Contract No. 25-WC-40-1028

RIO GRANDE PROJECT
NEW MEXICO

CONTRACT

between the

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

and the

ELEPHANT BUTTE IRRIGATION DISTRICT
NEW MEXICO
FOR THE CONVERSION OF RIO GRANDE PROJECT WATER
FROM IRRIGATION TO MISCELLANEOUS PURPOSES
AND USES OTHER THAN IRRIGATION

WITNESSETH:

THIS CONTRACT ("CONVERSION CONTRACT"), made this 21st day of August 2025, between the UNITED STATES OF AMERICA, hereafter styled the "United States", acting through the Secretary of the Interior ("Secretary"), Bureau of Reclamation ("Reclamation" or "Contracting Officer"), and the ELEPHANT BUTTE IRRIGATION DISTRICT, a political subdivision of the State of New Mexico, hereinafter referred to as "EBID" or "District," pursuant to the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451; 43 U.S.C. § 521), collectively known as the Reclamation laws.

RECITALS:

WHEREAS, pursuant to the Act of February 25, 1905 (33 Stat. 814), and approved by the Secretary on December 2, 1905, Reclamation constructed the Rio Grande Reclamation Project, hereinafter called the "Project" to store water in New Mexico for irrigation of Project lands in New Mexico and Texas and to aid in the delivery of water to Mexico under provisions of the 1906 treaty with Mexico which was ratified by the Congress on January 16, 1907. Additional Project features have been authorized from time to time; and

WHEREAS, Project Water is allocated by Reclamation to EBID for irrigation purposes; and

WHEREAS, Reclamation administers contracts between the United States and the District, particularly Repayment Contract No. 9-07-54-X0554 dated February 15, 1979, as amended, and the Contract dated February 16, 1938, among the United States, the El Paso County Water Improvement District #1 (EPCWID), and the District; and

WHEREAS, the District has no construction repayment obligation to Reclamation, having repaid all of its construction obligation to Reclamation as of 1979; and

WHEREAS, this Conversion Contract is not intended to conflict with terms of any prior agreements or contracts between the EBID and EPCWID, or EBID and the United States, or EPCWID and the United States, or among all of the Parties; and

WHEREAS, urbanization in and around the Project area has increased the demand for water for miscellaneous purposes and uses other than irrigation; and

WHEREAS, the Act of February 25, 1920, authorizes the Secretary to enter into contracts to supply water from any Project irrigation system for purposes other than irrigation, upon such conditions of delivery, use and payment as the Secretary may deem proper; and

WHEREAS, the Act of February 25, 1920, requires that such contracts shall be approved by the water users association and requires a determination that there is no other practicable water supply for the purpose and that the delivery of such water shall not be detrimental to water service for irrigation or to the rights of any prior appropriator; and requires that Federal revenues derived from such contracts shall be covered into the Reclamation fund and placed as a credit to the Project; and

WHEREAS, the District currently supplies Project Water to its members for the purpose of irrigating lands within the District boundary; and

WHEREAS, the District has requested authority from Reclamation to convert a portion of its irrigation supply to provide Project Water for miscellaneous purposes; and

WHEREAS, Reclamation has the right to store and distribute water for the Rio Grande Project, subject to the rights of the District and the beneficial owners, and has determined that the conversion of a portion of the District's water supply is desirable and meets the provisions of the Act of February 25, 1920, for the conversion of agricultural water to miscellaneous purposes; and

WHEREAS, the United States, New Mexico, EBID, and 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, which requires the United States and EBID to enter this Conversion Contract and EBID and New Mexico enter into a Third-Party Implementing Contract pursuant to this Conversion Contract for the use of Project Water for EBID Allocation Transfers; and

WHEREAS, nothing herein is intended to alter, amend, repeal, modify, or be in conflict with the provisions of the Rio Grande Compact of 1938.

NOW THEREFORE, the parties agree as follows:

AGREEMENT:

1. Definitions:

These definitions are for purposes of this and any Third-Party Implementing Contract only.

a. District: The Elephant Butte Irrigation District.

b. Secretary or Contracting Officer: The Secretary of the Interior of the United States or their duly authorized representative.

c. Reclamation Law: The Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451; 42 U.S.C. § 521); to be known herein as "the 1920 Act".

d. Project: Reclamation's Rio Grande Project.

e. Project Water: Water allocated by Reclamation to EBID or EPCWID pursuant to Reclamation Law and the applicable contracts or delivered by Reclamation to Mexico pursuant to the United States' treaty obligation.

f. Third-Party Implementing Contract: A contract between the District and any Third-Party Contractor pursuant to this Conversion Contract for the delivery of Project Water for miscellaneous purposes and uses other than irrigation under the provisions of the 1920 Act and subject to approval by Reclamation.

g. Third-Party Contractor: Any entity entering into a Third-Party Implementing Contract with the District under the terms and conditions of this Conversion Contract.

h. Converted Water: Any Project Water converted through a Third-Party Implementing Contract, which would have normally been diverted by the District and delivered to EBID members for irrigation under the annual Allotment but is instead being put to a miscellaneous purpose.

i. Federal Revenues (Replacement Component): Those funds collected by EBID from its Third-Party Contractors that are payable by EBID into the Reclamation Fund and designated for the specific purpose of performing extraordinary maintenance (XM), funding Safety of Dams (SOD) activities on the Rio Grande Project including both reserved works (Elephant Butte Dam and Caballo Dam) and transferred works (Percha, Leasburg and Mesilla Diversion Dams).

j. Allotment: is the amount of Project Water available to be delivered by the District to an EBID member.

k. Allocation: is the amount of Project Water available for diversion by the District.

l. EBID Allocation Transfers: are transfers of Allocation from EBID to EPCWID.

2. Source of Project Water for Converted Water.

a. Converted Water may originate from several sources of Project Water. The sources of Project Water listed below are not intended to be comprehensive.

i. Converted Water may originate from EBID members that choose to forego the use of the water for irrigation purposes, to fallow their lands, and make use of the Project Water for miscellaneous purposes ("Base Allotment").

ii. Converted Water may originate from EBID members that have leased their Project Water and are willing to temporarily forbear the use of the water for irrigation purposes so that the water may be supplied to a Third-Party Contractor for miscellaneous purposes ("Leased Allotment").

iii. Converted Water may be made available by the District foregoing the use of a portion of its Project Allocation for miscellaneous purposes established in Third-Party Implementing Contracts ("Allocation Forbearance").

3. Volume of Converted Water.

The maximum cumulative quantity of water to be made available to any Third-Party Contractor or any number of Third-Party Contractors pursuant to this Conversion Contract is up to 100,000 acre-feet (AF) annually.

4. Delivery of Converted Water.

No Project Water deliveries under this Conversion Contract or any Third-Party Contract shall be made in such a manner as to be detrimental to irrigation deliveries, District deliveries, or to the rights of any prior appropriator.

5. Accounting of Converted Water.

EBID shall be responsible for the administration and accounting of any Converted Water pursuant to this Conversion Contract and any additional costs incurred as a result.

6. Price of Converted Water and Components Thereof.

The price of Converted Water pursuant to this Conversion Contract shall be the sum of the Water Payments, the District's Portion, and the Federal Revenues as described below:

a. Water Payments: Payments from Third-Party Contractors to EBID members or the District as incentive to forego delivery of Project Water to which they are entitled under Reclamation contracts.

i. The amount of any Water Payments may be negotiated directly between the EBID member and the Third-Party Contractor or between the District and the Third-Party Contractor dependent on the source of Project Water for Converted Water.

ii. Water Payments are not required for Converted Water that is owned by the EBID member and the EBID member is the Third-Party Contractor.

b. District's Portion: That specific dollar amount determined by the District, and payable by a Third-Party Contractor.

i. Administrative charge. The District's Portion shall consist of a $8.00 per acre-foot administrative charge to cover the District's administrative and operational costs associated with this Conversion Contract. The District Administrative Charge shall increase in the same manner as the Federal Revenues as provided in Paragraph 6.c herein.

ii. Annual Assessments. The administrative charge will be in addition to those normal charges to EBID members for ordinary operation and maintenance associated with the provision of irrigation water ("Annual Assessments"), which Annual Assessments will also be payable by the Third-Party Contractor for Converted Water.

c. Federal Revenues: An amount calculated in addition to the District's Portion. The Conversion Contract will require a charge per acre foot to be paid by a Third-Party Contractor. The District will collect and hold these Federal Revenues in a non-interest bearing account until receipt of annual billing by Reclamation. Reclamation will bill the District by December 15 of each year. The District will remit the total of such payments annually to Reclamation as per the billing statement, and Reclamation will hold all such funds in an account to address potential future extraordinary maintenance (XM) or safety of dams (SOD) needs on Elephant Butte Dam or Caballo Dam. The Federal Revenue collections shall be $4.50 per acre-foot for the first five (5) years of this Agreement and shall be increased every five (5) years by a percentage equal to the percentage increase in the Southwest Region Consumer Price Index (302.413, July 2025), or its equivalent, over the preceding five years.

7. Third-Party Contracts

a. EBID may enter into one or more Third-Party Implementing Contracts.

b. All Third-Party Implementing Contracts entered into under the authority of this 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 this Conversion Contract and with federal law, regulation, and policy.

c. At a minimum, Third-Party Implementing Contracts must contain the following provisions:

i. Third-Party Implementing Contracts shall provide that Federal Revenues shall be paid to the District, which shall remit the Federal Revenues to Reclamation within 60 days after receipt of the annual billing statement.

ii. A term stating that Third-Party Contractors are subject to all Federal laws and regulations applicable to Project Water, particularly the 1920 Act.

iii. A term stating that Third-Party Contractors' right to use Converted Water is based strictly on their Third-Party Implementing Contract and this Conversion Contract, that the terms and conditions of the Conversion Contract are incorporated into the Third-Party Implementing Contract, and that in the case of a conflict between the Third-Party Implementing Contract and the Conversion Contract, the Conversion Contract governs.

iv. A term stating that Third-Party Contractors may not claim a water right based on any legal theory arising under State or federal law or before any State or federal judicial or administrative body based on the use of Project Water under the Third-Party Implementing Contract.

v. A term stating that the Third-Party Implementing Contract will expire within the remaining term of this Conversion Contract.

vi. A term stating that the quality of Project Water is not warranted by Reclamation or the District.

vii. A term that requires the Third-Party Contractor to establish and maintain records acceptable to the Secretary pertaining to their receipt and use of Project Water, and other matters as the Secretary may reasonably require. Records will be furnished to the Secretary in such form and on such date or dates as the Secretary may reasonably require.

viii. A term providing for full funding by the District or the Third-Party Contractor for all necessary National Environmental Policy Act (NEPA)

and other environmental law compliance so as to allow the United States to approve the Third-Party Implementing contract prior to execution.

d. All Third-Party Implementing Contracts pursuant to this Conversion Contract will be subordinate to the Third-Party Implementing Contract between EBID and New Mexico Interstate Stream Commission, Contract No. 25-WC-40-1029.

8. Term of Contract.

This Conversion Contract shall become effective upon execution by the parties hereto and shall terminate at the end of the life of the Project or upon the mutual written agreement of the Parties.

9. Water Rights and Use.

Nothing in this Conversion Contract or any Third-Party Contract entered into under the authority of this Conversion Contract shall be construed as to create a water right. This Conversion Contract shall not create, enlarge, or diminish any water right of the District, Reclamation, or any Third-Party Contractor. Further, no Third-Party Contractor may 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 Project Water under this Conversion Contract.

10. Environmental Compliance.

National Environmental Policy Act (NEPA) compliance will be completed prior to the execution of any Third-Party Implementing Contract. Reclamation will not approve any Third-Party Contract without NEPA compliance.

11. Notices.

a. Any notice, demand, or request authorized or required by this Conversion Contract shall be deemed to have been given if mailed (return receipt requested) or hand delivered (with written confirmation and acknowledgment), or faxed (with verification of receipt), all with an email copy sent contemporaneously as follows:

To the District:

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

To Reclamation:

Regional Director
Upper Colorado Region
Attn: UC-440
125 South State Street
Room 6107
Salt Lake City, Utah 84138-1102
Facsimile Number: 801-524-5499

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

b. The above addresses may be changed by written notice to the other party.

c. Notices sent by certified mail, return receipt requested, postage prepaid, shall be deemed given on the date stated on the certified mail return receipt. Notices sent by personal delivery to a responsible person with written confirmation of such delivery shall be deemed given upon the date stated in the written confirmation and acknowledgement. Notices delivered by facsimile shall be deemed given as of the date of the verification of delivery.

12. Charges for Delinquent Payments.

a. The District shall be obligated to pay the Federal Revenue within 60 days of receipt of the annual billing statement from Reclamation. The District shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the District shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the District shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the District shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The District shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period. When a partial payment on a delinquent account is

received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

13. General Obligation-Benefits Conditioned Upon Payment.

a. The obligation of the District to pay the United States as provided in this Contract is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's water users and notwithstanding the default of individual water users in their obligation to the District.

b. The payment of charges becoming due pursuant to this District is a condition precedent to receiving benefits under this Contract. The United States shall not make Converted Water available to the District through Rio Grande Project facilities during any period in which the District is in arrears in the payment of Federal Revenues due to the United States. The District shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the payment of District's Portion or Federal Revenues as levied or established by the District.

14. Confirmation of Contract.

Promptly after the execution of this Conversion Contract, the District will provide evidence to the Contracting Officer that, pursuant to the laws of the State of New Mexico, the District is a legally constituted entity, and the contract is lawful, valid, and binding on the District. This Contract will not be binding on the United States until the District provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the District may provide, or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of New Mexico, confirming the proceedings on the part of the District for the authorization of the execution of this Contract.

15. Contingent Upon Appropriation or Allotment of Funds.

The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the District from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

16. Officials Not to Benefit.

No Member of or Delegate to the Congress, Resident Commissioner, or official of the District shall benefit from this Conversion Contract other than as a water user or landowner in the manner as other water users or landowners.

17. Changes in District's Organization.

While this Contract is in effect, no change may be made in the District's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the District under this Contract, including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

18. Assignment Limited—Successors and Assigns Obligated.

The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

19. Books, Records, and Reports.

The District shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the District's land-use (crop census) landownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

20. Rules, Regulations, and Determinations.

a. The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation Law.

b. The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its expressed and implied provisions, the laws of the United States and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

21. Protection of Air and Water Quality.

a. The United States does not warrant the quality of the water delivered to the District and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the District.

b. The District will comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico; and will obtain all required permits or licenses from the appropriate Federal the State of New Mexico authorities necessary for the delivery of water by the District ; and will be responsible for compliance with all Federal and the State of New Mexico water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or District facilities or project water provided by the District within its Project Water Service Area.

c. This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

22. Water Conservation.

Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the District shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

23. Compliance with Civil Rights Laws and Regulations.

a. The District shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the District agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The District makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the District by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The District recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the District shall be investigated by the Contracting Officer's Office of Civil Rights

24. Medium for Transmitting Payments

a. All payments from the District to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of the contract, the District shall furnish the Contracting Officer with the District's taxpayer's identification number (TIN). The purpose for requiring the District's TIN is for collecting and reporting any delinquent amounts arising out of the District's relationship with the United States.

25. Contract Drafting Considerations.

This Conversion Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Conversion Contract pertains. Articles 1 through 10 of this Conversion Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

26. Constraints on the Availability of Water.

a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

b. If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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

REVIEWED FOR LEGAL SUFFICIENCY:

ERIN ST. JOHN
Digitally signed by ERIN ST. JOHN
Date: 2025.08.21 17:10:43 -06'00'

Office of the Regional Solicitor

BUREAU OF RECLAMATION

WAYNE PULLAN
Digitally signed by WAYNE PULLAN
Date: 2025.08.21 18:05:29 -06'00'

Regional Director
Interior Region 7 – Upper Colorado Basin

ELEPHANT BUTTE IRRIGATION DISTRICT

Greg Daviet
Board President

ATTEST

Randy Garay
Board Secretary
Aug 21, 2025