

WATER EXCHANGE AGREEMENT

This water exchange agreement (the “Agreement”) is entered into between the Middle Rio Grande Conservancy District, a political subdivision of the State of New Mexico (the “MRGCD”), and the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico (the “Water Authority”) (the MRGCD 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, 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 June 13, 1962 (76 Stat. 96), which authorized the San Juan-Chama Project (SJCP) as a participating project in the Colorado River Storage Project; and

B. WHEREAS, the MRGCD has an annual allocation of 20,900 acre-feet of SJCP surface water under its contract with the U.S. Bureau of Reclamation (Reclamation); and

C. WHEREAS, a more consistent release of MRGCD SJCP water into the Middle Rio Grande benefits farmers and maintains consistent river flows at the Central Avenue streamflow gage in the Rio Grande through the duration of MRGCD SJCP releases from Abiquiu Reservoir; and

D. WHEREAS, more consistent flows in the Rio Grande help promote better utilization of the Water Authority’s SJCP allocations for service to its customers; and

E. WHEREAS, Reclamation quantifies the monthly SJCP surface water in Heron Reservoir to be distributed to the Water Authority and MRGCD on the 1st of each month in the proportion of contracted water and based on available water for allocation, and effectuates delivery of that amount to each, respectively, on the 15th of each month; and

F. WHEREAS, the first SJCP allocation of 2025 quantity and timing is dependent on actual water inflow to Heron Reservoir and is determined by Reclamation and MRGCD anticipates that it may need early access to its May 15, 2025, Heron Delivery (the MRGCD’s “May 2025 Heron Delivery”) in order to promote consistent and efficient water releases, and to enhance operational flexibility in response to hydrologic conditions; and

G. WHEREAS, the Water Authority has SJCP surface water stored in Heron Reservoir that has not yet been released to Abiquiu Reservoir, stored under waiver with Reclamation (the Water Authority’s “Heron Storage”), that can be made available for MRGCD through exchange in advance and in anticipation of MRGCD’s May 2025 Heron Delivery in order to advance mutual goals.

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 MRGCD agree as follows:

Agreement

1. **Recitals.** The Recitals are incorporated herein by reference.
2. **Exchange.** The Water Authority grants MRGCD a portion of its Heron Storage in exchange for an equivalent amount of MRGCD's May 2025 Heron Delivery, subject to the following limitations:
 - a. If MRGCD requests the release and use of the Water Authority's Heron Storage before May 1, 2025, the amount of the exchange is limited to 80% of MRGCD's projected May 2025 Heron Delivery as projected by Reclamation; or
 - b. If MRGCD requests the release and use of the Water Authority's Heron Storage between May 1, 2025, and May 15, 2025, the amount of the exchange is limited to 100% of MRGCD's May 2025 Heron Delivery.
3. **Requests for Releases from Heron Reservoir.** Upon request by MRGCD, the Water Authority will allow Reclamation to release its Heron Storage for use by MRGCD subject to the limitations outlined in subparagraphs '2.a' and '2.b', above.
 - a. MRGCD shall document its request(s) for Reclamation to release the Heron Storage in the form of an email to Reclamation with copy to the Water Authority's Water Rights Program Manager: Diane Agnew, dagnew@abcwua.org.
 - b. Such release requests must also include the total amount of water requested to be released by MRGCD and be accompanied by verification of the volume requested to be equal to 80% of the projected or 100% of the actual May 2025 Heron Delivery to MRGCD.
4. **Water Accounting of Exchange.** In coordination with the Water Authority, MRGCD shall cause Reclamation to transfer the total amount of the May 2025 Heron Delivery exchanged to the Water Authority from the MRGCD's storage account in Heron Reservoir to the Water Authority's storage account in Heron Reservoir on a one-for-one basis. On or before October 15, 2025, MRGCD will document the total volume exchanged in the form of an email to the Water Authority's Water Rights Program Manager: Diane Agnew, dagnew@abcwua.org.
5. **Expiration.** This Agreement terminates at midnight on May 15, 2025, unless terminated pursuant to paragraph 6. Notwithstanding expiration, the Parties are required to fulfill any obligations that remain outstanding as of May 15, 2025, that were incurred during the term of this Agreement.

6. **Termination.** This Agreement can be terminated only by written, mutual consent of the Parties.

7. **Limitations of Liability.** Any claim of tort liability against either MRGCD 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 MRGCD 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, MRGCD 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.

8. **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.

9. **Merger.** This Agreement constitutes the entire Agreement between the Water Authority and MRGCD relating to the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

10. **Prior Agreements.** The Parties are parties to prior agreements, including agreements for suballotment and water storage at Abiquiu Reservoir, and a settlement agreement from June 2002 (the “2002 Settlement”) that resulted from an obligation of the MRGCD to repay a loan from the Water Authority of 70,000 acre-feet of SJCP water, of which 35,000 acre-feet is still owed to the Water Authority. This Agreement in no way amends, modifies, or supersedes these or any other agreements between the Water Authority and MRGCD.

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

12. **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.

13. **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 MRGCD under this Agreement. The MRGCD designates Jason Casuga, Chief Engineer/CEO, or his designee or successor, as the

MRGCD's Representative and person to receive notifications from the Water Authority under this Agreement.

14. **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 MRGCD 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

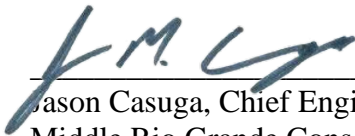


Mark S. Sanchez, Executive Director
Albuquerque Bernalillo County Water Utility Authority

04/25/2025

Date

MIDDLE RIO GRANDE CONSERVANCY DISTRICT



Jason Casuga, Chief Engineer/CEO
Middle Rio Grande Conservancy District

Date

April 30, 2025