

# Exhibit "K"

## MEMORANDUM OF AGREEMENT BY AND BETWEEN THE NEW MEXICO OFFICE OF THE STATE ENGINEER AND THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT

This Memorandum of Agreement ("Agreement") is made and effective the 29<sup>th</sup> day of December, 2009 by and between the New Mexico Office of the State Engineer ("State Engineer"), an agency of the State of New Mexico, and the Middle Rio Grande Conservancy District, a political subdivision of the State of New Mexico ("MRGCD").

Whereas, the State Engineer and the MRGCD desire to cooperate in providing relevant information to each other to assist in the performance of their duties;

Whereas, the MRGCD has recently provided the State Engineer with 2008 ditch rider logs and current MRGCD parcel data;

Whereas, the MRGCD has requested the State Engineer to provide it with a computerized database containing information on the status of water rights for tracts of land within the MRGCD from which pre-1907 surface water rights have been severed from the irrigated acreage to which they were appurtenant and transferred pursuant to State Engineer permits;

Whereas, the MRGCD wishes to utilize information compiled in the State Engineer computerized database for public uses in connection with the performance of its duties pursuant to NMSA 1978, Sections 73-14-1 through 73-18-43 and therefore no fee is required to be charged by the State Engineer for permitting access or use of the database pursuant to NMSA 1978, § 14-3-15.1(F).

Whereas, the District I Office of the State Engineer Water Resources Allocation Program ("WRAP") has compiled and inserted information for those tracts of land within the MRGCD from which surface water rights have been transferred pursuant to State Engineer permits in a computerized database known as the Transfer Feature Class of the MRG geodatabase ("the Transfer Feature Class"). The Transfer Feature Class has been designed to store water right and spatial information contained in permits for those surface water rights that have been severed and transferred, cancelled permits, denied applications, withdrawn applications, and dedications within the boundaries of the MRGCD. The information (fields) in the Transfer Feature Class includes Basin Name, Declaration Number and Suffix, File Date, Proposed Acreage, Permit Number, Permit Approval Date, Permitted Acreage, Lease Back Date, MRGCD Map Number, and MRGCD Tract Number. The State Engineer database does not contain the names, addresses or telephone numbers of any person, so the provisions of NMSA 1978, § 14-3-15.1(C)(3) do not apply to the database.

Whereas, the District I WRAP Office has developed the Transfer Feature Class in the State Engineer's proprietary capacity for the purpose of facilitating the administration of water and water rights;

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**Whereas,** the State Engineer database was developed with significant expenditure of public funds;

**Whereas,** all components of the Transfer Feature Class, including the data structure, data dictionary, user interface, and associated programming code, are the property of the State Engineer;

**Whereas,** the MRGCD desires to develop a new database containing information on water right transfers to support the work of the MRGCD in the performance of its duties;

**Whereas,** access to information compiled in the Transfer Feature Class would assist the MRGCD in addressing compliance issues within the District;

**Whereas,** the State Engineer is required to protect the proprietary nature of the Transfer Feature Class and its confidentiality to the extent allowed by law;

**Whereas,** the State Engineer desires to promote a more cooperative, collaborative and effective working relationship with the MRGCD;

**Whereas,** the MRGCD has demonstrated it also seeks the same objective as the State Engineer by providing its 2008 ditch rider logs and current parcel data; and,

**Whereas,** the State Engineer anticipates these initial exchanges of data will result in a regular course of business of reciprocal transfers of data between the State Engineer and the MRGCD.

**Now therefore,** in consideration of the following mutual promises, it is agreed as follows:

**1. State Engineer's Obligations.** The State Engineer will provide to the MRGCD the Transfer Feature Class. The Transfer Feature Class is in the process of being quality assessed and quality checked for accuracy by Office of the State Engineer staff. To date 86 out of the 176 MRGCD maps have been checked. This quality assessment and checking work is ongoing and the OSE will provide the Transfer Feature Class to the MRGCD as the work is completed, beginning with an initial provision of data associated with MRGCD map numbers 1 through 85. After the MRGCD has been provided the complete Transfer Feature Class, the State Engineer shall provide quarterly updates to this information to the MRGCD.

**2. MRGCD's Obligations.**

a. The MRGCD shall perform all programming services necessary for its use of the Transfer Feature Class at its sole expense.

b. Pursuant to the requirements of NMSA 1978, § 14-3-15.1(C)(1), the MRGCD shall not make any unauthorized copies of the Transfer Feature Class.

c. Pursuant to the requirements of NMSA 1978, § 14-3-15.1(C)(2), the MRGCD shall not use the Transfer Feature Class for any political or commercial purpose unless the purpose and use is approved in writing by the State Engineer

d. Pursuant to the requirements of NMSA 1978, § 14-3-15.1(C)(4), the MRGCD shall not allow access to the Transfer Feature Class by any other person unless the use is approved in writing by the State Engineer.

### 3. Mutual Obligations.

a. Due to the nature of the data the State Engineer shall provide to the MRGCD pursuant to this agreement, it is likely that inaccuracies in the data set will exist. The State Engineer and the MRGCD agree that the designated contact persons for technical issues, identified below, shall create a method to correct any inaccuracies in the data when identified by either the State Engineer or the MRGCD.

b. Contact Persons: The State Engineer and the MRGCD shall provide each other with the names and addresses of contact persons for purposes of implementation of this agreement and shall thereafter immediately inform the other party with any change in the name or address of the contact persons. The contact persons as of the date of this agreement are:

(i) State Engineer: Elizabeth Cervantes, WRAP District I Water Resource Supervisor, 121 Tijeras, N.E. - Suite 2000, Albuquerque, NM 87102-3465 (for technical issues) and Gary Stansifer, State Engineer Middle Rio Grande Water Master, 121 Tijeras, N.E. - Suite 2000, Albuquerque, NM 87102-3465 (for compliance issues);

(ii) MRGCD: Douglas Strech, 1931 Second St. S.W., Albuquerque, NM 87102 (for technical issues).

c. The parties agree that they shall provide copies of public records to each other without charge.

4. Confidentiality. Pursuant to this agreement, the State Engineer will disclose proprietary Transfer Feature Class containing data used in the performance of its duties to the MRGCD. The intent of the parties is that the State Engineer's proprietary interest in the coding and structure of the Transfer Feature Class application, as opposed to public information compiled in the Transfer Feature Class, shall be held confidential by the MRGCD.

a. MRGCD agrees that its officers, directors, employees, approved contractors or approved agents who are provided access to the Transfer Feature Class shall: (i) hold proprietary information pertaining to the coding and structure of the Transfer Feature Class in strict confidence; (ii) not disclose such proprietary information to any other

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person, firm or corporation without the State Engineer's prior written consent, except that such proprietary information may be disclosed to MRGCD's officers, directors, employees, or agents with a specific need to know; (iii) not use or reproduce such proprietary information other than in connection with the development and operation of the database to be developed by the MRGCD pursuant to this agreement; and (iv) otherwise use at least the same degree of care to avoid publication or dissemination of such proprietary information as it employs (or would employ) with respect to its own information which it does not (or would not) desire to have published or disseminated, but in no event not less than reasonable care. The MRGCD will not disclose, publish or otherwise reveal any such proprietary information received pursuant to this agreement to any other persons or entities whatsoever except with the specific prior written authorization of the State Engineer.

b. Information pertaining to the coding and structure of the Transfer Feature Class to be held confidential by MRGCD shall not include information that:

- (i) is in the public domain at the time of disclosure;
- (ii) enters the public domain subsequent to the time of disclosure to the other party without any fault or disclosure on the part of the other party;
- (iii) was known to a party prior to the disclosure, free of any obligation of confidence on the part of the person or entity disclosing the information;
- (iv) becomes available to a party on a non-confidential basis from a source other than the other party, provided that such source was not bound by any agreement with a party to keep such information confidential, or is otherwise prohibited from transmitting the information to the other party by a contractual, legal or fiduciary obligation; or
- (v) is independently developed by the MRGCD without reference to the confidential information.

c. The MRGCD shall have the right to provide information compiled in the Transfer Feature Class to the public in the form of printed reports consistent with the provisions of this agreement or as allowed by the Inspection of Public Records Act at NMSA 1978, § 14-2-9 (A) (1993) or the Public Records Act at NMSA 1978, § 14-3-15.1 (A) (1995).

**5. Termination.** This Agreement may be terminated at any time by either party on thirty (30) days written notice to the other party. In the event that the Agreement is terminated for any reason, all obligations as to confidentiality of the State Engineer database under applicable law shall survive the termination of this Agreement.

**6. Contracting.** The MRGCD may wish to contract portions of the programming services it requires to implement and use the Transfer Feature Class. The State Engineer hereby allows such MRGCD programming contractors access to the Transfer Feature Class, pursuant to NMSA 1978, § 14-3-15.1 (C)(4), on the condition that (a) MRGCD shall provide a list of all such contractors to the State Engineer at the time they are provided with access to the Transfer Feature Class; and, (b) that contractors who provides such services shall agree to be bound by the terms and obligations of this Agreement.

7. **No License.** Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in the Transfer Feature Class. The MRGCD agrees not to use the Transfer Feature Class or its data as a basis upon which to develop or have a third party develop a competing or similar product except as otherwise agreed herein.

8. **Entire Agreement; Amendments.** This Agreement states the entire agreement between the parties. Any addition or modification to this Agreement must be made in writing and signed by the parties.

9. **No Adequate Remedy; Applicable Law.** If there is a breach or threatened breach of any provision of this Agreement, it is agreed and understood that the State Engineer shall have no adequate remedy in money or other damages and accordingly shall be entitled to injunctive relief or specific performance. Such right of the State Engineer shall be in addition to the remedies otherwise available at law and in equity, including monetary damages. This Agreement is made under and shall be construed according to the laws of the State of New Mexico. In the event that this Agreement is breached, any and all disputes shall be settled in the District Court for the First Judicial District in Santa Fe County, New Mexico.

10. **Severability.** If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

#### **MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

  
Signature

Janet Sawratt  
Name

Chair, MRGCD Board of Directors  
Title

Date: 12-12-09

**OFFICE OF THE STATE ENGINEER**

Signature

John R. D'Antonio Jr., P.E.

New Mexico State Engineer

Date:

12/29/09