

Agreement between Santa Fe County and the
Albuquerque Bernalillo County Water Utility Authority to Suballot
Contracted Storage Space in Abiquiu Reservoir

This Agreement to authorize the use of portion of the Water Authority's contracted storage space in Abiquiu Reservoir (Agreement) between the Albuquerque Bernalillo County Water Utility Authority (Water Authority), a political subdivision of the State of New Mexico and Santa Fe County (County), a political subdivision of the State of New Mexico, is made on the date of the last signature below.

Recitals

- A. WHEREAS, Public Law 97-140 (December 29, 1981) authorized the Secretary of the Army to enter into agreements with entities that contracted with the Bureau of Reclamation for San Juan Chama Project water, for storage of 200,000 acre-feet of such San Juan-Chama Project water in Abiquiu Reservoir, and specified that such agreements shall not interfere with the authorized purposes of the Abiquiu Reservoir and shall include a requirement that each user of storage space shall pay any increase in operation and maintenance costs attributable to the storage of that user's water; and
- B. WHEREAS, Public Law 100-522 (October 24, 1988) and Section 337 of the Water Resources Development Act of 2020 (Division AA of Public Law 116-260) modified the authorization in Public Law 97-140 to allow concurrent storage of San Juan-Chama Project water and native Rio Grande system water in Abiquiu Reservoir up to elevation 6230.00 NGVD29; and
- C. WHEREAS, Section 337 further requires that the storage of native Rio Grande system water will be authorized only if the necessary water ownership and storage rights have been acquired by the entity requesting such storage, and that each user of storage space, regardless of source of water, pay for any increase in costs attributable to storage of that user's water; and
- D. WHEREAS, pursuant to Section 337 the Department of the Army and the Water Authority entered into a new agreement for storage space at Abiquiu Reservoir that was signed June 26, 2024, which allows for storage by the Water Authority of San Juan-Chama project water or native Rio Grande system water in Abiquiu Reservoir up to elevation 6230.00 NGVD29, and use of such storage by the Water Authority (known as the "Water Authority's contracted storage space"); and
- E. WHEREAS, the June 26, 2024, water storage agreement recognizes that 29,100 acre-feet of storage space is to be set aside for storage by other San Juan Chama contractors (known as the "USACE/Contractors' pool"); and
- F. WHEREAS, Section 10 of the June 26, 2024, Agreement provides that, upon the approval of the Secretary of the Army, or his duly authorized representative, the Water

Authority can suballot water supply storage space to third parties and approval to suballot the space set forth in this Agreement was approved by the Division Commander, South Pacific Division, U.S. Army Corps of Engineers on the 3rd day of August 2026; and

- G. WHEREAS, the Water Authority has acquired the requisite easements and fee simple property up to elevation 6230.00 NGVD29 in Abiquiu Reservoir to perfect its storage rights under the June 26, 2024, Agreement; and
- H. WHEREAS, if the suballotee has storage available in the USACE/Contractors' pool, such storage space will use that space first before using additional storage space from the Water Authority as Suballoted by this Agreement; now

THEREFORE, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the adequacy of which is acknowledged by the parties, the Water Authority and County agree as follows:

Agreement

1. The Recitals are incorporated herein by reference.
2. The Water Authority agrees:
 - a. To provide to the County a total of up to 3,000 acre-feet of water storage space within the Water Authority's contracted storage space in Abiquiu Reservoir. The actual amount of storage space available shall be determined solely by the Water Authority which shall be based on the amount of space needed by the Water Authority.
 - b. To provide the County with as much advance notice as practicable whenever exercising the Water Authority's right to require that the County vacate its stored water because the Water Authority becomes aware that the contracted space to the County is necessary for storage of Water Authority water.
3. The County agrees:
 - a. That the Water Authority maintains the exclusive right to store its San Juan-Chama Project or native Rio Grande system water within the unused storage space allocated under this Agreement.
 - b. To provide payment to the Water Authority of 10% of the water stored within the Water Authority's contracted storage space, based on the maximum day of stored volume during the calendar year. Stored volume is considered to be only that volume of water in excess of the County's storage in USACE/contractors' pool. Accounting of previous calendar year water stored in the Water Authority's contracted storage space will be submitted to the Water Authority by the end of February for the previous year's storage. The payment of

10% of the water shall be San Juan-Chama Project water and be due by the end of March.

c. To prepare and submit an annual report to the Water Authority by January 10th for the previous calendar year. The annual report shall provide the amount of water deposited, stored, and evaporated during that calendar year, broken down into both the USACE/Contractors' pool and Water Authority's contracted 's storage space, and the amount to be carried over to the following year, and anticipated storage space to be used in the following year.

d. That storage of the County's San Juan-Chama Project or native Rio Grande system water within the Water Authority's contracted storage space, easements or fee simple property does not convey any right of possession, control or exclusion nor does it affect or modify Water Authority contract rights under the agreement with the Department of the Army, signed on June 26, 2024, or its subsequent amendments.

e. Not to store San Juan-Chama Project or native Rio Grande system water that is subleased, purchased or otherwise acquired or obtained from any third party without the written approval from the Water Authority.

f. To take the necessary steps to as soon as practical release or move the County's San Juan-Chama Project or native Rio Grande system water from Abiquiu Reservoir to Elephant Butte Reservoir if the Water Authority determines that suballotted water storage space is not available in Abiquiu Reservoir.

g. To cooperate with the Water Authority and federal agencies on timing of release and delivery of water from El Vado or Heron to meet various objectives, such as recreational and ecological benefits on the Rio Chama.

h. That the County is responsible for its proportional share of the monthly evaporative losses that occur on the County's water stored in Abiquiu Reservoir including the current and any water added to the reservoir over time. The County will work with the U.S. Bureau of Reclamation to provide the records of the evaporative computation calculated on a monthly basis and ensure that these losses are deducted from the County's account.

4. Both parties agree:

a. That the amount stored, and the storage deadline will continue until written mutual consent by the Water Authority's Executive Director and the County is executed to terminate this Agreement.

b. That this agreement shall be for a term of 5 years and shall renew each year for a maximum of 5 years unless the County or the Authority provides a 180-day, written notice of termination of this agreement.

c. To coordinate closely to ensure that any state, federal or other permitting necessary to store native Rio Grande system water in the Water Authority's easements and fee simple property is properly obtained.

d. That the County will support the Water Authority's efforts to obtain the necessary state, federal and other permitting to store native Rio Grande system water in Abiquiu Reservoir.

e. That this Agreement can be terminated at the sole discretion of the Water Authority or the County by providing a 90-day written notice of termination. All of the County's San Juan-Chama or native Rio Grande system water remaining in the Water Authority's contracted storage space upon written termination may remain for a period of up to one year at which time the County shall have released or otherwise caused their remaining water to be removed from the Water Authority contracted storage space in Abiquiu Reservoir.

5. Liability. Any claim of tort liability against either the County or the Water Authority is subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended. Except as expressly provided by the New Mexico Tort Claims Act, the parties hereto do not waive sovereign immunity, or any defense or limitation of liability provided by applicable law. No provision of this Agreement shall be construed to modify, abrogate, or waive any provision of the New Mexico Tort Claims Act. None of the provisions contained within this Agreement are intended to create in the public or any member thereof a third-party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit or any claim whatsoever, pursuant to the provisions of this Agreement.

6. Severability. If any part, term or provision of this Agreement is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid.

7. Merger Clause. This Agreement constitutes the entire Agreement between the Water Authority and the County. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. The waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. the County, by signature of its authorized representative, hereby acknowledges this Agreement and agrees to be bound by its terms and conditions.

8. Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of New Mexico for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.

9. Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners of Santa Fe County for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners of Santa Fe County, this Agreement shall terminate immediately upon written notice being given by the County to the Authority.

10. The Water Authority designates Mark S. Sanchez, Executive Director, or his designee as the Water Authority's Representative and person to receive notifications from the County under this Agreement. The County designates Travis Soderquist, Deputy Public Works Director, as the County's Representative and person to receive notifications from the Water Authority under this Agreement.

11. This agreement may be signed in counterparts, and each signed copy shall be deemed an original.

12. The parties agree that the rights and obligations granted in this agreement shall not interfere with and are subject to the rights retained by the Department of the Army in its 26 June 2024 Agreement with the Water Authority.

13. The Parties will provide a copy of this executed agreement to the U.S. Army Corps of Engineers, Albuquerque District, and U.S. Bureau of Reclamation, Albuquerque Area Office.

IN WITNESS WHEREOF, the County and the Albuquerque Bernalillo County Water Utility Authority have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY



Executive Director
Albuquerque Bernalillo County Water Utility Authority

August 10, 2026

Date

BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

Justin Greene, Chair
Board of County Commissioners of Santa Fe County

Date

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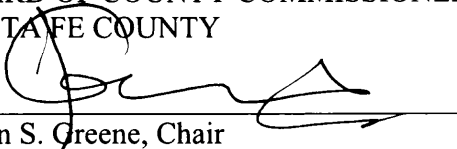
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ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY

Executive Director
Albuquerque Bernalillo County Water Utility Authority

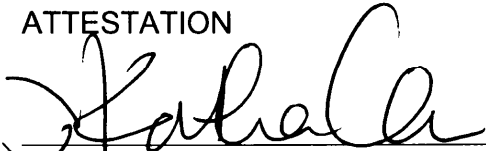
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BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

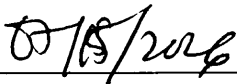


Justin S. Greene, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION



Katharine E. Clark
Santa Fe County Clerk


Date

Approved as to form:



Walker Boyd
Santa Fe County Attorney

6/3/2026
Date