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Meeting Date: December 13, 2023  
Staff Contact: Mark S. Sanchez, Executive Director

**TITLE: R-23-45 – Authorizing the Executive Director to Enter into an Agreement with the Middle Rio Grande Conservancy District to Suballot Storage Space in Abiquiu Reservoir**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) has had agreements with various San Juan-Chama Project contractors for the last 20 years for the storage of water within the Water Authority's allotted space in Abiquiu Reservoir and for the storage of water on Water Authority easements and fee simple property. In support of Middle Rio Grande Conservancy District (MRGCD) operations in the Middle Rio Grande, Water Authority will coordinate storage of MRGCD water in Abiquiu Reservoir through two storage agreements.

Under the new storage sub-allotment agreement, the Water Authority will provide up to 40,000 acre-feet of storage within the Water Authority's allotted space in Abiquiu Reservoir and in exchange, MRGCD will provide payment of 15% of the delivered water into the Water Authority's Space. Half of this amount will be credited toward repayment of the outstanding water debt owed to the Water Authority by MRGCD. The second agreement will allow MRGCD to store water within their allotted space, on Water Authority easements and fee simple property and in exchange, MRGCD will pay \$1 per acre-foot of water stored. Approval of these agreements will be consistent with the Water Authority's storage agreements with other SJCP contractors at Abiquiu Reservoir and will support MRGCD operations in the Middle Rio Grande.

**FISCAL IMPACT:**

None

# ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO.     R-23-45    

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## RESOLUTION

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

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**WITH THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT TO SUBALLOT**

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**STORAGE SPACE IN ABIQUIU RESERVOIR**

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WHEREAS, Congress authorized the Secretary of the Army to enter into

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agreements with entities for storage of 200,000 acre-feet of San Juan-Chama water in

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Abiquiu Reservoir in Public Law 97-140; and

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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, in P.L. 116-260 Congress amended P.L. 97-140 and P.L. 100-522 to

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allow concurrent storage of San Juan-Chama and native Rio Grande system water in

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Abiquiu Reservoir up to elevation 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, pursuant to NMSA 1978 § 72-1-10, the Water Authority is the legal

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successor to the interest and rights of the City of Albuquerque for storage space in

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Abiquiu Reservoir under Contract No. DACW47-86-C-0009 dated March 20, 1986 with

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the U.S. Army Corps of Engineers (Corps) and has the ability to allow other parties to

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use its storage space subject to approval from the Corps; and; and

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WHEREAS, the Water Authority and MRGCD are also parties to a settlement

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agreement from June 2002 that resulted in an obligation of the MRGCD to repay a loan

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from the Water Authority of 70,000 acre-feet of San Juan-Chama Project water, of

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which 35,000 acre-feet is still owed to the Water Authority, and a portion of MRGCD's

1 payments under the suballotment agreement will be credited toward the remaining  
2 amount owed under that settlement.

3 WHEREAS, MRGCD will preferentially use the USACE/Contractors' pool for storage  
4 of water, but may desire additional storage space from the Water Authority.

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6 BE IT RESOLVED BY THE WATER AUTHORITY:

7 Section 1. That the Executive Director shall have the authority to act on behalf of the  
8 Water Authority to sign an agreement whereby the Water Authority will suballot up to  
9 40,000 acre-feet of storage space in Abiquiu reservoir to MRGCD.

10 Section 2. That the Executive Director shall have the authority to act on behalf of the  
11 Water Authority to sign an agreement whereby MRGCD will compensate for utilizing the  
12 Water Authority's easements in Abiquiu reservoir.

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## WATER STORAGE AGREEMENT

This water storage 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, 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 the 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

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I. WHEREAS, pursuant to NMSA 1978 § 72-1-10, the Water Authority is the legal successor to the City of Albuquerque in its agreement with the U.S. Army Corps of Engineers (Corps) for 170,900 acre-feet of storage space in Abiquiu Reservoir under Contract No. DACW47-86-C-0009 dated March 20, 1986, as may be amended; and

J. 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

K. WHEREAS, the purpose of this Agreement is to authorize the MRGCD 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 MRGCD 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 up to a total of 2,000 acre-feet of MRGCD's San Juan-Chama water or of native Rio Grande water, which amount is equal to the MRGCD'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 MRGCD'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 2,000 acre-feet; 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 MRGCD's water actually stored; and

c. The Water Authority's grant under this agreement permits MRGCD to store San Juan-Chama water or native Rio Grande system water within or upon its Property<sup>1</sup> does not convey any right of possession, control, exclusion, or any other interest in real property to the MRGCD, nor does it affect or modify the existing Water Authority contract rights under Contract No. DACW47-86-C-009 dated March 20, 1986 or any subsequent Abiquiu allotment contracts between the Water Authority and the Corps.

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<sup>1</sup> 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.

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

a. To provide payment of \$1 for each acre-foot of MRGCD's water stored upon or within the Water Authority's Property during the previous calendar year as shown on the annual report, irrespective of evaporation. The MRGCD 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 1<sup>st</sup> 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 MRGCD water stored in Abiquiu. MRGCD 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 MRGCD account.

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 MRGCD 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 MRGCD; or
- d. At the sole discretion of the MRGCD by providing a 30-day written notice of termination to the Water Authority.
- e. If so terminated, all of the MRGCD 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 MRGCD 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 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.

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 MRGCD. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

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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 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.

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 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

\_\_\_\_\_  
Date

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

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

\_\_\_\_\_  
Date

11/28/2023

## SUBALLOTMENT AGREEMENT

This suballotment 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, 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 such storage; 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 further 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 contracting entities no longer require the storage; and

E. WHEREAS, P.L. 116-260 amended P.L. 97-140 and P.L. 100-522 to allow 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 do not rise to a point above the elevation of 6,230.00 NGVD29; and

F. 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

G. WHEREAS, P.L. 116-260 further requires that 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

H. WHEREAS, pursuant to NMSA 1978, § 72-1-10, the Water Authority is the legal successor to the City of Albuquerque in its agreement with the U.S. Army Corps of Engineers (the “Corps”) (Contract No. DACW47-86-C-0009 dated March 20, 1986, as may be amended)

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for 170,700 acre-feet of the total storage space in Abiquiu Reservoir contemplated by P.L. 100-522 under; and

I. WHEREAS, the Water Authority has acquired 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

J. WHEREAS, the purpose of this Agreement is to grant the MRGCD a suballotment of the Water Authority's contracted storage space under DACW47-86-C-0009 or any successor allotment agreement between the Water Authority and the Corps; and

K. WHEREAS, the Water Authority may authorize the MRGCD by separate agreement to utilize the Water Authority's Property to also store its proportional share of the remaining 29,100 acre-feet of the total storage space contemplated by P.L 100-522 that was set aside for non-Water Authority Abiquiu Reservoir Contractors

L. WHEREAS, the Parties are also parties to a settlement agreement from June 2002 (the "2002 Settlement") that resulted in an obligation of the MRGCD to repay a loan from the Water Authority of 70,000 acre-feet of San Juan-Chama Project water, of which 35,000 acre-feet is still owed to the Water Authority, and a portion of MRGCD's payments under this Agreement will be credited toward the remaining amount owed under that settlement;

M. 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. **Suballotment.** Through this Agreement, the Water Authority grants to the MRGCD a suballotment of 40,000 acre-feet from the Water Authority's contracted storage space under DACW47-86-C-0009 or any successor allotment agreement between the Water Authority and the Corps, subject to the following requirements and limitations:

a. The water storage needs of the Water Authority take priority over the suballotment established for the MRGCD by this Agreement and the Water Authority maintains the exclusive right to store its San Juan-Chama or native Rio Grande system water within any unused space within any suballotment granted by this Agreement; and

b. The amount of storage space available for storage of MRGCD water at any given time will be determined by the Water Authority through an exercise of its discretion; and

c. The MRGCD shall not store San Juan-Chama or native Rio Grande system water that is suballotted, purchased or otherwise acquired or obtained from any third party without the written approval from the Water Authority; and

d. The Water Authority, through an exercise of its discretion, may require that the MRGCD vacate some or all of its stored water within this suballotment to allow the Water Authority to meet its water storage needs. Prior to the exercise of the right to request that MRGCD vacate its water in storage, the Water Authority shall provide the MRGCD notice of its intent to exercise this entitlement providing as much advance notice as is practicable; and

e. This suballotment does not convey any right of possession, control, exclusion, or any other interest in real property to the MRGCD, nor does it affect or modify the existing Water Authority contract rights under Contract No. DACW47-86-C-009.

3. **Consideration.** In exchange for the suballotment described in paragraph 2, above, the MRGCD agrees:

a. To provide payment to the Water Authority in the form of wet Rio Grande (Native) water, an amount equal to 15% of MRGCD's water delivered to Abiquiu for storage within this suballotment based on the Maximum Days of Stored Volume during the calendar year (the "MDSV Water Payment").

i. 50% of the MDSV Water Payment will be credited toward repayment of the outstanding water debt owed to the Water Authority by MRGCD under the 2002 Settlement. Notwithstanding the foregoing, MRGCD's payment obligation under this Agreement is separate and distinct from any obligations established by the 2002 Settlement, and nothing in this Agreement shall be construed to relieve the MRGCD of its repayment obligation, or any other obligation under the 2002 Settlement except to the extent that those obligations are reduced by this credit.

b. To submit an accounting of the water stored in the suballotted storage space during the previous calendar year to the Water Authority by February 1<sup>st</sup> of each year. The payment for the previous year's storage as required by paragraph '2', above, is due and deliverable to the Water Authority at Abiquiu Reservoir 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 provide to the Water Authority state, federal or other permits necessary to allow the MRGCD to store native Rio Grande system water within the suballotted storage space.

e. To work with and support the Water Authority to obtain a Water Authority permit with the NMOSE for the storage of native water in Abiquiu Reservoir. The Water Authority will be seeking an NMOSE native storage permit for the storage of native water received in accordance with the terms and conditions of this sub-allotment agreement with MRGCD.

f. 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 the suballotted space 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.

g. To not store within this suballotment 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.

h. It will provide to the Water Authority proof that it is meeting its obligation to pay its proportional share of the monthly evaporative losses that occur on MRGCD water stored under this suballotment. MRGCD will work with the U.S. Bureau of Reclamation and as the result of that effort provide the records of the evaporative computation calculated on a monthly basis and ensure that these losses are deducted from the MRGCD account.

i. It will work with the Water Authority to ensure that the necessary steps are being taken to immediately release or move MRGCD San Juan-Chama or native Rio Grande system water from Abiquiu Reservoir to Elephant Butte Reservoir if the Water Authority determines that suballotted water storage space is no longer available in Abiquiu Reservoir as provided by subparagraphs 2(b), and 2(d), above.

j. It will pay to the Water Authority its proportional share of the annual cost for storage calculated based on the total amount of water deposited by MRGCD as a percentage of the total charged to the Water Authority. The proportional share of the cost shall be based on the annual fiscal-year billing provided to the Water Authority by the Corps and shall be payable to the Water Authority.

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

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

- a. At any time by written mutual consent of the Parties;
- b. At the sole discretion of the Water Authority by providing a 90-day written notice of termination to MRGCD; or
- c. At the sole discretion of the MRGCD by providing a 30-day written notice of termination to the Water Authority.

d. If so terminated, all of the MRGCD San Juan-Chama or native Rio Grande system water remaining in the suballotted storage space at the time of termination may remain for a period of up to one year except as may be limited by subparagraphs 2(a) through 2(d).

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6. **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 provide 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.

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 MRGCD with respect to suballotment of its storage space under DACW47-86-C-0009 or any successor allotment agreement between the Water Authority and the Corps. 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.** 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 MRGCD under this Agreement. MRGCD designates Jason Casuga, Chief Engineer/CEO, or their designee, as the MRGCD'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

11/28/2023

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

\_\_\_\_\_  
Date

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

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

\_\_\_\_\_  
Date

**Acknowledged by:**

UNITED STATES OF AMERICA

\_\_\_\_\_  
Jennifer Faler, Area Manager  
Albuquerque Area Office  
Bureau of Reclamation

\_\_\_\_\_  
Date

Approved by:

U.S. ARMY CORPS OF ENGINEERS

\_\_\_\_\_  
Lt. Col. Jerre Hansbrough  
LTC District Commander  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date