



Meeting Date: April 17, 2019
Staff Contact: John M. Stomp, Chief Operating Officer

TITLE: C-19-16 - Storage Agreement with Ohkay Owingeh for San Juan-Chama water in Abiquiu Reservoir

ACTION: Recommend Approval

Summary:

The Pueblo of Ohkay Owingeh (Pueblo) has requested 10,000 acre-feet of storage for San Juan-Chama water in Abiquiu Reservoir. The Water Authority currently has storage agreements with numerous San Juan-Chama contractors and this agreement would add to that list of entities using the Water Authority's space.

This agreement is consistent with the terms and conditions in the other San Juan-Chama Contractors agreements. The Water Authority has the available space within the existing 170,900 acre-feet storage agreement with the Corps of Engineers. The agreement is set to expire on Dec. 31, 2039.

The Agreement will be executed immediately upon the board's approval.

FISCAL IMPACT:

None.

1
2 Agreement between
3 Ohkay Owingeh and the
4 Albuquerque Bernalillo County Water Utility Authority for
5 Storage Space in Abiquiu Reservoir
6

7 This Agreement for Storage Space in Abiquiu Reservoir (Agreement) between the
8 Albuquerque Bernalillo County Water Utility Authority (Water Authority), a political
9 subdivision of the State of New Mexico and the Ohkay Owingeh (Pueblo), a sovereign,
10 federally-recognized Indian tribe, is made as of the date of the final signature hereto.
11

12
13 **Recitals**
14

15 **WHEREAS**, pursuant to NMSA 1978, § 72-1-10, the Water Authority is legal successor to
16 the interest and rights of the City of Albuquerque for storage space in Abiquiu Reservoir
17 under Contract No. DACW47-86-C-0009 dated March 20, 1986 with the U.S. Army Corps of
18 Engineers (Corps); and
19

20 **WHEREAS**, the Water Authority has the right to store up to 170,900 acre-feet under the
21 referenced contract and has the ability to suballot storage space to other parties subject to
22 approval from the Corps; and
23

24 **WHEREAS**, the Water Authority has and continues to implement the San Juan-Chama
25 Drinking Water Project to divert and fully utilize the Water Authority's 48,200 acre-feet of
26 San Juan-Chama water for drinking water purposes; and
27

28 **WHEREAS**, the Water Authority currently has about 82,000 acre-feet of San Juan-Chama
29 Project Water stored in Abiquiu and is awaiting delivery of the final portion of its 2018 and
30 the full 2019 allocation of San Juan-Chama water; and
31

32 **WHEREAS**, the Pueblo on October 24, 2001, entered into Contract No. 01-WC-40-6830
33 with the United States providing for the delivery of up to 2,000 acre feet of water per year for
34 a permanent supply of San Juan-Chama Project water to Ohkay Owingeh; and
35

36 **WHEREAS**, the Pueblo has entered into a subcontract with the U.S. Bureau of Reclamation,
37 dated February 5, 2018, pursuant to which the Bureau has leased for four years the Pueblo's
38 2,000 acre feet annual allocation of San Juan Chama Project water; and
39

40 **WHEREAS**, the Pueblo wishes to cumulatively store its San Juan Chama Project water in
41 Abiquiu Reservoir as the Pueblo's Project water and space become available, and
42

43 **WHEREAS**, the Pueblo manages its water resources to provide for the health and welfare of
44 its members now and in the future, and storage of water in Abiquiu Reservoir promotes that
45 goal; and

1
2 **WHEREAS**, the Water Authority desires to continue its good working relationship with the
3 Pueblo on storage and other water resources matters; and
4

5 **NOW**, therefore, upon the mutual consideration described by the Agreement, including the
6 covenants and promises contained herein, the adequacy of which is acknowledged by the
7 parties, the Water Authority and the Pueblo agree as follows:
8

9 **Agreement**

10
11 The Water Authority agrees:
12

- 13 1. To provide to the Pueblo a total of up to 10,000 acre-feet of storage space for San
14 Juan Chama Project water in Abiquiu Reservoir until December 31, 2039. The
15 amount of storage space available to the Pueblo shall be determined by the Water
16 Authority in its sole discretion, based on the amount of space needed by the Water
17 Authority for its own purposes.
18
- 19 2. To work with the Pueblo to develop, to the extent feasible, a long-term storage
20 agreement in Abiquiu Reservoir for San Juan-Chama Project water up to elevation
21 6,220 feet MSL in coordination with and subject to the approval of the U.S Army
22 Corps of Engineers (Corps).
23
- 24 3. To provide the Pueblo with as much advance written notice as practicable but no
25 less than sixty (60) days whenever exercising the Water Authority's right to require
26 that the Pueblo withdraw its water from the suballotted storage space when the
27 Water Authority determines, in its sole discretion, that it needs that space for its
28 own storage.
29

30 The Pueblo agrees:
31

- 32 1. To provide written notification to the Water Authority at least thirty (30) days
33 prior to the Pueblo's decision to deposit water in Abiquiu Reservoir under the
34 terms of this Agreement.
35
- 36 2. To provide payment of 10% of the deposited water every time the Pueblo deposits
37 its San Juan Chama Project water into the Water Authority's Abiquiu space. The
38 10% payment of deposited water by the Pueblo under this Agreement shall be
39 transferred to the Water Authority's space in Abiquiu Reservoir within thirty (30)
40 days of deposit. By February 1st each year, the Pueblo shall provide a written
41 report of deposits and withdrawals from the suballotted space to the Water
42 Authority for the preceding calendar year.
43
- 44 3. To not store San Juan-Chama Project water that is suballotted, purchased or
45 otherwise acquired from any third party without the prior written approval by the
46 Water Authority.

- 1 4. To take the necessary steps to immediately move the Pueblo's San Juan-Chama
2 Project water from Abiquiu Reservoir to Elephant Butte Reservoir if the Water
3 Authority determines that suballotted water storage space is not available in
4 Abiquiu Reservoir.
5
- 6 5. To work with the Water Authority to acquire additional storage easements in
7 Abiquiu Reservoir up to elevation 6230.00 MSL. The Pueblo recognizes that the
8 real property interests acquired by any additional storage easements will belong
9 solely to the Water Authority, and that any additional water storage those
10 easements allow must be coordinated with, and subject to the approval of, the
11 Corps.
12
- 13
- 14 6. To release the Pueblo's San Juan-Chama Project water from El Vado Reservoir or
15 Heron Reservoir to Abiquiu Reservoir in order to provide recreational benefits on
16 the Rio Chama during recreational weekends as established by the Corps in
17 cooperation with the Water Authority and federal agencies, except that such
18 releases shall be determined in the Pueblo's sole discretion and shall not be subject
19 to the direction of the Water Authority or any state or federal agency.
20
- 21 7. To be responsible for its proportional share of evaporative losses that occur on
22 Pueblo San Juan-Chama Project water stored in Abiquiu from the effective date of
23 this Agreement. The Pueblo agrees to cooperate with the U.S. Bureau of
24 Reclamation in its monthly evaporative loss computation, including providing any
25 necessary documentation to ensure that these losses are deducted from the Pueblo's
26 account.
27
- 28 8. To be responsible for its proportional share of the annual financial cost for storage
29 calculated according to the total amount of water deposited by the Pueblo in
30 Abiquiu Reservoir that year as a percentage of the total 170,900 acre-feet charged
31 to the Water Authority. The proportional share of the cost shall be based on the
32 annual fiscal-year billing provided to the Water Authority by the Corps and shall
33 be payable by the Pueblo to the Water Authority within thirty (30) days of receipt
34 of written notice from the Water Authority
35

36 Both parties agree:

- 37
- 38 1. The amount stored and the storage deadline may be extended by written mutual
39 consent by the Authority's Executive Director and the Pueblo's Representative if
40 executed prior to December 31, 2039.
41
- 42 2. To work cooperatively in developing a long-term agreement in Abiquiu Reservoir
43 for the Pueblo and other water management entities for San Juan-Chama Project
44 water up to elevation 6220.00 MSL in coordination with and subject to the
45 approval of the Corps.
46

- 1 3. Any claim of liability against the Water Authority arising from its obligations
2 under this Agreement is subject to the immunities and limitations of the New
3 Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended.
4 Except as expressly provided by the New Mexico Tort Claims Act, the Water
5 Authority does not waive its sovereign immunity, any defense or any limitation of
6 liability provided by applicable law. No provision in this Agreement shall be
7 construed to modify, abrogate or waive any provision of the New Mexico Tort
8 Claims Act. None of the provisions contained within this Agreement are intended
9 to create in the public or any member thereof a third party beneficiary or to
10 authorize anyone not a party to the Agreement to maintain a suit or any claim
11 whatsoever, pursuant to the provisions of this agreement.
12
- 13 4. Any claim of liability against the Pueblo shall be subject to the limited waiver of
14 sovereign immunity provided herein. The Pueblo agrees to waive its immunity from
15 unconsented suit solely for the limited purpose of enforcement of its obligations under
16 this Agreement by the Water Authority and no other party. This waiver applies to
17 claims seeking specific performance and/or damages, but it shall not be construed to
18 include claims seeking special damages or consequential damages.
19
- 20 5. The Water Authority designates Mark S. Sanchez, Executive Director, or his designee,
21 as the Water Authority's Representative and person to receive notifications from the
22 Pueblo under this Agreement. The Pueblo designates Larry Phillips, Director, Natural
23 Resources Department, or his designee, as the Pueblo's Representative and person to
24 receive notifications from the Water Authority under this Agreement.
25
- 26 6. This Agreement may be signed in counterparts, and each signed copy shall be deemed
27 an original.
28

29 IN WITNESS WHEREOF, the Ohkay Owingeh and the Albuquerque Bernalillo County
30 Water Utility Authority have caused this Agreement to be executed and delivered by its duly
31 authorized representatives as of the date specified below.
32
33
34
35

1 ALBUQUERQUE BERNALILLO COUNTY
2 WATER UTILITY AUTHORITY

3
4
5 _____
6 Mark S. Sanchez, Executive Director
7 Albuquerque Bernalillo County Water Utility Authority

_____ Date

8
9 OHKAY OWINGEH

10
11
12 _____
13 Ron Lovato
14 Governor

15
16
17 _____
18 Larry Phillips
19 Natural Resource Division Director

20
21
22 Approved as to Form:

23
24
25 _____
26 Curtis G. Berkey
27 Counsel for Ohkay Owingeh

28
29 Acknowledged by:

30
31 UNITED STATES OF AMERICA

32
33 _____
34 Jennifer Faler, Area Manager, Albuquerque Area Office, Bureau of Reclamation

35
36
37 Approved by:

38
39 U.S. ARMY CORPS OF ENGINEERS

40
41 _____
42 James L. Booth, LTC District Commander, U.S. Army Corps of Engineers