



Meeting Date: March 5, 2025

Staff Contact: Diane Agnew, Water Rights Program Manager

TITLE: R-25-9 – Authorizing the Executive Director to Enter into an Agreement with Santa Fe County to Store Water in Abiquiu Reservoir on Water Authority Easement and Fee Simple Property

ACTION: Recommend Approval

SUMMARY:

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) has had agreements with the City of Santa Fe, and others, for the last 20 years for the storage of water with the Water Authority's allotted space in Abiquiu Reservoir and for the storage of water on Water Authority easements and fee simple property. This Agreement will allow Santa Fe County to store water within their allotted space in Abiquiu Reservoir, on Water Authority easements and fee simple property and in exchange, Santa Fe County will pay \$1 per acre-foot of water stored. Approval of this Agreement will be consistent with Water Authority's partnership with Santa Fe County at Abiquiu Reservoir as well as the requirements of the Water Authority's storage contract with the U.S. Army Corps of Engineers.

FISCAL IMPACT:

None

1 WHEREAS, Santa Fe County will preferentially use the USACE/Contractors' pool
2 for storage of water, but may desire additional storage space from the Water Authority;
3 now
4 BE IT RESOLVED BY THE WATER AUTHORITY:
5 The Executive Director is authorized to enter a Water Storage Agreement with Santa Fe
6 County that permits the County to store water within the Water Authority's property at
7 Abiquiu Reservoir in exchange for reasonable consideration by the Santa Fe County.
8

WATER STORAGE AGREEMENT

This water storage agreement (the “Agreement”) is entered into between Santa Fe County, a political subdivision of the State of New Mexico (the “County”), and the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico (the “Water Authority”) (the County and the Water Authority are each a “Party” and together they are the “Parties”), and is effective as of the date of the last signature below (the “Effective Date”).

Recitals

A. WHEREAS, Congress authorized the Secretary of the Army to enter into agreements with entities for storage of 200,000 acre-feet of San Juan-Chama water in Abiquiu Reservoir in Public Law 97-140 (“P.L. 97-140”); and

B. WHEREAS, P.L. 97-140 authorized the Secretary of Interior to release San Juan-Chama water to contracting entities for storage by its contractors; and

C. WHEREAS, P.L. 97-140 required that the storage of San Juan-Chama water in Abiquiu Reservoir would not interfere with the authorized purposes of the project 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

D. WHEREAS, Pursuant to P.L. 100-522, Congress authorized the Secretary of the Army to store 200,000 acre-feet of Rio Grande system water in lieu of San Juan-Chama water if the contracting entities no longer required storage of their San Juan-Chama water; and

E. WHEREAS, P.L. 116-260 amended P.L. 97-140 and P.L. 100-522 to eliminate the 200,000 acre-feet volume cap from combined sources in favor of allowing for the concurrent storage of San Juan-Chama and native Rio Grande system water in Abiquiu Reservoir so long as the contents of the reservoir did not rise to a point above the elevation of 6230.00 NGVD29; and

F. WHEREAS, P.L. 116-260 requires the Secretary of the Army to retain or enter into new agreements with entities other than the Water Authority for storage of San Juan-Chama or native Rio Grande system water up to those entities’ proportional allocations of 29,100 acre-feet of storage space within Abiquiu Reservoir; and

G. WHEREAS, P.L. 116-260 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

H. WHEREAS, P.L. 116-260 further required each user of storage space, regardless of source of water, shall pay for any increase in costs attributable to storage of that user’s water; and

I. WHEREAS, pursuant to NMSA 1978 § 72-1-10, 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

J. WHEREAS, the June 6, 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

K. WHEREAS, the Water Authority has acquired easements, fee simple property or other real property interests at and along the perimeter of Abiquiu Reservoir up to the elevation 6230.00 NGVD29 (the Water Authority’s “Property”) as necessary to store San Juan-Chama or Native Rio Grande System water pursuant to the requirements of P.L 116-260; and

L. WHEREAS, the purpose of this Agreement is to authorize the County to store its proportional share of the 29,100 acre-feet set aside for non-Water Authority Abiquiu Reservoir Contractors on the Water Authority’s Property.

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 the County agree as follows:

Agreement

1. **Recitals.** The Recitals are incorporated herein by reference.

2. **Water Storage Allowance.** The Water Authority agrees to allow storage on its Property of the County’s San Juan-Chama water or of native Rio Grande water, in an amount equal to the County’s proportional share of the 29,100 acre-feet of set aside for non-Water Authority Abiquiu Reservoir contractors subject to the following requirements and limitations:

a. The County’s San Juan-Chama or native Rio Grande water stored in accordance with paragraph ‘2’ above can be carried over, but in no case shall its total quantity at any given point in time exceed the County’s portion of the 29,100 acre-feet set aside for Non-Water Authority Abiquiu Reservoir contractors; and

b. Notwithstanding the foregoing, the Water Authority maintains its right to store its San Juan-Chama or native Rio Grande system water on its Property in conjunction with or in addition to the amount of the County’s water actually stored; and

c. The Water Authority's grant under this agreement permits the County to store San Juan-Chama water or native Rio Grande system water within or upon its Property¹ does not convey any right of possession, control, exclusion, or any other interest in real property to the County, nor does it affect or modify the existing Water Authority contract rights under the water storage agreement between the Water Authority and the Department of the Army signed on June 26, 2024 or any subsequent Abiquiu allotment contracts between the Water Authority and the Corps.

3. **Consideration.** In exchange for the water storage described in paragraph 2, above, the County agrees:

a. To provide payment of \$1 for each acre-foot of County's water stored upon or within the Water Authority's Property during the previous calendar year, based on the maximum day of stored volume, as shown in the URGWOM final accounting model and the annual report, irrespective of evaporation. The County recognizes that this amount is nominal in consideration of the use and administration of the Water Authority's Property.

b. To submit an accounting of the water stored under this Agreement during the previous calendar year, and the amount to be carried forward, to the Water Authority by February 1st of each year. The payment for the previous year's storage as required by paragraph '2', above, is due by the first day of March of each year.

c. To 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.

d. To acquire any state, federal or other permits necessary to store native Rio Grande system water on the Water Authority's Property.

e. To provide written notification to the Water Authority at least one week in advance as to when water will be delivered to Abiquiu Reservoir for storage within or upon the Water Authority's Property pursuant to this Agreement. Such written notification is to be submitted in the form of an email to the Water Authority's Water Rights Program Manager.

f. To not store San Juan-Chama or native Rio Grande system water that is suballotted, purchased, leased or otherwise acquired or obtained from, or that belongs to any third party, without the Water Authority's prior written approval, which may be reasonably withheld.

g. That it is responsible for its proportional share of the monthly evaporative losses that occur on County water stored in Abiquiu. 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 account.

¹ The Water Authority has acquired fee simple or other real property interests at and along the perimeter of Abiquiu Reservoir up to the elevation of 6230.00NCVD29. This is the Water Authority's property.

h. To contract separately with the Corps for the storage of San Juan-Chama or native Rio Grande system water including the proportional share of the annual increased cost for operation and maintenance as determined by the Corps.

4. **Term.** The term of this Agreement is for the duration of one year from the Effective Date, and automatically renews for one additional year upon each anniversary of the Effective Date unless sooner terminated.

5. **Termination.** This Agreement can be terminated only as follows:

- a. By either Party providing 30-day written notice of initiation of good faith discussion of proposed termination;
 - i. Such good faith discussion shall include consideration of the documented loss to County if the Water Authority is seeking termination;
 - ii. Such good faith discussion shall include efforts to minimize losses to both Parties and avoid termination;
- b. At any time by written mutual consent of the Parties;
- c. At the sole discretion of the Water Authority by providing a 90-day written notice of termination to County; or
- d. At the sole discretion of the County by providing a 30-day written notice of termination to the Water Authority.
- e. If so terminated, all of the County San Juan-Chama or native Rio Grande system water remaining on the Water Authority's Property at the time of termination may remain for a period of up to one year, upon the conclusion of which the County shall have released or otherwise caused its remaining water to be removed from the Water Authority's Property.

6. **Limitations of 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, neither the Water Authority nor the County waives its 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. Notwithstanding the foregoing, the County agrees to waive its immunity from unconsented suit solely for the limited purpose of enforcement of its obligations under this Agreement by the Water Authority and no other party. This waiver applies to claims seeking

specific performance and/or damages, but it shall not be construed to include claims seeking special or consequential damages.

7. **Severability.** If any part, term or provision of this Agreement is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Agreement, and the remainder of this Agreement will remain in full force and effect unless its essential purpose is frustrated by such severance.

8. **Merger Clause.** This Agreement constitutes the entire Agreement between the Water Authority and the County. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

9. **Amendment.** This Agreement will not be altered, changed, or amended except by a written instrument executed by both Parties.

10. **Dispute Resolution.** The Parties hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of New Mexico and to the jurisdiction of the United States District Court for the District of New Mexico for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.

11. **Notices.** Except as provided in subparagraph 3(e), above, the Water Authority designates Mark S. Sanchez, Executive Director, or his designee or successor as the Water Authority's Representative and person to receive notifications from the County under this Agreement. The County designates the Public Utilities Director, or his designee or successor, as the County's Representative and person to receive notifications from the Water Authority under this Agreement.

12. **Counterparts.** This Agreement may be executed by the Parties in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute a single binding agreement between the Parties.

Signatures

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

Mark S. Sanchez, Executive Director

Date

Albuquerque Bernalillo County Water Utility Authority

SANTA FE COUNTY

Hank Hughes, Chair
Board of County Commissioners of Santa Fe County

Date