

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this 25th day of March 2003 by and between the state of New Mexico State Engineer, the New Mexico Interstate Stream Commission and the Fort Sumner Irrigation District. These Parties are sometimes individually referred to as “**Party**” or collectively as “**Parties**”.

RECITALS

A. The New Mexico Interstate Stream Commission (“**ISC**”) is created pursuant to NMSA 1978 Article 72-14, with the authority to, *inter alia*, negotiate compacts with other states, investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the state of New Mexico. Specifically, pursuant to NMSA 1978 § 72-1-2.2 (1991)¹, the ISC has undertaken a program to purchase, and retire and place in a state water conservation program administered by it, adequate water rights over a period of years to increase the flow of water in the Pecos River and diminish the impact of man-made depletions of the stream flow and therefore meet the state’s future obligations under the Pecos River Compact, § 72-15-19 *et. seq.* (1949) (the “**Pecos River Compact**”), and the Decree of the United States Supreme Court in *Texas v. New Mexico*, 485 U.S. 388 (1988) (the “**Pecos River Decree**”). Pursuant to § 72-1-2.4 (2002), the ISC shall determine the need for projects to be funded with appropriations for compliance with the Pecos River Compact and may expend funds for the purchase of land with appurtenant water rights or rights to the delivery of water and take other appropriate actions that would effectively aid New Mexico in compliance with the Pecos River Decree.

B. The New Mexico State Engineer (“**State Engineer**”) is an official of the state of New Mexico, exercising authorities pursuant to, *inter alia*, NMSA 1978 Chapter 72, including the general supervision of the waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required. The State, through the State Engineer, is the plaintiff in the adjudication pending in the District Court in and for the Fifth Judicial District (the “**Adjudication Court**”) in *State of New Mexico ex. rel. State Engineer v. L.T. Lewis*, Nos. 20294 and 22600 Consolidated (the “**Adjudication**”).

C. The Fort Sumner Irrigation District (“**FSID**”) is an irrigation district organized under the laws of the State of New Mexico, NMSA 1978 Article 73-10.

D. As a condition precedent to the expenditure of funds by the ISC appropriated pursuant to § 72-1-2.4, the ISC shall enter into contracts with the Board of FSID that specifies the actions the parties agree will be taken or avoided to ensure that the expenditures by the ISC authorized under § 72-1-2.4 will be effective toward permanent compliance with New Mexico’s obligations under the Pecos River Compact and the Pecos River Decree. § 72-1-2.4(C). This Agreement is intended by the Parties to satisfy said condition precedent.

¹ All further cites to specific New Mexico statutes are to NMSA 1978.

TERMS OF AGREEMENT

1. Pursuant to § 72-1-2.2, the Parties agree to cooperate in facilitating the ISC's program to purchase, and retire and place in a state water conservation program administered by it, water rights within the FSID boundaries.
2. If the ISC purchases land within FSID, the ISC will be subject to FSID's assessment and toll fees as well as ditch and land maintenance obligations.
3. At the time the ISC identifies parcels of land within FSID that it wishes to purchase, the ISC will meet with the District Board to resolve questions of where and how the ISC will take delivery of the water and the quantity of water associated with the land(s) purchased by ISC to assure that any such purchase does not harm the District or its members. All such agreements will become supplemental agreements to this Agreement.
4. FSID and ISC agree that this Agreement shall constitute compliance with the conditions specified in NMSA 1978, § 72-1-2.4.
5. This Agreement shall terminate on December 31, 2004, unless extended by the parties.

 /S/
New Mexico State Engineer

 /S/
Interstate Stream Commission Engineer

Approved as to legal form:

 /S/
SEO-ISC Attorney

 /S/
President of Board, FSID