

**BEFORE THE NEW MEXICO STATE ENGINEER**

**IN THE MATTER OF THE APPLICATION BY )  
ANTHONY WATER & SANITATION DISTRICT )     Hearing No. 00-003  
FOR PERMIT TO DRILL REPLACEMENT )  
WELLS WITHIN THE LOWER RIO GRANDE )     OSE File No. LRG-4793-S-2  
UNDERGROUND WATER BASIN OF     )                     & LRG-4793-S-8  
NEW MEXICO                             )**

**REPORT AND RECOMMENDATION  
OF THE HEARING EXAMINERS**

This matter came on for hearing before Victor Kovach and Louis D. O'Dell, the State Engineer's designated Hearing Examiners, on May 1, 2001 in Las Cruces, New Mexico. The parties appeared as follows: John C. Appel, Esq., Coppler & Mannick, P.C., represented Applicant Anthony Water and Sanitation District; Lee E. Peters, Esq., Hubert & Hernandez, P.A., represented Protestant Elephant Butte Irrigation District; Paul N. Jones, Esq., Eastham, Johnson, Monnheimer & Jontz, P.C., represented Protestant Desert Sands Mutual Domestic Water Consumers Association; and, Pierre Levy, Esq., represented the Water Rights Division of the Office of the State Engineer. Having considered the evidence presented, the Hearing Examiners recommend the following Findings and Order.

**FINDINGS OF FACT**

1. The State Engineer has jurisdiction of the parties and subject matter.
2. On April 13, 1984, Anthony Water Works, Inc. (AWW) filed Declarations of Owner of Underground Water Rights (Declarations) in the Lower Rio Grande Underground Water Basin, claiming ownership of five wells designated LRG-4793 through LRG-4793-S-4 drilled prior to declaration of the Lower Rio Grande Underground Water Basin on September 11, 1980. The declared quantity of ground water to be appropriated and beneficially used was 1,750 acre-feet per year (afy).
3. On July 18, 1988, AWW filed Amended Declarations for the five wells designated LRG-4793 through LRG-4793-S-4 wherein the declared quantity of ground water to be appropriated and beneficially used was 2,225.9 afy from all wells combined with a claimed priority of 1955.

4. On February 26, 1990, AWW filed Application for Permits for Supplemental Wells Nos. LRG-4793-S-7 and LRG-4793-S-8. Those applications were approved subject to conditions on May 3, 1990. Condition of Approval 1, for Application For Permit No. LRG-4793-S-8, states the following:

Diversion of water from well LRG-4793-S-8 shall not exceed 100 acre-feet per annum measured at the well and when combined with wells LRG-4793 thru LRG-4793-S-4 and LRG-4793-S-7, total diversion from all wells combined for municipal, domestic, commercial, industrial and related purposes within Townships 26 and 27 South, Range 3 East and Township 26 South, Range 4 East, shall not exceed a total of 2225.9 acre-feet per annum measured at the wells; said 2225.9 acre-feet is recognized as an inchoate water right, only part of which has been applied to beneficial use.

5. The permitted diversion amount for well LRG-4793-S-2 is 290 afy.
6. Anthony Water and Sanitation District (AWSD) subsequently acquired the wells and water rights of AWW and filed Changes of Ownership for wells LRG-4793 thru LRG-4793-S-4, S-7 and S-8 in October of 1993.
7. Since 1993, AWSD has supplied water to the unincorporated town of Anthony, New Mexico and adjacent areas for municipal, domestic, commercial, industrial and related uses.
8. AWSD obtained federal funding in 1996 for the construction of new wells. In 1998, AWSD faced a possible economic loss of over \$500,000 in federal funding if it did not promptly use the funds to complete new wells.
9. By letters dated November 5 and November 30, 1998, AWSD advised the State Engineer that it was drilling replacement wells within 100 feet of existing wells LRG-4793-S-8 and LRG-4793-S-2.
10. On December 1, 1998, AWSD filed Application No. LRG-4793-S-8 with the State Engineer for Permit to Change Location of Well for diversion limited to 800 afy from said well for municipal, domestic, commercial, industrial and related uses.

11. On January 29, 1999, AWSD filed Application No. LRG-4793-S-2 with the State Engineer for Permit to Change Location of Well for a diversion limited to 800 afy from said well for municipal, domestic, commercial, industrial and related uses.
12. By letter dated March 23, 1999, the Office of the State Engineer (OSE) District IV Supervisor notified AWSD that it is limited to a diversion of no more than 100 afy from replacement well LRG-4793-S-8 and 290 afy from replacement well LRG-4793-S-2 until such time as action is taken on the pending Applications.
13. Affidavits filed on April 29, 1999, indicate that notice of the Applications was published in the *Las Cruces Sun-News*. Protests to the granting of the Applications were received from Elephant Butte Irrigation District (EBID), Desert Sands Mutual Domestic Water Consumers Association (hereinafter "Desert Sands"), Dimas C. & Lilia G. Diaz, Gilbert & Deborah Ann Provencio, and Charles & Carol Ann Bella.
14. The protests of Dimas C. & Lilia G. Diaz, Gilbert & Deborah Ann Provencio, and Charles & Carol Ann Bella were dismissed pursuant to 19 NMAC 25.2.17 by Order entered in this matter on February 16, 2000.
15. On December 27, 1999, EBID filed a Motion to Dismiss Applications in Part or to Limit Issues at Hearing in which it contended that (1) the State Engineer is prohibited, by NMSA 1978, Section 72-12-22 (1959), from considering a proposed increase in the amount of water diverted under the subject Applications beyond the amounts permitted at the original wells and (2) the Legal Notices of the Applications did not constructively inform the public that Applicant was seeking an increase in the amount of water to be diverted from wells LRG-4793-S-8 and LRG-4793-S-2.
16. EBID's Motion to Dismiss Applications in Part or to Limit Issues at Hearing was denied by the Hearing Examiners' Order of April 10, 2000, which is incorporated herein by reference. The proceedings were stayed to allow Applicant an opportunity to republish Legal Notice of the Applications to clarify that the proposed amount of water to be diverted under the Applications is greater than the amount allowed at the original wells.
17. On July 20, 2000, the WRD filed Notice that Applicant had complied with the April 10, 2000 Order along with Affidavits of Publication indicating that revised Legal

Notices were published in the *Las Cruces Sun-News*. EBID and Desert Sands submitted letters of protest in response to the republished notice.

18. Replacement wells LRG-4793-S-8 and LRG-4793-S-2 are located within one hundred (100) feet of the original wells LRG-4793-S-8 and LRG-4793-S-2 respectively and are drilled into the same underground basin as the original wells.
19. No party objects to granting the subject Applications for the permitted diversion amounts in the original wells: 100 afy for LRG-4793-S-8 and 290 afy for LRG-4793-S-2. The issue in dispute is the extent to which an increase in diversion up to 800 afy from each of the subject wells is permissible.
20. The original and replacement wells LRG-4793-S-8 and LRG-4793-S-2 are located within an area described as the High Impact Area (HIA) of the Mesilla Valley Administrative Area (MVAA).
21. Administrative objectives, standards and criteria for evaluating water right applications within the MVAA are set forth in the State Engineer's MVAA Guidelines for Review of Water Right Applications (MVAA Guidelines).
22. The objectives of the MVAA Guidelines include protection of existing water rights from impairment, ensuring that an appropriation or change in point of diversion will not be contrary to water conservation within the state or detrimental to the public welfare of the state, protection of water quality for domestic, municipal, agricultural, industrial and other purposes, and ensuring that the existing drain systems will not be impaired.
23. The Rio Grande stream system within the MVAA is defined as including the Rio Grande, irrigation canals and laterals, drains and wasteways.
24. The Rio Grande stream system within the MVAA is fully appropriated.
25. The primary aquifer within the MVAA is a stream-connected system in which ground water withdrawals ultimately result in depletions of the surface water sources.
26. Applications for proposed wells that would result in increased groundwater diversions within the MVAA must be carefully evaluated to determine the corresponding effect on the Rio Grande stream system, existing surface water rights and the State's deliveries under the Rio Grande Compact.
27. Although AWSD has declared a diversion right in the amount of 2,225.9 afy, the

maximum amount of groundwater that Applicant has diverted for beneficial use from all of its permitted and declared wells combined is 1,160.55 afy.

28. The MVAA Guidelines provide that surface water depletions of less than 0.10 afy due to a proposed appropriation are acceptable and require no offset. Applications within the MVAA that cause surface water depletions in excess of 0.10 afy in any year must offset 100% of those depletions prior to commencement of the associated ground water withdrawal, unless a proposed water right transfer results in an increased calculated surface water depletion of less than 3% of the total amount of groundwater diverted.
29. WRD's expert hydrologist, Michael S. Johnson, conducted a hydrological evaluation of the subject Applications using a superposition version of a calibrated ground water flow model of the Mesilla Basin (the OSELRG Model) and the Theis equation in accordance with the MVAA Guidelines.
30. WRD's hydrologic evaluation utilizes a baseline ground water diversion scenario wherein 2,225.9 afy is diverted from all of AWSO's permitted wells combined, including the diversions at the original wells LRG-4793-S-8 and LRG-4793-S-2 being limited to 100 afy and 290 afy respectively. The simulated effects of pumping 2,225.9 afy, as proposed under the Application scenario, wherein diversions at each of the two replacement wells are increased to 800 afy beginning in 1999, is compared to the simulated effects of pumping 2,225.9 afy under the baseline scenario to obtain "net" surface water depletion amounts.
31. Under both the Application and baseline scenarios WRD's evaluation assumes historical pumping of 2,225.9 afy from the year 1955 when the first AWSO wells were drilled.
32. Simulated surface water depletions resulting from increasing diversions to 800 afy at each of the replacement wells would temporarily exceed the simulated depletions under the baseline conditions described in Findings 30 and 31 above.
33. Simulated net surface water depletions resulting from increasing diversions at replacement well LRG 4793-S-8 would equal 7.0% of the diversion amount as calculated for 1999, decreasing to 0.2% by the year 2008.
34. Simulated net surface water depletions resulting from increasing diversions at

replacement well LRG-4793-S-2 would equal 5.8% of the diversion amount as calculated for 1999, decreasing to 0.2% by the year 2005.

35. Simulated net surface water depletions due to the combined effect of diverting 800 afy from each of the replacement wells LRG-4793-S-8 and LRG-4793-S-2, as calculated for 1999, are set forth in Table 12 of WR-1 as follows:

<u>Year</u>	<u>afy</u>	<u>% of diversion</u>
1999	285	12.8
2000	229	10.3
2001	155	07.0
2002	104	04.7
2003	68	03.0
2004	44	02.0
2005	27	01.2
2006	16	00.7
2007	9	00.4
2008	4	00.2
2009	0	00.0

36. Simulated net surface water depletions are not significantly reduced by varying the historic pumping to levels that more accurately reflect actual pumping since 1955 and incrementally increasing future pumping to 2,225.9 afy in 2009.
37. The granting of the subject Applications for a diversion of 800 afy from each of the subject wells, under any historical pumping assumption presented at the Hearing, would cause increased net depletion to the Rio Grande of greater than 3% of the total amount of water diverted.
38. WRD's figures for net surface water depletions are based upon a comparison of the simulated effects of pumping 2,225.9 afy from differing well configurations. The figures do not represent the actual "gross" amount of surface water depletion that would result from increasing actual diversions from AWSD's wells above the maximum historic amount of 1,160.55 afy up to 2,225.9 afy.
39. Granting the subject Applications for a diversion of 800 afy from each of the subject wells will increase depletions to the surface water supply of the Rio Grande stream

system. To the extent that AWSD's groundwater diversions deplete the surface water supply and impair existing water rights senior to AWSD priority administration will require either curtailment of AWSD's diversions or AWSD's acquisition of adequate surface water to replace the resulting depletions. The timely acquisition of surface water to replace depletions and prevent impairment of existing water rights within the Lower Rio Grande stream system will allow for out of priority groundwater diversions by AWSD.\*

40. The increased depletion to the Rio Grande stream system resulting from an increase in diversions at wells LRG-4793-S-8 and LRG-4793-S-2 would be reduced to the extent that AWSD limits its ground water diversions from other wells and maintains its total annual diversion from all of its wells combined at historic levels. In that regard, Section C(16) of the MVAA Guidelines suggests that an increase in the diversion amounts at the subject wells may be considered to the extent that the combined diversion from all AWSD's wells do not exceed the amount of water that has been placed to beneficial use by AWSD.
41. Allowing an increase in the diversion amounts at the subject wells would not significantly increase existing impacts on surface water rights on the Lower Rio Grande, provided that the total combined diversion from all AWSD's wells does not exceed the amount of water that AWSD has put to beneficial use: 1,160.55 afy.
42. In evaluating the effect of a proposed diversion on wells of other ownership, the MVAA Guidelines provide that an average annual local ground water level decline rate of 1.0 afy or less, due to a proposed appropriation in combination with the exercise of existing water rights, is considered acceptable.

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\* "Surface water" acquisition may be by either the purchase and transfer of surface water rights, the purchase or lease of the rights to the delivery of surface water, or the lease of surface water rights.

43. Estimates of drawdowns at the nearest wells of other ownership, caused by the simultaneous diversion of 800 afy from each of the subject wells in combination with the exercise of existing rights, are less than 25 feet in 100 years as calculated by Theis analytical methodology. Use of Theis methodology is consistent with MVAA Guidelines and the estimated drawdowns are within the stated acceptable average

annual standard rate of 1.0 afy.

44. The nearest wells of other ownership to AWSD's well LRG-4793-S-8 include domestic well No. LRG-3354, located approximately 780 feet distant, and well No. LRG-5037-S, a public supply well owned by Desert Sands, located approximately 1,680 feet distant.
45. The nearest wells of other ownership to AWSD's well LRG-4793-S-2 include domestic well LRG-9000, approximately 1,620 feet distant, and domestic well LRG-10564, located approximately 2,000 feet distant.
46. Predicted drawdowns at the nearest wells of other ownership, due to the proposed pumping of the subject wells in combination with the exercise of existing rights for 100 years, are 24 feet at LRG-3354, 22 feet at LRG-5037-S and LRG-9000 and 21 feet at LRG-10564.
47. The evidence presented indicates that domestic well LRG-3354 is only 63 feet deep and would need to be (and could be) deepened to regain supply under baseline conditions. Wells LRG-5037-S, LRG-9000 and LRG-10564 would have sufficient remaining water columns to continue production after 100 years of pumping under the Application scenario.
48. Granting the subject Applications will not impair existing groundwater rights.
49. Evidence was presented at Hearing concerning the existing water quality in the area of the subject wells and the estimated potential water quality impacts that would result from the granting of the subject Applications.
50. The basin-fill aquifer in the southern Mesilla Valley can be divided into three zones of differing lithology and water quality. The upper or shallow zone, which extends to a depth of about 200 feet below the water table, consists of coarse-grain alluvium and the upper part of the Santa Fe group and contains slightly saline water ((Total Dissolved Solids (TDS) between 100 mg/L and 3,000 mg/L)) that is affected by irrigation return flow. The underlying intermediate zone, approximately 200 to 250 feet thick, consists of interlayered sands, silts, clays and some gravel of the Santa Fe Group and contains fresh water (TDS less than 1,000 mg/L). The deep zone contains saline water.
51. Wells LRG-4793-S-8 and LRG-4793-S-2 are completed in the intermediate zone of

- the Mesilla Basin aquifer.
52. Over time, pumping from wells completed in the intermediate zone of the aquifer may induce or increase the rate of vertical movement of water into the intermediate zone from the shallow and deep zones of the aquifer and cause a gradual deterioration of water quality in the intermediate zone.
  53. WRD's hydrologist evaluated the water quality effects by comparing drawdown calculations in layers 1 and 2 of the OSELRG Model under baseline and Application scenarios and estimating the relative changes in hydraulic heads between the shallow and intermediate zones. Under both the S-8 and S-2 Application scenarios, layer 2 drawdown predictions in the cells containing the replacement wells are greater than under the baseline scenario, indicating the potential to create or increase downward ground water flow in the vicinity of the wells.
  54. Regarding potential effects to water quality in Protestant Desert Sands' well LRG-5037-S, which also appears to be at least partially completed in the intermediate zone of the Mesilla Basin aquifer, WRD's hydrologist testified that an 800 afy diversion at well LRG-4793-S-8 over 100 years could cause an increase of approximately four (4%) in the concentration of TDS at Protestant Desert Sands' well LRG-5037-S. WRD's hydrologist indicated that the potential for water quality degradation at Desert Sands' well LRG-5037-S, due to pumping of LRG-5037-S itself, would be significantly greater than the potential deterioration due to the proposed pumping of AWSD's wells.
  55. Absent a detailed investigation of the geochemistry, hydraulics and vertical gradients in the aquifer in the area, the magnitude of the potential water quality effects of the subject Applications is uncertain. However, the evidence suggests that any degradation caused by the proposed increase in pumping at wells LRG-4793-S-8 and LRG-4793-S-2 would be incremental and insignificant in comparison to baseline effects.
  56. EBID's East Drain runs generally in a North-South direction and is located approximately 4,000 feet west of well LRG-4793-S-8 and approximately 2,000 feet west of LRG-4793-S-2 at the closest points. The East Drain is between the subject wells and the Rio Grande. Other features between the subject wells and the Rio

Grande include the Anthony Lateral, the Three Saints Lateral, and the Anthony Drain.

57. EBID contends that the proposed increase in diversions from the subject wells could impair the functioning of the East Drain.
58. EBID's expert hydrologist, Dr. Thomas Maddock III, stated that the flow levels in the East Drain fluctuate from 6 cubic feet per second (cfs) to 60 cfs.
59. Dr. Maddock testified that during the irrigation season there is no concern that pumping the subject wells would impair the East Drain. During the season of non-irrigation, or off-season, Dr. Maddock stated that increased pumping at the subject wells could cause water to be pulled out of the drain and into the ground water system with resultant saline movement into the fresh-water aquifer.
60. A detailed evaluation and report of the incremental effects to the East Drain that would result from the proposed increase in diversions from the subject wells in comparison to a baseline diversion scenario was not undertaken or presented by any party at Hearing. However, WRD's hydrologist indicated that water level declines in the shallow zone of the aquifer that could potentially affect the East Drain may be less if the proposed diversion from replacement wells LRG 4793-S-8 and LRG 4793-S-2 occurs than they would be if AWSD continues to divert from its existing shallow wells.
61. AWSD owns and operates a sewage treatment plant which discharges effluent into the East Drain at a point near New Mexico Highway 404, north of and up gradient to the subject wells.
62. Although there was some disagreement among the experts as to whether AWSD's sewage discharge would mitigate effects to the East Drain, the evidence presented indicates that there will be no significant increase in effects to the East Drain under the proposed diversion scenario in comparison to the effects that may occur under the baseline diversion scenario.
63. AWSD has made significant infrastructure improvements to its water delivery system since it acquired the system from the AWW.
64. Water use within the AWSD has been reduced from a high of 174.62 gallons per

- capita per day in 1995, to a low of 106.64 gallons per capita per day in 1999.
65. AWSD encourages water conservation by imposing an increasing commodity charge at higher levels of water usage and by supporting and conducting educational out-reach conservation programs.
  66. Between 1993 and 1999, AWSD's number of metered customers increased at an average of approximately 7% annually.
  67. The "Dona Ana County Regional Water Plan" projects a county-wide population increase of approximately 3% annually.
  68. Population projections indicate an increasing need and demand for potable water in the AWSD service area. In providing potable water, it is preferable to use water with the lowest possible concentration of nitrates.
  69. Water sampling results indicate that the water obtained from the subject wells contains significantly less nitrates than the water obtained from AWSD's other shallow wells.
  70. Granting of the subject Applications would result in provision of better quality water to households within the AWSD service area.
  71. Granting of the subject Applications with conditions to protect existing water rights from impairment and protect deliveries under the Rio Grande Compact obligations would not be contrary to the conservation of water within the state or detrimental to the public welfare of the state.
  72. Application Nos. LRG-4793-S-8 and LRG-4793-S-2 should be approved in part, subject to diversion limits and conditions that protect existing water rights from impairment and protect Rio Grande Compact deliveries while maximizing the beneficial use of New Mexico's Lower Rio Grande stream system water supply.

### **ORDER**

**THEREFORE**, Application Nos. LRG-4793-S-8 and LRG-4793-S-2 for Permits to Change Location of Well are hereby approved in part, subject to conditions, as follows:

**OSE File No.:** LRG-4793 et al.

**Well Nos. &  
Points of Diversion:**

LRG-4793-S-8	SE1/4 SW1/4 NE1/4 of Section 26, Township 26 South, Range 3 East, N.M.P.M.
LRG-4793-S-2	NE1/4 NW1/4 SE1/4 of Section 35, Township 26 South, Range 3 East, N.M.P.M.

**Priority:** Declarations of Owner of Underground Water Rights filed on April 13, 1984 for 1,750 afy and amended on July 18, 1988 for 2,225.9 afy claim a priority date of 1955.

Application No. LRG-4793-S-8 filed on December 1, 1998.

Application No. LRG-4793-S-2 filed on January 29, 1999.

**Purpose of Use:** Municipal, domestic, commercial, industrial & related uses

**Source of Water:** Lower Rio Grande Underground Water Basin

**Amount of Water:** LRG-4793-S-8, 100 acre-feet per annum, diversion. Diversion may be increased up to 800 afy subject to Condition 2 below

LRG-4793-S-2, 290 acre-feet per annum, diversion. Diversion may be increased up to 800 afy subject to Condition 3 below

**Place of Use:** Service area includes Township 26 South, Range 3 East, N.M.P.M., Township 26 South, Range 4 East, N.M.P.M., and Township 27 South, Range 3 East, N.M.P.M.

**CONDITIONS OF APPROVAL**

1. Permit Nos. LRG-4793-S-8 and LRG-4793-S-2 shall not be exercised to the detriment of valid existing water rights or in a manner that is contrary to the conservation of water within the state or detrimental to the public welfare of the State of New Mexico.
2. Diversion of water from LRG-4793-S-8 shall not exceed 100 afy measured at the wellhead and when combined with wells LRG-4793 thru LRG-4793-S-4 and LRG-4793-S-7, total diversion from all wells combined shall not exceed 2,225.9 afy measured at the wellheads, except that Permittee may increase the diversion of

water from LRG-4793-S-8 up to a maximum of 800 afy provided that the total annual diversion from all of its wells combined does not exceed 1,160.55 afy measured at the wellheads.

3. Diversion of water from LRG-4793-S-2 shall not exceed 290 afy measured at the wellhead and when combined with wells LRG-4793 thru LRG-4793-S-4, LRG-4793-S-7 and LRG-4793-S-8 total diversion from all wells combined shall not exceed 2,225.9 afy measured at the wellheads, except that Permittee may increase the diversion of water from LRG-S-2 up to a maximum of 800 afy provided that the total annual diversion from all of its wells combined does not exceed 1,160.55 afy measured at the wellheads.
4. Permittee may increase the diversion of water from LRG-4793-S-8 and LRG-4793-S-2 up to 800 afy each and increase the total annual diversion from all of its wells combined in an amount not to exceed 2,225.9 afy provided that, prior to increasing diversion above 1,160.55 afy from all of its wells combined, it submits to the State Engineer, and the State Engineer approves, a plan for the acquisition of replacement surface water to prevent impairment of water rights senior to AWSD and to allow AWSD to continue its diversions out of priority in the event of a priority call; and further provided that it maintains the original or amended plan as approved by the State Engineer. Upon submission of an effluent return flow plan acceptable to the State Engineer, Permittee's discharge of treated effluent to the Rio Grande stream system may reduce the amount of replacement surface water required under this condition, but shall not be a basis for requesting an increase in the maximum diversion amount of 2,225.9 afy under this condition.
5. The Permittee shall utilize the highest and best technology available and economically feasible for the intended use to ensure conservation of water to the maximum extent practicable. Permittee's right to divert up to 2,225.9 afy pursuant to Conditions of Approval 2, 3, and 4 above is contingent upon a plan of development demonstrating continuing need for future beneficial use of water, such as required for the estimated increasing population, and adherence to a conservation plan for reduction and maintenance of per capita water use at levels acceptable to the State Engineer and consistent with conservation practices and standards for municipal

water systems. Such a plan shall be required as part of any application concerning the Permittee's diversion right.

6. Well Nos. LRG-4793 thru LRG-4793-S-4, LRG-4793-S-7 and LRG-4793-S-8 shall be equipped with totalizing meters of a type and at locations approved by, and installed in a manner acceptable to the State Engineer. The permittee shall provide in writing, the make, model, serial number, date of installation, initial reading, units and dates of recalibration of each meter, and any replacement meter used to measure the diversion of water.
7. Records of the amount of water diverted from each of Well Nos. LRG-4793 thru LRG-4793-S-4, LRG-4793-S-7 and LRG-4793-S-8 during the preceding three (3) calendar months shall be submitted in writing to the District IV Office of the State Engineer in Las Cruces, New Mexico on or before the 10th day of January, April, July, October of each year.
8. Old Well Nos. LRG-4793-S-8 and LRG-4793-S-2 shall be plugged or capped in accordance with Article 4-14 of the Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico and any revision or amendment thereof. A written record of the plugging or capping shall be filed with the District IV Office of the State Engineer in Las Cruces, New Mexico within ten (10) days of completion of the plugging or capping.
9. The State Engineer shall retain jurisdiction of this permit in order to monitor compliance with the Conditions of Approval.
10. Proof of Application of Water to Beneficial Use according to an identifiable plan of development shall be filed with the State Engineer prior to initiation of the inter se proceedings in the Lower Rio Grande Basin Adjudication in State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al., Third Judicial District Cause No. CV96-888.

**Respectfully submitted** this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

\_\_\_\_\_  
Victor Kovach

\_\_\_\_\_  
Louis D. O'Dell

Hearing Examiner

Hearing Examiner

**I ACCEPT AND ADOPT THE REPORT AND RECOMMENDATION OF THE HEARING EXAMINERS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2002.**

\_\_\_\_\_  
**THOMAS C. TURNEY  
NEW MEXICO STATE ENGINEER**