OPERATIONS SETTLEMENT AGREEMENT
(Rio Grande Project Operations and Related Issues)

This Operations Settlement Agreement ("Operations Settlement Agreement") is made among the United States of America, by and through the U.S. Department of the Interior, Bureau of Reclamation ("Reclamation") (collectively the "United States"), the State of New Mexico ("New Mexico"), the Elephant Butte Irrigation District ("EBID"), and the El Paso County Water Improvement District No. 1 ("EPCWID") (collectively the "Parties" and individually "Party").

RECITALS

A. The Rio Grande begins in Colorado, flows through New Mexico into Texas, and then courses along the Texas-Mexico border. The Rio Grande provides water to users in the three States, as well as to the Republic of Mexico.

B. In 1906, the United States agreed by treaty to deliver 60,000 acre-feet ("AF") of water from the Rio Grande annually to Mexico upon completion of a new dam and reservoir, known as Elephant Butte Reservoir, located on the Rio Grande about 105 miles north of the Texas state line.

C. The Rio Grande Project ("Project") is a federal Reclamation project operated by the United States pursuant to federal Reclamation law in coordination and cooperation with the two Project beneficiaries – EBID in New Mexico and EPCWID in Texas (the "Districts"). Elephant Butte Reservoir is the major storage reservoir for the Project.

D. In addition to its treaty obligation to Mexico, the United States delivers water from the Project to EBID and EPCWID pursuant to a series of agreements, known as the "Downstream Contracts." "First signed in 1906 and later renegotiated in the 1930s, the Downstream Contracts provided that, after allocating Mexico's share of Rio Grande water under the 1906 Treaty, the United States would deliver" water for the irrigation of approximately 88,000 irrigable acres in EBID and 67,000 irrigable acres in EPCWID. *Texas v. New Mexico*, 602 U.S. 943, 949 (2024).

E. The Rio Grande Compact ("Compact") was entered into in 1938 by Colorado, New Mexico, and Texas ("Compacting States") for the purpose of effecting an equitable apportionment of the waters of the Rio Grande. Congress approved the Compact in 1939. Act of May 31, 1939, 53 Stat. 785.

F. Pursuant to Article V of the Compact, and the unanimous Resolution of the Rio Grande Commission adopted on February 24, 1948, New Mexico is obligated to deliver Rio Grande water into, and measured at, Elephant Butte Reservoir in amounts that are based on flows measured at the stream gaging station at Otowi Bridge near San Ildefonso.

G. The Compact is inextricably intertwined with the Project and the Downstream Contracts because "Reclamation's operation of the Project, and the United States' obligations to EBID and EP1 [EPCWID] under the Downstream Contracts, are the

means by which the States chose to effectuate the apportionment of water in the Compact." 602 U.S. at 960.

H. During the years 1951-1978 (the "D2 Period"), Reclamation allotted water to Project lands on an acre-foot per acre basis.

I. In 1979 and 1980, the Districts completed their repayment obligations under the Downstream Contracts to the United States for the Project's construction. After repayment and the transfer of title to Project works within each District, the Districts took over responsibility for delivering water to Project lands. Thereafter, Reclamation allocated and delivered water to each District at the District's diversion headings, and each District diverted and delivered water to Project lands.

J. Reclamation developed the "D2 equation" to determine Project diversion allocations to the Districts. The D2 equation is a linear regression relationship to predict how much water would have been available for diversion at Project headings during the D2 Period based on a given release of water from Project storage.

K. Reclamation operates the Project under an Operating Agreement executed by the United States, EBID, and EPCWID, on March 10, 2008 ("Operating Agreement"), and an Operations Manual that implements the Operating Agreement ("Operations Manual"), which includes use of the D2 equation. The Compacting States are not parties to the Operating Agreement or the Operations Manual.

L. In 2011, New Mexico brought a lawsuit against the United States and the Districts challenging the Operating Agreement under various federal statutes including the Compact. *New Mexico v. United States et al.*, No. 11-cv-00691-JB-ACT (D.N.M.) ("Operating Agreement Case"). The Operating Agreement Case has been stayed since 2012.

M. Against this backdrop, in 2013, in *Texas v. New Mexico*, No. 141, Orig. (the "Original Action"), Texas filed suit against New Mexico and Colorado, alleging that, in violation of the Compact, excessive groundwater pumping in New Mexico was depleting supplies of Rio Grande water apportioned to Texas. Texas sought declaratory and injunctive relief and damages against New Mexico but sought no relief against Colorado.

N. The United States intervened and filed a complaint asserting essentially the same claims as Texas. Like Texas, the United States alleged that groundwater pumping in New Mexico below Elephant Butte Reservoir intercepts and interferes with Project deliveries to the Districts and Mexico, thereby reducing "the amount of water stored in the Project that is available for delivery" in the future. U.S. Compl. ¶ 14. The United States sought declaratory and injunctive relief to compel New Mexico to prevent such interception and interference. U.S. Compl. at 5.

O. New Mexico pleaded counterclaims against Texas and the United States. New Mexico alleged that Project operations and accounting under the Operating Agreement deprived New Mexico of water apportioned to New Mexico in violation

of the Compact. New Mexico sought declaratory relief, injunctive relief, and damages against Texas and declaratory and injunctive relief against the United States.

P. EBID and EPCWID appeared as amici in the Original Action. In addition, the City of Las Cruces, New Mexico Pecan Growers, Albuquerque Bernalillo County Water Utility Authority, New Mexico State University, the City of El Paso, Hudspeth County Conservation and Reclamation District No. 1, the Southern Rio Grande Diversified Crop Farmers Association, Public Service Company of New Mexico, and Camino Real Regional Utility Authority (collectively the "Other Amici") participated as amici. The Other Amici are not parties to this Operations Settlement Agreement.

Q. In 2018, the Court in the Original Action held that the United States may "pursue the Compact claims it has pleaded." *Texas v. New Mexico*, 583 U.S. 407, 415 (2018). After the first phase of trial in the fall of 2021, the Compacting States agreed to a settlement of the case through a proposed consent decree, to which the United States excepted. The Supreme Court sustained the United States' exception and denied the States' motion to enter the proposed consent decree on the ground that it would have disposed of the United States' claims without its consent.

R. Following further negotiations, the Parties have agreed to resolve all claims in the Original Action, as well as certain related disputes through a collection of proposed agreements. These agreements are:

1. An agreement among the United States, New Mexico, and the Districts – this Operations Settlement Agreement – that would resolve outstanding disputes among the Parties regarding Project operations and that would also include the following agreements:

    a. An agreement among the United States, New Mexico, and EBID to settle certain issues associated with the rights of the United States in the Project and the water rights of EBID members in the Lower Rio Grande Adjudication ("LRG Adjudication"), a general stream adjudication pending in state court in the Third Judicial District Court of New Mexico.

    b. An agreement among the United States, New Mexico, and the Districts to dismiss the following claims with prejudice in two related cases:

        i. New Mexico's claims against EPCWID, EBID, and the United States and EBID's cross-claims against the United States in the Operating Agreement Case.

        ii. The United States' claims, EPCWID's cross-claim against the United States, and any other cross-claims or complaints in intervention in *United States v. Elephant Butte Irrigation District et al.*, No. 97-cv-00803 (D.N.M.) ("Quiet Title Case"), brought by the Parties.

2. An agreement among the United States, New Mexico, and EBID to enter into two contracts under Reclamation law pursuant to the Miscellaneous Purposes Act, 41

Stat. 451, 43 U.S.C. § 521: (1) a contract between the United States and EBID, subsequently assigned Contract No. 25-WC-40-102 (the "Conversion Contract"), which would authorize EBID to convert an agreed-upon amount of irrigation-only Project water to water that may be used for other purposes; and (2) a contract between EBID and New Mexico and approved by the United States, subsequently assigned Contract No. 25-WC-40-1029 (the "Third-Party Implementing Contract"), which would specify the terms and conditions upon which New Mexico may purchase from EBID water converted to other purposes under the Conversion Contract and use the converted water, including for potential Allocation Transfers from EBID to EPCWID, to assist New Mexico in meeting its delivery obligations under the proposed EEPI Decree.

3. An agreement between the United States and New Mexico on groundwater management that would reduce groundwater depletions in New Mexico and protect against interference with Project deliveries ("Groundwater Settlement Agreement").

4. A decree among the Compacting States – the Effective El Paso Index Decree (the "EEPI Decree") – that would provide a mechanism for measuring New Mexico's Compact compliance below Elephant Butte Reservoir, as agreed to by those parties only.

The terms of the Operations Settlement Agreement, including Exhibits A (Changes to the Operations Manual of the Rio Grande Project Operating Agreement) and B (proposed Decree of Dismissal), which are incorporated herein, are set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Project Operations. The United States, New Mexico, and the Districts agree as follows regarding Project operations:

A. Definition of Terms. For purposes of this Operations Settlement Agreement only, the following definitions apply:

1. Accrued Departure is the sum of all Annual Departures subject to limitations and adjustments as described in Exhibit A. An Accrued Departure may be positive (Positive Accrued Departure) or negative (Negative Accrued Departure).

2. ACE Credit is an allocation credit provided to EPCWID in annual Project accounting for the reduction in conveyance losses resulting from the construction of the American Canal Extension ("ACE").

3. Allocation Transfers are transfers of Project Allocation between the Districts made for purposes of and in accordance with the terms of this Operations

Settlement Agreement. Allocation Transfers from EBID to EPCWID are referred to as "EBID Allocation Transfers" and Allocation Transfers from EPCWID to EBID are referred to as "EPCWID Allocation Transfers."

4. Annual Departure is the difference between the Index Delivery and the Index Obligation in any calendar year using the methodology in Exhibit A. The Annual Departure is positive ("Positive Annual Departure") if the Index Delivery is greater than the Index Obligation and negative ("Negative Annual Departure") if the Index Delivery is less than the Index Obligation.

5. El Paso Valley Accounting Charge Point is the location at which diversions of Project water to EPCWID for the El Paso Valley in Texas are charged against EPCWID's allocation of water in Project accounting.

6. Index Delivery is the sum of: (a) the annual flow at the El Paso Gage, after subtracting delivery to Mexico and Excess Flow, as defined in Exhibit A; and (b) the estimated Depletion of Project Supply, as defined in Exhibit A, caused by groundwater and surface water use in the Texas Mesilla, as determined using the methodology in Exhibit A.

7. Index Obligation is the annual volume of water determined using the equation in section I.B of Exhibit A.

8. Modified D2 Equation is a modified version of the D2 equation used under the Operating Agreement in determining annual Project Allocations. The Modified D2 Equation is a multi-linear regression equation used in determining annual Project Allocations to EBID and EPCWID based on annual Project releases from Caballo Dam during the current and prior year. The Modified D2 Equation is more fully described in section IV.C of Exhibit A.

9. Project Allocation is the amount of Project water available for diversion by each District.

10. Referenced EEPI Regression Equation is set forth in section I.B.1 of Exhibit A.

11. Release Season means the period of time each calendar year that Reclamation is releasing water out of Caballo Dam to meet delivery orders from the Districts and Mexico.

12. Texas Mesilla means the portion of the Mesilla Valley in Texas, as defined in Exhibit A.

B. Reclamation and the Districts operate the Project under the Operating Agreement and the Operations Manual. Except as provided below in Part I.C and Exhibit A, nothing in this Operations Settlement Agreement requires the modification of Project operations.

C. Changes to Project Operations. Reclamation and the Districts shall make the changes in Parts I.C.1 through I.C.4, below, to Project operations, as more fully described in Exhibit A. Reclamation and the Districts shall make changes to the Operating Agreement or the Operations Manual that they deem necessary to implement the provisions of this Operations Settlement Agreement and will operate the Project consistent with these changes.

1. El Paso Valley Accounting Charge Point. The El Paso Valley Accounting Charge Point shall be moved to the American Canal Heading. The American Canal Heading replaces the charge points heretofore used to account for diversions of Project water to EPCWID for the El Paso Valley in Texas.

2. ACE Credit. EPCWID shall continue to receive the ACE Credit in perpetuity. The ACE Credit shall be calculated after the end of the Release Season each calendar year and added to EPCWID's end-of-year Project Allocation balance.

3. Modified D2 Equation. The Modified D2 equation shall be used in determining annual Project Allocations to EBID and EPCWID. The Modified D2 Equation replaces the simple linear D2 equation heretofore used under the Operating Agreement to make such determinations. This change requires recalculating the multi-year drought correction factor in the Operations Manual.

4. Allocation Transfers.

    a. Overview. For purposes of this Operations Settlement Agreement only, Reclamation and the Districts agree to implement Allocation Transfers under the conditions and limitations set forth below to address Accrued Departures as defined in this Operations Settlement Agreement. Under the EEPI Decree, the Compacting States have agreed to a mechanism for measuring New Mexico's Compact compliance below Elephant Butte Reservoir, as agreed to by those parties. The United States and the Districts shall implement Allocation Transfers as provided in this Operations Settlement Agreement. The timing and amount of Allocation Transfers are determined using the conditions and procedures set forth in Parts I.C.4.b-e, below, which will be incorporated into the Operations Manual, as set forth in Exhibit A.

    b. Determination of Accrued Departures.

        (1) New Mexico will report in writing to Reclamation, EBID, and EPCWID a determination of the Annual Departure and Accrued Departure under the EEPI Decree for the previous calendar year by February 15. If a final determination of the Annual Departure and Accrued Departure is not available by

February 15, New Mexico shall report to Reclamation, EBID, and EPCWID estimates of the Annual Departure and Accrued Departure, and these estimates will be used as the final determination of departures for the current year required in Exhibit A.

(2) If the Annual Departure value for the previous calendar year reported by New Mexico is negative, Reclamation, EBID, and EPCWID will accept the Annual Departure value.

(3) If the Annual Departure for the previous calendar year reported by New Mexico is positive, for the purpose of calculating Positive Annual Departures, Reclamation, EBID, and EPCWID will:

(a) independently determine the Positive Annual Departure using the Rio Grande at El Paso streamflow record (El Paso Gage) jointly developed with the United States Section of the International Boundary and Water Commission (US-IBWC) and based on streamflow measurements made by Reclamation, EBID, EPCWID, and US-IBWC;

(b) determine Positive Annual Departures using the Referenced EEPI Regression Equation, changes in consumptive use in the Texas Mesilla, and changes in open water evaporation and riparian evapotranspiration; and

(c) incorporate the data and equations into the Operations Manual as set forth in Exhibit A.

(4) Reclamation, EBID, and EPCWID will determine the Accrued Departures based on the Positive Annual Departures determined in Part I.C.4.b(3) and as further set forth in Exhibit A, and the Negative Annual Departures value reported by New Mexico under Part I.C.4.b(2), subject to the conditions and procedures described in section I.F of Exhibit A. Reclamation, EBID, and EPCWID shall provide their independent calculation of the Positive Annual Departure and Accrued Departure for the previous calendar year to New Mexico by March 1.

(5) In the event the Positive Annual Departures or Accrued Departures determined by Reclamation and the Districts deviate from the values reported by New Mexico by more than 1,000 AF for Positive Annual Departures and 10,000 AF for

Accrued Departures, Reclamation, the Districts, and New Mexico shall consult in an attempt to reconcile the calculations. That consultation shall take place within 180 days of the calculation reported by Reclamation and the Districts.

c. Positive Accrued Departures

(1) EPCWID Allocation Transfers. If the Positive Accrued Departure exceeds 50,000 AF at the conclusion of any calendar year, EPCWID shall transfer to EBID the amount of Project Allocation necessary to reduce the Positive Accrued Departure below 16,000 AF in the ensuing 3 calendar years ("EPCWID Allocation Transfer"), as set forth in Part I.C.4.c and as further set forth in Exhibit A.

(2) Cap on Annual Positive Departures. The maximum Positive Annual Departure is 67,500 AF. A Positive Annual Departure more than 67,500 AF shall be treated as the equivalent of 67,500 AF for the purpose of calculating Accrued Departures.

(3) Limitations on EPCWID Allocation Transfers.

(a) EPCWID Allocation Transfers shall not exceed the amount of the Positive Accrued Departure;

(b) EPCWID Allocation Transfers shall not cause EBID's end-of-year Project Allocation balance to exceed the carryover limit (305,918 AF); and

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

(4) Timing of EPCWID Allocation Transfers.

(a) EPCWID 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) EPCWID shall deliver written notice to Reclamation and EBID of the required EPCWID Allocation Transfer, if any, within 7 days after EPCWID, Reclamation, and EBID receive written notice from New Mexico of the Annual Departure and Accrued Departure pursuant to Part I.C.4.b(1).

(c) Reclamation shall give written notice to New Mexico of an Allocation Transfer and implement the EPCWID Allocation Transfer within 7 days after receipt of the written notification.

(d) When Reclamation implements the EPCWID Allocation Transfer, the Positive Accrued Departure shall be reduced by an amount equal to the transfer.

d. Negative Accrued Departures. If the Negative Accrued Departure exceeds 80,000 AF at the conclusion of any calendar year, New Mexico has an obligation under the EEPI Decree to reduce the Negative Accrued Departures to less than 16,000 AF within 6 calendar years. Subject to the provisions in Parts I.C.4.d(1)-(3), below, New Mexico may, in its sole discretion, order Allocation Transfers from EBID to EPCWID ("EBID Allocation Transfers") to satisfy this obligation or maintain the Negative Accrued Departure below 80,000 AF.

(1) EBID Allocation Transfers.

(a) EBID Allocation Transfers shall be subject to the provisions of the Conversion Contract and Third-Party Implementing Contract, as they may be amended.

(b) New Mexico shall not take or reduce EBID's annual Project Allocation through EBID Allocation Transfers without just compensation under the Third-Party Implementing Contract or a replacement contract (if the 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.

(c) In the event the Third-Party Implementing Contract is amended or terminated, the limitations and conditions relating to EBID Allocation Transfers set forth in Parts I.C.4.d(1)-(3) shall remain in full force and effect.

(2) Limitations on EBID Allocation Transfers. EBID Allocation Transfers are subject to the limitations set forth below, which limitations are included in the Third-Party Implementing Contract.

(a) EBID Allocation Transfers shall not exceed the amount of the Negative Accrued Departure;

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

(c) 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 Part I.C.4.e(2), below, if the preceding 2-year average end-of-year Project Allocation balance exceeds 180,000 AF; and

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

(3) Timing of EBID Allocation Transfers.

(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 the 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.

e. Accrued Departures Adjustment and Reset.

(1) In any calendar year in which the annual release from Caballo Dam measured at the Caballo Gage is greater than 790,000 AF, the Index Obligation will be determined using the Referenced EEPI Regression Equation using 790,000 AF as the value for the annual release from Caballo Dam.

(2) In any calendar year in which the 3-year lagged moving average of the end-of-year Project Allocation balance for EPCWID is greater than 180,000 AF, the Negative Accrued Departure shall be reset to 0.

(3) In any calendar year in which an actual or hypothetical spill occurs, as determined by the Rio Grande Compact Commission, the Accrued Departure, whether Positive or Negative, shall be reset to 0.

(4) In any calendar year in which annual Caballo Releases are less than 200,000 acre-feet, the Annual Departure shall be reset to 0.

D. Term and Changes to Project Operations.

1. Regulatory Compliance. All agreed-upon operational changes under this Operations Settlement Agreement shall be subject to applicable regulatory compliance, including but not limited to the requirements of the National Environmental Policy Act ("NEPA").

2. Term. This Operations Settlement Agreement and the agreed-upon operations changes shall be in effect in perpetuity, subject to applicable regulatory compliance, including but not limited to NEPA requirements.

3. Operating Agreement Extension. The United States, EBID, and EPCWID have agreed to extend the term of the Operating Agreement pursuant to the processes set forth in the Operating Agreement so that it shall be perpetual and run concurrently with the operations changes agreed to in Part I of this Operations Settlement Agreement, subject to applicable regulatory compliance, including but not limited to NEPA requirements.

4. Modification of Project Operations. Nothing in this Operations Settlement Agreement alters the authority of Reclamation and the Districts to modify Project operations, except that any modification to Project operations may not be inconsistent with the provisions regarding Project operations agreed to and set forth in this Part I and Exhibit A.

E. Transparency. After the Effective Date:

1. Reclamation, in coordination with EBID and EPCWID, will prepare an annual water allocation and accounting report ("Project Annual Report") that provides details regarding the previous year's Project Allocation and Project operations. The Project Annual Report will clearly document Project Allocation, Project operations, and accounting procedures as well as calculations and results for the preceding year.

a. The Project Annual Report will be available as a draft for review and comment by the Compact Engineer Advisers no later than the third Friday in February.

b. Reclamation will finalize the Project Annual Report no later than the first Friday in April.

2. Reclamation shall provide a written description of proposed modifications to the Operations Manual to New Mexico 30 days prior to those changes taking effect and provide any technical memorandum relating to the proposed changes. Any changes that are implemented will be described in the Project Annual Report.

3. Reclamation will describe any short-term, unplanned, or emergency changes to Project Allocation and Project accounting procedures in the Project Annual Report.

F. Construction. In the event an irreconcilable conflict arises between the terms of Part I of this Operations Settlement Agreement and the Operating Agreement or the Operations Manual (including any future modifications of them), the terms of this Operations Settlement Agreement shall control.

II. LRG Adjudication and Related Issues (Agreements Among the United States, New Mexico, and EBID).

A. SSI 101 and 104. In the LRG Adjudication, the Third Judicial District Court entered

subfile orders and final judgments in two Stream System Issue proceedings – proceedings addressing a designated issue, the resolution of which will affect the water right(s) of all or a substantial number of claimants – concerning (1) the consumptive irrigation and farm delivery requirements for all crops in the Lower Rio Grande Basin, Stream System Issue 101 ("SSI 101"); and (2) the Interests of the United States in the Rio Grande Project, Stream System Issue 104 ("SSI 104"). The United States, New Mexico, and EBID agree as follows regarding these proceedings:

1. Supplemental Groundwater Rights of EBID Members. The United States, New Mexico, and EBID agree to seek to amend no earlier than October 1, 2026, and by no later than January 31, 2027, the Final Judgment in SSI 101 entered on August 22, 2011, by the Third Judicial District Court to: (1) recognize a priority date of 1903 for administrable combined surface and groundwater diversions at the farm headgate of up to 3.024 AF/acre per year for EBID members with administrable, combined surface water and supplemental groundwater rights; and (2) otherwise amend the SSI 101 decree as necessary to implement the Groundwater Settlement Agreement.

2. 1903 Priority for Project Water Right in SSI 104. The United States, New Mexico, and EBID agree to a 1903 priority date for the Project water right, as described in the Subfile Order and Final Judgment entered on April 8, 2025, by the Third Judicial District Court. The United States and New Mexico filed separate notices of appeal in SSI 104 on June 9, 2025, and May 7, 2025, respectively. New Mexico agrees not to pursue its appeals related to the 1903 priority date for the Project water right. The agreement in this Part II.A.2 shall have no effect on the United States' and New Mexico's ability to pursue those appeals as to any other issues in SSI 104 ("other appealable issues").

3. The provisions of these Parts II.A.1-2 do not require the New Mexico State Engineer to administer water rights by strict priority or prevent New Mexico from agreeing to alternative administration.

B. Other Adjudication and Administration Issues. The United States, New Mexico, and EBID agree to negotiate in good faith among themselves and the Other Amici in New Mexico ("Other New Mexico Amici") to seek to resolve, by no later than October 1, 2026: (1) the potential objections of the Other New Mexico Amici to the proposed amended subfile order in SSI 101; (2) other appealable issues raised by the United States' and New Mexico's notices of appeals in SSI 104; (3) a separate appeal filed by the City of Las Cruces in SSI 104; and (4) final decrees of subfile orders on the water rights of EBID, the City of Las Cruces, and New Mexico State University. In addition, by no later than October 1, 2026, the United States, New Mexico, and EBID agree to negotiate in good faith among themselves and with the Other New Mexico Amici on issues associated with the manner in which the New Mexico State Engineer will administer water rights determined in the LRG Adjudication, including a potential alternative administration plan that might replace strict priority administration. Nothing herein precludes the participation in the negotiations of an affected party or amicus in the adjudication.

III. Related Cases. The United States, New Mexico, and the Districts agree to the dismissal with prejudice of the following claims in other related cases:

A. New Mexico's claims against EPCWID, EBID, and the United States and EBID's cross-claims against the United States in the Operating Agreement Case; and

B. The United States' claims, EPCWID's cross-claim against the United States, and any other cross-claims or complaints in intervention in the Quiet Title Case brought by Parties.

IV. Suit Regarding New Mexico's Depletion Reduction Obligations (Agreement Between New Mexico and EBID). In the Groundwater Settlement Agreement between the United States and New Mexico, New Mexico agrees, among other things, to meet certain depletion reduction obligations, as defined in that agreement, through the acquisition and retirement of groundwater rights. New Mexico and EBID agree that: (1) EBID may bring suit for specific performance of Section III of the Groundwater Settlement Agreement; and (2) EBID may seek other potential remedies if New Mexico fails to meet those depletion reduction obligations; provided, however, that the potential remedies EBID may seek do not include monetary damages.

V. Joint Motion and Effectiveness.

A. Motion for Entry of Decree of Dismissal. By August 29, 2025, the United States and New Mexico shall file a joint motion for entry of a decree of dismissal in the Original Action, provided that the conditions set forth in Parts V.A.1-5, below, are concurrently or previously met. The joint motion shall attach the signed settlement agreements. The form of the proposed decree ("Decree of Dismissal") is attached as Exhibit B. The pre-conditions to the filing of the joint motion are as follows:

1. The United States, EBID, EPCWID, and New Mexico sign this Operations Settlement Agreement;

2. The United States and New Mexico sign the Groundwater Settlement Agreement;

3. The United States and EBID sign the Conversion Contract;

4. EBID and New Mexico sign, and the United States approves, the Third-Party Implementing Contract; and

5. The Compacting States file a joint motion for entry of their proposed EEPI Decree.

B. Effective Date. This Operations Settlement Agreement shall be deemed effective upon entry by the Supreme Court of the proposed Decree of Dismissal (Exhibit B) and the proposed EEPI Decree.

VI. Miscellaneous Provisions.

A. Notice.

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 to:

If to New Mexico:

The Rio Grande Compact Commissioner
for New Mexico:

Elizabeth Anderson, P.E., State Engineer
New Mexico Office of the State Engineer
5550 San Antonio Dr. NE
Albuquerque, NM 87109-4127
elizabeth.anderson@ose.nm.gov

With a copy to:

The Rio Grande Compact Commission Legal
Advisor for New Mexico:

Chris Shaw, Deputy General Counsel
New Mexico Interstate Stream Commission
5550 San Antonio Dr. NE
Albuquerque, NM 87109-4127
Chris.Shaw@ose.nm.gov

If to the United States:

Regional Director
Upper Colorado Region
Attn: UC-4455
125 South State Street
Room 6107
Salt Lake City, Utah 84138-1102
jhearty@usbr.gov

With a copy to:

Area Manager
Albuquerque Area Office
Attn: ALB-107
555 Broadway NE, Suite 100
Albuquerque, NM 87102
mestradelopez@usbr.gov

If to EPCWID:

President of the Board of Directors – El Paso County Water Improvement District No. 1
El Paso County Water Improvement District No. 1
PO Box 749
13247 Alameda Ave.
Clint, Texas 79836-0749
epcwid1@epcwid1.org

With a copy to:

General Manager – El Paso County Water Improvement District No. 1
El Paso County Water Improvement District No. 1
PO Box 749
13247 Alameda Ave.
Clint, Texas 79836-0749
epcwid1@epcwid1.org

If to EBID:

EBID

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

and to any other address or addresses as may be hereafter specified by notice given to all of the others by anyone desiring a change of address. In providing notice, days shall be calculated the way days are calculated under Rule 6(a) of the Federal Rules of Civil Procedure. Notice shall be deemed effective upon receipt.

B. Venue. Any lawsuit to enforce the provisions of Part I (except Part I.C.4.d(1)(b)), II, III, or V of this Operations Settlement Agreement shall be in U.S. District Court or the United States Court of Federal Claims, as applicable. Any lawsuit by EBID against New Mexico to enforce the provisions of Part I.C.4.d(1)(b) or Part IV shall be in state district court in Doña Ana County, New Mexico.

C. Binding Effect. This Operations Settlement Agreement shall apply to and be binding on the Parties and their present, past, and future members, officers, agents, representatives, employees, insurers, heirs, successors, and assigns.

D. Compromise. This Operations Settlement Agreement is a compromise to avoid further litigation only. This Operations Settlement Agreement does not represent an admission by any Party to any fact, claim, or defense relating to any issue in the Original Action, the other related cases described in Part III, or any future litigation. This Operations Settlement Agreement has no precedential value and shall not be used as evidence of any precedent in any litigation.

E. Authority to Sign. The undersigned representatives of the Parties certify that they are fully authorized by their respective Party to execute this Operations Settlement Agreement on behalf of the Party and related entities for which they sign, and that they are authorized to bind such Parties to the terms stated herein.

F. Entire Agreement. This Operations Settlement Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes any prior written or oral agreements or understandings. Any prior or contemporaneous representations or understanding not explicitly contained in this written Operations Settlement Agreement, whether written or oral, are of no further legal or equitable force or effect.

G. Attorney's Fees and Costs. The Parties shall separately bear their own costs and attorney's fees arising from these proceedings and the negotiation and execution of this Operations Settlement Agreement.

H. Anti-Deficiency Act. No provision in this Operations Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the United States Department of the Interior, Reclamation, or their offices or officials obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

I. No Third-Party Rights. Nothing in this Operations Settlement Agreement is intended or shall be construed to create rights in, or authorize any cause of action by, anyone not a Party to this Operations Settlement Agreement.

J. Jointly Drafted Agreement. This Operations Settlement Agreement shall be considered a jointly drafted contract and shall not be construed against any Party as the drafter.

K. Modifications or Amendments. The provisions of this Operations Settlement Agreement can be modified or amended only by an instrument in writing agreed to and signed by all the Parties to the pertinent Part of the Operations Settlement Agreement, and no provision of this Operations Settlement Agreement shall be deemed waived except by a written waiver, signed by all the pertinent Parties.

L. Counterparts. This Operations Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument, and photographic copies of such signed counterparts may be used in lieu of the original.

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FOR UNITED STATES OF AMERICA

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Solicitor General
Counsel of Record
Curtis E. Gannon
Deputy Solicitor General
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(202) 514-2217

Dated: 8/27/25

David M. Palumbo
Acting Commissioner
Bureau of Reclamation
U.S. Department of the Interior

Dated: 8-27-2025

FOR EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

Arthur H. Ivey, President of the Board of Directors

Dated: _____

Attest:

George Brooks, Secretary

Dated: _____

FOR THE STATE OF NEW MEXICO:

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Dated: 8/26/25

Case: 24-141 Document: 50-4 Page: 21 Date Filed: 08/29/2025

FOR UNITED STATES OF AMERICA

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FOR EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

Arthur H. Ivey, President of the Board of Directors

Dated: 8-26-2025

Attest:

George Brooks, Secretary

Dated: 8-26-2025

FOR THE STATE OF NEW MEXICO:

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Special Assistant Attorneys General
Trout Raley

JOHN B. DRAPER
CORINNE E. ATTON
Special Assistant Attorneys General
Draper & Draper LLC

Dated: _____

FOR ELEPHANT BUTTE IRRIGATION DISTRICT

Greg Daviet, Board President

Dated: 21 Aug 2025

Attest:

Randy Garay, Secretary/Treasurer

Dated: Aug 21, 2025

Case: 24-141 Document: 50-4 Page: 22 Date Filed: 08/29/2025

EXHIBIT A – Changes to Rio Grande Project Operating Agreement – Operations Manual

OPERATIONS SETTLEMENT AGREEMENT – EXHIBIT A

Changes to the Operations Manual of the Rio Grande Project Operating Agreement

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Elephant Butte Irrigation District (EBID), El Paso County Water Improvement District No. 1 (EPCWID), and the Bureau of Reclamation (Reclamation) shall implement the following changes through procedures described in the Rio Grande Project – Operations Manual (Operations Manual).

I. Determination of Annual and Accrued Departures

A. Negative and Positive Annual Departures

1. New Mexico will report in writing to Reclamation, EBID, and EPCWID a determination of the Annual Departure and Accrued Departure under the EEPI Decree for the previous calendar year by February 15. If a final determination of the Annual Departure and Accrued Departure is not available by February 15, New Mexico shall report to Reclamation, EBID, and EPCWID estimates of the Annual Departure and Accrued Departure, and these estimates will be used as the final determination of departures for the current year required in this Exhibit A.
2. If the Annual Departure value for the previous calendar year reported by New Mexico is negative, Reclamation, EBID, and EPCWID will accept the Annual Departure value.
3. If the Annual Departure for the previous calendar year reported by New Mexico is positive, for the purpose of calculating Positive Annual Departures, Reclamation, EBID, and EPCWID will:

   (a) independently determine the Positive Annual Departure using the Rio Grande at El Paso streamflow record (El Paso Gage USGS08364000) jointly developed with the United States Section of the International Boundary and Water Commission (US-IBWC) and based on streamflow measurements made by Reclamation, EBID, EPCWID, and US-IBWC;

   (b) determine Positive Annual Departures using the Referenced EEPI Regression Equation, changes in consumptive use in the portion of the Mesilla Valley in Texas (Texas Mesilla) shown as the area inside the polygon in Figure 1, and changes in open water evaporation and riparian evapotranspiration; and

   (c) incorporate the data and equations into the Operations Manual as set forth in this Exhibit A.
4. Reclamation, EBID, and EPCWID will determine the Accrued Departures based on the Positive Annual Departures determined in section I.A.3, above , and as further set forth in this Exhibit A, and the Negative Annual Departures value reported by New Mexico under section I.A.2, above, subject to the conditions and procedures described in section I.F of this Exhibit A. Reclamation, EBID, and EPCWID shall provide their independent calculation of the Positive Annual

Departure and Accrued Departure for the previous calendar year to New Mexico by March 1.

5. In the event the Positive Annual Departures or Accrued Departures determined by Reclamation and the Districts deviate from the values reported by New Mexico by more than 1,000 AF for Positive Annual Departures and 10,000 AF for Accrued Departures, Reclamation, the Districts, and New Mexico shall consult in an attempt to reconcile the calculations. That consultation shall take place within 180 days of the calculation reported by Reclamation and the Districts.

B. Index Obligation

The following equation shall be used to calculate at the end of each calendar year the Index Obligation for that year in AF:

$$\text{Index Obligation}[y] = Q_R[y] + 39{,}084 + \Delta CU_R[y] \qquad \text{EQ1}$$

Where $Q_R[y]$ is the Referenced EEPI Regression Equation defined in section I.B.1 below, 39,084 is the average annual consumptive use in the Texas Mesilla for 1951 through 1978 in AF, and $\Delta CU_R[y]$ is the adjustment for change in open water evaporation and riparian evapotranspiration described in section I.B.2, below. The Index Obligation is subject to section I.F, below.

1. Referenced EEPI Regression Equation

The following regression equation shall be used in determining the Index Obligation, in units of AF:

$$Q_R[y] = 0.485886 \times Q_{Caballo}[y] + 0.113382 \times Q_{Caballo}[y–1] – 90{,}149 \qquad \text{EQ2}$$

Where Q_R is the predicted annual flow at the El Paso Gage in AF, excluding the annual Delivery to Mexico and Excess Flow, that would have occurred during the D2 Period (1951 through 1978), $Q_{Caballo}$ is the annual release from Caballo Dam measured at the Rio Grande Below Caballo Dam (USGS 08362500) streamflow gage (Caballo Gage), [y] is the calendar year for which the calculation is being made (Current Year), and [y–1] is the previous calendar year.

2. Adjustment for Change in Open Water Evaporation and Riparian Evapotranspiration

The following equation shall be used to calculate the annual adjustment to account for any estimated change in average annual open water evaporation and riparian evapotranspiration using changes in average ambient air temperature between the Caballo Gage and the El Paso Gage since the D2 Period in AF:

$$\Delta CU_R[y] = 47{,}137 \times (1.0 – CU_R[y] / 53) \times 67/155 \qquad \text{EQ3}$$

Where, $CU_R[y]$ is the average annual consumptive use during the five-year period ending in year [y] in units of acre-inches per acre per year computed using the Blaney-Criddle consumptive use method described in the 1950 Technical Publication 96 (TP-96) by the USDA Soil Conservation Service using an empirical crop consumptive use coefficient (K) of 0.85, the monthly percentages of day light hours (p) for a latitude of north 32 degrees obtained from Table 16 in TP-96, and the monthly average of the daily maximum and minimum ambient air temperatures [(Tmax+Tmin) / 2] measured at the New Mexico State University "Leyendecker II PSRC" weather station located at the Leyendecker Plant Science Research Station located at 7200 Plant Science Circle, La Mesa, New Mexico. If climate data from Leyendecker weather station is unavailable, the best available equivalent data shall be used.

C. Index Delivery

The following equation shall be used to calculate the Index Delivery in AF:

$$\text{Index Delivery}[y] = Q_{\text{El Paso}}[y] + CU_{\text{TxMesilla}}[y] - \text{Delivery to Mexico}[y] - \text{Excess Flow}[y] \quad \text{EQ4}$$

Where $Q_{\text{El Paso}}[y]$ is the Current Year measured annual flow at the El Paso Gage, $CU_{\text{TxMesilla}}[y]$ is the Current Year consumptive use for irrigation and non-irrigation uses in the Texas Mesilla value (section I.C.1, below), Delivery to Mexico [y] (section I.C.2 below), and Excess Flow [y] (section I.C.3, below).

1. Consumptive Use in the Texas Portion of Mesilla Groundwater Basin

(a) The Texas Mesilla Consumptive Use ($CU_{\text{TxMesilla}}$) is the sum of the consumptive irrigation requirement resulting from agricultural and non-agricultural irrigation using groundwater and surface water in the Texas Mesilla (Figure 1, below) and the consumptive use resulting from domestic, commercial, municipal, and industrial (DCMI) groundwater pumping in the Texas Mesilla or in Texas west of the Franklin Mountains, east of the boundary of the Texas Mesilla, and upstream of the El Paso Gage from an aquifer hydrologically connected to the Mesilla Basin aquifer.

(b) The annual consumptive irrigation requirement in AF is equal to the irrigated area in the Texas Mesilla for the current year, in acres, multiplied by 2.8 AF per acre.

(c) The annual DCMI consumptive use is 0.95 multiplied by the sum of the total annual amount of groundwater pumped by the City of El Paso from the Canutillo Well Field in AF and 67% of the annual amount of groundwater pumped from all other DCMI wells in the Texas Mesilla in AF.

2. Delivery to Mexico

The Delivery to Mexico [y] is the annual amount of water in AF delivered by the United States to Mexico at the heading of the Acequia Madre and made available for

diversion by Mexico during the Current Year calculated using the daily flow records as determined by the United States Section of the International Boundary and Water Commission (US-IBWC).

3. Excess Flow

(a) Excess Flow [y] is the annual amount of water measured at the El Paso Gage that:

(1) is in excess of 1,000 cfs, excluding the Delivery to Mexico (section I.C.2, above), as determined using the daily average flow records for the El Paso Gage and Delivery to Mexico;

(2) is released from Caballo Reservoir for flood control purposes or as necessary to accommodate operations and maintenance activities or for purposes other than to meet water orders by EBID, EPCWID, and Mexico, and the water released is not beneficially used in Texas upstream of Ft. Quitman, Texas; and/or

(3) results from an extraordinary circumstance.

(b) Available data and information will be used to determine the timing, duration, and volume of Excess Flow. The available data and information may include, but are not limited to, data and reports from Reclamation, EBID, EPCWID, or US-IBWC.

(c) For Excess Flow caused by an extraordinary circumstance, available data and information will be used to determine the occurrence of the extraordinary circumstance and to quantify the timing, duration, and quantity of Excess Flow resulting from such an extraordinary circumstance.

D. Annual Departures from Index Obligation

The following equation shall be used to calculate, at the end of the calendar year, the Annual Departure [y] in AF per year:

Annual Departure [y] = Index Obligation [y] – Index Delivery [y] EQ5

The Annual Departure [y] is subject to section I.F below.

E. Accrued Departures from Index Obligation

The following equation shall be used to calculate, at the end of the calendar year, the Accrued Departure [y] in AF per year:

Accrued Departure [y] = Accrued Departure [y-1] + Annual Departure [y] EQ6

The Accrued Departure [y] is subject to section I.F below.

F. Conditions, Procedures, Limitations, and Adjustments to Departures

1. In any calendar year in which annual Caballo Releases are less than 200,000 acre-feet, the Annual Departure shall be set to 0.

2. In any calendar year in which the annual release from Caballo Dam measured at the Caballo Gage is greater than 790,000 AF, the Index Obligation will be determined using the Referenced EEPI Regression Equation using 790,000 AF as the value for the annual release from Caballo Dam.
3. In any calendar year in which the three-year lagged moving average of the end-of-year Project Allocation balance for EPCWID is greater than 180,000 AF, the Negative Accrued Departure shall be reset to 0.
4. In any calendar year in which an actual or hypothetical spill occurs, as determined by the Rio Grande Compact Commission, the Accrued Departure, whether Positive or Negative, shall be reset to 0.
5. The maximum Positive Annual Departure is 67,500 AF. A Positive Annual Departure more than 67,500 AF shall be treated as the equivalent of 67,500 AF for the purpose of calculating Accrued Departures.

II. Allocation Transfer Procedures for Positive Accrued Departures

A. EPCWID Allocation Transfers

If the Positive Accrued Departure exceeds 50,000 AF at the conclusion of any calendar year, EPCWID shall transfer to EBID the amount of Project Allocation necessary to reduce the Positive Accrued Departure below 16,000 AF in the ensuing 3 calendar years ("EPCWID Allocation Transfer"), as set forth in Part I.C.4.c. of the Operations Settlement Agreement and as further set forth in this Exhibit A.

B. Limitations to EPCWID Allocation Transfers

1. EPCWID Allocation Transfers shall not exceed the amount of the Positive Accrued Departure;
2. EPCWID Allocation Transfers shall not cause EBID's end-of-year allocation balance to exceed the carryover limit (305,918 AF); and
3. EPCWID Allocation Transfers in any one calendar year in excess of 30,000 AF will require unanimous approval of EPCWID, EBID, and Reclamation.

C. Timing of EPCWID Allocation Transfers

1. EPCWID 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 calendar year.
2. EPCWID shall deliver written notice to Reclamation and EBID of the required EPCWID Allocation Transfer, if any, within 7 days after EPCWID, Reclamation, and EBID receive written notice from New Mexico of the Annual Departure and Accrued Departure pursuant to Part I.C.4.b(1) of the Operations Settlement Agreement.

3. Reclamation shall give written notice to New Mexico of an Allocation Transfer and implement the EPCWID Allocation Transfer within 7 days after receipt of the written notification.
4. When Reclamation implements the EPCWID Allocation Transfer, the Positive Accrued Departure shall be reduced by an amount equal to the transfer.

III. Allocation Transfer Procedures for Negative Accrued Departures

If the Negative Accrued Departure exceeds 80,000 AF at the conclusion of any calendar year, New Mexico has an obligation under the EEPI Decree to reduce the Negative Accrued Departures to less than 16,000 AF within six (6) calendar years. Subject to the provisions in sections III.A through III.C below, New Mexico may, in its sole discretion, order Allocation Transfers from EBID to EPCWID ("EBID Allocation Transfers") to satisfy this obligation or maintain the Negative Accrued Departure below 80,000 AF.

A. EBID Allocation Transfers

1. EBID Allocation Transfers shall be subject to the provisions of the Conversion Contract and Third-Party Implementing Contract, as they may be amended.
2. New Mexico shall not take or reduce EBID's annual Project Allocation through EBID Allocation Transfers without just compensation under the Third-Party Implementing Contract, a replacement contract (if the 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.
3. In the event the Third-Party Implementing Contract is amended or terminated, the limitations and conditions relating to EBID Allocation Transfers set forth in this section III.A, and sections III.B and III.C, below, shall remain in full force and effect.

B. Limitations to EBID Allocation Transfers

1. EBID Allocation Transfers shall not exceed the amount of the Negative Accrued Departure;
2. EBID Allocation Transfers shall not cause EPCWID's end-of-year Project Allocation balance to exceed the carryover limit (232,915 AF);
3. 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.F.3, above, if the preceding 2-year average end-of-year Project Allocation balance exceeds 180,000 AF; and
4. EBID Allocation Transfers in excess of 30,000 AF in any one calendar year will require unanimous approval of EPCWID, EBID, and Reclamation.

C. Timing of EBID Allocation Transfers

1. 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 calendar year.
2. 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 the 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.
3. 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.
4. 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.
5. EBID shall notify Reclamation and EPCWID of the ordered EBID Allocation Transfer within 7 days after receiving notice from New Mexico.
6. 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.
7. When Reclamation implements the EBID Allocation Transfer, the Negative Accrued Departure shall be reduced by an amount equal to the transfer.

IV. Other Operations Changes

A. El Paso Valley Accounting Charge Point

Diversions to EPCWID for the El Paso Valley will be ordered to, and diversion allocation charges determined at, the American Canal Heading flume metering station. There shall be no diversion allocation charges in El Paso Valley at the headings of Franklin and Riverside Canals and the intakes to Robertson-Umbenhaurer and Jonathan W. Rogers Water Treatment Plants. Project accounting for diversions to El Paso Valley greater than EPCWID's water orders will be determined by analysis of water orders and discharges from the American Canal Extension (ACE) to the Rio Grande from waste/floodways located at Settling Basin, Leon Street, and ACE

Wasteway No. 3, which is located approximately 400 feet upstream of the downstream end of the ACE; and from the Riverside Canal Wasteways No. 1 and No. 2, Fabens Waste Drain, Fabens Waste Channel, and Tornillo Wasteway No. 2. EPCWID shall revise EPCWID's Allocation Charges Report to include the new diversion allocation charge point, the new accounting procedures for diversions greater than orders, and to remove the downstream diversion charge points.

B. ACE Credit

EPCWID shall continue to receive the ACE Credit in perpetuity. At the start of a new calendar year and prior to the initial allocation of Project Water to EBID, EPCWID, and Mexico, EPCWID's carryover allocation balance shall be increased by the amount of the ACE Credit from the previous year, which shall be determined based on the previous year's Project accounting.

C. Modified D2 Equation

The D2 equation shall be replaced with the Modified D2 Equation for all uses in Project allocation and accounting procedures.

The D2 equation was derived using simple linear regression of historical annual Project diversions, excluding excess diversions bypassed to the Rio Grande, and historical annual releases from Caballo Dam during the D2 Period (1951 through 1978). The Modified D2 Equation was derived using multi-linear regression of historical annual Project diversions, excluding excess diversions bypassed to the Rio Grande, and the historical current and prior year annual releases from Caballo Dam during the D2 Period.

The Multi-Year Drought Correction Factor (DCF) shall be revised based on the Modified D2 Equation. The D2 equation and the corresponding DCF will no longer be used.

The Modified D2 Equation is:

$$D[y] = 1.2410945 \times Q_{Caballlo}[y] + 0.2550879 \times Q_{Caballo}[y-1] - 173{,}477 \qquad EQ6$$

Where $Q_{Caballo}[y]$ is the total volume of water released from Caballo Dam in AF in year [y] (Current Year), $Q_{Caballo}[y-1]$ is the total volume of water released from Caballo Dam in AFin year [y–1] (prior year), and D[y] is the predicted volume of Project diversions in AF in year [y] (current year).

The Gross D2 Diversion Allocation for releases between 763,842 AF and the maximum allocation release of 790,000 AF extends the current year release term ($Q_{Caballo}[y]$) in the Modified D2 Equation with a 1:1 line to the current year release.

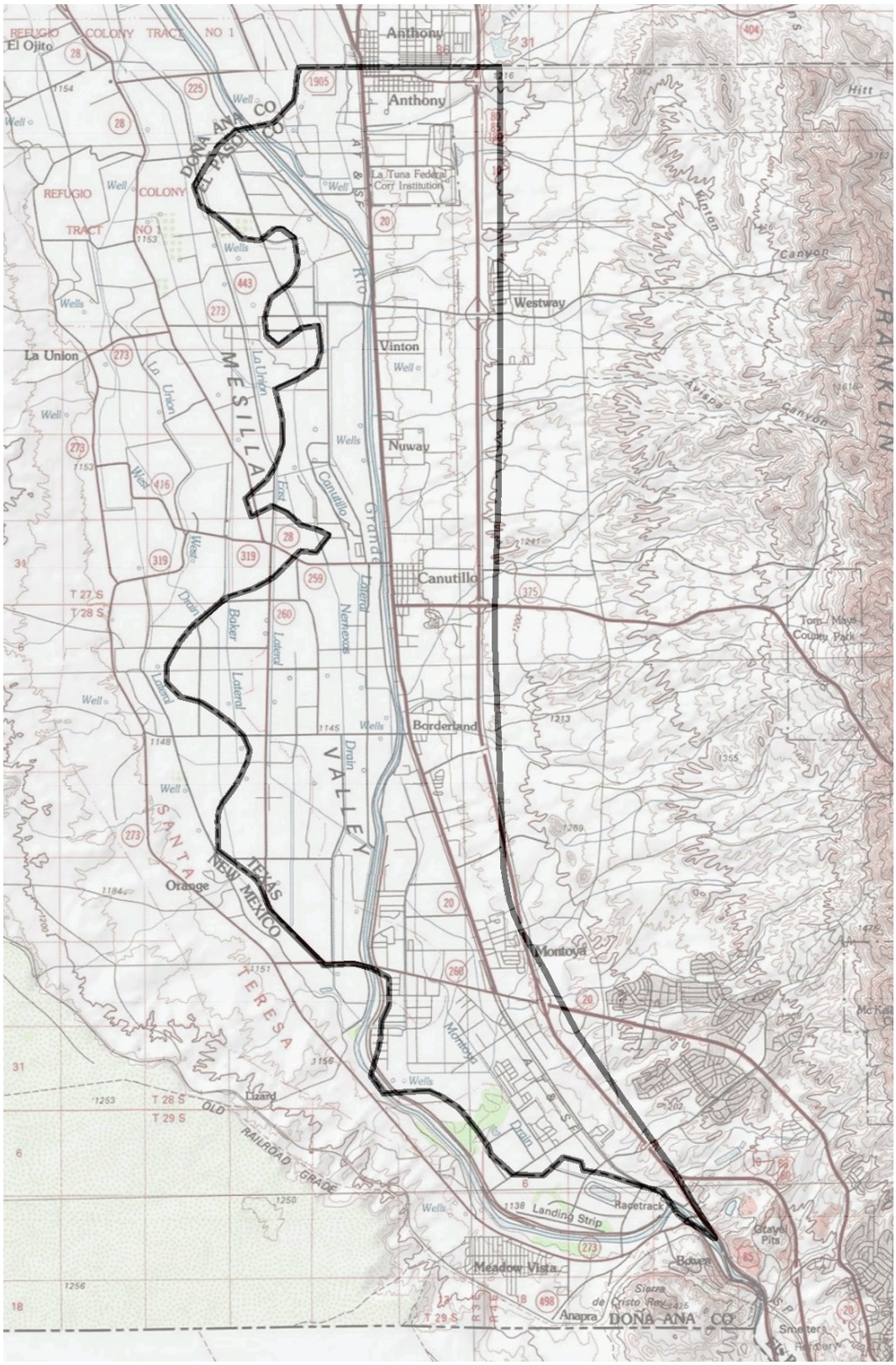


Figure 1: Texas Portion of Mesilla Groundwater Basin (Texas Mesilla)

Exhibit B – Decree of Dismissal

In the Supreme Court of the United States

No. 141, Original

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO, DEFENDANTS

UNITED STATES OF AMERICA, INTERVENOR

DECREE OF DISMISSAL

This cause, having come to be heard on the Report of the Special Master appointed by this Court on the United States' and New Mexico's joint motion to dismiss the United States' claims, IT IS HEREBY ORDERED THAT:

The United States' claims in this case are hereby dismissed with prejudice.