the Rio Grande Compact, and (3) potentially increases depletions in the basin further dewatering the already parched Rio Grande thereby threatening the survival of native species.

II. District's Illegal Water Bank Violates Operating Parameters of Revised Rule 23

A. Water Bank Revised Rule 23

Notwithstanding the fact that it never received the permission or approval of either the State or Reclamation, the District created its Water Bank in the late 1990's and established a set of guidelines to determine who could utilize the Water Bank and under what conditions. On June 25, 2012, the District adopted Water Bank, Revised Rule 23 to govern the operation of the Water Bank "to support beneficial use and distribution of water for agriculture and related purposes within the Boundaries of the Conservancy District, to promote the welfare of the Conservancy District and of all the inhabitants and constituents thereof..." See Statement of Purpose, Section 23-2.00(A), Water Bank, Revised Rule 23, included as **Attachment B**. This commitment includes supporting the public welfare and the conservation of water within the state. *Id.*

To this end, the policy recognizes that all Water Bank leases have "a priority date *junior* to all other uses of Conservancy Water Rights and to all other water delivered via the MRGCD infrastructure, including privately held water rights" in the basin (e.g. Pueblo senior rights, pre-1907 water rights, rights claimed by the District and San Juan-Chama water rights). See Water Bank Operations, Section 23-4.00(G) (emphasis added). Water Bank users lease water from the District in order to irrigate lands that do not have water rights. Therefore, to ensure equitable distribution of water amongst water users, Rule No. 23 specifically provides:

Water use under all Water Bank water leases, without exception, shall be automatically curtailed when natural flows in the river fall below the amount necessary to satisfy all irrigators and water allocated for storage in El Vado Reservoir falls below a specified amount and when supplemental water available to the Conservancy District for use in a particular year is insufficient, as determined by the Conservancy District staff in accordance with the attached appendix of stream flow and storage volume.

Id. Thus, those who lease water from the Water Bank remain the last in line to receive any share of the water from the Rio Grande and must be curtailed if certain conditions exist.

The District has not only operated the Water Bank when the minimum thresholds have not been met, but has also provided false information to the public regarding its compliance with these thresholds. The following two examples illustrate the District's ad hoc operation of the Water Bank despite the clear standards it has set out for curtailment.

B. The District Operated the Water Bank from July 9 to July 25 Despite Conditions that Warrant Curtailment

Guardians calculated the "natural flows" in the Rio Grande for the month of July 2014 according to the Appendix to Water Bank, Revised Rule 23. See Table 1, included as **Attachment C**. Figure 1 compares the calculated "natural flow" (orange line) to the Water Bank threshold standards (blue line):

**Figure 1. Water Bank, Revised Rule 23:
Calculated “Natural Flow” v. Threshold Standards**

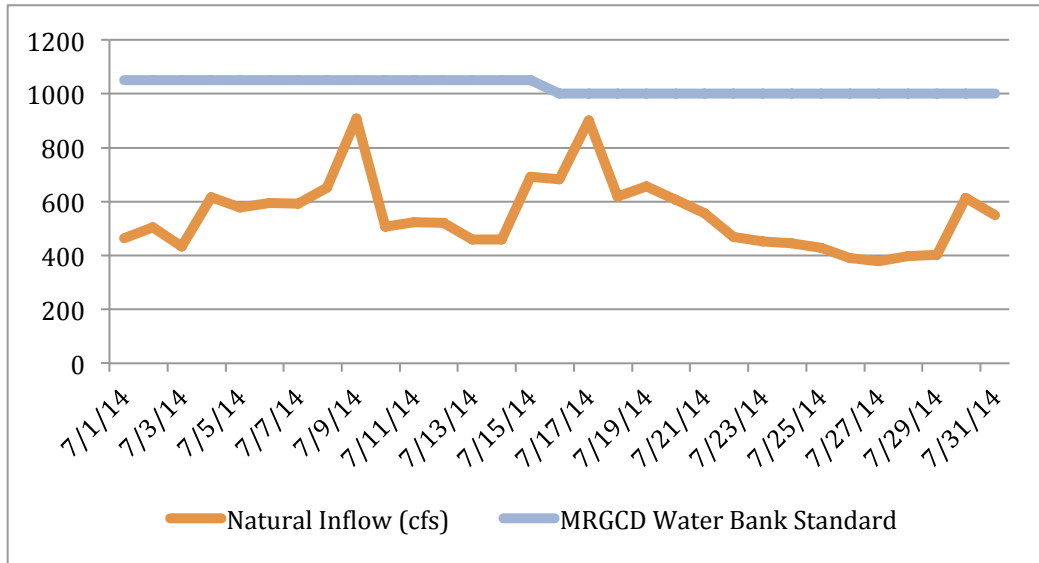


Figure 1 clearly shows that the calculated “natural flow” did not meet the threshold standards at any point during the month of July. In order for the District to provide deliveries to Water Bank leases, the threshold standards must be met or exceeded. However, despite this fact, the District issued a directive authorizing deliveries to Water Bank leases on July 9. The deliveries continued until July 25, 2014 when the District finally issued a memorandum curtailing diversions. *See* Memorandum re: Curtailment of MRGCD Water Bank Deliveries dated July 25, 2014, included as **Attachment D**.

Also troubling, the District provided misleading information to the public regarding the operation and subsequent curtailment of the Water Bank deliveries. On July 18, 2014, the District included the following paragraph in its “Farmer’s Forecast” on its website:

Deliveries to Water bank users were resumed on the evening of July 9. Although we were still well below the upstream flow thresholds, there had been numerous local rainfall inputs in the MRG valley, and most service areas were reporting extra water available. A few days later the storms moved farther north, and *upstream flows rose above the minimum flow thresholds*, so Water Bank deliveries continue to be allowed. Although this could change at any time, we are thankful that the storms have made this possible.

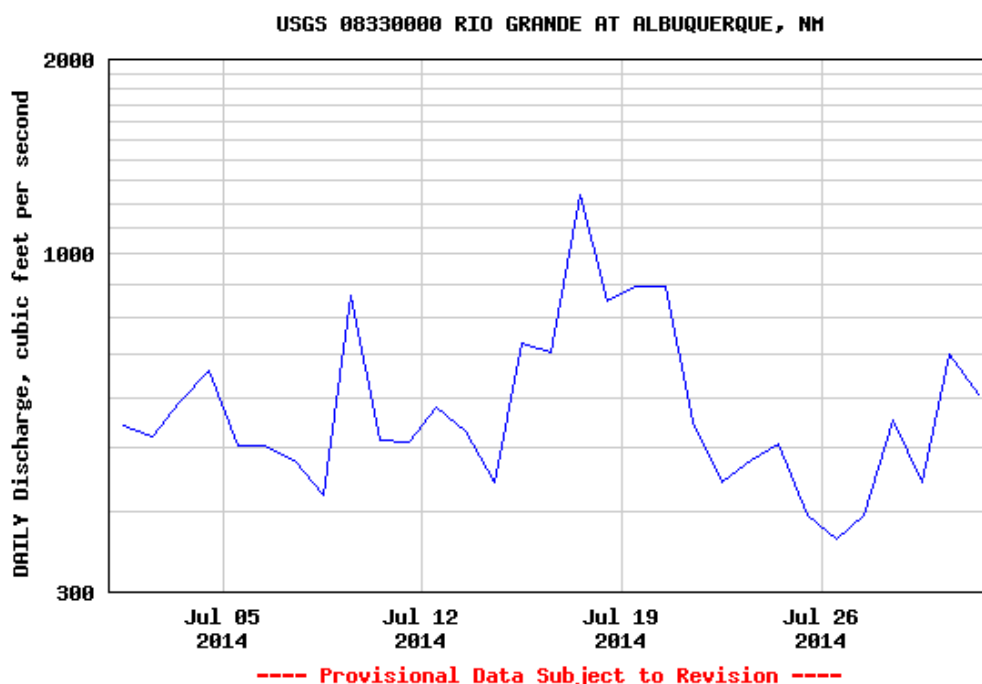
See Farmer’s Forecast for July 18, 2014 at www.mrgcd.org (emphasis added), included as **Attachment E**. The District deleted the above-quoted paragraph from its website on July 25, 2014 upon issuing its curtailment order. Despite the patently false assertion on the District’s website—that upstream flows rose above the minimum flow thresholds—the threshold flow requirements were not met anytime from July 9 to July 25.

Further, it does not appear that Water Bank deliveries were permissible based on the level of storage by the District. At the time of the curtailment notice on July 25, the District admitted that its

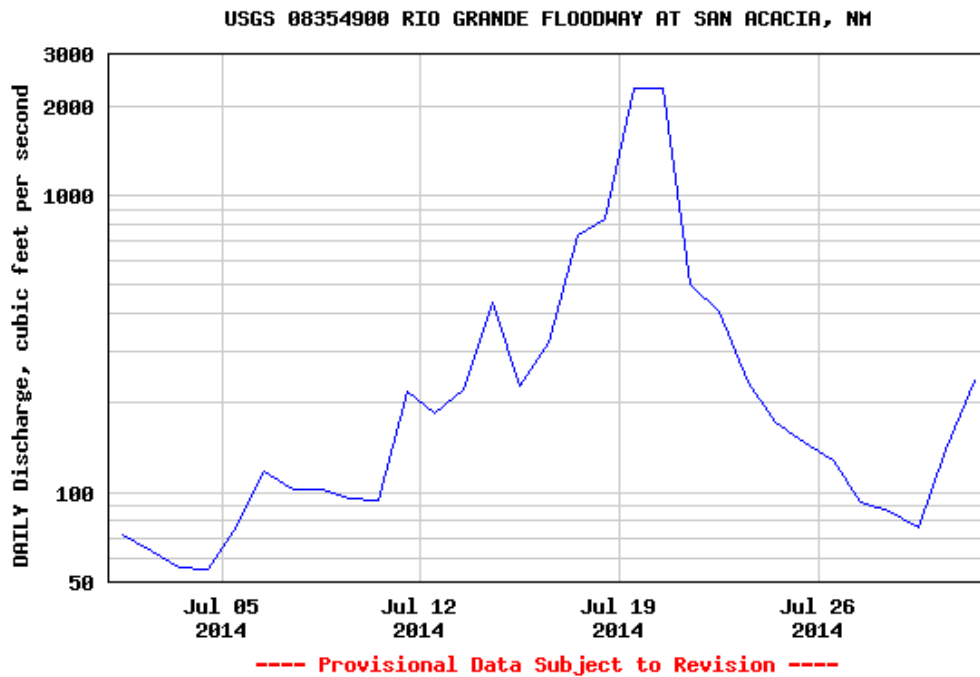
storage of supplemental water in El Vado and Abiquiu Reservoirs did not meet the threshold standards for the month of July (e.g. 89,000 acre feet). *See* July 25 Memorandum.

Based on the fact that the “natural flow” and storage conditions did not meet the thresholds of Water Bank Revised Rule 23, the only way to justify, if at all possible, the operation of the Water Bank for more than half of the month of July would be the District’s evaluation of the “transient flow conditions.” This part of the equation for opening the Water Bank appears to be the exception that swallows the rule. There are no objective standards under the “transient flow” exception that provide guidance for how and when the exception is applied. At best this exception serves as a large loophole to cover all operations by the District.

For example, the following graph shows flows at the USGS gauge on the Rio Grande at Albuquerque, NM (#08330000) during the month of July:



The graph shows that conditions on the Rio Grande in July look very similar to the evaluation of the “natural flow” conditions in Figure 1, above. While the flows appear to have exceeded the 1000 cfs threshold briefly in mid-July, those conditions do not persist in a way that would justify the continued operation of the Water Bank. In the graph below, there is some variation shown when looking at the San Acacia gauge in July:



However, even in this graph, flows in the river only exceed 1000 cfs for a very short duration. That short duration is not reflected in the length of time the Water Bank remained operational.

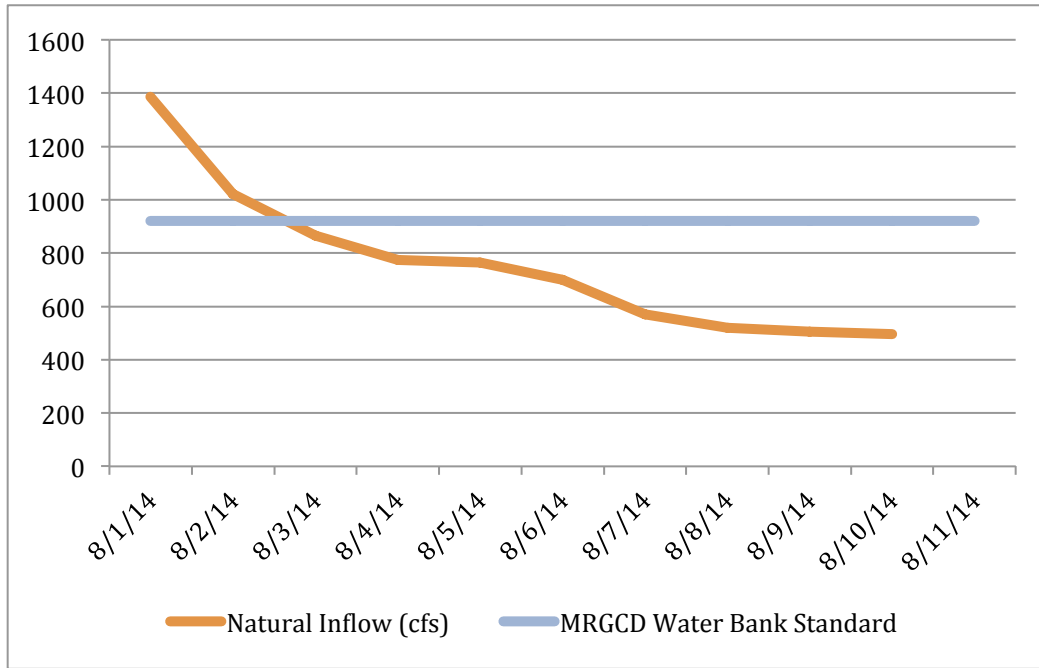
While the “transient flow conditions” around July 18 could possibly justify a couple days of Water Bank deliveries at best, it seems unreasonable to begin deliveries on July 9—well before these rain event began creating significant changes in the hydrograph—and sustaining deliveries to Water Bank leases for at least 17 days. The “transient conditions” cannot excuse the District’s blatant disregard for its own policies.

C. The District Operated the Water Bank from August 1 to August 11 Despite Conditions that Warrant Curtailment

On August 1, the District lifted its curtailment of Water Bank deliveries put in place on July 25 in response to “recent heavy rainfall in Cochiti and other divisions.” *See* Memorandum re: Lifting Curtailment of MRGCD Water Bank Deliveries dated August 1, 2014, included as **Attachment F**. The Memorandum provides “The scattered rain in the valley has reduced irrigation demand greatly and the excess water is being wasted. We are well above the curtailment threshold for the Water Bank and we anticipate that there will more than adequate water available for the next few days.” *Id.*

Guardians also calculated the “natural flows” in the Rio Grande for the month of August 2014 according to the Appendix to Water Bank, Revised Rule 23. *See* Table 2, included as **Attachment G**. Figure 2 compares the calculated “natural flow” (orange line) to the Water Bank threshold standards (blue line):

**Figure 2. Water Bank, Revised Rule 23:
Calculated “Natural Flow” v. Threshold Standards**



While Figure 2 shows that the “natural flows” did exceed the threshold standards for two days (August 1-2), this does not appear to justify the following 10 days of Water Bank deliveries by the District. While the District declared that as of August 1 the natural flows were “well above” the threshold requirements (400 cfs), by August 7 the natural flows were “well below” the threshold requirements by a similar amount (350cfs). The District appears to liberally apply its policy to open up the Water Bank deliveries (providing a revenue source for the District), but does not similarly close the Water Bank when conditions change.

III. State and Reclamation Must Permanently Curtail All Water Bank Deliveries

In order to reform water use in the Middle Rio Grande to protect a living river, the State and Reclamation must critically evaluate and demand reforms of the existing institutions that continue to create new depletions from the river. The Water Bank provides a salient example of how unregulated water use can undermine the goal of a more sustainable operation of the Rio Grande. The legitimate concerns expressed by the State and Reclamation in 1997 that the Water Bank should not operate without conditions protecting against increased depletions still ring true today and yet both agencies continue to stand by idly and watch the Water Bank operate without any constraints.

Based on the inability of the District to operate the Water Bank within the confines of its own policies and its continued failure to obtain approval from the the State to operate the Water Bank, we request that the State and Reclamation order curtailment of diversions from the Water Bank immediately and the operations cease permanently until all of the proper authorizations are obtained and clear enforceable policies are in place to protect senior water users and the river ecosystem. Further, in order

State Engineer, Scott A. Verhines *et. al.*
August 14, 2014

for the Water Bank to be reinstated, we believe that the State must make a finding that its operation promotes the public welfare and the conservation of water within the state.

Sincerely,

Jen Pelz
Wild Rivers Program Director
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(303) 884-2702

Enclosures

cc w/encl.: Michael L. Connor, Deputy Secretary of the Interior
Anne J. Castle, Assistant Secretary, U.S. Department of the Interior
Lowell D. Pimley, Acting Commissioner, U.S. Bureau of Reclamation
Jennifer Gimbel, Deputy Commissioner, Extern and Intergovernmental Affairs
Dan Ashe, Director, U.S. Fish and Wildlife Service
Gary Frazer, Assistant Director, U.S. Fish and Wildlife Service
Estevan Lopez, Director of Interstate Stream Commission, State of New Mexico
Board of Directors, Middle Rio Grande Conservancy District
Subhas Shah, Chief Engineer, Middle Rio Grande Conservancy District
John Stomp, Chief Operating Officer, Albuquerque Water Utility Authority
Kevin Cobble, Manager, Bosque del Apache National Wildlife Refuge
Jennifer Owen-White, Refuge Manager, Valle del Oro National Wildlife Refuge

**COPY FOR YOUR
INFORMATION**



**STATE OF NEW MEXICO
STATE ENGINEER OFFICE
SANTA FE**

July 28, 1997

THOMAS C. TURNEY
State Engineer

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Subhas K. Shah, Chief Engineer
Middle Rio Grande Conservancy District
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Albuquerque, NM 87103-0581

Re: MRGCD Rule No. 23, Water Bank

Dear Mr. Shah:

The purpose of this letter is to let the Conservancy know what I understood from the meeting with you and with me and members of my staff on May 27, 1997, to discuss the Middle Rio Grande Conservancy District's ("MRGCD's") Water Bank. Besides you and me, in attendance at the meeting were: Garry Rowe (BOR), Chris Rich (BOR), Robert Leutheuser (BOR), Maria O'Brien (MRGCD Counsel), Paul Saavedra (SE), Ted Apodaca (SE) and Brian James (SE).

To begin with, I would like to say thank you for meeting with us. It is important that a strong communication be developed between this office and the MRGCD. This letter is a recollection of the way I remember discussions at the meeting, but of course, I am interested from hearing if there is something that I misunderstood or do not correctly recall.

On behalf of the MRGCD and a request from the State Engineer, Ms. O'Brien, suggested addressing the six major points discussed in Ted Apodaca's August 29, 1996, letter to you regarding the Water Bank.

First, in concept, we do support a Water Bank if its purpose is to provide the District a vehicle to effect more efficient transfers of water within the District between irrigation users. The District should be congratulated on developing a more formal procedure of identifying lands, using state of the art GIS capabilities, which have a vested water right and which further allows the tracking of that right as it is moved to another tract of land within the district.

Overall, there seemed to be few areas of immediate disagreement between the State Engineer's position and MRGCD's on how to get Water Bank use and location information to the Office of the State Engineer. Certain information is vitally necessary to assure that the State meets its'

Mr. Subhas K. Shaw
Chief Engineer
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various obligations on a potentially fully appropriated River system.

However, unfortunately, at this time we cannot formally sign off on the Water Bank. Statements made by MRGCD's legal counsel during the meeting cast confusion and uncertainty over the purpose of the Water Bank. Perhaps, the major point of confusion is understanding the assets of the Bank.

The six major points we discussed, and the MRGCD's position on each, as I understood yours and Ms. O'Brien's answers are set forth below.

1. Only water rights perfected by actual beneficial use through the irrigation of lands within the MRGCD will be included within the Water Bank.

Ms. O'Brien stated, unequivocally, that only those water rights vested under state law through irrigation beneficial use would be included within the Water Bank. She also stressed that the Bank was a vehicle that would primarily facilitate the transfer of water rights from formerly irrigated lands within the MRGCD to other lands, currently irrigated, within the MRGCD.

2. No greater amount of water would be claimed for the Water Bank than the total actual amount of water applied to irrigated acreage within the MRGCD during any on calendar year.

We discussed the problems the State faces in meeting its' obligations on a potentially fully appropriated river. We voiced our concern and questioned if the MRGCD were to simply take a cumulative total of sixty years of irrigation and claim that amount could be deposited into the Bank for use during a single calendar year. MRGCD stated that information on the greatest amount ever irrigated in any one year could probably be provided but that such a determination was currently not available. Ms. O'Brien further did not directly answer the question of what lands would be used in the Water Bank - whether the lands would simply be a cumulative total of 60 years of irrigation or whether the lands would be based on a calendar year when the number of irrigated acres in the MRGCD reached its maximum. This point will have to be further discussed so we understand MRGCD's position.

3. In the event changes in point of diversion from surface to ground within the MRGCD were sought, formal application would be submitted to the State Engineer.

There was absolute agreement that all such applications would be submitted to the State Engineer.

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4. Information as to any change in the location of lands to be irrigated from surface water on deposit in the Water Bank shall be provided to the State Engineer and to the Bureau of Reclamation.

The MRGCD agreed to provide all such information on a yearly basis -- defining the areas where water would be coming from and where it is being transferred to, and indeed, stated it does so currently. The State Engineer Office requested a copy of the inventory of water use within the MRGCD that you indicated was nearly complete and without which you indicated you would not have attempted to operate the Water Bank.

You graciously invited representatives from this office to view your GIS data base. A year ago, I personally accepted a previous invitation. I further accept this invitation on behalf of my staff. I wish for them to see the results of many years of diligent work and effort. Ultimately, I am hopeful that we can incorporate your data base into our computers. This would allow us to easily track the transfers which will take place within the MRGCD. We agreed that so long as this information was provided, we would continue to agree to defer the issue of whether transfers in place of use must be approved by formal application to the State Engineer.

We also briefly touched on the issue of who the owner of State Engineer Permits Nos. 1690 and 0620. We understand that the Bureau of Reclamation and the MRGCD have, at least for now, agreed to disagree on this issue. As far as the assignment of one or both of the permits to the Bureau by MRGCD to secure MRGCD's repayment obligations to the Bureau in the early 1950's, Ms. O'Brien emphatically stated that assignment does not, as a legal matter, deprive the assignor of an ownership interest in the subject matter of the assignment nor does it create in the assignee any ownership claim. We believe this is an important clarification to have been made and appreciate the Sheehan firms's representative having gone on record with that position.

Finally, Ms. O'Brien hinted that the 1930 and 1931 permits allow for uses other than irrigation because of a 1923 filing of Notice of Intention to Appropriate. We discussed that it is the State Engineer's concern that the Water Bank may be a vehicle by which the MRGCD may one day attempt to argue it need not comply with state law which allows public input (relating to impairment of existing water rights, conservation or public welfare) in transferring surface water from irrigation uses to other uses, such as M & I flow. Unfortunately, we would have to oppose such an interpretation. This is an issue that we agreed needs further discussion between the MRGCD, the State Engineer and the Bureau of Reclamation.

5. Separate Accounting of San Juan Chama irrigation water and native Rio Grande will be

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Chief Engineer
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provided for in the Water Bank.

MRGCD agreed with the State Engineer's underlying need for this information, namely for Rio Grande Compact compliance, and indicated this would be easy to accomplish.

6. The time for submitted Proof of Beneficial Use (PBU) has expired

The Proof of Beneficial Use of the District's Permit was due in 1987. MRGCD has had over 60 years to perfect irrigation rights under these permits and various reports indicate that the irrigation acreage within the MRGCD is declining. In response to my identification this issue, Ms. O'Brien requested I submit a letter notifying you of the need to file a PBU with this office. Complying with your attorney's request, under separate letter, I have since written you about the PBU.

We discussed the fact that the MRGCD's water use inventory for the Water Bank would provide a ready means for identifying all lands on which water rights have been perfected under state law and would provide the necessary factual basis for the PBU. Once the PBU is received and approved, we will issue an appropriate license.

Thank you again for meeting with me to discuss the Water Bank.

It is vitally important that we remain in close communication so that we can assist the MRGCD as you develop your PBU and related inventory.

I will be calling you in the near future .

Sincerely,


Thomas C. Turney
State Engineer

cc: Rob Leutheuser
Garry Rowe
Chris Rich
Maria O'Brien
Paul Saavedra
Ted Apodaca
Brian James
Norm Gaume

**MIDDLE RIO GRANDE CONSERVANCY DISTRICT
POST OFFICE BOX 581, 1931 SECOND STREET S.W.
ALBUQUERQUE, NEW MEXICO 87103-0581**

**REVISED RULE NO. 23
WATER BANK RULES**

23-1.00 PREAMBLE

The Board of Directors of the Middle Rio Grande Conservancy District, having adopted a Water Distribution Policy on June 25, 2012 and having previously resolved to form a Water Bank to promote the beneficial use of water for agriculture, "protect water rights of the landowners of the district" (NMSA 1978, § 73-14-47(B)) and the water supplies of the Middle Rio Grande Conservancy District, ensure adequate carriage water to irrigators and continue to support and promote aquifer recharge within the Boundaries of the Conservancy District, adopts the following Revised Rules to govern the operation of the Water Bank. The authority to enact these rules is conferred under the Conservancy District's statutory authority under NMSA 1978, §§ 73-14-1 through 73-18-43. They will be in effect twenty (20) days after they are adopted by the Conservancy District's Board of Directors. These Revised Rules will be adopted by the Conservancy District's Board of Directors pursuant to NMSA 1978, § 73-14-51 (1951), only after publication in two issues, one week apart, of a legal newspaper of general circulation in each county embraced within the Boundaries of the Conservancy District and after the posting of these revised Rules in the courthouse of each county within the Conservancy District. Public comment will be received on these rules after publication and before adoption. Once adopted, these Revised Rules will repeal and replace the preexisting Rule No. 23 previously adopted by the Conservancy District.

23-2.00 STATEMENT OF PURPOSE

A) Water Bank

- 1) It is the purpose of the Water Bank to support beneficial use and distribution of water for agriculture and related purposes within the Boundaries of the Conservancy District, to promote the welfare of the Conservancy District and of all the inhabitants and constituents thereof, pursuant to NMSA 1978, §§ 73-14-1 through 73-18-43. This welfare comprises the encouragement of agriculture and is conducive to the public welfare and the conservation of water within the state, including groundwater recharge, maintaining delivery of water to rights holders, and promoting food security, while secondarily providing incidental recreational uses and environmental benefits.

23-3.00 DEFINITIONS

For the purposes of the Water Bank Rules, the following definitions shall apply.

- A) BOARD OF DIRECTORS. The members of the Conservancy District Board elected under the provisions of NMSA 1978, §73-14-21 (1975).
- B) BOUNDARIES OF THE CONSERVANCY DISTRICT. The lands comprising the outer extent of the Conservancy District described in the order of the court establishing the Middle Rio Grande Conservancy District and any other lands lawfully designated as the boundaries.

- C) CONSERVANCY DISTRICT. The Middle Rio Grande Conservancy District, meaning the political subdivision created by the New Mexico Legislature with authority to manage water within its boundaries in accordance with the policies of its Board of Directors, acting through its designated agents and employees.
- D) CONSERVANCY WATER RIGHTS. All water rights owned by the Conservancy District acquired as permitted by law, including the Conservancy Act, NMSA 1978, §§ 73-14-1 through 73-18-43 and water rights acquired pursuant to contract, but not including water rights privately owned within the District.
- E) PERSON. A person, firm, partnership, cooperative, association, corporation, political subdivision, or governmental agency.
- F) PRE-1907 WATER RIGHTS. Water rights that were perfected by beneficial use prior to 1907 and that are exercised within the Boundaries of the Conservancy District.
- G) SAN JUAN CHAMA CONTRACT WATER. Water rights held by the Conservancy District pursuant to a contract between the Conservancy District and the United States Department of the Interior, Bureau of Reclamation.
- H) STATE ENGINEER. The New Mexico Office of the State Engineer.
- I) WATER BANK. The depository in which water rights are deposited and made available for lease to Persons wishing to apply Conservancy Water Rights, Pre-1907 Water Rights and/or San Juan Chama Contract Water to beneficial use within the Boundaries of the Conservancy District and for delivery within Conservancy District infrastructure.
- J) WATER BANK RECORD. The record containing all Water Bank deposits, lease withdrawals, and other Water Bank transactions.
- K) DEPOSITED WATER RIGHTS. The amount of Conservancy Water Rights, perfected Pre-1907 Water Rights and/or San Juan Chama Contract Water in the Water Bank that is available for lease at any given time. Water rights are perfected by approval of the New Mexico State Engineer or an adjudication court.
- L) WATER DEPOSIT. The transaction by which a person makes a water right available for lease at a given time by entering into an agreement with the Water Bank.
- M) WATER LEASE WITHDRAWAL. The transaction by which a water right becomes the subject of a lease agreement between a person and the Water Bank and is made unavailable for lease at a given time.

23-4.00 WATER BANK OPERATIONS

- A) It is the intent of the Water Bank to not increase net depletions within the District boundaries.
- B) Determination of Availability of Conservancy Water Rights under NMSA 1978, § 73-14-47(F) (1927).

Upon receipt of a Water Bank water lease application on a form approved by the Board of Directors, the Conservancy District will make a determination of the availability of Conservancy Water Rights and/or Pre-1907 Water Rights for lease.

To determine potential water availability, the Conservancy District will compare beneficial use of Conservancy Water Rights under historic conditions to current beneficial use on specific acreage within the Boundaries of the Conservancy District, as well as other factors that could make water available for use by the Water Bank. If the Conservancy District finds a specific tract or tracts on which Conservancy Water Rights were placed to beneficial use under historic conditions, but that are no longer being placed to beneficial use, the water is available for leasing. Such tract is called the "Move From Tract". The tract to which the water is to be applied under the water lease is called the "Move To Tract". In evaluating the "Move From Tract" for the purpose of determining the availability of Pre-1907 Water Rights, the Conservancy District will certify that the State Engineer's records as of the date of the lease indicate that no water rights transfer of Pre-1907 Water Rights has previously removed water rights from that land. A water lease can only be issued if there are sufficient Conservancy Water Rights and/or Pre-1907 Water Rights available for leasing in sufficient quantities to meet the amounts requested in the Water Bank water lease application.

Upon approval of a Water Bank water lease application and execution of a Water Bank lease on a form approved by the Board of Directors, the Conservancy District will cause a record to be made within the Water Bank Record reflecting that Conservancy Water Rights and/or Pre-1907 Water Rights placed to beneficial use within a specific acreage within the Boundaries of the Conservancy District are currently under lease and are unavailable for further leasing during the term of the current lease. "Move From Tracts" shall not receive water from works of the Conservancy District. After termination of the lease, the Conservancy District may enter into a new lease for the use of said water rights on a different "Move To Tract".

The Conservancy District may also accept water from available San Juan Chama Contract Water Rights into the Water Bank for lease. In no case shall the existence of the Water Bank foreclose any current other user of water within the Conservancy District from exercising a right to continue using water as provided by law. Nor shall any actions of the Water Bank be considered an adjudication of the water rights of any Person or in any way affect vested rights within the Conservancy District.

C) Recording Transactions in the Water Bank Record.

The Conservancy District is responsible for assuring that all Water Bank transactions are recorded in the Water Bank Record. Transactions include water deposits and water lease withdrawals.

D) Lease of Pre-1907 Water Rights in the Water Bank.

Any person owning a Water Right appurtenant to lands within the Boundaries of the Conservancy District wherein the State Engineer has determined the tract or any portion of that tract has a pre-1907 priority date, or wherein a court having jurisdiction has made a comparable determination, such person may make a water deposit of this water right into the Water Bank for the purpose of obtaining revenue and so that others may place the Pre-1907 Water Right to beneficial use for a specific term. Each water deposit shall be recorded in the Water Bank Record with a description of the number of acre-feet per year and the appurtenant land.

Any person wishing to lease a Pre-1907 Water Right from the Water Bank shall enter into a Water Bank lease agreement on a form approved by the Board of Directors. The lease of Pre-1907 Water Rights shall not be subject to curtailment in times of shortage under this rule.

E) Lease Applications.

Water Bank leases may be issued only for agricultural purposes and uses supporting such purposes. Any person wishing to lease Deposited Water from the Water Bank must submit a Water Bank water lease application to the Conservancy District. The lease application shall be submitted on a standardized form provided by the Conservancy District, which may be amended from time to time at the discretion of the Board of Directors. The lease application form shall require at least the following: the amount of water requested, the place water will be diverted using Conservancy District Infrastructure, the place water will be used, and a statement that the intended purpose of use is for agriculture and/or related purposes as determined by the Conservancy District.

F) Lease Agreement Required, Term of Lease, Termination of Lease.

If the Conservancy District accepts a Water Bank water lease application, the lessee shall be required to enter into a written water lease agreement with the Conservancy District. Lease periods may be up to a maximum of five years to be renewed annually. Upon expiration of a lease period, the Conservancy District may at its discretion renew the lease, provided that it has determined that sufficient water is available for lease.

The Conservancy District, at its discretion, may terminate water leases if the lessee is out of compliance with New Mexico Law or any Rules and Regulations of the Conservancy District. Prior to termination, the Conservancy District shall provide notice of the reason for termination. Notice shall be sent by first class mail to the address specified on the Water Bank water lease application. If the lessee does not come into compliance with New Mexico law or Conservancy District Rules and Regulations or otherwise remedy the reason provided in the notice of intent to terminate the lease within thirty days of mailing the notice, the Conservancy District shall terminate the lease.

G) Priority of Lease and Curtailment.

All Water Bank water leases for Conservancy Water Rights and San Juan Chama Contract Water shall have the same priority date. Each lease agreement shall specify that all leased Conservancy Water Rights or leased San Juan Chama Contract Water shall have a priority date junior to all other uses of Conservancy Water Rights and to all other water delivered via the MRGCD infrastructure, including privately held water rights. EACH LEASE AGREEMENT SHALL SPECIFY THAT WATER USE UNDER THE LEASE MAY BE CURTAILED IN TIMES OF SHORTAGE, PURSUANT TO THE CONSERVANCY DISTRICT'S AUTHORITY TO DISTRIBUTE AND ALLOCATE AVAILABLE WATER UNDER NMSA 1978, §§ 73-14-49 TO – 53 (1951). Water use under all Water Bank water leases, without exception, shall be automatically curtailed when natural flows in the river fall below the amount necessary to satisfy all irrigators and water allocated for storage in El Vado Reservoir falls below a specified amount and when supplemental water available to the Conservancy District for use in a particular year is insufficient, as determined by Conservancy District staff in accordance with the attached appendix of stream flow and storage volume. If these conditions occur, notice shall be provided by each Ditch Rider to water bank leaseholders that curtailment conditions are in effect. Once a curtailment order has been entered, the Ditch Rider having jurisdiction shall cease providing irrigation water to the Water Bank users until such time as the curtailment order is rescinded. Such curtailment shall apply equally to all leases, with the exception of local or transient conditions as noted in the appendix, which may allow deliveries to leases in certain areas if MRGCD staff determines that sufficient water is available. The Board of Directors may from time to time, after considering recommendations from Conservancy District staff, amend the attached

appendix as necessary. Changes to the appendix shall be made to the greatest degree practicable at the same time as rates for the Water Bank are set.

If a lease is curtailed, no refund or pro-rata reduction of lease amounts or fees shall be provided.

Any Water Bank lessee who illegally irrigates after a curtailment order has been entered shall be subject to the following penalties:

- (1) The first violation of a curtailment order will require the Water Bank lessee to pay double the normal annual administrative fee and applicable lease fee for the first year of any subsequent Water Bank lease.
- (2) A subsequent violation of a curtailment order will result in the termination of the Water Bank lease. Future Water Bank leases applied for by the violator will require approval by the Board of Directors.

H) Conservancy Water Rights, Lease Periods, Prices, Administrative Fees.

Applications for leases may be filed at any time during the irrigation season, provided that the annual lease fee shall be the same regardless of when application is made. The Conservancy District may lease available Conservancy Water Rights and/or San Juan Chama Contract Water at a rate determined by the Board of Directors. In setting lease rates, the Board of Directors shall consider the market value of water at that time, the capacity of agricultural water users to pay, and other related factors. Once determined, the rate shall be the same during that annual period for all lessees. The Board of Directors may charge the borrower a reasonable administrative fee to cover the administrative costs involved in administering the lease in addition to the lease fee. If the Conservancy District renews an existing lease, the Conservancy District shall have the authority to change any lease terms, including adjusting the lease rate. The price for water bank leases shall be determined on an annual basis by the Board at a special meeting called for that purpose no later than January 15 of each calendar year. In situations other than a curtailment of water, administrative fees may be refundable at the sole discretion of the Conservancy District. .

I) Pre-1907 Water Rights, Lease Rates, Administrative Fees.

Leases of Pre-1907 Water Rights shall be at the rate determined by the owner of the Pre-1907 Water Right and the lessee. The Conservancy District shall act as the collector of all lease fees, and funds received from the lease of Pre-1907 Water Rights shall be delivered to the owner by the Conservancy District. The Board of Directors may establish an administrative fee to be paid by the owner to cover the reasonable costs of placing the Pre-1907 Water Right in the Water Bank and administering the lease.

J) Bank Fund.

All proceeds realized from Water Bank leases of Conservancy Water Rights and/or San Juan Chama Contract Water after the date of the Resolution adopting this Revised Rule No. 23 shall be deposited in the Conservancy District's general fund.

K) Financial Audit.

The Water Bank will be subject to an annual financial audit conducted by a qualified outside entity.

L) Violation of Water Bank Irrigation Rules/Policies.

Any irrigator found to be in violation of Water Bank rules/policies will be subject to loss or suspension of irrigation water delivery, and may be liable for damages resulting from those violations. Actions taken by the Conservancy District may include the following:

- (1) Termination of the Water Bank lease;
- (2) Securing turnouts to prevent operation using Conservancy District locking devices, welding, burial, or removal.
- (3) Referral to local law enforcement authorities for prosecution, where appropriate.
- (4) Landowners, irrigators, or other persons who, by opening, closing, modifying, or otherwise interfering with the regulation of Conservancy District facilities and structures cause any fluctuation on water flow or elevation that results in breaks or damage of any kind, will be responsible for the expense and damage caused and may be liable to others who are adversely affected.
- (5) All other remedies provided by law.

M) Appeal of Conservancy District Decisions

Notwithstanding any other language in these Rules to the contrary, if a dispute over any matter addressed in these Rules cannot be resolved administratively with the assistance of the Division Manager, the Conservancy District's Hydrologist or Engineering Department, or by a decision of the Chief Engineer, then the affected party may appeal to the Board. The affected party has the burden of providing specific evidence contradicting the position of staff regarding the matter. Otherwise, the Board must give deference to the factual determinations of its staff. The Board shall make a decision on the appeal no later than the next regularly scheduled board meeting after the date of the presentation before the Board.

APPENDIX TO WATER BANK RULE 23

Water Bank Curtailment: Stream Flow and Storage Conditions

As provided in Water Bank Rule 23, attached to this table, delivery to Middle Rio Grande Conservancy District (MRGCD) Water Bank leases shall be curtailed under certain conditions. Curtailment shall occur based on the rates of natural flows in the river, as well as the amount of water in storage for irrigation use. Based on an analysis of these two variables, the general rule being followed is that curtailment should be expected when the natural flow of the Rio Grande drops below a level at which the MRGCD can no longer deliver water to all users within its system and supplemental storage is insufficient to complete the irrigation season. Under these conditions of limited water supply, water will be directed preferentially to persons who have not sold their pre-1907 water rights or who are relying on water rights of the MRGCD for irrigation. It should be noted, that this table is generic in scope and is designed to provide general information regarding circumstances likely to result in curtailment. However, natural flow sufficient to meet all users' needs varies, not only from year to year, but also throughout the course of the irrigation season.

Stream Flow Conditions Resulting in Curtailment

The following schedule defines the natural flow requirement below which curtailment of water delivery to water bank leases could be expected:

Start Date	End Date	CFS
1-Mar	31-Mar	390
1-Apr	15-Apr	550
15-Apr	30-Apr	780
1-May	15-May	900
16-May	31-May	950
1-Jun	15-Jun	950
16-Jun	30-Jun	1030
1-Jul	15-Jul	1050
16-Jul	31-Jul	1000
1-Aug	15-Aug	920
16-Aug	31-Aug	850
1-Sep	15-Sep	660
16-Sep	30-Sep	600
1-Oct	15-Oct	410
16-Oct	31-Oct	310

This schedule defines the required natural flow in terms of cubic feet per second (cfs). The natural flow is calculated as the daily average of the combined total of flow as reported by USGS gauges for the following sites, less 100cfs (excluding March) to allow for consumptive use by the Rio Chama Acequia Association and main-stem users above Otowi, NM.

	Rio Grande at Embudo, NM	(USGS # 08279500)
	Rio Chama Near La Puente, NM	(USGS # 08284100)
	Rio Ojo Caliente at La Madera, NM	(USGS # 08289000)
+	Rio Jemez below Jemez Canyon Dam, NM	(USGS # 08328750)
	Average Middle Rio Grande Inflow	
-		100 cfs
=	Natural flow	

Storage Conditions Affecting Curtailment

It should also be understood that the MRGCD may allow continued delivery of water to Water Bank leases at times when the natural flow is less than specified above. This can occur if MRGCD has sufficient supplemental water in storage to augment the natural flow of the Rio Grande for all users, with an expectation that sufficient water is present in storage to provide for all irrigators through the remainder of the current irrigation season. Reasonable expectations of sufficient supplemental water in storage to permit continued supply to water bank leases are described in the following schedule* of supplemental water in storage at El Vado/Abiquiu reservoir as of the listed dates, and available for use in the then current irrigation season :

March 1:	91,000 AF**
April 1:	91,000 AF**
May 1:	91,000 AF**
June 1:	91,000 AF
July 1:	89,000 AF
August 1:	54,000 AF
September 1:	20,000 AF
October 1:	1,000 AF

These volumes are shown in Acre Feet (AF) (1 AF=325,850 gallons)

Evaluation of Local or Transient Flow Condition

Even though the above guidelines provide parameters for stream flow and storage, the Water Bank Rule recognized conditions may occur at certain points within the District which would make it possible to deliver water to MRGCD Water Bank leases; even though the natural flow and supplemental storage schedules indicate otherwise. Under these conditions deliveries to Water Bank leases would be the result of local conditions, often transient, which would provide additional water supply or reduce the demand on water supply for some users. These conditions could include, but not be limited to, precipitation in certain areas of the MRGCD, tributary inflows (ie: AMAFCA diversion channels, or Rio Puerco /Rio Salado), unusually cool temperatures or high humidity, a cessation of deliveries to portions of the MRGCD due to physical constraints (such as a major ditch break), or other causes. In some cases, these could affect the entire MRGCD service area, or in other cases could affect only limited areas. These will be evaluated by MRGCD staff if and/or when they occur, with the intent to maximize the beneficial use of water by irrigators within the MRGCD system, regardless of water right or Water Bank status.

* Should Article 8 of the Rio Grande Compact (RGC) be in effect, the required storage volumes shown in the schedule will be increased by the amount of New Mexico's accrued RGC debits to the State of Texas.

**Potential storage - In the early part of the season, storage may be noted as potential, so that the specified volume of water may not need to actually be present, but it is anticipated to be result from snowmelt runoff in the spring. The MRGCD must have physical space available to store this water and snowpack must be present to make it likely that the space will be filled before June 1 of the year in question. The USDA Natural Resource Conservation Services monthly New Mexico State Basin Outlook Reports will be used to determine the likelihood of acquiring that storage, based on the 70% "chance of exceedance" value for El Vado Reservoir Inflow, March-July. As provided in Article 7 of the RGC storage will not be allowed if Elephant Butte contains less than 400,000 acre feet of "usable water", unless MRGCD has acquired sufficient RGC storage credits to permit storage.

Table 1.
Calculation of Natural Flows (cfs) Under MRGCD Water Bank Revised Rule 23
From July 1 to July 31 2014

Date	RG Embudo (#8279500)	RG La Plente (#8284100)	Ojo Caliente (#8289000)	Rio Jemez (#8328950)	Avg Inflow (Sum of all gages)	Natural Inflow (Avg - 100cfs)	MRGCD Water Bank Standard
7/1/14	531	28	5.3	0.01	564.31	464.61	1050
7/2/14	524	21	5.4	54	604.40	504.40	1050
7/3/14	511	16	5.7	1.2	533.90	433.90	1050
7/4/14	551	19	6	148	715.00	615.00	1050
7/5/14	646	25	5.9	2.1	679.00	579.00	1050
7/6/14	657	27	6.1	14	695.20	595.20	1050
7/7/14	667	28	6.9	0.71	692.51	592.51	1050
7/8/14	694	26	7.1	37	752.80	652.80	1050
7/9/14	673	33	7.2	311	1007.90	907.90	1050
7/10/14	561	41	7	13	607.50	507.50	1050
7/11/14	558	47	7.3	25	622.80	522.80	1050
7/12/14	517	52	7.9	59	621.10	521.10	1050
7/13/14	510	50	7.3	7.5	559.10	459.10	1050
7/14/14	524	44	8.8	0.67	558.37	458.37	1050
7/15/14	572	51	9	181	792.80	692.80	1050
7/16/14	582	131	10	75	781.50	681.50	1000
7/17/14	669	101	162	88	1000.00	900.00	1000
7/18/14	622	79	22	19	718.00	618.00	1000
7/19/14	695	68	11	5.7	755.90	655.90	1000
7/20/14	664	59	9.2	0.64	707.00	607.00	1000
7/21/14	624	49	8.2	0.43	657.93	557.93	1000
7/22/14	547	40	6.6	0.13	569.43	469.43	1000
7/23/14	539	36	6.5	1.6	553.40	453.40	1000
7/24/14	521	33	5.7	15	546.00	446.00	1000
7/25/14	491	31	5.5	0.44	527.94	427.94	1000
7/26/14	456	28	5.4	0.15	489.55	389.55	1000
7/27/14	432	29	5.6	11	477.60	377.60	1000
7/28/14	454	36	7.2	1.6	498.80	398.80	1000
7/29/14	452	41	6.4	4.2	503.60	403.60	1000
7/30/14	484	50	6.8	172	712.80	612.80	1000
7/31/14	553	50	7.5	39	649.50	549.50	1000




Memorandum

NOTICE

To: MRGCD WATER BANK USERS, MRGCD BOARD MEMBERS, DIVISION MANAGERS, DITCH RIDER SUPERVISORS & DITCH RIDERS

cc: DAVID GENSLER, MRGCD HYDROLOGIST, MRGCD ASSESSMENT DEPARTMENT

From: SUBHAS K. SHAH, CHIEF ENGINEER/CEO 

Date: JULY 25, 2014

Re: CURTAILMENT OF MRGCD WATER BANK DELIVERIES

As you know, due to drought conditions and inadequate storage in our reservoirs, a very limited amount of water has been available this year for our irrigators. Middle Rio Grande Conservancy District (MRGCD) Water Bank users were advised that the curtailment of Water Bank deliveries this year was almost certain; given the limited supplies of water. MRGCD Water Bank Rule 23 contains two water cessation supply triggers (storage at El Vado Dam below 89,000 ac-ft. and natural flow in the river below 1,000 cfs) that, when met, require curtailment of Water Bank leases. As of today, **July 25, 2014**, both triggers requiring cessation of Water Bank deliveries contained in MRGCD Water Bank Rule 23 have occurred.

Water deliveries to persons receiving water under a Water Bank lease will no longer be scheduled after noon on **July 25, 2014**. Deliveries that are currently scheduled through noon on **July 30th** may be completed. After that time, no deliveries under Water Bank leases will be permitted at noon on **July 30th** until further notice.

Failure to follow the MRGCD Water Bank Rule 23 Section 23-4.00(G) and the Water Bank lease agreement will result in violation of policy. Appropriate actions will be taken.

When conditions change and additional water is available for Water Bank leases, your Ditch Rider will advise you or it will be posted on www.mrgcd.com.

Your cooperation is appreciated.

Thank you.

Farmer's Forecast

7.18.2014

And the roller coaster ride continues! The last 3 weeks have brought much needed rain to New Mexico. Showers have been scattered all over, with almost everyone getting some rain, although not all at once. There have also been rains to the north, creating inflows to the Rio Grande above and below Otowi gauge. Initially the MRGCD was able to reduce our releases from storage, and the past few days there have been no releases at all. This has greatly improved our outlook for water later in the season, and we now expect to be delivering water normally well into August, and a few more shots of rain could get us even farther.

Deliveries to Water bank users were resumed on the evening of July 9. Although we were still well below the upstream flow thresholds, there had been numerous local rainfall inputs in the MRG valley, and most service areas were reporting extra water available. A few days later the storms moved farther north, and upstream flows rose above the minimum flow thresholds, so Water Bank deliveries continue to be allowed. Although this could change at any time, we are thankful that the storms have made this possible.

These same storms have also re-wet the entire river. Earlier in the summer, as we were becoming increasingly reliant on releases of stored water, the river was being carefully dried from the downstream end. Bureau of Reclamation was providing water to maintain flows for the Silvery Minnow, but their supply was not expected to last long. Because of the rains, BOR has also been able to conserve water, and both the Silvery minnow and the valley farmers have benefited.

Today we are still operating on the rainwater. There is about 1250 cfs coming out of Cochiti Dam, and this will continue at least for a few more days. Cochiti division temporarily shut down canals to protect against flooding earlier this week, but has now resumed normal operations. Albuquerque is operating at a slightly reduced rate. Belen is irrigating the west side of the valley through the weekend, and will shift to the east side on Monday morning. Socorro reports plentiful water, although it is highly silt-laden water due to Rio Puerco inflow. Flow below San Acacia dam is currently over 700 cfs, and water is making it all the way to Elephant Butte reservoir.



Memorandum

NOTICE

To: MRGCD WATER BANK USERS, MRGCD BOARD MEMBERS, DIVISION MANAGERS, DITCH RIDER SUPERVISORS & DITCH RIDERS
cc: DAVID GENSLER, MRGCD HYDROLOGIST, MRGCD ASSESSMENT DEPARTMENT
From: SUBHAS K. SHAH, CHIEF ENGINEER/CEO *SKS*
Date: AUGUST 1, 2014
Re: **LIFTING CURTAILMENT OF MRGCD WATER BANK DELIVERIES**

A curtailment order for MRGCD Water Bank deliveries was issued on July 25, 2014. Due to the recent heavy rainfall in Cochiti and other divisions, additional water is available to District water users. The scattered rain in the valley has reduced irrigation demand greatly and the excess water is being wasted. We are well above the curtailment threshold for the Water Bank and we anticipate that there will be more than adequate water available for next few days. In order to make the best use of extra water and provide much needed water to our Water Bank users, the MRGCD is lifting its curtailment deliveries to Water Bank users until further notice.

Your cooperation is appreciated.

Thank you.

ATTACHMENT F

Table 2.
Calculation of Natural Flows (cfs) Under MRGCD Water Bank Revised Rule 23
From August 1 to August 10 2014

Date	RG Embudo (#8279500)	RG La Plente (#8284100)	Ojo Caliente (#8289000)	Rio Jemez (#8328950)	Avg Inflow (Sum of all gages)	Natural Inflow (Avg - 100cfs)	MRGCD Water Bank Standard
8/1/14	1380	58	19	30	1487	1387	920
8/2/14	756	75	9.8	281	1121.8	1021.8	920
8/3/14	787	79	7.8	91	964.8	864.8	920
8/4/14	713	77	9.4	76	875.4	775.4	920
8/5/14	708	68	9.2	79	864.2	764.2	920
8/6/14	692	56	8.8	44	800.8	700.8	920
8/7/14	588	49	8.4	24	669.4	569.4	920
8/8/14	548	46	8	18	620	520	920
8/9/14	543	42	7.6	13	605.6	505.6	920
8/10/14	526	38	7.2	25	596.2	496.2	920