

SAN JUAN-CHAMA PROJECT  
NEW MEXICO

CONTRACT  
Between the  
UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
and the  
SANTA FE COUNTY  
TO LEASE THE USE OF  
SAN JUAN-CHAMA PROJECT WATER

THIS CONTRACT (Contract), made this 22 day of September, 2011, between the UNITED STATES OF AMERICA, hereafter styled the United States, acting through the Secretary of the Interior (Secretary), Bureau of Reclamation (Reclamation), acting pursuant to the Act of June 17, 1902 (32 Stat. 388) as amended or supplemented, particularly the authority granted the Secretary under Section 14 of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187-1197; 43 U.S.C. § 389), and the Act of June 13, 1962 (76 Stat. 96), commonly referred to as the Reclamation Laws, and the Act of December 28, 1973 (87 Stat. 884), particularly Section 1536 (a) (1) (16 U.S.C. §§ 1531-1543), more commonly known as the Endangered Species Act, and SANTA FE COUNTY, a municipal corporation in the State of New Mexico, herein styled "County."

WITNESSETH THAT:

EXPLANATORY RECITALS

WHEREAS, the Colorado River Storage Project was authorized by the Act of April 11, 1956 (70 Stat. 105), as amended and supplemented by, among other statutes, the Act of December 29, 1981 (PL. 97-140, 95 Stat. 1717), and the Act of June 13, 1962 (76 Stat. 96), which authorized the San Juan-Chama Project as a participating project in the Colorado River Storage Project as set out in 43 U.S.C. § 615pp; and

WHEREAS, on November 23, 1976, the County, the City of Santa Fe, and Public Service Company of New Mexico entered into Contract No. 7-07-50-X0879 with the United States; and

WHEREAS, on July 3, 1995, Public Service Company of New Mexico assigned its interest in Contract No. 7-07-50-X0879 to the County and the City of Santa Fe; and

WHEREAS, under Contract No. 7-07-50-X0879, and pursuant to the Water Resources Agreement between the County and the City of Santa Fe (January 11, 2005), the County is entitled to the delivery of 375 acre-feet of San Juan-Chama Project water annually, to be measured at the outlet of Heron Dam; and

WHEREAS, on October 19, 2006, Santa Fe County entered into Contract No. 05-WC-40-550 with the United States which supersedes Contract No. 7-07-50-X0879 in its entirety; and

WHEREAS, the County has San Juan-Chama Project water available in Heron Reservoir in excess of its current needs which can be made available to the United States for beneficial use under terms and conditions further described herein, all consistent with applicable State and Federal law; and

WHEREAS, the Rio Grande silvery minnow (minnow) has been listed as a Federal endangered species and can be found in a reach of the Rio Grande between Cochiti Dam and San Marcial, New Mexico, which is prone to critically low flows during the irrigation season lasting from March 1 through October 31 each year; and

WHEREAS, until permanent strategies for managing the existing limited water supply to meet the needs of the Middle Rio Grande water users can be effectuated, efforts need to be made to assure that the March 2003 Biological Opinion is satisfied; and

WHEREAS, it is Reclamation's and the County's understanding that the Middle Rio Grande Conservancy District (District) intends to operate its irrigation and drainage system to allow native Rio Grande water to remain in the river undiverted for habitat needs of the minnow; and

WHEREAS, the District's intended operation would likely result in a need for an additional water supply to meet the irrigation needs of its water users; and

WHEREAS, the United States desires to augment the District's water supply by leasing up to 375 acre-feet of the County's 2011 San Juan-Chama Project water allocation remaining in Heron Reservoir for the purpose of irrigation within the District.

NOW, THEREFORE, it is agreed as follows:

#### COUNTY DELIVERABLES

1. a) The County agrees to lease to Reclamation the use of up to 375 acre-feet of its 2011 San Juan-Chama Project water to be stored in Heron Reservoir.
- b) The County concurs with the terms of the Waiver described below in section 4.d), that this water is to be used to augment the total water supply to the Middle Rio Grande Valley and is expected to be released from Heron Reservoir by April 30, 2012.
- c) The County agrees that no liability shall accrue to the United States should it become necessary for Reclamation to terminate the Waiver so that Reclamation can take prudent action

to ensure that the Project's ability to store water is not impacted, as provided for under the terms and conditions of the Waiver.

d) The County agrees that Reclamation will call for the release of water from Heron Reservoir as necessary, and that it will cooperate with Reclamation as may be needed to facilitate such releases. The points of measurement for deliveries to the United States pursuant to this Contract will be at the outlet works of Heron Reservoir. The parties agree that the water leased pursuant to this agreement is not subject to evaporation losses until it is released from Heron Reservoir.

e) All previous contracts between the County and the United States shall remain in full force and effect during the term of this Contract.

#### RECLAMATION DELIVERABLES

2. a) Reclamation will pay the County \$47.00 per acre-foot for a maximum of 375 acre-feet of water released from Heron Reservoir pursuant to this Contract. Reclamation will pay the County only for water it calls for and releases for beneficial use, under terms and conditions described herein, pursuant to this Contract.

b) As consideration for the water provided under the terms of this Agreement, Reclamation will pay 10% in advance of the total payment described under Article 3.a., upon execution of this Contract. The advancement of funds is made in good faith to assist the County with any administrative and legal costs it may incur. Should Reclamation not call for the release of any water, under this Contract, advanced funds will not be recovered by Reclamation.

c) Within 30 days of the final release of water under the terms of this Contract, Reclamation will provide the County an accounting of the amount of leased water released under this Contract.

d) Reclamation will not make any further payment for any leased water spilled from Heron Reservoir, or any water that may revert to the firm yield pool, should Reclamation find it necessary to take prudent action to ensure that the Project's ability to store water does not become impacted; as such, the Waiver and this Contract granted to the County will be terminated. The County agrees that no liability shall accrue to the United States as a result of such termination and that every effort will be made on Reclamation's behalf to notify the County prior to any action being taken.

e) Reclamation shall be solely responsible for all National Environmental Policy Act requirements and costs associated with this Contract, and no such costs shall be passed on to the County.

### PAYMENT

3. a) Payment under this Contract shall not exceed \$17,625 for the term of this Contract, contingent upon appropriation of funds being made therefore. If Reclamation does not call for the release of any of the 375 acre-feet during the term of this Contract, the County shall not be entitled to any further payment from Reclamation.

b) Upon execution of the Contract, and based upon Reclamation's accounting of all the water actually released, the County shall bill Reclamation, no less than annually, for water actually released from Heron Reservoir under the terms of this Contract at a cost of \$47.00 per acre-foot. The original billing shall be submitted to Reclamation at the following address:

Bureau of Reclamation  
Albuquerque Area Office  
Attention: ALB-440  
555 Broadway NE, Suite 100  
Albuquerque NM 87102

c) Upon verification and approval by Reclamation's Contracting Officer, the billing will be forwarded to Reclamation's finance office in Denver, Colorado, for payment to the County via electronic funds transfer. Any correspondence should be directed to the following address:

Santa Fe County  
Utilities Division Director  
Water/Wastewater Operations  
424 NM 599/P.O. Box 276  
Santa Fe NM 87507

### TERM OF CONTRACT AND WAIVER

4. a) This Contract shall be effective from the date of execution and expire upon final payment by the United States, under terms and conditions described herein, pursuant to this Contract.

b) It is agreed by both parties that all water released under this Contract will be in accordance with all applicable State and Federal laws.

c) All provisions of Contract No. 05-WC-40-550, except as provided below, between the County and Reclamation dated October 19, 2006, shall remain in full force and effect, and the agreements entered herein shall not be interpreted in any manner to amend, modify, or affect that contract, or relieve either the County or Reclamation from any obligations or requirements agreed to therein.

d) Reclamation has determined it is advantageous to the United States to waive subarticle 6(c), entitled "Annual Water Carryover Prohibited," of the above Contract No. 05-WC-40-550 (the "Waiver"). Waiver of this provision allows the County to keep any of its remaining 2011 allocation of SJCP water in Heron Reservoir until April 30, 2012, contingent upon the Project's ability to store such water.

i) Should natural events occur that could potentially impact the Project's ability to store spring runoff, the release of waived water from Heron Reservoir may need to occur prior to April 30, 2012, and would be released in a manner consistent with State and Federal law. As such, Reclamation will make every effort to notify the County in advance prior to the release of any waived water. The County agrees to assume all risk of any lost water under said Waiver if Reclamation is not able to make beneficial use of the leased water under the terms of the forthcoming proposed lease agreement. Any losses incurred will be charged to the County after releases are made from Heron Reservoir.

e) National Environmental Policy Act compliance for this Waiver is satisfied by programmatic environmental assessment and finding of no significant impact.

f) This extension of storage time is applicable to the 2011 water year allocation only and should not be construed in any way to affect any future allotments, nor shall it be considered to be a permanent change to the above Contract, except as specified herein.

#### WATER QUALITY

5. The County makes no warranty or representation regarding, and Reclamation assumes all responsibility for, the quality of water released by the County to Reclamation hereunder.

#### WATER RIGHTS PROTECTION

6. No party hereto shall assert that any activity under this Contract shall affect the validity of any existing water rights or rights to water held by any other party.

#### WAIVER OF THIS CONTRACT

7. Waiver of any breach of this Contract by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Contract.

#### ASSIGNMENT LIMITED-- SUCCESSORS AND ASSIGNS OBLIGATED

8. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right of interest therein by either party shall be valid until approved in writing by the other party.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

9. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the County from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

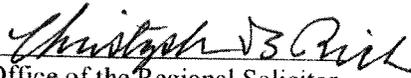
OFFICIALS NOT TO BENEFIT

10. No Member or Delegate to Congress, Resident Commissioner, or Federal or State Official, shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names, the date and year first above written.

APPROVED:

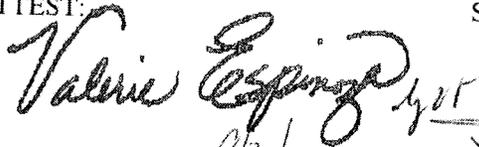
UNITED STATES OF AMERICA

  
Office of the Regional Solicitor

  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

ATTEST:

SANTA FE COUNTY

  
8/30/11



APPROVED AS TO FORM:

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Approved as to form

Santa Fe County Attorney

By: 

Date: August 25, 2011

