

**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 adopted a Water Distribution Policy on June 25, 2012 and 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 repeal and replace the preexisting 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, perfected Pre-1907 Water Rights and/or San Juan Chama Contract Water in the Water Bank that is available for lease at any given time. Water rights are perfected by approval of the New Mexico State Engineer or an adjudication court.
- 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 during the term of the current lease. "Move From Tracts" shall not receive water from works of the Conservancy District. After termination of the lease, the Conservancy District may enter into a new lease for the use of said water rights on a different "Move To Tract".

The Conservancy District may also accept water from 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 may be up to a maximum of five years to be renewed annually. 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, at its discretion, may 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). Water use under all Water Bank water leases, without exception, shall be automatically curtailed when natural flows in the river fall below the amount necessary to satisfy all irrigators and supplemental water reservoirs falls below a specified amount and when supplemental water designated for use in a particular year is insufficient, as determined by Conservancy District staff in accordance with the attached appendix of stream flow and storage volume. If these conditions occur, notice shall be provided by each Ditch Rider to water bank leaseholders that curtailment conditions are in effect. Once a curtailment order has been entered, the Ditch Rider having jurisdiction shall cease providing irrigation water to the Water Bank users until such time as the curtailment order is rescinded. Such curtailment shall apply equally to all leases, with the exception of local or transient conditions as noted in the appendix, which may allow deliveries to leases in certain areas if MRGCD staff determines that sufficient water is available. The Board of Directors may from time to time, after considering recommendations from Conservancy District staff, amend the attached appendix as necessary. Changes to the appendix shall be made to the greatest degree practicable at the same time as rates for the Water Bank are set.

If a lease is curtailed, no refund or pro-rata reduction of lease amounts or fees shall be provided.

Any Water Bank lessee who illegally irrigates after a curtailment order has been entered shall be subject to the following penalties:

- (1) The first violation of a curtailment order will require the Water Bank lessee to pay double the normal annual administrative fee and applicable lease fee for the first year of any subsequent Water Bank lease.
- (2) A subsequent violation of a curtailment order will result in the termination of the Water Bank lease. Future Water Bank leases applied for by the violator will require approval by the Board of Directors.

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

Applications for leases may be filed at any time during the irrigation season, provided that the annual lease fee shall be the same regardless of when application is made. 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 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. In situations other than a curtailment of water, administrative fees may be refundable at the sole discretion of the Conservancy District.

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 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 administering the lease.

J) Bank Fund.

All proceeds realized from Water Bank leases of Conservancy Water Rights and/or San Juan Chama Contract Water after the date of the Resolution adopting this Revised Rule No. 23 shall be deposited in the Conservancy District's general fund.

K) Financial Audit.

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

L) Violation of Water Bank Irrigation Rules/Policies.

Any irrigator found to be in violation of Water Bank rules/policies will be subject to loss or suspension of irrigation water delivery, and may be liable for damages resulting from those violations. Actions taken by the Conservancy District may include the following:

- (1) Termination of the Water Bank lease;
- (2) Securing turnouts to prevent operation using Conservancy District locking devices, welding, burial, or removal.
- (3) Referral to local law enforcement authorities for prosecution, where appropriate.
- (4) Landowners, irrigators, or other persons who, by opening, closing, modifying, or otherwise interfering with the regulation of Conservancy District facilities and structures cause any fluctuation on water flow or elevation that results in breaks or damage of any kind, will be responsible for the expense and damage caused and may be liable to others who are adversely affected.
- (5) All other remedies provided by law.

M) Appeal of Conservancy District Decisions

Notwithstanding any other language in these Rules to the contrary, if a dispute over any matter addressed in these Rules cannot be resolved administratively with the assistance of the Division Manager, the Conservancy District's Hydrologist or Engineering Department, or by a decision of the Chief Engineer, then the affected party may appeal to the Board. The affected party has the burden of providing specific evidence contradicting the position of staff regarding the matter. Otherwise, the Board must give deference to the factual determinations of its staff. The Board shall make a decision on the appeal no later than the next regularly scheduled board meeting after the date of the presentation before the Board.

APPENDIX TO WATER BANK RULE 23

Water Bank Curtailment: Stream Flow and Storage Conditions

As provided in Water Bank Rule 23, attached to this table, delivery to Middle Rio Grande Conservancy District (MRGCD) Water Bank leases shall be curtailed under certain conditions. Curtailment shall occur based on the rates of natural flows in the river, as well as the amount of water in storage for irrigation use. Based on an analysis of these two variables, the general rule being followed is that curtailment should be expected when the natural flow of the Rio Grande drops below a level at which the MRGCD can no longer deliver water to all users within its system and supplemental storage is insufficient to complete the irrigation season. Under these conditions of limited water supply, water will be directed preferentially to persons who have not sold their pre-1907 water rights or who are relying on water rights of the MRGCD for irrigation. It should be noted, that this table is generic in scope and is designed to provide general information regarding circumstances likely to result in curtailment. However, natural flow sufficient to meet all users' needs varies, not only from year to year, but also throughout the course of the irrigation season.

Stream Flow Conditions Resulting in Curtailment

The following schedule defines the natural flow requirement below which curtailment of water delivery to water bank leases could be expected:

Start Date	End Date	CFS
1-Mar	31-Mar	390
1-Apr	15-Apr	550
15-Apr	30-Apr	780
1-May	15-May	900
16-May	31-May	950
1-Jun	15-Jun	950
16-Jun	30-Jun	1030
1-Jul	15-Jul	1050
16-Jul	31-Jul	1000
1-Aug	15-Aug	920
16-Aug	31-Aug	850
1-Sep	15-Sep	660
16-Sep	30-Sep	600
1-Oct	15-Oct	410
16-Oct	31-Oct	310

This schedule defines the required natural flow in terms of cubic feet per second (cfs). The natural flow is calculated as the daily average of the combined total of flow as reported by USGS gauges for the following sites, less 100cfs (excluding March) to allow for consumptive use by the Rio Chama Acequia Association and main-stem users above Otowi, NM.

	Rio Grande at Embudo, NM	(USGS # 08279500)
	Rio Chama Near La Puente, NM	(USGS # 08284100)
	Rio Ojo Caliente at La Madera, NM	(USGS # 08289000)
+	<u>Rio Jemez below Jemez Canyon Dam, NM</u>	<u>(USGS # 08328750)</u>
	Average Middle Rio Grande Inflow	
-		100 cfs
=	Natural flow	

Storage Conditions Affecting Curtailment

It should also be understood that the MRGCD may allow continued delivery of water to Water Bank leases at times when the natural flow is less than specified above. This can occur if MRGCD has sufficient supplemental water in storage to augment the natural flow of the Rio Grande for all users, with an expectation that sufficient water is present in storage to provide for all irrigators through the remainder of the current irrigation season. Reasonable expectations of sufficient supplemental water in storage to permit continued supply to water bank leases are described in the following schedule* of supplemental water in storage at El Vado/Abiquiu/Heron reservoirs as of the listed dates, and designated for use in the then current irrigation season :

March 1:	91,000 AF**
April 1:	91,000 AF**
May 1:	91,000 AF**
June 1:	91,000 AF
July 1:	89,000 AF
August 1:	54,000 AF
September 1:	20,000 AF
October 1:	1,000 AF

These volumes are shown in Acre Feet (AF) (1 AF=325,850 gallons)

Evaluation of Local or Transient Flow Condition

Even though the above guidelines provide parameters for stream flow and storage, the Water Bank Rule recognized conditions may occur at certain points within the District which would make it possible to deliver water to MRGCD Water Bank leases; even though the natural flow and supplemental storage schedules indicate otherwise. Under these conditions deliveries to Water Bank leases would be the result of local conditions, often transient, which would provide additional water supply or reduce the demand on water supply for some users. These conditions could include, but not be limited to, precipitation in certain areas of the MRGCD, tributary inflows (ie: AMAFCA diversion channels, or Rio Puerco /Rio Salado), unusually cool temperatures or high humidity, a cessation of deliveries to portions of the MRGCD due to physical constraints (such as a major ditch break), or other causes. In some cases, these could affect the entire MRGCD service area, or in other cases could affect only limited areas. These will be evaluated by MRGCD staff if and/or when they occur, with the intent to maximize the beneficial use of water by irrigators within the MRGCD system, regardless of water right or Water Bank status.

* Should Article 8 of the Rio Grande Compact (RGC) be in effect, the required storage volumes shown in the schedule will be increased by the amount of New Mexico's accrued RGC debits to the State of Texas.

**Potential storage - In the early part of the season, storage may be noted as potential, so that the specified volume of water may not need to actually be present, but it is anticipated to be result from snowmelt runoff in the spring. The MRGCD must have physical space available to store this water and snowpack must be present to make it likely that the space will be filled before June 1 of the year in question. The USDA Natural Resource Conservation Services monthly New Mexico State Basin Outlook Reports will be used to determine the likelihood of acquiring that storage, based on the 70% "chance of exceedance" value for El Vado Reservoir Inflow, March-July. As provided in Article 7 of the RGC storage will not be allowed if Elephant Butte contains less than 400,000 acre feet of "usable water", unless MRGCD has acquired sufficient RGC storage credits to permit storage.