

Department of Interior
Bureau of Reclamation

RIO GRANDE BASIN STUDY FROM LOBATOS GAUGE TO ELEPHANT BUTTE
MEMORANDUM OF AGREEMENT

The United States Department of the Interior, Bureau of Reclamation (Reclamation), the Middle Rio Grande Conservancy District (District), and the undersigned Non-Federal Partners agree to work collaboratively to perform the Rio Grande Basin Study from Lobatos Gauge to Elephant Butte Dam (Study) as part of the WaterSMART Basin Study Program. This Memorandum of Agreement (MOA) establishes the terms that will guide the performance of the Study. The Study will be designed to meet the required elements of a Basin Study under Reclamation's Basin Study Program, which are as follows:

1. Development of projections of water supply and demand within the basin, including an assessment of risks to the water supply relating to climate change as defined in Section 9503(b)(2) of the SECURE Water Act.
2. Analysis of how existing water and power infrastructure and operations will perform in the face of changing water realities, such as population increases, climate change, extreme events (e.g., droughts and floods), as well as other impacts identified within Section 9503(b)(3) of the SECURE Water Act as appropriate.
3. Development of appropriate adaptation and mitigation strategies to meet future water demands.
4. Perform a trade - off analysis of the strategies identified and findings, including an analysis of all proposed alternatives in terms of their relative cost, environmental impact, risk (probability of not accomplishing the desired/expected outcome), stakeholder response, or other attributes common to the alternatives.

The Study will be conducted on the reach of the Rio Grande Basin that falls within the geographic area encompassing the Rio Grande Basin from the Colorado-New Mexico State line down to Elephant Butte Reservoir, referred to as the Study Area. Because of the use of trans-basin water from the Colorado River Basin imported through Reclamation's San Juan-Chama Project, the defined Study Area includes a small portion of Southern Colorado, which supplies Reclamation's San Juan-Chama diversion facilities.

As part of this Study, adaptations to projected water supply and demand challenges will be collaboratively developed by a broad spectrum of interested parties, and will be technically evaluated, and compared to each other through a structured trade-off analysis process.

The results of these analyses and comparisons will be used to develop a support tool for water and land managers in the Study Area to make informed water-management policies and develop programs and projects that enhance resilience to coming changes in water availability and use. The decision support tool will be based on the most recent data, science, and models, with the goal of supporting informed decision-

making. After the Study is complete, the decision-support tool can be used, along with evaluations of social, political and economic factors, to support decisions related to infrastructure projects and policy changes that have been deemed to be of a benefit to water users, stakeholders and the environment in the Study Area.

The Study is a cost-share project between Reclamation and a consortium of Non-Federal Partners, including tribal governments. The total budget for the Study is \$1.15 million, with cost-share from Non-Federal Partners in the amount of \$517,000.00 in the form of cash expenditures (such as for contracted services), In-kind Services, employee time, or relevant data and studies conducted in the study area. Reclamation has committed \$498,000.00 to the Study, which will fund the development of state-of-the-art hydroclimate projections for the basin, technical analysis, modeling, and project management.

ARTICLES

I. Definitions:

- A. “Reclamation” means the United States Department of the Interior, Bureau of Reclamation.
- B. “Non-Federal Partner(s)” means the Middle Rio Grande Conservancy District (“MRGCD”), irrigation districts, state agencies, municipalities, tribal governments, water utilities, community advocacy groups, counties, universities, non-profit organizations, acequias, and Soil and Water Conservation Districts and potential third parties who become signatories to this Agreement at any time before the completion of the Study.
- C. “Party” or “Parties” means Reclamation and Non-Federal Partner(s), according to the context of this provision.
- D. “Acequia” means a ditch or irrigation conveyance. Some of the acequias in the Study Area are governed by Acequia Associations.
- E. “Agreement” means this Memorandum of Agreement.
- F. “Contributed Funds Agreement” means a legal agreement used to receive “all moneys ... from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the reclamation law, are covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes,” 43 USC 395.
- G. “Cost-Share” means a specific percentage (%) of identified charges that are allocated to specific entities or Non-Federal Partner(s).

- H. “In-kind Services” means services provided by a Non-Federal Partner that substantially contribute to the completion of the work task or task identified.
- I. “Confidential Information” means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).
- J. “Intellectual Property” means any invention that is legally protected through patents, copyrights, trademarks, and trade secrets or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- K. “Key Personnel” means:
- i. Ms. Anne Marken
Hydrology Technician 1
Middle Rio Grande Conservancy District
2nd St SW, Albuquerque, NM 87102
(505)-247-0234
 - ii. Ms. Dagmar Llewellyn
Civil Engineer (Hydrologic)
Bureau of Reclamation
555 Broadway Blvd. NE, Suite 100, Albuquerque, NM 87102
505-462-3594
- L. “Subject Invention” means any invention or other Intellectual Property conceived or first reduced to practice under this Agreement which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- M. “Term of Agreement” means that period set forth under the Section IV(A), Term of this Agreement.
- N. “Pueblo(s)” means the Native American tribes of New Mexico who occupy their ancestral lands.
- II. Authorities and Financial Obligations:
- A. Authorities: Nothing in this Agreement alters the statutory authorities or any other authorities of the Parties. This Agreement is intended to facilitate cooperative efforts by the Parties for mutual provision of services and support, and technical assistance by both Parties in the conduct of meeting the objectives and scope of this Agreement. This Agreement does not supersede or void existing agreements between the Parties. All related Non-Federal Partners wishing to participate in the Study have the authority to do so. Additionally, nothing in this Agreement shall affect or impair the water rights of any Pueblo or Tribe, including but not limited to the priority of the rights and the quantity of water associated with those rights under federal, tribal or state laws.

- i. Reclamation's authority to enter into this Agreement:
 1. Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 U.S.C. 372, et seq.) and acts amendatory thereof and supplementary thereto. Title IX of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 123 Stat. 991).
 - ii. The District's authority to enter into this Agreement:
 1. NM State Statutes Sections 73-14-1 through 73-14-88 (73-14-1 through 73-14-88 NMSA 1978) and acts amendatory thereof and supplementary thereto.
 - iii. All other Parties authorities to enter into this Agreement are derived from their individual leadership entities and are pursuant to their respective governing laws, codes, statutes, charters, and bylaws.
- B. Cost Sharing Obligations: The cost share obligations of the Study is divided among the Parties in the following manner: (1) \$498,000.00 by Reclamation and, (2) \$517,000.00 by all of the Non-Federal Partners combined, in the form of cash expenditures (such as for contracted services), In-kind Services, employee time, or relevant data and studies conducted in the Study Area. Reclamation's financial contribution to the Basin Study shall not exceed 50% of the total cost of the Study and can be used for in-house labor or contracted services and the individual Non-Federal Partners are under no obligation to provide cash contribution, in-kind services, or other donated resources. Valuation of In-kind Services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) or with 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122), as appropriate.
- C. Financial Obligations: This Agreement is not a funding document and does not authorize the obligation or transfer of funds. If a subsequently identified activity or project is identified that may require Reclamation to receive or expend funds received from the Non-Federal Partner(s) for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, a supplemental Contributed Funds Agreement, pursuant to the Sundry Civil Expenses Appropriations Act for 1922 (43 USC 395), will be executed. Funds contributed by Non-Federal Partner(s) will only be used to pay for costs incurred by Reclamation associated with completing the tasks described in this Agreement or modifications to this Agreement.
- D. Anti-Deficiency Act: All activities, responsibilities, and commitments made under or pursuant to this Agreement (including any Contributed Funds Agreement under this Agreement) are subject to the availability of appropriated funds and each Party's budget priorities, as determined by each Party, and neither the Non-Federal Partner(s) nor

Reclamation are obligated in any way under this Agreement to expend appropriations or to enter into any contract, assistance agreement, Contributed Funds Agreement, or other financial obligation. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

- E. Appropriations: The terms of this MOA are contingent upon sufficient appropriations and authorization being granted by the New Mexico Legislature and available to the Non-Federal Partners. If sufficient appropriation or authorization is not granted, a Non-federal Partner may withdraw from this MOA, or suspend performance pending approval of sufficient appropriation or authorization. A Non-Federal Partner's decision as to whether sufficient appropriations or authorization is available shall be final, binding and accepted by the Parties.
- III. Publications, Reports, and Confidentiality:
- A. Publications: The Parties understand and agree that this Agreement and any documents or written information collected, compiled, evaluated, or prepared under this Study and submitted to Reclamation or other federal or state agency or municipality may be disclosed to the public in accordance with the Freedom of Information Act ("FOIA") and the New Mexico Inspection of Public Records Act (NMSA 1978, Chapter 14 Article 2) ("IPRA"), where applicable unless a FOIA exemption or IPRA exception applies. Subject to the requirements of Confidential Information and preservation of rights in Subject Inventions, any Party may publish the results of this Agreement, PROVIDED:
- i. All Parties are permitted to review the manuscript at least sixty (60) days prior to submission for publication by submission to the Authorized Agent.
 - ii. The publication shall make best efforts to acknowledge this Agreement and the contributions of each Party's personnel.
 - iii. The final decision as to the publication content rests with the Party that intends to publish.
- B. Final Report: The results of this Agreement and any science, engineering, and technology data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually exchanged by the Parties. A final draft report summarizing all data collected during the term of the Agreement will be distributed by the Key Personnel identified in Section I(K) to the Parties prior to releasing it to the public domain. Upon review by all Parties, the final report will be in the public domain and will be published on Reclamation's website.
- C. Confidentiality: Any Confidential Information provided under in this Agreement shall be clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the submitter and shall not be disclosed by the Recipient without permission of the owner. To the extent the Party orally submits or provides Confidential Information to the other Party, the submitting Party will prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other Parties within thirty (30) days of disclosure. This Confidentiality

provision shall apply to and bind each Party's officers, agents, employees, consultants, successors, and assigns, and any other person acting on behalf of a Party.

No Party shall be bound by confidentiality if the Confidential Information received from another party:

- i. is already is available to the public or known to the recipient;
- ii. becomes available to the public through no fault of the recipient; or
- iii. is received from another Party without an affirmative assertion of confidentiality when it is legally entitled to it.

It shall not be a breach of this Agreement if a Party is required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of any Party under this Agreement; PROVIDED THAT the Non-Federal Partner(s) shall provide prompt prior notice thereof to affected Non-Federal Partners and Reclamation to enable affected Non-Federal Partners and Reclamation to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

- D. Intellectual Property: Unless otherwise agreed by the Parties, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this Agreement shall remain with the respective inventing Party. In the event that an invention is made jointly by employees of the Parties or an employee of an Party's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

IV. Term and Termination:

- A. Term: This Agreement shall be effective from the last date of execution by the Parties and, unless terminated per Section IV(C), Termination, will expire three (3) years from the date of the last signature to this Agreement. The time of last signature will be decided and agreed upon by all Parties. All Contributed Funds Agreement under this Agreement will be limited to an initial period of performance not to exceed the term of this Agreement, although they may be renewed for additional periods of performance not to exceed the term of this Agreement for any renewal period.
- B. Amendment: If a Party desires a modification to this Agreement, each of the Parties shall confer in good faith with Reclamation to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed and dated by all of the Parties.
- C. Termination: Parties may withdraw from this Agreement prior to its expiration at any time, for any reason, and without incurring any liability or obligation to the other Parties, by giving each of the Parties at least ninety (90) calendar days prior written notice of termination. If there are not enough Non-Federal Partner(s) to the Agreement to meet the

Non-Federal Cost-Share requirements, or if Reclamation withdraws from this Agreement, the Agreement is terminated.

V. General:

- A. Liability: It is understood and agreed that none of the Parties 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 that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.* With respect to breaches of § III (C), Confidentiality, the Non-Federal partners shall be subject to an injunction preventing further violations but shall not be liable for any monetary damages. The Non-Federal Parties' liability shall also be limited by the terms and exclusions contained in the New Mexico Tort Claims Act, NMSA 1978 Secs. 4-41-1, *et seq.* (2016), where applicable.
- B. Limitations: This Agreement sets out the Parties' obligations and does not direct or apply to any person outside of the Parties to this Agreement. This Agreement is not intended to, 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, its officers, or any person.
- C. Notices and Key Personnel: Notices between the Parties and copies of correspondence among the scientific and/or technical representatives of each Party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions shall be sent to the Key Personnel identified in Section I(K). Reclamation's Key Personnel is authorized to perform scientific and/or technical activities falling within the Scope of this Agreement. The Key Personnel are not authorized to change or interpret with authority the terms and conditions of this Agreement. Key Personnel are defined in Section I(K).
- D. Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise for projects within the scope of this Study shall give a prior notice of thirty (30) days to the other Parties, including confirmation that the third party is bound by the provisions of this Agreement concerning Confidential Information and Subject Inventions. This requirement is to assure that Confidential Information and rights in Subject Inventions are not compromised.
- E. Assignment: None of the Parties have the right to assign this Agreement or any of its responsibilities hereunder.
- F. Endorsement: No Party shall in any way state or imply that this Agreement or the results of this Agreement constitute an endorsement by any other Party, including any department, subdivision, or employee of any other Party, except to the extent permission is granted by an authorized representative of such other Party.

- G. Regulatory Compliance: All Parties acknowledge and agree to comply with all applicable laws and regulations of the state, Federal, tribal laws, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to the activities or projects for this Agreement. These regulatory compliance requirements may include but are not limited to, the National Environmental Policy Act (NEPA) including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, Tribal Water Quality Standards, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office, Rio Grande Compact, and New Mexico state water laws, rules, and regulations.
- H. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Key Personnel officials, identified in Section I(K), Article 14, Notices and Key Personnel. All Parties agree to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim, the Parties agree that the performance of all obligations shall be pursued diligently.
- I. Force Majeure: None of the Parties shall be held responsible for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
- i. which causes the Party to be unable to perform its obligations under this Agreement; and
 - ii. which it has been unable to overcome by the exercise of due diligence,
 - iii. including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemics, war, riot, civil disturbance or disobedience, strikes, labor disputes, failure or sabotage of any Party's facilities or any order or injunction made by a court or public agency.
- J. Relationship between the Parties: Nothing in this Agreement shall be construed to create an employee-employer relationship, contact, partnership, agency, joint venture, or teaming agreement between the Parties.
- K. Severability: In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- L. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- M. Waiver: The failure of any Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.

- N. Sovereign Immunity: Nothing in this Agreement, or in any future modifications to this Agreement, is intended to limit, abridge, or be construed as a waiver of, the sovereign immunity or sovereign powers of the participating tribal government(s).
- O. Entire Agreement: The terms and conditions contained in this MOA and its appendices or attachments constitute the entire agreement and understanding by and between the Parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.
- P. Counterparts: This Agreement may be executed in multiples and each original shall be equally effective.
- Q. No Third-Party Beneficiaries: The Parties do not intend to create, and do not create, any third-party beneficiaries of this Agreement.

For the Non-Federal Partner(s)

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

Title
Organization

Date

For Reclamation

Regional Director

Date
