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Meeting Date: August 20, 2025

Staff Contact: Diane Agnew, Water Rights Program Manager

**TITLE: R-25-25 – Authorizing the Executive Director to Enter Into An Agreement With The U.S. Bureau of Reclamation To Suballot Storage Space In Abiquiu Reservoir**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) has had agreements with the U.S. Bureau of Reclamation (Reclamation) the last ten years for the storage of water within the Water Authority's allotted space in Abiquiu Reservoir. This agreement will allow Reclamation to store leased San Juan-Chama water ("supplemental water") that is used for the purpose of providing additional flows in compliance with requirements of the 2016 Biological Opinion that Reclamation is a signatory to. Reclamation releases stored supplemental water as part of operations in the Middle Rio Grande and the Endangered Species Act (ESA).

Under the new storage sub-allotment agreement, the Water Authority will provide up to 10,000 acre-feet of storage within the Water Authority's allotted space in Abiquiu Reservoir and in exchange, Reclamation will waive the carryover provision that impacts Water Authority San Juan-Chama water stored in Heron Reservoir. Through waiving the carryover provision in Heron Reservoir, the Water Authority is able to retain a quantity of San Juan-Chama water in Heron Reservoir where it will have less water lost to evaporation. Approval of this agreement will be consistent with the Water Authority's storage agreements with SJCP contractors (e.g., Middle Rio Grande Conservancy District) at Abiquiu Reservoir and will support ESA operations in the Middle Rio Grande.

**FISCAL IMPACT:**

None

# ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

**BILL NO. R-25-25**

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## RESOLUTION

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**AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN AGREEMENT**

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**WITH THE U.S. BUREAU OF RECLAMATION TO SUBALLOT STORAGE SPACE IN**

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**ABIQUIU RESERVOIR**

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WHEREAS, P.L. 97-140 specified that the storage of San Juan-Chama water in

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Abiquiu Reservoir shall not interfere with the authorized purposes of the project and

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shall include a requirement that each user of storage space shall pay any increase in

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operation and maintenance costs attributable to the storage of that user's water; and

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WHEREAS, Public Law 100-522 (October 24, 1988) and Section 337 of the Water

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Resources Development Act of 2020 (Division AA of Public Law 116-260) modified the

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authorization in Public Law 97-140 to allow concurrent storage of San Juan-Chama

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Project water and native Rio Grande system water in Abiquiu Reservoir up to elevation

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6230.00 NGVD29; and

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WHEREAS, P.L. 116-260 required that each user of storage space, regardless of

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source of water, pay for any increase in costs attributable to storage of that user's

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water; and

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WHEREAS, on June 26, 2024, the USACE and the Water Authority entered into

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a Water Storage Agreement for the concurrent storage of SJCP and native Rio Grande

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system water within its Property in Abiquiu Reservoir up to a maximum elevation of

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6230.00 NGVD29, which superseded the San Juan-Chama Contract No. DACW47-86-

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C-0009, dated March 20, 1986; and

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WHEREAS, the Water Authority has acquired easements and fee simple

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property up to elevation 6230.00 NGVD29 in Abiquiu Reservoir; and

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WHEREAS, Reclamation is subject to the 2016 Biological Opinion (BO) issued

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by the US Fish and Wildlife Service in accordance with the Endangered Species Act of

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December 28, 1973 (87 Stat. 884) (16 U.S.C. §§ 1531-1543, particularly Section

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1536(a)(1)); and

1           WHEREAS, while Reclamation and its 2016 BO partners seek permanent  
2 strategies for managing the existing limited water supply to meet the needs of the  
3 Middle Rio Grande water users, efforts need to be made to manage river flows to  
4 optimize Rio Grande Silvery Minnow (Minnow) propagation and spawning as delineated  
5 in the 2016 BO

6           WHEREAS, on August 24, 2016, Reclamation and the Water Authority executed  
7 an agreement under which the Water Authority provided up to 10,000 AF of their  
8 storage space in Abiquiu Reservoir to Reclamation, which expired on September 30,  
9 2021; and

10           WHEREAS, on May 19, 2022, Reclamation and the Water Authority executed an  
11 agreement under which the Water Authority provided up to 10,000 AF of their storage  
12 space in Abiquiu Reservoir to Reclamation, and this agreement expires October 31,  
13 2025.

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15 BE IT RESOLVED BY THE WATER AUTHORITY:

16           The Executive Director is authorized to act on behalf of the Water Authority to  
17 sign an agreement whereby the Water Authority will suballot up to 10,000 acre-feet of  
18 storage space in Abiquiu reservoir to Reclamation for the storage of supplemental water  
19 (San Juan-Chama leased water for environmental flows).

AGREEMENT BETWEEN  
the  
UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
and the  
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY  
TO LEASE ABIQUIU RESERVOIR STORAGE SPACE

THIS AGREEMENT (Agreement), made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, 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 (ch. 1093, 32 Stat. 388) and Acts amendatory thereof or supplementary thereto, particularly the authority granted the Secretary under Section 14 of the Reclamation Project Act of August 4, 1939 (ch. 418, 53 Stat. 1197; 43 U.S.C. § 389), and the Act of June 13, 1962 (76 Stat. 96), and the Act of December 27, 2020 (P.L. 116-260, Sec 337), which amended the Acts of December 29, 1981 and October 24, 1988 (P.L. 97-140, Sec 5 (b) and P.L. 100-522), to authorize concurrent storage of native Rio Grande system water and San Juan-Chama Project (SJCP) water in Abiquiu Reservoir, and the ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY, a political subdivision of the State of New Mexico, herein styled “Water Authority or Contractor.”

WITNESSETH THAT:

EXPLANATORY 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 SJCP as a participating project in the Colorado River Storage Project, and the Act of December 29, 1981 (PL. 97-140, 95 Stat. 1717); and
- B. WHEREAS, the City of Albuquerque, on June 25, 1963, entered into Repayment Contract No. 14-06-500-810 with Reclamation, for water from the SJCP. The City of Albuquerque has assigned the Repayment Contract to the Water Authority and said assignment was approved by Reclamation on March 9, 2006; and
- C. 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

- 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, 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
- F. 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
- G. WHEREAS, on June 26, 2024, the USACE and the Water Authority entered into a Water Storage Agreement for the concurrent storage of SJCP and native Rio Grande system water within its Property in Abiquiu Reservoir up to a maximum elevation of 6230.00 NGVD29, which superseded the San Juan-Chama Contract No. DACW47-86-C-0009, dated March 20, 1986; and
- H. WHEREAS, upon execution, the Water Storage Agreement dated June 26, 2024, supersedes the March 20, 1986, Contract No. DACW47-86-C-0009; and
- I. WHEREAS, Reclamation is subject to the 2016 Biological Opinion (BO) issued by the US Fish and Wildlife Service in accordance with the Endangered Species Act of December 28, 1973 (87 Stat. 884) (16 U.S.C. §§ 1531-1543, particularly Section 1536(a)(1)); and
- J. WHEREAS, while Reclamation and its 2016 BO partners seek permanent strategies for managing the existing limited water supply to meet the needs of the Middle Rio Grande water users, efforts need to be made to manage river flows to optimize Rio Grande Silvery Minnow (Minnow) propagation and spawning as delineated in the 2016 BO; and
- K. WHEREAS, Reclamation has the need for additional storage space each year to store SJCP water for its Supplemental Water Program; and
- L. WHEREAS, on August 24, 2016, Reclamation and the Water Authority executed an agreement under which the Water Authority provided up to 10,000 AF of their storage space in Abiquiu Reservoir to Reclamation, which expired on September 30, 2021; and
- M. WHEREAS, on May 19, 2022, Reclamation and the Water Authority executed an agreement under which the Water Authority provided up to 10,000 AF of their storage

space in Abiquiu Reservoir to Reclamation, and this agreement expires October 31, 2025;  
and

N. WHEREAS, Reclamation desires to enter into a new agreement with the Water Authority for up to 10,000 AF of their storage space in Abiquiu Reservoir for SJCP water.

THEREFORE, IT IS MUTUALLY AGREED AMONG THE PARTIES AS FOLLOWS:

#### DEFINITIONS

1. The following terms, when used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, shall have the meaning specified.
  - a. The term “Supplemental Water” means San Juan-Chama Project water under lease to Reclamation for the purpose of providing additional flows, to help satisfy the 2016 Biological Opinion or any subsequent biological opinion.
  - b. “Repayment Contract” means Repayment Contract No. 14-06-500-810, dated June 25, 1963, as amended, between Reclamation and the Water Authority.

#### WATER AUTHORITY DELIVERABLES

2.
  - a. The Water Authority agrees to provide Reclamation up to 10,000 AF of storage space per calendar year, for five (5) years beginning November 1, 2025, and continuing through October 31, 2030, in Abiquiu Reservoir subject to the terms and provisions herein. 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. Thereafter, this Agreement may be extended for one additional five-year term, through October 31, 2035, as may be mutually agreed upon in writing between the Water Authority, Reclamation, and approved by USACE.
  - b. To provide Reclamation with as much advance notice as practicable whenever exercising the Water Authority’s right to require that Reclamation vacate its stored water because the Water Authority becomes aware that the contracted space to Reclamation is necessary for storage of Water Authority’s water.
  - c. The Water Authority agrees to cooperate with Reclamation in accounting for water releases and evaporation related to this Agreement at Abiquiu Reservoir.

#### RECLAMATION DELIVERABLES

3. As consideration for the storage provided under this Agreement:

a. Reclamation recognizes 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. Reclamation agrees to manage and operate releases of its Supplemental Water to Abiquiu Reservoir, in coordination with the Water Authority, and whenever practical, in a manner intended to benefit both parties as well as for the benefit of environmental and recreational flows on the Rio Chama.

c. Reclamation agrees to waive the carryover provision of Article 18e. of the Repayment Contract, between Reclamation and the Water Authority, which prohibits annual carryover of SJCP water allocations in Heron Reservoir. Reclamation and the Water Authority agree that for every year of this Agreement, a corresponding waiver will be approved granting storage until September 30 of the following calendar year.

d. Reclamation agrees that its use of storage space provided pursuant to this Agreement will not impair at any time, or impact in any way the Water Authority's ability to release, store, or manage water in Abiquiu Reservoir.

#### WAIVER UNDER REPAYMENT CONTRACT

4. a. Reclamation has determined it is advantageous to the United States to waive subarticle 18e. of the Repayment Contract prohibiting annual water carryover to allow the Water Authority to keep its water supply in Heron Reservoir until September 30 of the final year of this Agreement, contingent upon SJCP's ability to store such water.

b. This extension of storage time is granted only during the term of this Agreement and this waiver to extend storage of annual SJCP allocations shall not be construed in any way to affect storage of future allocations, nor shall it be considered a change to the Repayment Contract.

#### MUTUAL UNDERSTANDINGS AND AGREEMENTS

5. a. In the event the Water Authority determines in its sole discretion that the storage of water under this Agreement will impair the ability of the Water Authority to store water in Abiquiu Reservoir or will otherwise impair the Water Authority's ability to fulfill its statutory purposes, Reclamation agrees to release any Supplemental Water then stored under this Agreement in a manner consistent with state and federal law.

b. Any water stored under this Agreement shall suffer its proportional share of evaporative losses as determined using the existing hydrologic accounting for Abiquiu Reservoir.

c. Reclamation and the Water Authority further recognize that the storage space leased under this Agreement has a monetary market value that the Water Authority is exchanging for the mutual understandings, covenants, and agreements contained herein.

d. This Agreement shall not be construed in any way to change the Repayment Contract or affect any other binding contracts in effect during the period of this present Agreement.

e. This Agreement contains the entire agreement between these parties concerning storage of Supplemental Water in Abiquiu Reservoir by Reclamation and completely supersedes and replaces all previous agreements and understanding not expressly contained herein.

### NOTICES

6. a. Any correspondence, including any notices, to the Water Authority should be directed to:

Albuquerque Bernalillo County Water Utility Authority  
Attention: Mr. Mark S. Sanchez, Executive Director  
PO Box 568  
Albuquerque NM 87102

b. Any correspondence, including any notices, to Reclamation should be directed to:

Bureau of Reclamation  
Albuquerque Area Office  
Attention : ALB-623  
Chancock@usb.gov  
555 Broadway NE, Suite 100  
Albuquerque NM 87102-2162

c. The above addresses may be changed by written notice to the other party.

d. Notices sent by email shall be deemed delivered upon transmission. Notices sent by certified mail, return receipt requested, postage prepaid, shall be deemed delivered on the date stated on the certified mail return receipt. Notices sent by regular first-class mail shall be deemed delivered on the date of delivery by the postal carrier. Notices sent by overnight delivery using a nationally recognized overnight courier shall be deemed delivered upon confirmation from such courier. Notices sent by personal delivery to a responsible person with written confirmation of such delivery shall be deemed delivered upon the date stated in the written confirmation.

e. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Albuquerque Area Office, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepared or delivered to the of the Contractor.

### TERMINATION

7. a. The Water Authority may terminate this Agreement for any reason. Notice of termination must be given by the Water Authority no later than July 1 of any year. If the Water

Authority provides notice by July 1, then this Agreement shall terminate upon October 31 of the year following such notice.

b. Reclamation may terminate this contract for any reason. In the case of Reclamation terminating this Agreement, Reclamation will provide notice to the Water Authority by July 1 one calendar year prior to the predetermined termination date of October 31.

c. In case of a notice of termination by either party, the parties will meet and confer as to the desirability of amending the terms for any remaining years, with such new terms implemented not earlier than December 31 of the year following such notice.

#### NO NULLIFICATION

8. Neither party may, by termination of this Agreement, nullify obligations already incurred before the date such notice of desire for termination is received, nor prior to the effective date of agreed termination.

#### WAIVER OF BREACH – NOT RELIEVING

9. a. A breach of any provision by either party to this Agreement shall not relieve either party of the remaining obligations of this Agreement.

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

#### NO EFFECT ON REPAYMENT CONTRACT

10. All provisions of the Repayment Contract between the Water Authority and Reclamation shall remain in full force and effect, and nothing in this Agreement shall be interpreted in any manner to amend, modify, or affect that contract, or relieve either the Water Authority or Reclamation from any obligations or requirements agreed to therein, except for the waiver granted in Paragraph 4a. of this Contract waiving the no carry-over provision of the Repayment Contract.

#### NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

11. NEPA compliance is through the 2021 Long Term Supplement to the 2001 Rio Grande Supplemental Water Programmatic Final Environmental Assessment and Finding of No Significant Impact. This document conforms with the Endangered Species Act by analyzing Reclamation's activities and their conformance with the 2016 BO. It is envisioned this environmental compliance will continue to provide sufficient compliance in future years so long as future biological opinions contain no major changes in strategies for preservation of the Silvery Minnow in the Middle Rio Grande Valley.

CONFIRMATION OF CONTRACT

12. Promptly after the execution of this Contract, the Contractor shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of New Mexico, the Contractor is a legally constituted entity, and the contract is lawful, valid, and binding on the Contractor. This contract will not be binding on the Contracting Officer until the Contractor provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Contractor may provide, or Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of New Mexico, confirming the proceedings on the part of the Contractor for the authorization of the execution of this contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

14. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

15. While this contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either Reclamation or the Contractor under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED-- SUCCESSORS AND ASSIGNS OBLIGATED

16. 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 or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

17. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), landownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

PROTECTION OF WATER AND AIR QUALITY

18. a. The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

b. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

c. The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico; and will obtain all required permits or licenses from the appropriate Federal; State or local authorities necessary for the delivery of water by the Contractor; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within its Project Water Service Area.

d. This article will not affect or alter any legal obligations of the Secretary to provide draining or other discharge services.

WATER CONSERVATION

19. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Agreement shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

20. a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the Contracting Officer reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

#### CONTRACT DRAFTING CONSIDERATIONS

21. This Agreement has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. The Preamble and Articles 1 through 7 of this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

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

REVIEWED AS TO LEGAL SUFFICIENCY: UNITED STATES OF AMERICA

\_\_\_\_\_  
Regional Solicitor’s Office,  
Intermountain Region

\_\_\_\_\_  
Regional Director  
Bureau of Reclamation  
Interior Region 7 – Upper Colorado Basin

APPROVED: ALBUQUERQUE BERNALILLO  
COUNTY  
WATER UTILITY AUTHORITY

\_\_\_\_\_  
LTC Patrick M. Stevens V  
Albuquerque District Commander  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Mark S. Sanchez  
Executive Director