

Interim Advance Funding Agreement No. 17-AF-32-00010
Between the New Mexico Interstate Stream Commission,
the Bureau of Reclamation, and the New Mexico CAP Entity

I. INTRODUCTION

THIS FUNDING AGREEMENT, hereinafter referred to as the "Agreement," is made as of this 18 day of November, 2016, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, the Contributed Funds Act of March 4, 1921 (41 Stat. 1404), the Colorado River Basin Project Act of September 30, 1968 (68 Stat. 885), as amended, and the Arizona Water Settlements Act of December 10, 2004 (118 Stat. 3478), all collectively hereinafter referred to as the "Federal Reclamation Laws," between the United States of America, hereinafter referred to as the "United States," acting through the Department of Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," the New Mexico Interstate Stream Commission, hereinafter referred to as the "Commission" or the "ISC," and the New Mexico CAP Entity, hereinafter referred to as the "NM CAP Entity," collectively referred to as the "Parties," to provide interim advance funding to Reclamation for costs of planning and environmental compliance activities for the New Mexico Unit ("NM Unit") of the Central Arizona Project ("CAP").

II. EXPLANATORY RECITALS

WHEREAS, the Colorado River Basin Project Act of 1968, Pub. L. 90-537, 43 U.S.C. Ch. 32, as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108-451 ("AWSA"), among other things, authorizes the Secretary of the Interior ("Secretary") to contract with water users in New Mexico for water from the Gila River, its tributaries, and underground water sources, including the San Francisco River;

WHEREAS, Section 212 of the AWSA sets out the general requirements for a NM Unit of the CAP to be built in New Mexico;

WHEREAS, as required by Section 212(c) of the AWSA, the State of New Mexico ("State"), acting through the ISC, notified the Secretary on November 24, 2014 that it intends to build the NM Unit of the CAP to provide for the consumptive use of water in New Mexico from the Gila River, its tributaries, and underground water sources, including the San Francisco River, pursuant to the aforementioned Acts of Congress;

WHEREAS, pursuant to Section 212(c) of the AWSA, the Secretary and the NM CAP Entity, as beneficiary of the NM Unit, as noted in Section 212(c)(4) of the AWSA, executed the New Mexico Unit Agreement ("Unit Agreement") on November 23, 2015;

WHEREAS, in 2012, Reclamation made the first of ten (10) equal, annual deposits into the New Mexico Unit Fund ("NM Unit Fund") in accordance with Section 107(a)(2)(D)(i) of the AWSA;

WHEREAS, as identified in Section 212(i) of the AWSA, the NM Unit Fund is a fund established in the State Treasury and administered by the ISC;

WHEREAS, Section 212(i) of the AWSA provides that the ISC may use the NM Unit Fund for, among other things, the purpose of paying costs of the NM Unit, including costs associated with planning and environmental compliance activities;

WHEREAS, the Unit Agreement provides that Reclamation shall enter into an agreement with the ISC for the ISC to provide advance funding for environmental compliance;

WHEREAS, pursuant to Sections 212(h)(1) and (2) of the AWSA, the Secretary is directed to promptly carry out all necessary environmental compliance required by Federal law, including, without limitation, compliance with the National Environmental Policy Act (“NEPA”), as defined herein, in implementing the Consumptive Use and Forbearance Agreement (“CUFA”) and the Unit Agreement;

WHEREAS, Section 212(h)(3) of the AWSA designates Reclamation as the lead agency for environmental compliance, and the State, acting through the ISC, has requested to be, and has become, a Joint Lead agency with respect to environmental compliance, as contemplated in the AWSA; in accordance with these authorities, Reclamation and the ISC are undertaking environmental compliance for a NM Unit;

WHEREAS, the ISC and Reclamation have prepared a Memorandum of Understanding (“MOU”), for signature by the ISC and Reclamation, that defines the roles and responsibilities of the ISC and Reclamation as the Joint Leads in preparing an Environmental Impact Statement (“EIS”) under NEPA and addressing related requirements in anticipation of the Record of Decision (“ROD”) required by Section 212(i)(2) of the AWSA for a NM Unit;

WHEREAS, this Agreement and the MOU referenced above will be signed concurrently.

NOW THEREFORE, the Parties hereto agree as follows:

III. PURPOSE

The purpose of this Agreement is to define the terms and conditions under which the ISC, in consultation with the NM CAP Entity, will provide interim advance funding to Reclamation from the NM Unit Fund pursuant to the AWSA in order to promptly complete the NEPA process for the NM Unit. Reclamation, acting on behalf of the Secretary, will use these funds for costs related to Planning, Environmental Compliance, and Engineering Evaluation, as these terms are defined herein. The Parties anticipate executing separate agreements at a later date as needed to address further aspects of the NM Unit.

IV. DEFINITIONS

“Activity” means each of the categories listed in the Project Plan, including, but not limited to, NEPA Evaluation, Cultural Resources Compliance, Engineering Evaluation, PR&Gs, and Contingency, as these terms are defined herein.

“Acts” means federal law.

“Close-Out” means short-term actions required to conclude the activities funded under this Agreement, including, but not limited to, compiling the administrative file, closing out contracts and processes and associated financial activities, and continued maintenance of the website for the NEPA process. Close-Out pursuant to a Notice of Termination will include Reclamation’s preparation of a technical concluding report that summarizes work completed as of the Effective Date of Termination.

“Contingency” means a budget set aside for an unforeseen event or circumstance necessary to achieve timely completion of the ROD.

“Cultural Resources Compliance” means compliance with federal and state laws protecting the material evidence of past human activities, as well as objects, features, and sites that are important in maintaining the heritage and cultural identity of distinct groups. Such laws include, but are not limited to, the National Historic Preservation Act, the Archaeological Resources Protection Act, the Native American Graves Preservation and Repatriation Act, and the entirety of Chapter 18 of the New Mexico Statutes, including, but not limited to, the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-7 and the New Mexico Prehistoric and Historic Sites Preservation, NMSA 1978, Sections 18-8-1 through 18-8-8.

“Engineering Evaluation” means Reclamation’s consultation and review activities to ensure consistency with the standards set forth in Section 9.7.2 of the Unit Agreement.

“Environmental Compliance” means, in and for the purposes of this Agreement, preparation, by the Joint Leads, of an EIS or other documents required under NEPA, and other reviews, analyses, or approvals required under the Endangered Species Act and all other applicable environmental Acts and regulations to support issuance of a ROD for the NM Unit.

“Federal Fiscal Year” means the period of time from October 1st of one calendar year to September 30th of the following calendar year.

“NEPA” means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4347.

“NEPA Evaluation” means all measures necessary for compliance with the requirements of NEPA.

“NM CAP Entity” means the entity formed and designated for the purpose of, among other things, planning, designing, building, operating, and maintaining the NM Unit of the CAP.

“Planning” means involvement by Reclamation staff and contractors directly related to reaching a ROD for the NM Unit. “Planning” includes an analysis of alternatives consistent with the Federal Principles, Requirements and Guidelines for Water & Land Related Resources Implementation Studies (“PR&Gs”). “Planning” does not include any Reclamation activities that would occur independently of the NM Unit.

“Project Plan” means a plan presented by Reclamation and approved by the ISC and the NM CAP Entity to fund activities to support issuance of a ROD for the NM Unit. This plan includes a description of the work activities and associated budgets funded pursuant to this Agreement for the period at issue. Once a Project Plan is approved by all Parties, it is incorporated by reference into this Agreement. The Parties anticipate the following types of Project Plans:

- A. The Interim Project Plan will describe work for the period beginning sixty (60) days from signature of this Agreement until September 30, 2017;
- B. The Bi-Annual Project Plan will cover the two upcoming State Fiscal Years from the date the Bi-Annual Project Plan is approved by the Commission. The first Bi-Annual Project Plan will describe work for the period beginning on October 1, 2017 and encompassing State Fiscal Years 2018 and 2019;
- C. A Supplement to the Project Plan will describe additional work and/or funding if necessary to the issuance of a ROD pursuant to this Agreement, but not previously envisioned in the applicable Project Plan.

“Schedule of Advances” means a schedule which identifies the dates and amounts of advances to be made by the ISC to Reclamation within a specific State Fiscal Year for Reclamation’s costs associated with performing activities funded pursuant to this Agreement. The Schedule of Advances is a distinct document from the Project Plan, but will be provided to the ISC at the same time as the applicable Project Plan. The amounts in the Schedule of Advances must equal the total amount of funding requested in the applicable Project Plan.

“State Fiscal Year” means the period of time from July 1st of one calendar year to June 30th of the following calendar year.

V. TERM OF THE AGREEMENT

This Agreement shall become effective upon the date of the last signature of this document, and shall remain in effect until completion of all work identified in this Agreement directly associated with a ROD for the NM Unit, including Close-Out. This Agreement may be terminated earlier pursuant to the Termination provisions herein.

VI. ROLES AND RESPONSIBILITIES

- A. In fulfilling their respective responsibilities, the Parties to this Agreement hereby commit to communicating at least weekly regarding the activities related to this Agreement. Communicating includes both formal and informal means of communications, and may include the following: conference calls, e-mails, and exchanges of information through written documents, such as correspondence, updates, and reports. The Parties also commit to holding monthly team conference calls.
- B. In fulfilling its responsibilities under this Agreement, the Commission shall perform the following activities:

1. Consider, in public meetings, any Project Plan submitted by Reclamation and approved by the NM CAP Entity.
 2. Advance funds to Reclamation in accordance with the terms and conditions herein and in accordance with any Project Plan approved by the NM CAP Entity and the Commission for the applicable State Fiscal Year, pursuant to Section VI.C. of this Agreement.
 3. Designate staff to represent the Commission throughout the execution of activities identified herein and performance of the terms and conditions herein.
 4. Participate, through its staff, in coordination meetings, NEPA contractor and sub-contractor meetings, and associated activities and meetings to discuss finances administered by the Commission in connection with the NM Unit.
 5. In the event Reclamation submits a Supplement to any Project Plan, the ISC staff will submit the Supplement to the Commission within 30 days of approval by the NM CAP Entity.
- C. In fulfilling its responsibilities under this Agreement, Reclamation shall perform the following activities:
1. Receive and expend funds advanced by the ISC to Reclamation for the NM Unit pursuant to the terms and conditions of this Agreement.
 2. Within seven (7) calendar days of this Agreement being signed, submit an Interim Project Plan to the ISC for the activities to be conducted through September 30, 2017. The Interim Project Plan shall contain the same information, and shall be coordinated with the ISC in the same manner as any Bi-Annual Project Plan, as specified in this Agreement. Thereafter, the first Bi-Annual Project Plan will begin October 1, 2017.
 3. Develop a Bi-Annual Project Plan which estimates Reclamation's costs and funding advances required to perform the activities funded pursuant to this Agreement. The Bi-Annual Project Plan shall include:
 - a. Estimates for the two upcoming State Fiscal Years; and
 - b. For each Activity, a narrative statement identifying the tasks which will be performed to accomplish the work for the activity, and an estimate of the funding necessary to accomplish those tasks.

4. Submit an updated Bi-Annual Project Plan for the upcoming two State Fiscal Years to the ISC by April 1st of each year.
5. Develop a Schedule of Advances. The Schedule of Advances shall be adjusted as necessary to reflect any remaining balances from the previous approved Project Plan.
6. Develop a Supplement to the applicable Project Plan, as needed, in coordination with the ISC staff.
7. Coordinate with ISC staff regarding all aspects of the funding process:
 - a. As part of coordination with the ISC staff on development of any Project Plan, provide the ISC staff with the underlying calculations and assumptions for each of the budget line items formulated (e.g., direct labor, indirect labor, travel, contracts) for each Activity. These calculations and assumptions shall be used to develop the estimates for each Activity presented in the Project Plan to enable ISC staff to present the Project Plan to the Commission for official action. This information will also be provided to the NM CAP Entity.
 - b. Coordinate with ISC staff on development of any Supplement to any Project Plan before submitting that Supplement to the NM CAP Entity and the Commission for official action. This coordination will include providing underlying assumptions for the estimates in the Supplement.
8. Provide the ISC with quarterly reports as follows: Quarterly reports will be provided on January 31st, April 30th, July 31st and October 31st for costs incurred through the end of the preceding quarter. Quarterly reports will include documented itemization of costs incurred by Reclamation for the Activities defined in the applicable Project Plan, and the percentages of budget expended by Reclamation. The costs will be reported for each budget line item as provided in accordance with Paragraph VI.C.7.a. above. The quarterly reports will also indicate what sums, if any, remain from previous ISC advances (breaking it down from oldest funding advance to most recent funding advance). Future quarterly advances shall be contingent upon receipt by the ISC of adequate quarterly reports consistent with the requirements of this Paragraph 8.
9. Use its best efforts to perform (or cause to be performed) the work identified herein and all obligations under this Agreement in a timely manner.

10. Reclamation will minimize travel and attendance by multiple Reclamation staff to avoid duplication of personnel for all tasks funded pursuant to this Agreement, and conduct meetings via video or telephone conference, in order to minimize travel expenses, unless these actions would hinder the ability to complete the work in a safe and timely manner.
- D. In fulfilling its responsibilities under this Agreement, the NM CAP Entity shall perform the following activities:
1. Through its staff and contractors, review and provide timely input into any Project Plan prepared by Reclamation in cooperation with the ISC.
 2. Consider, in public meetings, any Project Plan submitted by Reclamation, within 30 days of receiving the proposed Project Plan.
 3. Designate points of contact, as deemed appropriate by the NM CAP Entity, to represent the NM CAP Entity throughout the execution of activities identified in the applicable Project Plan and, if necessary, in performance of the terms and conditions herein.
 4. Participate, through its staff and contractors, in coordination meetings and associated activities.

VII. FUNDING AND FUNDING ADVANCES

A. The ISC shall:

1. Make an initial disbursement (“Initial Disbursement”) to Reclamation. The ISC will advance Reclamation the Initial Disbursement within 60 days following Commission approval of the Interim Project Plan developed and submitted by Reclamation to the ISC. The Initial Disbursement shall be for the amount identified in the applicable Schedule of Advances and in the Interim Project Plan.
2. Thereafter, advance funds to Reclamation on behalf of the NM CAP Entity, as identified in the applicable Schedule of Advances. Funding advances will occur on January 1st, April 1st, July 1st and October 1st of each year.
3. In the event Reclamation submits a Supplement, advance funds to Reclamation within 60 days of approval of the Supplement by the Commission.

B. Reclamation shall:

1. Invoice the ISC for payment quarterly in accordance with the applicable Schedule of Advances. Invoices will be submitted 30 days in advance of the required payment date.
2. Notify the ISC of its intent to transfer funds between the Activities in the Project Plan provided that: (1) the transfer of funds does not result in exceeding the current total amount in the applicable approved Project Plan, and (2) the notice of transfer between Activities is submitted to the ISC 30 days prior to the actual expenditure of transferred funds. This notice will include a narrative description of the reasons why the transfer is necessary and the assumptions used for calculating the amount of transfer. The technical representatives designated by the Parties must reach consensus prior to expenditures of any Contingency funds.
3. Have the ability to transfer funds between the budget line items (e.g., direct labor, indirect labor, travel, contracts) within an Activity envisioned in the applicable Project Plan.
4. Maintain a separate account for all funds received from the ISC in connection with the activities funded pursuant to this Agreement. This account, and all financial records related to this account or the monies in this account, shall be available for inspection, review, audit, and reproduction by authorized representatives of the ISC without charge during normal business hours. Reclamation will maintain all records related to this account and the funds therein for a period of six (6) years after receipt of the last disbursement from the ISC pursuant to this Agreement. The records must fully account for the amount and disposition of the total funds received under this Agreement and the purpose for which such funds were used. During the period this Agreement is in effect, and for six (6) years following the last disbursement from the ISC pursuant to this Agreement, the ISC or its contract auditor may review or audit all relevant Reclamation records pertaining to this Agreement to determine whether funds that are the subject of this Agreement were not expended in accordance with this Agreement. The ISC may present the findings of any such review or audit to Reclamation. If Reclamation agrees with the review or audit findings, Reclamation shall reimburse the NM Unit Fund in the sum required by the findings. If Reclamation disagrees with the findings, or if Reclamation and the ISC cannot agree on a reimbursement amount, then they will follow the dispute resolution process in Section XI of this Agreement. If a dispute remains following the dispute resolution process in Section XI of this Agreement, then any further remedy will be governed by federal law.
5. Refer to this Agreement number in all financial correspondence or supporting cost data documentation transmitted to the designated ISC and NM CAP Entity representatives.

6. Within 120 days following Close-Out, provide the ISC and the NM CAP Entity with a summary report that fully accounts for all financial transactions pertaining to the monies disbursed pursuant to this Agreement, modeled after the quarterly report but detailing the entire period of funding covered by this Agreement and related documents.
7. Within 120 days following Close-Out, return funds to the ISC. The funds to be returned are all the funds advanced to Reclamation which were not expended pursuant to this Agreement.
8. Within 45 days following any Effective Date of Termination, provide a list of assets purchased with funds disbursed pursuant to this Agreement, and thereafter meet and confer with the ISC and the NM CAP Entity to reach agreement upon the disposition of those assets.

VIII. MODIFICATIONS TO THIS AGREEMENT

This Agreement and any exhibits hereto may be amended or supplemented at any time by a written amendment signed by the Parties hereto.

IX. LIABILITY

- A. Each Party assumes liability under this Agreement only as to those actions specifically addressed and agreed to hereunder, and only to the extent allowed by each Party's governing authorities, including, without limitation, the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30. Performance by the Parties under this Agreement is contingent upon the availability of funds in the NM Unit Fund.
- B. Reclamation shall perform its obligations under this Agreement in the capacity of a Federal agency. Reclamation is not a co-venturer, agent, employee, nor a representative of the ISC. The ISC assumes no liability for claims or actions arising solely out of the performance, by Reclamation employees or agents, of any work funded pursuant to this Agreement, including any amendments or supplements thereto.
- C. Performance of Reclamation's obligations associated with implementing Section 212 of the AWSA is contingent upon the receipt of advance funding from the NM Unit Fund to be provided to Reclamation by the ISC pursuant to this Agreement. Reclamation cannot continue work under this Agreement without advanced funding. The ISC shall not be liable for any loss, damage, or expense to Reclamation other than ISC's payment obligations under this Agreement related to advance funding for activities funded pursuant to this Agreement.
- D. The ISC, as an agency of the State, does not waive its sovereign immunity by entering into this Agreement and specifically retains immunity and all defenses

available to the State of New Mexico as a sovereign pursuant to applicable state law.

- E. The NM CAP Entity has waived its sovereign immunity as set forth in Section 9.12 of the Unit Agreement. The individual entities that are parties to the NM CAP Entity Joint Powers Agreement (“JPA members”) are not individually parties to this Agreement. Nothing in this Agreement shall be construed as creating financial obligations or financial liability on the part of JPA members for the actions or decisions of the NM CAP Entity made pursuant to, or in relation to, this Agreement.
- F. Nothing in this Agreement shall be construed as creating any tort or legal liability, or a duty to indemnify, on the part of JPA members for the actions or decisions of the NM CAP Entity made pursuant to this Agreement.

X. LIMITATION OF FUNDS

Except as required by other provisions of this Agreement, and subject to availability of money in the NM Unit Fund, the ISC shall advance Reclamation, on a quarterly basis, from the NM Unit Fund the amount of funding necessary for estimated costs associated with activities funded pursuant to this Agreement and agreed upon by the Parties in the applicable Project Plan approved by the NM CAP Entity and the Commission.

XI. DISPUTE RESOLUTION

The Parties will make all reasonable efforts to resolve issues arising under this Agreement in a collaborative and timely manner. Staff will bring unresolved issues to the Agreement signatories for resolution. If the signatories are unable to resolve the dispute, the Parties agree to seek to resolve the dispute through mutually acceptable means.

XII. TERMINATION

- A. Termination of this Agreement by mutual written consent of the Parties may occur at any time.
- B. Prior to completion of the activities funded pursuant to this Agreement (i.e., issuance of a ROD), any Party hereto may terminate this Agreement by giving a written Notice of Termination to the other Parties. This written Notice of Termination shall indicate the cause for termination. If termination of this Agreement is not by mutual agreement of the Parties, a Party may only issue a Notice of Termination if the Parties have completed the Dispute Resolution process discussed in Section XI above.
- C. Within 14 calendar days of issuance of a Notice of Termination, by any Party, the Parties shall meet and confer regarding all outstanding obligations related to

activities funded pursuant to this Agreement, including Close-Out, and regarding funds not yet disbursed by Reclamation. At this meeting, the Parties shall develop a mutually agreeable funding estimate and proposed schedule for Close-Out. This schedule will include the timeframe for providing the list of all outstanding obligations discussed in Paragraph H below.

- D. The Effective Date of Termination of this Agreement will be 21 calendar days after issuance of the Notice of Termination, unless the Parties set a different Effective Date of Termination when they meet and confer.
- E. In the event the NM CAP Entity terminates this Agreement, the NM CAP Entity shall be precluded from seeking to enforce this Agreement against any other Party.
- F. In the event of Termination of this Agreement by the ISC or the NM CAP Entity prior to completion of the activities identified in the Project Plan, the ISC shall be responsible for funding Reclamation actions for Close-Out in accordance with Paragraph C above.
- G. Upon the Effective Date of Termination, Reclamation will immediately:
 - 1. Execute no further agreements, contracts, or orders against active contracts (with the exception of termination orders pursuant to subsection 2 below) related to activities funded pursuant to this Agreement;
 - 2. Initiate termination procedures for all existing agreements, contracts, and activities funded pursuant to this Agreement. Reclamation agrees to use its best effort to terminate contracts at the lowest possible costs.
- H. Within the timeframe agreed upon pursuant to Paragraph C above, Reclamation will provide to the ISC and the NM CAP Entity the list of all known outstanding obligations. The Parties will then confer and reach consensus regarding the disposition of those outstanding obligations. Reclamation will then settle those outstanding obligations pursuant to the decision of the Parties. If the Parties are unable to reach consensus regarding disposition of outstanding obligations, the Parties will follow the Dispute Resolution Process outlined in Section XI.
- I. In the event of Termination prior to completion of the work to be funded pursuant to this Agreement, all costs incurred by Reclamation after the Effective Date of Termination that could not be immediately canceled in spite of Reclamation's best efforts are deemed allowable costs hereunder.

XIII. AVAILABILITY OF INFORMATION

All information and data obtained or developed by Reclamation, in connection with the work to be funded out of the NM Unit Fund pursuant to this Agreement shall be available at any time,

except where prohibited by law, to the ISC and the NM CAP Entity. However, if the ISC or the NM CAP Entity use reports, data, or information developed by Reclamation pursuant to this Agreement, the ISC, or the NM CAP Entity, shall list Reclamation as the source for the information referenced to the extent such a reference is appropriate.

XIV. DELAYS

To the extent that activities under this Agreement are prevented or delayed by any cause that is beyond the reasonable control of any of the Parties to the Agreement, the non-performing Party shall not be deemed to be in default. In the event of any such prevention or delay, the Party unable to perform shall provide the other Parties with a written explanation of the activity or activities at issue and the circumstances beyond its control that created such prevention or delay.

XV. REMEDIES

Nothing in this Agreement limits the authority of the Parties hereto to pursue any legal remedy available under the AWSA, or other applicable law, or under any existing or future contracts to be entered into by and between the Parties to this Agreement. To the extent allowed by applicable federal law, New Mexico state law will supply the rule of decision.

XVI. PRIVACY OF CONTRACT

Reclamation may enter into contracts to assist in the performance of the activities identified herein. The Parties hereto recognize the contractual relationship between Reclamation and its contractors. Any direction or instruction to Reclamation contractors that could result in a change in scope of work or an assignment of work must come through Reclamation's Contracting Officer, and must comply with the provisions of the MOU simultaneously signed by the ISC and Reclamation.

XVII. NOTICES AND AUTHORIZED REPRESENTATIVES

Notice given pursuant to the provisions of this Agreement, or which is necessary to carry out its provisions, must be in writing and delivered by email, fax, mail, postage prepaid, or hand-delivered personally to a Party's representative. The Parties' authorized representatives and their addresses for this purpose are as follows:

Bureau of Reclamation

Area Manager
Bureau of Reclamation
6150 W. Thunderbird Rd.
Glendale, Arizona 85306-4001
623-773-6211
Lmeyers@usbr.gov

NM Interstate Stream Commission

Director
New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102
505-827-6103
Deborah.Dixon@state.nm.us

NM CAP Entity

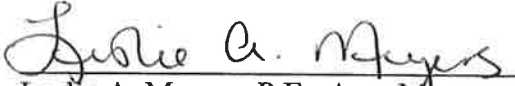
Chairman
New Mexico CAP Entity
P.O. Box 446
Lordsburg, NM 88045
575-542-9341
Darrshannon52@gmail.com

XVIII. MISCELLANEOUS

- A. No member of or delegate to Congress, resident Commissioner, Commissioner of the ISC, or representative of the NM CAP Entity shall receive any share or part of this Agreement or any benefit that may arise from it.
- B. This Agreement sets out the Parties' intentions and objectives and does not create a right or benefit for any person or group of persons other than the Parties hereto.
- C. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns, if any.
- D. If any part of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses, or applications of this Agreement.
- E. All provisions of section 212 of the AWSA shall apply to this Agreement and shall be controlling in the event of conflict between the AWSA and this Agreement.
- F. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- G. The Parties recognize that time is of the essence in this matter.
- H. The Parties agree that this Agreement and the information provided under this Agreement do not create a precedent for other agreements.
- I. This Agreement incorporates all agreements, covenants, promises and understandings between the Parties concerning the subject matter hereof, and all prior or contemporaneous agreements and understandings are merged into this Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.
- J. The provisions in Sections VII.B.4, VII.B.6, VII.B.7, VII.B.8, XII.E, XII.F, XII.G, and XII.H of this Agreement survive termination of this Agreement until they are completed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the last date written below.

BUREAU OF RECLAMATION


Leslie A. Meyers, P.E., Area Manager
Phoenix Area Office

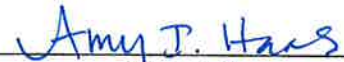
Date: 11/18/16

NEW MEXICO INTERSTATE STREAM COMMISSION


Deborah K. Dixon, P.E., Director

Date: 11/17/16

Approved as to legal form


Amy I. Haas, General Counsel

Date: 11/17/16

NEW MEXICO CAP ENTITY


Darr Shannon, Chair

Date: 11/11/16