EBID Growers Meetings

- Tuesday, November 1, Hatch Community Center, 10:00 AM
- Monday, November 7, Mesilla Days Inn, 10:00 AM
- Tuesday, November 8, Anthony Country Club, 10:00 AM
Agenda

• Weather and Water Supply Forecast
• Endangered Species Concerns
• AG Lawsuit
• Stream Adjudication Issue 101 – Consumptive Irrigation Requirement and Farm Delivery Requirement, and what you need to do
• Budget/Financial Issues
• Pipeline Projects
• What next?
# March-July Runoff Forecasts, San Marcial Gauge

<table>
<thead>
<tr>
<th></th>
<th>1,000 AF</th>
<th>% of average</th>
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<tbody>
<tr>
<td>January</td>
<td>740</td>
<td>129%</td>
</tr>
<tr>
<td>February</td>
<td>605</td>
<td>106%</td>
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<tr>
<td>March</td>
<td>465</td>
<td>81%</td>
</tr>
<tr>
<td>April</td>
<td>305</td>
<td>53%</td>
</tr>
<tr>
<td>May</td>
<td>260</td>
<td>45%</td>
</tr>
<tr>
<td>Actual</td>
<td>92</td>
<td>16%</td>
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<table>
<thead>
<tr>
<th></th>
<th>30%</th>
<th>50%</th>
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<tbody>
<tr>
<td>January</td>
<td>740</td>
<td>505</td>
<td>270</td>
</tr>
<tr>
<td>February</td>
<td>605</td>
<td>405</td>
<td>205</td>
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<tr>
<td>March</td>
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</tr>
<tr>
<td>Actual</td>
<td></td>
<td>92</td>
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U.S. Temperature and Precipitation Departures During the Last 30 and 90 Days

Last 30 Days

30-day (ending 30 Oct 2011) % of average precipitation

Percent of Normal (%)

30-day (ending 29 Oct 2011) temperature departures (degree C)

Last 90 Days

90-day (ending 30 Oct 2011) % of average precipitation

Percent of Normal (%)

90-day (ending 29 Oct 2011) temperature departures (degree C)
Current Snowpack Conditions
## Current Reservoir Status

<table>
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<tr>
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<th>October 31, 2011</th>
<th>Elevation, ft</th>
<th>Outflow, cfs</th>
<th>Volume, AF</th>
<th>Computed Inflow, cfs</th>
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<tr>
<td>ELEPHANT BUTTE RESERVOIR</td>
<td>4,312.49</td>
<td>4</td>
<td>207,750</td>
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<tr>
<td>CABALLO RESERVOIR</td>
<td>4,131.08</td>
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<td>10,158</td>
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<tr>
<td>Total Rio Grande Project Storage</td>
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<tr>
<td>Rio Grande Compact Credit Water</td>
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<tr>
<td>San Juan-Chama Water</td>
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<tr>
<td>Rio Grande Project Usable Water</td>
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<tr>
<td>San Marcial Floodway</td>
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<td>San Marcial LFCC</td>
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<td>162</td>
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<tr>
<td>San Marcial Total</td>
<td></td>
<td></td>
<td>199</td>
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</tbody>
</table>

(from USBR Daily Report)
6-10 day outlook
8-14 day outlook
One month outlook
Three month outlook
SST Departures (°C) in the Tropical Pacific During the Last 4 Weeks

During the last 4-weeks, equatorial SSTs were more than 0.5°C below average east of 170°E and more than 1°C below average east of 155°W.
Since early August 2011, negative SST anomalies have gradually strengthened across much of the equatorial Pacific.
Conclusions

- Monsoon has not significantly materialized – a “Nonsoon”
- La Niña has returned
- Early high-elevation snowpack is promising, but it is premature to get optimistic
- Plan for continued drought
- Hope and pray for precipitation
ESA Issues

- Fish and Wildlife Service is proposing to extend critical habitat into the Elephant Butte Reservoir and designate the entire river stretch from Caballo Dam to Leasburg State Park (or Leasburg Dam).
- This means the entire Hatch/Rincon Valley and Selden Canyon will be within critical habitat.
- Concerns:
  - How/Whether this will impact water deliveries; and
  - How this will affect our ongoing negotiations over Section 7 protection through collaboration with other groups through IBWC canalization/habitat project?
Status

• Comments on the proposed critical habitat designation by FWS were due Oct. 14
• EBID, Audubon, IBWC, and BOR all submitted comments supporting an exclusion from FWS where CH designation would interfere with work through the ongoing canalization and habitat project.
• The successful collaboration with Audubon and the federal agencies maximizes likelihood of exclusion.
NM AG v. BOR

- The Rio Grande Project and the Rio Grande Compact—EBID (NM) and EP#1 (TX), both in “Texas”
- NM delivers water to TX at Elephant Butte Reservoir
- The RGC has accounting methods for credit and debit water for all three Compact States
- NM has taken issue with the way the BOR “unilaterally” accounted for credit water in a way NM believes is unlawful.
NM AG files lawsuit

• Lawsuit filed Aug. 8, 2011
  – 2 major issues:
    • 1. Was the credit water accounting lawful?
    • 2. Attack on the 2008 Operating Agreement among the US, EBID & EP#1 under numerous federal laws
• The NMAG has a conflict in representing southern NM because according to the Rio Grande Compact, NM ends at Elephant Butte reservoir and we (EBID) are represented by the Texas Compact Commissioner and, for Compact issues, by the Texas AG.
• The NMAG’s office has tried to sell this lawsuit to the public, yet despite their claims of immediate harm, they did not move for an injunction to stop the release of water to EP#1.
• When the NMAG is saying he is looking out for NM, he means NM north of Elephant Butte. He is using money from southern NM to fight southern NM Agricultural interests.
Impact of AG lawsuit

• The AG’s lawsuit has stalled the stream adjudication—SSI 104
• Threatens the 2008 Operating Agreement among EBID, EP1, and the US.
• The State of TX has taken an interest in the lawsuit and its potential impact and are gearing up for a lawsuit in the event the OA is disrupted.
• The lawsuit will probably be filed in the US Supreme Court and not in NM federal district court.
• Uncertain times...
Gov. Richardson’s settlement gave Pecan Growers’ members in the Lower Rio Grande Basin (LRG) a maximum amount of water that can be diverted to irrigate of 5.5 acre feet a year (FDR=5.5 AFY). Diverse Crop members were told by the OSE they would not get the same amount of water essentially because there was not enough water left after the Pecan Growers’ deal. Diverse Crop Members pushed the OSE to go to trial in the adjudication, which started June 6, 2011. At trial the Diverse Crop Farmers challenged the Pecan Growers 5.5 AFY FDR. OSE FDR numbers when trial began were substantially lower than in the Pecan Growers’ settlement and after 2 days of trial, the parties started to mediate. Settlement was reached on a FDR of 4.5 AFY for ALL EBID members with a demonstrated history of groundwater use and all other irrigation uses in the LRG with some exceptions. The Final Judgment was signed by the judge on August 22, 2011 over objection by the City of Las Cruces and others. The judge ruled their objections were untimely and instead they should have participated in trial and mediation when they had the opportunity. The settlement provides for a FDR of 4.5 AFY, Consumptive Irrigation Requirement (CIR) of 4.0 AFY within Agriculture and 2.6 AFY for transfers out of Agriculture.
SSI 101 Settlement Provisions

- Acreage that has surface and ground water: 3.024 is adjudicated as supplemental groundwater right to the surface water right and 1.476 is adjudicated as a primary groundwater right.
- How it works: If EBID has an allocation of 2.0AF, farmers within EBID may pump up to 3.024 as “supplemental” groundwater, then the 1.476 up to the 4.5 FDR is considered primary and subject to priority administration.
- Why it’s important: 3.024 is protected a little more than the 1.467 which is important in years like this year when there is very little surface water—it will ensure farmers stay in business.
- Farmers must make sure the supplemental groundwater is included in their offer of judgment if they or their predecessor have ever used groundwater on their farm, whether from their own well or someone else’s.
- The OSE will do a field check to see if water can physically be transported from the off-site well to the field in question.
1st: example: SW & GW:
Blue = EBID surface water allotment for given year (above shown as approx. 2AFA)
Green = amount a groundwater and surface water user may pump (up to 3.024) with early
priority date (EBID is working toward getting protection of the green area of pumping
through adjudication of an early priority date).
Yellow = pumping up to 4.5, the difference between the 4.5 and 3.024 (1.476) is pumped
with a priority date of the date of drilling of the well.

2nd example: SW only
Blue = a surface water only user may only use the EBID allotment for a given year.

3rd example: GW only
Yellow = a groundwater only user may pump up to 4.5 in any year, regardless of what the
EBID allocation is, but the pumping is only protected up to the date of drilling of the well,
so if it is a late priority date, it is more susceptible to being curtailed during times of
shortage.
Encouraging surface water use

- For acreage with combined surface and groundwater rights, in years of allotments greater than 3.024 feet, 1.476 feet of the primary groundwater may still be diverted such that more than 4.5 feet may be used in wet years.

- In effect, there is no cap on what the project can deliver in years when there is abundant water supply and the farmers will not be penalized for using more than 4.5 feet.
EBID members who have historically watered with offsite wells have the opportunity to go into OSE and show they had groundwater use from an offsite well. That offsite well can form the basis for a groundwater right on the property it watered. There is no deadline to prove a history of groundwater use, however landowners should do this immediately, especially if the offsite groundwater will be used to support the basis for proving a higher FDR. Additionally, if a landowner has already accepted an Offer of Judgment in the Stream Adjudication that did not include a groundwater component, that landowner will need to go to court to re-open his subfile order if he intends to prove a history of groundwater use.
This is a sample (incomplete) affidavit that shows the type of information that will be required when trying to prove a history of groundwater use through an offsite well. The affidavit should specifically state all the above information, including a statement of the basis of the claim for groundwater use. Each situation will involve a different basis for claiming groundwater use through an offsite well.
Proving a Higher FDR

• Farmers are allowed to prove up higher than 4.5 FDR, but no higher than 5.5 FDR, provided they have sufficient evidence and subject to the timely filing of a notice of intent to prove higher with the OSE and timely submission of evidence.

• Farmers must file notice of intent with the OSE at 1680 Hickory Loop, LC, NM on or before December 31, 2011 and must submit their evidence no later than June 30, 2012.
Process for proving higher FDR

- Submit Notice of Intent by December 31, 2011
- Gather Evidence to submit by June 30, 2012
- Types of evidence:
  - Choose a year in which you relied heavily upon GW (2011, 2004, 2003)
  - Well meter records
  - ASCS records regarding type of crop and acreage
  - EBID records regarding surface water use (available in digital format for last 10 years only)
  - Fuel records (El Paso Electric, Zia Nat. Gas, accountants)
  - Site specific studies (some pecans)

Farmers will be grouped according to their evidence. They will either be “fast-track” or normal track. The fast-track will be dealt with before all others.
The settlement says:

“For purposes of fast-track approval by the State of a FDR greater than 4.5 afay, the State shall consider groundwater meter records on file with the OSE and EBID surface water delivery records from the same year, along with affidavits from the water right owners asserting they have diverted more than 4.5 afay and/or site specific NMSU studies, demonstrating that the total application of water placed to beneficial use has been in excess of 4.5 afay. In the fast-track calculation of surface water and groundwater delivery data for establishment of a FDR in excess of 4.5 afay, the State shall consider the reported surface water delivered to those lands, limited to the annual EBID surface water allotment for the year in question.”

To be considered “fast-track” the three types of evidence will be: 1) groundwater meter records, 2) EBID surface water delivery records, and 3) Affidavits from the landowner regarding beneficial use of greater than 4.5 afay and/or site specific NMSU studies.

The settlement goes on:

“As supporting evidence of beneficial use of water for establishment of a FDR in excess of 4.5 afay, the State shall consider evidence of reported surface water deliveries in excess of the annual EBID allotment to the extent it makes the existence of groundwater deliveries in amounts sufficient to establish a FDR in excess of 4.5 afay more probable than it would be without the evidence.”

This means that even though surface water purchased on a yearly basis for use on a
particular farm, in addition to the allocation for that farm, may not be used in the fast track process, it can still be used as evidence of a higher use. This is particularly so in the case of a farm that uses excess surface water when it is available, but pumps the water (and landowner does not have pump records) when excess surface water is not available.
Most crops will fall within the general form. The immature pecans form specifies which pecan trees would qualify as “immature.”

**Forms to Fill Out:**

- **OSE: Notice of intent to claim FDR higher than 4.5 feet**
  - General crops, including mature pecans
  - Immature pecans
- **Available on EBID Web Site: ebid-nm.org**
  - [http://www.ebid-nm.org/Static/PDF/OSE/FDR.pdf](http://www.ebid-nm.org/Static/PDF/OSE/FDR.pdf)
- **EBID: Request for Electronic Records**
  - [http://www.ebid-nm.org/Static/PDF/Dept/Public_Record_Request_Electronic.pdf](http://www.ebid-nm.org/Static/PDF/Dept/Public_Record_Request_Electronic.pdf)
NEW MEXICO OFFICE OF THE STATE ENGINEER

NOTICE OF INTENT TO DEMONSTRATE BENEFICIAL USE OF WATERS SUPPORTING A FARM DELIVERY REQUIREMENT (FDR) GREATER THAN 100 CUBIC FEET PER HOUR PER YEAR

In accordance with Title 9, Part 5 of the Rules of the State Engineer, Case No. VX-96-060, Lower Rio Grande Scenic Adjunction

Filing deadline for Notice of Intent December 31, 2012

1. SUBMITE NUMBERS FOR WHICH CLAIM WILL BE MADE:
(If you have received documents regarding your water rights, the samplers will appear in those documents. Otherwise you may call the Office of the State Engineer at 575-254-6100 to obtain the number(s)

2. SUBMIT OWNERS:

3. PRELIMINARY LIST OF WELLS WHICH CLAIM WILL BE BASED:
(Exact names and approximate locations)

4. SETTLEMENT PROVISIONS REGARDING FDR GREATER THAN 100 CUB.

a. Subject to the provisions of paragraphs 3(a) and (b), below, for beneficial water and groundwater rights, and groundwater only rights, a FDR greater than 100 cfs, but not to exceed 450 cfs, may be adjudicated subject to supporting evidence of beneficial use of water.

b. For purposes of this notice, the State Engineer shall consider beneficial water use in the particular instance or on the particular right of water as occurring in excess of 100 cfs, for the purpose of establishing to the satisfaction of the State Engineer that a beneficial use of water exists to support a claim for a FDR greater than 100 cfs.

This notice is intended to provide notice of the State Engineer's intention to establish beneficial use of water and to establish a FDR for the particular right of water based on the evidence presented.

Mail this form, or hand deliver it, if you would like to receive a copy of the Notice of Intent to the Office of the State Engineer, Litigation and Adjudication Program, 1401 Beecher Loop, Santa Fe Plaza, NM 87501. Phone: 575-254-6100.
When requesting records from EBID, please be specific regarding your request. The schedule of fees for public records requests is posted on EBID’s website.
Other Settlement Highlights

• In the settlement agreement that accompanied the Final Judgment, the State agreed to recognize EBID’s long standing policy allowing stacking and transfers. This recognition will ensure that EBID’s ability to be flexible with management of the resource will continue into the future. Flexibility is important to maintaining a competitive advantage in the agricultural industry—one major victory that came out of SSI 101.

• Overall, the Final Judgment is a victory for EBID as it encourages use of surface water in years when there is plenty, and allows for flexibility in groundwater use in years of less surface supply. This is a philosophy EBID has operated under for almost a hundred years and it is important to maintain this flexibility due to our unique situation in the LRG.

• Surface water only irrigators can transfer supplemental groundwater from EBID constituents who are not using theirs.
Cost Control at EBID

- Annual assessments (farm rate) have been reduced by $5.00 per WRA for the year 2011 (from $80.00 WRA to $75.00 WRA). Flat rate assessments have been reduced accordingly.
- The District has reduced costs associated with reduced surface water supply.
- Operating expenses have reduced $1,000,000 (2008 - 2011) Expense reductions due to reduced canal expense, heavy equipment, consulting, hydrology expense, weed control)
- Payroll & benefits expenses have reduced $1,100,000 (2008 – 2011). Expense reductions are due to adjusting shift schedules, District unit combinations, reduced OT, 3 year wage freeze, and reduction of employees thru attrition.
- EBID employee count is currently 86, reduced from a prior count of 106 employees.
- EBID is cross training employees to be versatile in jobs within the District.
- Employee operations and hydrology personnel are operating heavy equipment, assisting in the mechanic shop, or operating mowing equipment in the District facilities, as well as other work assignments.
Water Conservation - Pipe Projects

- EBID received a $4,000,000 grant from NADB to install pipe and telemetry for water accounting and conservation in District facilities over a 5 year period.
- EBID successfully completed the project in 3 years, (2004-2006) installing 21 miles of pipe.
- EBID irrigation system infrastructure improvements were increased by $5,183,627 as a result of this grant. EBID labor for construction of this pipe project is incorporated into the capital improvements.
- The water conservation benefit for increased surface water supply (11,000 ac/ft per year) available for delivery and application to the farm has proven to be valuable in increased water supply and efficiency.
- Piping also dramatically reduces maintenance costs – Eliminates spraying, gopher control, mowing, etc.
- EBID would like to pursue future pipe projects throughout the District, even if not funded thru grants.
# Cost of Piping in EBID*

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<th>Pipe Diameter</th>
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<th>48 inch</th>
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<tbody>
<tr>
<td>Capacity, cfs</td>
<td>35</td>
<td>65</td>
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<tr>
<td>Materials cost/foot</td>
<td>$22</td>
<td>$30</td>
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<tr>
<td>Installation cost/foot</td>
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<td>$42</td>
</tr>
<tr>
<td>Total cost/foot</td>
<td>$50</td>
<td>$72</td>
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*Estimates based on previous projects.
What is EBID doing to cope?

- EBID Pump policy facilitates conjunctive use of surface water and groundwater among constituents (see EBID website)
- EBID Piping projects convey water efficiently and reduce the need for pumping
- EBID is developing capacity to capture and use storm water runoff, and policy to allow adaptive management
- EBID is metering surface water and groundwater diversions and use, and monitoring groundwater levels within district
- EBID is working with federal agencies and environmentalists to exclude the Rio Grande from Caballo to Leasburg from critical habitat designation for SWFL
- EBID working with State Engineer to bring our 9,500 acre-feet of groundwater online for use by EBID constituents
- Rio Grande Project Operating Agreement provides protection against administrative action to cut off access to groundwater
- Settlement in adjudication provides access to groundwater and ability to move it around within the district
- EBID is working to get the best possible priority date for constituent surface water and supplemental groundwater
- EBID is working to maximize information exchange among constituents and district personnel
What should you do?

• If you think you have any chance of proving up more than 4.5 feet FDR, get your notice into the State Engineer before December 31 – Forms and instructions at ebid-nm.org

• Be proactive – Join the Family Farm Alliance, a grassroots organization of farmers who protect our interests at the national level

• Communicate, communicate, communicate – with EBID personnel and your neighbors to move water as efficiently and effectively as possible to get through this drought
Questions?