

SETTLEMENT AGREEMENT

WHEREAS, the parties to this Agreement the ELEPHANT BUTTE IRRIGATION DISTRICT ("EBID"), THE CITY OF EL PASO ("El Paso"), and THE REGENTS OF NEW MEXICO STATE UNIVERSITY ("NMSU"), are the parties to the pending appeal by El Paso in the New Mexico Court of Appeals, and are major suppliers and users of water in the Lower Rio Grande and Hueco Basins; and

WHEREAS, the parties share common interests in the development, use and conservation of the water resources of those basins; and

WHEREAS, the parties desire to work together with respect to those common interests.

NOW, THEREFORE, the parties agree as follows:

1. El Paso agrees to withdraw its litigation, without prejudice, to wit:

a) its pending well applications in the Hueco Basin and Lower Rio Grande Basin;

b) its pending case in the New Mexico Court of Appeals;

c) all protests to applications for appropriation and transfer in New Mexico; and

d) its counterclaims and cross-claims in the adjudication.

2. El Paso understands and agrees that its goals for meeting water demand should be first, conservation, second, surface water, and third, ground water.

3. EBID agrees to withdraw its claims against El Paso in the stream adjudication, Cause No. CV-86-848, and its attack on El Paso's Canutillo Well Field without prejudice. EBID agrees that El Paso and NMSU will remain parties to the adjudication. It further agrees not to assess any new fees on additional supplies of surface water for the region from upstream sources being transported through EBID's present system for delivery to Texas for municipal and/or agricultural purposes, assuming that said system has the capability to carry said water as well as the water allocated to EBID and El Paso County Water Improvement District No. 1 and unless water is transported during the present non-irrigation season, in which event EBID may assess a fee based on its actual operation and maintenance costs attributable to the use of that water.

4. In the stream adjudication which EBID has filed and to which El Paso is a party, EBID alleges that the surface and ground water in the Rio Grande Stream System in New Mexico hydrologically constitute intermingled sources of a single supply, the rights to the use of which are interdependent. El Paso agrees to study the Canutillo Well Field to determine whether, and to what extent, pumpage from that well field is affecting Rio Grande Project water, and if so, to identify appropriate measures, which measures will take into consideration the project as a whole, measures undertaken by others, and what El Paso has delivered back to the project. El Paso will continue to use ground water, including drilling new wells, but it will do so consistent with the goals in Paragraph 2.

5. The parties agree to work together to study, identify and address common concerns and objectives with respect to water resources in the region, including the possibility of securing additional supplies of surface water for the region from upstream sources.

6. The parties agree to study and to support, where warranted by study, construction of conveyance facilities to carry project water by pipeline, canal, or other means from Caballo or downstream points, to Texas. This support will include the New Mexico parties cooperating with El Paso to assist in obtaining federal financing for such a project through grants, loans, appropriations and/or federal matching funds.

7. The parties agree to work together in a cooperative effort to maximize the utilization of waters provided to New Mexico and Texas through the Rio Grande Project in order to provide reliable and cost-effective water supplies to meet current and projected long-term agricultural and municipal needs of the region. Subject to the availability of funding, this cooperative effort will include the following:

a) an ongoing study of ways to harmonize and integrate the elements of each of the parties' water plans;

b) study of and support for, where warranted by study, and where legally and contractually possible, changes in the facilities or operation of the Rio Grande Project in order to maximize conservation and use of project waters to the benefit of all the parties, including carry-over of unused stored project water that EBID and El Paso County

Water Improvement District No. 1 are entitled to from year to year;

c) implementation of changes in operation of the Rio Grande Project to allow year-round delivery of project water;

d) exchange of technical data available to the parties where permitted by law.

8. The New Mexico parties and El Paso agree that conserved water should be treated as the property of those responsible for the conservation, if consistent with applicable water law.

9. The parties agree to establish and participate as members in a joint commission which will coordinate the work set forth in Paragraphs 4, 5, 6, 7, 8 and 11 of this Agreement, seek funds to support the studies and other work provided in this Agreement, and generally seek to promote coordination and cooperation among the parties with respect to their common water resource interests. The joint commission will be established within ninety (90) days of the date of this Agreement, and will hold its first meeting within thirty (30) days of its formation. One-half of the members of the joint commission will be appointed by El Paso, and one-half of the members will be appointed by the New Mexico parties.

10. Subject to availability of funding, NMSU agrees to help staff and coordinate the work of the commission as set forth in Paragraphs 4, 5, 6, 7, 8 and 11 of this Agreement.

11. The parties agree to explore the feasibility of changing or clarifying those legal and institutional requirements and

constraints which impede the achievement of the objectives of this Agreement.

12. All parties are responsible for their own attorneys' fees and costs.

13. The provisions of this Agreement on the development and use of water resources state the parties' goals and objectives, but are not intended to restrict any party's lawful use of water resources or its water resource planning.

14. It is understood by the parties that the El Paso County Water Improvement District No. 1 is EBID's counterpart in Texas and that some of the actions contemplated in this Agreement will require El Paso County Water Improvement District No. 1's cooperation and participation.

15. This Agreement may be signed in multiple original counterparts which, when taken collectively, shall constitute one and the same instrument.

DATED this 6th day of March, 1991, at 10:30 o'clock A.M./P.M.

ELEPHANT BUTTE IRRIGATION
DISTRICT

By: John Salopek
John Salopek, President

THE REGENTS OF NEW MEXICO STATE
UNIVERSITY

By: James E. Halligan
James E. Halligan, President
of New Mexico State University

THE CITY OF EL PASO by and
through its PUBLIC SERVICE
BOARD

By: Joe Hanson
Joe Hanson, Chairman

(4589, Rev. 1)