RIO GRANDE PROJECT
NEW MEXICO

THIRD-PARTY IMPLEMENTING CONTRACT

between the

ELEPHANT BUTTE IRRIGATION DISTRICT
NEW MEXICO

and the

NEW MEXICO INTERSTATE STREAM COMMISSION

FOR THE USE OF RIO GRANDE PROJECT WATER FOR EBID ALLOCATION TRANSFERS

and approved by

THE BUREAU OF RECLAMATION

This Third-Party Implementing Contract is entered into this 21st day of August, 2025, between the ELEPHANT BUTTE IRRIGATION DISTRICT ("District" or "EBID") and the NEW MEXICO INTERSTATE STREAM COMMISSION ("Third-Party Contractor" or "ISC"), collectively "the Parties", and approved by the UNITED STATES OF AMERICA, hereafter styled the "United States," acting through the Secretary of the Interior ("Secretary"), Bureau of Reclamation, Department of the Interior ("Reclamation" or "Contracting Officer"), pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451, 43 U.S.C. § 521), collectively known as the Reclamation laws.

RECITALS

A. EBID has entered into Contract No. 25-WC-40-1028, dated _____ ("Conversion Contract") with the United States of America, acting through the Secretary of the Interior, pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, particularly the Act of February 25, 1920 ( 41 Stat. 451, 43 U.S.C. § 521), for the conversion of Rio Grande Project Water from irrigation to miscellaneous purposes; and

B. The Conversion Contract authorizes EBID to make available up to 100,000 acre-feet (AF) annually of Converted Water[1] for miscellaneous purposes through Third-Party

[1] All capitalized defined terms have the definition set forth in Article 1 of the Conversion Contract, or as otherwise defined herein.

Implementing Contracts, as defined by, and subject to, the terms and conditions of the Conversion Contract; and

C. New Mexico, along with the States of Texas and Colorado, (collectively, "Compact States") have entered a Supreme Court Decree ("EEPI Decree") that was part of the collection of agreements that resolved the litigation in *Texas v. New Mexico*, Org., 141. The EEPI Decree quantifies among the Compact States the apportionment of water between New Mexico and Texas below Elephant Butte based on the D2 Period (1951-1978). The EEPI Decree sets forth an index, called the Effective El Paso Index ("EEPI"), which quantifies the amount of surface flows that the Compact States agree must be delivered to Texas as a function of releases from Caballo Reservoir, among other terms. Under the EEPI Decree, Negative Accrued Departures are the negative results from the sum of all the annual differences in the deliveries and obligation for the EEPI. New Mexico must take water management actions to reduce the Negative Accrued Departures following terms of the EEPI Decree; and

D. The United States, New Mexico, EBID, and El Paso County Water Improvement District (EPCWID) entered into the Operations Settlement Agreement that was part of the collection of agreements that resolved the litigation in *Texas v. New Mexico*, Org., 141. The Operations Settlement Agreement sets forth procedures and terms for the transfer of Project Allocation between EBID and EPCWID ("Allocation Transfers" and as specifically referred to herein as "EBID Allocation Transfers") and requires EBID and ISC to enter this Third-Party Implementing Contract for the purpose of allowing New Mexico to use Project Water for EBID Allocation Transfers to reduce Negative Accrued Departures.

Now, therefore, in consideration of the mutual and dependent covenants contained herein, the parties to this Third-Party Implementing Contract agree as follows:

**AGREEMENT**

1. Authority.

   This Third-Party Implementing Contract is subject to Reclamation laws, and applicable State law. The terms of the Conversion Contract are incorporated into this Third-Party Implementing Contract by reference. Any conflicts between this Third-Party Implementing Contract and the Conversion Contract, the Conversion Contract governs.

2. Sources of Converted Water for EBID Allocation Transfers.

   The four sources for ISC's Converted Water for EBID Allocation Transfers are Base Allotment, Converted Water Credits, Leased Allotment, and Allocation Forbearance:

   a. Base Allotment: ISC may convert water from its annual Allotment for EBID Allocation Transfers. The annual ISC Allotment is calculated as the product of the annual EBID Allotment and EBID acreage from which ISC has permanently acquired EBID surface water rights. ISC must notify EBID about the disposition of

ISC's Base Allotment, specifically if any of the Base Allotment will be leased, making it ineligible for Converted Water Credit.

b. Converted Water Credits: ISC may accumulate credit for its Base Allotment that is not used for an EBID Allocation Transfer or other Project purposes and at ISC's option is accounted for at the end of each year as Converted Water Credits. Such credits will be available to ISC for EBID Allocation Transfers in the following year, and all years thereafter, by reducing EBID's Allotment to make the Converted Water Credits available for an EBID Allocation Transfer.

    i. ISC may accumulate Converted Water Credits up to 60,000 AF but the use of Converted Water Credit for EBID Allocation Transfers subject to the limitations set forth herein.

c. Leased Allotment: ISC may lease Allotment from other EBID members for conversion for EBID Allocation Transfer in the year in which it is allotted. ISC may use Leased Allotment for EBID Allocation Transfers in the same manner as Base Allotment, but Leased Allotment must be used in the year in which it is leased and will not generate Converted Water Credits.

d. Allocation Forbearance: In years when ISC's Base Allotment, Converted Water Credits, and Leased Allotment are insufficient to meet ISC's needed amount of EBID Allocation Transfer, ISC may request and EBID will forebear the use of a portion of its Project Allocation to allow ISC to meet its EBID Allocation Transfer needs, subject to the limitations and conditions set forth herein. Allocation Forbearance must be transferred in the year in which it is forborne and will not generate Converted Water Credits.

e. EBID will adjust its allotment to provide for:

    i. The use of ISC's Base Allotment by EBID farmers in the year in which Base Allotment is designated for Converted Water Credit, including scaling the final Base Allotment to the full EBID acreage;

    ii. Converted Credit Water use in the year in which it is designated for EBID Allocation Transfer; and

    iii. Allocation Forbearance used for EBID Allocation Transfer.

3. Converted Water Volume.

    a. The maximum amount of Converted Water to be made available to ISC under this Third-Party Implementing Contract is 50,000 AF annually.

    b. The 50,000 AF annual limit applies to the combined total amount of Converted Water from Base Allotment, Leased Allotment, Converted Water Credits used for EBID Allocation Transfer, and Allocation Forbearance.

    c. Water is counted toward the Converted Water total in the year it is used for an EBID Allocation Transfer (not in the year it is claimed as a credit). For example, Converted Water Credits accumulated in Year 1, Year 2, and Year 3 are not counted towards the Converted Water total in any of those three years. However, if the accumulated Converted Water Credit is used for EBID Allocation Transfers in Year 4, then the volume used for the transfer shall be counted toward the Converted Water total in Year 4.

4. Monthly Meetings for Accounting of Project Water Available for Converted Water.

    a. The Parties will meet on a monthly basis starting in January of each calendar year and continuing until Reclamation stops releasing water out of Caballo Dam for the year as is practicable and EBID will report to ISC the then current EBID Allocation and Allotment and the status of the following:

        i. Base Allotment

        ii. Leased Allotment

        iii. Converted Water Credits

        iv. Allocation Forbearance

5. Timing of EBID Allocation Transfers

    The Parties acknowledge that EBID Allocation Transfers from this Third-Party Implementing Contract will occur as set forth in Section I.C.4.d(3) of the Operations Settlement Agreement and as restated below for reference:

    a. EBID Allocation Transfers shall be made by Reclamation before the Release Season begins, or before March 15 if the Release Season begins on or before that date, and not more frequently than once per year.

    b. EBID shall meet with New Mexico and Reclamation within 7 days before EBID intends to make its initial allotment to its water users, and at least 21 days prior to the start of Release Season, to confer on the estimated initial allotment, the estimated date for the beginning of the Release Season, the amount of EBID surface water that is available to New Mexico through the Third-Party

Implementing Contract for EBID Allocation Transfers, if New Mexico intends to order an EBID Allocation Transfer, and the estimated volume of the EBID Allocation Transfer.

c. Any time Reclamation sets or adjusts the Project Allocation, EBID sets or adjusts the Allotment, or the Districts change the estimated date for the beginning of the Release Season, EBID shall notify New Mexico within 7 days.

d. New Mexico shall notify EBID of the amount of the EBID Allocation Transfer order at least 14 days before the estimated date of the beginning of the Release Season. If New Mexico does not notify EBID of an EBID Allocation Transfer order at least 14 days before the estimated date for the beginning of the Release Season, no EBID Allocation Transfer will occur in the current year.

e. EBID shall notify Reclamation and EPCWID of the ordered EBID Allocation Transfer within 7 days after receiving notice from New Mexico.

f. Reclamation shall implement and notify New Mexico of the EBID Allocation Transfer within 7 days after receipt of the notification from EBID of the ordered EBID Allocation Transfer.

g. When Reclamation implements the EBID Allocation Transfer, the Negative Accrued Departure shall be reduced by an amount equal to the transfer.

6. EBID Allocation Transfer Volume Limits.

Converted Water available for EBID Allocation Transfers through this Third-Party Implementing Contract are limited by the following conditions:

a. EBID Allocation Transfers cannot reduce EBID's Allocation below 100,000 AF, at the time of the EBID Allocation Transfer, without the prior written agreement of the Parties and approval by Reclamation, with the exception that ISC can transfer its Base Allotment and Leased Allotment for an EBID Allocation Transfer in any year, subject to the limitations set forth in Section 3.

b. If ISC is unable to transfer Converted Water Credit due to the 100,000 acre-feet EBID Allocation limit for two or more consecutive years, then starting in the second year, ISC may transfer any increase in its Converted Water Credit that occurred in the previous year due to an increase in ISC's Base Allotment after the start of that year's Release Season.

c. The total amount of Converted Water used for an EBID Allocation Transfer (which includes Base Allotment, Leased Allotment, Converted Water Credits used as EBID Allocation Transfers, and Allocation Forbearance) shall not exceed twenty percent (20%) of EBID's Allocation at the time of the EBID Allocation Transfer or 50,000 AF, whichever is less.

d. The portion of EBID's Allocation above the 100,000 AF limit and within the 20% limit, up to 50,000 AF, will be available to ISC for EBID Allocation Transfers

(subject to all limits herein) and any Converted Water by other Third-Party Contractors may not reduce ISC's rights herein. Specifically, any additional water converted under the Conversion Contract will be subordinate to ISC's 50,000 AF of Converted Water and may not impact any of the limits allowed above. For example, if additional water is converted for a new Third-Party Contractor such additional Converted Water will not be included in the calculation of the 20% cap or the 100,000 AF limit described above.

e. The amount of the EBID Allocation Transfer shall equal the lesser of ISC's available water for EBID Allocation Transfer and the Negative Accrued Departure.

f. When requested by ISC, the conversion of water to EBID Allocation Transfer is mandatory for acceptance by EPCWID pursuant to the terms and limitations of the as set forth in Section I.C.4.d(2) of the Operations Settlement Agreement and as restated below for reference. EBID may not deny any such request, so long as water is available to be converted within the quantity limits and terms herein.

    i. EBID Allocation Transfers shall not exceed the amount of the Negative Accrued Departure;

    ii. EBID Allocation Transfers shall not cause EPCWID's end-of-year Project Allocation balance to exceed the carryover limit (232,915 AF);

    iii. The current-year EBID Allocation Transfer shall not be included in the calculation of the 3-year lagged moving average of the end-of-year Project Allocation balance for EPCWID under Section I.C.4.e(2) in the Operations Settlement Agreement if the preceding 2-year average end-of-year Project Allocation balance exceeds 180,000 AF; and

    iv. EBID Allocation Transfers in excess of 30,000 AF in any one calendar year will require unanimous approval of EPCWID, EBID, and Reclamation.

g. ISC and EBID, with approval from Reclamation, may agree in writing upon and implement annual variances to the limits in this section to address specific conditions as they arise without permanently changing this agreement. Such variances shall be term limited to the year in which they are agreed upon.

7. Accounting EBID Allocation Transfers.

a. Pursuant to the Operations Settlement Agreement at Section I.C.4.d(3)(g), the Parties acknowledge that Reclamation will account for the EBID Allocation Transfer by reducing EBID's Allocation by the requested amount and increasing EPCWID's Allocation by the same amount.

b. Pursuant to the EEPI Decree (Section II. B.3.c.), the Parties acknowledge that the EBID Allocation Transfer will be accounted for as an immediate reduction in any Negative Accrued Departures.

8. Additional Terms for Allocation Forbearance.

a. If EBID's Allocation is reduced due to the ISC utilizing Allocation Forbearance as EBID Allocation Transfer, such reduction shall not reduce the EBID members' combined surface water and supplemental groundwater water rights for that year.

b. ISC shall not take or reduce EBID's annual Project Allocation through EBID Allocation Transfers without just compensation under this Third-Party Implementing Contract, a replacement contract (if this Third Party Implementing Contract is terminated), or otherwise in contravention of Reclamation law; provided, however, that nothing herein restricts New Mexico's ability to conduct water rights administration, and New Mexico retains all rights under New Mexico law to curtail any water right.

9. Payment for Converted Water.

The charges for the Converted Water paid by ISC shall be as follows:

a. Converted Water from annual Allotment payments:

i. ISC agrees to pay EBID for the "District Portion" and "Federal Revenues" as set forth in Article 6 of the Conversion Contract.

ii. ISC will pay the annual assessment to EBID for the Permanently Retired Lands, as defined in the Operations Settlement Agreement.

iii. ISC will not pay EBID a Forbearance Payment for water converted from Annual Allotment (calculated annually or as a Conversion Water Credit) because such forbearance payments are negotiated and included in the consideration to each EBID member landowner when ISC purchases the groundwater and surface water associated with the Permanently Retired Lands.

b. Converted Water from Leased Allotment payments:

i. ISC agrees to pay EBID for the "District Portion" and "Federal Revenues" as set forth in Article 6 of the Conversion Contract.

ii. ISC will not pay EBID a Forbearance Payment for water converted from Leased Allotment because such forbearance payments are negotiated and included in the consideration to each EBID member landowner when ISC leases the allotment.

c. Converted Water from Allocation Forbearance payment:

i. ISC agrees to pay EBID for the "District Portion" and "Federal Revenues" as set forth in Article 6 of the Conversion Contract.

ii. ISC will provide a Forbearance Payment to EBID for the amount of EBID's Allocation Forbearance water converted to EBID Allocation Transfer for ISC annually. Payments will be as follows:

1. First 10,000 AF:
   - $150.00 per AF (1-10,000 AF).
2. Second 10,000 AF:
   - $170.00 per AF (10,001-20,000 AF).
3. Third 10,000 AF:
   - $190.00 per AF (20,001-30,000 AF).
4. Fourth 10,000 AF:
   - $210.00 per AF (30,001-40,000 AF).
5. Fifth 10,000 acre-feet:
   - $230.00 per AF (40,001-50,000).

iii. The pricing of the tiers in subsection c.ii will not be adjusted for the first two years following the effective date of this agreement.

iv. Beginning in year three, and every five years thereafter (Ex. year 3, 8, 13, 18, etc.), the pricing tiers will be adjusted to reflect Fair Market Value (FMV). The Determination of FMV will not include ISC's payments for Allocation Forbearance water. The process for determining FMV is further described in subsection d.

v. In the subsequent four years (Ex. year 4, 5, 6, and 7) the FMV will be adjusted annually by the average annual inflation rate for the previous 5 years based on the Implicit Regional Price Deflater (IRPD) for El Paso, TX, plus 0.5% price guarantee premium ("Inflation Adjustment"). The Inflation Adjustment will be recalculated every five years to coincide with determination of FMV.

vi. Within two years of the effective date of this agreement, the parties have the option to select a mutually agreed upon alternative index multiplier.

d. Determination of Fair Market Value:

i. The Parties agree to determine the FMV of converted allocation water within 2-years of the entry of the U.S. Supreme Court Decree in the case of *Texas v. New Mexico*, Orig. 141 (Decree), and every 5-years thereafter.

ii. Within 18 months of the entry of the Decree, the Parties may agree to the appointment of an appraiser and economist to determine the FMV and the parties shall accept the determination of the appointed appraiser and economist.

1. This process shall be followed every five years after the initial two-year determination and shall begin 6 months prior to the 5-year mark.

iii. In the event the Parties are unable or unwilling to agree to the appointment of either an appraiser or economist within thirty (30) days of the timeline described in Section D. ii.1 herein, the following process shall be followed:

1. Either party may provide written notice of its intent to cease negotiations and appoint appraisers and/or economists to determine the FMV as follows:

- One appraiser and/or economist appointed by EBID;
- One appraiser and/or economist appointed by ISC; and
- one appraiser and/or economist appointed by the appraisers or economists for EBID and ISC.

2. EBID and NM shall appoint their respective appraisers/economists within thirty (30) days after notice has been given pursuant to the provisions of Subsection d.iii.1 of this section and the third appraiser/economist shall be jointly appointed within thirty (30) days thereafter.

3. The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party.

4. The economic analysis and valuation shall be in writing and signed by the economists. The economists shall deliver copies to each party personally.

5. The FMV shall be shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the ISC offer shall not be less than the appraisal prepared by the ISC appraiser. EBID must accept or reject the offer when made by ISC within fifteen (15) days after a written offer is tendered.

6. The valuation process must be completed within 9-months of the initial appointment.

7. In the event the ISC and EBID are unable to agree upon a FMV based on the process set forth herein, FMV shall be determined by a

New Mexico District Court with proper jurisdiction and venue. ISC and EBID agree to a trial heard by a judge and mutually agree to waive their right to a jury trial.

8. The appraisals and economic analyses shall be submitted to the Court at the time a petition is filed. The Court may appoint its own appraiser and economist to advise the Court and determine FMV.

e. Invoicing and Payments:

i. EBID shall invoice ISC within thirty (30) days after an EBID Allocation Transfer for all required payments, itemized into specific amounts for each of the following:

1. Base Allotment: District Portion and Federal Revenues

2. Leased Allotment: District Portion and Federal Revenues

3. Allocation Forbearance: District Portion, Federal Revenues, and Forbearance Payment

ii. ISC shall remit payment to EBID within ninety (90) days of receipt of the annual invoice from EBID.

iii. In the event EBID does not receive payment for the invoice on or before ninety (90) days, EBID and Reclamation will refuse to allow Converted Water to be used by ISC until any past-due invoices are paid in full.

10. Additional Third-Party Contracts.

ISC and EBID agree in good-faith to expeditiously negotiate and execute a separate Third-Party Implementing Contract whereby ISC may use Converted Water for the additional miscellaneous purposes of offsets and replacement supplies subject to the terms of the Conversion Contract.

11. Records.

The Parties agree to establish and maintain records of the receipt and use of all EBID Allocation Transfer, in a format mutually agreed upon by the Parties. Each Party will provide these records to any other Party upon request.

12. Acknowledgments.

By signing this Third-Party Contract, ISC acknowledges:

a. That ISC has read and understands the Conversion Contract, which is incorporated by reference into this Third-Party Contract, and agrees to be bound by its terms.

b. That EBID and Reclamation make no representation that the amount of Converted Water allowed herein is sufficient to meet ISC's requirements.

c. That EBID and Reclamation are not liable to ISC if the EBID Allocation in any given water year is insufficient to meet ISC's requirements.

d. All Third-Party Implementing Contracts entered into under the authority of the Conversion Contract shall be subject to written approval by Reclamation, which approval shall not be withheld if the terms of such contract are consistent with the terms of the Conversion Contract and with federal law, regulation, and policy.

e. That nothing in this Third-Party Implementing Contract creates a water right to Converted Water obtained pursuant to this Third-Party Contract, and ISC may not claim a water right based on any legal theory arising under State or Federal law before any State or Federal judicial or administrative body based on the use of Converted Water under this Third-Party Implementing Contract.

f. The quality of Project Water is not warranted by Reclamation or the District.

g. ISC's use of Project Water is subject to all Federal laws and regulations applicable to Project Water, particularly the 1920 Act. Further, ISC acknowledges that its right to use Converted Water is based strictly on this Third-Party Implementing Contract and the Conversion Contract.

13. Assignment.

This Third-Party Implementing Contract may not be assigned, or any Converted Water provided for the use of any third party (except as expressly allowed herein), without the written consent of EBID and Reclamation.

14. Term.

This Third-Party Implementing Contract shall become effective upon execution by the parties hereto and shall terminate upon the termination of the Conversion Contract or upon the mutual written agreement of the Parties.

15. Entire Agreement and Amendment.

This Third-Party Implementing Contract constitutes the entire and only agreement between EBID and ISC relating to the subject matter hereof. No subsequent modification of any of the terms of this Third-Party Implementing Contract shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by both Parties, and approved by Reclamation.

16. Notice.

a. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given and delivered, if mailed certified postage prepaid, or emailed.

b. Calculation of Days. In providing notice under this Agreement, days shall be calculated the way days are calculated under Rule 6(a) of the Federal Rules of Civil Procedure.

Elephant Butte Irrigation District

Attn: Josh Smith, Treasurer-Manager
530 South Melendres Street
Las Cruces, NM 88005
jsmith@ebid-nm.org

New Mexico Interstate Stream Commission

Attn: Hannah Riseley-White
Director - NM Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone: 505-695-5592
Hannah.Riseley-White@ose.nm.gov

With a copy to:
Attn: Ryan J. Serrano
Lower Rio Grande Basin Manager
1680 Hickory Loop, Suite J
Las Cruces, NM 88005-6598
Phone: 505-490-5408
Ryan.serrano@ose.nm.gov

Bureau of Reclamation

Attn: Regional Director
Upper Colorado Region
Attn: UC-440
125 South State Street
Room 6107
Salt Lake City, Utah 84138-1102
jhearty@usbr.gov

With a copy to:
Bureau of Reclamation
Albuquerque Area Office
Attn: ALB-622
555 Broadway NE, Suite 100
Albuquerque, NM 87102
emontoya@usbr.gov

17. Environmental Compliance.

This Third-Party Implementing Contract is subject to National Environmental Policy Act (NEPA) compliance prior to Reclamation approval. Reclamation has determined that the effects of this Third-Party Implementing Contract were adequately analyzed in the Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas Final Environmental Impact Statement (2016) and reliance on the analysis in this Environmental Impact Statement remains valid. Reclamation has documented this decision in a Determination of NEPA Adequacy Memorandum, dated August 21, 2025.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed the day and year first written above.

ELEPHANT BUTTE IRRIGATION DISTRICT

Greg Daviet
Board President

ATTEST

Randy Garay
Board Secretary Aug 21, 2025

NEW MEXICO INTERSTATE STREAM COMMISSION

Director 8-21-25

APPROVED BY:

WAYNE PULLAN Digitally signed by WAYNE PULLAN Date: 2025.08.21 18:04:36 -06'00'

Regional Director
Bureau of Reclamation
Interior Region 7 – Upper Colorado Basin

ERIN ST. JOHN Digitally signed by ERIN ST. JOHN Date: 2025.08.21 17:12:51 -06'00'

Office of the Regional Solicitor