
Meeting Date: August 19, 2015
Staff Contact: John Stomp, Chief Operating Officer

TITLE: C-15-23 - Restated and Amended Agreement between the City of Santa Fe and the Albuquerque Bernalillo County Water Utility Authority to Lease Storage Space in Abiquiu Reservoir

ACTION: Recommend Approval

SUMMARY:

Overview of Restated and Amended Agreement

The Water Authority has had storage agreements with the City of Santa Fe and others over the last 20 years. Under this new Agreement, the Water Authority will provide up to 15,000 acre-feet of storage space in Abiquiu Reservoir and in exchange, the City of Santa Fe (City) will provide payment of 10% of the delivered water every time the City delivers water into the Water Authority's space. In addition, the City will work with the Water Authority to develop additional storage opportunities and both parties agree to work cooperatively in developing a long-term storage agreement in Abiquiu Reservoir for the City and other water management entities for San Juan-Chama water up to elevation 6220.00 MSL subject to future Water Authority Board approval.

FISCAL IMPACT:

None

Restated and Amended Agreement between the City of Santa Fe and the
Albuquerque Bernalillo County Water Utility Authority to
Lease Storage Space in Abiquiu Reservoir

This new Agreement to Lease Storage Space in Abiquiu Reservoir (Agreement) between the Albuquerque Bernalillo County Water Utility Authority (Water Authority), a political subdivision of the State of New Mexico and the City of Santa Fe, New Mexico (City), a municipal corporation of the State of New Mexico, is made this _____ day of _____, 2015, and supersedes the agreement between the Authority and the City dated July 11, 2007.

Recitals

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

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

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

WHEREAS, the Authority is required under Permit No. 4830 with the Office of the State Engineer to have available 130,000 acre-feet of San Juan-Chama water in Abiquiu Reservoir prior to beginning operations of the Drinking Water Project; and

WHEREAS, the Water Authority currently has about 120,000 acre-feet of San Juan-Chama stored in Abiquiu and is awaiting delivery of the final portion of its 2014 and the full 2015 allocation of San Juan-Chama water; and

WHEREAS, the Water Authority desires to continue a good working relationship with the City on storage and other water resources matters; and

WHEREAS, the provisions regarding the storage of water in Abiquiu Reservoir in the July 11, 2007 Agreement between the Water Authority and the City have expired; and

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

Agreement

The Water Authority agrees:

1. To provide a total of up to 15,000 acre-feet of storage space in Abiquiu Reservoir until December 31, 2025. 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 (see paragraph 4 below).
2. Work with the City to develop a long-term storage agreement in Abiquiu Reservoir for San Juan-Chama water up to elevation 6220.00 MSL.
3. To provide the City with as much advance notice as practicable whenever exercising the Water Authority's right to require that the City vacate its water from the leased storage space because the Water Authority becomes aware that the space the City has subleased is needed for Water Authority storage.

The City of Santa Fe agrees:

1. To provide written notification to the Water Authority when water under the terms of this Agreement is to be delivered to Abiquiu Reservoir.
2. To provide payment of 10% of the delivered water stored every time a the City deposit delivers water is made into the Water Authority's space. The 10% payment of delivered water stored by the City under this Agreement will be transferred to the Water Authority's space in Abiquiu Reservoir within 30 days of delivery. The City will provide an annual report of deposits and withdrawals from the leased space to the Water Authority by February 1st of every year.
3. Not to store San Juan-Chama water that is leased, purchased or otherwise acquired or obtained from any third party without the written approval from the Water Authority.
4. To take the necessary steps to immediately move the City's San Juan-Chama water from Abiquiu Reservoir to Elephant Butte Reservoir if the Water Authority determines that leased water storage space is not available in Abiquiu Reservoir.
5. To work with the Water Authority to develop additional storage opportunities and potentially increase the amount of storage in Abiquiu Reservoir. The City recognizes that any additional space obtained belongs solely to the Water Authority in cooperation with the Corps.
6. By September 1, August 2015, the City will provide a letter to the Water Authority supporting efforts to obtain the remaining permanent easements around Abiquiu Reservoir which will benefit the City and other entities in the Middle Rio Grande.

7. In 2015, and when possible thereafter, release and deliver water from El Vado or Heron to provide recreational benefits on the Rio Chama by releasing water from El Vado or Heron Reservoir to store in Abiquiu Reservoir during established recreational weekends in cooperation with the Water Authority and federal agencies.

8. The City is responsible for their proportional share of evaporative losses that occur on City San Juan-Chama water stored in Abiquiu including the current and any water added to the reservoir over time. The City 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 City's account.

9. The City is responsible for their proportional share of the annual cost for storage calculated based on the total amount of water deposited by the City as a percentage of the total 170,900 acre-feet charged to the Water Authority on an annual basis. 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..

Both parties agree:

1. The amount stored and the storage deadline may be extended by written mutual consent by the Authority's Executive Director and the City's City Manager if executed prior to December 31, 2025.

2. To work cooperatively in developing a long-term agreement in Abiquiu Reservoir for the City and other water management entities for San Juan-Chama water up to elevation 6220.00 MSL.

3. Any claim of tort liability against either the City or the Authority is subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30.

IN WITNESS WHEREOF, the City of Santa Fe 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

CITY OF SANTA FE

Mayor

City Clerk

City Attorney's Office, approved as to form

Finance Director

Acknowledged by:

UNITED STATES OF AMERICA

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

Approved by:

U.S. ARMY CORPS OF ENGINEERS
