

BEFORE THE NEW MEXICO STATE ENGINEER

**IN THE MATTER OF THE APPLICATION)
BY ROY D. MERCER, LLC FOR PERMIT) Hearing No. 04-027
TO CHANGE PARTIAL POINT OF DIVER-)
SION AND PLACE OF USE FROM SUR-) OSE File No. 06286 and
FACE TO GROUND WATER IN THE RIO) RG-10260
GRANDE UNDERGROUND WATER BASIN)
IN NEW MEXICO)**

REPORT AND RECOMMENDATION OF THE HEARING EXAMINER

This matter came on for hearing before Louis D. O'Dell, the State Engineer's designated Hearing Examiner, on December 7 and 8, 2004, in Albuquerque, New Mexico. Hearing Examiner Victor Kovach attended the hearing as legal adviser and assistant to Hearing Examiner Louis D. O'Dell. The parties appeared as follows: Tanya L. Scott, Esq., and Charles T. DuMars, Esq., represented Applicant Roy D. Mercer, LLC; Protestants Max and Joan S. Romero appeared *pro se*; and, Kristofer C. Knutson, Esq., represented the Water Rights Division (WRD) of the Office of the State Engineer (OSE). By Notice issued on July 22, 2005, the parties were advised that the matter was reassigned to Hearing Examiner Victor Kovach. Having considered the evidence presented, the Hearing Examiner recommends the following Findings and Order.

FINDINGS OF FACT

1. The State Engineer has jurisdiction of the parties and the subject matter.
2. On November 10, 2003, Roy D. Mercer, LLC, filed Application No. 06286 and RG-10260 with the State Engineer for Permit to Change Partial Point of Diversion and Place of Use from Surface to Ground Water in the Rio Grande Underground Water Basin in New Mexico.
3. Applicant proposes to partially change point of diversion for a declared pre-1907 right to divert 277.44 acre-feet per year (afy) of Rio Grande surface water (inclusive of a claimed consumptive use of 194.208 afy), with move-from point of diversion located at the Isleta Diversion Works of the Middle Rio Grande Conservancy District (MRGCD) in the NE1/4 NE1/4 SW1/4 of Projected Section 24, Township 8 North, Range 2 East, NMPM, for livestock and irrigation of 92.48

acres of land owned by the Applicant and described as within Tracts 32A1A, 32B1A, 104A, E. PT. 35, 37A1, 36A1A, 36A2A, 36A3A, 36A4A, 36A5A, 43B2A, 44A, 45A, 47A, all on MRGCD Map 104; Tracts 20A, PT. 110B2A, PT. 104A1A, PT. 104A2, 24C1, PT. 24C2 and 105B, PTS. 102C, 102B, 28A, 28B, 106B1, 99B1A, and 99E, all on MRGCD Map 105; and Tracts PT. 62B1A, 62B2A, and 67A, all on MRGCD Map 114, and to transfer the appurtenant water rights to allow supplemental diversion of groundwater for livestock and irrigation purposes from existing well RG-10260 located within Tract 36A5A, MRGCD Map 104, further described as within 372 feet of a point where Latitude = N 34 degrees 37.719 minutes and Longitude = W 106 degrees 47.060 minutes.

4. The Applicant further proposes to change the place of use from the above described 92.48 acres to anywhere within approximately 412.07 acres of land, owned by Applicant, described as a tract of land comprising Tracts 1 and 2 of the Boundary Survey of the Lands of Les Gibson (formerly Land of Burris), filed on January 12, 1999 in the Valencia County Clerk's Office and recorded in Book J, page 253, more particularly described as follows:

Tract 1, a certain tract of land, lying within projected Sections 25 and 26, Township 5 North, Range 1 East NMPM, and being Tracts (or portions of) 33, 104A, 35, 102B, 36B, 37A1, 102C1, 36A1A, 102C2, 36A2A, 102C3, 36A3A, 102C4, 36A4A, 102C5, 36A5A, 43B1, 43B2A, 44A, 45A, 46B2A, 103B, 46B1, 104A, 47A, 105B, 106B, 107B, 108B, and 109B, all within MRGCD Map No. 104, and being Tracts (or portions of) 110B1, 20A, 110B2A, the westerly portion of 104A1A, 104A2, 24B2, 24C1, 24B1, 24C2, 105A, 105B, 27D, 27B, 102C, 102B, 28A, 28B, 106B1, 99B1A, 99A, and 99C, all within MRGCD Map No. 105, and

Tract 2, a certain tract of land, lying within projected Section 36, Township 4 North, Range 1 East and Section 1, Township 4 North, Range 1 East, NMPM, and being Tracts (or portions of) 103B, 108A and 107A1, all within MRGCD Map No. 105, and being Tracts (or portions of) 107A, 107B1, 108A, 122A, 126D, 112B1, 113A, 114A, 115B1, 116A, 117A, 118A, 119A, 120A, 121A1A, 121A2A, 122A, 123A, 109A, 110A, 111A, 124A, and 125B1, all within MRGCD Map No. 108.

5. The 412.07-acre tract of move-to land is commonly known as the "Burriss Farm." Portions of the move-from lands, described as located on MRGCD Maps 104 and 105 in Finding 3 above and comprising 75.48 of the 92.48 acres of move-from lands, are within the move-to Burriss Farm land. The remaining 17 acres of move-from land is located south of the move-to Burriss Farm land and was referred to at hearing as the southern or horseshoe tract of move-from land.
6. The well, move-to and move-from lands are all generally located west of Interstate 25 directly southwest of the south Belen exit from I-25 in Valencia County, New Mexico.
7. An Affidavit of Publication filed on December 12, 2003, reflects that Legal Notice of the Application was published in the *Valencia County News-Bulletin* on November 29, December 6 and December 10, 2003. The WRD received five (5) timely protests, four of which were dismissed by Order entered on May 13, 2004. The remaining protesting parties are Max and Joan S. Romero.
8. Essentially, Applicant seeks to obtain a permit to use well RG-10260 as a supplemental point of diversion for declared surface water rights it claims are appurtenant to 92.48 acres of land for the supplemental irrigation of the 412.07-acre Burriss Farm land, which includes 75.48 acres of the move-from lands.
9. In order to accurately account for diversion of water and prevent over diversions, the practice of the WRD of the OSE, since at least 2002, has been to limit the granting of applications for permits for wells to supplement surface water irrigation rights to situations where the amount of water diverted for irrigation of the specific appurtenant land, from both the surface and groundwater source(s), can be accurately measured by acceptable means, and to limit the total diversion from those sources to historic diversions. Pursuant to said practice, applications for wells to supplement surface water delivered by the MRGCD have generally been denied as the MRGCD does not measure diversions of water at the turn-out or delivery point for specific individual parcels of land.
10. In support of this Application, Applicant submitted, as its Exhibit 113, a letter from Jim L. Sizemore, WRD Director, dated June 18, 2004, describing specific circumstances whereby valid pre-1907 surface water irrigation rights could, "temporarily during the current drought," be severed from the appurtenant land and

transferred to a well to provide a supplemental source of water to lands served by the MRGCD. The following requirements for consideration of an application for such supplemental wells are described in the letter:

- a. Valid pre-1907 water rights must be transferred to the proposed well and move-to land being irrigated with surface water from MRGCD.
- b. The move-from lands are not to be irrigated with water from any source.
- c. The well shall be used exclusively to provide an additional source of water to supplement surface water from the MRGCD.
- d. The pre-1907 water right shall be considered a reserve for drought and would be protected from abandonment (must be requested on the application).
- e. The move-to lands may have existing pre-1907 or post 1907 MRGCD rights.
- f. In years of short supplies of surface water, the pre-1907 water rights associated with the well may be leased for other uses provided a permit is acquired from the State Engineer.
- g. The well shall be metered and the diversion of water from the well shall be limited to the amount of pre-1907 water right available in the well.
- h. The diversion of water from all sources shall in no event exceed 3.0 acre-feet per acre per annum for the irrigation of the move-to lands.

The letter further reflects that an evaluation for impairment, public welfare and conservation of water would be performed for such application.

11. The requirements set forth in Applicant's Exhibit 113 and Finding 10 address the administrative concerns as to excess diversion of water and accurate accounting for delivery of water noted in Finding 9.
12. Under Declaration of Ownership No. 06286, filed on October 24, 2003, the Applicant claims pre-1907 surface water rights on the 92.48 acres of land of move-from land described in Finding 3.
13. According to the New Mexico OSE Criteria for Evaluating the Validity of Water Rights Perfected Prior to March 19, 1907 in the Middle Rio Grande Basin (WRD Exhibit 3), a classification of lands as Cultivated Class 1, Cultivated Class 2 or Orchard, on the 1917 Rio Grande Drainage Survey, is considered acceptable

evidence that those lands were irrigated from prior to 1907 through 1917. If there is no evidence of irrigation on the 1917 Rio Grande Drainage Survey, the Applicant may present other acceptable evidence to show that the tract in question was irrigated during that time period.

14. The 1917 Rio Grande Drainage Survey reflects that the majority of the subject move-from lands are classified as “sand hills & sage brush”, with a small portion of the lands overlapping and contained within an area described as “cultivated class 1”. The amount of the subject land contained within the area described as cultivated class 1 is approximately 3.00 acres.
15. The WRD concluded that only 3.00 acres of the move-from land were irrigated prior to 1907 based upon the 1917 Rio Grande Drainage Survey.
16. Suzanne Smith, Applicants expert in Water Rights Evaluation, testified that the total 92.48 acres of declared pre-1907 surface water rights was derived by adding up the acreage within the northern Burris Farm lands and southern horseshoe tracts that was described as irrigated, fallow or in weeds on the 1926-1927 MRGCD Plane Table Survey and/or Appraisal Data Sheets.
17. The 1926-1927 MRGCD Plane Table Survey (hereinafter “1926 Plane Table Survey”) and 1926-1927 MRGCD Appraisal Data Sheets (hereinafter “1926 Appraisal Sheets”) reflect that water for irrigation of parts of the northern move-from lands was delivered via the New Belen Ditch, also identified on the survey as the Badera (Ladera) Ditch and the Contraseque Belen.
18. The New Belen Ditch has been known through its history by a variety of other names including, the Ladera Ditch, the contra acequia, the La Senora de Belen de La Ladera, the Acequia de la Nuestra Senora de Belen, the New Belen Ditch and the Isleta Ditch.
19. The New Belen Ditch is identified as the Isleta Ditch on the 1917-1918 Rio Grande Drainage Survey (hereinafter “1917 Rio Grande Drainage Survey”) and it is depicted as running in a southerly direction roughly along, or near the western edge of the northern Burris Farm part of the move-from lands and it appears to end at a point approximately 2/3 to 3/4 of the way down through those lands.
20. Historical documents submitted into evidence by the Applicant suggest that the New Belen Ditch may have been in existence since the mid-1880s.

21. Applicant's Exhibit 20 includes documents from an 1890 court case No. 1103 in the District Court of the Second Judicial District of the Territory of New Mexico, County of Valencia. Suzanne Smith described the case as involving a dispute over an 1882 ditch agreement between the New Belen and Garcia ditches.
22. Applicant's Exhibit 92, a letter to Franklin D. Roosevelt, dated February 6, 1934, and signed by several commissioners of the New Belen Ditch, indicates that the New Belen Ditch was reconstructed and enlarged beginning in 1905 with the work completed in 1912.
23. Eric Robinson, WRD's expert witness in Water Rights Administration, testified that the University of New Mexico archive records reflect that the New Belen Ditch was constructed in 1905.
24. In any event, it is undisputed that the New Belen Ditch has been in existence since at least 1905.
25. The historic point of diversion for the New Belen Ditch was located on the Rio Grande south of the Pueblo of Isleta. In 1917, the ditch was approximately twenty miles long and it terminated on what is now the Burris Farm. The current point of diversion for the New Belen Ditch is at the Isleta Diversion Works on the Rio Grande.
26. Applicants' contention that the total 92.48 acres of the move-from lands have pre-1907 surface water rights rests upon an inference that land described as irrigated, fallow or in weeds, on either the 1926 Plane Table Survey or Appraisal Sheets was likely to have been irrigated from prior to 1907. The 1926 Appraisal Sheets do not support such inference as to land described as fallow or in weeds.
27. Applicant's Exhibits 26, 27 and 43 include copies of 1926 Appraisal Sheets relating to tracts of move-from land mapped on MRGCD Maps 104, 105 and 114, as follows: Exhibit 26 covers approximately the northern 2/3 of the Burris Farm move-from lands depicted on MRGCD Map 104; Exhibit 27 covers the southern 1/3 of the Burris Farm move-from lands depicted on MRGCD Map 105; and, Exhibit 43 correspond to the southern 'horseshoe' move-from lands depicted on MRGCD Map 114.
28. The 1926 Appraisal Sheets contain spaces for entry of data concerning the following: the acres of lands being irrigated this season and kind; lands not

irrigated this season and kind; the names of the irrigation ditches used; years in use; and, acres now under ditch. The data sheets are identified by landowner names and they can be cross-referenced to the 1926 Plane Table Survey.

29. The entries for acres of land irrigated this season on the Appraisal Sheets in Applicant's Exhibit 26 reflect that parts of described move-from tracts of land depicted on MRGCD Map 104 were irrigated in 1926. The New Belen Ditch is identified as the source of water for those lands described as irrigated, with the years in use listed as from 25 to over 50. The entry for acres now under the ditch is equivalent to the entry for irrigated acreage.
30. There are no entries on the 1926 Appraisal Sheets in Applicant's Exhibit 26 to indicate or suggest that lands described as fallow or in weeds on the 1926 Plane Table Survey or Appraisal Sheets were under the New Belen Ditch, or were otherwise served by the New Belen Ditch, in 1926, or at any time prior to 1926.
31. Of the ten Appraisal Sheets contained in Applicant's Exhibit 27, for tracts of move-from land mapped on MRGCD Map 105, only one describes any irrigated acreage, that being 4.02 acres, Lands of Ruperto Gomez. The New Belen Ditch is identified as the irrigation ditch and years of use is listed as over 40. The other nine Appraisal Sheets do not describe any lands as being irrigated. The name of the irrigation ditch entered on those sheets is the "Belen Lateral" or the "Cordova Ditch" and there is no entry for the years in use. Fallow lands are listed as acres under the ditch, or not, depending solely upon a notation that said land "can be improved," the presumption being that improvement would be a necessary prerequisite to irrigation.
32. The 1926 Appraisal Sheets for tracts of move-from land mapped on MRGCD Map 114 indicate that lands are being irrigated, but the entries for identification of the irrigation ditch reflect that said irrigation was not via an irrigation ditch or man made diversion of water. WRD's Exhibit 2C reflects that the land in question rises in elevation in the westward direction, from approximately 4,774 feet to 4810 feet and the subject lands apparently benefited from natural run-off when available.
33. The 1926 Appraisal Sheets contain entries showing that 23.64 acres of the move-from lands were irrigated under the New Belen Ditch in 1926 and that the New Belen Ditch was in use for over 25 years, as follows:

<u>MRGCD Map</u>	<u>Tract No.</u>	<u>Irrigated Acres (within move-from lands)</u>
104	32A1A	.60
104	32B1A	1.15
104	104A	1.69
104	36A5A	3.00
104	43B2A	15.07
104	45A	.08
105	20A	<u>2.05</u>
	Total	23.64

34. The 1926 Appraisal Sheets support an inference that 23.64 acres of the move-from lands were irrigated and under the New Belen Ditch for some time prior to 1926. The Appraisal Sheets specific to the tracts of land identified in Finding 33 describe them as including irrigated acreage with entries reflecting that said acreage was irrigated via the New Belen Ditch and that the ditch was in use for over 25 years.
35. The 1926 Appraisal Sheets provide no support for such an inference with respect to lands identified as fallow or in weeds.
36. Applicant's Exhibit 20 includes a ditch list, submitted by Mayordomo, Jesus Tafolla, in the 1890 court case referenced in Finding 21. Suzanne Smith testified that the list is for the New Belen Ditch.
37. Applicant provided further additional evidence indicating that the names of the owners of the tracts of land referenced in Finding 33 above, or the names of their predecessors, appear on the ditch list submitted in the 1890 court case, with the exception of Tract No. 36A5A, as follows:

<u>Map & Tract Nos.</u>	<u>Appraisal Data No.</u>	<u>Owner on ditch list or relationship</u>
104 - 32A1A & B1A	20	Ruperto Gomez married to daughter of Jose Francisco Chavez
104 -104 A	27	Juan S. Garcia
104 – 43B2A	24	Felipe Trujillo
104 - 45A	26	Predicando Baca
105 – 20A	29	Ruperto Gomez heir to lands of Jose Francisco Chavez

38. Most of the 3.00 acres of land that WRD determined was irrigated prior to 1907, based on the 1917 Drainage Survey, appears to lie within and is attributed to Tract No. 36A5A.
39. Applicants have provided credible evidence that the owners of the tracts of land referenced in Finding 37, above, or their predecessors in interest, were listed as ditch members in territorial court records dating from 1890. Those tracts are depicted as having irrigated acreage on the 1926 Plane Table Survey. The 1926 Appraisal Sheets specific to those tracts of land describe them as including irrigated acreage with entries reflecting that irrigation was via the New Belen Ditch and that the ditch was in use for over 25 years. In addition, those irrigated acres are located between the New Belen Ditch and an area classified as cultivated class 1 on the 1917 Rio Grande Drainage Survey, suggesting that water would have to pass through the subject lands.
40. The items of evidence described in Findings 33 & 36 through 39, when considered individually are not sufficient to establish that irrigation of the 23.64 acres of move-from land identified in Finding 33 was ongoing from prior to 1907. However, when considered together under the specific circumstances presented in this matter, they support a conclusion that those 23.64 acres were most likely irrigated beginning prior to 1907.
41. The items of evidence described in Finding 33 & 36 through 39, together provide acceptable evidence that 23.64 acres of the move-from lands identified in Finding 33, were irrigated prior to 1907, in accordance with the OSE Criteria for Evaluating the Validity of Water Rights Perfected Prior to March 19, 1907 in the Middle Rio Grande Basin.
42. Aerial photographs from 1935, 1947, 1955, 1963 and subsequently, reflect that the 23.64 acres of move-from lands identified as irrigated in Finding 33 appear to have been irrigated to the present.
43. The 23.64 acres of the subject move-from land referenced in Finding 33 appear to have valid existing pre-1907 surface water rights in accordance with the OSE Criteria for Evaluating the Validity of Water Rights Perfected Prior to March 19, 1907 in the Middle Rio Grande Basin.

44. Applicant has not met his burden of demonstrating that more than 23.64 acres of the subject land have valid, pre-1907 surface water rights
45. The subject Application was analyzed under the Guidelines for Review of Water Right Applications in the Middle Rio Grande Administrative Area (MRGAA Guidelines), and it is the determination of the Hydrology Bureau of the Office of the State Engineer (“OSE”) that no model cell was noted which would be in violation of the those guidelines.
46. Partial approval of the Application for a diversion of 70.92 afy (3.0 acre-feet per acre x 23.64 acres) would not impair existing water rights and would not be contrary to the conservation of water within the state or detrimental to the public welfare of the state, provided that the permit is subject to conditions of approval consistent with Finding No. 10, including a condition requiring that the move-from lands are not to be irrigated with water from any source.
47. The Application should be partially approved for a supplemental diversion of not more than 70.92 afy (3.0 acre-feet per acre x 23.64 acres) for irrigation of 388.43 acres of land, subject to conditions of approval consistent with Finding 10.
48. Based on the transfer of valid existing surface water rights to a changed point of diversion and place of use, groundwater placed to beneficial use under this permit should have the December 31, 1906 priority date of the transferred surface water right.

ORDER

THEREFORE, Application No. 06286 and RG-10260 filed by Roy D. Mercer, LLC, is partially approved, for a supplemental diversion of groundwater not to exceed 70.92 acre-feet per year (afy), subject to conditions, as follows:

Permittee: Roy D. Mercer, LLC

Permit No.: 06286 and RG-10260

Priority: December 31, 1906.

Source: Groundwater from well RG-10260 to supplement surface water delivered by and through the works of the Middle Rio Grande Conservancy District (MRGCD).

Points of

Diversions: Belen High Line Canal and New Belen Ditch via the Isleta Diversion Dam with a point of diversion on the Rio Grande located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 8 North, Range 2 East, NMPM, Valencia County, New Mexico.

Well RG-10260, located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, Township 5 North, Range 1 East, N.M.P.M., further described as located in Tract 35 on MRGCD Map 104, further described as within 372 feet of a point where Latitude = N 34 degrees 37.719 minutes and Longitude = W 106 degrees 47.060 minutes.

Purpose of Use: Irrigation and livestock

Place of Use: 388.43 irrigated acres of land (412.07 acres less the 23.64 acres from which the surface water rights are now severed and transferred under this permit) described as a tract of land comprising Tracts 1

and 2 of the Boundary Survey of the Lands of Les Gibson (formerly Lands of Burris), filed on January 12, 1999 in the Valencia County Clerk's Office and recorded in Book J, page 253, more particularly described as: Tract 1, a certain tract of land, lying within projected Sections 25 and 26, Township 5 North, Range 1 East, NMPM, and being Tracts (or portions of) 33, 35, 102B, 36B, 37A1, 102C1, 36A1A, 102C2, 36A2A, 102C3, 36A3A, 102C4, 36A4A, 102C5, 36A5A, 43B1, 46B2A, 44A, 46B2A, 103B, 46B1, 104A, 47A, 105B, 106B, 107B, 108B, and 109B, all within Map No. 104 of the surveys of the MRGCD, and being Tracts (or portions of) 110B1, 110B2A and the westerly portion of 104A1A, 104A2, 24B2, 24C1, 24B1, 24C2, 105A, 105B, 27D, 27B, 102C, 102B, 28A, 28B, 106B1, 99B1A, 99A, and 99C, all within Map No. 105 of the surveys of the MRGCD; and Tract 2, a certain tract of land, lying within projected Section 36, Township 4 North, Range 1 East and Section 1, Township 4 North, Range 1 East, NMPM, and being Tracts (or portions of) 103B, 108A and 107A1, all within Map No. 105 of the surveys of the MRGCD, and being Tracts (or portions of) 107A, 107B1, 108A, 122A, 126D, 112B1, 113A, 114A, 115B1, 116A, 117A, 118A, 119A, 120A, 121A1A, 121A2A, 122A, 123A, 109A, 110A, 111A, 124A, and 125B1, all within Map No. 108 of the surveys of the MRGCD.

Amount of Water: Total diversion of groundwater under permit 06286 and RG-10260 shall not exceed 70.92 afy (23.64 acres x the Farm Delivery Requirement (FDR) of 3.0 acre feet per irrigated acre) measured at the wellhead. Total consumptive use shall not exceed 49.64 afy (23.64 acres x the Consumptive Irrigation Requirement (CIR) of 2.1 acre-feet per irrigated acre).

CONDITIONS OF APPROVAL

1. Permit No. 06286 and RG-10260 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. The total diversion of groundwater under Permit No. 06286 and RG-10260 shall not exceed 70.92 afy. The total diversion of groundwater under Permit No. 06286 and RG-10260, when combined with groundwater diversions under permittee's supplemental well Permit No. 0620, 1690 and RG-10260 and supplemental well Permit No. 04552-A into RG-10260, shall not exceed 314.574 afy.
3. Groundwater diverted and reported under Permit No. 06286 and RG-10260 is to be administered independently of permittee's other water rights in well RG-10260 (Permit No. 0620, 1690 and RG-10260 and Permit No. 04552-A into RG-10260).
4. The combined diversions of surface and ground water shall not exceed 3.0 afy per irrigated acre measured at the wellhead and/or at the farm headgate for the irrigation of 388.43 acres of land.
5. Well RG-10260 shall be used exclusively to supplement MRGCD surface water delivered to the move-to-lands for irrigation and livestock purposes only.
6. The water rights appurtenant to the 23.64 acres of irrigated land described as parts of Tracts 32A1A, 32B1A, 104A, 36A5A, 43B2A and 45A of MRGCD Map 104, and Tract 20A of MRGCD Map 105 are severed therefrom and said lands shall not be irrigated with water from any source.
7. Within ninety (90) days from the date of issuance of the State Engineer's decision in this matter, the permittee shall file with the District 1 Office of the State Engineer (OSE) in Albuquerque, New Mexico, a plat of the lands to be retired from irrigation pursuant to Condition of Approval 6. Permit No. 06286 and RG-10620 shall be canceled if the permittee fails to timely submit said plat.
8. The total diversion of water from well RG-10260 under this permit shall be measured with a totalizing meter(s) of a type approved by and installed in a manner at a location acceptable to the State Engineer. Prior to any diversion of supplemental groundwater under this permit, permittee shall record with the District 1 OSE both the type of meter installed and its location. Records of the total

amount of water diverted from well RG-10260 for each permit (06286 and RG-10260; 0620, 1690 and RG-10260; and 04552-A into RG-10260) shall be submitted to the District 1 OSE on or before the 10th day of April, May, June, July, August, September, October and November of the calendar year.

9. Well RG-10260 shall be used exclusively under this permit for the diversion of groundwater to supplement MRGCD surface water delivered by the MRGCD.
10. The permittee shall utilize the highest and best technology to ensure conservation of water to the maximum extent practical.

Respectfully submitted this ____ day of _____ 2005.

Victor Kovach
Hearing Examiner

I ACCEPT AND ADOPT THE REPORT AND RECOMMENDATION OF THE HEARING EXAMINER THIS _____ DAY OF _____ 2005.

JOHN R. D'ANTONIO, JR., P.E.
NEW MEXICO STATE ENGINEER