

Exhibit "E"

Middle Rio Grande Conservancy District
Post Office Box 581, 1931 Second Street S.W.
Albuquerque, New Mexico 87103-0581

REVISED RULE NO. 23 WATER BANK RULES

23-1.00 PREAMBLE

The Board of Directors of the Middle Rio Grande Conservancy District, having previously resolved to form a Water Bank to promote the beneficial use of water for agriculture, "protect water rights of the landowners of the district" (NMSA 1978, § 73-14-47(B)) and the water supplies of the Middle Rio Grande Conservancy District, ensure adequate carriage water to irrigators and continue to support and promote aquifer recharge within the Boundaries of the Conservancy District, adopts the following Revised Rules to govern the operation of the Water Bank. The authority to enact these rules is conferred under the Conservancy District's statutory authority under NMSA 1978, §§ 73-14-1 through 73-18-43. They will be in effect twenty (20) days after they are adopted by the Conservancy District's Board of Directors. These Revised Rules will be adopted by the Conservancy District's Board of Directors pursuant to NMSA 1978, § 73-14-51 (1951), only after publication in two issues, one week apart, of a legal newspaper of general circulation in each county embraced within the Boundaries of the Conservancy District and after the posting of these revised Rules in the courthouse of each county within the Conservancy District. Public comment will be received on these rules after publication and before adoption. Once adopted, these Revised Rules will revise and repeal the pre-existing Rule No. 23 previously adopted by the Conservancy District.

23-2.00 STATEMENT OF PURPOSE

A) Water Bank

- 1) It is the purpose of the Water Bank to support beneficial use and distribution of water for agriculture and related purposes within the Boundaries of the Conservancy District, to promote the welfare of the Conservancy District and of all the inhabitants and constituents thereof, pursuant to NMSA 1978, §§ 73-14-1 through 73-18-43. This welfare comprises the encouragement of agriculture and is conducive to the public welfare and the conservation of water within the state, including groundwater recharge, maintaining delivery of water to rights holders, and promoting food security, while secondarily providing incidental recreational uses and environmental benefits.

23-3.00 DEFINITIONS

For the purposes of the Water Bank Rules, the following definitions shall apply.

- A) BOARD OF DIRECTORS. The members of the Conservancy District Board elected under the provisions of NMSA 1978, §73-14-21 (1975).
- B) BOUNDARIES OF THE CONSERVANCY DISTRICT. The lands comprising the outer extent of the Conservancy District described in the order of the

court establishing the Middle Rio Grande Conservancy District and any other lands lawfully designated as the boundaries.

- C) CONSERVANCY DISTRICT. The Middle Rio Grande Conservancy District, meaning the political subdivision created by the New Mexico Legislature with authority to manage water within its boundaries in accordance with the policies of its Board of Directors, acting through its designated agents and employees.
- D) CONSERVANCY WATER RIGHTS. All water rights owned by the Conservancy District acquired as permitted by law, including the Conservancy Act, NMSA 1978, §§ 73-14-1 through 73-18-43 and water rights acquired pursuant to contract, but not including water rights privately owned within the District.
- E) PERSON. A person, firm, partnership, cooperative, association, corporation, political subdivision, or governmental agency.
- F) PRE-1907 WATER RIGHTS. Water rights that were perfected by beneficial use prior to 1907 and that are exercised within the Boundaries of the Conservancy District.
- G) SAN JUAN CHAMA CONTRACT WATER. Water rights held by the Conservancy District pursuant to a contract between the Conservancy District and the United States Department of the Interior, Bureau of Reclamation.
- H) STATE ENGINEER. The New Mexico Office of the State Engineer.
- I) WATER BANK. The depository in which water rights are deposited and made available for lease to Persons wishing to apply Conservancy Water Rights, Pre-1907 Water Rights and/or San Juan Chama Contract Water to beneficial use within the Boundaries of the Conservancy District and for delivery within Conservancy District infrastructure.
- J) WATER BANK RECORD. The record containing all Water Bank deposits, lease withdrawals, and other Water Bank transactions.
- K) DEPOSITED WATER RIGHTS. The amount of Conservancy Water Rights, Pre-1907 Water Rights and/or San Juan Chama Contract Water in the Water Bank that is available for lease at any given time.
- L) WATER DEPOSIT. The transaction by which a person makes a water right available for lease at a given time by entering into an agreement with the Water Bank.
- M) WATER LEASE WITHDRAWAL. The transaction by which a water right becomes the subject of a lease agreement between a person and the Water Bank and is made unavailable for lease at a given time.

23-4.00 WATER BANK OPERATIONS

- A) It is the intent of the Water Bank to not increase net depletions within the District boundaries.

B) Determination of Availability of Conservancy Water Rights under NMSA 1978, § 73-14-47(F) (1927).

Upon receipt of a Water Bank water lease application on a form approved by the Board of Directors, the Conservancy District will make a determination of the availability of Conservancy Water Rights and/or Pre-1907 Water Rights for lease.

To determine potential water availability, the Conservancy District will compare beneficial use of Conservancy Water Rights under historic conditions to current beneficial use on specific acreage within the Boundaries of the Conservancy District, as well as other factors that could make water available for use by the Water Bank. If the Conservancy District finds a specific tract or tracts on which Conservancy Water Rights were placed to beneficial use under historic conditions, but that are no longer being placed to beneficial use, the water is available for leasing. Such tract is called the "Move From Tract". The tract to which the water is to be applied under the water lease is called the "Move To Tract". In evaluating the "Move From Tract" for the purpose of determining the availability of Pre-1907 Water Rights, the Conservancy District will certify that the State Engineer's records as of the date of the lease indicate that no water rights transfer of Pre-1907 Water Rights has previously removed water rights from that land. A water lease can only be issued if there are sufficient Conservancy Water Rights and/or Pre-1907 Water Rights available for leasing in sufficient quantities to meet the amounts requested in the Water Bank water lease application.

Upon approval of a Water Bank water lease application and execution of a Water Bank lease on a form approved by the Board of Directors, the Conservancy District will cause a record to be made within the Water Bank Record reflecting that Conservancy Water Rights and/or Pre-1907 Water Rights placed to beneficial use within a specific acreage within the Boundaries of the Conservancy District are currently under lease and are unavailable for further leasing. Written Proof that the Move From Tract is physically incapable of receiving water from District works shall be placed into the Water Bank lease file. Upon termination of the lease, said water rights are available for further leasing. The Conservancy District may also accept water deposits created by operation of law through conservation measures by individual irrigators as well as available San Juan Chama Contract Water Rights into the Water Bank for lease. In no case shall the existence of the Water Bank foreclose any current other user of water within the Conservancy District from exercising a right to continue using water as provided by law. Nor shall any actions of the Water Bank be considered an adjudication of the water rights of any Person or in any way affect vested rights within the Conservancy District.

C) Recording Transactions in the Water Bank Record.

The Conservancy District is responsible for assuring that all Water Bank transactions are recorded in the Water Bank Record. Transactions include water deposits and water lease withdrawals.

D) Lease of Pre-1907 Water Rights in the Water Bank.

Any Person owning a Water Right appurtenant to lands within the Boundaries of the Conservancy District wherein the State Engineer has determined the tract or any portion of that tract has a pre-1907 priority date, or wherein a court having jurisdiction has made a comparable determination, such Person may make a water deposit of this water right into the Water Bank for the purpose of obtaining revenue and so that others may place the Pre-1907 Water Right to beneficial use for a specific term. Each water deposit shall be recorded in the Water Bank Record with a description of the number of acre-feet per year and the appurtenant land.

Any person wishing to lease a Pre-1907 Water Right from the Water Bank shall enter into a Water Bank lease agreement on a form approved by the Board of Directors. The lease of Pre-1907 Water Rights shall not be subject to curtailment in times of shortage under this rule.

E) Lease Applications.

Water Bank leases may be issued only for agricultural purposes and uses supporting such purposes. Any person wishing to lease Deposited Water from the Water Bank must submit a Water Bank water lease application to the Conservancy District. The lease application shall be submitted on a standardized form provided by the Conservancy District, which may be amended from time to time at the discretion of the Board of Directors. The lease application form shall require at least the following: the amount of water requested, the place water will be diverted using Conservancy District Infrastructure, the place water will be used, and a statement that the intended purpose of use is for agriculture and/or related purposes as determined by the Conservancy District.

F) Lease Agreement Required, Term of Lease, Termination of Lease.

If the Conservancy District accepts a Water Bank water lease application, the lessee shall be required to enter into a written water lease agreement with the Conservancy District. Lease periods shall not exceed one year. Upon expiration of a lease period, the Conservancy District may at its discretion renew the lease, provided that it has determined that sufficient water is available for lease.

The Conservancy District may at its discretion terminate water leases if the lessee is out of compliance with New Mexico Law or any Rules and Regulations of the Conservancy District. Prior to termination, the Conservancy District shall provide notice of the reason for termination. Notice shall be sent by first class mail to the address specified on the Water Bank water lease application. If the lessee does not come into compliance with New Mexico law or Conservancy District Rules and Regulations or otherwise remedy the reason provided in the notice of intent to terminate the lease within thirty days of mailing the notice, the Conservancy District shall terminate the lease.

G) Priority of Lease and Curtailment.

All Water Bank water leases for Conservancy Water Rights and San Juan Chama Contract Water shall have the same priority date. Each lease agreement shall specify that all leased Conservancy Water Rights or leased

San Juan Chama Contract Water shall have a priority date junior to all other uses of Conservancy Water Rights and to all other water delivered via the MRGCD infrastructure, including privately held water rights. EACH LEASE AGREEMENT SHALL SPECIFY THAT WATER USE UNDER THE LEASE MAY BE CURTAILED IN TIMES OF SHORTAGE, PURSUANT TO THE CONSERVANCY DISTRICT'S AUTHORITY TO DISTRIBUTE AND ALLOCATE AVAILABLE WATER UNDER NMSA 1978, §§ 73-14-49 TO - 53 (1951). THE BOARD OF DIRECTORS SHALL HAVE THE SOLE DISCRETION TO DETERMINE WHETHER THERE IS A WATER SUPPLY SHORTAGE SUFFICIENT TO REQUIRE A CURTAILMENT OF WATER BANK WATER LEASES. The Board shall meet on a monthly basis or more frequently if necessary during the irrigation season to determine whether curtailment of Water Bank leases is required as a result of shortage in water supply. If a decision to curtail is made, notice shall be provided by each ditch rider to water bank leaseholders of that curtailment not less than 5 days prior to the date the curtailment shall begin. A curtailment decision may be rescinded by the Board upon a showing that the water supply conditions have changed. Once a curtailment order has been entered, the ditch rider having jurisdiction shall direct that the head gates of the Water Bank users shall be closed. Such curtailment shall apply equally to all leases. If a lease is curtailed, no refund or pro-rata reduction of lease amounts or fees shall be provided.

H) Conservancy Water Rights, Lease Periods, Prices, Administrative Fees.

Applications for annual leases (i.e. the duration of the irrigation season) shall be filed in the first 30 days of the irrigation season. Decisions on all applications shall be made no later than 45 days from the start of the irrigation season. Decisions as to the quantity and duration of leases shall be based upon the Board's determination of available water supply. Applications may also be filed for late season irrigation from August 1 through the end of the irrigation season. The Conservancy District may lease available Conservancy Water Rights and/or San Juan Chama Contract Water at a rate determined by the Board of Directors. In setting lease rates, the Board of Directors shall consider the market value of water at that time, the capacity of agricultural water users to pay, and other related factors. Once determined, the rate shall be the same during that annual period for all lessees. The Board of Directors may charge the borrower a reasonable annual administrative fee to cover the administrative costs involved in administering the lease in addition to the lease fee. If the Conservancy District renews an existing lease, the Conservancy District shall have the authority to change any lease terms, including adjusting the lease rate. The price for water bank leases shall be determined on an annual basis by the Board at a special meeting called for that purpose no later than January 15 of each calendar year.

I) Pre-1907 Water Rights, Lease Rates, Administrative Fees.

Leases of Pre-1907 Water Rights shall be at the rate determined by the owner of the Pre-1907 Water Right and the lessee. The Conservancy District shall act as the collector of all lease fees, and funds received from the lease of Pre-1907 Water Rights shall be delivered to the owner by the Conservancy District. The Board of Directors may establish an annual administrative fee to

be paid by the owner to cover the reasonable costs of placing the Pre-1907 Water Right in the Water Bank and administrating the lease.

J) Lease Preferences.

If applications for Water Bank leases exceed the quantity of water available, the priority for issuance of leases shall go first to those having a lease in the previous year for agricultural purposes and then the balance of entitlements shall be determined by lottery. In the case that there is insufficient water for delivery to holders of previous leases, those persons receiving leased water shall be determined by lottery.

K) Bank Fund.

All proceeds realized from Water Bank leases of Conservancy Water Rights and/or San Juan Chama Contract Water shall be deposited in a fund created by the Board of Directors. The Board of Directors shall use the proceeds in the bank fund in such a manner that is consistent with the statutory purposes of the Conservancy District.

L) Financial Audit.

The Water Bank will be subject to an annual financial audit conducted by a qualified outside entity.