MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW MEXICO INTERSTATE STREAM COMMISSION
AND THE
UNITED STATES BUREAU OF RECLAMATION
FOR TECHNICAL SUPPORT OF THE
PROPOSALS BEING EVALUATED
PURSUANT TO THE AWSA

THIS MEMORANDUM OF UNDERSTANDING ("MOU," or "Agreement") is made and entered into by and between the New Mexico Interstate Stream Commission, hereinafter referred to as the "ISC," and the United States Bureau of Reclamation, hereinafter referred to as "Reclamation." Hereinafter, ISC and Reclamation shall be collectively referred to as "the Parties" or individually as "Party."

RECITALS

WHEREAS, in 1968, Congress enacted the Colorado River Basin Project Act (the "Colorado Act"), Pub. L. 90-537, which states that, in the operation of the Central Arizona Project ("CAP"), the Secretary of Interior shall offer to contract with water users in New Mexico for water from the Gila River, its tributaries and underground sources ("Gila River waters"). Consumptive use of this water can continue only as long as Colorado River water is delivered to downstream Gila River users in Arizona; and

WHEREAS, in 2004, Congress enacted the Arizona Water Settlements Act, Pub. L. 108-451 ("AWSA"), which authorizes New Mexico to build a New Mexico Unit ("Unit") of the CAP to use the Gila River waters. The AWSA also authorizes New Mexico to develop other water utilization alternatives in the southwest water planning region. The AWSA provides federal funding for either type of project; and

WHEREAS, the AWSA conferred discrete tasks and responsibilities upon the ISC and Reclamation; and

WHEREAS, the ISC was tasked with determining and planning options available to the State of New Mexico for use of the water from the Gila and San Francisco Rivers and tributaries and for use of the federal funding made available under the AWSA; and

WHEREAS, in February 2012, following a two-tiered evaluation process, the ISC selected for further review and study sixteen water-related projects proposed by stakeholders from New Mexico’s southwest water planning region; and

WHEREAS, these sixteen projects include three diversion and storage projects as potential New Mexico Unit options, and thirteen other water utilization projects; and

WHEREAS, under the AWSA, New Mexico must notify the Secretary of the Interior by December 31, 2014 if it intends to build a New Mexico Unit of CAP; and
WHEREAS, in that eventuality, the Secretary of the Interior is authorized to design, construct, operate and maintain the Unit for New Mexico; and

WHEREAS, under the AWSA, Reclamation is also responsible for ensuring environmental compliance, along with other cost and safe yield considerations, of any New Mexico Unit project; and

WHEREAS, the ISC is currently evaluating the sixteen proposals in order to make a final decision by November 2014; and

WHEREAS, since 2005, Reclamation has provided technical assistance to the ISC in order to support the State of New Mexico’s process to decide how to utilize the water and funding provided by the AWSA; and

WHEREAS, by letter dated October 15, 2012, the ISC formally requested Reclamation’s assistance in conducting economic analyses of each of the sixteen proposals approved in February 2012 and in assessing the three diversion and storage alternatives; and

WHEREAS, the Parties hereby enter into this MOU to determine and clarify the Parties’ roles and responsibilities in this effort, along with the anticipated timelines to be applied to the work;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

AGREEMENT

1. Purpose and Responsibilities of the Parties

The Parties intend to collaboratively develop technical information to assist in the ISC’s decision-making process for the AWSA. The Parties’ respective responsibilities under this Agreement are as follows:

A. Reclamation will:

a. Conduct appraisal level economic analyses for each of the sixteen proposals being evaluated.

An appraisal level economic analysis typically relies on available data and information which can be used to estimate economic values of resources and the costs of proposed alternatives. This task will consist of identifying the benefits and costs of each proposal and quantifying to the extent possible the benefits and costs in monetary terms (“cost-benefit analysis”). The potential impacts of each proposal on the regional economy will also be estimated to the extent possible,
depending on the availability of project cost estimates for each proposal ("regional impact analysis").

i. An appraisal level cost-benefit analysis will be completed for each proposed project on the basis of the estimated incremental changes to affected resources and valuing those changes. Resource categories include: (1) agricultural, municipal and/or industrial water supply, (2) water quality, (3) recreation, and (4) fish and wildlife uses. Incremental changes represent conditions that would exist with a proposed project and conditions that would exist without a project. Therefore, an evaluation of likely future conditions that would exist without a project is required which represents a baseline from which project benefits can be estimated. It is possible in some cases that current conditions may be representative of conditions without a project.

ii. The regional impact analysis for each proposed project will attempt to quantify the direct, indirect, and induced effects of each of the sixteen proposals on the local economy relative to current regional economic conditions. The regional impact analysis is separate from the cost-benefit analysis. Reclamation will summarize all the information obtained in a final economic analyses report, to be delivered to the ISC by July 31, 2014. A preliminary document will be made available for public review and comment prior to the final report delivery.

b. Assess various diversion & storage alternatives for a New Mexico Unit of CAP.

As to diversion & storage alternatives, Reclamation will perform the following tasks for ISC:

i. Reclamation will assess the three existing diversion & storage proposals that were approved by the ISC for further study ("Three Proposals") and will consider scenarios subsequently provided by the ISC; and

ii. If, during the course of its assessment, Reclamation identifies other diversion configurations ("Diversion Configurations") that appear to warrant additional analysis, such work may also be performed, if agreed upon between Reclamation and the ISC.

iii. For each of the Three Proposals and for each of the Diversion Configurations identified, if any, Reclamation will provide sufficient detail to aid the ISC in making a
choice about building a Unit. The Three Proposals and the Diversion Configurations will be presented to the ISC in a uniform manner to allow the ISC to compare the merits of each option.

iv. Reclamation will prepare an appraisal level engineering report describing, for each of the Three Proposals and for each of the Diversion Configurations, the current conditions, an overview of the plan, and an appraisal level estimate of costs. Reclamation will also assess the potential effects of the Three Proposals or Diversion Configurations on water-related resources, fish and wildlife, endangered species and recreation.

v. Reclamation will summarize all the information obtained about the Three Proposals and any other Diversion Configurations in a final diversion & storage report, to be delivered to the ISC by July 31, 2014. A preliminary document will be provided to the ISC by February 1, 2014. The preliminary report will be made available for public review and comment prior to the final report delivery.

vi. Reclamation will participate in the ISC public participation process outlined by the ISC at its February 29, 2012 meeting. Reclamation will involve the proponents and other stakeholders as it determines is needed to perform the work specified herein.

B. The ISC will:

a. Coordinate with Reclamation and individual proponents of each of the sixteen proposals, or others as appropriate to gain supplemental information needed by Reclamation to perform the work described in Paragraph A, above.

b. Work with Reclamation, in instances where specific information is not available, to develop and support appropriate assumptions to allow Reclamation to complete its appraisal level analyses.

   i. Share information obtained by other ongoing ISC studies for use in completing Reclamation's tasks described in Paragraph A, above.

   c. Follow the public participation process outlined and adopted by the ISC on February 29, 2012.
C. Both Parties will:

a. Communicate and coordinate with each other to identify issues and concerns that may arise from tasks undertaken pursuant to this MOU, develop strategies to address those issues and concerns, and for other purposes.

2. Availability of Funds

This Agreement is not a funding agreement and does not authorize the obligation or transfer of funds. If an activity or project is subsequently identified that may require Reclamation to receive funds for work incident to this Agreement, funding shall occur through a separate agreement between the ISC and Reclamation. No provision of this Agreement shall be construed to require the commitment, expenditure or future commitment of funds by either Party.

3. Anti-Deficiency Act

Implementation of this Agreement by Reclamation is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The Parties acknowledge that Reclamation will not be required under this Agreement to expend any Federal agency’s appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures.

4. Confidentiality

Any confidential information used in performing the work under this Agreement shall be clearly marked confidential or proprietary on each page that contains such information by the submitter and shall not be disclosed by the recipient without permission of the submitter, unless the disclosure is pursuant to the Freedom of Information Act (“FOIA”), or the New Mexico Inspection of Public Records Act (“IPRA”) or as otherwise required by law. If either Party receives a request under FOIA, IPRA or other legal process to disclose confidential information, the Party receiving the request will use reasonable efforts to provide advance notice of disclosure to the other Party.

5. Term and Counterpart

This Agreement becomes effective on the date of signature of the last signatory and shall remain in effect through completion of the work or through December 31, 2014, whichever comes first, unless otherwise terminated or modified. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
6. Amendment

Modifications to this Agreement shall become effective only once the Parties have signed a written amendment to this Agreement.

7. Termination

A. Either Party may terminate this Agreement prior to its expiration by providing thirty (30) days written notice to the other Party.

B. This Agreement may be terminated upon completion of the tasks identified in Paragraph 1 above, or if either Party terminates the Agreement early pursuant to Paragraph 7(A). In the event of termination prior to completion of the tasks identified in Paragraph 1, Reclamation shall notify the ISC as soon as possible so that the ISC can make other arrangements to have the work completed. Reclamation shall prepare a concluding report summarizing the work completed prior to the effective date of termination.

8. Liability

It is understood and agreed that neither Party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent provided by the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. and the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30.

9. Limitations

This Agreement sets out the Parties’ intentions and objectives and does not apply to any entity other than the ISC or Reclamation. This Agreement is not intended to create, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies or its officers, or against the ISC, its officers or employees.

10. Notices

Notices between the Parties shall be sent to the following persons at the following addresses:

For ISC:

Craig Roepke
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone: 505-827-6117
Fax: 505-827-6188
E-mail: craig.roepke@state.nm.us
For Reclamation:

Mary Reece  
General Engineer, Program Development Division  
6150 West Thunderbird Road  
Glendale, AZ 85306-4001  
Phone: 623-773-6279  
Fax: 623-773 6486  
E-mail:mreece@usbr.gov

11. Disputes

The Parties agree to seek in good faith to resolve any dispute that may arise under this Agreement through negotiation or other forms of informal dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim pursuant to this Agreement, the Parties agree that performance of all obligations shall be pursued diligently.

12. Governing Law

This Agreement is subject to all applicable federal and state laws, regulations or guidelines. No provisions of this Agreement shall be construed to delegate or abrogate any statutory responsibility of either Party.

13. Entire Agreement

The terms and conditions contained in this Agreement constitute the entire agreement and understanding between the Parties. This Agreements supersedes any and all other agreements, either oral or written, among the Parties with respect to the subject matter hereof. This Agreement does not supersede or void any other existing agreements between the ISC and Reclamation pertaining to other matters.
New Mexico Interstate Stream Commission

Estevan R. López, P.E., Director

Date

4/30/13

U.S. Bureau of Reclamation

Randy Chandler, Area Manager
Phoenix Area Office

Date

5/7/13