

Appendix H.
Return Flow Plan

RETURN-FLOW PLAN CITY OF LAS CRUCES NEW MEXICO

submitted by
City of Las Cruces

prepared by
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from information furnished by
City of Las Cruces

January 2009




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NEW MEXICO**

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INTRODUCTION

The City of Las Cruces holds water rights and State Engineer permits, and has applied for other permits, that carry with them a variety of conditions, including requirements for discharge of certain amounts of water to the natural system after use. In addition, the City of Las Cruces owns, and has entered into leases of, surface-water allotments for future municipal and industrial (M & I) uses. The purposes of this Return-Flow Plan are to compile the various requirements for return flows, and to present the City's plan for meeting them.

SOURCES OF WATER

The Las Cruces water system diverts water from wells in the Mesilla Sub-Basin and wells in the Jornada del Muerto Sub-Basin under Lower Rio Grande Underground Water Basin ground-water rights, and in the future will divert surface water under existing Rio Grande rights already owned by the City, and also under leases from allottees served by the Elephant Butte Irrigation District (EBID). The amounts of water that the City of Las Cruces must return to the surface-water or ground-water system depend on the terms of the several water-right permits the City holds, and the adjudication order in LRG-430 et al. The City currently returns these required amounts to the stream system through the discharge of effluent from wastewater treatment. Water rights owned by the City are listed below, along with descriptions of their respective return-flow requirements.

Ground Water

File No. LRG-430 et al.: This declared Lower Rio Grande Underground Water Basin right, established by the City prior to the declaration of the Basin by the State Engineer in 1980 and confirmed by Court Order, represents the ability to divert (that is, to pump from wells) a combined amount up to 21,869 ac-ft/yr from wells in the Mesilla Sub-Basin.

The right is the subject of a Subfile Order in the adjudication of the Lower Rio Grande, Northern Mesilla Valley Section.¹ The Order establishes no requirement for return flow, so that the entire amount diverted may be consumed, except that “...during periods of drought which, for purposes of this Offer of Judgment, are defined as years when the annual *pro rata* share of Rio Grande Project water available to acreage supplied with such water within Elephant Butte Irrigation District falls below two (2.0) acre-feet per acre, the Defendant [i.e., the City] shall not consumptively use the treated effluent derived from LRG-430 wells ..., but shall return the effluent derived from these wells to the stream system. If the preceding year ended with an annual *pro rata* share of less than two (2.0) acre-feet per acre, the system remains in drought until the annual *pro rata* share is greater or equal to (2.0) acre-feet per acre.”

Two wells in the Jornada del Muerto Basin are also enumerated in the Subfile Order, LRG-430-S-26 (Well 40) and LRG-430-S-28 (Well 41), but “upon completion of infrastructure and notice to the State Engineer,” they will no longer serve as supplemental wells under File No. LRG-430 et al., and will be designated LRG-3289 and LRG-3288 respectively. They will be pumped under State Engineer Permit LRG-3283 through LRG-3296 (issued in 2002), which requires that depletions of Rio Grande flows be offset, by acquisition and transfer of existing valid water rights or by discharge of treated effluent, according to a schedule that reaches 644 ac-ft/yr after 100 years, as described in a following section. Wells LRG-430-S-29 and -S-30 are intended by the City to also become supplemental points of diversion under the East Mesa permits upon adjudication of those permits. A State Engineer permit will be applied for.

Permits LRG-389 and LRG-399: Las Cruces has State Engineer permits to drill two wells and divert up to 4,250 ac-ft/yr from them (2,550 ac-ft/yr from LRG-389 and 1,700 ac-ft/yr from LRG-399), with a requirement that effects on the Rio Grande flows be offset by transfer of existing rights. The wells have not been drilled, because of water-quality considerations at the locations described in the permits, but the City is applying for a supplemental point of diversion, Well LRG-430-S-44, for the rights represented by these permits. The application was not protested, and is awaiting action from the Office of the State Engineer.

Diversions from Well LRG-430-S-44 under LRG-389 and LRG-399 will be reported to the State Engineer separately from diversions from the well under Declaration LRG-430 et al. State Engineer records indicate that 435.5 ac-ft/yr may be diverted from Well LRG-399 under

¹ State of New Mexico vs. Elephant Butte Irrigation District et al., Third Judicial District Court No. CV 96-888, Subfile No. LRN-28-011-0078-A.

existing water rights other than LRG-430. An additional transfer of 21.0 ac-ft/yr was applied for, but the permit has been denied by the State Engineer. The City is aggrieved by the denial, and has responded formally.² The consumptive-use amounts available under the already-transferred rights (LRG-5933, LRG-3530, and LRG-4455-B) currently total 297.55 ac-ft/yr. These rights would be available to offset depletion due to pumping from the supplemental well.

Permit LRG-3283 through LRG-3296: The Las Cruces East Mesa wells in the Jornada del Muerto Sub-Basin are governed by this permit, issued in 2002, which provides for diversion of up to 10,200 ac-ft/yr according to a limiting schedule, and requires that depletions of Rio Grande flows due to pumping be offset, by acquisition and transfer of existing valid water rights or by discharge of treated effluent, according to another schedule. That schedule of required offsets is reproduced in Table 1 and is expanded by interpolation in Table 2, simply as a convenience to provide a value for each year to be used in the return-flow calculations described in later sections of this Plan. No diversions under the permit have occurred.

Interpolated annual required offsets, the amount that would be required in each year based on the schedule in the permit, are presented in Table 2. For the first 20 years, the values are linear interpolations between the values for 1, 5, 10, and 20 years. For later years, the interpolation is from a polynomial fit through all of the values in the schedule.

Table 1. Schedule of required offsets of Rio Grande depletion under Permit No. LRG 3283 through LRG-3296, Jornada del Muerto Sub-Basin (East Mesa) wells

time after start of pumping (years)	required depletion offsets (ac-ft/yr)	time after start of pumping (years)	required depletion offsets (ac-ft/yr)
1	0.0	30	50
5	0.3	40	100
10	2.8	100	644
20	18		

ac-ft/yr - acre-feet per year

² The diversion amounts are as follows: LRG-3530 and LRG-3530-S into LRG-399, 19.0 ac-ft/yr; LRG-4455-B into LRG-399, 109.0 ac-ft/yr; and LRG-5933 and LRG-399, 307.5 ac-ft/yr, for a total of 435.5 ac-ft/yr. The transfer that had been applied for, but which was denied, is LRG-449 into LRG-389 and LRG-399. The LRG-4455-B application had requested a diversion of 285.24 ac-ft/yr from Well LRG-399, which would have led to a total diversion of 611.7 ac-ft/yr, but the Conditions of Approval indicate a maximum diversion of 109.0 ac-ft/yr. This amount is based on a State Engineer analysis of the quantity available for transfer (see OSE Memorandum dated October 15, 2002, from E.H. Fuchs to Calvin Chaves, File No. LRG-399).

Table 2. Annual offsets of Rio Grande depletion required under Permit No. LRG-3283 through LRG-3296, the East Mesa (Jornada del Muerto Sub-Basin) wells, interpolated from values in Table 1

time after start of pumping (years)	offset required (acre-feet)	time after start of pumping (years)	offset required (acre-feet)
1	0.00	51	161
2	0.06	52	167
3	0.15	53	174
4	0.23	54	181
5	0.30	55	188
6	0.80	56	195
7	1.3	57	203
8	1.8	58	210
9	2.3	59	218
10	2.8	60	225
11	4.3	61	233
12	5.8	62	241
13	7.3	63	249
14	8.8	64	258
15	10	65	266
16	12	66	275
17	13	67	283
18	15	68	292
19	16	69	301
20	18	70	310
21	23	71	319
22	26	72	329
23	29	73	338
24	32	74	348
25	35	75	357

Table 2. Annual offsets of Rio Grande depletion required under Permit No. LRG-3283 through LRG-3296, the East Mesa (Jornada del Muerto Sub-Basin) wells, interpolated from values in Table 1 (concluded)

time after start of pumping (years)	offset required (acre-feet)	time after start of pumping (years)	offset required (acre-feet)
26	38	76	367
27	41	77	377
28	45	78	387
29	48	79	398
30	50	80	408
31	56	81	419
32	60	82	429
33	64	83	440
34	68	84	451
35	73	85	462
36	77	86	473
37	82	87	485
38	86	88	496
39	91	89	508
40	100	90	520
41	102	91	531
42	107	92	543
43	112	93	556
44	118	94	568
45	124	95	580
46	130	96	593
47	135	97	605
48	142	98	618
49	148	99	631
50	154	100	644

Wastewater collected by the Las Cruces system is presently conveyed to the Jacob A. Hands Wastewater Treatment Facility, treated, and then discharged to the Rio Grande. Las Cruces plans to build a water-reclamation plant on the East Mesa to collect wastewater from interceptors serving, in particular, the Las Colinas, Mars, High Range, and Sonoma Ranch areas, and will have the ability to serve the recently-annexed Vistas at Presidio development.³ Flows collected from these systems will be treated to produce a very-high-quality reclaimed water intended for sale to customers with high landscape-irrigation needs and for use to irrigate city parks east of Interstate 25. A potential customer is the Sonoma Ranch Golf Course, but it is not included in any current plan. The wastewater would primarily be derived from the East Mesa wells. The plant is expected to be in service by about 2010, and have a capacity of 500,000 gallons per day. The annual capacity at full operation would be about 560 ac-ft, but the irrigation use is likely to be seasonal, and the annual treatment volume less than 560 ac-ft. The remaining wastewater would be transferred to the Jacob A. Hands Wastewater Treatment Facility, treated, and then discharged to the Rio Grande.

Application, File No. LRG-3275 through LRG-3282 (West Mesa Applications):

Las Cruces applied to the State Engineer in 1981 for an appropriation of 8,000 ac-ft/yr, to be pumped from wells on the West Mesa. Although the permit has not yet been approved, it is very likely to be conditioned to require that depletion of flows of the Rio Grande be offset by a combination of acquisition of existing rights to surface water or ground water, and return flows. Las Cruces expects to use return flows from various sources, in accordance with the LRG-430 et al. Subfile Order and subject to the conditions of other permits as described elsewhere in this Return-Flow Plan, to offset depletion. All of the effluent that results from pumping of the group of West Mesa wells plus up to 4,480 ac-ft/yr of other effluent (assuming that 44 percent of pumping will appear as return flow) will be used to offset the entire amounts diverted from the wells.

File No. LRG-5818 et al., Jornada Water Company: Las Cruces has preliminarily acquired the wells, State Engineer permits, and declared pre-basin water right of Jornada Water Company. The total permitted diversion is 792.0 ac-ft/yr. Diversions in excess of the pre-basin right, 42.46 ac-ft/yr, must be matched by offsetting water rights or return flow. Although the amount of water that may be diverted shall not exceed 42.46 ac-ft/yr without submission, and approval by the State Engineer, of a schedule for the acquisition of

³ City of Las Cruces 40-Year Water Development Plan, November 2008, p. 57.

replacement surface water to prevent impairment of senior surface water rights, the permit also includes a provision to the effect that “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 otherwise required, but shall not be a basis for requesting an increase in the maximum annual diversion of up to 792.0 acre-feet.”⁴ This Return-Flow Plan is intended to serve as that submission, and the return-flow accounting in this Plan includes a provision for increasing diversions under LRG-5818 et al. by discharging treated effluent in sufficient amounts to offset the increased effects on the flow of the Rio Grande.

Rio Grande Project (Elephant Butte Irrigation District) Surface Water

Las Cruces is planning a surface-water diversion project and a water-treatment facility for potable water uses. A comprehensive feasibility study is currently underway, including determination of a plant site. Water will be diverted under rights and other arrangements as described below, treated, and conveyed to the distribution system. The following discussion of the City’s potential surface-water supply is included in this Return-Flow Plan, even though specifics as to the supply are lacking at present, because return-flow requirements are expected and would be included in the accounting under this Plan.

Surface-Water Rights Owned or Leased from EBID: Las Cruces owns or has lease-purchase agreements for surface-water rights appurtenant to some 1,138.48 acres of irrigated land.⁵ These rights are represented by Offers of Judgment in the adjudication of the Lower Rio Grande Basin. The amount of consumptive use available under these rights remains to be determined in the adjudication; the City expects that the proportion of return flow of water diverted under these rights by the City would be required to be the same as if the rights were exercised in irrigation.

Leases to Las Cruces Special Water Users Association: Legislation enacted in 2003⁶ allows municipalities, such as Las Cruces, and certain other kinds of entities, to form Special Water Users’ Associations (SWUAs) which may lease Rio Grande Project irrigation water for their respective uses. State Engineer regulations governing these leases, and the associated return-flow requirements, are expected to be promulgated.

⁴ Permits for Supplemental Wells, Nos. LRG-5818-S-7 through –S-10, Conditions of Approval 1 and 7.

⁵ Information from City of Las Cruces, January 2008.

⁶ NMSA 1978, §§73-10-48, 73-10-49, and 73-10-50 (2003).

Las Cruces formed the Las Cruces Special Water Users' Association in 2005, for the purposes of entering into 40-year leases of the annual allotments of Rio Grande Project water from the owners of tracts of land within the boundaries of the Elephant Butte Irrigation District, acting in a fiduciary capacity on behalf of the City as a municipal water utility, and acquiring annual water allotments on behalf of the City.⁷

SOURCES OF WASTEWATER

Municipal Wastewater System

The principal source of wastewater to be treated and discharged is the municipal sewer system. As of this writing, an amount equivalent to about 44 percent of the City's total water diversion is discharged to the Rio Grande as treated wastewater.⁸ The actual future amounts will be determined monthly as a part of this plan. At present, most of this effluent is derived from pumping of the City's wells under File No. LRG-430 et al.

Some wastewater derived from LRG-430 wells west of the Rio Grande (Wells 36, 46, and 63, and four other permitted wells either not yet in service or as-yet undrilled), and wastewater from the airport, the prison, and the industrial park, is treated in a small wastewater reclamation plant west of the river. Water from this plant is not discharged to the Rio Grande, and no return flow is claimed. In the future, water produced from the West Mesa wells drilled under the applied-for permit, File Nos. LRG-3275 through LRG-3282, will result in additional wastewater. At present there is no wastewater connection across the river, but it is planned that some water from these sources will be treated in the Jacob A. Hands plant and discharged to the Rio Grande.

The municipal wastewater system serves some individual customers that are supplied water by other water utilities which have no wastewater systems, and the wastewater is therefore derived from non-City sources. These individual residential customers (Code 1431 accounts) are distinguished in the City's utility accounting, and the discharge volume from each is estimated based on similar residential routes. It is therefore possible to determine the amounts of wastewater from City customers that are derived from non-City supply sources only. As of October 30, 2007, there were about 165 such accounts.

⁷ Second Amended Certificate of Organization for the Las Cruces Special Water Users' Association, 2005

⁸ City of Las Cruces 40-Year Water Development Plan, November 2008, p. 16.

Other Sources of Wastewater

State Engineer practice, in the absence of any agreement to the contrary, is to recognize return-flow credit as belonging to the entity that physically discharges water to the original source, which in the case of Las Cruces is the Rio Grande.

New Mexico State University: The City owns and treats wastewater, originally derived from University wells under its water rights, received from the University. The wastewater flows are metered. The governing contract, signed in 1991, does not explicitly assign the return-flow credit. Las Cruces will account for the wastewater as part of its return flow to the Rio Grande in compensation for handling and treating the wastewater.

Las Cruces entered into an agreement in 2007 that provides for purchase of water from the University for peaking and emergency supply. That agreement provides that the City owns all return-flow credits that would arise from discharge of wastewater derived from that source.

Town of Mesilla: Las Cruces owns and treats wastewater, originally derived from Town of Mesilla wells under its water rights, received from the town. The lift station that conveys the Mesilla wastewater to the City wastewater system also receives some wastewater from Las Cruces customers. The wastewater flows from Mesilla, not metered at present, will be metered as part of this Plan. The contract with Mesilla, signed in 1991, does not assign the return-flow credit. Las Cruces will include the wastewater as part of its return flow to the Rio Grande, in compensation for handling and treating the wastewater.

San Pablo Mutual Domestic Water Consumers' Association: The City owns and treats wastewater from the San Pablo Association under a contract that does not assign return-flow credits. The wastewater flows are metered. The water is derived from wells of the Jornada Water Co., pumped by Jornada under State Engineer permits other than Declaration LRG-5818 et al., which now belong to Las Cruces. Las Cruces will include the wastewater as part of its return flow to the Rio Grande, in compensation for handling and treating the wastewater.

Doña Ana County, on behalf of the Community of Doña Ana: Las Cruces accepts wastewater from Doña Ana under a 1998 contract that does not mention return-flow credits. The water supplier in this case is the Doña Ana Mutual Domestic Water Consumers' Association. Pursuant to a settlement agreement with the Association,⁹ the Association has the right to all

⁹ Agreement of Compromise, Settlement and Release, Doña Ana Mutual Domestic Water Consumers' Association vs. City of Las Cruces, U.S. District Court for N.M., Case No. CIV-02-122 BB/KMB.

return-flow credits, if any, associated with water provided to its water customers that is treated as wastewater by the City. The Association may construct its own wastewater-treatment facilities in the future, and the potential return-flow credits may be reduced accordingly. The wastewater received by the City from the Community of Doña Ana is metered.

Winterhaven Mobile Home Subdivision: Las Cruces owns and treats wastewater from Winterhaven MDWC&SWA, which provides water service to its customers, and will include the wastewater as part of its return flow to the Rio Grande, in compensation for handling and treating the wastewater. The wastewater flows are not metered at present, but will be metered as part of this Plan.

Some City wastewater customers within the city limits have their own wells, or purchase water from other suppliers. Las Cruces owns, treats, and discharges wastewater received from these customers.

DISPOSITION OF WATER: DEPLETIONS AND RETURN FLOWS

According to the City's 40-Year Water Development Plan,¹⁰ "about 44 percent of the City's total water diversion is discharged as treated waste water effluent to the Rio Grande. The remainder is consumptively used through evapotranspiration or returned to the aquifer through deep percolation." A large percentage of that remainder is depleted in various uses. The following sections describe the disposition of the portion of the total diversion that is either discharged as treated wastewater, or otherwise returns to the aquifer system.

Direct Return to the Rio Grande

Jacob A. Hands Wastewater Treatment Facility: Wastewater collected by the City is treated at the Jacob A. Hands plant, and discharged to the Rio Grande. The discharge is metered. Return flows described in this Plan will appear in the Rio Grande at that point, which is located just north of Interstate 10, and just east of the river. The plant treats 7.3 to 8.3 MGD (equivalent to about 9,300 ac-ft/yr for the period 2000 through 2005). The City is currently upgrading this plant to accept 13.5 MGD of wastewater.

¹⁰ City of Las Cruces 40-Year Water Development Plan, November 2008, p. 16.

Estimated Return Flow to Shallow Ground Water

Although this Return-Flow Plan contemplates that only metered flow returned directly to the Rio Grande will be considered “return flow” in the context of water-rights administration, there are other flows of water, diverted under City water rights, that go back to “the ground water system or surface water system (see definition of ‘return flow’ in the proposed State Engineer Rules and Regulations).”¹¹ Although these other physical return flows are not claimed by the City as components of the return flow required under various rights, they are discussed here to provide a description of all of the categories of disposition of water that is diverted and not consumed. These indirect return flows do have the effects of ensuring, first, that the City’s obligations in terms of physical returns of water are met, and also of providing a buffer in case of short-term under-delivery of return flow. The current total of such physical return flows is estimated at something close to 3,450 ac-ft/yr, as described in the following paragraphs.

Septic-Tank Returns from City Water Customers: The City has identified, through a study by CDM, an estimated 1,880 parcels within the current City service area that are on septic-tank systems and not served by the City’s wastewater collection and treatment system.¹² Not all of these parcels are occupied; on the other hand, a number of parcels have several mobile homes on each parcel. In recent years, State Engineer policy has recognized physical return flows only in areas of shallow ground water, generally defined as those in which the water table is 100 ft or less below land surface.

For the purpose of estimating the return flow that might be occurring under present conditions, only the potential septic tanks west of Interstate 25, where the depth to the water table is generally less than 100 ft, are considered. These lie in City Council Districts 1 through 4, and certain subdivisions in Districts 5 and 6. The number of parcels estimated in the CDM report is 767. If each potential tank is assumed to receive water at an “inside use” rate equivalent to the winter residential water use of about 5 percent of the annual use (169 gallons per capita per day) per winter month, and the number of individuals using each

¹¹ §19.25.16.7VV NMAC

¹² CDM, 2006, City of Las Cruces, New Mexico, septic tank identification and prioritization plan: CDM, consultant’s report to City of Las Cruces, p. 1.

septic tank is 2.46,¹³ then the total flow to these septic tanks is on the order of 200 ac-ft/yr. This amount is expected to decline over time as presently unsewered lots are connected to the system. The City understands that the septic-tank flows are not recognized for return-flow credit by the State Engineer.

Return Flow from Irrigation of Parks and Other Lands: Las Cruces supplies irrigation water to parks, golf courses, athletic fields, and landscaping owned by the City. The average deliveries for these purposes during the period 2000-2005 was 1,101 ac-ft/yr (about 8 percent of all metered delivery).¹⁴ Most of these lands are in the valley, where the water table is relatively close to land surface, and some return flow can be expected. If the average return flow from irrigation of these lands is about one-half of the amount applied, then a return flow under current conditions of about 550 ac-ft/yr would be occurring. The City understands that the irrigation returns described in this paragraph are not recognized for return-flow credit by the State Engineer.

Non-Revenue Water: Some components of the City's water audit accounting described in a following section, CURRENT WATER REPORTING, are flows that are likely to reach the Rio Grande through storm sewers, or to reach shallow ground water, and thus provide physical return flow. These components include fire-fighting and training, street cleaning, new water-main flushing, line breaks and spills, and system leaks. The total of all components, including both the real physical losses listed, and apparent losses related to theft and vandalism, meter inaccuracy, and data-management errors, would have led to an estimated average amount of about 2,700 ac-ft/yr during the period 2003-2007; a large part of that is likely to be appearing physically as return flow.

Although the total non-revenue water, as a percentage of annual diversion, is expected to decline, the annual diversions themselves are expected to increase over time. The City's goal is to reduce non-revenue water to about 10 percent of diversions. The City understands that the flows described in the preceding paragraph are not recognized for return-flow credit by the State Engineer.

¹³ City of Las Cruces 40-Year Water Development Plan, November 2008, Appendix O, p. O-1.

¹⁴ City of Las Cruces 40-Year Water Development Plan, November 2008, Appendix O, Table O1.

CURRENT WATER REPORTING

The City of Las Cruces maintains a system-wide water audit to track and record water production, water use, and “non-revenue” (formerly referred to as “unaccounted”) water. Each month, the following supply and demand statistics are compiled and reported:

- metered supply: ground-water pumping, by basin.
- metered demands:
 - ◆ non-potable water: well flushing and irrigation water,
 - ◆ account demand: water delivered and billed to permanent accounts, and
 - ◆ non-account demand: bulk water sales, and water for main flushing and sewer cleaning.

The difference between metered supply and metered demand is the “non-revenue” or “unaccounted” water, which includes certain authorized uses (such as fire fighting and training), unauthorized uses (such as theft and vandalism), accidental uses (such as line breaks and leaks), and meter and data errors.

For the 5-year period from 2003 through 2007, the water audit shows the following:

- Total metered supply was 98,306 ac-ft.
- Total metered demand was 84,650 ac-ft.
- “Non-revenue” or “unaccounted” water was 13,656 ac-ft.

The reporting will be augmented with the following additional information:

- monthly well-by-well pumping,
- monthly meter readings reflecting amounts of water received from other individual sources,
- monthly meter readings for each new well as it is added to the City system,
- monthly meter readings for Well LRG-430-S-44 assigned to Permits LRG-389 and LRG-399 rather than to LRG-430,
- monthly amounts of surface diversion, once the surface-water treatment facility is in operation, and,
- monthly amounts of wastewater received by the Las Cruces system from each non-City system, including New Mexico State University, the Town of Mesilla, the San Pablo MDWCA, Doña Ana County, and Winterhaven MDWC&SWA.

RETURN-FLOW ACCOUNTING

Las Cruces proposes the following return-flow plan, based on its understanding that metered flow delivered to the Rio Grande will be accounted for as return flow in terms of water-right administration.

Accounting Period and Reporting Date

It is proposed that reporting to the State Engineer of diversions, and of metered discharge of treated effluent to the Rio Grande, be monthly, as required by Permit LRG-3283 through LRG-3296 for the East Mesa wells, and that year-to-date totals be brought forward and reported on a calendar-year basis. That permit requires that reports be submitted to the State Engineer on or before the 10th day of each month for the preceding calendar month, and that schedule is proposed in this Return-Flow Plan for all reporting.

Although the draft Proposed Rules and Regulations define the accounting period for the Water Master District as the water year, beginning each November 1, the proposed return-flow reporting would be monthly, with a calendar-year annual accounting requirement, following the City's historical reporting practice, and because of the diversity of reporting dates and anniversary dates of permits. For example, Permit LRG-3283 through LRG-3296 requires a report on conservation efforts each January 1, and has an anniversary date of February 28. The anniversary date of Permit LRG-399 is January 31.

Amount of Physical Return Flow Required

The minimum discharge to the Rio Grande each year is made up of several components, relating to various State Engineer permits, as described in the section SOURCES OF WATER, above. Return-flow requirements depend on the source of water supply to the system. Water supplied to some parts of the water-distribution system may come from more than one source, and the wastewater generated in that part of the service area may not come entirely from water sources within it.

The water sources included in this calculation at present are the LRG-430 et al. (valley) wells, and the LRG-5818 et al. (Jornada Water Co.) wells. In the future, other water sources that may supply the same service area, such as the applied-for West Mesa wells, and the water-supply and wastewater derived from them will be included in the calculation. This requires that other wastewater flows be metered separately, and deducted from the total effluent.

Calculation of Effluent Attributable to LRG-430 et al.: It is necessary to distinguish between effluent attributable to LRG-430 et al. and effluent derived from other sources because of the provision in the Subfile Order that associates the disposition of the return flow derived from pumping under LRG-430 with the annual EBID allotment.

Water from the several supply sources described above may be commingled in the distribution system, and wastewater derived from them, and from other sources, may be commingled in the wastewater system. The amount of effluent attributable to pumping under LRG-430 et al. will be calculated by determining the net amount of effluent attributable to the combined sources of water diverted for use in the City system (that is, the quantity remaining after subtraction of wastewater amounts derived from non-City sources), excluding the effluent attributable to pumping from the East Mesa and West Mesa wells, and finding the ratio relating the effluent from the combined sources to the total of the diversions, then applying that ratio to the diversions from wells under LRG-430.

Effluent from the west side of the Rio Grande is not presently discharged to the river, and no direct return flow is derived from it, but water pumped from wells under File No. LRG-430 et al. on the West Mesa is included in the calculation of the ratio of effluent to diversion. If some wastewater from the West Mesa is later conveyed to the Jacob A. Hands facility for treatment and discharge, it is likely to be derived from a combination of LRG-430 et al. wells and wells drilled and pumped under the currently pending West Mesa applications LRG-3275 through LRG-3282. The amount of the wastewater to be attributed to LRG-430 et al. pumping on the West Mesa will be determined according to the proportion of total pumping on the West Mesa that comes from LRG-430 et al. wells. The calculation is summarized in Table 3, below. All flow amounts will be converted to acre-feet for the calculation. Table 3 will be amended as necessary if regulations change, or if other relevant changes occur.

Return Flows Required by Other Rights and Permits: Other required return flows are summarized in Table 4, below.

Calculation of Physical Return Flow Required: Table 4 represents the set of monthly calculations for determining the amount of effluent discharge required to meet State Engineer permit conditions for all of the City's water rights. Table 4 will be amended as necessary if regulations change, or if other relevant changes occur.

Table 3. Calculation of effluent attributable to File No. LRG-430 et al.

component	monthly amount, ac-ft
net effluent attributable to pumping under City water rights (excluding East Mesa and West Mesa non-LRG-430 wells)	
1. enter total monthly effluent discharged to the Rio Grande	
2. subtract total estimated discharge volume, residential customers not served by City water (Code 1431 accounts)	
3. subtract metered wastewater received from Doña Ana MDWCA	
4. subtract metered wastewater received from New Mexico State University	
5. subtract metered wastewater received from San Pablo MDWCA	
6. subtract metered wastewater received from Town of Mesilla	
7. subtract metered wastewater received from Winterhaven MDWCA	
8. subtract metered wastewater from west of river conveyed to Jacob A. Hands facility that is derived from non-LRG-430 et al. wells, based on proportion of non-LRG-430 pumping to total West Mesa pumping	
9. subtract metered wastewater from East Mesa, derived from wells LRG-3283 through LRG-3296	
10. Subtotal: net effluent attributable to City water rights (excluding East Mesa and West Mesa non-LRG-430 wells)	
total diversion under City water rights (excluding East Mesa and West Mesa non-LRG-430 wells)	
11. enter combined monthly diversion from all LRG-430 et al. wells	
12. add combined monthly diversion from LRG-5818 et al. (Jornada Water Co.) wells	
13. add monthly surface-water diversion	
14. Subtotal: diversion attributable to City water rights (excluding East Mesa and West Mesa non-LRG-430 wells)	
find overall ratio of wastewater to diversion	
15. Divide net effluent (Line 10) by diversion (Line 14)	
find return flow attributable to LRG-430 et al.	
16. Enter monthly pumping from all LRG-430 et al. wells, including LRG-430-S-44 (assigned to Permits LRG-389 and LRG-399)	
17. Subtract pumping from LRG-430-S-44 under Permits LRG-389 and LRG-399. Any pumping from this well in excess of 435.5 ac-ft/yr is assigned to Permit LRG-430-et al.*	
18. Subtotal: net pumping from LRG-430 et al. wells under LRG-430 Permit	
19. Apply ratio to net pumping from LRG-430 wells to find return flow attributable to LRG-430 et al.: Line 18 times Line 15.	

* This item will be amended if and as additional consumptive-use rights are transferred to offset depletion due to pumping under this permit.

Table 4. Minimum monthly discharge to the Rio Grande to satisfy requirements for return flow, City of Las Cruces

component of return-flow requirement	monthly amount (ac-ft)
1. Doña Ana MDWCA. Add an amount equal to the metered amount of wastewater received from Doña Ana MDWCA during the preceding month.	
2. Permit LRG-3283 through LRG-3296. A scheduled offset of Rio Grande depletion is required under Permit No. LRG-3283 through LRG-3296, Jornada del Muerto Sub-Basin (East Mesa) wells (see Table 2): add an amount equal to one-twelfth of the scheduled annual amount for the current year.	
3a. File No. LRG-430 et al. If the prior-year Elephant Butte Irrigation District (EBID) allotment was 2.0 ac-ft/ac or more and the current-year allotment has not been set: no return flow is required.	
3b. File No. LRG-430 et al. If the prior-year EBID allotment was 2.0 ac-ft/ac or more and the current-year allotment has been set at 2.0 ac-ft/ac or more: no return flow is required.	
3c. File No. LRG-430 et al. If the prior-year EBID allotment was 2.0 ac-ft/ac or more and the current-year allotment has been set at less than 2.0 ac-ft/ac: add an amount equal to the return flow attributable to LRG-430 wells for the previous month determined as described in Table 3, Line 19.	
3d. File No. LRG-430 et al. If the prior-year EBID allotment was less than 2.0 ac-ft/ac and the current-year allotment has not been set: add an amount equal to the return flow attributable to LRG-430 wells for the previous month determined as described in Table 3, Line 19.	
3e. File No. LRG-430 et al. If the prior-year EBID allotment was less than 2.0 ac-ft/ac and the current-year allotment has been set at less than 2.0 ac-ft/ac: add an amount equal to the return flow attributable to LRG-430 wells for the previous month determined as described in Table 3, Line 19.	
3f. File No. LRG-430 et al. If the prior-year EBID allotment was less than 2.0 ac-ft/ac and the current-year allotment has been set at 2.0 ac-ft/ac or more: no return flow is required.	
3g. File No. LRG-430 et al. If the current-year EBID allotment has been less than 2.0 ac-ft/ac and effluent has been discharged under Item 3c, 3d, or 3e as return flow assigned to Declaration No. LRG-430 et al. during the current year, but the EBID allotment has since been increased to 2.0 ac-ft/ac or more, <u>deduct</u> an amount equal to the total amount of return flow assigned for the current year under Items 3c, 3d, and 3e.	
4. Surface Water: Rio Grande Water Rights: [tentative*]: add an amount as required by regulations.	
5. Surface Water: Leased EBID Allotments: [tentative*]: add an amount as required by regulations.	
6. West Mesa wells (LRG-3275 through LRG-3282): [tentative, pending permit conditions]: add an amount as required by permit conditions. This is expected to be a combination of West Mesa effluent flow and effluent from other sources such that the total is equal to the total diversion from the West Mesa wells. Add an amount equal to sum of the previous month's diversions from West Mesa wells.	
7. Jornada Water Co. (LRG-5818 et al.): Depletions in excess of 42.46 ac-ft/yr must be offset. If year-to-date pumping under this permit is less than 42.46 ac-ft divided by the ratio of wastewater to diversion (Table 3, Line 15), no return flow is required. If year-to-date pumping through the previous month is greater than 42.46 ac-ft divided by the ratio of wastewater to diversion, add an amount equal to the total year-to-date pumping through the previous month, less 42.46 ac-ft divided by the ratio of wastewater to diversion, less any return flow assigned in earlier months.**	
8. Permits LRG-389 and LRG-399: [tentative, pending permit conditions]: add an amount as required by permit conditions. This is expected to be an amount equal to the diversion from Well LRG-430-S-44 under Permits LRG-389 and LRG-399, less the combined consumptive-use amounts of existing rights transferred into LRG-430-S-44 under these permits. At present the consumptive-use total is 297.55 ac-ft/yr. If year-to-date pumping through the previous month is greater than 297.55 ac-ft, add an amount equal to the total year-to-date pumping through the previous month, less 297.55 ac-ft divided by the ratio of wastewater to diversion (Table 3, Line 15), less any return flow assigned in earlier months.**	
Subtotal: return flow required for current month: sum of the items above.	
Sum of previous months' required return flow for current year	
Year-to-date effluent discharged to Rio Grande	
Net return flow required for current month	

* tentative, pending regulations

** This item will be amended if and as additional consumptive-use rights are transferred to offset depletion due to pumping under this permit.

Appendix I.

LRG-389 and LRG-399 Permit Approval and Water Rights Transfers

1980 OCT 6 AM 8:07 IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

STATE ENGINEER OFFICE
DISTRICT III
DEMING, N. MEX.

APPLICATION FOR PERMIT

TRM 49579

To Appropriates the Underground Waters of the State of New Mexico

- Date Received October 6, 1980 File No. LRG-389
- Name of applicant City of Las Cruces, Utilities Division
Mailing address P. O. Drawer CLC,
City and State Las Cruces, New Mexico 88001
 - Source of water supply shallow water aquifer, located in Lower Rio Grande Underground Water Basin
(artesian or shallow water aquifer) (name of underground basin)
 - The well is to be located in the 1/4 1/4 1/4 Section Township
Range N.M.P.M., or Tract No. of Map No. of the District,
on land owned by the City of Las Cruces (see Section 7)
 - Description of well: name of driller unknown at present ;
Outside Diameter of casing 24 inches; Approximate depth to be drilled 1000 feet;
 - Quantity of water to be appropriated and beneficially used 2550 acre-feet/year acre feet,
(consumptive use, diversion)
for municipal water supply purposes.
 - Acreage to be irrigated or place of use City of Las Cruces Municipal water supply system.

Subdivision	Section	Township	Range	Acres	Owner

7. Additional statements or explanations Well is to be located in the Dona Ana Bend Colony Grant approximately 300 feet West of the intersection of Telghor Blvd. and Missouri Avenue. It will be located in the City Park area on the South side Missouri.

Water from this proposed well will be co-mingled with other City wells and used for municipal water supply purposes.

10 NOV 17 PM 1 25
 STATE ENGINEER
 SANTA FE, N.M.

I, KENNETH M. NEEDHAM, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

CITY OF LAS CRUCES, Permittee,
 By: Kenneth M. Needham
 Kenneth M. Needham, Acting Utilities Director
 Subscribed and sworn to before me this 3rd day of October, A.D., 19 80
 My commission expires July 8, 1981
Rosie Artell
 Notary Public

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of wells be complied with; and further subject to the following conditions: and is not detrimental to the public welfare or contrary to the conservation of water within the state; further provided that all rules and regulations of the State Engineer pertaining to the drilling of shallow wells be complied with; and further subject to the attached conditions.

See Attached Conditions of Approval

Proof of completion of well shall be filed on or before January 31, 19 83

Proof of application of water to beneficial use shall be filed on or before January 31, 19 83

Witness my hand and seal this 20th day of February, A.D., 19 89

S. E. Reynolds, State Engineer

By: D.N. Stone, Chief Water Rights Division

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of \$5.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4--Fill out all blanks fully and accurately.

Sec. 5--Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6--Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7--If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

CONDITIONS OF APPROVAL

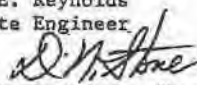
File No.: LRG-389

Applicant: City of Las Cruces, Utilities Division

1. Diversion of water from well LRG-389, under this permit, shall not exceed 2550 acre-feet per annum, measured at the well, for the purpose and place of use described on the face of this permit. Water appropriated from well LRG-389 under this permit shall not be considered as supplemental to rights under State Engineer File No. LRG-430 et al. The diversion of water shall be further limited by Condition No. 2 below.
2. The State Engineer will determine on or before December 31 of each year the amount of water which may be diverted under this permit during the following year. The amount of water which may be diverted in any year shall be limited to the amount which may be diverted without causing the depletion to the flow of the Rio Grande caused by the exercise of this permit to exceed the amount made available to offset such depletion by termination of use under existing water rights, as determined by the State Engineer.
3. The permittee shall file dedications of rights to be retired to offset the effects of the exercise of this permit on the Rio Grande in the office of the State Engineer and the office of the county clerk of the county in which these rights are located. The form of the dedication and rights dedicated shall be acceptable to the State Engineer.
4. Well LRG-389 shall be equipped with a totalizing meter of a type approved by and installed in a manner and at a location acceptable to the State Engineer.
5. Records of the amount of water diverted during the preceding calendar month shall be submitted to the State Engineer Office in Las Cruces on or before the 10th day of each month.
6. The State Engineer retains jurisdiction in this matter to administer the conditions of this permit.

Date of Approval: February 20, 1989

S. E. Reynolds
State Engineer

By: 
D. N. Stone, Chief
Water Rights Division

John R. D Antonio, Jr., P.E.
State Engineer



Las Cruces Office
1680 HICKORY LOOP, SUITE J
LAS CRUCES, NM 88005

**STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER**

Trn Nbr: 149579
File Nbr: LRG 00389

Feb. 16, 2005

JORGE A. GARCIA, P.E., UTILITIES DIRECTOR
CITY OF LAS CRUCES
P.O. BOX 20000
LAS CRUCES, NM 88005

Greetings:

Enclosed is your copy of Extension of Time for the above numbered Permit which has been granted.

Proof of Application of Water to Beneficial Use will be due in this office on 01/31/2008. This proof must be signed by an engineer or land surveyor who is registered in the State of New Mexico, and who must be designated and paid by you. As soon as you are ready to have final inspection made, you should send this office the name of the engineer or land surveyor you wish to employ so that we may send him the necessary instructions.

Proof of Completion of Well(s) will be filed in this office after completion and installation of equipment, but in no event later than 01/31/2008.

Your rights under this permit will expire on 01/31/2008, unless Proofs of Completion of Well(s) and Proof of Application of Water to Beneficial Use are filed or an Application for Extension of Time is received in this office on or before that date.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Hays".

Elizabeth Hays
(505) 524-6161

Enclosure
cc: Santa Fe Office

etuwapr

LRG-389
TRN149579
#4-12663 \$25.00

File Number: LRG-00389

NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR EXTENSION OF TIME
IN WHICH TO PERFECT AN APPROPRIATION OF UNDERGROUND WATER

1. PERMITTEE

Name: City of Las Cruces Work Phone: (505)528-3511
Contact: Jorge A. Garcia, P.E., Utilities Director Home Phone: _____
Address: P.O. Box 20000
City: Las Cruces State: NM Zip: 88004

2. HEREBY APPLIES FOR AN EXTENSION OF TIME IN WHICH TO

Complete the well and apply water to beneficial use.
(complete the well, apply water to beneficial use or both)

3. REASON

The period of time is insufficient and additional time is requested for the following reasons (state reasons in detail if desirable or necessary, submit affidavits, photographs, etc., as evidence in support of statement:

The City of Las Cruces is in the planning stages for the FY05-FY09 budgets. In conjunction with that, a Five Year Master Plan is being reviewed and developed. The City is requesting an extension of time to locate funding to complete the well and appropriate water to beneficial use.

The State Engineer is hereby requested to extend the time previously granted
by extending the limiting date to 1/31/08
mm/dd/year

File Number: LRG-00389
Form: wr-13

page 1 of 2

Trn Number: 149579

LRG-389
TRN149579

NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR EXTENSION OF TIME
IN WHICH TO PERFECT AN APPROPRIATION OF UNDERGROUND WATER

ACKNOWLEDGEMENT

(I, We) Jorge A Garcia, P.E. affirm that the foregoing statements are true

(Please Print)

to the best of (my, our) knowledge and belief.

City of Las Cruces, Permittee,

By: Jorge A Garcia
Jorge A Garcia, P.E. Utilities Director

ACTION OF STATE ENGINEER

By authority vested in me, this application for additional time is approved/denied and I do hereby grant the permittee an extension of time to the following dates:

Complete the well on or before JANUARY 31, 20 08

Apply Water to Beneficial Use on or before JANUARY 31, 20 08


Witness my hand and seal this 16TH day of FEBRUARY, 20 05

JOHN R. D'ANTONIO JR., STATE ENGINEER *inccr*


BY Calvin Chavez, Supervisor District 4

**MEMORANDUM
OFFICE OF THE STATE ENGINEER
DISTRICT 4**

February 16, 2005

File: LRG-389
Permit: Permit to Appropriate Underground Water; LRG-389
To: Calvin Chavez, Supervisor
From: Craig Cathey, Water Resource Specialist Senior 
Subject: **Application for Extension of Time in which to file Proof of Completion of Well and Proof of Application of Water to Beneficial Use**
Applicant: City of Las Cruces

Recommendations:

- 
- It is recommended that this Application for Extension of Time in which to file Proof of Completion of Well be approved for a period of three years by extending the due date to 1/31/08.
 - It is recommended that this Application for Extension of Time in which to file Proof of Application of Water to Beneficial Use be approved for a period of three years by extending the due date to 1/31/08.
-

Proposed Well Location:

NW ¼ NE ¼ NE ¼ of projected Section 21, Township 22 South, Range 2 East, NMPM.

Permitted Purpose and Place of Use:

Municipal water supply within the City of Las Cruces service area.

Permitted Amount of Water:

Please reference the file for the amount of water listed under the conditions of approval for permit no.: LRG-389.

Applicants Statement (Reason):

Please reference attached Application for Extension of Time received 1/27/05.

Metered Diversions:

Well LRG-389 has not been drilled.

Considerations:

- Permit to Appropriate Underground Water No. LRG-389 was approved on 2/20/89 and is subject to proof of beneficial use.
- Well LRG-389 has not been drilled.
- Approval of this extension of time is being recommended to allow the applicant sufficient time to show diligence in completing the well and applying the permitted water right to beneficial use.
- This is the applicants 7th Application for Extension of Time in which to file proof of completion of the well.
- This is the applicants 7th Application for Extension of Time in which to file proof of application of water to beneficial use.



City of Las Cruces

January 14, 2005

Mr. Calvin Chavez
District Supervisor
Office of the State Engineer
1680 Hickory Loop
Las Cruces, NM 88005

RE: Transaction #149579 – File #LRG 00389 – Well File #LRG 00389
Transaction #167926 – File #LRG 00399 – Well File #LRG 00399
Applications for Extension of Time

Dear Mr. Chavez:

Attached are two Applications for Extension of Time for the above-referenced wells (submitted in triplicate) along with a check in the amount of \$50.00 to cover the filing fee for both applications.

Feel free to contact me if you have any questions.

Sincerely,

Jorge A. Garcia, Ph.D., P.E.
Utilities Director

JAG/mv
Attachments

80 OCT 9 AM 8 41

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

STATE ENGINEER OFFICE
DISTRICT III
DEMING, N. MEX.

APPLICATION FOR PERMIT

TKN 149453

To appropriate the Underground Waters of the State of New Mexico

- Date Received October 9, 1980 File No. LRG-399
- Name of applicant City of Las Cruces, Utilities Division
Mailing address P. O. Drawer 616
City and State Las Cruces, New Mexico 88001
 - Source of water supply shallow water aquifer, located in Lower Rio Grande underground water basin
(artesian or shallow water aquifer) (name of underground basin)
 - The well is to be located in the 1/4 1/4 1/4, Section Township
Range N.M.P.M., or Tract No. of Map No. of the District,
on land owned by City of Las Cruces (see Section 7)
 - Description of well: name of driller unknown at present;
Outside Diameter of casing 24 inches; Approximate depth to be drilled 1000 feet;
 - Quantity of water to be appropriated and beneficially used 1700 acre-feet/year acre feet,
(consumptive use, diversion) purposes.
for Municipal Water Supply
 - Acreage to be irrigated or place of use City of Las Cruces Municipal Water Supply System

Subdivision	Section	Township	Range	Acres	Owner

7. Additional statements or explanations. Well is to be located in the Donna Ana Bend Colony Grant at the Northwest Quadrant of the intersection of Interstate Highway 25 (I-25) and State Highway No. 70. Specifically, the well will be located in the College Manor III Subdivision along NEMESH Drive.

Water from this proposed well will be co-mingled with other City wells and used for municipal water supply purposes.

STATE ENGINEER
SANTA FE
H.M.
DO NOT WRITE
FH 1

I, KENNETH M. NEEDHAM, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

CITY OF LAS CRUCES, Permittee,
By: Kenneth M. Needham, Acting Utilities Director
Subscribed and sworn to before me this 3rd day of October, A.D., 1980
My commission expires July 8, 1981
Louis Cottrell
Notary Public

Number of this permit LRG-399

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; ~~further provided that all rules and regulations of the State Engineer pertaining to the drilling of~~ wells be complied with; ~~and further subject to the following conditions:~~ and is not detrimental to the public welfare or contrary to the conservation of water within the state; further provided that all rules and regulations of the State Engineer pertaining to the drilling of shallow wells be complied with; and further subject to the attached conditions:

See Attached Conditions of Approval

Proof of completion of well shall be filed on or before January 31, 19 93

Proof of application of water to beneficial use shall be filed on or before January 31, 19 93

Witness my hand and seal this 20th day of February, A.D., 19 89

S. E. Reynolds, State Engineer

By: D.N. Stone
D.N. Stone, Chief
Water Rights Division

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of \$5.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4—Fill out all blanks fully and accurately.

Sec. 5—Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6—Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7—If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

CONDITIONS OF APPROVAL

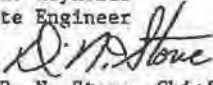
File No.: LRG-399

Applicant: City of Las Cruces, Utilities Division

1. Diversion of water from well LRG-399, under this permit, shall not exceed 1700 acre-feet per annum, measured at the well, for the purpose and place of use described on the face of this permit. Water appropriated from well LRG-399 under this permit shall not be considered as supplemental to rights under State Engineer File No. LRG-430 et al. The diversion of water shall be further limited by Condition No. 2 below.
2. The State Engineer will determine on or before December 31 of each year the amount of water which may be diverted under this permit during the following year. The amount of water which may be diverted in any year shall be limited to the amount which may be diverted without causing the depletion to the flow of the Rio Grande caused by the exercise of this permit to exceed the amount made available to offset such depletion by termination of use under existing water rights, as determined by the State Engineer.
3. The permittee shall file dedications of rights to be retired to offset the effects of the exercise of this permit on the Rio Grande in the office of the State Engineer and the office of the county clerk of the county in which these rights are located. The form of the dedication and rights dedicated shall be acceptable to the State Engineer.
4. Well LRG-399 shall be equipped with a totalizing meter of a type approved by and installed in a manner and at a location acceptable to the State Engineer.
5. Records of the amount of water diverted during the preceding calendar month shall be submitted to the State Engineer Office in Las Cruces on or before the 10th day of each month.
6. The State Engineer retains jurisdiction in this matter to administer the conditions of this permit.

Date of Approval: FEBRUARY 20, 1989

S. E. Reynolds
State Engineer

By: 
D. N. Stone, Chief
Water Rights Division

IMPORTANT - READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

4-04676 \$50.00

APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL AND PLACE OR PURPOSE OF USE OF UNDERGROUND WATERS

File No. LRG-5933 into LRG-399

1. Name of Water Right Owner City of Las Cruces
Mailing address P.O. Box 20000
City and State Las Cruces, NM

2. Source of water supply Shallow water aquifer located in Lower Rio Grande
(artesian or shallow water aquifer) (name of underground basin)

3. Right was acquired for irrigation purposes and recorded under File No. LRG-5933

4. Well and acreage from which rights are to be severed:
(a) Well is in the NE 1/4 SW 1/4 NE 1/4 Section 12 Township 20S Range 2W N.M.P.M.,
or Tract No. 7A2 of Map No. K of the USRS/EBID District.
(b) Quantity of water to be transferred 245 acre feet to be severed from 98 acres of land
described as follows:

Subdivision	Section	Township	Range	Acres	Owner
<u>Pt. S 1/4 NE 1/4 & Pt. SE 1/4</u>	<u>12</u>	<u>20S</u>	<u>2W</u>	<u>98</u>	<u>City of Las Cruces</u>

(c) Is well to be plugged yes; If not, state for what use retained: n/a
(d) If there are other sources of water for these lands, describe by file No. n/a

5. Application is made to change location of well and place or purpose of use for following reasons:
To transfer water rights to offset the effects on the Rio Grande from pumping LRG-399, pursuant to condition of approval No. 2 in permit LRG-399

6. Well to which transfer is to be made:
(a) Projected SE 1/4 NE 1/4 NW 1/4 Section 6 Township 23S Range 2E N.M.P.M.,
within Dona Ana Bend Colony Grant of the _____ District,
on land owned by City of Las Cruces
(b) If existing well, give File No. Permitted well (not drilled), File No. LRG-399
(c) If a new well, give name of driller n/a
(d) Inside diameter of casing 24 inches; Approximate depth to be drilled 1000 feet

7. Acreage to which transfer is to be made (a) City of Las Cruces Municipal Water Supply System

Subdivision	Section	Township	Range	Acres	Owner
<u>City of Las Cruces</u>	<u>Municipal</u>	<u>Water Supply</u>	<u>System</u>		

(b) Water to be used thereon for Municipal Water Supply purposes.
(c) If there are other sources of water for these lands, describe by File No. n/a

PAID

8. Additional statements or explanations The City proposes to transfer water rights from LRG-5933 and LRG-5933-S as set forth in the map attached to this application. The City proposes to transfer the Consumptive use as measured by the Consumptive Irrigation Requirements of 2.50 acre-ft per irrigable acre

I, Robert J. Monday, affirm that the foregoing statements are true to the best of my knowledge and belief and that I am the agent for owner and holder of said water right.
(sole, partial, agent for, etc.)

City of Las Cruces, Permittee,
By: Robert J. Monday
Robert J. Monday, Utilities Division Director

Subscribed and sworn to before me this 30th day of April, 1998

My commission expires April 8, 1999
D. Kathleen Hernandez
Notary Public

ACTION OF STATE ENGINEER

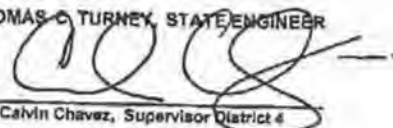
After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; ~~provided that the proposed change is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state; further provided that all rules and regulations of the State Engineer pertaining to the drilling of shallow wells be complied with; and further subject to the attached conditions of approval;~~

SEE ATTACHED CONDITIONS OF APPROVAL

Proof of application of water to beneficial use shall be filed on or before January 31, ~~19~~ 2002

Witness my hand and seal this 1st day of October, A.D., 1998.

THOMAS C. TURNEY, STATE ENGINEER

BY 
Calvin Chavez, Supervisor District 4

FILE: LRG-5933 into LRG-399

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and must be accompanied by a ~~state~~ ^{state} filing fee. Each triplicate copy must be properly aligned and attested. If applicant is not recorded owner of water right, Change of Ownership affidavit must accompany this application. If additional space is required use a separate sheet or sheets and attach securely hereto.

Note: It is unlawful, after a transfer has been completed, to apply water on the lands or uses from which right has been severed, or to use more water than the owner had a valid right to use before transfer was made. Supplementary water rights, by their very nature, cease to exist for those lands from which rights are transferred; also they cannot be transferred to other lands as new or primary water rights.

All blanks in Section 1 - B shall be filled out fully and accurately. Sec. 2 - 4, describe all essential features of the water right or rights involved in the proposed change. Sec. 5, explain fully why change is desired or necessary. Sec. 6, describe well (or wells) to which transfer is to be made and if it is an existing well. Sec. 7, describe lands or uses to which transfer is to be made and set forth any other rights appurtenant thereto. Sec. 8, explain any features or conditions not made clear in previous sections.

CONDITIONS OF APPROVAL
APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL, PLACE AND PURPOSE OF USE
NO. LRG-5933 into LRG-399

1. The water rights appurtenant to the 61.5 acres of land are transferred therefrom and shall not be irrigated from any source for the life of this permit. The transfer of water rights from 26.5 acres of land is denied for the reason that the State Engineer is of the opinion that no water right exists on said land.
2. A survey plat acceptable to the State Engineer showing the location of the 61.50 acres from which water rights are transferred under this permit shall be filed with the Office Of The State Engineer in Las Cruces prior to use of water under this permit.
3. The amount of water diverted and consumptively used under this permit from well LRG-399 shall not exceed the following amounts after the initiation of withdrawals :

<u>Year</u>	<u>Amount in Acre-feet per annum</u>
1 - 40	169.55
41 & thereunder	153.75

for municipal water supply within the City of Las Cruces municipal water supply system.
4. A totalizing meter shall be installed before the first branch of the discharge line from well LRG-399 and the installation shall be acceptable to the State Engineer. The permittee shall notify the State Engineer of the make, model, serial number, date of installation and initial reading of the meter prior to appropriation of water.
5. Records of the amount of water pumped from well LRG-399 during the preceding calendar month shall be submitted in writing to the Office Of The State Engineer in Las Cruces on or before the 10th day of each month.
6. The permittee shall utilize the highest and best technology available to ensure conservation of water to the maximum extent practical.
7. Proof of Completion of Well shall be filed on or before January 31, 2000.

Witness my hand and seal this 1st day of October, A.D., 1998.

Thomas G. Turney, STATE ENGINEER

BY: Calvin Chaves, District Supervisor

IMPORTANT--(READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM)

APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL AND PLACE OR PURPOSE OF USE OF UNDERGROUND WATERS

1. Name of Water Right Owner: City of Las Cruces File No. IRG-3530 and IRG-3530-S into IRG-399
Mailing address P.O. Box 20000
City and State Las Cruces, NM 88005

2. Source of water supply shallow water aquifer, located in Lower Rio Grande Underground Water Basin
(artesian or shallow water aquifer) (name of underground basin)

3. Right was acquired for residential/subdivision purposes and recorded under File No. IRG-3530, IRG-3530-S.

4. Well and acreage from which rights are to be severed: Both wells are in:
(a) Well is in the SE 1/4 SW 1/4 NE 1/4 Section 36 Township 22S Range 1E N.M.P.M., District.
(b) Quantity of water to be transferred 40 acre feet to be severed from acres of land described as follows:

Table with 6 columns: Subdivision, Section, Township, Range, Acres, Owner. The table is mostly empty with some faint lines.

(c) Is well to be plugged Yes; If not, state for what use retained: n/a
(d) If there are other sources of water for these lands, describe by file No. n/a

5. Application is made to change location of well and place or purpose of use for following reasons:
For municipal purposes to serve residential area

6. Well to which transfer is to be made:
(a) Located in the projected SE 1/4, NE 1/4, NW 1/4 Section 6 Township 23S Range 2E N.M.P.M., District.
within the Dona Ana Behm Colony Grant of the District.
on land owned by
(b) If existing well, give File No. Well is not existing but has a File No. IRG-399
(c) If a new well, give name of driller unknown
(d) Outside diameter of casing 24 inches; Approximate depth to be drilled 1000 feet;

7. Acreage to which transfer is to be made (City of Las Cruces Municipal Water Supply)
Table with 6 columns: Subdivision, Section, Township, Range, Acres, Owner. The table is mostly empty with some faint lines.

(b) Water to be used thereon for Municipal Water Supply purposes;
(c) If there are other sources of water for these lands, describe by File No.

8. Additional statements or explanations

I, Robert J. Monday, affirm that the foregoing statements are true to the best of my knowledge and belief and that I am the agent for owner and holder of said water right.
(sole, partial, agent for, etc.,)

City of Las Cruces, Permittee,

By Robert J. Monday, Utilities Division Director
Subscribed and sworn to before me this 7th day of July 1999

My commission expires 4-15-2000

Notary Public signature and name

ACTION OF STATE ENGINEER

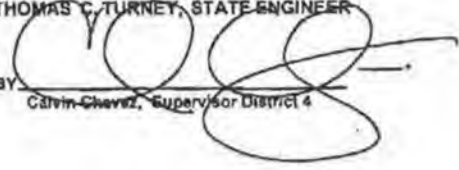
After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions:

SEE ATTACHED CONDITIONS OF APPROVAL

Proof of application of water to beneficial use shall be filed on or before JANUARY 31 15, 2002

Witness my hand and seal this 10TH day of NOVEMBER, A.D., 1999

THOMAS C. TURNEY, STATE ENGINEER

BY 
Calvin Chavez, Supervisor District 4

FILE NO. LRG-3530 INTO LRG-399

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and must be accompanied by a ~~2000~~ ⁴⁵⁰⁰ filing fee. Each triplicate copy must be properly signed and attested. If applicant is not recorded owner of water right, Change of Ownership affidavit must accompany this application. If additional space is required use a separate sheet or sheets and attach accurately hereto.

Note: It is unlawful, after a transfer has been completed, to apply water on the lands or uses from which right has been severed, or to use more water than the owner had a valid right to use before transfer was made. Supplementary water rights, by their very nature, cease to exist for those lands from which rights are transferred; also they cannot be transferred to other lands as new or primary water rights.

All blanks in Section 1 - 8 shall be filled out fully and accurately. Sec. 2 - 4, describe all essential features of the water right or rights involved in the proposed change. Sec. 5, explain fully why change is desired or necessary. Sec. 6, describe well (or wells) to which transfer is to be made and if it is an existing well. Sec. 7, describe lands or uses to which transfer is to be made and set forth any other rights appurtenant thereto. Sec. 8, explain any features or conditions not made clear in previous sections.

ATTACHMENT

Conditions of Approval

Permit to Change Location of Well, Place and Purpose of Use No. LRG-3530 into LRG-399

1. This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
2. The State Engineer recognizes 19.0 acre-feet per annum consumptive use rights under LRG-3530, and all of said water rights are severed therefrom under this permit. This permit is denied for the transfer of 21.0 acre-feet per annum for the reason that no evidence exists that said permitted amount was applied to beneficial use.
3. Well nos. LRG-3530 and LRG-3530-S shall be plugged 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. A written record of the plugging shall be filed with the State Engineer within ten (10) days of completion of the plugging.
4. The amount of water diverted and consumptively used from well no. LRG-399 under this permit shall not exceed 19.0 acre-feet per annum for municipal water supply purposes within the City of Las Cruces municipal water supply service area.
5. Well no. LRG-399 shall be equipped with a totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
6. Records of the amount of water pumped from well no. LRG-399 shall be submitted, in writing to the Office of the State Engineer in Las Cruces on or before the 10th day of each month for the preceding calendar month.
7. 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 practical.
8. A well record for well no. LRG-399 shall be filed with the State Engineer within ten (10) days of drilling the well.
9. Proof of Completion of Well shall be filed with the State Engineer on or before January 31, 2000.

Witness my hand and seal this _____ 10th _____ day of _____ November _____, A.D., 1999.

Thomas C. Turney, State Engineer


BY: Calvin Chavez, Supervisor, District 4

IMPORTANT - READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

4-09018 \$50.00

APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL AND PLACE OR PURPOSE OF USE OF UNDERGROUND WATERS

File No. LRG-4455-B into LRG-399

1. Name of Water Right Owner ARNULFO MARTINEZ
Street or Post Office Address HC 30 BOX 95 9/2
City and State MESILLA PARK, NEW MEXICO 88047

2. Source of water supply shallow water aquifer, located in Lower Rio Grande
(artesian or shallow water aquifer) (name of underground basin)

3. Right was acquired for irrigation purposes and recorded under File No. LRG-4455-B

4. Well and acreage from which rights are to be severed:

(a) Well is in the SW 1/4 NE 1/4 NW 1/4, Section 25 Township 24S Range 2E N.M.P.M.
or Tract No. _____ of Map No. _____ of the _____ District.

(b) Quantity of water to be transferred 285.24 acre feet to be severed from 57.048 (or 50.65 as determined in Hydrographic Survey) acres of land described as follows:

Subdivision	Section	Township	Range	Acres	Owner
Pt. NE 1/4	25	24 South	2 East	1.73	Las Cruces City of Las Cruces Municipal Water Supply System
Pt. NW 1/4	25	24 South	2 East	7.47	
Pt. SE 1/4	25	24 South	2 East	3.22	
Pt. SW 1/4	25	24 South	2 East	36.23	
				50.65	Arnulfo Martinez

As shown on Hydrographic Survey Map LRS-4 (Subfile No: LRS-280040232)

(c) Is well to be plugged NO; If not, state for what use retained: no other rights
(d) If there are other sources of water for these lands, describe by File No. n/a

5. Application is made to change location of well and place or purpose of use for the following reasons:
To transfer water rights to offset the effects on the Rio Grande from pumping LRG-399, pursuant to condition of approval No. 2 in permit LRG-399.

6. Well to which transfer is to be made:

(a) Located in the SE 1/4 NE 1/4 NW 1/4, Section 6 Township 23S Range 2E N.M.P.M.
or Tract No. _____ of Map No. _____ of the Dona Ana Bend Colony Grant District,
on land owned by the City of Las Cruces

(b) If existing well, give File No. Permitted well (not drilled), File No. LRG-399

(c) If a new well, give name of driller n/a

(d) Outside diameter of casing 24 inches: Approximate depth to be drilled 1000 feet.

7. Acreage to which transfer is to be made (a) City of Las Cruces Municipal Water Supply System

Subdivision	Section	Township	Range	Acres	Owner
City of Las Cruces Municipal Water Supply System					

(b) Water to be used thereon for Municipal Water Supply purposes:

(c) If there are other sources of water for these lands, describe by File No. n/a

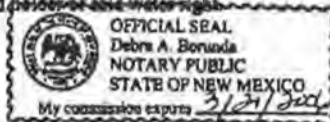
8. Additional statements or explanations The owner proposes to transfer water rights from LRG 4455-B to the City of Las Cruces. The City will entertain this transfer for consideration dependent on the outcome of this application. The owner proposes to transfer the Consumptive use as measured by the CIR of 2.25 acre-ft per irrigable acre for 50.65 acres. Report for Subfile No. 280040232 of the Lower Rio Grande Hydrographic Survey attached.

I, Arnulfo Martinez, affirm that the foregoing statements are true to the best of my knowledge and belief and that I am the sole owner and holder of said water rights (sole, partial, agent for, etc.)

By Arnulfo Martinez, Permittee,

Subscribed and sworn to before me this 23rd day of May, A.D. 2006

My commission expires 3/21/2006



Debra A. Borunda
Notary Public

ACTION OF THE STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions:

~~SEE ATTACHED CONDITIONS OF APPROVAL~~

Proof of application of water to beneficial use shall be filed on or before JANUARY 31 2003

Witness my hand and seal this 29TH day OCTOBER, A.D., 2002

Thomas C. Turney, State Engineer

By: Erik E. Fuchs
ERIK E. FUCHS

FILE: LRG-4455-B INTO LRG-399

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and must be accompanied by a filing fee of \$25.00. Each of triplicate copies must be properly signed and attested. If applicant is not recorded owner of water right, Change of Ownership affidavit must accompany this application. If additional space is required use a separate sheet or sheets and attach securely hereto.

Note: It is unlawful, after a transfer has been completed, to apply water on the lands or uses from which right has been severed, or to use more than the owner had a valid right to use before transfer was made. Supplementary water rights, by their very nature, cease to exist for those lands from which rights are transferred; also they cannot be transferred to other lands as new or primary water rights.

All blanks in Section 1 - 8 shall be filled out fully and accurately. Sec. 2 - 4, describe all essential features for the water right or rights involved in the proposed change. Sec. 5, explain fully why change is desired or necessary. Sec. 6, describe well (or wells) to which transfer is to be made and if it is an existing well. Sec. 7, describe lands or uses to which transfer is to be made and set forth any other rights appurtenant thereto. Sec. 8, explain any features or conditions not made clear in previous sections.

Attachment
Conditions of Approval

**Application for Permit to Change Location of Well and Place and Purpose of Use
No. LRG-4455-B into LRG-399**

1) This application is approved as follows:

Permit Number: LRG-4455-B into LRG-399

Priority: To be determined by order of the Third Judicial District Court, Doña Ana County, State of New Mexico in *New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.*, Case No. CV 96-888.

Source: Shallow underground water of the Lower Rio Grande Underground Water Basin.

Point of Diversion: Well LRG-399 to be located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 6, Township 23 South, Range 2 East, N.M.P.M.

Purpose of Use: Municipal water supply

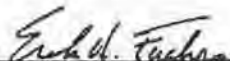
Place of Use: Within the service area of the City of Las Cruces

Amount of Water: The diversion of water from well LRG-399 under this permit shall not exceed 109 acre-feet per annum.

- 2) The water rights otherwise appurtenant to 50.65 acres as described under Subfile no. 280040232(A) of the Hydrographic Survey of the Lower Rio Grande and recorded under file no. LRG-4455-B with the State Engineer as the move-from lands that are the subject of this permit are transferred therefrom and said lands shall not be irrigated from any source.
 - 3) The permittee shall submit on or before January 1 of each year, a written report on water conservation efforts, overall per capita use and residential per capita use calculations and any changes to the water conservation plan all of which illustrate the effectiveness of the water conservation efforts of the city. By August 18, 2004, the permittee shall reduce residential per capita use to the amount equal to or below the southwestern states average.
 - 4) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
-

- 5) Well LRG-399 shall be equipped with totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 6) Written records of the amount of water pumped from well LRG-399 shall be submitted in writing to the Office of the State Engineer in Las Cruces on or before the tenth day of each month for the preceding calendar month.
- 7) 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 practical.
- 8) A well record for well LRG-399 shall be filed within ten (10) days of drilling the well.
- 9) Proof of Completion of Well for well LRG-399 shall be filed with the State Engineer on or before January 31, 2003.
- 10) Proof of Application of Water to Beneficial Use shall be filed with the State Engineer on or before January 31, 2003.

Date: 10-29-02



Erik H. Fuchs, M.S.
Lower Rio Grande Basin Supervisor

MEMORANDUM
OFFICE OF THE STATE ENGINEER
DISTRICT 4

October 15, 2002

File: LRG-399

To: Calvin Chavez, District Supervisor

From: E. H. Fuchs, Basin Supervisor *EHF*

Subject: Application for Permit to Change Location of Well and Place and Purpose of Use of Underground Waters: LRG-4455-B into LRG-399

Applicant: Arnulfo Martinez

Application

Application was filed on May 28, 2002 to Change Location of Well, Place and Purpose of Use by discontinuing the use of wells LRG-4455 and LRG-4455-S and transferring the diversion of 285.24 acre-feet of per annum of shallow groundwater used for irrigation purposes on 57.048 acres of land owned by the applicant to well LRG-399 (permitted, not yet drilled) for the purpose of satisfying offset requirements as previously imposed by the State Engineer as a condition of approval of well LRG-399. Well LRG-399 eventually will partially serve the City of Las Cruces municipal water supply system within the service area of the City of Las Cruces.

Move-from wells

LRG-4455

SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$

Projected Section 25, Township 24 South, Range 2 East, N.M.P.M.

LRG-4455-S

NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$

Projected Section 25, Township 24 South, Range 2 East, N.M.P.M.

Move-from place and purpose of use

Irrigation of 57.048 acres of land located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of projected Section 25, Township 24 South, Range 2 East, N.M.P.M.

Quantity of water requested for transfer

285.24 acre-feet per annum

Move-to well

LRG-399 (permitted but not yet drilled)

SE¼NE¼NW¼

Projected Section 6, Township 23 South, Range 2 East, N.M.P.M.

Move-to place and purpose of use

Municipal water supply within the City of Las Cruces municipal water system service area.

Administrative history and hydrographic survey findings

Move-from LRG-4455

Wells LRG-4455 and LRG-4455-S were declared November 1, 1983 for the irrigation of 100 acres of land in the amount of 5.0 acre-feet per acre per annum. This office investigated the claim on November 2, 1983 as part of routine reconnaissance whereby it was found that 96.7 acres were irrigated from the wells. All of the lands were found to be outside of the Elephant Butte Irrigation District boundary and hence were irrigated with groundwater only. Well LRG-4455 was repaired on November 5, 1983 under a repair authorization granted by this office on November 2, 1983, otherwise no administrative action has occurred so as to formally quantify the right. 57.048 acres and associated rights were later conveyed to the applicant as reflected in change of ownership filed October 10, 1997, apparently following the settlement of an estate inheritance dispute of which the applicant was involved (see file). This partial ownership conveyance was assigned file no. LRG-4455-B and is the right sought for transfer under the subject application.

Subfile no. 280040232(A) of the Hydrographic Survey of the Lower Rio Grande identifies the applicant as the owner of groundwater rights appurtenant to 50.65 acres of land in the subject location. The land receives groundwater only from wells LRG-4455 and LRG-4455-S.

Move-to LRG-399

Application for Permit to Appropriate no. LRG-399 was filed by the City of Las Cruces on October 9, 1980 and eventually approved February 20, 1989 as a new appropriation in the amount of 1700 acre-feet per annum for municipal water supply purposes within the City of Las Cruces municipal water system service area. As a condition of approval, the City is required to offset surface water depletions caused by the appropriation. The City has demonstrated some diligence in recent years in seeking transfers to satisfy the offset requirement. Application LRG-5933 into LRG-399 was approved October 1, 1998 authorizing the diversion and consumptive use of 169.55 acre-feet per annum from well LRG-399 for the first 40 years, and 153.75 acre-feet per annum thereafter. This transfer was later (January 16, 2001) credited with return flows by administrative permit allowing the diversion to increase to 307.5 acre-feet per annum, though the consumptive use previously authorized remains as scheduled. Application LRG-3530 into LRG-399 was approved November 10, 1999 authorizing the diversion and consumptive use of 19.0 acre-feet per annum. Collectively, transfers authorized thus far to be exercised from LRG-399 may be summarized as follows:

<u>Permit</u>	<u>Diversion (acre-feet per annum)</u>	<u>Consumptive use (acre-feet per annum)</u>
LRG-5933 into LRG-399	307.5	169.55 first 40 yrs, 153.75 thereafter
LRG-3530 into LRG-399	19.0	19.0

Total: 326.5

188.55 first 40 yrs.

172.75 thereafter

Currently, PCW and PBU for LRG-399 are due January 31, 2003.

Quantity available for transfer

The Mesilla Valley Administrative Area (MVAA) guidelines state that for applications to change the point of diversion and/or place and/or purpose of use, the quantity of water that has been historically available and consumed for beneficial purposes will be taken as the amount which may be considered for transfer to the proposed use (Turney, 1999; Section C.10 at page 9). Assuming an average consumptive irrigation requirement of 2.25 acre-feet per irrigated acre per annum throughout the Lower Rio Grande basin as reported by Wilson (1998) and an irrigated area of 50.65 acres in the subject location as described by Subfile no. 2800-10232(A) of the Hydrographic Survey, 113.96 acre-feet per annum (0.157 cubic-feet per second) may be taken as the quantity available for transfer from LRG-4455-B to a new/different use. However, for applications to offset surface water depletions, the MVAA guidelines state that the amount credited to offset the surface water effect will be based on the historical use of the move-from water right and the resulting surface water impact, and will also be limited to the difference between impacts resulting from continued use of the move-from well(s) and residual impacts. Therefore, it is necessary to estimate depletions from the surface water system resulting from historic diversions at move-from wells LRG-4455 and LRG-4455-S, including residual impacts, and hypothetical impacts resulting from continued (future) use of the move-from wells, in order to quantify the amount of water available for offset.

Mesilla Basin numerical model

A three-dimensional, four-layer finite-difference numerical model of the basin fill aquifer in the Mesilla Basin, New Mexico and Texas, hereinafter referred to as "the model", was developed by Frenzel and Kaehler (1992), and modified by Hamilton and Maddock (1993). Peggy Barroll of the New Mexico State Engineer Office Technical Division, Hydrology Bureau, has modified the model into a superposition version for water rights administrative purposes. The model was used to estimate depletions from the surface water system in order to quantify the amount of water available for offset.

Well locations

Wells LRG-4455 and LRG-4455-S are both located in the model cell denoted by row 28 (R28), column 32 (C32), which will be referred to as cell R28.C32 (see attached map). Well LRG-399 is located in model cell R38.C50. The bottom of model layer 1 is 200 feet below the water table across the model domain (Frenzel and Kaehler, 1992). Water levels reported for wells LRG-4455 and LRG-4455-S are 40 feet and 70 feet below land surface, respectively, placing the bottom of layer 1 at 240 to 270 feet in the area. With total depths of approximately 225 feet, wells LRG-4455 and LRG-4455-S both produce from model layer 1 (L1). Well LRG-399 is to be drilled to a depth of 1,000 feet, and therefore would produce from model layer 3 (L3); however, model cell L3.R28.C50 is an inactive cell, therefore well LRG-399 was placed in cell

Model simulations

A baseline model simulation was run initially to determine depletions due to historical pumping, including residual depletions. A second model simulation was run to determine the hypothetical depletions, which would have resulted from continued use of the move-from wells. Finally, a third model simulation was run to determine depletions due to exercise of the available offset at move-to well LRG-399.

Model results

Annual surface water depletions resulting from historical use and hypothetical continued future use at the move-from location are presented in Table 1 (attached), and are illustrated in Figure 1 (attached). The difference between the two simulations is also presented in Table 1 as the "available offset", and shown in Figure 1 as the "available offset" curve. The results show that the available offset becomes largely static in about the last 10 years of the simulation, increasing only slightly above 109.0 acre-feet in the last 5 years. To be conservative 109.0 acre-feet was considered the maximum amount available for offset. The third simulation was performed to determine if the depletions resulting from diverting this full amount (109.0 acre-feet per annum) from well LRG-399 would at any time exceed the available offset from the move-from wells. Surface water depletions from LRG-399 under this scenario are also described in Table 1 and Figure 4. These depletions are considered to be conservative (high) given that pumping was modeled as coming from a shallower zone (layer 2) than that in which the well is actually to be completed (layer 3). Depletions from well LRG-399 under this scenario will never exceed the offset.

Effects on neighboring wells of other ownership

As documented previously, 1,700 acre-feet per annum may be diverted from well LRG-399 as permitted provided that sufficient offsets are obtained and transferred. In lieu of the existing permit, potential impairment of neighboring wells of other ownership in the area could be ignored in this case because the original permit authorized an amount much greater than the offset approvable under the subject application (109.0 acre-feet per annum), in addition to the quantities approved under previous transfers to well LRG-399 (326.5 acre-feet per annum; total = 435.5 acre-feet per annum). However, administrative considerations included in the evaluation of previous transfers to well LRG-399 (i.e. LRG-5933 into LRG-399, LRG-3530 into LRG-399) do account for potential impairment of neighboring wells of other ownership. In the interest of consistency though perhaps unnecessary, the Theis non-equilibrium well equation was used to estimate the potential drawdown created by the exercise of the offset approvable under the subject application, including existing rights (total = 270 gpm) from well LRG-399. The nearest well of other ownership is an undeclared domestic well, labeled as 101047 A as shown on Map LRN 10D of the Hydrographic Survey. This well is situated about 800 feet south of the permitted location of well LRG-399. This analysis (see attached) indicates that after pumping well LRG-399 at 270 gpm for 40 years, the water column available to undeclared well 101047 A will have dropped approximately 7 feet. This amount is insignificant.

Notice of publication

Notice was published June 27, July 4 and July 11, 2002 in the Las Cruces Bulletin. Proof of publication was received July 15, 2002.

Protest

There were no protests filed on the application.

Major considerations

- The application was filed for the purpose of satisfying offset requirements as previously imposed by the State Engineer as a condition of approval of well LRG-399.
- Subfile no. 280040232(A) of the Hydrographic Survey of the Lower Rio Grande identifies the applicant as the owner of groundwater rights appurtenant to 50.65 acres of land in the move-from location. The land receives groundwater only from wells LRG-4455 and LRG-4455-S.
- 113.96 acre-feet per annum may be taken as the quantity available for transfer from LRG-4455-B to a new/different use.
- Model results indicate that 109.0 acre-feet per annum is available for offset purposes.
- A conservative analysis indicates that exercise of the available offset (109.0 acre-feet per annum) from well LRG-399 will not cause greater depletions to the Rio Grande.
- Exercise of the available offset at well LRG-399 in addition to previously approved transfers will not cause impairment of neighboring wells of other ownership.

Conclusion

It is recommended that Application for Permit to Change Location of Well and Place and Purpose of Use of Underground Waters, LRG-4455-B into LRG-399, be approved subject to the following conditions:

1) This application is approved as follows:

Permit Number: LRG-4455-B into LRG-399

Priority: To be determined by order of the Third Judicial District Court, Dona Ana County, State of New Mexico in *New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.*, Case No. CV 96-888.

Source: Shallow underground water of the Lower Rio Grande Underground Water Basin.

Point of Diversion: Well LRG-399 to be located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 6, Township 23 South, Range 2 East, N.M.P.M.

Purpose of Use: Municipal water supply

Place of Use: Within the service area of the City of Las Cruces

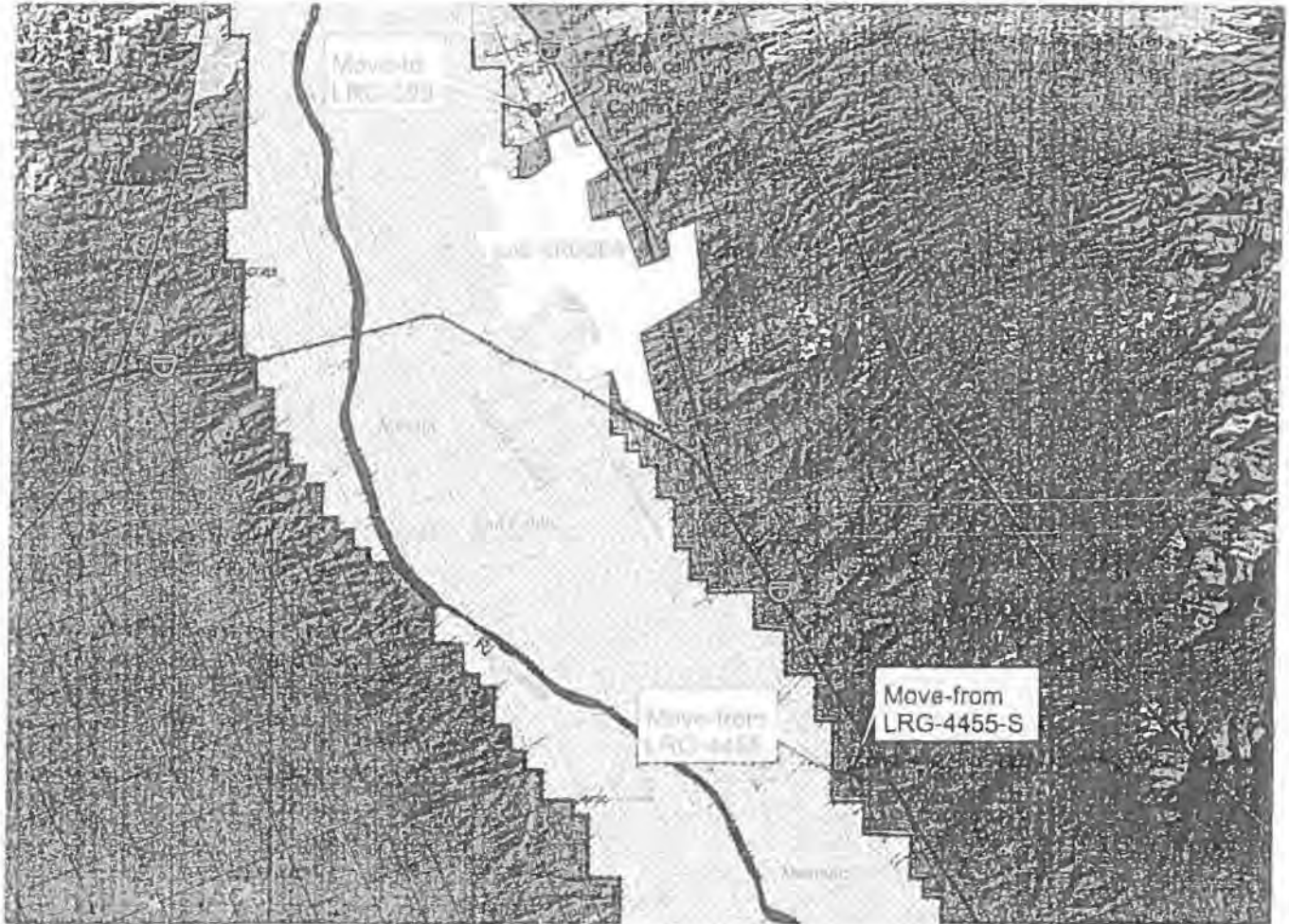
Amount of Water: The diversion of water from well LRG-399 under this permit shall not exceed 109 acre-feet per annum.

- 2) The water rights otherwise appurtenant to 50.65 acres as described under Subfile no. 280040232(A) of the Hydrographic Survey of the Lower Rio Grande and recorded under file no. LRG-4455-B with the State Engineer as the move-from lands that are the subject of this permit are transferred therefrom and said lands shall not be irrigated from any source.
- 3) The permittee shall submit on or before January 1 of each year, a written report on water conservation efforts, overall per capita use and residential per capita use calculations and any changes to the water conservation plan all of which illustrate the effectiveness of the water conservation efforts of the city. By August 18, 2004, the permittee shall reduce residential per capita use to the amount equal to or below the southwestern states average.
- 4) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
- 5) Well LRG-399 shall be equipped with totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 6) Written records of the amount of water pumped from well LRG-399 shall be submitted in writing to the Office of the State Engineer in Las Cruces on or before the tenth day of each month for the preceding calendar month.
- 7) 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 practical.
- 8) A well record for well LRG-399 shall be filed within ten (10) days of drilling the well.
- 9) Proof of Completion of Well for well LRG-399 shall be filed with the State Engineer on or before January 31, 2003.
- 10) Proof of Application of Water to Beneficial Use shall be filed with the State Engineer on or before January 31, 2003.

References cited

- Frenzel, P.E. and Kaehler, C.A., 1992, Geohydrology and simulation of ground-water flow in the Mesilla Basin, Dona Ana County, New Mexico, and El Paso County, Texas: U.S. Geological Survey Professional Paper 1407-C, 105 p.
- Hamilton, S.L., and Maddock, T., 1993, Application of a ground-water flow model to the Mesilla Basin, New Mexico and Texas: Department of Hydrology and Water Resources, University of Arizona, HWR-93-020
- Turney, T.C., 1999, Mesilla Valley Administrative Area guidelines for review of water right applications: Office of the New Mexico State Engineer, January 5, 1999, 18 p.
- Wilson, B.C., 1992, Water use by categories in New Mexico counties and river basins, and irrigated acreage in 1990: New Mexico State Engineer Technical Report 47, 141 p.
- Wilson, B.C. and Lucero, A.A., 1997, Water use by categories in New Mexico counties and river basins, and irrigated acreage in 1995: New Mexico State Engineer Technical Report 49, 149 p.

LRG-4455-B into LRG-399



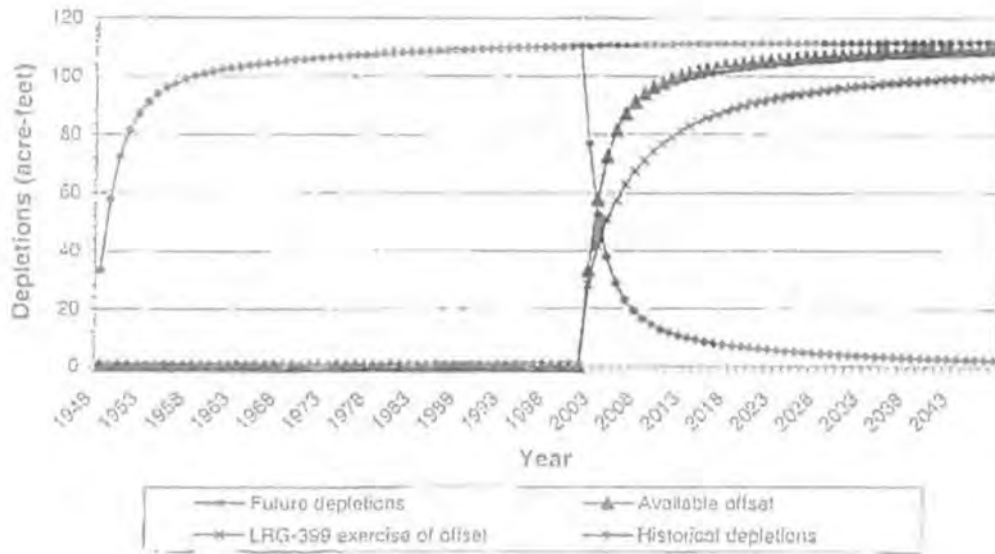


Figure 1. Model predicted surface water depletions and available offset (max = 109.0 acre-feet), LRG-4455-B into LRG-399

Table 1. Model predicted surface water depletions and available offset.
LRG-4455-B into LRG-399

Time step	Year	Historical depletions (acre-feet)	Future depletions (acre-foot)	Available offset reflecting residual effects (acre-feet)	LRG-399 depletions from pumping max avail. offset (acre-feet)
1	1948	33.33	33.33	0	0
2	1949	57.8	57.8	0	0
3	1950	72.54	72.54	0	0
4	1951	81.59	81.59	0	0
5	1952	87.31	87.31	0	0
6	1953	91.3	91.3	0	0
7	1954	94.05	94.05	0	0
8	1955	96.15	96.15	0	0
9	1956	97.74	97.74	0	0
10	1957	99.04	99.04	0	0
11	1958	100.13	100.13	0	0
12	1959	101	101	0	0
13	1960	101.72	101.72	0	0
14	1961	102.37	102.37	0	0
15	1962	102.95	102.95	0	0
16	1963	103.46	103.46	0	0
17	1964	103.89	103.89	0	0
18	1965	104.33	104.33	0	0
19	1966	104.69	104.69	0	0
20	1967	105.05	105.05	0	0
21	1968	105.34	105.34	0	0
22	1969	105.7	105.7	0	0
23	1970	105.99	105.99	0	0
24	1971	106.21	106.21	0	0
25	1972	106.5	106.5	0	0
26	1973	106.72	106.72	0	0
27	1974	106.93	106.93	0	0
28	1975	107.15	107.15	0	0
29	1976	107.37	107.37	0	0
30	1977	107.51	107.51	0	0
31	1978	107.73	107.73	0	0
32	1979	107.88	107.88	0	0
33	1980	108.09	108.09	0	0
34	1981	108.24	108.24	0	0
35	1982	108.38	108.38	0	0
36	1983	108.53	108.53	0	0
37	1984	108.67	108.67	0	0
38	1985	108.74	108.74	0	0
39	1986	108.89	108.89	0	0
40	1987	109.03	109.03	0	0
41	1988	109.11	109.11	0	0
42	1989	109.25	109.25	0	0
43	1990	109.32	109.32	0	0
44	1991	109.47	109.47	0	0
45	1992	109.54	109.54	0	0

45	1993	109.61	109.61	0	0
47	1994	109.76	109.76	0	0
48	1995	109.83	109.83	0	0
49	1996	109.9	109.9	0	0
50	1997	109.98	109.98	0	0
51	1998	110.05	110.05	0	0
52	1999	110.12	110.12	0	0
53	2000	110.19	110.19	0	0
54	2001	110.27	110.27	0	0
55	2002	77.03	110.34	33.31	29.31
56	2003	52.61	110.41	57.8	41.9
57	2004	37.9	110.48	72.58	50.77
58	2005	28.96	110.55	81.59	57.49
59	2006	23.25	110.55	87.3	62.87
60	2007	19.38	110.63	91.25	67.29
61	2008	16.63	110.7	94.07	71
62	2009	14.59	110.77	96.18	74.14
63	2010	13.03	110.77	97.74	76.82
64	2011	11.8	110.84	99.04	79.13
65	2012	10.79	110.92	100.13	81.09
66	2013	9.96	110.92	100.96	82.83
67	2014	9.26	110.99	101.73	84.42
68	2015	8.65	110.99	102.34	85.72
69	2016	8.12	111.06	102.94	86.95
70	2017	7.66	111.06	103.4	88.04
71	2018	7.24	111.13	103.89	89.05
72	2019	6.86	111.13	104.27	89.92
73	2020	6.51	111.21	104.7	90.72
74	2021	6.2	111.21	105.01	91.44
75	2022	5.9	111.28	105.38	92.09
76	2023	5.63	111.28	105.65	92.67
77	2024	5.38	111.35	105.97	93.25
78	2025	5.14	111.35	106.21	93.76
79	2026	4.92	111.42	106.5	94.26
80	2027	4.71	111.42	106.71	94.7
81	2028	4.52	111.42	106.9	95.13
82	2029	4.33	111.5	107.17	95.57
83	2030	4.16	111.5	107.34	95.93
84	2031	3.99	111.5	107.51	96.29
85	2032	3.83	111.57	107.74	96.58
86	2033	3.68	111.57	107.89	96.94
87	2034	3.54	111.57	108.03	97.23
88	2035	3.41	111.64	108.23	97.52
89	2036	3.28	111.64	108.36	97.74
90	2037	3.16	111.64	108.48	98.03
91	2038	3.04	111.71	108.67	98.25
92	2039	2.93	111.71	108.78	98.54
93	2040	2.82	111.71	108.89	98.75
94	2041	2.72	111.71	108.99	98.97
95	2042	2.63	111.79	109.16	99.19
96	2043	2.53	111.79	109.26	99.33
97	2044	2.44	111.79	109.35	99.55

98	2045	2.36	111.79	109.43	99.77
99	2046	2.28	111.86	109.58	99.91
100	2047	2.2	111.86	109.56	100.13

Max offset –
109.0 acre-feet

Appendix J.

**LRG-5818 et al. Permit, Southwest Environmental Center Water Use
Under LRG-5818 et al.**

#2
JUL 29 AM 11:04 1985 - READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM.

STATE ENGINEER'S OFFICE
DECLARATION OF INTENT TO COMPLETE DEVELOPMENT OF AN INCH-OATE GROUND WATER RIGHT (MENDENHALL)
LOWER RIO GRANDE UNDERGROUND WATER BASIN

Declaration No. LE-5818-S-4 Date received July 29, 1985

STATEMENT

1. Name of Declarant Trigon Enterprises, Ltd.
Mailing Address P.O. Box 2406 Las Cruces
County of Dona Ana, State of New Mexico

2. Source of water supply Shallow water
(Artesian or shallow water aquifer)

3. Describe well location under one of the following subheadings:
a. SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 33 Twp. 23S Rge. 1E N.M.P.M., in
Dona Ana County.

b. Tract No. _____ of Map No. _____ of the _____

c. X = _____ feet, Y = _____ feet, N. M. Coordinate System _____ Zone _____

in the _____
On land owned by Declarant _____

4. Description of well: date drilled 4-8-77 driller Schieffer depth 456 feet,
outside diameter of casing 4 1/2 inches; original capacity 100 gal. per min.; present capacity 40
gal. per min.; pumping lift 250 feet; static water level 226 feet (above) (below) land surface;
make and type of pump Berkeley Submersible Turbine
make, type, horsepower, etc., of power plant Franklin Submersible 5HP
Fractional or percentage interest claimed in well 100%

5. Quantity of water appropriated and beneficially used see reverse side
for see reverse side purposes.
(acre feet per acre) (acre feet per annum)

6. Acreage actually irrigated _____ acres, located and described as follows (describe only lands actually irrigated):

Subdivision	Sec.	Twp.	Range	Acres Irrigated	Owner
<u>see reverse side</u>					

(Note: location of well and acreage actually irrigated must be shown on plot on reverse side.)

7. Water was first applied to beneficial use April 8 1977 and since that time
month day year
has been used fully and continuously on all of the above described lands or for the above described purposes except
as follows: _____

8. Additional statements or explanations see reverse side

I, Davis Dillon, President being first duly sworn upon my oath,
depose and say that the above is a full and complete statement prepared in accordance with the instructions on the re-
verse side of this form and submitted in evidence of ownership of a valid underground water right, that I have carefully
read each and all of the items contained therein and that the same are true to the best of my knowledge and belief.

Trigon Enterprises, Ltd., declarant,
by: Davis Dillon

Subscribed and sworn to before me this 26th day of July, A.D. 85
My commission expires 11/12/85 Josephine Dillon Notary Public

Additional Statements:

Prior to the declaration of the Lower Rio Grande Underground Water Basin on September 11, 1980, it was the intent of the Declarant to combine wells 1, 2, 3, 4, & 5 (well numbers designated by the Declarant and noted on the left upper corner of each declaration) and use those wells to the maximum amount of water that could be produced from each well, in order to furnish water for domestic, commercial, industrial, subdivision and related purposes, within Part of Section 33, T23S, R1E and Part W1/2 SW1/4, Section 34, T23S, R1E, and surrounding areas, owned by various owners.

Within the above described area there are subdivision plats filed for record in the Dona Ana County Court House.

Maximum original capacity of each well follows:

Well #1 - based upon the static water level, the specific capacity of the well and total depth of the well, Well #1 was originally capable of pumping in excess of 100 gpm. The casing size limits the capacity of the well to 100 gpm based upon pump size and pump curves.

Well #2 - based upon the static water level, the specific capacity of the well and total depth of the well, Well #2 was originally capable of pumping in excess of 100 gpm. The casing size limits the capacity of the well to 100 gpm based upon pump size and pump curves.

Well #3 - this well was designed to pump 600 gpm based upon pump curves for the pump presently in place. In the past the well was used for irrigation and road construction.

Well #4 - because of the casing size this well is restricted to a maximum capacity of 50 gpm.

Well #5 - because of the casing size this well is restricted to a maximum capacity of 50 gpm.

The system is presently furnishing water to 17 homes. During the last 12 months about 15.7 acre feet were applied to beneficial use for subdivision purposes.

Total original maximum capacity of all wells combined is 900 gpm. Based upon established State Engineer precedence, 60% pumping time is acceptable; therefore, the Vested and Inchoate Water Rights claimed from all five wells combined is 871 acre feet per annum.

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

APPLICATION FOR PERMIT

To appropriate the Underground Waters of the State of New Mexico

Date Received August 16, 1995 File No. LRG-5818-S-6

1. Name of applicant Jornada Water Co., Inc.
 Mailing address 225 E. Idaho, Suite 15
 City and State Las Cruces, NM 88005

2. Source of water supply shallow water aquifer, located in Mesilla Bolson
(artesian or shallow water aquifer) (name of underground basin)

3. The well is to be located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 33 Township 23S
 Range 1E N.M.P.M., or Trier No. _____ of Map No. _____ of the _____ District,
 on land owned by Edgar R. Garrett

4. Description of well: name of driller LarJon Drilling;
 Outside diameter of casing 8" inches; Approximate depth to be drilled 600 feet;

5. Quantity of water to be appropriated and beneficially used 500 acre feet,
(consumptive use, diversion)
 for domestic, commercial, industrial, subdivision & related purposes.

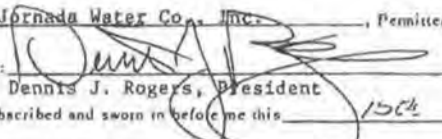
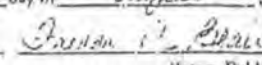
6. Acreage to be irrigated or place of use unknown acres.

Subdivision	Section	Township	Range	Acres	Owner
<u>Parts of</u>	<u>33 & 34</u>	<u>23S</u>	<u>1E</u>		
<u>and surrounding areas</u>					

7. Additional statements or explanations: The total diversion from all wells combined shall not exceed the total permitted appropriation of 792.0 ac-ft/annum. Well will supplement existing well LRG-5818-S-4 and permitted well LRG-5818-S-5, not yet drilled.

RECEIVED
 '95 AUG 15 AM 7:50
 STATE ENGINEER'S OFFICE
 LAS CRUCES, NEW MEXICO

I, Dennis J. Rogers, President, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Jornada Water Co., Inc., Permittee,
 By: 
Dennis J. Rogers, President
 Subscribed and sworn in before me this 15th day of August, A.D., 1995
 My commission expires 7:00 PM on 10/1/98

 Notary Public

Number of this permit LRG-5818-g-6

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; ~~and provided that all rules and regulations of the State Engineer shall be complied with; and further subject to the following conditions~~ is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state; and further subject to the attached conditions of approval;

SEE ATTACHED CONDITIONS OF APPROVAL.

Proof of completion of well shall be filed on or before October 31, 19 96

Proof of application of water to beneficial use shall be filed on or before October 31, 19 96

Witness my hand and seal this 6th day of October, A.D., 19 95.

THOMAS C. TURNER, STATE ENGINEER

By: J. B. Nixon, Supervisor District 4

FILE NO. 5818-g-6

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of \$5.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4—Fill out all blanks fully and accurately.

Sec. 5—Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6—Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7—If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

ATTACHMENT

CONDITIONS OF APPROVAL

APPLICATION FOR PERMIT NO. LRG-5818-S-6

1. The diversion of water from well LRG-5818-S-6 under this permit shall be limited to 500 acre-feet per annum measured at the well.
2. The total combined diversion of water from wells LRG-5818-S-4 thru LRG-5818-S-6 shall not exceed 792 acre-feet per annum measured at the wells.
3. Wells LRG-5818-S-4 thru LRG-5818-S-6 shall be equipped with a totalizing meter of a type approved by the State Engineer and installed on the discharge line from each well before the line enters the ground.
3. Readings from each water meter on wells LRG-5818-S-4 thru LRG-5818-S-6 shall be taken at the end of each month and submitted to the State Engineer office in Las Cruces on or before the 10th day of the following month.
4. **Proof of Completion of Well** shall be filed on or before October 31, 1996.
5. **Proof of Application of Water to Beneficial Use** shall be filed on or before October 31, 1996.

Date: October 6, 1995



J. B. Nixon, Supervisor, District 4

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

APPLICATION FOR PERMIT
TO ENLARGE SERVICE AREA

To Appropriately the Underground Waters of the State of New Mexico

Date Received _____ File No. LRG-5818-S-7

1. Name of applicant: Jornada Water Co., Inc.
 Mailing address: 225 E. Idaho, Suite 15
 City and State: Las Cruces, NM 88005

2. Source of water supply: shallow water aquifer, located in lower Rio Grande Basin
(artesian or shallow water aquifer) (name of underground basin)

* See well site location below

3. The well is to be located in the ~~XXXXXX~~ Section 28 Township 23S
 Range 1E N.M.P.M., or Tract No. _____ of Map No. _____ of the _____ District,
 on land owned by Ben Boldt & then to be transferred to Jornada Water Co.

4. Description of well: name of driller not yet known
 Outside Diameter of casing 12 3/4 inches; Approximate depth to be drilled 800 feet;

5. Quantity of water to be appropriated and beneficially used 798 792 gpd for D.R. acre feet,
(consumptive use, diversion)
 for domestic, commercial, industrial, subdivision related purposes.

6. Acreage to be irrigated or place of use _____ acres.

Subdivision	Section	Township	Range	Acres	Owner
<u>Raasaf Hills(See Below)</u>					
<u>See Attachment</u>					

CL 101 31 111 25
 STATE ENGINEER OFFICE
 LAS CRUCES, NEW MEXICO

7. Additional statements or explanations NW 25 SW 25 S. 23

* Well site location as follows: Northing = 464083.47 T. 23S
Easting = 1454591.92 R. 1E
Latitude = 32°16'27.715" North
Longitude = 106°51'4.521" West

<u>LRG-5818-S-4</u>	<u>SW 1/4 SW 1/4 SE 1/4</u>	<u>Section 33, T23S, R1E</u>
<u>LRG-5818-S-5</u>	<u>N 1/4 NE 1/4 SE 1/4</u>	<u>Section 33, T23S, R1E</u>
<u>LRG-5818-S-6</u>	<u>S 1/4 SE 1/4 NE 1/4</u>	<u>Section 33, T23S, R1E</u>

I, Dennis J. Rogers, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Jornada Water Co. Inc Permittee,
 By: Dennis J. Rogers, President
 Subscribed and sworn to before me this 30th day of October, A.D., 2003
 My commission expires March 20 2006
Freida C. Blair
 Notary Public

Number of this permit _____

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions:

AS PER ATTACHED CONDITIONS

Proof of completion of well shall be filed on or before March 31, 19 2007

Proof of application of water to beneficial use shall be filed on or before October 31, 19 2005

Witness my hand and seal this 14TH day of MARCH, A.D., 2005

By: _____ John R. D'Antonio, Jr., STATE ENGINEER

BY Erek H. Fuchs
Erek H. Fuchs, M.S.
Water Resource Master District IV

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of ~~\$500~~ ^{\$2500}. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4—Fill out all blanks fully and accurately.

Sec. 5—Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6—Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7—If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

LRG-5818-S-7
TRN No. 302471

Attachment
Conditions of Approval

Applications for Permits for Supplemental Wells
No. LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10

1) These applications are approved as follows:

Permit Numbers:	LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10
Priority:	To be determined by order of the Third Judicial District Court, Doña Ana County, State of New Mexico in <i>New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.</i> , Case No. CV 96-888.
Source:	Shallow underground water of the Lower Rio Grande Underground Water Basin.
Points of Diversion:	LRG-5818-S-4 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-6 located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-7 located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-8 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-9 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-10 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 27, Township 23 South, Range 1 East, NMPM.
Purpose of Use:	Domestic, commercial, industrial, subdivision and related purposes.
Place of Use:	Jornada Water Company service area throughout the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM, enlarged under this permit to encompass all remaining lands in said Section 33, in addition to all of Sections 28, 21, the southeast part of Section 16, the southwest part of Section 15 west of the Rio Grande and south of Picacho Avenue, the west half of Section 22, the west half of Section 27, and the west half of Section 34, all in Township 23 South, Range 1 East, NMPM, including projected portions therein.

LRG-5818-S-7
TRN No. 302471


as well as the south and west projected parts of Section 3, Township 24 South, Range 1 East, NMPM, excluding any portion within the Town of Mesilla.

- Amount of Water: The diversion of water from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall not exceed 42.46 acre-feet per annum reflecting the maximum beneficial use of water to date under this right, however may be increased up to 792.0 acre-feet per annum from all wells combined as otherwise previously permitted provided that prior to increasing diversions the permittee submits to the State Engineer, and the State Engineer approves, a schedule for the acquisition of replacement surface water to prevent impairment of surface water rights senior to the priority date of water rights developed under this permit and to allow water rights to continue to be exercised out of priority in the event of a priority call; and further provided that it maintains the original or amended schedule as approved by the State Engineer. Acquisitions required by the schedule for a given year shall be in an amount determined by the State Engineer sufficient to replace the depletions to surface water and such acquisitions shall be made by the beginning of that year.
- 2) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
 - 3) Wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall each be equipped with a totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
 - 4) Written records of the amount of water pumped from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 be submitted to the Office of the State Engineer in Las Cruces on or before the tenth day of each month.
 - 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 practical.

LRG-5818-S-7
TRN No. 302471

- 6) The permittee shall submit, on or before January 1 of each year, a written report acceptable to the State Engineer on its water conservation efforts, overall per capita use and residential per capita use calculations, and any changes to its original water conservation plan.
- 7) 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 otherwise required, but shall not be a basis for requesting an increase in the maximum annual diversion of up to 792.0 acre-feet.
- 8) Prior to the drilling of wells under these permits, the permittee shall submit to the District IV Office of the State Engineer in Las Cruces an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land as is necessary to drill and operate the wells.
- 9) A Well Record shall be submitted to the Office of the State Engineer in Las Cruces within ten (10) days following the drilling of new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10.
- 10) Proof of Completion of Well for new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall be filed with the Office of the State Engineer in Las Cruces on or before March 31, 2007.
- 11) In accordance with previous permit conditions, Proof of Application of Water to Beneficial shall be filed with the Office of the State Engineer in Las Cruces on or before October 31, 2005.

Date: MARCH 14, 2005


Erik H. Fuchs, M.S.
Basin Supervisor

Application for Permit - Attachment
File No. LRG-5818-S-7
Jornada Water Co., Inc.
225 E. Idaho, Suite 15
Las Cruces, NM 88005

Permitted Service Area - SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ & S $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33,
Township 23S, Range 1E

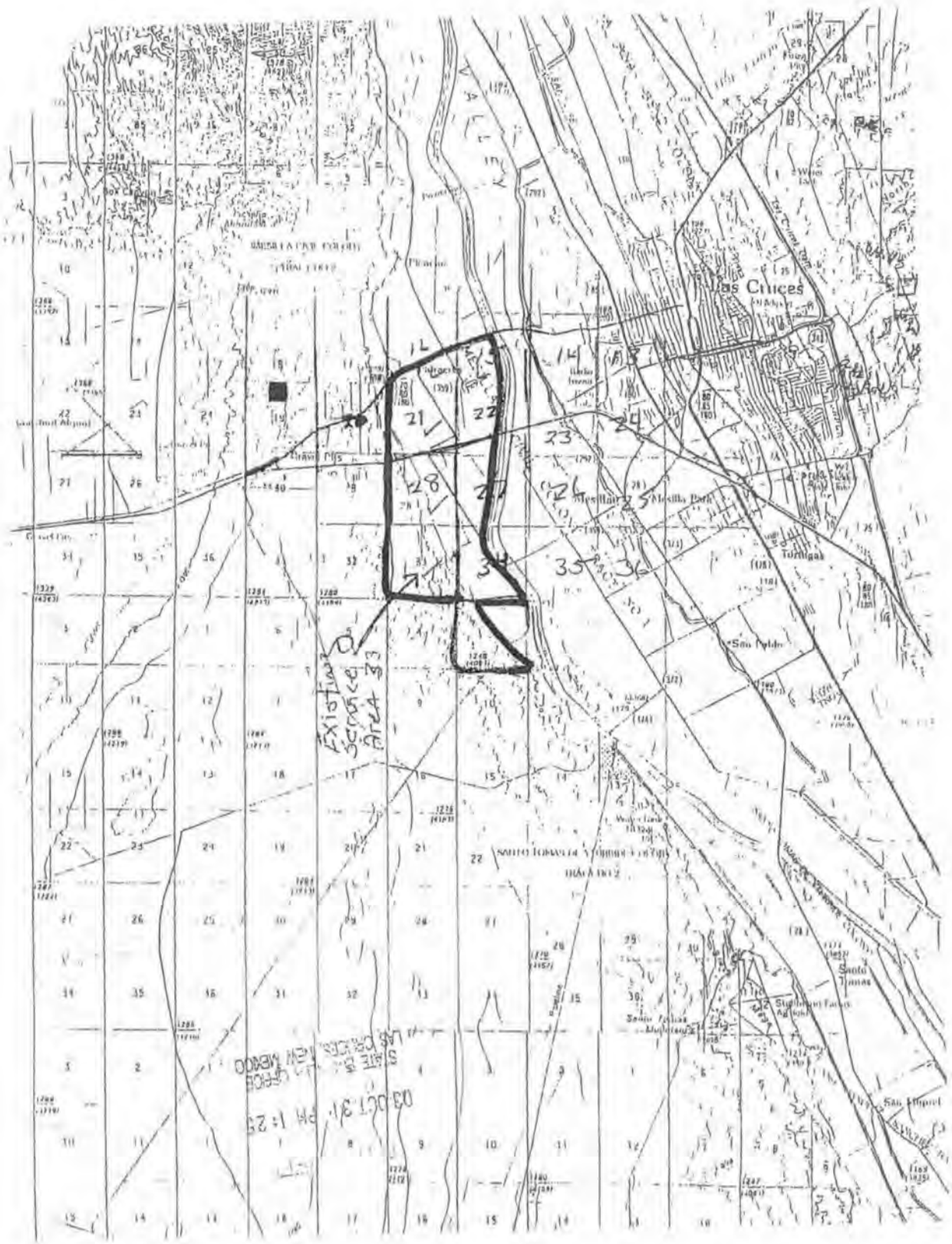
Additional Service Area -

All Section 33, T23S, R1E
All Section 28, T23S, R1E
All Section 21, T23S, R1E
-Southeast part of Section 16, T23S, R1E, south of Picacho Ave.
-Southwest part of Section 15, T23S, R1E, west of Rio Grande and south
of Picacho Ave.
-West half of Section 22, T23S, R1E
-West half of Section 27, T23S, R1E
-West half of Section 34, T23S, R1E
-South and west Section 3, T24S, R1E, excluding any portion within the
Town of Mesilla,
And surrounding areas that require water service.

It is Jornada Water Co.,'s intent to expand into any area that requires service.
See Attached Plat.

Jornada Water Co., Inc. is being asked by the Ben Boldt Hills Subdivision
and La Mancha Estates(Phillip Philippou) to expand our service area to
facilitate their subdivision needs. Both subdivisions are going through
the ETZ subdivision process. The area of expansion details the coordinates
for a supplemental well permit. Additional supplemental well applications
are also being filed to facilitate the subdivisions and adjoining service
areas. Enclosed is a map indicating the proposed expansion.

RECEIVED
OCT 31 PM 1:25
STATE ENGINEER OFFICE
LAS CRUCES, NEW MEXICO



03 OCT 31 PM 1:29
 STATE OF NEW MEXICO
 OFFICE OF THE ATTORNEY GENERAL
 LAS CRUCES, NEW MEXICO

Fax

To: Denny Rogers
Of: Jornada Water Company
Fax: 505-524-0424
Pages: 1, including this cover sheet.
Date: September 24, 2003

Coordinates for proposed well locations, Baldt Hills Subdivision:

North Water Well:
 Northing = 464063.47
 Easting = 1454591.92
 Latitude = 32° 16' 27.715" North
 Longitude = 106° 51' 4.521" West

NAD83 New Mexico State Plane Coordinates

South Water Well:
 Northing = 462627.6
 Easting = 1454575.6
 Latitude = 32° 16' 13.506" North
 Longitude = 106° 51' 4.617" West

If you have any questions or need additional information please contact me at 505-526-6260.

RECEIVED
 03 OCT 31 PM 1:25
 STATE ENGINEER'S OFFICE
 LVE CREDIT, NEW MEXICO

SUMMIT ENGINEERING
 PO BOX 375
 FAIRACRES, NEW MEXICO 88033
 505-541-1211
 Fax: 505-541-1211

IMPORTANT—READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

APPLICATION FOR PERMIT

To Appropriately Use the Underground Waters of the State of New Mexico

Date Received _____ File No. LRG-5818-S-8

1. Name of applicant Jornada Water Co., Inc.
 Mailing address 225 E. Idaho, Suite 15
 City and State Las Cruces, NM 88005

2. Source of water supply shallow water aquifer located in lower Rio Grande basin
(artesian or shallow water aquifer)

3. The well is to be located in the see below Ben Boldt 23S
 Range 1E N.M.P.M., or Tract No. _____ of Map No. _____ of the _____ Township
 on land owned by Ben Boldt & then to be transferred to Jornada Water Co.

4. Description of well: name of driller not yet known
 Outside diameter of casing 12 & 3/4 inches; Appropriate depth to be drilled 800 feet

5. Quantity of water to be appropriated and beneficially used 298 792 SWU for DP
(consumptive use, diversion)
 for domestic, commercial, industrial, subdivision related purposes

6. Acreage to be irrigated or place of use _____ acres

Subdivision	Section	Township	Range	Acres	Owner
<u>Rasaf Hills- presently served by</u>				<u>LRG-5818-S-4</u>	<u>SWISWISE</u> of Section 33, T23S, R1E
				<u>LRG-5818-S-5</u>	<u>NINEISE</u> of Section 33, T23S, R1E
				<u>LRG-5818-S-6</u>	<u>SISEINE</u> of Section 33, T23S, R1E
<u>And, (see below)</u>					

7. Additional statements or explanations
Additional Requested Service Area on LRG-5818-S-7 application:

All Section 21, 28 & 33, T23S, R1E
Southeast part of Section 16, T23S, R1E, south of Picacho Ave.
Southwest part of Section 15, T23S, R1E, west of Rio Grande river
south of Picacho Ave.
West half of Section 22, T23S, R1E
West half of Section 27, T23S, R1E
West half of Section 34, T23S, R1E
South and west Section 3, T24S, R1E, excluding any portion within the
Town of Mesilla,
And, surrounding areas that require water service.

*Well Site Location - Northing = 462627.6
Easting = 1454575.6
Latitude = 32°16'13.506" North
Longitude = 106°51'4.617" West

03 OCT 31 11 PM 1985
 STATE ENGINEER'S OFFICE
 LAS CRUCES, NEW MEXICO
 RECEIVED

I, _____, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Jornada Water Co., Inc. Permittee
 By: [Signature]
Dennis J. Rogers, President
 Subscribed and sworn to before me this 30th day of October, A.D., 1983
 My commission expires March 21 1986
[Signature]
 Notary Public

Number of this permit _____

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions: _____

AS PER ATTACHED CONDITIONS

Proof of completion of well shall be filed on or before March 31, 2007

Proof of application of water for beneficial use shall be filed on or before October 31, 2005

Witness my hand and seal this 14TH day of MARCH, A.D., 2005

By: John R. D'Antonio, Jr., STATE ENGINEER

BY Erek H. Fuchs
Erek H. Fuchs, M.S.
Water Resource Master District IV

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of 125.00.
Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Sec. 1. Fill out all blanks fully and accurately.

Sec. 2. Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 3. Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as protected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 4. If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe the water right sought.

LRG-5818-S-8
TRN No. 302510

Attachment Conditions of Approval

Applications for Permits for Supplemental Wells
No. LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10

1) These applications are approved as follows:

Permit Numbers: LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10

Priority: To be determined by order of the Third Judicial District Court, Doña Ana County, State of New Mexico in *New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.*, Case No. CV 96-888.

Source: Shallow underground water of the Lower Rio Grande Underground Water Basin.

Points of Diversion: LRG-5818-S-4 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-6 located in the S $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-7 located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-8 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-9 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-10 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 27, Township 23 South, Range 1 East, NMPM.

Purpose of Use: Domestic, commercial, industrial, subdivision and related purposes.

Place of Use: Jornada Water Company service area throughout the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM, enlarged under this permit to encompass all remaining lands in said Section 33, in addition to all of Sections 28, 21, the southeast part of Section 16, the southwest part of Section 15 west of the Rio Grande and south of Picacho Avenue, the west half of Section 22, the west half of Section 27, and the west half of Section 34, all in Township 23 South, Range 1 East, NMPM, including projected portions therein.

LRG-5818-S-8
TRN No. 302510

as well as the south and west projected parts of Section 3, Township 24 South, Range 1 East, NMPM, excluding any portion within the Town of Mesilla.


Amount of Water: The diversion of water from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall not exceed 42.46 acre-feet per annum reflecting the maximum beneficial use of water to date under this right, however may be increased up to 792.0 acre-feet per annum from all wells combined as otherwise previously permitted provided that prior to increasing diversions the permittee submits to the State Engineer, and the State Engineer approves, a schedule for the acquisition of replacement surface water to prevent impairment of surface water rights senior to the priority date of water rights developed under this permit and to allow water rights to continue to be exercised out of priority in the event of a priority call; and further provided that it maintains the original or amended schedule as approved by the State Engineer. Acquisitions required by the schedule for a given year shall be in an amount determined by the State Engineer sufficient to replace the depletions to surface water and such acquisitions shall be made by the beginning of that year.

- 2) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
- 3) Wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall each be equipped with a totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 4) Written records of the amount of water pumped from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 be submitted to the Office of the State Engineer in Las Cruces on or before the tenth day of each month.
- 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 practical.

LRG-5818-S-8
TRN No. 302510

- 6) The permittee shall submit, on or before January 1 of each year, a written report acceptable to the State Engineer on its water conservation efforts, overall per capita use and residential per capita use calculations, and any changes to its original water conservation plan.
- 7) 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 otherwise required, but shall not be a basis for requesting an increase in the maximum annual diversion of up to 792.0 acre-feet.
- 8) Prior to the drilling of wells under these permits, the permittee shall submit to the District IV Office of the State Engineer in Las Cruces an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land as is necessary to drill and operate the wells.
- 9) A Well Record shall be submitted to the Office of the State Engineer in Las Cruces within ten (10) days following the drilling of new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10.
- 10) Proof of Completion of Well for new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall be filed with the Office of the State Engineer in Las Cruces on or before March 31, 2007.
- 11) In accordance with previous permit conditions, Proof of Application of Water to Beneficial shall be filed with the Office of the State Engineer in Las Cruces on or before October 31, 2005.

Date: MARCH 14, 2005


Erik H. Fuchs, M.S.
Basin Supervisor

Fax

To: Denny Rogers
Of: Jornada Water Company
Fax: 505-524-0424
Pages: 1, including this cover sheet.
Date: September 24, 2003

Coordinates for proposed well locations, Holdt Hills Subdivision:

North Water Well: NAD83 New Mexico State Plane Coordinates

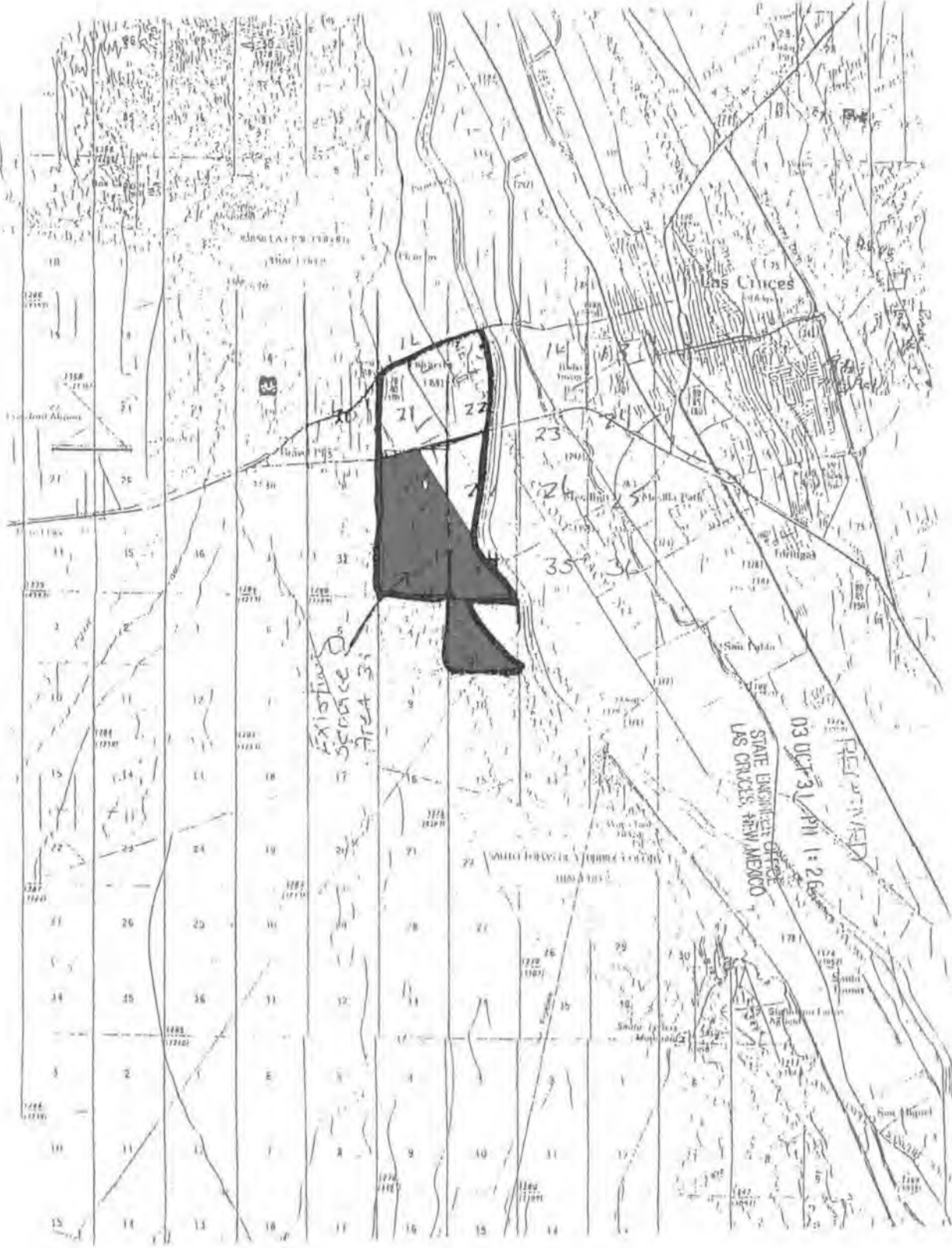
Northing = 464063.47
 Easting = 1454591.92
 Latitude = 32° 16' 27.715" North
 Longitude = 106° 51' 4.521" West



South Water Well:
 Northing = 462627.6
 Easting = 1454575.6
 Latitude = 32° 16' 13.506" North
 Longitude = 106° 51' 4.617" West

If you have any questions or need additional information please contact me at 505-526-6260

03 OCT 31 PM 1:26
 STATE ENGINEER OFFICE
 LAS CRUCES, NEW MEXICO
 REPLY (A/E/T)



Handwritten: 30
31
32
33
34
35
AREA 31

Las Cruces

STATE ENGINEERING OFFICE
LAS CRUCES, NEW MEXICO
03 OCT 31 PM 1:26

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

APPLICATION FOR PERMIT

To Appropriates the Underground Waters of the State of New Mexico

Date Received _____ File No. LRG-5818-S-9

1. Name of applicant Jornada Water Co., Inc.
 Mailing address 225 E. Idaho, Suite 15
 City and State Las Cruces, NM 88005

2. Source of water supply shallow water aquifer, located in lower Rio Grande basin
(intention or shallow water aquifer) (name of underground basin)

3. The well is to be located in the SW1/4NE1/4SE1/4 of Section 28 Township T23S
 Range 1E N.M.P.M., or Tract No. _____ of Map No. _____ of the _____ District,
 on land owned by La Mancha Estates & then transferred to Jornada Water Co.

4. Description of well: name of driller not yet known
 Outside diameter of casing 12 & 3/4 inches; Approximate depth to be drilled 800 feet

5. Quantity of water to be appropriated and beneficially used 198 792 GPM gpm feet,
(from surface use, diversion)

for domestic, commercial, industrial, subdivision related purposes.

6. Acreage to be irrigated or place of use _____ acres.

Subdivision	Section	Township	Range	Acres	Owner
<u>Basaf Hills- presently served by</u>	<u>LRG-5818-S-4</u>	<u>SW1/4SE1/4</u>	<u>of Section 33, T23S, R1E</u>		
	<u>LRG-5818-S-5</u>	<u>N1/4SE1/4</u>	<u>of Section 33, T23S, R1E</u>		
	<u>LRG-5818-S-6</u>	<u>S1/4NE1/4</u>	<u>of Section 33, T23S, R1E</u>		
<u>And (see below)</u>					

7. Additional statements or explanations
Additional Requested Service Area on LRG-5818-S-7 application:

All Section 21, 28.6 33, T23S, R1E
Southeast part of Section 16, T23S, R1E, south of Picacho Ave.
Southwest part of Section 15, T23S, R1E, west of Rio Grande river and
south of Picacho Ave.
West half of Section 22, T23S, R1E
West half of Section 27, T23S, R1E
West half of Section 34, T23S, R1E
South and west Section 3, T24S, R1E, excluding any portion within the
Town of Mesilla,
And, surrounding areas that require water service.

03 OCT 31 PM 1:26
 STATE ENGINEER'S OFFICE
 LAS CRUCES, NEW MEXICO

I, _____, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Jornada Water Co., Inc., Permittee,
 By: [Signature]
Dennis J. Rogers, President
 Subscribed and sworn to before me this 28th day of October, A.D., 1975
 My commission expires March 20 1976 [Signature]
 Notary Public

Number of this permit _____

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions:

AS PER ATTACHED CONDITIONS

Proof of completion of well shall be filed on or before March 31, 192007

Proof of application of water to beneficial use shall be filed on or before October 31, 192005

Witness my hand and seal this 14TH day of MARCH, A.D., 19XX2005

By: John R. D'Antonio, Jr., STATE ENGINEER

BY Erek H. Fuchs
Erek H. Fuchs, M.S.
Water Resource Master District IV

INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of \$125.00.
Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4--Fill out all blanks fully and accurately.

Sec. 5--Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6--Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7--If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe the water right sought.

LRG-5818-S-9
TRN No. 302511

Attachment Conditions of Approval

Applications for Permits for Supplemental Wells
No. LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10

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- Permit Numbers: LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10
- Priority: To be determined by order of the Third Judicial District Court, Doña Ana County, State of New Mexico in *New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.*, Case No. CV 96-888.
- Source: Shallow underground water of the Lower Rio Grande Underground Water Basin.
- Points of Diversion: LRG-5818-S-4 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-6 located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-7 located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-8 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-9 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-10 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 27, Township 23 South, Range 1 East, NMPM.
- Purpose of Use: Domestic, commercial, industrial, subdivision and related purposes.
- Place of Use: Jornada Water Company service area throughout the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM, enlarged under this permit to encompass all remaining lands in said Section 33, in addition to all of Sections 28, 21, the southeast part of Section 16, the southwest part of Section 15 west of the Rio Grande and south of Picacho Avenue, the west half of Section 22, the west half of Section 27, and the west half of Section 34, all in Township 23 South, Range 1 East, NMPM, including projected portions therein,

LRG-5818-S-9
TRN No. 302511

as well as the south and west projected parts of Section 3, Township 24 South, Range 1 East, NMPM, excluding any portion within the Town of Mesilla.


Amount of Water: The diversion of water from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall not exceed 42.46 acre-feet per annum reflecting the maximum beneficial use of water to date under this right, however may be increased up to 792.0 acre-feet per annum from all wells combined as otherwise previously permitted provided that prior to increasing diversions the permittee submits to the State Engineer, and the State Engineer approves, a schedule for the acquisition of replacement surface water to prevent impairment of surface water rights senior to the priority date of water rights developed under this permit and to allow water rights to continue to be exercised out of priority in the event of a priority call; and further provided that it maintains the original or amended schedule as approved by the State Engineer. Acquisitions required by the schedule for a given year shall be in an amount determined by the State Engineer sufficient to replace the depletions to surface water and such acquisitions shall be made by the beginning of that year.

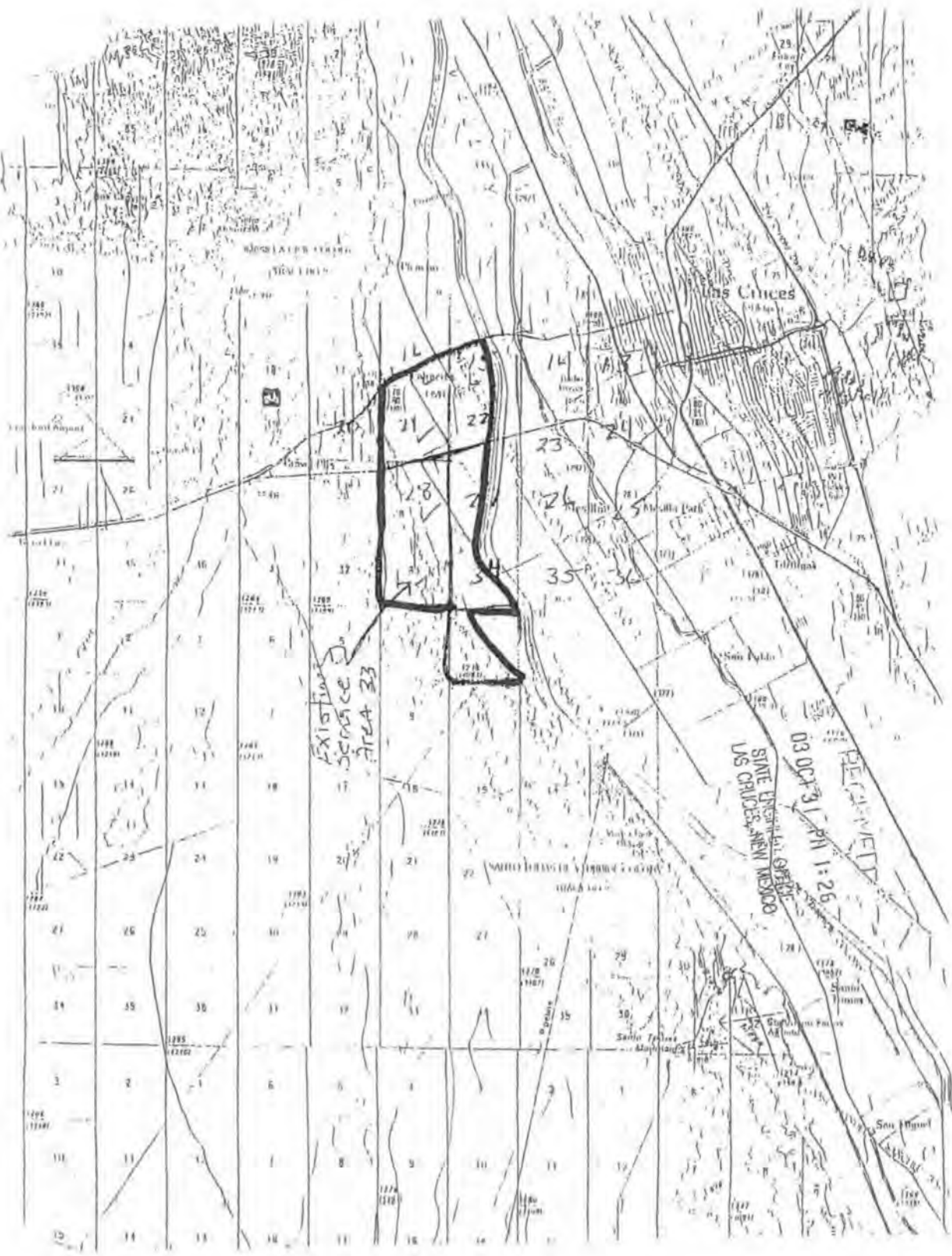
- 2) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
- 3) Wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall each be equipped with a totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 4) Written records of the amount of water pumped from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 be submitted to the Office of the State Engineer in Las Cruces on or before the tenth day of each month.
- 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 practical.

LRG-5818-S-9
TRN No. 302511

- 6) The permittee shall submit, on or before January 1 of each year, a written report acceptable to the State Engineer on its water conservation efforts, overall per capita use and residential per capita use calculations, and any changes to its original water conservation plan.
- 7) 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 otherwise required, but shall not be a basis for requesting an increase in the maximum annual diversion of up to 792.0 acre-feet.
- 8) Prior to the drilling of wells under these permits, the permittee shall submit to the District IV Office of the State Engineer in Las Cruces an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land as is necessary to drill and operate the wells.
- 9) A Well Record shall be submitted to the Office of the State Engineer in Las Cruces within ten (10) days following the drilling of new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10.
- 10) Proof of Completion of Well for new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall be filed with the Office of the State Engineer in Las Cruces on or before March 31, 2007.
- 11) In accordance with previous permit conditions, Proof of Application of Water to Beneficial shall be filed with the Office of the State Engineer in Las Cruces on or before October 31, 2005.

Date: MARCH 14, 2005


Erik H. Fuchs, M.S.
Basin Supervisor





510 N. WATER
LAS CRUCES, NM 88001
(505) 525-2112
FAX (505) 525-1229
Email: scanlon@zinet.com

OCTOBER 14, 2003

DESCRIPTION OF TWO 0.125 ACRE TRACTS
(WELL SITE #1 AND WELL SITE #2 FOR LA MANCHA ESTATES)

A tract of land situate within the Extra-Territorial Zone of The City of Las Cruces, Dona Ana County, New Mexico, located in Section 28, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys, and being more particularly described as follows, to wit:

SW1/4, NE1/4, NE1/4, NE1/4, SE1/4, of Section 28, T.23S., R.1E. of the U.S.R.S. Surveys. This tract of land contains 0.125 acres more or less of land and is subject to reservations and easements of record. This Tract of land is to be known as Well Site #1 for La Mancha Estates Subdivision.

Along with:

A tract of land situate within the Extra-Territorial Zone of The City of Las Cruces, Dona Ana County, New Mexico, located in Section 27, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys, and being more particularly described as follows, to wit:

SE1/4, NW1/4, SW1/4, NW1/4, NW1/4, of Section 27, T.23S., R.1E. of the U.S.R.S. Surveys. This tract of land contains 0.125 acres more or less of land and is subject to reservations and easements of record. This Tract of land is to be known as Well Site #2 for La Mancha Estates Subdivision.

Ted G. Scanlon, PS 9433
JOB NO. 03-08-0703

03 OCT 31 PM 1:26
STATE ENGINEER'S OFFICE
LAS CRUCES, NEW MEXICO

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILING OUT THIS FORM

APPLICATION FOR PERMIT

To Appropriate the Underground Waters of the State of New Mexico

Date Received _____ File No. LRG-5818-S-10

1. Name of applicant Jornada Water Co., Inc.
 Mailing address 225 E. Idaho, Suite 15
 City and State Las Cruces, NM 88005

2. Source of water supply shallow water aquifer located in lower Rio Grande basin
(artesian or shallow water aquifer) (name of underground basin)

3. The well is to be located in the SE1/4NW1/4NW1/4 of Section 27 Township 23S
 Range 1E N.M.P.M., or Tract No. _____ of Map No. _____ of the _____ District,
 on land owned by La Mancha Estates & then transferred to Jornada Water Co.

4. Description of well: name of driller not yet known
 Outside diameter of casing 12 & 3/4 inches; Approximate depth to be drilled 800 feet;

5. Quantity of water to be appropriated and beneficially used 798 acre feet,
(consumptive use, diversion)
 for domestic, commercial, industrial, subdivision related purposes.

6. Acreage to be irrigated or place of use _____ acres.

Subdivision	Section	Township	Range	Acres	Tract
<u>Raaaf Hills- presently served by</u>	<u>LRG-5818-S-4</u>	<u>SW1/4SW1/4</u>	<u>of Section 33, T23S, R1E</u>		
	<u>LRG-5818-S-5</u>	<u>N1/4E1/4</u>	<u>of Section 33, T23S, R1E</u>		
	<u>LRG-5818-S-6</u>	<u>S1/4E1/4</u>	<u>of Section 33, T23S, R1E</u>		
<u>And, (see below)</u>					

03 OCT 31 PM 11 27
 STATE ENGINEER'S OFFICE
 LAS CRUCES, NEW MEXICO
 (J. Rogers) (E)

7. Additional statements or explanations:
Additional Requested Service Area on LRG-5818-S-7 application:

All Section 21, 28 & 33, T23S, R1E
Southeast part of Section 16, T23S, R1E, south of Picacho Ave.
Southwest part of Section 15, T23S, R1E, west of Rio Grande river and south of Picacho Ave.
West half of Section 22, T23S, R1E
West half of Section 27, T23S, R1E
West half of Section 34, T23S, R1E
South and west Section 3, T24S, R1E, excluding any portion within the Town of Mesilla,
And, surrounding areas that require water service.

I, _____, affirm that the foregoing statements are true in the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Jornada Water Co., Inc. Permittee
 By: [Signature]
Dennis J. Rogers, President
 Subscribed and sworn to before me this 30th day of October, A.D., 192003
 My commission expires March 30, 2005 Frederic C. Blau
 Notary Public

Number of this permit _____

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with and further subject to the following conditions: _____

AS PER ATTACHED CONDITIONS

Proof of completion of well shall be filed on or before March 31, ~~19~~ 2007

Proof of application of water to beneficial use shall be filed on or before October 31, ~~19~~ 2005

Witness my hand and seal this 14TH day of MARCH, A.D., 2005

By: John R.D'Antonio, Jr., STATE ENGINEER

BY Erek H. Fuchs
Erek H. Fuchs, M.S.
Water Resource Master District IV

INSTRUCTIONS

This form shall be executed, preferably typewritten, in duplicate and shall be accompanied by a filing fee of \$125.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Sec. 1--Fill out all blanks fully and accurately.

Sec. 2--Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 3--Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by acres and bounds and tie survey to some permanent, easily located natural object.

Sec. 4 If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

LRG-5818-S-10
TRN No. 302513

Attachment Conditions of Approval

Applications for Permits for Supplemental Wells
No. LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10

1) These applications are approved as follows:

Permit Numbers:	LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10
Priority:	To be determined by order of the Third Judicial District Court, Doña Ana County, State of New Mexico in <i>New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.</i> , Case No. CV 96-888.
Source:	Shallow underground water of the Lower Rio Grande Underground Water Basin.
Points of Diversion:	LRG-5818-S-4 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-6 located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-7 located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-8 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM; LRG-5818-S-9 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 23 South, Range 1 East, NMPM; LRG-5818-S-10 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 27, Township 23 South, Range 1 East, NMPM.
Purpose of Use:	Domestic, commercial, industrial, subdivision and related purposes.
Place of Use:	Jornada Water Company service area throughout the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 23 South, Range 1 East, NMPM, enlarged under this permit to encompass all remaining lands in said Section 33, in addition to all of Sections 28, 21, the southeast part of Section 16, the southwest part of Section 15 west of the Rio Grande and south of Picacho Avenue, the west half of Section 22, the west half of Section 27, and the west half of Section 34, all in Township 23 South, Range 1 East, NMPM, including projected portions therein.

LRG-5818-S-10
TRN No. 302513

as well as the south and west projected parts of Section 3, Township 24 South, Range 1 East, NMPM, excluding any portion within the Town of Mesilla.

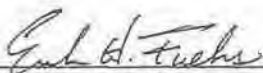
Amount of Water: The diversion of water from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall not exceed 42.46 acre-feet per annum reflecting the maximum beneficial use of water to date under this right, however may be increased up to 792.0 acre-feet per annum from all wells combined as otherwise previously permitted provided that prior to increasing diversions the permittee submits to the State Engineer, and the State Engineer approves, a schedule for the acquisition of replacement surface water to prevent impairment of surface water rights senior to the priority date of water rights developed under this permit and to allow water rights to continue to be exercised out of priority in the event of a priority call; and further provided that it maintains the original or amended schedule as approved by the State Engineer. Acquisitions required by the schedule for a given year shall be in an amount determined by the State Engineer sufficient to replace the depletions to surface water and such acquisitions shall be made by the beginning of that year.

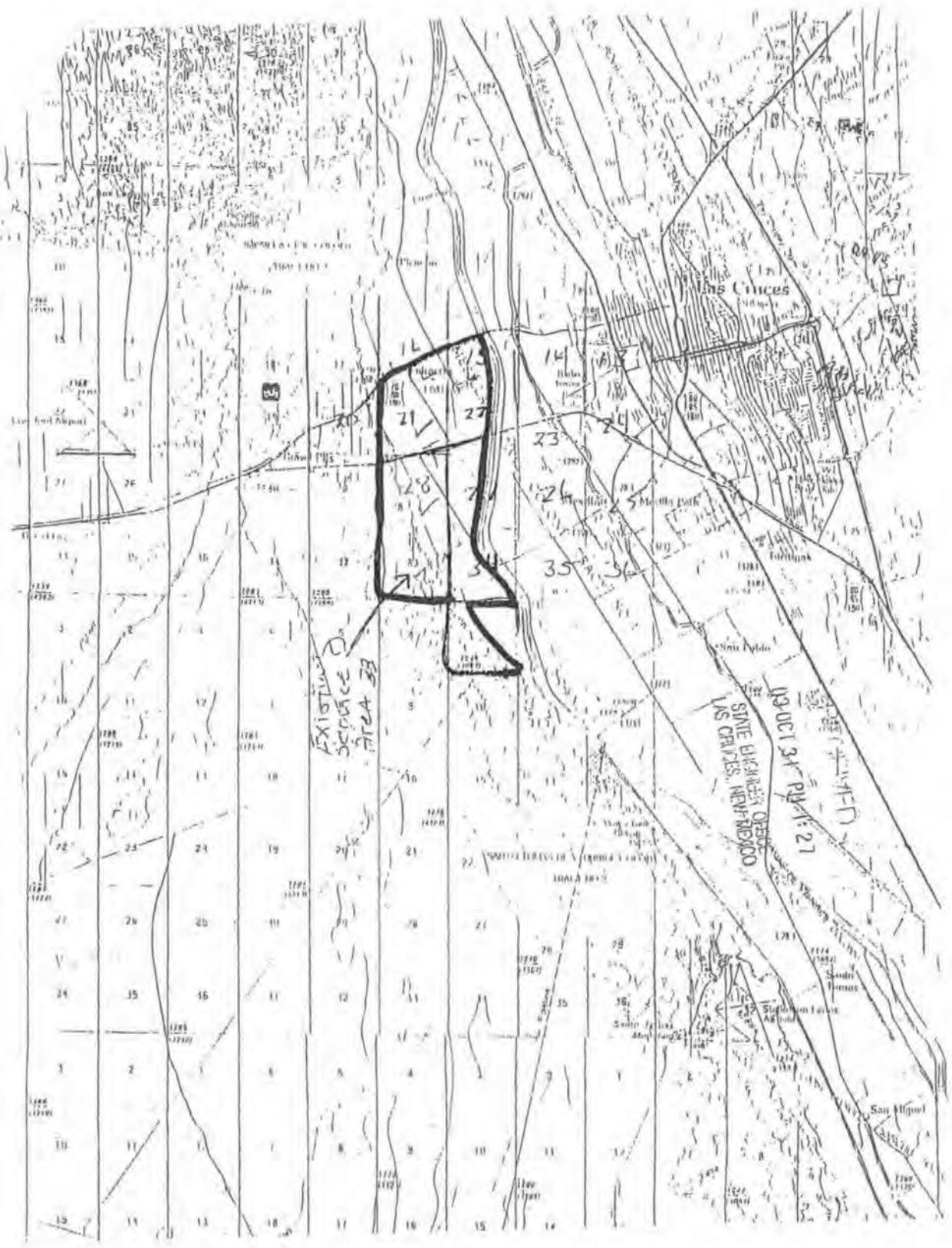
- 2) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
- 3) Wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall each be equipped with a totalizing meter of a type and at a location 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. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 4) Written records of the amount of water pumped from wells LRG-5818-S-4, LRG-5818-S-6, LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 be submitted to the Office of the State Engineer in Las Cruces on or before the tenth day of each month.
- 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 practical.

LRG-5818-S-10
TRN No. 302513

- 6) The permittee shall submit, on or before January 1 of each year, a written report acceptable to the State Engineer on its water conservation efforts, overall per capita use and residential per capita use calculations, and any changes to its original water conservation plan.
- 7) 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 otherwise required, but shall not be a basis for requesting an increase in the maximum annual diversion of up to 792.0 acre-feet.
- 8) Prior to the drilling of wells under these permits, the permittee shall submit to the District IV Office of the State Engineer in Las Cruces an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land as is necessary to drill and operate the wells.
- 9) A Well Record shall be submitted to the Office of the State Engineer in Las Cruces within ten (10) days following the drilling of new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10.
- 10) Proof of Completion of Well for new wells LRG-5818-S-7, LRG-5818-S-8, LRG-5818-S-9 and LRG-5818-S-10 shall be filed with the Office of the State Engineer in Las Cruces on or before March 31, 2007.
- 11) In accordance with previous permit conditions, Proof of Application of Water to Beneficial shall be filed with the Office of the State Engineer in Las Cruces on or before October 31, 2005.

Date: MARCH 14, 2005


Erik H. Fuchs, M.S.
Basin Supervisor





540 N. WATER
LAS CRUCES, NM 88001
(505) 525-2112
FAX (505) 525-1228
Email: scanlon@zland.com

OCTOBER 14, 2003

DESCRIPTION OF TWO 0.125 ACRE TRACTS
(WELL SITE #1 AND WELL SITE #2 FOR LA MANCHA ESTATES)

A tract of land situate within the Extra-Territorial Zone of The City of Las Cruces, Dona Ana County, New Mexico, located in Section 26, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys, and being more particularly described as follows, to wit:

SW1/4, NE1/4, NE1/4, NE1/4, SE1/4, of Section 26, T.23S., R.1E of the U.S.R.S. Surveys. This tract of land contains 0.125 acres more or less of land and is subject to reservations and easements of record. This Tract of land is to be known as Well Site #1 for La Mancha Estates Subdivision.

Along with,
A tract of land situate within the Extra-Territorial Zone of The City of Las Cruces, Dona Ana County, New Mexico, located in Section 27, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys, and being more particularly described as follows, to wit:

SE1/4, NW1/4, SW1/4, NW1/4, NW1/4, of Section 27, T.23S., R.1E of the U.S.R.S. Surveys. This tract of land contains 0.125 acres more or less of land and is subject to reservations and easements of record. This Tract of land is to be known as Well Site #2 for La Mancha Estates Subdivision.

Ted G. Scanlon, P.S. 9433
JOB NO. 03-08-0703

03 OCT 31 PM 1:27
STATE ENGINEER OFFICE
LAS CRUCES, NEW MEXICO

NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR EXTENSION OF TIME
IN WHICH TO PERFECT AN APPROPRIATION OF UNDERGROUND WATER

I. PERMITTEE

Name: Jornada Water Company
Work Phone: (505)524-2920
Contact: Dennis Rogers Home Phone: 524-2920
Address: 225 E. Idaho, Suite 15
City: Las Cruces State: NM Zip: 88005

2. HEREBY APPLIES FOR AN EXTENSION OF TIME IN WHICH TO

COMPLETE THE WELLS & APPLY WATER TO BENEFICIAL USE
(complete the well, apply water to beneficial use or both)

3. REASON

The period of time is insufficient and additional time is requested for the following reasons (state reasons in detail if desirable or necessary, submit affidavits, photographs, etc., as evidence in support of statement):
The City of Las Cruces is purchasing the Jornada Water Company water rights and associated place of use for the LRG-5818 series (Wells S-4, S-6, S-7 (Enlarged), S-7, S-8, S-9 and S-10) well permits in accordance with City Council Resolution No.'s 07-281 & 07-282 on March 19, 2007 attached hereto. The purchase for this series of well permits is only valid based on the following conditions: This Extension of Time and Change of Ownership is approved through the Office of the State Engineer (OSE); the New Mexico Public Regulatory Commission (PRC) approves the purchase; and an Extra Territorial Zone (ETZ) Special Use Permit is issued. The City of Las Cruces anticipates drilling at least one well and begin utilizing the water rights once all conditions are met. If any of the conditions are not met, this extension of time is needed because developments taking place are still in the preliminary stages. Therefore we would appreciate an extension of time in which to apply water to beneficial use and complete the wells.

The State Engineer is hereby requested to extend the time previously granted by extending the limiting date to 09/30/08.
mm/dd/year

RECEIVED
MAY 29 11:00 AM
2008

Tom Blaine, P.E.
State Engineer



1680 Hickory Loop, Suite J
Las Cruces, NM 88005-6598
Phone: (575) 524-6161
Fax: (575) 524-6160

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
District 4 Office

Trn Nbr: 482364
File Nbr: LRG 15085

May 11, 2015

JORGE A. GARCIA, P.E. PH.D.
CITY OF LAS CRUCES
P O BOX 20000
UTILITIES DEPARTMENT
LAS CRUCES, NM 88004



Greetings:

Enclosed is your copy of the above numbered permit that has been approved subject to the conditions set forth on the approval page. Please review the conditions for any required submittals. If submittals are not made by the date(s) indicated in the conditions, your rights under this permit are subject to expiration unless a request for an Extension of Time is received in this office by that date and subsequently approved.

NOTE: Proof of Beneficial Use, if required, may need signature by an engineer or surveyor registered in the State of New Mexico for whom it is your responsibility to designate and pay. When ready for inspection, please contact this office for further instructions.

Appropriate forms can be downloaded from the OSE website www.ose.state.nm.us or will be mailed upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Yvette C. Lopez".

YVETTE C. LOPEZ
(575) 524-6161 ext. 1008

Enclosure

4-17953

File Number: LRG-15085
(For OSE Use Only)

NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL
AND PLACE AND/OR PURPOSE OF USE OF UNDERGROUND WATER

1. APPLICANT

Name: City of Las Cruces Work Phone: (575)528-3511
Contact: Jorge A. Garcia P.E., Ph.D. Home Phone: _____
Address: P.O. Box 20000
Utilities Department
City: Las Cruces State: NM Zip: 88004

2. CHANGE FROM

A. LOCATION OF WELLS (A and/or B or E Required)

A1. LRG-5818-S-4: SW1/4 SW1/4 SE1/4 Section: 33 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

A2. LRG-5818-S-6: S1/2 SE1/4 NE1/4 Section: 33 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

A3. LRG-5818-S-7: NW1/4 SW1/4 SW1/4 Section: 28 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

A4. LRG-5818-S-8: NW1/4 NW1/4 NW1/4 Section: 33 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

A5. LRG-5818-S-9: NE1/4 NE1/4 SE1/4 Section: 28 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

A6. LRG-5818-S-10: SW1/4 NW1/4 NW1/4 Section: 27 Township: 23S Range: 1E
N.M.P.M. in Dona Ana County.

b. X _____ feet, Y = _____ feet, N.M. Coordinate System
Zone in the _____ Grant.

U.S.G.S. Quad Map _____

c. Latitude: _____ d _____ m _____ s Longitude: _____ d _____ m _____ s

d. East _____ (m), North _____ (m), UTM Zone 13, MAD _____ (27 or 83)

e. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey

f. Lot No. _____, Block No. _____ of Unit/Tract _____ of the _____
Subdivision recorded in _____ County.

g. Other: _____

h. Give State Engineer File Number of existing well: As shown above

i. On land owned by (required): LRG-5818-S-4 & S-6= Billy & Cynthia Garrett; LRG-5818-S-7 & S-8=West Mesa Holdings LLC; LRG-5818-S-9=PI Holdings NO I Inc; LRG-5818-S-10=Cinco LLC

j. Is well to be plugged or capped? _____ If not, state for what use retained: _____

Do Not Write Below This Line

File Number: LRG-15085
Form: wr-08

Trn Number: 482364

LRG-5818 into LRG-15085

NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL
AND PLACE AND/OR PURPOSE OF USE OF UNDERGROUND WATER

2. CHANGE FROM - continued

B. PLACE OF USE

_____ acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres
Service area throughout the SW1/4 SW1/4 SE1/4, N1/2 NE 1/4 SE 1/4 and S1/2 SE 1/4 NE 1/4 of Section 33, Township 23 South, Range 1 East, NMPM enlarged under permit LRG-5818-S-7, to encompass all remaining lands in said Section 33, in addition to all of Sections 28, 21, the southeast part of Section 16, the southwest part of Section 15 west of the Rio Grande and south of Picacho Avenue, the west half of Section 22, the west half of Section 27, and the west half of Section 34, all in Township 23 South, Range 1 East, NMPM, including projected portions therein, as well as the south and west projected of Section 3, Township 24 South, Range 1 East, NMPM, excluding any portion within Town of Mesilla.				

Who is the owner of the land? _____

If there are other sources of water for these lands, describe by file number:

C. PURPOSE OF USE

Domestic: Livestock: Irrigation: Municipal: Industrial:
Commercial: Other (specify): Subdivision and related purposes
Specific use: _____

D. QUANTITY

Diversion Amount: 792 acre-feet per annum
Consumptive Use: 792 acre-feet per annum

*Quantity to move of the 792 AF is 9-15 acre feet.

Do Not Write Below This Line

File Number: LRG-15085
Form: wr-08

page 2 of 5

Trn Number: 482364

LRG-5818 into LRG-15085

**NEW MEXICO OFFICE OF THE STATE ENGINEER
 APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL
 AND PLACE AND/OR PURPOSE OF USE OF UNDERGROUND WATER**

3. CHANGE TO

A. LOCATION OF WELL (A and/or B or E Required)

- a. NE 1/4 NE 1/4 SW 1/4 Section: 27 Township: 23S Range: 1E N.M.P.M.
 in Dona Ana County.
- b. X = 1,461,531 feet, Y = 465,234 feet, N.M. Coordinate System
Central Zone in the _____ Grant.
 U.S.G.S. Quad Map _____
- c. Latitude: _____ d _____ m _____ s Longitude: _____ d _____ m _____ s
- d. East _____ (m), North _____ (m), UTM Zone 13, NAD _____ (27 or 83)
- e. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey
- f. Lot No. _____, Block No. _____ of Unit/Tract _____ of the
 _____ Subdivision recorded in _____ County.
- g. Other: _____
- h. Give State Engineer File Number of existing well: _____
- i. On land owned by (required): Southwest Environmental Center
- j. If new well, give approximate depth (if known) _____ Feet; Outside
 diameter of casing _____ inches. Name of driller and license number
 (if known) _____

B. PLACE OF USE

2.98 acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey) USRS Map Serial:	Section (Map No.)	Township (Tract No.)	Range	Acres
<u>10-88B1, 94 BLK C LT 5A</u>	<u>27</u>	<u>23S</u>	<u>1E</u>	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Who is the owner of the land? Southwest Environmental Center

If there are other sources of water for these lands, describe by file number:

Do Not Write Below This Line

LRG-5818 into LRG-15085

**NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL
AND PLACE AND/OR PURPOSE OF USE OF UNDERGROUND WATER**

3. CHANGE TO - continued

C. PURPOSE OF USE

Domestic: Livestock: Irrigation: Municipal: Industrial:
Commercial: Other (specify): Wetland Restoration Project
Specific use: for the Rio Grande Riparian Ecological Corridor Project

D. QUANTITY

Diversion Amount: 9-15 acre-feet per annum
Consumptive Use: 9-15 acre-feet per annum

4. REASON FOR CHANGE

Application is made to change location of well and/or place and/or purpose of use for the following reasons: _____

5. ADDITIONAL STATEMENTS OR EXPLANATIONS:

Southwest Environmental Center has approached the City of Las Cruces requesting the use of up to 15 acre-feet of groundwater rights for the purpose of supplying groundwater for a wetland restoration project. Providing groundwater rights is contingent upon Southwest Environmental Center obtaining all pertinent permits related to the project and any OSE related required permits. The ownership of the groundwater rights will remain within the City throughout the duration of the wetland restoration project as stated in Las Cruces Utilities Board Resolution No. 10-11-025 attached.

ACKNOWLEDGEMENT

(I, We) Jorge A. Garcia P.E., Ph.D./Utilities Director affirm that the
(Please Print)
foregoing statements are true to the best of (my, our) knowledge and belief.

Jorge A. Garcia Applicant Signature [Signature] Applicant Signature
EXEC. DIRECTOR, SWRC

Do Not Write Below This Line

File Number: LRG-15085
Form: wr-08

Trn Number: 482364

LRG-5818 into LRG-15085

**NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO CHANGE LOCATION OF WELL
AND PLACE AND/OR PURPOSE OF USE OF UNDERGROUND WATER**

ACTION OF STATE ENGINEER

This application is approved/denied/partially approved provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare; and further subject to the following conditions:

See Attached Conditions

Witness my hand and seal this 11th day of May, 2015

BY Yvette Lopez
Yvette Lopez
Senior Water Resource Specialist
Tom Blaine, P.E., STATE ENGINEER



Do Not Write Below This Line

File Number: LRG-15085
Form: WR-08

page 5 of 5

Trn Number: 482364

LRG-5818 into LRG-15085

**Attachment
Conditions of Approval**

**Application for Permit to Change Location of Well
and Place and/or Purpose of Use of Underground Water**

File No.: LRG-05818 into LRG-15085

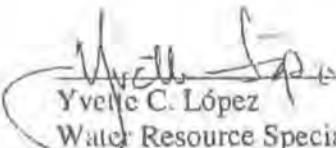
1) This application is approved as follows:

- Permit Number: LRG-05818 into LRG-15085
- Priority: December 31, 1953, or as determined by order of the Third Judicial District Court in *State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District et al.*, Case No. D-307-CV-96-888
- Source: Lower Rio Grande Underground Water Basin
- Points of Diversion: A pond located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 27, Township 23S, Range 01 East (NMPM). Approximate location: X= 1,461,531 ft. and Y= 465,234 ft. New Mexico Central State Plane (NAD83)
- Purpose of Use: Fish and Game Propagation
- Place of Use: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 27, Township 23 South, Range 01 East, NMPM. Project area is contained within Doña Ana County Parcel ID 03-29683.
- Amount of Water: The diversion of water under this permit shall be limited to the following schedule:

<u>Year</u>	<u>Consumptive Use (acre-feet per annum)</u>
2014-2016	9.0
2017 thru 2019	12.0
2020 thru 2029	13.0
2030 thru 2041	14.0
2042 thru 2052	14.5
2053 & thereafter	15.0

- 2) The State Engineer retains jurisdiction over this permit.
- 3) Any evaporative loss of water from the pond associated with this project shall be measured according methods defined in the OSE Water Use and Conservation Bureau: New Mexico Water Use by Categories 2010 Technical Report 54, Section 6.4 or by an alternate method approved by the Office of the State Engineer. Water loss measurements shall be submitted in writing to the Office of the State Engineer in Las Cruces on or before the tenth day of January, April, July and October of each year for the three (3) preceding calendar months.
- 4) New points of diversion for the conveyance of surface water from the Rio Grande to the above described Place of Use shall not be created or used without the benefit of a permit from the Office of the State Engineer.
- 5) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state and shall not be detrimental to the public welfare of the State of New Mexico.
- 6) 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 practical extent.
- 7) The diversion of water from wells LRG-05818-S-4, LRG-05818-S-6, LRG-05818-S-7, LRG-05818-S-8, LRG-05818-S-9, and LRG-05818-S-10 shall not exceed 27.46 acre-feet per annum reflecting the maximum beneficial use of water to date under this right, however may be increased up to 792.0 acre-feet per annum from all wells combined as otherwise previously permitted provided that prior to increasing diversions the permittee submits to the State Engineer, and the State Engineer approves, a schedule for the acquisition of replacement surface water to prevent impairment of surface water rights senior to the priority date of water rights developed under this permit and to allow water rights to continue to be exercised out of priority in the event of a priority call; and further provided that it maintains the original or amended schedule as approved by the State Engineer. Acquisitions required by the schedule for a given year shall be in an amount determined by the State Engineer sufficient to replace the depletions to surface water and such acquisitions shall be made by the beginning of that year.

Date: 5/11/15


Yvette C. López
Water Resource Specialist Senior
District IV, WRAP

LAS CRUCES UTILITIES BOARD RESOLUTION NO. 10-11-025

A RESOLUTION AUTHORIZING A PARTNERSHIP WITH SOUTHWEST ENVIRONMENTAL CENTER TO PROVIDE GROUNDWATER RIGHTS FOR THE PURPOSE OF A WELAND RESTORATION PROJECT.

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, since 2001, the City of Las Cruces has worked alongside with Southwest Environmental Center (SWEC) and other governmental agencies towards the completion the Rio Grande Riparian Ecological Corridor Project; and

WHEREAS, on May 17, 2004, the City Council approved Resolution No. 04-338, attached and made part of this Resolution, which adopted the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan, and recommended the restoration of wetland nodes along the Rio Grande; and

WHEREAS, SWEC, as the property owner, has obtained funding to complete a wetlands restoration project; and

WHEREAS, SWEC has approached the City of Las Cruces Utilities Department and requested between 9 acre feet and up to approximately 15 acre feet of groundwater rights for the purpose of supplying groundwater for a wetland restoration project; and

WHEREAS, providing the groundwater rights is contingent upon SWEC obtaining all pertinent permits related to the project and any potential permits from the Office of the State Engineer; and

WHEREAS, ownership of the water rights will remain with the City throughout the duration of the project; and

WHEREAS, the commitment of the groundwater rights will stay in effect as long as the project is in existence; and

WHEREAS, if the project does not see completion and is not viable, the water rights remain with the City and will not be used for the project; and

WHEREAS, Utility staff recommends to the Las Cruces Utilities Board of Commissioners that the partnership with SWEC is authorized to provide groundwater rights for the purpose of a wetland restoration project.

NOW, THEREFORE, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

(I)

THAT, the Partnership with Southwest Environmental Center to reserve groundwater rights for the purpose of a wetland restoration project is authorized.

(II)

THAT, the City will reserve up to a maximum of 15 acre feet of groundwater rights for this project per year for an initial period of five (5) years and for each year thereafter as long as the project is in existence and the City has groundwater rights available.

(III)

THAT, if the Project construction has not been completed within five (5) years, then said rights shall revert back to the City.

(IV)

THAT, said Agreement shall be subject to approval by the applicable regulatory agencies, including but not limited to the State Engineer's Office.

(V)

THAT, Utilities Department staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 10th day of March, 2011.

By William M Little
Board Chair

ATTEST:

Jose A. Garcia
Secretary

Moved by Ericson

Seconded by Hayes

APPROVED AS TO FORM:

Isaac Cruz
Utilities Attorney

VOTE:

Chair Little:	<u>Aye</u>
Vice-Chair Cadena:	<u>Recuse</u>
Commissioner DeMouche:	<u>Aye</u>
Commissioner Ericson:	<u>Aye</u>
Commissioner Hayes:	<u>Aye</u>
Commissioner Pedroza:	<u>Aye</u>
Commissioner Sorg:	<u>Aye</u>



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Las Cruces Utilities Board of Commissioners Action Form For Meeting of March 10, 2011 (Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING A PARTNERSHIP WITH SOUTHWEST ENVIRONMENTAL CENTER TO PROVIDE GROUNDWATER RIGHTS FOR THE PURPOSE OF A WETLAND RESTORATION PROJECT.

BACKGROUND:

Since 2001, the City of Las Cruces has worked alongside Southwest Environmental Center (SWEC) and other governmental and quasi-governmental agencies in applying for and receiving grants in completing a comprehensive Plan for the Rio Grande Riparian Ecological Corridor Project. City approved Resolutions to-date include the following:

- Resolution 02-025, approved on July 16, 2001
- Resolution 02-085, approved on September 17, 2001
- Resolution 02-182, approved on February 19, 2002
- Resolution 02-183, approved on March 18, 2002, approved a Memorandum of Understanding between the City and SWEC.
- Resolution 03-092, approved on September 16, 2002

Resolution 04-338, approved on May 17, 2004, adopted the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan submitted by the City of Las Cruces, which is attached and made part of this Resolution.

The City of Las Cruces Utilities Department has been approached by SWEC, as the property owner, to partner with them to provide groundwater rights for a wetland restoration project.

(Continue on additional sheets as required)

Name of Drafter: Juana E. Johnson		Department: Utilities		Phone: 528-3636	
Account Number N/A		Amount of Expenditure N/A		Budget Amount N/A	
Strategic Plan Goal / Objective / Strategy Addressed: N/A					
Performance Budget Goal / Objective Addressed: N/A					
Department	Signature	Phone	Department	Signature	Phone
Utilities		528-3511	Budget		541-2300
			City ACTING Manager		541-2076
Legal		541-2128	Assistant City Manager		541-2271

The restoration project would consist of a pond located on private land and would connect to the Rio Grande. A trail with signs and benches, and appropriate native plantings are included. The project would provide for year-round spawning and nursery habitat for native fish species and would provide opportunities for public recreation and education about the Rio Grande ecosystem.

A presentation was made to the Las Cruces Utilities Board of Commissioners at the February 10, 2011 meeting, requesting +9 acre feet of groundwater rights from the Utilities for the purpose of the wetland restoration project. Staff has been advised that the project has acquired additional land and therefore, would request up to approximately 15 acre feet of groundwater rights. Ownership of the water rights will remain with the City throughout the duration of the project. Providing the groundwater rights is contingent upon SWEC obtaining all pertinent permits related to the project including any potential permits from the Office of the State Engineer. Additionally, if the project does not see completion and is not viable, the water rights remain with the City and will not be used for the project.

At this time, Utilities staff recommends to the Board of Commissioners for the City of Las Cruces Utilities that the Partnership with SWEC be approved.

SUPPORT INFORMATION:

1. LCU Resolution No. 10-11-025.
2. Resolution 02-025, approved on July 16, 2001.
3. Resolution 02-085, approved on September 17, 2001.
4. Resolution 02-182, approved on February 19, 2002.
5. Resolution 02-183, approved on March 18, 2002.
6. Resolution 03-092, approved on September 16, 2002.
7. Resolution 04-338, approved on May 17, 2004.
8. Copy of presentation as made to the Las Cruces Utilities Board on February 10, 2011.
9. Map of area.

BOARD OPTIONS:

1. **VOTE "YES"** – Will approve the Resolution and authorize a partnership with Southwest Environmental Center to provide groundwater rights for a wetland restoration project.
2. **VOTE "NO"** – Will reject the Resolution and not authorize a partnership with Southwest Environmental Center. This action could adversely affect the efforts accomplished to date by inter-agency collaboration and affect the wetland restoration project.

RESOLUTION NO. 02-025

A RESOLUTION AUTHORIZING CITY STAFF TO APPLY TO THE NATIONAL PARKS SERVICE FOR TECHNICAL ASSISTANCE FROM THE NPS RIVERS AND TRAILS PROGRAM WHICH WILL BE USED IN THE COMPLETION OF THE COMPREHENSIVE PLAN FOR THE "RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT," A CITY PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces received a Sustainable Development Challenge Grant from the Environmental Protection Agency in July 2000 to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande, and

WHEREAS, the City of Las Cruces recognizes the importance of community support in such a project, and

WHEREAS, City staff desires to apply for and hopefully receive technical assistance from the National Parks Service Rivers and Trails Program and the acceptance of this assistance will not obligate the City of Las Cruces to provide additional funding other than already budgeted in-kind services.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, Staff is hereby authorized to submit an application, as shown in "Exhibit A", which is attached hereto and made a part of this Resolution, to the National Parks Service Rivers and Trails Program for technical assistance from NPS staff in the preparation of the Comprehensive Plan for the Rio Grande Riparian Ecological Corridor Project.

(II)

THE City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED THIS 16th day of July, 2001.

APPROVED:

[Handwritten Signature]
Mayor ~~Ruben A. Smith~~ Pro Tem

ATTEST:

[Handwritten Signature]
City Clerk
(SEAL)

Moved by: Tomlin

Seconded by: Haltom

VOTE:

Mayor Smith:	<u>absent</u>
Councillor Fietze:	<u>aye</u>
Councillor Mattiace:	<u>aye</u>
Councillor Valencia:	<u>absent</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Tomlin:	<u>aye</u>
Councillor Haltom:	<u>aye</u>

APPROVED AS TO FORM:

[Handwritten Signature]
City Attorney

RESOLUTION NO. 02-085

A RESOLUTION AUTHORIZING CITY STAFF TO APPLY FOR A \$25,000 GRANT FROM THE BUREAU OF RECLAMATION'S WETLAND DEVELOPMENT FUND. SAID GRANT WILL BE USED IN THE COMPLETION OF THE WETLAND PILOT FOR THE "RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT," A CITY PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces received a Sustainable Development Challenge Grant from the Environmental Protection Agency in July 2000 to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and two pilot construction projects: a wetland and a multi-use pathway, and

WHEREAS, the City of Las Cruces recognizes the importance of interagency collaboration and support to successfully complete the wetland pilot project, and

WHEREAS, City staff desires to apply for and hopefully receive funding from the Bureau of Reclamation's (BOR) Wetland Development Fund and the acceptance of this assistance will not obligate the City of Las Cruces to provide additional funding other than already budgeted in-kind services.

NOW, THEREFORE; be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, Staff is hereby authorized to submit an application, as shown in "Exhibit A", which is attached hereto and made a part of this Resolution, to the Bureau of Reclamation's

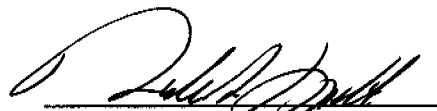
Wetland Development Fund for \$25,000 in assistance of design and construction of the wetland pilot of the Rio Grande Riparian Ecological Corridor Project.

(II)

THAT City Staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

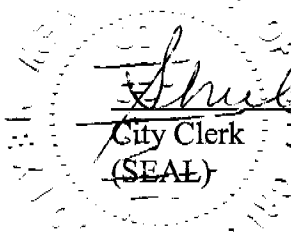
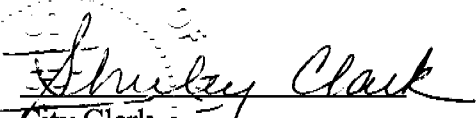
DONE AND APPROVED THIS 17th day of September, 2001.

APPROVED:



Mayor Ruben A. Smith

ATTEST:

City Clerk
(SEAL)

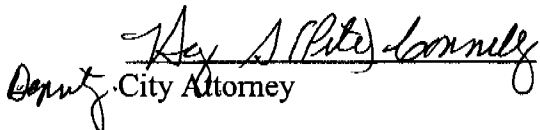
Moved by: Valencia

Seconded by: Frietze

VOTE:

Mayor Smith:	<u>aye</u>
Councillor Frietze:	<u>aye</u>
Councillor Mattiace:	<u>aye</u>
Councillor Valencia:	<u>aye</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Tomlin:	<u>aye</u>
Councillor Haltom:	<u>aye</u>

APPROVED AS TO FORM:



Deputy City Attorney

RESOLUTION NO. 02-182

TITLE: A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A RIGHT OF USE PERMIT WITH ELEPHANT BUTTE IRRIGATION DISTRICT AND THE SOUTHWEST ENVIRONMENTAL CENTER IN ORDER TO COMPLETE ASSESSMENTS AND CONSTRUCTION OF THE WETLAND PILOT COMPONENT OF THE "RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT," A CITY PROJECT. THE RESOLUTION ALSO AUTHORIZES THE CITY MANAGER TO SIGN SAID PERMIT ON THE CITY'S BEHALF.

The City Council is informed that:

WHEREAS, the City of Las Cruces received a \$250,000 Sustainable Development Challenge Grant from the Environmental Protection Agency to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and to complete two pilot construction projects: a wetland and a multi-use pathway; and

WHEREAS, the City wishes to construct the wetland within an area known as the Picacho Bosque, belonging to the New Mexico Department of Game and Fish, which has given the Southwest Environmental Center ("SWEC") authority over the area; and

WHEREAS, the wetland site is adjacent to the Picacho Drain, operated and maintained by the Elephant Butte Irrigation District ("EBID"); and

WHEREAS, in order to construct the wetland, it will be necessary to cross the EBID right-of-way to access the property managed by the SWEC and NMGF, and to operate and maintain a portion of the Picacho Drain for the purposes of diverting water to the wetland and monitoring water quality.

NOW THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, the City Council hereby approves the Right-of-Use permit with EBID and SWEC, which is attached hereto and made part of this resolution.

(II)

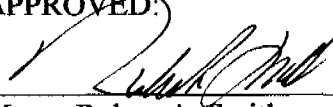
THAT, the City Manager is authorized to sign said Right-of-Use permit on the city's behalf.

(III)

THAT, the City staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

DONE AND APPROVED this 19th day of February, 2002.

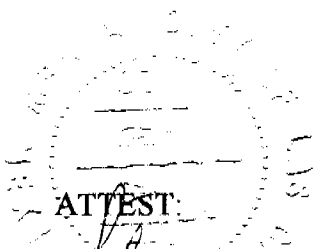
APPROVED:



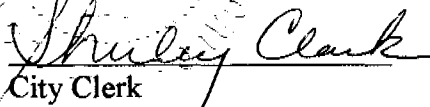
Mayor Ruben A. Smith

VOTE:

Mayor Smith:	<u> </u> aye
Councillor Fietze:	<u> </u> absent
Councillor Mattiace:	<u> </u> aye
Councillor Archuleta:	<u> </u> aye
Councillor Trowbridge:	<u> </u> aye
Councillor Strain:	<u> </u> aye
Councillor Miyagishima:	<u> </u> aye



ATTEST:




City Clerk
(SEAL)

Moved by: Mattiace

Seconded by: Archuleta

APPROVED AS TO FORM:



City Attorney

RESOLUTION NO. 02-183

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING “MOU” BETWEEN THE CITY AND THE SOUTHWEST ENVIRONMENTAL CENTER IN ORDER TO COMPLETE THE CONSTRUCTION OF THE WETLAND PILOT COMPONENT OF THE “RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT,” A CITY PROJECT. THE RESOLUTION ALSO AUTHORIZES THE MAYOR TO SIGN SAID “MOU” ON THE CITY’S BEHALF.

The City Council is informed that:

WHEREAS, the City of Las Cruces received a Sustainable Development Challenge Grant from the Environmental Protection Agency in July 2000 to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and to complete two pilot construction projects: a wetland and a multi-use pathway, and

WHEREAS, the City wishes to construct the wetland within an area known as the Picacho Bosque, belonging to the New Mexico Department of Game and Fish, which has given the Southwest Environmental Center (“SWEC”) authority over the area, and

WHEREAS, a Memorandum of Understanding with SWEC will make it possible for City staff, crews and volunteers to enter the Picacho Bosque, southwest of the Mesilla Bridge, and construct the wetland within that area.

NOW, THEREFORE; be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, a Memorandum of Understanding with the Southwest Environmental Center to complete the construction of the Wetland Pilot of the Rio Grande Riparian Ecological Corridor Project, is approved as contained in Exhibit “A” attached hereto and made part of this resolution.

(II)

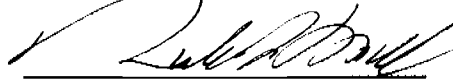
THAT, the Mayor is hereby authorized to sign said MOU on the City's behalf.

(III)

THAT, the City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

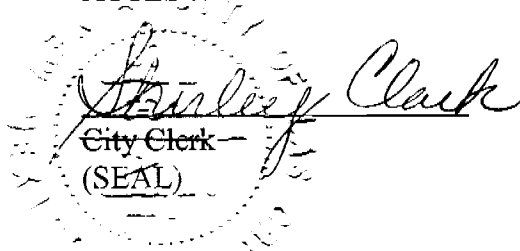
DONE AND APPROVED THIS 18th day of March, 2002.

APPROVED:



Mayor Ruben A. Smith

ATTEST:



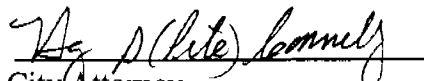
Moved by: Trowbridge

Seconded by: Mattiace

VOTE:

Mayor Smith:	<u>aye</u>
Councillor Fietze:	<u>aye</u>
Councillor Mattiace:	<u>aye</u>
Councillor Archuleta:	<u>aye</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Strain:	<u>aye</u>
Councillor Miyagishima:	<u>aye</u>

APPROVED AS TO FORM:

Denny 
City Attorney

**SUB-MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SOUTHWEST ENVIRONMENTAL CENTER
AND
THE CITY OF LAS CRUCES
February 27, 2002**

WHEREAS, the City of Las Cruces ("City") has been awarded an EPA Sustainable Development Challenge Grant, titled the "Rio Grande Riparian Ecological Corridor Project" ("Project") which provides, in part, that the City shall conduct a Pilot Wetlands Restoration Project to reestablish riparian and aquatic habitats along the Rio Grande and to determine the potential for reestablishment of such habitats elsewhere along the river; and

WHEREAS, since 1998, the Southwest Environmental Center ("SWEC") has been involved in a wetland restoration project within the Picacho Bosque, a parcel of land southwest of Mesilla Bridge owned by New Mexico Department of Game and Fish ("NMDGF"), and has promoted a plan for the creation of the Mesilla Valley Bosque Park at this location; and

WHEREAS, SWEC's goals for a wetland within the Picacho Bosque property include restoration of native riparian and aquatic habitat and improvement of water quality, and are compatible with the goals of the Wetland Pilot, as described above; and

WHEREAS, a Wetland Pilot Project Steering Committee, the "Steering Committee" has been created that comprises of representatives from the City, SWEC, NMDGF, Elephant Butte Irrigation District ("EBID"), Bureau of Reclamation ("BOR") and the International Boundary and Water Commission ("IBWC"), which will make decisions for the Wetland Pilot Project; and

WHEREAS, SWEC has provided in-kind funding in the amount of \$10,000 "worth of materials and volunteer labor used in pole planting of native trees in the proposed Project area" (9/29/99 Letter from SWEC to City Manager Nava); and

WHEREAS, the City and SWEC ("the Parties") wish to work cooperatively to develop a wetlands project at the Picacho Bosque site;

WHEREAS, the Project's Wetland Workgroup, an advisory body composed of experts in the field of habitat restoration and wetland ecology, identified fourteen criteria by which to select a preferred site for location of the Wetland Pilot (3/26/01 Wetland Workgroup Plan of Action) and, based on those fourteen criteria, selected the NMDGF property as the preferred location for construction of the Wetland Pilot; and

WHEREAS, the New Mexico State Game Commission ("Commission"), the governing body of NMDGF, has granted SWEC authority over construction and funding of all proposed wetland improvements to the Picacho Bosque property and responsibility for

maintenance associated with those improvements (7/06/01Memorandum of Understanding); and

WHEREAS, the Commission requires that all proposed wetland improvements be approved by the NMDGF prior to implementation; and

WHEREAS, the Parties understand that all items identified within this agreement are contingent upon funding, and the Parties agree that activities not yet funded for this project may need to be eliminated, modified, simplified or other funds pursued either jointly or independently, to complete this project. These efforts may be done within the project timeline where feasible.

NOW THEREFORE, the City and SWEC agree as follows:

1. Purpose of Memorandum: This memorandum establishes a framework for cooperation and decision-making between the Parties and the remaining entities that comprise the Wetland Pilot Steering Committee and establishes the respective obligations of the Parties regarding the development of the Wetland Pilot on the southwest side of the Picacho Drain, within the NMDGF property ("Wetland Site").
2. Publicity and Data Sharing: The Parties agree that they will coordinate publicity and share data on the Wetland Pilot and credit each other in data publication, press releases and other publicity.
3. Interagency communications: To provide for consistent and effective communication between both Parties, each shall immediately designate representatives to serve as the points of contact on all matters relating to this MEMORANDUM. Each Party will advise the other in writing of the names and telephone numbers of the representative designees within ten days of the effective date of this MEMORANDUM.
4. Decision-making: All major project decisions shall be made by the Project Steering Committee by consensus. Decisions shall be considered major if so defined by any member of the Project Steering Committee. Consensus is defined as agreement of all Project Steering Committee members and not by majority or plurality. The City and SWEC shall serve as Project co-coordinators. Regarding City fiduciary decision-making, such as award of City contracts, etc., the decision of the Project Steering Committee will be presented to City Council for passage as a resolution.
5. Fundraising: The parties shall coordinate additional and on-going fundraising efforts for design and construction of the project.
6. The following services will be provided by the City:
 - A. Obtain licenses, special use permits or other agreements with IBWC to access or carry out on-site assessment, environmental assessment, design and

construction on and across their respective rights-of-way. All necessary agreements were obtained on October 15, 2001.

- B. Enter into license (s), agreement(s) or permit(s) with IBWC and/or EBID to authorize construction of a pathway for non-vehicular public access to the Wetland Site across IBWC and/or EBID right of way. Any licenses, permits or agreements must be entered into on or before commencement of construction in October 2002.
- C. Enter into a three-way special use permit with EBID and SWEC to authorize access on EBID's right-of-way, carry out on-site assessment on EBID's right of way, construction of improvements on EBID's right-of-way, and permission to perform maintenance on those improvements after construction. Time is of the essence in negotiating this agreement and the Parties will make a good faith effort to enter into this agreement no later than February 19, 2002.
- D. Coordinate the following on-site assessment activities of Wetland Workgroup members at the Wetland Site:
 - a. Survey of flora and fauna (Lead: Dr. Martha Desmond, NMSU, Dept. of Fisheries and Wildlife)
 - b. Drain flows (Lead: Henry Magallanez, EBID, Engineering Supervisor)
 - c. Water quality monitoring of drain water for Total Dissolved Solids ("TDS"), conductivity and pH. (Lead: Henry Magallanez, EBID, Engineering Supervisor);
 - d. Install 6 peizometer wells on IBWC and EBID right-of-way and the Wetland Site and monitor groundwater table height and water quality (TDS, conductivity, and pH) (Lead: Dr. Nic Lozano, NMSU, Dept of Civil, Agricultural, Geological Engineering);
 - e. Soil salinity survey (Lead: John Taylor, Wildlife Biologist, Bosque del Apache);
 - f. Flag the property corners of the Picacho Bosque property per a Metes and Bounds Survey prepared for NMDGF in (insert date) (Lead: Loretta Reyes, City of Las Cruces, Engineering Services Administrator);
 - g. Prepare contour map of Wetland Site on NMDGF parcel (Lead: Loretta Reyes, City of Las Cruces, Engineering Services Administrator).
 - h. Prepare GIS map with following coverages: aerial photo, elevation points, and soil salinity data.
- E. Coordinate, perform or contract environmental assessment for construction of the pilot wetland on the Wetland Site including salt cedar removal on wetland site as required under the National Historic Preservation Act; Sec. 7 of the

Endangered Species Act; Sec. 401, 402 and 404 of NEPA; and other environmental laws. The City's procurement process will be followed in selecting contractors. The City developed a scope of work for this service for distribution to City designated contractors on November 19, 2001.

- F. Develop Request for Proposals (including Scope of Work), coordinate, perform or contract design of the wetland and site through the Steering Committee, in consultation with the Wetland Workgroup. The wetland design will be completed by an entity with expertise in southwest habitat wetlands, or in consultation with said entity. The Parties agree that the preferred wetland design is a flow-through wetland, but acknowledge that financial, engineering and other constraints may prohibit construction of a flow-through wetland. The final wetland and site design must be approved by the Steering Committee prior to implementation. The City developed a scope of work and RFP for this service on January 27, 2002. Selection of the design contractor will be made by the Steering Committee, and forwarded for City approval as per 6G below.
 - G. City Procurement Code Compliance: All professional and technical services contracted by the City for this Wetland Pilot shall be obtained in compliance with the City's Procurement Code. Professional or technical services under \$25,000 shall be obtained in accordance with LCMC 1997, Section 24-94 (e) of the City's Procurement Code. Professional or technical services equal to or greater than \$25,000 shall be obtained in accordance with LCMC 1997, Sections 24-61 through 24-66 of the City's Procurement Code.
 - H. Coordinate, perform or oversee construction of the Wetland Pilot through the Steering Committee, in consultation with the Wetland Workgroup. The City will develop a Request for Bids for this service through the Steering Committee, in consultation with the Wetland Workgroup on or before September 2002. Selection of the construction contractor will be made by the Steering Committee, and forwarded for City approval as per 6G above.
 - I. City will provide metering structure(s), radio telemetry unit(s), and water quality sensor(s) as required by the EBID in the three-way Special Use Permit, Exhibit C1 of Right of Use Permit, License 01-T-80.
 - J. City may provide limited maintenance to the Wetland site, above and beyond that of SWEC, following construction as long as SWEC's agreement with NMDGF is in effect. Extent of maintenance will be detailed in an addendum to this MEMORANDUM by August 31, 2002 or prior to commencement of construction, whichever comes first.
 - K. Be the fiscal agent for those Project funds given to it for administration.
7. The following services will be provided by SWEC:
- A. Coordinate the following on-site assessment activities in consultation with Wetland Workgroup at the Wetland Site:
 - a. Soil profile studies on NMDGF land (Lead: Dr. Nic Lozano);


- B. Enter into a three-way special use permit with EBID and the City to authorize access on EBID's right-of-way, carry out on-site assessment on EBID's right of way, construction of improvements on EBID's right-of-way, and permission to perform maintenance on those improvements after construction. The Parties will make a good faith effort to enter into this agreement no later than February 19, 2001.
 - C. Submit preliminary and final wetland and site design proposals to NMDGF for approval. Proposals must be submitted to NMDGF in a timely manner so that construction of the Wetland Pilot may commence in the Fall of 2002.
 - D. Enter into a license(s), agreement(s) or permit(s) with IBWC and/or EBID to authorize (1) access for SWEC or their designee across IBWC and/or EBID right of way for activities associated with maintaining the wetland and site after construction. Any licenses, permits or agreements must be entered into on or before completion of construction or January 2003, whichever is sooner.
 - E. Develop and coordinate implementation of a plan to remove salt cedar and replace with desired native vegetation as needed to complete the project. The final plan will be prepared within 14 days of approval by NMDGF of the final wetland design. A draft plan has been prepared to facilitate NEPA and ESA compliance, but may lack specific information that will be contained in the final plan.
 - F. Develop and coordinate implementation of a plan for maintaining the functionality of the wetland following construction. The duration of the plan shall be for the duration of SWEC's MOU with NMDGF. The operation and maintenance plan shall be developed on or before August 31, 2002, and will be included in the addendum to this MEMORANDUM as per 6-J above.
 - G. Develop and coordinate implementation of a plan for public use of the Picacho wetlands site following construction for as long as SWEC's MOU with NMDGF is in effect. The Steering Committee must approve any plan for public use of the site, the conditions of which will be detailed in an addendum to this MEMORANDUM, on or before August 31, 2002. Liability will need to be addressed as part of the public access plan.
8. Liability Insurance: The parties shall develop a separate agreement related to liability insurance coverage for this Project, by April 30, 2002. Said agreement for liability insurance coverage is authorized to be executed by the City Manager for the City of Las Cruces and the Executive Director for the Southwest Environment Center.
9. Indemnification: Each party shall indemnify and hold the other party harmless from any claim for personal injury or property damage caused in whole or in part by the negligent act of the other party, its employees, or agents concerning the Project. As set forth in Section 56-7-1, NMSA 1978, this indemnification shall

not extend to liability, claims, damages, losses or expenses, including attorney fees arising out of:

- A. The preparation or approval of maps, drawings, opinions, reports, surveys, change-orders, designs or specification by a party, its employees or agents; or
 - B. The giving of or the failure to give directions or instructions by a party, its employees or agents when such giving or failure to give directions or instructions is the primary cause for the personal injury or property damage.
10. Parties agree to develop a draft Work Plan with deadlines, responsible parties and budget for the Wetland Pilot within fifteen (15) business days of the date of this MEMORANDUM with the understanding that budget line items are estimates only and subject to change.
 11. This agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred or failure to perform prior to the date of termination.
 12. Neither Party may assign the duties of this Memorandum without the written consent of the other Party.
 13. Compliance with legal rights and obligations: All activities taken pursuant to this Memorandum shall comply with all applicable law.

CITY OF LAS CRUCES

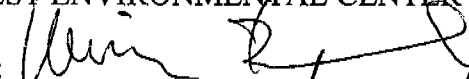
BY:



Mayor Ruben A. Smith

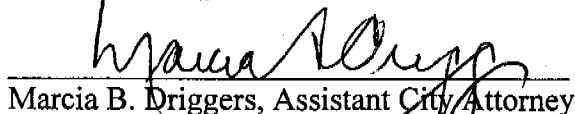
SOUTHWEST ENVIRONMENTAL CENTER

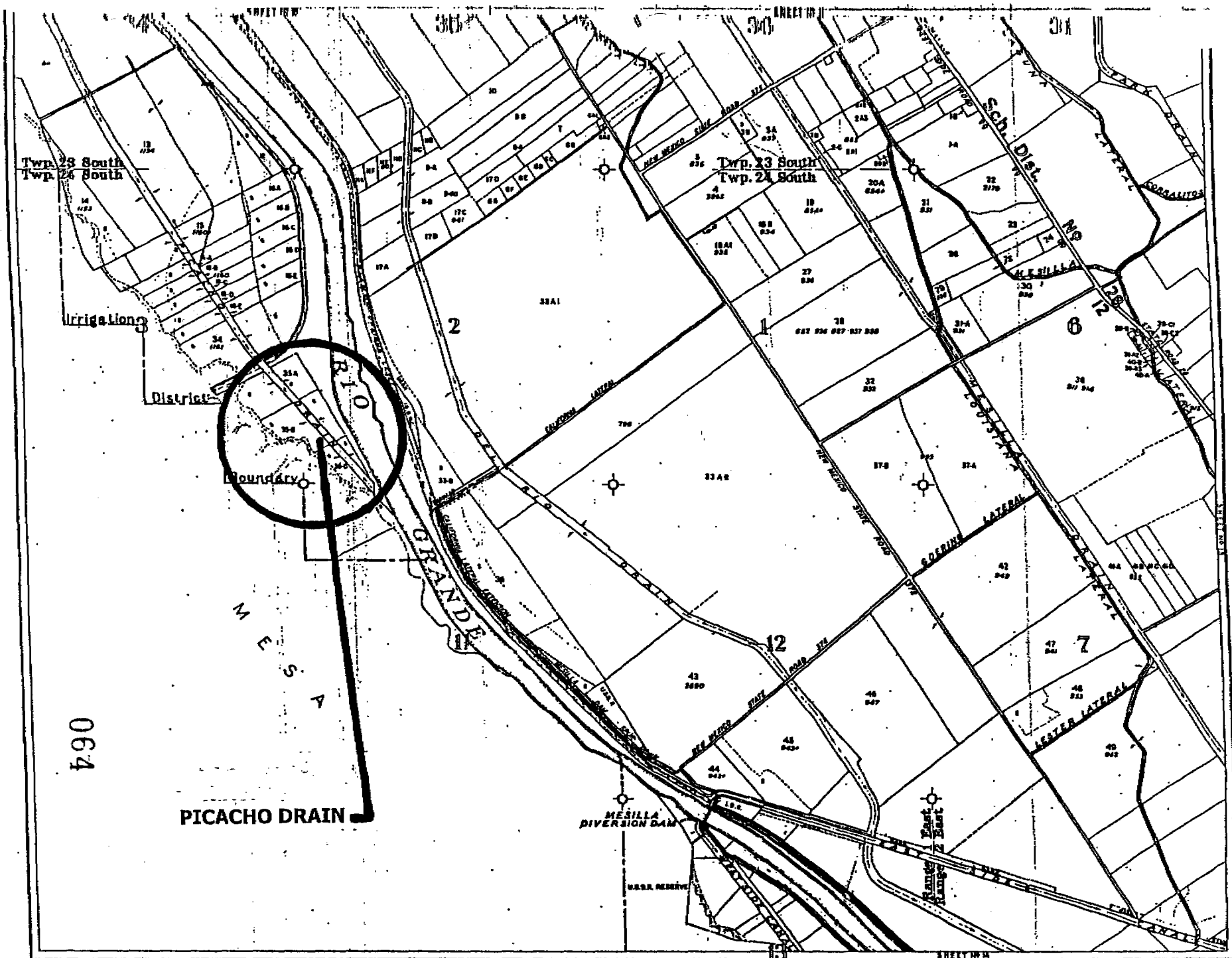
BY:



Kevin Bixby, Executive Director

APPROVED AS TO FORM:


Marcia B. Driggers, Assistant City Attorney



<p>EXPLANATION</p> <p>Canals Suspended Areas Various Classification</p> <p>Levees Roads High Land Valley Land</p> <p>Drains Irrigable Area</p>	<p>AUTHORITIES</p> <p>Compiled from various public and private surveys of the Bureau of Reclamation. It is to be understood that the Bureau does not warrant the accuracy of the information contained herein, and it is not to be used for any purpose other than that for which it was prepared.</p>	<p>SCALE</p> <p>1:25,000</p> <p>DATE 1935 REVISED 1958</p>	<p>PROPERTY NUMBERS</p> <p>Project Serial No. of a Property is the Sheet No. followed by Tract No. Thus, 12.44.72 being the No. of this sheet, 44 being the Tract No. on this sheet, and 72 being the Project No. 4-1.</p>	<p>BUREAU OF RECLAMATION - RIO GRANDE PROJECT</p> <p>IRRIGABLE AREA AND PROPERTY MAP</p> <p>ELEPHANT BUTTE IRRIGATION DISTRICT</p>	<p>MESILLA VALLEY</p> <p>SHEET - 12</p> <p>MESILLA DAM</p>
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COUNCIL ACTION FORM

For the Meeting of March 18, 2002

TITLE:

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING "MOU" BETWEEN THE CITY AND THE SOUTHWEST ENVIRONMENTAL CENTER IN ORDER TO COMPLETE THE CONSTRUCTION OF THE WETLAND PILOT COMPONENT OF THE "RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT," A CITY PROJECT. THE RESOLUTION ALSO AUTHORIZES THE MAYOR TO SIGN SAID "MOU" ON THE CITY'S BEHALF.

BACKGROUND:

In July, 2000, the City of Las Cruces received a \$250,000 Sustainable Development Challenge Grant from the Environmental Protection Agency to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and to complete two pilot construction projects: a wetland and a multi-use pathway. Titled the "Rio Grande Riparian Ecological Corridor Project," the project integrates the goals of many governmental and quasi-governmental agencies whose missions impact the river corridor.

The Resolution and accompanying Memorandum of Understanding with the Southwest Environmental Center ("SWEC") will make it possible for City staff, crews and volunteers to enter the Picacho Bosque, southwest of the Mesilla Bridge, and construct a wetland within that area.

This property belongs to the New Mexico Department of Game and Fish, which has given SWEC authority over the area. As a result, the City must enter into a Memorandum of Understanding with SWEC to allow City presence at the site. This Memorandum summarizes the responsibilities of both Parties and sets deadlines for the completion of the tasks required to construct the wetland.

Name of Drafter: Carol McCall <i>cm</i>		Department: Community Development		Phone: 528-3222	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>	x 3222	Budget	<i>[Signature]</i>	2300
Legal	<i>[Signature]</i>	51-2128	City Manager	<i>[Signature]</i>	2078

CAF Rev 6/01

054

In summary, this Memorandum:

- * Defines common goals for the Wetland Pilot;
- * Lists necessary agreements with various agencies who manage projects along the river;
- * Defines the decision making process during construction;
- * States that the City will be responsible for construction of the Wetland;
- * States that the City will be responsible for liability associated with construction and maintenance of the wetland;
- * States that the SWEC and the City will share responsibility for maintenance of the wetland area following construction;
- * States that SWEC will coordinate the implementation of the salt cedar removal plan and revegetation plan; and
- * States that SWEC will have management authority of the wetland site following construction.

The Resolution, is written so that the Mayor will sign the MOU on the City's behalf, if the Resolution is approved.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Memorandum of Understanding between the Southwest Environmental Center and the City.
3. Map of Wetland Pilot site.

COUNCIL OPTIONS:

1. Approve the Resolution Memorandum. This would result in the City being able to access the Picacho Bosque to construct the Wetland Pilot.
2. Disapprove the Resolution. This would result in the City's not constructing a wetland within the Picacho Bosque area.
3. Modify the application as may be deemed appropriate by the City Council. Options for modification may include changes in the responsibilities of either party; changes in the responsibilities for liability by either party; changes in the decision-making process; changes in deadlines; etc.

RESOLUTION NO. 03-092

A RESOLUTION AUTHORIZING CITY STAFF TO ACCEPT A \$25,000 GRANT FROM THE BUREAU OF RECLAMATION'S WETLAND DEVELOPMENT FUND. SAID GRANT WILL BE USED IN THE COMPLETION OF THE WETLAND PILOT FOR THE "RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT," A CITY PROJECT, AND TO ADJUST THE CITY OF LAS CRUCES FY2002-03 ADOPTED BUDGET.

The City Council is informed that:

WHEREAS, the City of Las Cruces received a Sustainable Development Challenge Grant from the Environmental Protection Agency in July 2000 to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and two pilot construction projects: a wetland and a multi-use pathway; and

WHEREAS, the City of Las Cruces recognizes the importance of interagency collaboration and support to successfully complete the wetland pilot project; and

WHEREAS, City staff desires to accept funding from the Bureau of Reclamation=s (BOR) Wetland Development Fund, which was applied for in September, 2001. The funds will result in additional resources for the construction of the 5-acre Picacho Bosque Wetland Pilot, and acceptance of this assistance will not obligate the City of Las Cruces to provide additional funding other than already budgeted in-kind services.

NOW THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(1)

THAT Staff is hereby authorized to a grant from the Bureau of Reclamation=s Wetland Development Fund in the amount of \$25,000 in assistance of construction of the wetland pilot of the Rio Grande Riparian Ecological Corridor Project.

(II)

THAT this Resolution further authorizes the City Manager to sign the contract between the City of Las Cruces and the Bureau of Reclamation (BOR).

(III)

THAT the City of Las Cruces FY2002-03 adopted budget is hereby adjusted as reflected in Exhibit C.

(IV)

THAT City Staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

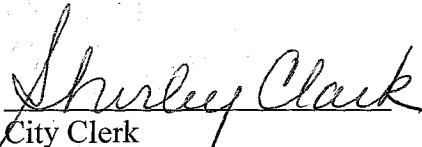
DONE AND APPROVED THIS 16th day of September, 2002.

APPROVED:



Mayor Ruben A. Smith

ATTEST:


City Clerk
(SEAL)

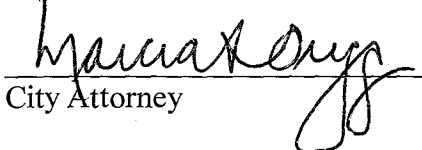
VOTE:

Mayor Smith: aye
Councillor Frieze: aye
Councillor Mattiace: aye
Councillor Archuleta: aye
Councillor Trowbridge: aye
Councillor Strain: aye
Councillor Miyagishima: aye

Moved by: Frieze

Seconded by: Mattiace

APPROVED AS TO FORM:


City Attorney
Ass't

RESOLUTION NO. 04-338

A RESOLUTION TO ADOPT THE RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT COMPREHENSIVE PLAN SUBMITTED BY THE CITY OF LAS CRUCES

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces received a Sustainable Development Challenge Grant from the Environmental Protection Agency in July 2000 to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande, and two pilot construction projects: a wetland and a multi-use pathway; and

WHEREAS, the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan is primarily a farm land and open space preservation document that provides a guide to decision-making for City Council, City staff, and area residents with regards to land use issues along the Rio Grande Corridor, most of which falls within the Extra-territorial Zone; and

WHEREAS, the City of Las Cruces recognizes the importance of inter-agency collaboration and support to make land use decisions affecting the Rio Grande Corridor; and

WHEREAS, stakeholder agencies, user groups, and area residents have provided comments and input on the goals and objectives of the Comprehensive Plan for the past two years, and this input has been incorporated into the Plan.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)


THAT the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan, as contained in Exhibit "A" and attached hereto and made a part of this resolution, is hereby approved and adopted.

(II)

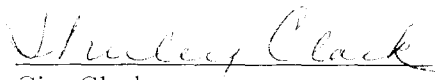
THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

DONE and APPROVED this 17th day of May, 2004.

APPROVED:


Mayor William Mattiace

ATTEST:


City Clerk
(SEAL)

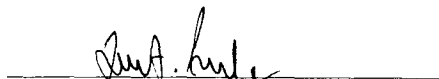
VOTE:

Mayor Mattiace: aye
Councillor Fietze: aye
Councillor Connor: aye
Councillor Archuleta: aye
Councillor Trowbridge: aye
Councillor Strain: aye
Councillor Miyagishima: aye

Moved by: Fietze

Seconded by: Trowbridge

APPROVED AS TO FORM:


City Attorney



City of Las Cruces

COUNCIL ACTION FORM
For Meeting of May 17, 2004

TITLE:

A RESOLUTION TO ADOPT THE RIO GRANDE RIPARIAN ECOLOGICAL CORRIDOR PROJECT COMPREHENSIVE PLAN SUBMITTED BY THE CITY OF LAS CRUCES

BACKGROUND:

In July, 2000, the City of Las Cruces received a \$250,000 Sustainable Development Challenge Grant from the Environmental Protection Agency to develop a Comprehensive Plan for sustainable development of an 11-mile corridor of the Rio Grande and two pilot construction projects: a wetland and a multi-use pathway. Titled the "Rio Grande Riparian Ecological Corridor Project," the project integrates the goals of many governmental and quasi-governmental agencies whose missions impact the river corridor. The resulting Comprehensive Plan is intended as a blueprint and guide for proposed projects along the corridor which may impact the environment, economic development and quality of life of the region. The Comprehensive Plan suggests many projects which could be carried out by various stakeholders in order to accomplish a set of goals created as a result of public input.

To create the goals, workgroups were assembled with representation from principal stakeholders who manage projects along the river and approximately twenty user groups whose interests specifically relate to the Rio Grande corridor. The workgroups conducted several brain-storming sessions to develop a current inventory and an initial list of needs. Two sets of public input meetings were conducted, during which information was gathered asking what residents would/would not like to have happen along the corridor. In addition, surveys were distributed to the public for those individuals who were not able to attend public meetings. The workgroups used this public input to create a more comprehensive needs assessment. From this, they created a list of goals and objectives, which form the basis of the Comprehensive Plan.

The Plan complements various components related to open space preservation and recreation in the City of Las Cruces Comprehensive Plan, the Dona Ana County Comprehensive Plan, the Extra-territorial Zone Comprehensive Plan, the proposed 2004 Town of Mesilla Comprehensive Plan, and the 1984 State Parks Division Outdoor Recreation Master Plan for the Southern Rio Grande. In addition, projects proposed in the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan are included in the International Boundary and Water Commission's Rio Grande Canalization Project Environmental Impact Statement and River Management Plan.

Name Of Drafter: Carol McCall <i>CM 5/10/04</i>		Department: Community Development		Phone: 528-3148	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>	528-3043	Budget	<i>[Signature]</i>	2300
Legal	<i>[Signature]</i>	2128	City Manager	<i>[Signature]</i>	

Account Number	Amount of Expenditure	Budget Amount
No Budget Impact	No Budget Impact	No Budget Impact

The Comprehensive Plan draft was reviewed by representatives from Elephant Butte Irrigation District (EBID), United States Section, International Boundary and Water Commission (USIBWC), Bureau of Reclamation (BOR), Southwest Environmental Center (SWEC), New Mexico Department of Game and Fish (NMDGF), Doña Ana County, the Town of Mesilla, the Environmental Protection Agency (EPA), as well as NMSU faculty, members of over twenty special interest groups, and local farmers. Their concerns and suggestions have been integrated into the Plan revision.

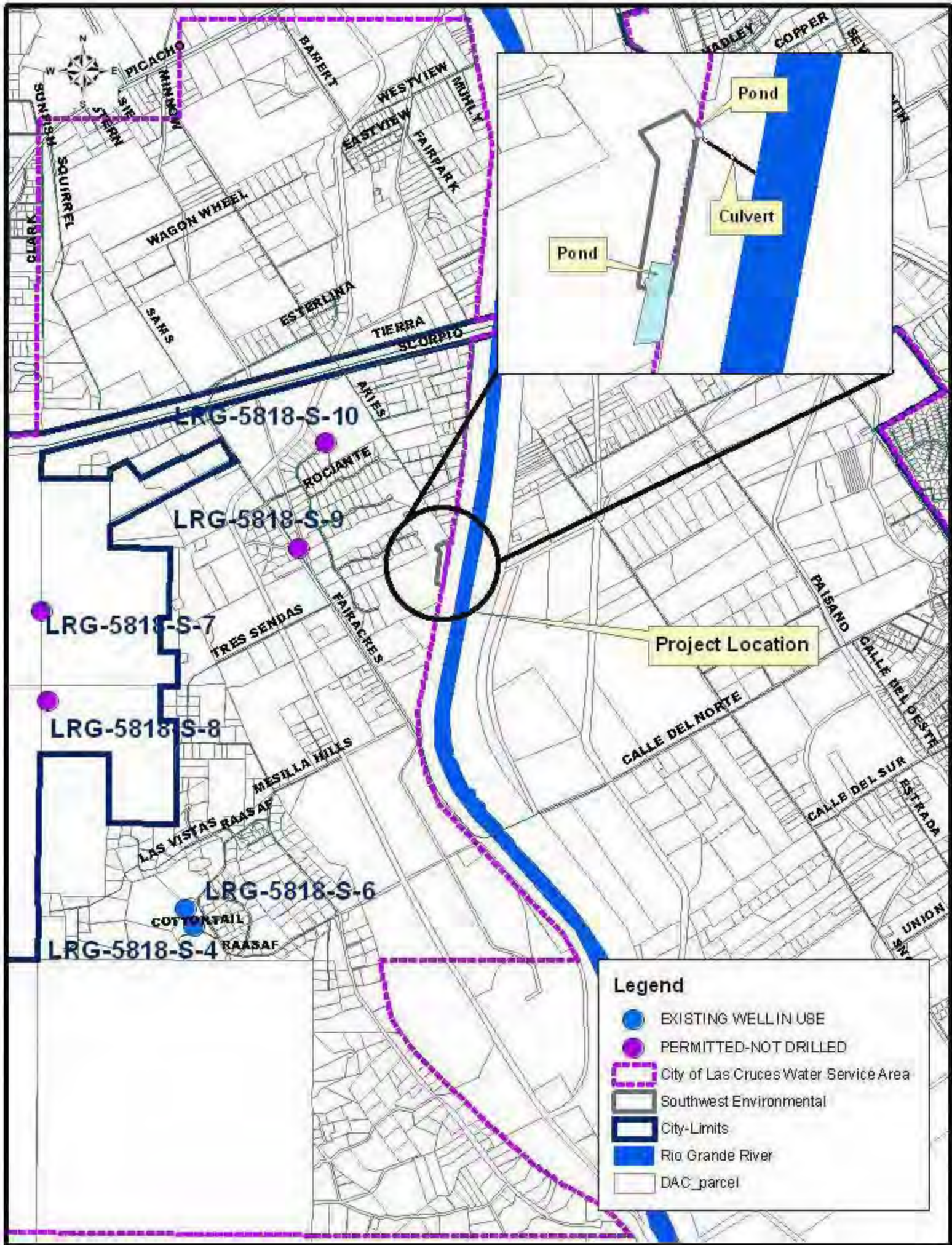
Staff is hereby submitting the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan for adoption by the City Council. This plan does not change current laws or ordinances pertaining to development along the corridor.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A" Rio Grande Riparian Ecological Corridor Project Comprehensive Plan.

COUNCIL OPTIONS:

1. Vote "yes" to approve the Resolution, which would adopt the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan. The plan, primarily a farm land and open space preservation document, would provide a guide to decision-making for City Council, City staff and area residents with regards to land use issues along the Rio Grande Corridor, most of which falls within the Extra-territorial Zone.
2. Modify the Comprehensive Plan and vote "yes" to approve the Resolution. This action would require staff to amend the Plan based on Council direction. Modification could occur to the portion of the document dealing with land-use related issues along the Rio Grande Corridor.
3. Vote "no" and deny the Resolution. This action would not adopt the Rio Grande Riparian Ecological Corridor Project Comprehensive Plan. Other general Comprehensive Plan policies would provide a guide to land use related decisions as opposed to specific policy dealing with land use issues along the Rio Grande Corridor.



Appendix K.
LRG-5039 et al. Permit

RESOLUTION NO. 15-017

A RESOLUTION RECOMMENDING APPROVAL BY THE CITY COUNCIL OF AN AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS OF THE MESA DEVELOPMENT CENTER WATER COMPANY; PROVIDING FOR THE PHASED UPGRADE OF WATER COMPANY DISTRIBUTION LINES AND EXTENSION OF CITY WATER SERVICE; AND, FURTHER PROVIDING FOR CUSTOMER CONVERSION AND CUSTOMER BILLING.

The City Council is informed that:

WHEREAS, Las Cruces City Council Resolution No. 12-106 authorized City staff to negotiate the purchase of Mesa Development Center, Inc. ("Mesa"), a public water utility regulated by the New Mexico Public Regulation Commission (the "PRC"), based on an appraisal to be prepared by Robert Pender, who is a public utility appraisal specialist. R. E. Pender, Inc. prepared a Summary Appraisal Report dated October 23, 2012, which appraisal enabled staff to resume negotiations to acquire Mesa; and

WHEREAS, negotiations to acquire Mesa had been stalled for years in large part due to ongoing litigation with Moongate Water Company ("Moongate"). In 2006, a State District Court Judge ruled that Moongate had an exclusive service area against the City within one-half (1/2) mile of Moongate's infrastructure. This ruling potentially meant that Moongate could claim the exclusive right to provide water utility service within Mesa's service area if the City acquired it because Moongate encircles within one-half (1/2) mile of most, if not all, of Mesa's existing service area; and

WHEREAS, The City Attorney's Office could not recommend that staff proceed to negotiate the acquisition of Mesa if there was a possibility that Moongate would claim an exclusive right to serve within Mesa's former service area after acquisition by the City; and

WHEREAS, the City appealed the District court decision in 2007 and the New Mexico Court of Appeals ruled in August 2011 that Moongate did not have an exclusive service area against the City, which meant that, if the City was to acquire Mesa, Moongate could not claim that it had the exclusive right to the service area, thereby ousting the City from what it had purchased; and

WHEREAS, Moongate filed with the New Mexico Supreme Court seeking review of the Court of Appeals' decision. The Supreme Court upheld the Court of Appeals' decision in May 2013 and ruled that Moongate did not have a right to provide water utility service within its PRC-recognized service area to the exclusion of the City; and

WHEREAS, following the New Mexico Supreme Court decision, the parties proceeded to negotiate a draft Agreement for Purchase and Sale (the "Agreement"). Finalizing the Agreement was further delayed by House Bill 246 introduced during the 2014 New Mexico Legislative Session, with the support of Moongate and Jornada Water Company; and

WHEREAS, an existing state statute provides that, if cities over 200,000, which would only be Albuquerque, extended municipal utility service into an area within the service area of a PRC-regulated water utility, the PRC is empowered to determine whether the city with a population over 200,000 or the regulated utility can serve; and

WHEREAS, HB 246 sought to reduce the population requirement from 200,000 to 95,000 so that the above referenced statute would apply to Las Cruces. HB 246 was not approved in 2014 but staff is concerned that if a bill similar to HB 246 were to be approved in 2015 or later, the City may become subject to PRC jurisdiction if it opted to provide City water or wastewater service at the request of a developer within the claimed service area of a PRC regulated utility such as Moongate because Moongate may claim that Mesa's

service area would become part of Moongate's service area after purchase by the City;
and

WHEREAS, staff therefore amended the draft Agreement to provide that the City needs to be fully satisfied with the terms of the abandonment of water utility service by Mesa and a transfer of ownership and operation to the City that may be proposed by PRC staff because the City needs to be able to offer utility service within all of Mesa's service area without making itself subject to PRC jurisdiction; and

WHEREAS, the Agreement provides for payment in the amount of \$425,000 for the water utility assets identified in Paragraph 1 entitled "Assets Transferred", which assets include approximately 107 acre feet of perfected groundwater rights, plus an additional payment in the amount of \$200,000 if the City is able to perfect additional groundwater rights as provided in Paragraph 5 entitled "Payment for Unperfected Water Rights"; and

WHEREAS, the Utilities Board recommended approval of the Agreement in Board Resolution No. 14-15-LCU005 in substantially the same form as shown on Exhibit "A" attached to this Resolution.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City Council approves the Agreement for Purchase and Sale of Water Utility Assets of the Mesa Development Central Water Company; Providing for the Phased Upgrade of Water Company Distribution Lines and Extension of City Water Service; and Further Providing for Customer Conversion and for Customer Billing in substantially the same form as shown on Exhibit "A" attached to this Resolution.

(II)

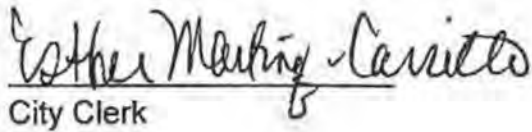
THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED on this 4th day of August, 20 14.

APPROVED:


Mayor

ATTEST:


City Clerk

(SEAL)

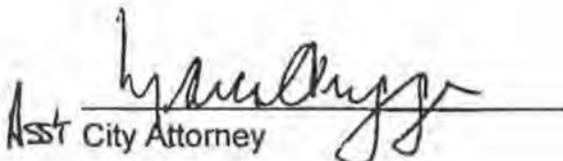
VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Smith:	<u>Aye</u>
Councillor Pedroza:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Sorg:	<u>Aye</u>
Councillor Levatino:	<u>Aye</u>

Moved by: Small

Seconded by: Smith

APPROVED AS TO FORM:


Asst City Attorney

AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS OF THE MESA DEVELOPMENT CENTER WATER COMPANY; PROVIDING FOR THE PHASED UPGRADE OF WATER COMPANY DISTRIBUTION LINES AND EXTENSION OF CITY WATER SERVICE; AND, FURTHER PROVIDING FOR CUSTOMER CONVERSION AND FOR CUSTOMER BILLING

THIS AGREEMENT is entered into on this 11th day of August, 2014 between the City of Las Cruces ("City"), a New Mexico municipal corporation, on behalf of the City of Las Cruces Utilities, and Mesa Development Center, Inc. ("Water Company"), a New Mexico corporation and a public water utility regulated by the New Mexico Public Regulation Commission ("PRC").

WHEREAS, City Council Resolution No. 12-106 authorized City staff to negotiate the purchase of the Water Company based on an appraisal to be prepared by Robert Pender, who is a public utility appraisal specialist; and

WHEREAS, the Summary Appraisal Report (the "Appraisal") prepared by R. E. Pender, Inc. (the "Appraiser") dated October 23, 2012 stated that the fair market value of the Water Company including its perfected water rights and some of its surplus water rights deemed required by the Appraiser for continued operation as of July 1, 2012 was \$425,000, and that the fair market value of the remainder of the Water Company's surplus water rights (aka inchoate or unperfected water rights) deemed not required by the Appraiser for continued operation as of July 1, 2012 was \$1,246,100 for a total valuation of \$1,661,100; and

WHEREAS, legal counsel for the City has raised concerns as to the Appraisal's \$1,600 per acre foot ("AF") value for the Water Company's surplus water rights because (1) a conditionally approved Application for Permit to Change Location of the Water Company's Well LRG-5039 will expire on February 1, 2014 if a proof of application to beneficial use is not filed with the New Mexico Office of the State Engineer ("OSE") on or before January 31, 2014; and (2) the surplus water rights have to be put to beneficial use within Section 14 and unspecified parts of Section 23 by that date, which concerns were set forth in Footnote 24 on page 6-9 of the Appraisal; and

WHEREAS, legal counsel for the City has further concerns not conveyed to the Appraiser that arose after the Appraisal was completed when counsel discovered that the New Mexico Public Service Commission (a predecessor to the PRC) in Case No. 2047 reduced the Water Company's service area, which is where a public regulated utility is legally entitled to provide regulated utility

service, from all of Section 14, T22S, R2E, to approximately the west ½ of Section 14, and allowed Moongate Water Company to serve within approximately the east ½ of Section 14; and

WHEREAS, the Appraiser understood that the Water Company's service area was bordered by Mesa Grande Drive to the west, Porter Drive to the east, Peachtree Hills Road to the north, and U.S. Highway 70 to the south, which service area would include all of Section 14 and a portion of Section 23 north of Highway 70, as referenced on Appraisal page 3-1, and, upon information and belief, did not realize that its service area that been reduced by the Public Service Commission. This reduced service area arguably reduces the area where the Water Company's unperfected water rights may be put to beneficial use and thereby perfected; and

WHEREAS, the City is willing to purchase the Water Company's water utility assets on the terms set forth herein, which assets include the perfected water rights; and is further willing to separately purchase the unperfected water rights that the City can perfect within the undeveloped portions of the approximate west ½ of Section 14 within forty (40) years or within the time allowed by the OSE, whichever is less; and

WHEREAS, the Water Company has been unable to secure an extension of the March 1, 2011 OSE Order, which obligates the Water Company to file both an Application of Water to Beneficial Use and Proof of Completion of Well on or before January 31, 2014; and

WHEREAS, the City understands that the Water Company's failure to timely file the Proof of Completion of Well will result in a denial and cancellation of its Application for Permit to Change Location of Well Permit No. LRG-5039, and that its ability to perfect any additional LRG-5039 rights will be capped at the acre feet perfected as of January 31, 2014, which is approximately 107 AF; and

WHEREAS, the City filed an Application for Permit to Repair and/or Deepen Well (Non 72-12-1) with the OSE on November 27, 2013 in which the City seeks authorization to repair and/or deepen one or more of the Water Company's three (3) wells subject to conditions which may be imposed by the OSE. The City understands that filing the Application may operate to extend the January 31, 2014 deadline set forth in the March 1, 2011 OSE Order as referenced above and to provide the City with additional time in which to perfect the unperfected water rights within the reduced service area; and

WHEREAS, the City also desires to provide for the phased upgrade of the Water Company's infrastructure with infrastructure that meets City water utility standards and for the phased extension and connection of the City's water utility system to the upgraded water

distribution infrastructure within the approximate west ½ of Section 14, all in accordance with a phasing plan to be developed by Las Cruces Utilities; and for the conversion of Water Company customers to become City water utility customers and to provide for City billing for water service; and

WHEREAS, the City expects to invest substantial sums of money for the phased upgrade of the Water Company's water production and water distribution infrastructure (except for those distribution lines previously replaced by the City within Genesis Lane, Sierra Vista Avenue and Midway Avenue), which existing infrastructure needing to be upgraded is of no value to the City's water utility system even though the City is paying to acquire the Water Company's existing physical plant infrastructure; and

WHEREAS, a reasonable surcharge may be added to the City's water utility bills charged to former Water Company service addresses within the approximate west ½ of Section 14 (which is the service area recognized by the PRC) to partially offset some of the City's costs for upgrading the water distribution lines and for extending City water utility infrastructure to the west ½ of Section 14.

IT IS THEREFORE AGREED between the parties as follows:

1. **Assets Transferred**. The Water Company will sell to the City free and clear of all liabilities all of its water utility assets excluding accounts receivable and including but not necessarily limited to the following, and will execute deeds, right-of-way easements, and any other document necessary to fully transfer said assets and physical access to said assets to the City:

A. The physical plant including three (3) well sites (each site consisting of a well, tank or tanks, and pump house/storage building); utility piping; customer water meters, and all other components of the water production and water distribution systems and excluding the office building located at 5051 Jimmie Lane, Las Cruces, New Mexico 88012; and

B. Perfected groundwater rights consisting of approximately 107 AF permitted under State Engineer Declaration Nos. LRG-5039, LRG-5039-S, and LRG-5039-S-2 (the "LRG-5039 series of wells") and approved by the OSE. Perfected groundwater rights are those rights that have been placed to beneficial within the OSE permitted place of use. The maximum that the Water Company has put to beneficial use was 106.78 AF diverted in 2003 which has been rounded up to 107 AF; and

C. Rights-of-way and easements used or needed for the water production and distribution system, whether or not previously recorded; and

D. All Water Company account records including but not limited to a listing by name, by service address, and by billing address if different from service address for all current customers. The accounts receivable will remain owned by and an asset of the Water Company.

2. **Purchase Price.** The Purchase Price for the above referenced water utility assets is \$425,000 based in part on the Appraisal and includes the perfected and excludes the unperfected groundwater rights as further explained and identified in paragraph 3. The Purchase Price will be paid from the appropriate City water utility funds within thirty (30) days after the Effective Date referenced in paragraph 26 herein.

3. **Water Rights Explanation.**

A. **The \$425,000 Appraisal Included Perfected and Some Unperfected Water Rights But the \$425,000 Purchase Price Includes Only Perfected Not Unperfected Water Rights.**

(i) **Perfected Water Rights Included in Purchase Price.** The Water Company claims the right to develop up to 967.8 AF of groundwater rights under its LRG-5039 series of wells within a place of use described by the OSE as both Section 14, T22S, R2E and the Water Company's service area. SEE OSE Water Rights Summary attached as Exhibit "A". Metered diversions from the LRG-5039 series of wells indicate a maximum diversion of 106.78 AF per year in 2003 (rounded up to 107 AF) meaning that the Water Company has perfected 107 AF out of the 967.8 AF claimed. The 107 AF of perfected groundwater rights are included within the \$425,000 Purchase Price.

(ii) **Unperfected Water Rights Excluded from Purchase Price.** The Appraiser classified the unperfected water rights into two (2) categories:

(a) **Required:** The Appraiser included within the \$425,000 Appraisal 82 AF of the Water Company's unperfected water rights that he deemed "required for the continued operation of the utility as an on-going business enterprise. We believe these water rights are an integral part of the utility system and should not, therefore, be separately valued." SEE Appraisal, pages 6-7. Although the Appraiser's justification for including some of the unperfected water rights within the \$425,000 Appraisal to provide for additional water consumption by existing customers and for in-fill is professionally well-founded, solely for purposes of this Agreement, the \$425,000 Purchase Price does not include any unperfected water rights.

(b) Surplus: The Appraiser excluded from the \$425,000 Appraisal 778.8 AF (being 967.8 AF minus 189 AF) of the Water Company's unperfected groundwater rights that he deemed to be "surplus to the current and future needs of the utility. . . . We view the value of these rights to be separate and distinct from the value of the utility as an on-going business enterprise. That is, the surplus rights are not essential to the continued operation of MDC and could therefore be separately marketed and sold." SEE Appraisal, pages 6-7. The Appraiser valued what he called "surplus water rights", which are unperfected inchoate rights, at \$1,600 per acre foot for an additional Appraisal valuation of \$1,246,080 (being \$1,600 per AF X 778.8 AF). The City rejects this additional Appraisal valuation and will compensate the Water Company in the amount of \$200,000 for water rights that the City is able to perfect above 107 AF per year as more specifically set forth hereafter in Paragraph 5.

B. OSE Order, Hearing No. 10-028. The Water Company filed an Application for Permit to Change Location of Well No. LRG-5039 with the OSE on June 13, 2001. The OSE entered an Order dated March 1, 2011 concerning that Application. The Order approved one final extension of time through January 31, 2014 for the Water Company to file proof of completion of the well and to file proof of application of inchoate water rights to beneficial use for the well. If the Water Company is unable to secure an extension of the 2011 Order, its Application to drill the replacement well will be denied, and the Water Company will not be allowed to perfect any additional LRG-5039 ground water rights after January 31, 2014. A copy of the 2011 Order is attached as Exhibit "B".

C. Application for Permit to Repair and/or Deepen Well (Non 72-12-1). The City filed an Application for Permit to Repair and/or Deepen Well (Non 72-12-1) with the OSE on November 27, 2013 in which the City seeks authorization to repair and/or deepen one or more of the Water Company's three (3) wells subject to conditions which may be imposed by the OSE. The City understands that filing the Application may operate to extend the January 31, 2014 deadline set forth in the March 1, 2011 OSE Order referenced in paragraph 3(B) above, and may provide the City with additional time in which to perfect the unperfected water rights. However, the OSE has requested that the Water Company support the City's November 27, 2013 Application because the City does not own the wells or the land in which the wells are located. A copy of the

November 27, 2013 Application is attached as Exhibit "C". Further, it may be necessary for the City to hire a well driller or engineer to examine the condition of the three (3) wells in order for the City to assess the cost of repairing and/or deepening of each well. The Water Company will cooperate and coordinate with the City to support the City's November 27, 2013 Application and for each well examination.

4. **Water Company Service Area Recognized by the New Mexico Public Regulation Commission.** Pursuant to the Order Adopting Recommended Decision of the Hearing Examiner with Supplementation issued in 1986 in New Mexico Public Service Commission Case No. 2047 (a predecessor to the PRC), the Water Company's PRC recognized service area was reduced to approximately the west ½ of Section 14. The 1986 Order gave Moongate Water Company the PRC recognized service area in the east ½ of Section 14 and, upon information and belief, the PRC continues to recognize the east ½ of Section 14 as Moongate's service area as between these two (2) PRC regulated water utilities. A copy of the 1986 Order is attached as Exhibit "D". The 1986 Order was confirmed in a Petition for Investigation filed by staff of the New Mexico Public Service Commission in 1986 in New Mexico Public Service Commission in Case No. 2082. The Appraiser without knowledge of the 1986 Order mistakenly identified the Water Company's service area as bordered by Mesa Grande Drive to the west, Porter Drive to the east, Peach Tree Hills Road to the north, and U.S. Highway 70 to the south, which are the boundaries of Section 14, not the boundaries of the west ½ of Section 14.

5. **Payment for Unperfected Water Rights.** If the OSE deems that the Application for Permit to Repair and/or Deepen Well extends the January 31, 2014 deadline and provides the City with additional time in which to perfect the Water Company's unperfected water rights, not to exceed 860.8 AF (being 967.8 AF unperfected minus 107 AF perfected); and if the OSE approves the City's Application for Permit to Repair and/or Deepen one or more of the Water Company's wells and imposes approval conditions that are acceptable to the City, the City will pay the Water Company an additional sum of \$200,000 for all of its unperfected water rights within 60 days after the City's formal acceptance of the OSE approval conditions and after PRC regulatory approval, whichever comes later. The City is concerned that, if the OSE approves the Application, it may impose conditions that the City is unable or unwilling to satisfy, including but limited to prohibiting local impairment of adjacent wells and providing for cure if impairment does occur. The City as the applicant has the burden of proof concerning impairment, and, if impairment is an issue, then the City will have to hire a hydrogeologist or engineer to assess

potential impairment to adjacent wells. The City will work diligently and in good faith to determine whether the conditions of approval imposed by the OSE are acceptable to the City in its sole discretion. If the City determines that the OSE's approval conditions attached to the Application are not acceptable, the City will so inform the Water Company, and will not owe or pay the Water Company the additional sum of \$200,000.

6. **No City Obligation for Outstanding Debts of the Water Company.** The water utility assets acquired by the City from the Water Company pursuant to this Agreement will be delivered free of any lien or encumbrance. Any and all debts and other financial obligations of the Water Company, including but not limited to gross receipts taxes and any other obligations owed to the State of New Mexico, are unaffected by this Agreement and remain the entire obligation of the Water Company, and the City shall have no liability for payment thereof.

7. **Debts and Releases of Mortgages.**

A. **Debts to Third Parties.** The Water Company warrants that there are no outstanding debts or liabilities which affect its ability to convey its water utility assets referenced herein to the City free and clear of any debt or creditor claim.

B. **Mortgages.** The Water Company has secured the release of the Real Estate Mortgage from the Water Company to Western Bank recorded on November 14, 1989 in Book 461, Pages 694-696 of the records of Doña Ana County, New Mexico. Assets of the Water Company including 100 acre feet of water rights were pledged as security for said 1989 Mortgage. The Release of Mortgage was recorded on April 29, 2014 as Instrument No. 1408638 of the records of Dona Ana County, New Mexico. The Water Company need not secure the release of the Mortgage from the Water Company to Community First National Bank recorded on September 21, 2004 in Book 552, Pages 679-685 of the records of Dona Ana County, New Mexico because it believes that the debt secured by the 2004 Mortgage has been paid and further because the real property located at 5051 Jimmie Lane, which was pledged as security for the 2004 Mortgage, is excluded from the assets being transferred to the City.

C. **Debt to City.** The Water Company owes the City for three (3) unpaid invoices, being Invoice No. 24729 dated August 2, 2012 in the amount of \$2,765.34 for repairs to damaged Water Company water lines at Mesa Drive and Sunny Acres Drive; Invoice No. 25596 dated November 6, 2012 in the amount of \$2,219.93 for repair of a Water Company service line leak at 5448 Sierra Vista Avenue; and Invoice No. 25597 dated November 6, 2012 in the amount of \$1,324.78 for repair of a service line leak at 5201 Sierra Vista Avenue, in the total amount of

\$6,310.05. Said sum will be paid by the Water Company to the City by separate check prior to or at closing on the City's purchase of the Water Company's water utility assets.

8. **Franchise Fee Balance.**

A. **Promissory Note Balance.** On April 22, 2002, Grover Pettes as President on behalf of the Water Company executed a promissory note to the City in the original amount of \$20,305.75 for unpaid franchise fees owed by the Water Company to the City for calendar years 1988 through 2000. Payments were to be made in the amount of \$282 per month. Interest was waived if monthly payments were timely made. Based on a City Accounts Receivable statement, City records indicate that \$12,972 was paid and that \$7,051.72 was owed as of March 28, 2006. Further, based on a City invoice detail report dated May 14, 2014, City records indicated that an additional \$6,205.72 was paid on that Promissory Note as of September 24, 2008 being the last payment date. The City is unable to locate any monthly payments of \$282 after that date. However, the City waives the interest owing on the Promissory Note after September 24, 2008 and deems that payments totaling \$19,177.72 (being \$12,972 + \$6,205.72) have been paid, and that \$1,128.03 is owed as the date of this Agreement.

B. **Post-2002 Franchise Fees:** Based on a City invoice detail report dated May 14, 2014, the City deems that the Water Company has paid franchise fees for calendar years 2001 through 2007, and owes franchise fees for calendar years 2008 through 2013 plus payment for calendar year 2014 and possibly for calendar year 2015 depending on when the purchase is completed. The Water Company has been paying the City the sum of \$1,969 per year for franchise fees based on its own calculations, which calculations are accepted by the City. Therefore, the City deems that the Water Company owes it the sum of \$11,814 for franchise fees for calendar years 2008 through 2013 (being \$1,969 per year X 6 years) plus payment for calendar year 2014 and possibly for calendar 2015.

C. **Payment.** The combined balance owing on the 2002 Promissory Note in the amount of \$1,128.03 and on post-2002 franchise fees in the amount of \$11,814, which total \$12,942.03, plus payment for calendar year 2014 and possibly for calendar year 2015 will be paid by the Water Company to the City by separate check prior to or at closing on the City purchase of the Water Company's water utility assets. Upon receipt of payment, the City will cancel the April 22, 2002 Promissory Note and return same to the Water Company.

9. **Litigation and Claims.** The Water Company warrants that no claims or litigation is pending or threatened against it or against any of the owners of the Water Company concerning

the Water Company. The Water Company further warrants that neither the Estate of Jimmie L. Pettes, deceased, nor the heirs of Jimmie L. Pettes claim any interest in the Water Company, and that the Water Company is legally entitled to sell the aforementioned water utility assets free and clear of any claim from the Estate of Jimmie L. Pettes, deceased, or from the heirs of Jimmie L. Pettes.

10. **Uniform Commercial Code.** The transfer and conveyance of the Water Company's water utility assets to the City is not subject to the New Mexico Uniform Commercial Code.

11. **Subdivision Compliance.** The Company will be required to comply with all City subdivision requirements to validly subdivide the parcels on which the well sites are located, if any subdivision is necessary, in order to deed the three (3) existing well sites to the City.

12. **Transfer Documents and Account Documents.** The Water Company will execute the following transfer and account documents to the City:

A. Change of Ownership of Water Right for LRG-5039, LRG-5039-S, and LRG-5039-S-2 from the Water Company to the City to be prepared by the City and filed with the OSE at City expense after execution by the Water Company or by the City depending on when the Warranty Deed or Special Warranty Deed (Groundwater Rights) is recorded with the County Clerk.

B. Proof of final payment of all water utility related accounts payable including but not limited to El Paso Electric Company and to the City of Las Cruces.

C. Warranty Deeds for the three (3) well sites including access to the well sites with individual metes and bounds legal descriptions prepared by a licensed surveyor at the Water Company's expense. Said legal descriptions will be reviewed and approved by the City's surveyor in advance of execution of the Warranty Deeds. The legal description for each well site will include the existing chain link fences around each well site and the areas within the chain link fences, as well as access to the well sites if the well sites do not abut public rights of way.

D. Warranty Deed or Special Warranty Deed (Groundwater Rights) for LRG-5039, LRG-5039-S, and LRG-5039-S-2.

13. **Customer Lists.** The Water Company will provide the City with a detailed listing of all current water customers with the name of the customer, the service address, and the billing address if different from the service address. Said list will be attached as Exhibit "E" to this Agreement and will be updated prior to the Effective Date. After the Effective Date of the

Agreement, any customers desiring City water service in the west ½ of Section 14 will have to sign up for City water utility service as set forth herein.

14. **Water Company's Place of Use and Service Area.**

A. **State Engineer's Office Place of Use.** Based on the Water Company's LRG-5039 series of well declarations filed with the Office of the State Engineer, the Water Company can only put groundwater from said wells to beneficial use within the area referenced in said well declarations, which area is Section 14 and the "service area for Mesa Development Center, Inc." SEE OSE Water Right Summary attached as Exhibit "A". That place of use designation by the OSE is ambiguous because Mesa's present PRC recognized service area does not include all of Section 14.

B. **PRC Service Area.** Based on the 1986 Order attached as Exhibit "B", the Water Company's PRC recognized service area is approximately the west ½ of Section 14.

C. **Conflict Between Place of Use and Service Area.** There exists legal uncertainty as to whether the Water Company can perfect LRG-5039 water rights outside of its PRC recognized service area since the Water Company is a PRC regulated public utility that can only provide water utility service where authorized by the PRC.

D. **Warranty.** The Water Company warrants that it has never provided water utility service to any customer outside of approximately the west ½ of Section 14, and that all water from said well declarations on file with the OSE has been put to beneficial use within approximately the west ½ of Section 14.

15. **Regulatory Approval.**

A. The Water Company will obtain regulatory permission and approval from the PRC for the Water Company to abandon all regulated water utility service as required by NMSA 1978, § 62-9-5 (2005) and to transfer ownership and operation thereof to the City. The Water Company will thereafter provide written proof of such regulatory permission and approval to the City as a condition precedent for the City paying the \$425,000 Purchase Price to the Water Company. The City will cooperate with the Water Company to provide any testimony, documentation or evidence reasonably required by the PRC as to the City's continued provision of water service to Water Company customers upon the transfer of the water utility assets to the City.

B. Each party will pay its own costs incurred in connection with the Water Company's application to the PRC to abandon regulated water utility service as provided in this paragraph 15.

C. If the terms of the abandonment of regulated utility service by the Water Company and the transfer of ownership and operation thereof to the City as may be proposed by PRC staff as part of the regulatory approval process are not fully satisfactory to the Water Company, it may withdraw its Petition for Approval and terminate the Agreement without claim by the City. If the terms of the abandonment of regulated utility service by the Water Company and the transfer of ownership and operation thereof to the City as may be proposed by PRC staff as part of the regulatory approval process are not fully satisfactory to the City, it may terminate the Agreement with the approval of the City Manager without claim by the Water Company.

D. The closing on the City's purchase of the water utility assets and the City's obligation to pay the Water Company the Purchase Price of \$425,000 as provided in Paragraph 26 entitled "Effective Date for Paying \$425,000 Purchase Price" shall be stayed until the completion of any appeal that may be filed by an intervenor in the PRC regulatory case. Either party may terminate this Agreement without claim by the non-terminating party if the appellate decision is not fully satisfactory to the party seeking termination.

16. **Franchise Termination.** The City's franchise with the Water Company approved in Ordinance No. 1019 expired on January 1, 2003, and has continued on a month-to-month basis thereafter. The expired franchise is in the process of being renewed. Any franchise that the City may have with the Water Company will be terminated as of the Effective Date referenced in paragraph 26 herein, and from that date forward, the Water Company has no legal right to operate a water utility system within the City limits.

17. **Phased Upgrade.** The City will develop a phased upgrade to the Water Company's production and distribution systems to meet City standards, which plan will be provided to Water Company customers in a mailing followed up with one or more public meetings at a site in the vicinity of Section 14. The City will continue providing water utility service using the Water Company's existing infrastructure and without any guaranty of fire flow until such time as the upgrades can be made by the City.

18. **Becoming City Water Utility Customers.**

A. **Application Process.** All customers of the Water Company will be required to become City water utility customers by executing the required customer service application at

the City's Customer Service office located in City Hall if they desire continued water utility service in accordance with the City's transfer plan.

B. Application Payments. The Water Company customers will not be required to pay the City's standard utility deposit even if they are not current City utility customers, nor will they be required to pay the City's utility account activation and processing fee. The City's general fund will pay the account activation and processing fee.

C. Failure to Timely Apply. The Water Company customers who do not execute the required application to become City water utility customers within thirty (30) days after the availability of City water utility service to their properties will have water service terminated. They will then have to pay the standard City utility deposit, if required, and the account activation and processing fee to have City water service provided.

19. Customer Notification. The Water Company will send a written notification prepared by the City to all of the Water Company's current customers before the Effective Date and will otherwise comply with any PRC notification requirements. The notification will advise the current customers of the terms of this Agreement and will further advise them of their obligation to execute the necessary customer service applications with the City in order to obtain continuous water service. The notification letter will be timely delivered by the City to the Water Company to enable the Water Company to send the letter with a routine monthly billing.

20. Water Utility Rates.

A. City Utility Rates. The City will charge all customers of the Water Company that become City water utility customers as well as new City water utility customers within the west ½ of Section 14 the same water utility rates charged to comparable City water customers.

B. Surcharge. The City may charge all such customers within the west ½ of Section 14 a reasonable monthly surcharge in an amount to be determined by the Utilities Board to partially offset some of the City's costs for upgrading the Water Company's water distribution lines and for extending City water utility infrastructure to the west ½ of Section 14.

21. Payment of City Water Development Impact Fees, Water Rights Fees, and Connection Charges.

A. Water Development Impact Fees. Current Water Company customers will not be assessed any of the City's water development impact fees charged to new City water utility

connections when these current customers become City water customers. The City will internally transfer funds that would otherwise be required for water development impact fees.

B. Water Rights Fees. Current Water Company customers will not be assessed the City's water rights fees, which are presently \$383 for a 5/8" residential water meter, when these current customers become City water customers.

C. New Customers - New Service Locations. Builders and customers, who sign up for City water utility service within the west ½ of Section 14 after the date of this Agreement for properties where service had not previously been provided by the Water Company, will be charged the applicable shares of the City's water development impact fees in accordance with City procedures as well as the City's water rights fee and the usual deposit and account activation processing fees in effect at that time.

22. Payment. Payment of the Purchase Price and any separate payment for unperfected water rights will be made to Mesa Development Center, Inc.

23. Merger. This Agreement incorporates all of the understandings of the parties concerning the purchase of the Water Company, the purchase of the unperfected water rights, the phased upgrade of the Water Company distribution lines and extension of City service to the area, customer conversion and customer billing. All such understandings have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents as to the subject matter hereof will be enforceable unless included within this Agreement.

24. Third Party Beneficiary. It is not intended that any provisions of this Agreement create on behalf of the public or any member of the public, including but limited to current and former Water Company customers, the status of a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit based on this Agreement.

25. Board Review and City Council Approval. This Agreement is not binding on the City until it has been reviewed by the Utilities Board and approved by Resolution of the City Council.

26. Effective Date for Paying \$425,000 Purchase Price. The Purchase Price shall be paid to the Water Utility at closing on the City's purchase of the water utility assets, which shall be within thirty (30) days after the Water Company secures the permission and approval from the PRC as referenced and conditioned in paragraph 15 and after the Water Company otherwise complies with its conditions precedent to the transfer of the water utility assets as set forth herein, whichever comes last.


27. **Voluntariness; Drafting Presumption; Reliance on Inducements.** The parties have been given the opportunity to thoroughly discuss all aspects of this Agreement with their attorneys and that they understand all of the provisions contained herein and are voluntarily entering into this Agreement. No presumption shall be drawn against the drafter of this Agreement as both parties had an opportunity for counsel to participate in its development. In entering into this Agreement, the parties have not relied upon any inducements, promises, or representations made by each other or their attorneys except as expressly set forth herein.

28. **Amendments.** This Agreement shall not be altered, modified, or amended except by instrument in writing executed by all parties.

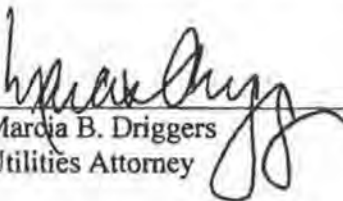
29. **Assignment.** The Water Company shall not assign any rights or delegate any duties contained in this Agreement without the written consent of the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

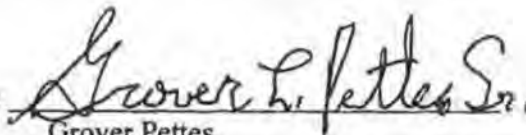
CITY OF LAS CRUCES

By: 
Robert L. Garza, P.E.
City Manager

PREPARED AND APPROVED BY:


Mardia B. Driggers
Utilities Attorney

MESA DEVELOPMENT CENTER, INC.

By: 
Grover Pettes
President

File No.



NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO REPAIR AND/OR DEEPEN WELL (Non 72-12-1)



For fees, see State Engineer website: <http://www.ose.state.nm.us/>

1. APPLICANT(S)

Name: City of Las Cruces	Name:
Contact or Agent: <input type="checkbox"/> check here if Agent Utilities Director	Contact or Agent: <input type="checkbox"/> check here if Agent
Mailing Address: P.O. Box 20000	Mailing Address:
City: Las Cruces	City:
State: NM Zip Code: 88004	State: Zip Code:
Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work): 575-528-3511	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work):
E-mail (optional):	E-mail (optional):

2. CURRENT OSE FILE INFORMATION

OSE File No(s): LRG-5039

3. WELL INFORMATION

Well Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84)

NM State Plane (NAD83) (Feet)
 UTM (NAD83) (Meters)
 Latitude/Longitude (Lat/Long - WGS84 to the nearest 1/10th of second)

NM West Zone
 Zone 12N
 NM East Zone
 Zone 13N
 NM Central Zone

Well Number:	X or Easting or Longitude:	Y or Northing or Latitude:	Optional: Complete boxes labeled "Other" below with PLSS (Public Land Survey System, i.e. Quarters, Section, Township, Range); Hydrographic Survey Map & Tract; Lot, Block & Subdivision; OR Land Grant Name if known.
LRG-5039	1,499,051	505,860	
LRG-5039-S	1,499,057	508,680	
LRG-5039-S-2	1,499,137	509,795	

Well is on Land Owned by: Mesa Development Inc. To Be Acquired By City Of Las Cruces

Other description relating well to common landmarks, streets, or other: West of Jimmie Street

Driller Information: Driller Name: Clarence Rodgers Driller License Number: WD-225

1/18/11 20:00:00 FOR OSE INTERNAL USE

Application for Permit, Form wr-04, Rev 12/14/11

File Number:	Trm Number:
Log Due Date:	Sub-Basin:

EXHIBIT C



New Mexico Office of the State Engineer Water Right Summary



WR File Number: LRG 05039
Primary Purpose: MDW COMMUNITY TYPE USE - MDWCA, PRIVATE OR COMMERCIAL SUPPLIED
Primary Status: PMT PERMIT
Total Acres: 0
Total Diversion: 967
Owner: MESA DEVELOPMENT CENTER INC.

Documents on File

Trn #	Doc	File/Act	Status		Transaction Desc.	From/	Acres	Diversion	Consumptive
			1	2		To			
211190	CLW	2001-08-17	PMT	ET	LRG 05039	T	0	0	
211190	CLW	2001-08-17	PMT	ET	LRG 05039	F	0	0	
149159	SUPPL	1985-05-08	PMT	ET	LRG 05039-S-2	T	0	967	
149158	DCL	1984-08-24	DCL	PRC	LRG 05039-S	T	0	967.8	
149157	DCL	1984-08-24	DCL	PRC	LRG 05039	T	0	967.8	

Current Points of Diversion

POD Number	Source	Q Q Q			X	Y	Other Location Desc
		6416	4	SecTws Rng			
LRG 05039	Shallow	3	3	4	14	22S 02E	339375 3584840*
LRG 05039 S	Shallow	1	3	2	14	22S 02E	339391 3585849*
LRG 05039 S-2	Shallow	1	2	14	22S 02E	339500	3586155*

An () after northing value indicates UTM location was derived from PLSS - see Help

Place of Use

Q	Q	Q	Q	SecTws Rng	Acres	Diversion	CU	Use	Priority	Status	Other Location Desc
256	64	16	4	14 22S 02E		967.8		MDW		DCL	SERVICE ARE FOR MESA DEVELOPMENT CENTER INC.

Source

Acres	Diversion	CU	Use	Priority	Source Description
0	967		MDW		GW

EXHIBIT A

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE APPLICATION)
BY MESA DEVELOPMENT CENTER, INC.,)
FOR EXTENSION OF TIME IN WHICH TO) Hearing No. 10-028
FILE PROOF OF COMPLETION OF WELL)
AND FILE PROOF OF APPLICATION OF)
WATER TO BENEFICIAL USE WITHIN THE)
LOWER RIO GRANDE UNDERGROUND) OSE File No. LRG-5039
WATER BASIN IN THE STATE OF NEW)
MEXICO)

ORDER

WHEREAS, on April 12, 2010, the District IV office of OSE denied the request of Mesa Development Center, Inc. ("Applicant") for an extension of time for ". . .failure to demonstrate due diligence;"

WHEREAS, within thirty (30) days of the Applicant's receipt of said denial, the Water Rights Division ("WRD") received written notice from the Applicant stating that Applicant was aggrieved by the decision and that a hearing was requested;

WHEREAS, the WRD "due diligence" requirement is intended to limit endless Extensions of Time;

WHEREAS, WRD is of the opinion that one *final* extension of time to put water to beneficial use by January 31, 2014 would serve the purpose of the "due diligence" requirement;

WHEREAS, the Applicant has withdrawn its request for a hearing; and

WHEREAS, on the 7th day of February 2011, the Hearing Examiner issued an order remanding the application to the Water Rights Division for disposition in accordance with the Joint Motion to Remand.

NOW, THEREFORE, the State Engineer of the State of New Mexico hereby approves Application LRG-5039, subject to the following Conditions of Approval.

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE APPLICATION)
BY MESA DEVELOPMENT CENTER, INC.,)
FOR EXTENSION OF TIME IN WHICH TO) Hearing No. 10-028
FILE PROOF OF COMPLETION OF WELL)
AND FILE PROOF OF APPLICATION OF)
WATER TO BENEFICIAL USE WITHIN THE)
LOWER RIO GRANDE UNDERGROUND) , OSE File No. LRG-5039
WATER BASIN IN THE STATE OF NEW)
MEXICO)

CONDITIONS OF APPROVAL

This application is approved for one final extension of time to place water to beneficial use by January 31, 2014, subject to the following Conditions of Approval:

Permittee: Mesa Development, Inc.
Permit Number: LRG- 5039
Application File Date: March 23, 2010 (most recent Extension of Time request)
Source: Ground water

1. This extension of time shall expire on January 31, 2014, and Mesa will be limited to the amount of water that is put to beneficial use according to all applicable laws and regulations. No further extensions of time will be accepted for filing nor approved as agreed by both parties in this Order.
2. Proof of Application of Water to Beneficial Use will be filed in this office on or before January 31, 2014.
3. Proof of Completion of Well will be filed in this office after completion and installation of equipment, but in no event later than January 31, 2014. If the well is not drilled and the required paperwork is not filed by that date, Change Location of Well Permit No. LRG-5039, approved on August 17, 2001 will be cancelled.

Witness my hand and seal this 1st day of March, A.D., 2011.

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



Greg Fuchs
Greg Fuchs
Water Resource Supervisor

extension of time to file exceptions. This motion was denied. Nevertheless, Mesa mailed exceptions on the date that exceptions were due to be filed. The exceptions received from Mesa did not include a certification of service to other parties in the case, and, in fact stated that the exceptions were served on the State Corporation Commission rather than the Public Service Commission. Mesa should understand that such procedural mistakes will not be excused by the Commission and that the Commission's rules of practice and procedure, General Order No. 1, will be strictly enforced.

B. Reasons for Adopting the Recommended Decision

In addition to the reasons enumerated in the Recommended Decision, the Commission has found other factors persuasive in permitting Moongate Water Company to serve the territory at issue in this case. First, the Commission understands that the territory proposed to be served is not within either Moongate's or Mesa's currently certified service area. Thus, neither has a "right" to serve. Under the Commission's statutory mandate, the service "agreement" between Mesa and Moongate does not limit the Commission in considering the public convenience and necessity in determining which utility should serve. The question before the Commission is which utility should be allowed to serve based on considerations of the public interest. The evidence in this case indicates that service by Moongate is most in the public interest. Aside from the pattern of delays and complaints arising from Mesa's line extensions and the contrasting absence of such difficulties with Moongate, it appears that Moongate can

serve the territory at lower cost. Moongate is more capable, qualified and cost effective to serve the new territory.

C. Line Extension Policy

The Recommended Decision did not address Staff's proposed modification of Moongate's line extension policy in this case. The Commission has determined that the proposal has merit. Under Moongate's current line extension policy, initial participants in the line pay an equal share of the cost of materials for the line as outlined in Moongate's application. Subsequent participants, that is, customers hooking up after the line is completed, would pay their share for materials and labor up to the point that the line cost is fully paid. Staff proposed that for five years after the line is completed in this case, subsequent customers on the line be required to pay their pro-rata share of materials and labor including the initial material costs in their line extension fees. The initial material cost portion of their line extension fees would then be refunded to prior participants pro rata, as more fully outlined in the testimony of Phillip Baca, TR. 191-192.

It appears that portions of the new territory may be subdivided soon, but subsequent to completion of the line. Therefore, Staff's proposed modification of the line extension policy will distribute the initial material costs of the line among the initial participants and subdivision participants more justly and reasonably than the current policy. The Commission, therefore, has decided to adopt Staff's proposal.

WHEREFORE, THE COMMISSION FINDS:

1. The findings and conclusions of the Hearing Examiner as set forth in the Recommended Decision issued on August 20, 1986 which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, are Adopted, Approved and Accepted as the findings and conclusions of the Commission.

2. Staff's proposed modifications of Moongate's line extension policy as set forth on pages 191 through 192 of the transcript of proceedings is just and reasonable, required by the public convenience and necessity, and should be adopted and implemented for the line extension and service into Section 14 as approved in this case for a period of 5 years after the line extension is completed. Moongate's compliance with the policy should be monitored.

3. It is just and reasonable and required by the public convenience and necessity to approve Moongate's line extension application under G.O. 10 and to authorize Moongate to serve the territory known as Section 14 at issue here.

NOW, THEREFORE, IT IS ORDERED by the New Mexico Public Service Commission that:

A. The Orders recommended by the Hearing Examiner as set forth in Exhibit A attached hereto and incorporated by reference as if fully set forth herein, are ADOPTED, APPROVED and ACCEPTED as the orders of the Commission.

B. The Recommended Decision of the Hearing Examiner is ADOPTED, APPROVED and ACCEPTED.

C. Staff's proposed modification of Moongate's line extension policy as specified in Finding No. 2 is approved and

adopted. Moongate shall by September 30, 1986, file an addendum to its line extension policy applicable to the line extension approved here. The addendum shall be effective for five years following completion of the line. The addendum shall reflect Staff's proposed modification and shall be subject to approval by Commission Staff prior to filing. Moongate shall file an annual compliance report reflecting implementation of the policy modification and its refund provisions.

D. This Order is effective immediately.

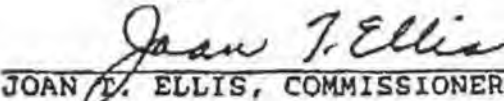
E. A copy of this Order shall be mailed to the Company, to counsel of record for all parties to this case and to any parties appearing without counsel.

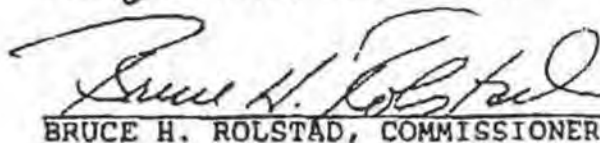
I S S U E D under the Seal of the Commission at Santa Fe, New Mexico this 16th day of September, 1986.



NEW MEXICO PUBLIC SERVICE COMMISSION


MARILYN C. O'LEARY, CHAIRMAN


JOAN T. ELLIS, COMMISSIONER


BRUCE H. ROLSTAD, COMMISSIONER

DL

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE EXTENSION)
 OF SERVICE FILING BY MOONGATE CASE)
 WATER COMPANY, INC.,)
)
 Applicant.)
 _____)

Case No. 2047

RECOMMENDED DECISION OF THE HEARING EXAMINER

COMES NOW, Leonard A. Helman, Esq. Hearing Examiner in the above-styled cause and submits his Recommended Decision to the New Mexico Public Service Commission for its consideration and review.

STATEMENT OF THE CASE:

On May 19, 1986, Moongate Water Company ("Moongate") filed with the New Mexico Public Service Commission ("Commission") an Extension of Service form, together with a map of the area where the utility was requesting permission to serve. The Extension of Service form was filed pursuant to General Order No. 10. Notice of the proposed line was sent to Mesa Development Center ("Mesa"), and Jornada Water Company ("Jornada").

On May 26, 1986, Mesa sent a letter to the Commission Staff ("Staff") by which Mesa protested the proposed line extension by Moongate.

On June 30, 1986, the Commission issued its Order docketing the Line Extension application. The Commission found that:

1. The proposed line extension would extend the utility's lines into Section 14, contiguous to the service territories of Moongate, Mesa and Jornada.

2. All three utilities were under the jurisdiction of the Commission.

3. A proceeding should be held to determine whether Moongate or Mesa should provide service into the area.

The Commission Ordered that the Extension of Service form filed by Moongate should be docketed as a proceeding and that the letter of May 26, 1986 on behalf of Mesa should be considered to be a complaint in protest of the requested line extension.

In the same Order, the Commission appointed Leonard A. Helman, Esq. to preside over the hearing in this case, to take all actions necessary and convenient within the limits of his authority and to submit proposed findings of fact and conclusions of law regarding this cause to the Commission.

On July 8, 1986, the Hearing Examiner issued his Order of Hearing. He found good cause to order a hearing in the matter of the extension of service filing by Moongate. He ordered that:

1. A public hearing on this matter be held at the conference room of the City of Las Cruces, New Mexico on Monday July 14, 1986 at 1:00 p.m. The purpose of the hearing would be to take testimony in support of, or in opposition to Moongate's application to extend service under G.O. 10. The hearing was expedited due to the emergency nature of the proceeding.

At the announced time and designated place, the hearing was held. Publication of a notice of the hearing was not required by the Hearing Examiner as all the affected parties had been notified by a receipt of the Notice of the hearing or being notified by the Hearing Examiner and/or the utilities. In addition, all parties to the proceeding waived any right to 20 days notice prior to hearing.

APPEARANCES:

For Moongate Water Company, Inc.

Norman E. Todd, Esq.
Las Cruces, New Mexico

For Mesa Development Center, Inc.

Michael Romero, Esq.
Las Cruces, New Mexico

The Commission Staff

Charles Noble, Esq.
Santa Fe, New Mexico

Other Appearances

None

Persons who testified included both the owners and operators of the utilities and persons who owned land in the area and who would be affected by whatever utility served and when service would be provided.

A summary of their statements and positions is as follows:

- A. Louis Gariano
President, Moongate Water Company
Las Cruces, New Mexico

Mr. Gariano stated that:

1. Moongate had entered into an agreement with Mesa in 1983 with respect to any future development in the area contiguous to Mesa. First of all, Moongate had written to Mesa a letter dated November 30, 1983 in which Moongate stated its intention not to serve any existing or future customers in Section 14, Dona Ana County, other than Mesa Grande Subdivision, which was owned by Mr. Edward Green. Moongate stated that it would not cross any existing lines that are in the ground. Moongate agreed to give to Mesa the first right of refusal on any future customers in Section 14. Tr. p.21.

This agreement was further documented in a letter dated December 13, 1983 to Robert Castillo, Utility Engineer, Commission Staff, attached to Exhibit B of the Commission Order Docketing Line Extension Application. The letter contained the same essential elements as the agreement of November 30, 1983.

Having made these commitments, Moongate made every effort to abide by them. When persons came to Moongate for water service in Section 14, Moongate would send them to Mesa. However, for extended periods of time, Mesa had not provided service to some persons requesting service in Section 14. Tr. 19. Moongate saw no progress taking place. Meanwhile, persons were complaining constantly to Moongate about the failure of Mesa to provide service and the need for water service into Section 14. Moongate decided that Mesa had indeed exercised its right of first

refusal, by its failure to provide service into Section 14. Tr. 19-22. In order to force the situation as to service into Section 14, Moongate filed its General Order 10. Tr, 23-26.

Moongate stated that it was ready immediately to provide service into Section 14; that it had contacted the potential customers as to costs, easements, etc; that it had the figures as to cost of the line and how the costs would be prorated. Moongate also said that it would build the line for the cost of the materials alone and would provide labor free to those persons who contributed to the cost of the line at the time of construction. Anybody hooking on after the line was built would have to pay for the labor costs and materials cost (prorated among the various lots). Tr. pp.28-31; 31-62.

Mr. Gariano concluded by saying that he felt that he had honored the agreement by referring potential customers to Mesa, that Mesa had failed to act, that a need to provide service existed and that Moongate would be in a position immediately to begin construction of a line to serve Section 14. Tr. 21.

B. Mr. James Rogers
President, Jornada Water Company
Las Cruces, New Mexico

Mr. Rogers stated that Jornada had no intention to serve that portion of Section 14 which was West of I-70; however, a portion of Section 14 was on the East side of I-70 and Jornada would be serving that area, except for service to a Mrs. McCollum which was to provided by Moongate. Jornada would be willing to serve

Section 14 (West) except that no one had asked them for such service. Jornada took no position as to whether it favored Mesa or Moongate in the controversy. Jornada expressed concerns about adequate system to meet fire protection standards and sizing of pipe sufficiently large to provide adequate service. Tr. 63-77.

C. Mr. Grover Pettes
President, Mesa Development Center
Las Cruces, New Mexico

Mr. Pettes stated that Mesa was prepared and ready to provide service into Section 14; however before providing such service Mesa needed plats, roads and easements and other details to be provided by the potential customers before Mesa could start its work on the project. Tr. 105-106. However, Pettes did say that a figure of \$114,000 had been established as to cost of the lines and additional equipment to provide service into Section 14. Tr. 86. Mesa felt that the agreement with Moongate still obtained, that Mesa had not violated its agreement, and therefore Mesa had not exercised its right of first refusal. Tr. 79. Mesa was prepared and ready to serve Section 14 as soon as the necessary information was supplied by the persons seeking service. Page 77-114.

D. Wayne H. Joyner
Commander, VFW Post 6917
Las Cruces, New Mexico

Commander Joyner testified that he had contacted Moongate for water service. Moongate referred him to Mesa. Mesa constantly

delayed service. Mesa stalled and stated that it needed permission to dig an additional well to provide service to Section 14. However Joyner discovered that Mesa did in fact have the well permit at the time Mesa was saying it was waiting for the authorization to dig an additional well to serve Section 14. Tr. 152.

Joyner concluded by saying that he had been very frustrated in his dealings with Mesa and that he and the members of VFW wanted Moongate to supply water service. Tr. 150-159.

E. Warren Chilton
Developer

Mr. Chilton testified that he was agent for his father and another investor who wanted to develop some 20 acres of land in Section 14. Chilton said that he had first contacted Mesa in 1980 when water service was requested. Tr. 134-135. In February 1984, he wrote to Mesa and requested water service. Additional requests were made and each time Mesa responded by asking for further information such as plats of the area. Chilton referred to correspondence with the Commission in which letters Mesa stated that it needed to study the matter further and needed more information. Tr. 135-136. In such a letter dated September 10, 1984, Mesa said that it was making a feasibility study but the study could not be completed until Chilton furnished the information requested. Tr. 136. Chilton furnished the

information, but after several months, no decision was forthcoming.

Finally in October 18, 1985 Chilton wrote the Commission stating that he had contacted Mesa a number of times, yet Mesa failed to respond. Mesa refused to answer Chilton in writing as to such issues as whether Mesa received permission from the State Engineers' office to construct a third well. Tr. 137.

Chilton testified that Mesa had effectively denied him service. Tr. 142.

E. Ramon Carnero
Resident of Section 14

The next person to testify was Ramon Carnero. He was assisted by Arturo Cadena who was the tenant of a mobile home in Section 14. Mr. Carnero testified that he has repeatedly asked for water service, that Mesa wanted a total payment of \$114,000 for the provision of water and that Mesa wanted Mr. Carnero to go and raise the money. Mr. Carnero was not fluent in English and resented such a request being made of him. Carnero felt that the duty was on the utility to organize the customers and allocate the costs between the potential customers for the new system. Mr. Arturo Cadena also spoke and echoed the same sentiments. Tr. 160-169.

G. Three other persons spoke. They were:

R.J. Herbert, for the County of Dona Ana. He appeared as witness for Hearing Examiner. He spoke of the rules of the County with respect to subdivision laws. Tr. 7-11.

Brian Denmark, Planner, City of Las Cruces who also talked about subdivision laws in the City of Las Cruces. Tr. 12-17).

Ken Needham-City Utilities Director. Needham did not offer a position as to whether Mesa or Moongate should serve. He did say that the minimum main should be 6 inches; that Section 14 was in the City Limits as of March 1986, that Needham had the authority to approve plans and plats within two weeks of submission to his office. The City would not oppose a subdivision in Section 14. Tr. 115-133.

After these presentations, the Commission Staff presented its case. The following witnesses testified:

1. Philip Baca, Staff Engineer

Mr. Baca stated that the State Engineer's Report established that the two present wells of Mesa are being used only to a 11% capacity. That is, about 89% of capacity is presently being unutilized-therefore there is no need for a third well; moreover to add a third well to the system would be an economic hardship to the existing customers. Baca stated that Mesa could serve all potential customers in Section 14 from the existing wells. Baca felt that the requirement for a third well was completely unjustified and may have only been an excuse to stall Mesa's responsibility to serve.

Baca also testified on Moongate's proposal with respect to size and quality of pipe. He said that both the proposed pipe size and quality of materials were satisfactory. Baca supported Moongates's application. Tr. 188-202.

2. Keith Moheban, Compliance Officer

Mr. Moheban elaborated on the number of complaints that had been filed against Mesa with respect to failure to provide service; the dilatory manner in which Mesa has handled the requests for service in Section 14 and the obstacles that Mesa has put into the way of those who wanted service. Tr. 169-187.

The Hearing Examiner allowed Mesa to put on rebuttal testimony. However the rebuttal testimony did not address the specific issues raised; rather it was in support of Mesa as having served in the area for twenty years and the good quality of service which Mesa has offered. Tr. 213-218.

The testimony is overwhelming that Mesa has pursued a dilatory approach to serving Section 14; that it wanted potential customers to pay for a well that was not needed at a time when it had vast overcapacity; that Moongate had acted according to the agreement and that Mesa in fact by its refusal to take action or provide leadership has indeed exercised its right of first refusal.

A utility by New Mexico Public Utility Act 62-7-1 et seq. has a duty to serve and it cannot escape that duty by delaying tactics; by asking its customers to pay for wells which are needed or by trying to get a person deficient in English to raise

\$140,000 when all that person wanted was simple service to a trailer for his nephew. The only argument in support of Mesa's position is that it does not want to put water lines into an area which has not been platted or divided; however, even by the map which Mesa submitted as evidence in this case, it is clear that a central line between the various lots, a line running North-South could be built now and would be ideal to serve future growth in the area.

Having considered the evidence, listened to the testimony of the witnesses and heard the argument of learned counsel, the Hearing Examiner Recommends that the Commission F I N D S and C O N C L U D E S that:

1. The Statement of the Case, above is adopted by these Findings of Fact and Conclusions of Law.

2. Mesa Development Water Company, Moongate Water Company and Jornada Water Company serve retail customers in Dona Ana County, New Mexico, and as such is under the jurisdiction of this Commission.

3. An area known as Section 14 which is north of Las Cruces, New Mexico on both sides of I-70 is presently not been fully served. The Eastern side has been designated as service territories for Jornada Water Company except for a small section which the parties have agreed Moongate shall serve. However the larger portion of the Section which is directly north of Mesa Development Center service area is still not being served.

4. An agreement entered into by Mesa and Moongate provides that Mesa shall have the first right of refusal to serve that area. However the overwhelming evidence exists that Mesa has pursued a policy of delaying service to that area and has made demands such as an additional well which are unreasonable and not required. Further the costs that Mesa wants for the installation of the line into Section 14 are unreasonable and not required. Mesa has effectively denied service to persons in Section 14.

5. Moongate Water Company is prepared to serve immediately. It has fulfilled its part of the agreement by asking potential customers to contact Mesa first. Moongate will offer the leadership to put together the water system, will charge reasonable costs for the construction of the lines and will provide adequate water service at reasonable rates.

6. It is in the best interests of future consumers and in the public interest to authorize Moongate to serve the area known as Section 14.

7. Moongate shall use minimum size 6 inch transmission pipes of the quality acceptable to the Commission staff for use in Section 14.

The Hearing Examiner recommends that the Commission
O R D E R that:

1. Moongate Water Company be allowed to extend its plant, lines and system to provide Service to the east side of Section 14, North of Highway 70, in Dona Ana County, New Mexico, as requested by Moongate's Application in this case.

2. Moongate shall provide the Commission with details of costs, materials and areas of such a line before the line is constructed.

3. Moongate shall file a revised line extension policy acceptable to Staff prior to extensions into Section 14.

This Order is effective immediately.

I S S U E D at Santa Fe, New Mexico this 20th day of August, 1986.

Respectfully submitted,

Leonard A. Helman

LEONARD A. HELMAN
Hearing Examiner

2

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE EXTENSION)
OF SERVICE FILING BY MOONGATE CASE)
WATER COMPANY, INC.,)
)
Applicant.)
)

Case No. 2047

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing Recommended Decision of the Hearing in the above-styled case, issued August 20, 1986 was mailed by First Class, postage prepaid to the following persons:

Mr. Grover Pettes, President
Mesa Development Center
5616 Mesa Drive
Las Cruces, NM 88001

Mike Romero, Esq.
Picket & Holmes
Post Office Box 1239
Las Cruces, NM 88004

Mr. Louis A. Cariano, Mgr.
Moongate Water Company
Post Office Box 243
Organ, NM 88052

Mr. Dennis J. Rogers
2000 South Valley Drive
Las Cruces, NM 88005

Ms. Debbie Taylor
Post Office Drawer CLC
Las Cruces, NM 88001

Ms. Donna Keith
Suite 1600
Texas Commerce Bank Bldg.
El Paso, TX 79901

DATED this 20th day of August, 1986.

NEW MEXICO PUBLIC SERVICE COMMISSION

Leonard A. Helman

LEONARD A. HELMAN
Hearing Examiner

Customer List

EXHIBIT E



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 7

Ordinance/Resolution# 15-017

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of August 4, 2014
(Adoption Date)

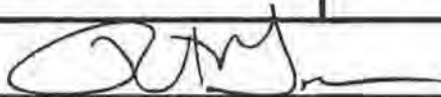
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION RECOMMENDING APPROVAL BY THE CITY COUNCIL OF AN AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS OF THE MESA DEVELOPMENT CENTER WATER COMPANY; PROVIDING FOR THE PHASED UPGRADE OF WATER COMPANY DISTRIBUTION LINES AND EXTENSION OF CITY WATER SERVICE; AND, FURTHER PROVIDING FOR CUSTOMER CONVERSION AND CUSTOMER BILLING.

PURPOSE(S) OF ACTION:

To approve an agreement.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Marcia B. Driggers	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Las Cruces City Council Resolution No. 12-106 authorized City staff to negotiate the purchase of Mesa Development Center, Inc. ("Mesa"), a public water utility regulated by the New Mexico Public Regulation Commission (the "PRC"), based on an appraisal to be prepared by Robert Pender, who is a public utility appraisal specialist. R. E. Pender, Inc. prepared a Summary Appraisal Report dated October 23, 2012, which appraisal enabled staff to resume negotiations to acquire Mesa.

Negotiations to acquire Mesa had been stalled for years in large part due to ongoing litigation with Moongate Water Company ("Moongate"). In 2006, a State District Court Judge ruled that Moongate had an exclusive service area against the City within one-half (1/2) mile of Moongate's infrastructure. This ruling potentially meant that Moongate could claim the exclusive right to provide water utility service within Mesa's service area if the City acquired it because Moongate encircles within one-half (1/2) mile of most, if not all, of Mesa's existing service area. The City Attorney's Office could not recommend that staff proceed to negotiate the acquisition of

(Continue on additional sheets as required)

Mesa if there was a possibility that Moongate would claim an exclusive right to serve within Mesa's former service area after acquisition by the City.

The attorney for Mesa has approved the Agreement. The Utilities Board, in Resolution No. 14-15-LCU005 has further recommended City Council approval of the Agreement in substantially the same form as shown on Exhibit "A".

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Agreement for Purchase and Sale of Water Utility Assets of the Mesa Development Center Water Company; Providing for the Phased Upgrade of Water Company Distribution Lines and Extension of City Water Service; and, Further Providing for Customer Conversion and for Customer Billing (with Exhibits "A" through "E" attached to the Agreement).

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY_____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The proposed expenditure of \$625,000 includes \$425,000 to be paid after approval by the New Mexico Public Regulation Commission and \$200,000 to be paid after approval by the New Mexico Office of the State Engineer as referenced respectively in the Agreement.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
5378-WT NMFA 07	53538550- 854300-83082	\$625,000	\$1,620,914	\$995,914	Expenses related to Mesa

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Agreement.
2. Vote "No"; this will not approve the Agreement.
3. Vote to "Amend"; this could allow Council to modify the Agreement as necessary which modifications would have to be accepted by Mesa.
4. Vote to "Table"; this could postpone approval.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

15-017

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of August 4, 2014
(Adoption Date)

TITLE:

A RESOLUTION RECOMMENDING APPROVAL BY THE CITY COUNCIL OF AN AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS OF THE MESA DEVELOPMENT CENTER WATER COMPANY; PROVIDING FOR THE PHASED UPGRADE OF WATER COMPANY DISTRIBUTION LINES AND EXTENSION OF CITY WATER SERVICE; AND, FURTHER PROVIDING FOR CUSTOMER CONVERSION AND CUSTOMER BILLING.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>[Signature]</i>	541-2128	7/17/14
Department Director	<i>[Signature]</i>	541-2128	7/17/14
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2100 541-2107	7/16/14
Assistant City Manager/COO	<i>[Signature]</i>	541-2271	7/21/14
City Attorney	<i>[Signature]</i>	541-2128	7/17/14
City Clerk	<i>[Signature]</i>	541-2115	7/24/14

Appendix L.

**NMOSE GPCD Calculator Spreadsheet, version 2-05, with
Las Cruces data from 2009 to 2015**



NMOSE GPCD CALCULATOR

Gallons per Capita - v2.05

Release Date: August 2015

This spreadsheet-based GPCD calculator is designed to help quantify and track water uses associated with water distribution systems. The spreadsheet contains several separate worksheets. Sheets can be accessed using the tabs towards the bottom of the screen, or by clicking the buttons on the left below. Descriptions of each sheet are also given below.

It should be noted that all the recorded data should be from actual metered results and should not include any estimates.

Value to be entered by user
 Dropdown box, pick from list
 Value calculated based on input data
 No longer available for input

Look for the following boxes that provide additional information: [Instructions](#) [Info](#)

THE FOLLOWING KEY APPLIES THROUGHOUT:

Please begin by providing the following information, then proceed through each sheet:

NAME OF CITY OR UTILITY:

REPORTING YEARS: Enter the most recent reporting year: Data can be entered back to:

NAME OF CONTACT PERSON: E-MAIL: TELEPHONE: Ext.

SELECT THE REPORTING UNITS FOR VOLUME DATA: For unit converter click here:

Instructions & Utility	This sheet
Census Data	Census data and the portal to get the data from the Census website
Single-Family	Single-Family residential gallons and population
Multi-Family	Multi-Family residential gallons and population
ICI & Other Metered	Other data including Commercial, Industrial and Institutional [1.3] and Other metered [1.4] categories
Reuse	Data related to water reuse projects
Total Diverted	Total Production and Diverted Water
Reported Data	The calculated data graphical review of most common performance indicators
Annual Performance	The calculated data graphical review of annual performance indicators
Monthly Performance	The calculated data graphical review of monthly performance indicators
Definitions	Use this sheet to understand terms used in the audit process

All parties reserve the right to validate the data recorded in this document. This does not bind the OSE or the Utility to the results. It is a tool used for planning purposes.

Questions or comments regarding the software please contact us at: waternm@state.nm.us

Census Information Data Table 2.1

Info

[Click here to access the Census Web site](#)

[Click here for instructions on how to find the data on the Census website](#)

2015	TO	2009
------	----	------

Use the most recent census data

[Return to Instructions](#)

OR

DATA

US Census Table	Description		INPUT
DP-1	Profile of General Population and Housing Characteristics	Census Year	2010
Subject			
Relationship	In group quarters	Total	1,610
Housing Occupancy	Total housing units	Total	42,370
	Occupied housing units		39,433
	Vacant housing units		2,937
Households by Type	Average household size	Total	2.43

Formula: Household Size = Total Population / Total Number of Housing Units

Vacancy Rate %	6.9%
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COMMENTS:

DATA INPUT SHEET Info **6. REUSE** Return to Instructions

Las Cruces

MONTHLY DATA

2015 TO 2009

Instructions

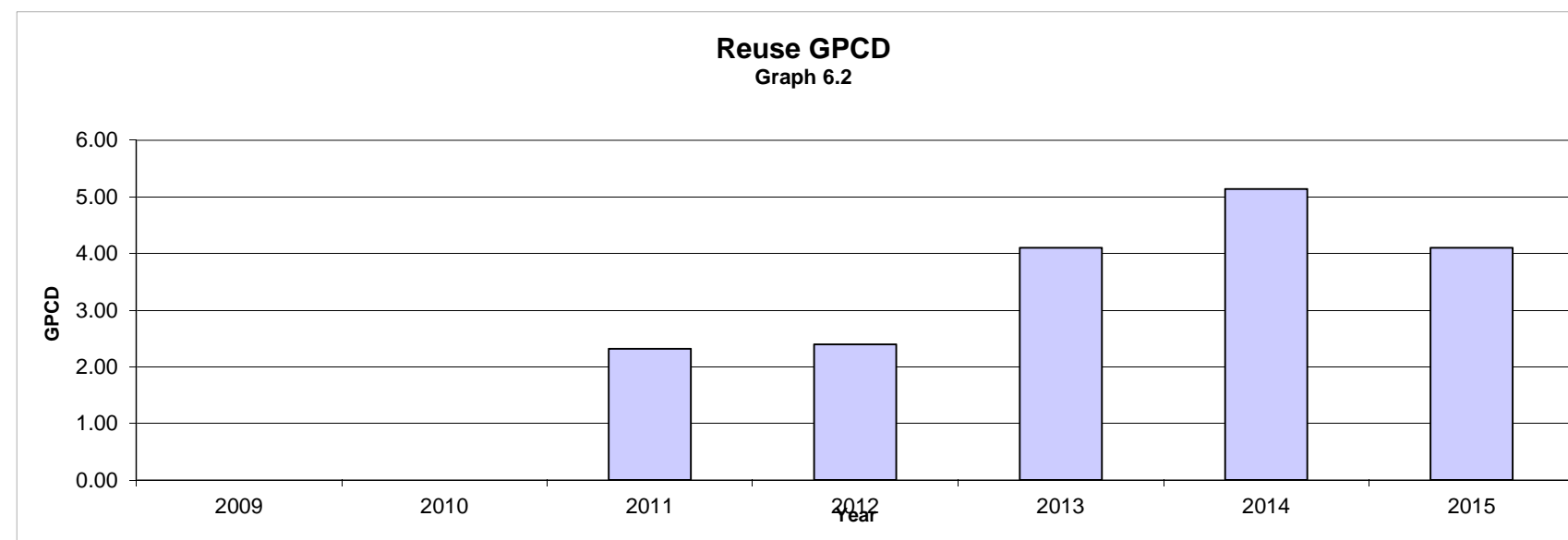
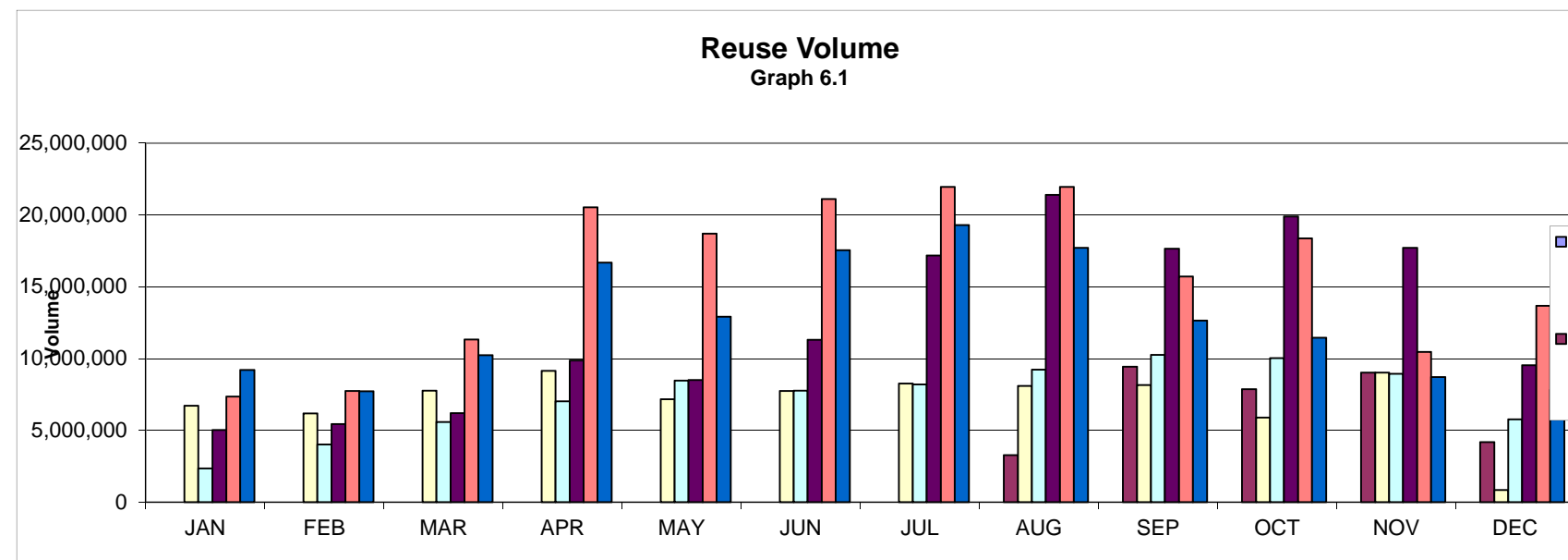
TABLE 6.1
REUSE DIVERSIONS (Monthly) (Gallons (US))

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2015	9,201,000	7,717,000	10,224,000	16,681,000	12,911,000	17,539,000	19,286,000	17,717,000	12,638,000	11,446,000	8,703,000	7,822,000
2014	7,354,000	7,749,000	11,318,000	20,538,000	18,700,000	21,098,000	21,951,000	21,951,000	15,717,000	18,375,000	10,451,000	13,676,000
2013	5,013,000	5,442,000	6,194,000	9,871,000	8,494,000	11,310,000	17,182,000	21,400,000	17,640,000	19,896,000	17,715,000	9,538,000
2012	2,340,000	4,016,000	5,582,000	7,019,000	8,461,000	7,756,000	8,203,000	9,225,000	10,246,000	10,026,000	8,934,000	5,757,000
2011	6,710,000	6,183,000	7,761,000	9,150,000	7,159,000	7,744,000	8,249,000	8,090,000	8,158,000	5,880,000	9,018,000	850,000
2010								3,266,600	9,426,000	7,872,000	9,018,000	4,182,000
2009												

COMMENTS:
Sonoma Ranch Golf Course (2010)

ANNUAL DATA

TABLE 6.2 REUSE ANNUAL DIVERSIONS	TABLE 6.3 REUSE GPCD
	4.10
	5.14
	4.10
	2.40
	2.32
	N/A
	N/A



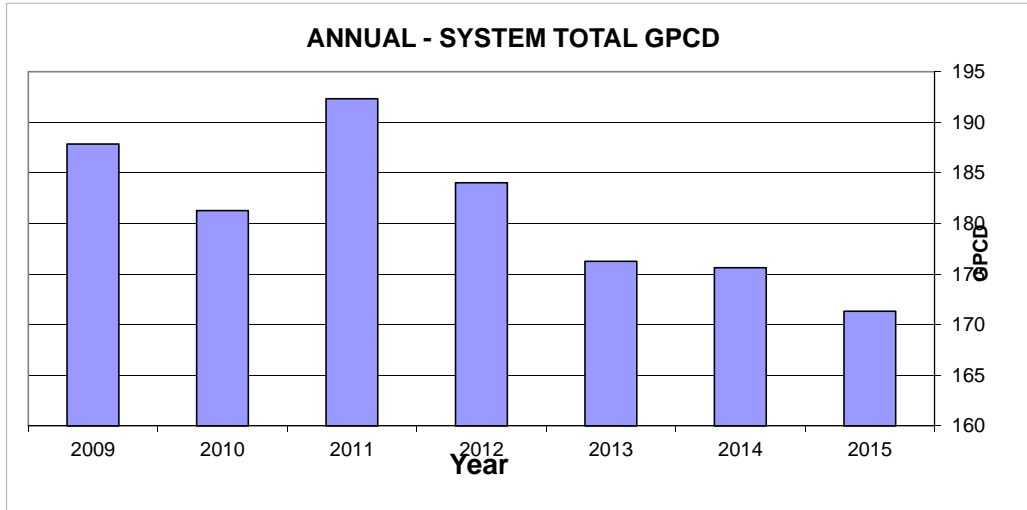
8. SUMMARY GPCD REPORTED DATA

Las Cruces

2015 To: 2009

ANNUAL

Year	SYSTEM GPCD
2015	171.33
2014	175.64
2013	176.27
2012	184.02
2011	192.34
2010	181.28
2009	187.85

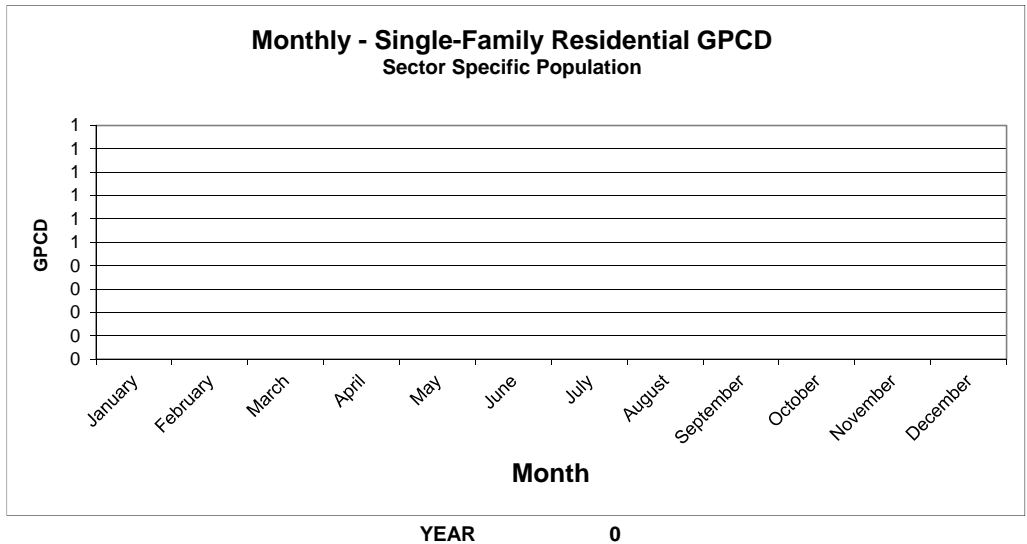


MONTHLY

Month	SFR GPCD
January	#N/A
February	#N/A
March	#N/A
April	#N/A
May	#N/A
June	#N/A
July	#N/A
August	#N/A
September	#N/A
October	#N/A
November	#N/A
December	#N/A

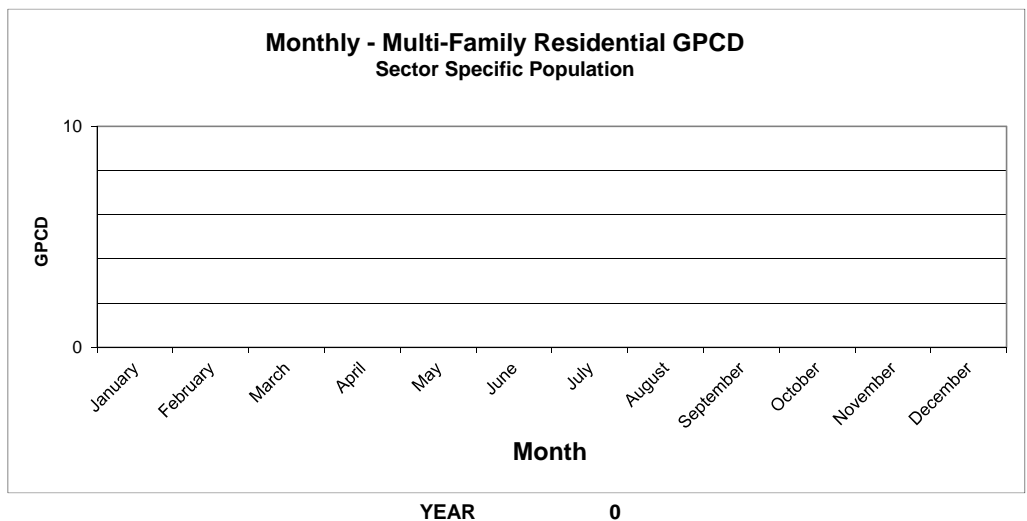
Year 0

Peak/Ave #N/A



Month	MFR GPCD
January	#N/A
February	#N/A
March	#N/A
April	#N/A
May	#N/A
June	#N/A
July	#N/A
August	#N/A
September	#N/A
October	#N/A
November	#N/A
December	#N/A

Peak/Ave #N/A



9. System Total Annual Reporting Performance

Overall Annual GPCD (based on Total Population)

	SFR (System Total)	MFR (System Total)	ICI	Other Metered	Non-Revenue Water	Total Supplied	Non-Revenue Volume Million Gallons (US)
Year							
On Graph?	Yes	Yes	Yes	Yes	Yes		
2015	79.90	16.49	38.39	6.70	29.86	175.43	1,108.25
2014	83.31	14.75	37.38	5.65	34.54	180.78	1,263.72
2013	86.73	15.79	40.84	6.67	26.25	180.37	957.66
2012	88.96	16.38	38.28	9.50	30.91	186.42	1,128.77
2011	92.11	18.78	48.60	3.84	29.00	194.65	1,068.43
2010	87.06	17.39	42.69	6.58	27.55	181.28	1,002.20
2009	91.59	17.98	44.17	9.74	24.37	187.85	660.43

Las Cruces		
2015	to	2009

Annual Analysis of GPCD - Viewer (based on Total Population)

