

### Agreement on Settlement In Principle

The State of New Mexico (“State”), Southern Rio Grande Diversified Crop Farmers Association (“SRGDCFA”), New Mexico Pecan Growers Association (“NMPG”) and Elephant Butte Irrigation District (“EBID”) have agreed to a settlement in principle of issues in Lower Rio Grande Stream Adjudication Stream System Issue 97-101, CIR/FDR of all Crops, *State of New Mexico ex rel. Office of the State Engineer v. EBID*, No. CV-96-888, and agree to prepare a final settlement agreement to submit to the adjudication court consistent with the following terms and conditions:

1. The State will adjudicate a surface water right for all 90,640 acres within EBID. The owner of an assessed acre will be adjudicated a surface water right with a Farm Delivery Requirement of 3.024 acre feet per acre per year (“afay”).
  - a. EBID surface water may be leased, transferred and stacked consistent with EBID rules and policies based on state law, so that any EBID parcel may receive more than 3.024 acre-feet per acre of surface water. If the EBID allotment exceeds 3.024, EBID lands may receive that allotment plus any additional transferred, leased or stacked surface water.
  - b. Lands adjudicated as surface-water only may also apply groundwater leased from groundwater right owners (the amount of groundwater available from an adjudicated point of diversion being subject to and limited by the adjudicated amount of the groundwater rights), or provided by EBID from its adjudicated groundwater rights associated with OSE File No. LRG-1776.
2. Except as provided for below, a FDR of 4.5 afay will be adjudicated for that acreage irrigated with combined surface water (sw) and groundwater (gw) or gw only. Such acreage shall be adjudicated an associated *in situ* CIR of 48 inches. For transfers to non-irrigation purposes of use, a basinwide CIR of 2.6 afay shall apply.
  - a. With respect to the gw component of combined sw and gw rights, an amount not to exceed 3.024 acre-feet per irrigated acre shall be supplemental to the sw right FDR of 3.024 afay, and an amount not to exceed 1.476 acre-feet per irrigated acre shall be a primary gw right.
  - b. The priority date for supplemental gw rights, as described above, is date of drilling except as may otherwise be determined by the adjudication court as a stream system issue on priority. The parties hereto agree to pursue settlement of the priority of supplemental groundwater issue prior to litigation of that issue. In any settlement on a priority date of 1906, the State believes that, at a minimum, a subordination agreement and agreement on a means of alternative administration will be required, as well as agreement by other major groundwater rights owners. Thereafter, if such a settlement on supplemental groundwater priority is reached, the signatories thereto shall participate in public meetings to inform other water rights owners of the

supplemental groundwater priority settlement before it is filed with the adjudication court.

- c. The priority date for primary gw rights shall be the date of drilling.
- d. For combined sw and gw rights, the primary gw right of 1.476 may be diverted even when the EBID allotment exceeds 3.024. Primary gw may be stacked within a farm or among farms under the same management or ownership.
- e. Only the full amount of combined sw and gw rights can be transferred.
- f. Non-wasteful application of water to any irrigated acreage may exceed the FDR to allow for stacking of sw, supplemental gw, and primary gw, and to allow for the application of EBID allotments in excess of 3.024 acre-feet per acre.

3. For combined sw and gw rights and gw only rights, a FDR greater than 4.5 afay, but not to exceed 5.5 afay, may be adjudicated subject to supporting evidence of beneficial use of water. For purposes of fast-track approval by the State of a FDR greater than 4.5 afay, the State shall consider groundwater meter records on file with the OSE and EBID surface water delivery records from the same year, along with affidavits from the water right owners asserting they have diverted more than 4.5 afay and/or site-specific NMSU studies, demonstrating that the total application of water placed to beneficial use has been in excess of 4.5 afay.

- a. Irrigated lands under the same ownership or management may combine the actual beneficial use amount for each farm to establish a weighted FDR greater than 4.5 afay but not to exceed 5.5 afay.
- b. Subject to the provisions concerning immature pecan orchards, below, notices of intent to claim a FDR greater than 4.5 afay must be filed with the adjudication court on or before December 31, 2011 and evidence of water use in support of claims to a FDR greater than 4.5 afay must be submitted to the State no later than June 30, 2012. Other than immature pecan orchards, as provided for below, evidence of water use in support of a higher FDR shall be based on water use prior to December 31, 2011.
- c. Immature pecan orchards, as defined by the 2008 Pecan Settlement Agreement between the State and the NMPG, have until March 31, 2019 to file proof of beneficial use with the New Mexico State Engineer to establish a FDR greater than 4.5 afay.

4. Adjudicated water rights may be stacked and may exceed either the adjudicated 3.024 afay FDR or 4.5 afay FDR, as is applicable. The 3.024 or 4.5 afay FDR define only the limit of the legal right to water. Stacking allows the flexibility to use the adjudicated amount of water to obtain an FDR greater than 3.024 or 4.5 without exceeding the total amount of adjudicated water rights based on the FDR of 3.024 or 4.5 afay.

5. EBID members may utilize their adjudicated water rights on any of their acreage within EBID, stacking sw rights on some acreage (subject to EBID rules and policies) and gw rights on other acreage within their total amount of adjudicated water rights.

6. The total delivery of water to EBID acreage may exceed the adjudicated 3.024 or 4.5 afay FDR, as is applicable, when EBID's allotment exceeds 3.024 afay or as water otherwise may be available from or through EBID.

7. EBID members may lease their groundwater to other EBID members, subject only to the extent of the lessor's rights. Water may be delivered to the lessee via EBID's works when necessary subject to EBID's rules and policies.

8. Offers of Judgment for irrigation water rights shall set out the amount of water in a form that conforms to the attached water right description forms for settlement of SSI 97-101.

9. To establish claims to gw rights from off-property wells, farmers shall provide two affidavits (one from the well owner attesting that he provides the claimant with gw diverted from his well, one from the claimant attesting to his use of gw and where it is used) and confirmation by the State's hydrographic survey crew that the gw diverted from the well can physically be delivered to the acreage claimed to be irrigated with the diverted gw.

10. The non-State parties to the settlement understand and accept that the New Mexico State Engineer has the obligation to supervise the apportionment of groundwater in the Lower Rio Grande, including the gw rights covered by this settlement. To meet his obligation, the State Engineer will, as necessary, implement priority administration or a system of alternative administration in the Lower Rio Grande, in accordance with the law. The non-State parties and EBID will work in good faith with the State Engineer and others to develop a regulatory framework for priority administration and/or alternative administration with the objective of reaching and supporting a consensus on the details of the administrative systems.

11. Pursuant to this agreement, EBID members shall take full delivery of their surface water allotment. If a late EBID surface water allotment (for example one that is made at the July EBID board meeting or allotments made thereafter) causes an EBID member to exceed his/her/its total groundwater diversion limit no penalty shall be imposed but it shall be assumed that the excess amount of the late allotment will be available and will be applied in the following water accounting year in calculating that year's groundwater maximum diversion limit.

12. Upon approval of a final settlement agreement by the Court, that final agreement shall supersede the 2008 Pecan Settlement Agreement.

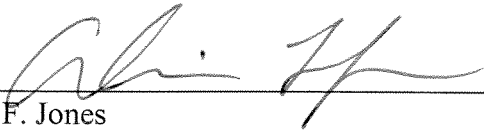
STATE OF NEW MEXICO



Date: 6-8-2011

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Date: June 8, 2011

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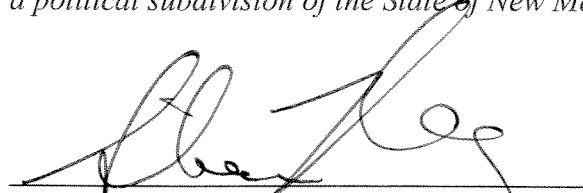
NEW MEXICO PECAN GROWERS



Date: June 8, 2011

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Date: June 8, 2011

**SURFACE WATER ONLY, COMBINED SURFACE WATER  
AND GROUNDWATER, AND GROUNDWATER ONLY  
WATER RIGHT DESCRIPTION FORMS  
FOR SETTLEMENT OF SSI 97-101**

### Surface Water Only

1. Surface Water: 3.024 acre-feet per assessed acre.

Provided that EBID surface water may be leased, transferred and stacked, consistent with EBID rules and policies based on state law, so that any EBID parcel may receive more than 3.024 acre-feet per acre of surface water. If the EBID allotment exceeds 3.024, EBID parcels may receive that allotment plus any transferred, leased or stacked surface water.

2. Supplemental Groundwater: 0.00

3. Primary Groundwater: 0.00

Provided, however, that parcels adjudicated as surface-water only may also apply groundwater leased from groundwater right owners (the amount of groundwater available from an adjudicated point of diversion being subject to and limited by the adjudicated amount of the groundwater rights), or provided by EBID from its adjudicated groundwater rights associated with OSE File No. LRG-1776.

### Surface Water/Groundwater Combined

1. Surface Water: 3.024 acre-feet per assessed acre.

Provided that EBID surface water may be leased, transferred and stacked, consistent with EBID rules and policies based on state law, so that any EBID parcel may receive more than 3.024 acre-feet per acre of surface water. If the EBID allotment exceeds 3.024, EBID parcels may receive the allotment plus any transferred, leased or stacked surface water.

2. Supplemental Groundwater: not to exceed 3.024 acre-feet per irrigated acre adjudicated as having groundwater rights. Supplemental groundwater may be stacked within a farm, or among farms under the same management/ownership.
3. Primary Groundwater: not to exceed 1.476 acre-feet per irrigated acre adjudicated as having groundwater rights.

Provided that primary groundwater may be stacked within a farm, or among farms under the same management/ownership.

Provided further that the total adjudicated FDR amount is 4.5 acre-feet total per irrigated acre, except as provided for below. The non-wasteful application of water to any given tract may exceed the FDR to allow for stacking of surface water, supplemental groundwater, and primary groundwater, and to allow for the application of EBID allotments in excess of 3.024 acre-feet per acre.

It is provided that the total FDR adjudicated for any specific subfile may exceed 4.5 acre-feet per acre subject to supporting evidence of beneficial use of water.

Groundwater Only

1. Surface Water: 0.00
  
2. Supplemental Groundwater: 0.00
  
3. Primary Groundwater: not to exceed 4.5 acre-feet per irrigated acre adjudicated as having groundwater rights.

Provided that groundwater may be stacked within a farm or among farms under the same management/ownership.

Provided further that the total adjudicated FDR amount is 4.5 acre-feet total per irrigated acre, except as provided for below. The non-wasteful application of water to any given tract may exceed the FDR to allow for stacking of supplemental groundwater and primary groundwater.

It is provided that the total FDR adjudicated for any specific subfile may exceed 4.5 acre-feet per acre subject to supporting evidence of beneficial use of water.