

## **MEMORANDUM OF AGREEMENT UPPER RIO GRANDE BASIN WATER OPERATIONS**

### **I. INTRODUCTION**

The Bureau of Reclamation ("BOR"), the U. S Army Corps of Engineers ("COE"), and the New Mexico Interstate Stream Commission ("NMISC"), collectively referred to as the "signatories" or "lead agencies", enter into this Memorandum of Agreement (this "Agreement") to conduct the Upper Rio Grande Basin Water Operations Review (the "Review") and prepare a Programmatic Water Operations Environmental Impact Statement ("Water Operations EIS"). The Review and Water Operations EIS are sometimes collectively referred to herein as the "project". The Review will be the basis of, and integral to, the Water Operations EIS. The Water Operations EIS will be prepared by the parties in accordance with the National Environmental Policy Act ("NEPA") and will present alternatives for the exercise of discretionary authority of BOR, COE, and NMISC with respect to water operations at federally-operated facilities in the upper Rio Grande Basin ("Upper Rio Grande Basin Water Operations") and evaluate the environmental, economic, and social effects of these alternatives. The parties acknowledge and agree that collective federal discretionary actions taken with respect to Upper Rio Grande Basin Water Operations constitute a major federal action significantly affecting the quality of the human environment. BOR, COE, and NMISC are joint-lead agencies in complying with analysis, documentation, and disclosure requirements of the NEPA process.

The project will consider the means available to exercise existing water operations authorities of BOR, COE, and NMISC with respect to Upper Rio Grande Water Operations to (1) meet agricultural, domestic, municipal, industrial, and environmental water needs, including water needs for the conservation of endangered and threatened species as required by law, consistent with the allocation of supplies and priority of water rights under state law; (2) meet downstream water delivery requirements mandated by the Rio Grande Compact and international treaty; (3) provide flood protection and sediment control; (4) assure safe dam operations; (5) support compliance with local, state, federal, and tribal water quality regulations; (6) increase system efficiency; and (7) support compliance of BOR and COE with the National Environmental Policy Act ("NEPA") for Upper Rio Grande Basin Water Operations and activities and support compliance of all signatories with the Endangered Species Act (the "ESA").

BOR and COE operate reservoir and water conveyance facilities under a number of different authorities, contracts, and policies. NMISC is authorized to protect, conserve and develop the waters of the state and monitors operations at reservoirs and water conveyance facilities for these purposes and to assure compliance with the Rio Grande Compact. The Review and related Water Operations EIS will define procedures and protocols for review, coordination, consultation, and public input in water operations decisions. The decision-making process must be flexible and efficient to allow water

managers to be responsive to ever-changing conditions, but must also be designed to allow public review and input.

Subject to applicable compacts and decrees, the State of New Mexico administers water rights within the state. Nothing in this Agreement, the Review, or the Water Operations EIS shall be construed to create water rights or require the State of New Mexico to grant water rights to any entity. Further, this Agreement shall not be construed as a *de facto* negotiation of water rights or authority to create depletions that negatively impact water users or compact deliveries. The foregoing shall not limit or otherwise affect the existing authorities of BOR, COE and NMISC that are the subject of the Review and the Water Operations EIS.

## II. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to define the scope of the project and to establish the roles and responsibilities of the signatories relating to completing the Review and associated Water Operations EIS in accordance with NEPA and the ESA, and relevant regulations.

## III. PURPOSE AND NEED STATEMENT FOR THE PROJECT

The signatories adopt the following purpose and need statement for the project:

The proposed action is the adoption of an integrated plan for water operations at existing COE and BOR facilities in the Rio Grande basin above Fort Quitman, Texas.

**Need:** Under various existing legal authorities, and subject to allocation of supplies and priority of water rights under state law, the COE and BOR operate dams, reservoirs, and other facilities in the upper Rio Grande basin to:

- (1) store and deliver water for agricultural, domestic, municipal, industrial, and environmental uses;
- (2) assist the ISC in meeting downstream water delivery obligations mandated by the Rio Grande Compact;
- (3) provide flood protection and sediment control; and
- (4) comply with existing law, contract obligations, and international treaty.

**Purpose:** The Upper Rio Grande Basin Water Operations Review will be the basis of, and integral to, preparation of the Water Operations EIS. The purpose of the Review and Water Operations EIS is to:

(1) identify flexibilities in operation of federal reservoirs and facilities in the upper Rio Grande basin that are within existing authorities of COE, BOR, and NMISC, and in compliance with state and federal law;

(2) develop a better understanding of how these facilities could be operated more efficiently and effectively as an integrated system;

(3) formulate a plan for future water operations at these facilities that is within the existing authorities of BOR, COE, and NMISC; complies with state, federal, and other applicable laws and regulations; and assures continued safe dam operations;

(4) improve processes for making decisions about water operations through better interagency communications and coordination, and facilitation of public review and input; and

(5) support compliance of the COE, BOR, and NMISC with applicable law and regulations, including but not limited to the National Environmental Policy Act and the Endangered Species Act.

#### IV. SCOPE

The Review and Water Operations EIS will address water operations at the following facilities with the noted exceptions and limitations. The term "water operations," as used in this Agreement, shall mean and refer to physical operation of the identified facilities.

- Flood control operations at Platoro Reservoir (the Review and Water Operations EIS will include only flood control operations at Platoro that are under COE authority. None of the signatories to this Agreement have authority over water supply operations at Platoro).
- Closed Basin Division -- San Luis Valley Project
- Heron Dam and Reservoir
- Abiquiu Dam and Reservoir
- Cochiti Dam and Reservoir
- Jemez Canyon Dam and Reservoir
- Low Flow Conveyance Channel
- Flood control operations at Elephant Butte Dam and Reservoir (because of current litigation, water supply operations at Elephant Butte will not be included in the Review or the Water Operations EIS).
- Flood control operations at Caballo Dam and Reservoir (because of current litigation, water supply operations at Caballo will not be included in the Review or the Water Operations EIS).

BOR and COE operate these facilities under federal authorities, state water rights permits, and various contracts. The Review and Water Operations EIS will be limited

to actions that can be implemented within the existing authorities of the signatories in compliance with applicable international, federal, state, and tribal laws, regulations, and contracts, including without limitation the Rio Grande Compact. A summary of important pertinent authorities and legal constraints is provided for reference in Appendix A.

## V. ORGANIZATION TO ACCOMPLISH THE PROJECT

The organization for the preparation of the Water Operations EIS will include cooperating agencies and stakeholders (sometimes hereinafter referred to as the “EIS parties”). Cooperating agencies are those agencies that have or will enter into an agreement with the lead agencies in support of the project pursuant to Article VII. The organizational structure is shown schematically in Figure 1. In accordance with NEPA and Council on Environmental Quality (“CEQ”) implementing regulations, an interdisciplinary team will be organized to conduct required technical work and prepare the Water Operations EIS. Support to the joint lead agencies will be provided by the EIS parties through participation on the Steering Committee, interdisciplinary NEPA team, and technical teams.

A. Final decisions. Except as otherwise specifically provided herein, the lead agencies are collectively responsible for all decisions relating to the Water Operations EIS and will make all final decisions on disputes arising during the NEPA process.

For disputes involving different interpretations of information, the lead agencies agree to consider different interpretations if such interpretations are supported by sufficient credible data, as determined by the lead agencies. For other disputes, the EIS parties will make all reasonable efforts to resolve issues in a collaborative and timely manner. If a disputed issue cannot be resolved in a collaborative and timely manner, the lead agencies will make a final decision. This Agreement and any related agreements supporting the purpose of this Agreement shall not limit or in any way affect any person or entity’s right to comment or otherwise participate in the normal public review and comment process.

B. Decision makers. Each of the lead agencies shall designate a decision maker. The decision makers collectively have authority to conduct the project and each of the lead agencies hereby represents that the decision maker specified below is authorized to act on behalf of the agency with respect to matters relating to the Water Operations EIS, including without limitation the authority to sign any resulting Record of Decision. During the process, the decision makers will attempt to resolve any conflicts or disputes that cannot be resolved by the executive committee. The decision maker for the BOR is the Regional Director, Upper Colorado Region. The decision maker for the COE is the Division Engineer South Pacific Division. The decision maker for the NMISC is the New Mexico Interstate Stream Commission.

C. Executive committee. The executive committee shall have overall responsibility for accomplishing the project by allocating staff and funding resources, providing guidance

to staff, reviewing progress, and coordinating among signatory agencies. The executive committee will select and retain a mediator or facilitator to assist in resolving disputes or conflicts at all levels. The executive committee will assist in resolving any disputes or conflicts referred by the management team or the interdisciplinary NEPA team. Disputes or conflicts that cannot be resolved by the executive committee will be referred to the decision makers. The decision makers may direct that the dispute or conflict be resolved by mediation. Membership of the executive committee shall consist of the District Engineer, Albuquerque District, U.S. Army Corps of Engineers; Area Manager, Albuquerque Area Office, Bureau of Reclamation; and the Interstate Stream Engineer for the NMISC; or their delegates. Appendix B contains the charter of the executive committee.

D. Steering committee. The executive committee will establish a Steering Committee to provide direct communication between the executive committee and representatives of cooperating agencies and key stakeholders that will be identified by the executive committee. The purpose of the Steering Committee is to facilitate coordination and information exchange. The Steering Committee will have no decision-making role. Appendix C contains the charter of the Steering Committee.

E. Management Team. The management team shall be responsible for day-to-day project management. Each signatory (lead) agency shall assign one member to the management team. The management team will have primary responsibility for:

- Overall coordination of project activities
- Formation of an interdisciplinary NEPA team and supporting technical work teams
- Leading the interdisciplinary NEPA team
- Work planning
- Budget and schedule tracking
- Documenting the process and keeping the administrative record
- Advising the executive committee with regard to work plan and schedule changes, budget needs, and other administrative and project management matters
- Day-to-day coordination with cooperating agencies
- Ensuring adequate communication and information exchange, both external and internal
- Producing and distributing progress reports, newsletters, and news
- Producing and submitting for publication required Federal Register notices
- Keeping the administrative record and maintaining project files
- Coordinating with US Fish and Wildlife Service for Section 7 consultation on endangered species and to satisfy Fish and Wildlife Coordination Act requirements
- Coordinating and assuring appropriate public involvement and participation in the project
- Coordinating contractual service procurements and efforts.

The management team will attempt to resolve conflicts and disputes that may arise over the management and administration of the project. In the event that the

management team cannot reach agreement, the issue will be referred to the executive committee. The executive committee may direct that the conflict or dispute be resolved by mediation.

F. Interdisciplinary NEPA Team. The Review and Water Operations EIS will be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. The interdisciplinary NEPA team will include a representative designated by the management team from each of the technical teams. The management team may, as necessary and appropriate as determined by the management team, add members to the interdisciplinary NEPA team. The management team will provide leadership for the interdisciplinary NEPA team. Interdisciplinary NEPA team meetings will be open public meetings.

The interdisciplinary NEPA team will be responsible for:

- Developing, evaluating, and screening water operation alternatives
- Coordinating and directing technical teams
- Providing information to support the public involvement program
- Drafting and assembling the Water Operations EIS
- Reviewing and responding to comments on the draft Water Operations EIS

The interdisciplinary NEPA team will attempt to resolve conflicts or disputes of a technical nature that arise with respect to the project. If the interdisciplinary NEPA team is unable to reach agreement in a timely fashion, the management committee will refer the dispute or conflict to the executive committee. The executive committee may direct that the dispute or conflict be resolved by mediation.

G. Technical teams. Technical teams in a variety of disciplines will support the interdisciplinary NEPA team and perform technical studies and evaluations. The lead agencies will appoint members to these technical teams as specified under Agency Contributions. The management team may, at its discretion, invite and add, from time to time, representatives of cooperating agencies and stakeholders to be technical team members. Each technical team will be responsible for its own organization. Each technical team will refer any dispute or conflicts arising within the technical team that cannot be resolved to the interdisciplinary NEPA team. Disputes or conflicts arising between technical teams will be addressed by the interdisciplinary NEPA team. The interdisciplinary NEPA team may direct that the dispute or conflict be resolved by mediation.

## VI. GENERAL PROVISIONS OF UNDERSTANDING

A. Term. This Agreement will become effective on the last signature date. This Agreement shall remain in effect until terminated as provided herein or completion of a final Water Operations EIS, whichever is earlier. The signatories expect the final Water Operations EIS to be completed within five (5) years from the date of this

## Agreement.

Any signatory party may terminate this Agreement by providing written notice to the other parties, effective 60 days following the date of delivery of such notice. Within ten (10) days after the termination or expiration of this Agreement, the management team will make accessible a full and complete copy of the then-current administrative record and project files to each signatory agency. The management team will provide a copy of the administrative record and project files to a signatory party within sixty (60) days after receiving a request for the record. The management team shall maintain the administrative record and project files for at least one year following the termination of this Agreement or until each of the signatory parties has received a copy of the administrative record and project files, whichever is later.

B. Decision Process. The signatories (lead agencies) are responsible for all decisions involving the Review and the Water Operations EIS and ESA-related processes and will make all final decisions on issues arising during the NEPA process. Decisions regarding the conduct of the Review and Water Operations EIS will be made by the signatories and must be unanimous.

C. No Delegation or Abrogation. Although this Agreement sets forth a cooperative process, all signatories to this Agreement recognize that they each have statutory and contractual responsibilities that cannot be delegated. This Agreement does not, and is not intended to, abrogate any of the signatory agencies' statutory duties. Nothing in this Agreement will be construed to amend or abridge the authority of any agency to carry out its legal responsibilities, mandates, or contractual obligations. The rights and obligations of the parties under this Agreement are contract rights and obligations only, and shall not be construed to modify in any way the statutory or regulatory duties of the parties.

D. Dispute Resolution. The signatories agree to use all reasonable efforts to resolve any disputes arising among them and to do so in a collaborative and timely manner. Disputes that cannot be resolved will be mediated. The team or committee responsible for resolution of a dispute or conflict will document the nature of any dispute and the resolution process used, and provide the documentation to the management team. The signatories, through the management team, will document in the administrative record the nature of any dispute and the resolution process used.

E. Modifying the Agreement. This Agreement may be modified by letter of agreement signed by the three decision makers or their designated representatives. Any modification shall be made in writing prior to implementing the change.

F. The Work Plan. The *Work Plan for the Upper Rio Grande Basin Water Operations Review* (Attachment A) defines the specific work items to be accomplished under this Agreement and provide associated schedule and budget information. The work plan shall be subject to periodic review, revision, and approval by the executive committee.

G. Correspondence. For coordination purposes, copies of all written correspondence from any signatory agency or EIS party to another person or entity pertaining to activities under this Agreement shall be sent by the originator to the originator's peers in the team, committee, or other relevant group to which the originator belongs.

H. Officials not to Benefit. No member of, or delegate to Congress, or resident Commissioner, shall receive any benefit that may arise from this Agreement.

## VII. INVOLVEMENT OF COOPERATING AGENCIES

Agencies and governments with appropriate expertise or jurisdiction have been invited to participate in the NEPA process as cooperating agencies. The executive committee may, at any time during the course of the project, invite additional agencies to participate in the process as cooperating agencies. An agreement with each cooperating agency will be developed documenting specific expectations, roles, and responsibilities including such issues as preparation of analysis, schedules, and availability of pre-decisional information. Cooperating agency agreements must be signed by all of the signatories. A standard cooperating agency agreement is appended hereto as Appendix B.

## VIII. PUBLIC INVOLVEMENT

The signatories, through the management team, will seek and encourage public involvement throughout the project. The management team will prepare a public involvement plan to present milestones to the public. The management team will submit for publication in the Federal Register a Notice of Intent to prepare an EIS, Notices of Availability of the draft and final Water Operations EIS, and Records of Decision. Notices will also be placed in the Federal Register on the availability of scoping information. Each lead agency, through the management team will be responsible for public involvement in the process. The responsibilities of the lead agencies will include conducting public scoping meetings, Water Operations EIS comment hearings, and other outreach activities.

## IX. PRODUCTS

A. Water Operations EIS Documents. The Water Operations EIS Documents will be prepared in accordance with the National Environmental Policy Act and its implementing regulations and the Endangered Species Act and its implementing regulations:

- Notice of Intent to prepare an EIS
- Notice of availability of draft EIS
- Draft Environmental Impact Statement
- Notice of availability of final EIS
- Final Environmental Impact Statement
- Notice of availability of Record of Decision Record of Decision

The management team will be responsible for production and distribution of the Water Operations EIS documents.

B. ESA Compliance and Compliance with other federal law. The lead agencies shall establish a protocol for the integration with this Review of other federal and NMISC actions or decisions which relate to or may have an effect on the decisions and resources that are within the scope of this Review. This Protocol should include an explanation of the relationship between the project and other Environmental Assessments or Environmental Impact Statements, the manner in which the actions for which the project will be conducted will comply with the requirements of Sections 7 and 9 of the Endangered Species Act, and the manner in which decisions regarding the grant or denial of permits or other authorizations or discretionary actions will be incorporated within the project. The lead agencies will determine and document the timing and products for review by the United States Fish and Wildlife Service pursuant to the Endangered Species Act, and the organization structure for arrangements between the United States Fish and Wildlife Service and the three lead agencies.

C. Administrative Record. The management team will keep and maintain the administrative record for the EIS. The administrative record shall include all reports and other records establishing the factual basis and material to the development of the EIS and Records of Decision, such as correspondence among the signatories and EIS parties, including email; meeting notes; and public comments. Informal communications shall not be considered to establish the factual basis of the EIS and Records of Decision.

D. Records of Decision. Each of the signatories will publish a separate Record of Decision not less than 30 days following publication of the Final Water Operations EIS. Each agency's ROD will state its plan for future exercise of its authorities over water operations in the Upper Rio Grande Basin. While the intent of this Agreement is that the signatories will use all reasonable efforts to develop a preferred plan that will be adopted by all three signatories, this outcome is not assured.

## X. AGENCY CONTRIBUTIONS

The BOR, COE, and NMISC will make funding and in-kind contributions during the term of the Agreement for purposes of completing the *Work Plan for the Upper Rio Grande Basin Water Operations Review* (Attachment A). The staffing commitments of the parties may be fulfilled using in-house staff or contractors.

The signatories will be responsible for funding their respective obligations identified in this Agreement and in Attachment A. If additional or unanticipated needs are identified in the course of the project, the signatories will review their respective budgets and mutually agree on the means of funding.

Commitments made under this Agreement are subject to approval and appropriations by state and federal legislative bodies. Nothing in this Agreement will require any of the signatories to exceed annual appropriations or personnel limits.

A. Bureau of Reclamation. BOR will:

1. Assign a project manager whose primary assignment is to manage the project process for BOR and participate as a member of the management team. The estimated resource commitment for the Reclamation project manager is 0.5 to 1.0 FTE per year.
2. Assign technical specialists as necessary to accomplish the Work Plan. The estimated resource commitment for BOR technical specialist participation is 0.3 FTE for each of 8 to 10 teams per year.
3. Assign staff and provide funding as necessary to accomplish the public involvement program. The estimated resource commitment for BOR public involvement program participation is 0.3 to 0.5 FTE.
4. Provide general support such as clerical support.
5. Provide written input for all documents and review materials within time frames set.
6. Review and comment on all draft documents and public information materials.
7. Provide appropriate existing data and analysis.
8. Provide funding for staffing, travel, and other participatory needs.
9. Provide work plans and statements of work for any necessary studies.
10. Provide draft copies for other agency review.
11. Continue to support development of the Upper Rio Grande Water Operations Model (URGWOM).

B. Corps of Engineers. COE will:

1. Assign a project manager whose primary assignment is to manage the project process for COE and participate as a member of the management team. The estimated resource commitment for the COE project manager is 0.5 to 1.0 FTE per year.
2. Assign technical specialists as necessary to accomplish the Work Plan. The

estimated resource commitment for COE technical specialist participation is 0.3 FTE for each of 8 to 10 teams per year.

3. Assign staff and provide funding as necessary to accomplish the public involvement program. The estimated resource commitment for COE public involvement program participation is 0.3 to 0.5 FTE.
4. Provide general support such as clerical support.
5. Provide written input for all documents and review materials within time frames set.
6. Review and comment on all draft documents and public information materials.
7. Provide appropriate existing data and analysis.
8. Provide funding for staffing, travel, and other participatory needs.
9. Provide work plans and statements of work for any necessary studies.
10. Provide draft copies for other agency review.
11. Continue to support development of the Upper Rio Grande Water Operations Model (URGWOM).

C. New Mexico Interstate Stream Commission. NMISC will:

1. Assign a project manager whose primary assignment is to manage the project process for NMISC and participate as a member of the management team. The estimated resource commitment for the NMISC project manager is 0.5 to 1.0 FTE per year.
2. Assign technical specialists as necessary to accomplish the Work Plan. The estimated resource commitment for NMISC technical specialist participation is 0.3 to 0.5 FTE for each of 6 to 10 teams per year.
3. Assign staff and provide funding as necessary to accomplish the public involvement program. The estimated resource commitment for NMISC public involvement program participation is 0.3 to 0.5 FTE.
4. Provide general support such as clerical support.
5. Provide written input for all documents and review materials within time frames set.

6. Review and comment on all draft documents and public information materials.
7. Provide appropriate existing data and analysis.
8. Provide funding for staffing, travel, and other participatory needs.
9. Provide work plans and statements of work for any necessary studies.
10. Provide draft copies for other agency review.
11. Increase support of development of the Upper Rio Grande Water Operations Model (URGWOM).

APPROVED:

New Mexico Interstate Stream Commission

---

Richard P. Cheney  
Chairman

Date: \_\_\_\_\_

U.S. Bureau of Reclamation

---

Charles A. Calhoun  
Director, Upper Colorado Region

Date: \_\_\_\_\_

U.S. Army Corps of Engineers

---

Peter T. Madsen  
Brigadier General, U.S. Army  
Division Engineer

APPENDIX A: Pertinent authorities and legal constraints on water operations in the Upper Rio Grande Basin

Appendix B: Charter of the Executive Committee

Appendix C: Charter of the Steering Committee

Attachment A: Work Plan

Attachment B: Standard Cooperating Agreement

## APPENDIX A WATER OPERATIONS AUTHORITIES

The signatories state that they have the following discretionary authorities over water operations in the upper Rio Grande basin, the exercise of which will be subject to consideration in the project.

A. Corps of Engineers Authorities: The COE operates reservoir facilities for flood and sediment control in the Upper Rio Grande Basin under existing authority of:

- PL 86-645 (1960) authorizes construction of Cochiti and Galisteo Dams and includes the operating criteria for Jemez Canyon, Abiquiu, Cochiti, and Galisteo Dams which includes:
  1. " will be operated solely for flood control and sediment control
  2. "the outflow from Cochiti Reservoir during each spring flood and thereafter will be at maximum rate of flow that can be carried at the time in the channel of the Rio Grande through the middle valley without causing flooding of areas protected by levees or unreasonable damage to channel protective works."
  3. "that whenever the months of July, August, September, and October, there is more than two hundred twelve thousand acre-feet of storage available for regulation of summer floods and the inflow to Cochiti Reservoir (exclusive of that portion of the inflow derived from upstream flood -control storage) is less than one thousand five hundred cubic feet per second, no water will be withdrawn from storage in Cochiti Reservoir and the inflow derived from upstream flood-control storage will be retained in Cochiti Reservoir".
  4. "Releases of water from Galisteo, reservoir and Jemez Canyon Reservoir during the months of July, August, September, and October, will be limited to the amounts necessary to provide adequate capacity for control of subsequent summer floods; and such releases when made in these months, or thereafter, will be at the maximum rate practicable under the conditions at the time.",
  5. "all reservoirs will be evacuated completely on or before March 31 of each year..."
  6. "that when estimates of anticipated streamflow made by appropriate agencies of the Federal Government indicate that the operation of reservoirs constructed as a part of the Middle Rio Grande Project may affect the benefits accruing to New Mexico or Colorado under provisions of the eighth unnumbered paragraph of Article VI of the Rio Grande Compact, releases from such reservoirs shall be regulated to produce a flow of ten thousand cubic feet per second at Albuquerque, or such greater or lesser rate as may be determined by the Chief of Engineers at the time to be maximum safe flow, whenever such operation shall be requested by the Rio Grande Compact Commissioner for New Mexico or the Commissioner for Colorado, or both, in writing prior to commencement of such operation."
  7. " ...nodeparture from the foregoing operation schedule will be made except with advice and consent of the Rio Grande Compact commission..."
  8. "...whenever the Corps of Engineers determines that an emergency exists affecting the safety of major structure or endangering life and shall so advise the Rio

Grande Compact Commission in writing, these rules of operation may be suspended during the period of and to the extent required by such emergency."

- PL 88-293 (1964) which authorizes a permanent pool in Cochiti Lake for recreation and fish and wildlife; the pool was established and maintained with San Juan -Chama Project water;
- PL 97-140 (1981) authorizes up to 200,000 acre-feet of contract storage of San Juan Chama project water in Abiquiu Reservoir with certain conditions;
- PL 100-522 (1988) authorizes storage of Rio Grande system water (up to 200,000 acre-feet) in Abiquiu Reservoir in the San Juan Chama storage space, if the San Juan Chama entities no longer require such storage; the storage of Rio Grande system water is subject to the provisions of the Rio Grande Compact; and
- Flood Control Act of 1944 (58 Stat. 890, 33 U.S.C. 709), Section 7, Flood Control Regulation for Platoro Reservoir, Conejos River, Colorado is the responsibility of the COE.

B. Bureau of Reclamation Authorities: The BOR operates reservoir and channel facilities in the Upper Rio Grande Basin under existing authority of:

- The Reclamation Act of 1902
- The Flood Control Acts of 1948 (PL 80-858) and 1950 authorize construction, operation, and maintenance of channel rectification works of the Middle Rio Grande Project, which includes the Low Flow Conveyance Channel.
- PL 87-483 (1962) authorizes the San Juan-Chama Project, which makes possible diversion of water from the upper tributaries of the San Juan River through the Continental Divide and into the Rio Grande drainage, not to exceed a maximum of 270,000 acre-feet in any one year, and limited to a total of 1,350,000 acre-feet in any consecutive ten-year period; the authorization allows water use to include municipal, irrigation, domestic, and industrial uses, and provide recreation and fish and wildlife benefits; Reclamation administers the contracts for San Juan-Chama Project water; Heron Reservoir is a facility of the San Juan-Chama Project and stores only water diverted from the San Juan Basin;
- PL 92-514 (1972) authorizes the Closed Basin project in Colorado to salvage groundwater that would otherwise be lost to evapotranspiration. The project helps the state of Colorado meet its required compact deliveries to New Mexico and to help all three states: Colorado, New Mexico and Texas meet their delivery requirements to the Republic of Mexico;
- PL 93-493 (1974) authorizes a recreation pool at Elephant Butte of 50,000 acre-feet; the state of New Mexico has contracted with the city of Albuquerque for San Juan -Chama project water to maintain the recreation pool since 1985;

### C. New Mexico Interstate Stream Commission Authorities:

- Section 72-14-3, NMSA 1978 provides in part that NMISC “is authorized to ... investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise;... and to do all other things necessary to carry out the provisions of [Chapter 72, Article 14, NMSA 1978].”
- Section 72-14-20, NMSA 1978 provides in part that NMISC “authorized and empowered, to accept cooperation from the United States of America, its instrumentalities and agencies, in the construction, maintenance and operation ..... of any works authorized by this act, and the commission shall have full power to do any and all things necessary in order to avail itself of such aid, assistance and cooperation ....”

### D. Other Applicable Laws and Regulations

This Agreement, the Review, and the Water Operations EIS are subject to, and are intended to be consistent with, all applicable federal and state laws, regulations, agency policies, and interstate compacts including, but not limited to:

- The Rio Grande Compact of 1938, apportions the waters of the Rio Grande above Fort Quitman Texas among the states of Colorado, New Mexico, and Texas.
- The Rio Grande Convention of 1906 requires the United States to deliver 60,000 acre feet of water annually to Mexico. The National Environmental Policy Act of 1969, as amended (Public Law 91-910, 42 USC 4321-4347).
- Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500-1508).
- U.S. Department of the Interior, Departmental Manual Part 516
- U.S. Department of the Interior, Bureau of Reclamation, National Environmental Policy Act Handbook, as revised (October 1990).
- The Endangered Species Act of 1973, as amended (P.L. 93-205; 87 Stat. 884, 16 U.S.C. 1531 et. seq.) Consultation and Regulatory Certainty Under Section 7 of the ESA, 16 U.S.C. Section 1536, federal agencies shall utilize their programs and authorities in furtherance of the purposes of the ESA and ensure that their actions are not likely to jeopardize listed species or adversely modify designated critical habitat of such species. Federal Cooperation with States Section 2(c)(2) of the ESA, 16 U.S.C. Section 1531(c)(2), states that "the policy of Congress is that federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species." Under Section 6 of the ESA, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the states in carrying out the program authorized by the ESA and to consult with the affected states before acquiring any land and water, or interest therein, for the purpose conserving listed species. Nothing

herein shall constitute an admission that any water related activities or new water related activities have caused or will cause adverse effects to endangered or threatened species or their habitats.

- Under the Fish and Wildlife Coordination Act, 16 U.S.C. ' 662, federal agencies must consult with the Service and with state wildlife agencies on the impacts to fish and wildlife resources of federal or federally licensed or permitted water projects.
- Water Pollution Prevention and Control Act (Clean Water Act). 33 U.S.C. Section 1251 et. seq.
- PL 100-633 which amends the National Wild and Scenic River Act of 1968 to include a portion of the Rio Chama the reach between El Vado, and Abiquiu Reservoirs as " wild and scenic " and designates another portion of the reach as a study reach for possible designation. The Corps, Reclamation, and the Bureau of Land Management (BLM) are jointly responsible for management of the reaches.
- Subject to applicable compacts and decrees, the State of New Mexico administers water rights.
- The State of New Mexico also has certain statutory authorities, including authority under Section 17-2-39, NMSA 1978, and responsibilities to protect and manage its fish and wildlife resources.
- Additional authorities:

### **National Parks, Monuments, Recreation Areas**

Several laws established national monuments or recreation areas within the river basin. These units were established to provide for public outdoor recreation use and enjoyment and to preserve the scenic, scientific, and historic features of the area. (i.e., list the laws establishing Bandelier National Monument; Wild Rivers NRA; Ovielle Verde NRA; Quarai at Salinas Pueblo Missions National Monument; Abo at Salinas Pueblo Missions National Monument; Gran Quivira at Salinas Pueblo Missions National Monument; Valley of Fires NRA; Ft. Craig National Historic Site)

The following may also be applicable:

Antiquities Act of 1906 (16 U.S.C. 431 et seq.)

National Park Service Organic Act (16 U.S.C. 1-4, 22,43)

National Park Service General Authorities Act of 1970 (16 U.S.C. 1a-1)

Redwood National Park Act of 1978 (Public Law (P.L.) 95-250, 92-Stat. 163 as amended)

Energy Policy Act of 1992 (P.L. 102-486, Sec. 2402)

### **Environmental**

Several laws and executive orders were designed to restore and protect the natural environment of the United States-air, water, land, and fish and wildlife.

Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.)  
Wilderness Act of 1964 (16 U.S.C. 1131 et seq.)  
Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.)  
Clean Air Act (42 U.S.C. 7401 et seq.)  
Executive Order 11991, Protection and Enhancement of Environmental Quality, 1977  
Executive Order 11988, Floodplain Management, 1977  
Executive Order 11990, Protection of Wetlands, 1977  
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

### **Cultural Preservation**

Several laws and executive orders were designed to protect and preserve historic and cultural resources under Federal control and/or in consultation with Indian Tribes.

Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)  
Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.)  
National Historic Preservation Act (16 U.S.C. 470 et seq.)  
Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971  
Archaeological Resources Protection Act of 1979 (16 U.S.C. 470 et seq.)  
Executive Order 13007, Indian Sacred Sites, 1996

### **Tribal Laws and Regulations**

Several laws and treaties established reservations and protect the rights of Native Americans to express, believe, and exercise traditional religious practices. Federal agencies are responsible for consulting with Indian Tribal Governments and traditional religious leaders to determine appropriate actions necessary for protecting and preserving Native American religious cultural rights and practices.

American Indian Religious Freedom Act of 1978  
(42 U.S.C. 1996)

Native American Graves Protection and

Repatriation Act of 1990 (25 U.S.C. 3001 et seq.)

Religious Freedom Restoration Act of 1993 (P.L. 13-141)

Laws or treaties establishing Indian Reservations within or adjacent to the study area

r:\riogrand\appendixa.moa

## APPENDIX B

### **CHARTER OF THE EXECUTIVE COMMITTEE FOR THE UPPER RIO GRANDE BASIN WATER OPERATIONS REVIEW AND WATER OPERATIONS ENVIRONMENTAL IMPACT STATEMENT**

Membership: In accordance with the Memorandum of Agreement for the Upper Rio Grande Basin Water Operations Review and Environmental Impact Statement (the Project) , the executive committee for the Project (executive committee) shall consist of the District Engineer, Albuquerque District, U.S. Army Corps of Engineers; the Area Manager, Albuquerque Area Office, Bureau of Reclamation; and the Interstate Stream Engineer for the New Mexico Interstate Stream Commission.

Role of the executive committee: The executive committee is responsible for accomplishing the review by allocating staff and funding resources from their respective agencies, providing guidance to staff, reviewing progress, and coordinating among signatory agencies.

The executive committee will review and approve changes to the Project work plan.

The executive committee shall establish a steering committee for the purpose of coordinating and exchanging information regarding the Project between the executive committee and representatives of cooperating agencies and key stakeholders. Representatives of all cooperating agencies, the Rio Grande Compact Commission, and key stakeholders that are identified by the executive committee will be invited to participate in the steering committee.

Decisions: Decisions of the executive committee shall be unanimous and will be approached in a constructive and collaborative manner. In the event that conflicts or disputes may arise that cannot be resolved within the committee itself, mediation of the dispute will be attempted. The executive committee will select and retain a mediator to provide conflict and dispute resolution assistance for the Project.

The executive committee will assist in resolving any disputes or conflicts referred by the management team or the interdisciplinary NEPA team.

Meetings: The executive committee shall meet at least three times a year, or more often as necessary.

The executive committee shall conduct steering committee meetings at least twice a year or more often if necessary.

## APPENDIX C

### CHARTER OF THE STEERING COMMITTEE FOR THE UPPER RIO GRANDE BASIN WATER OPERATIONS REVIEW

Membership: In accordance with the Memorandum of Agreement for the Upper Rio Grande Basin Water Operations Review and Water Operations Environmental Impact Statement (the Project), the steering committee for the project (steering committee) shall consist of the members of the executive committee (i.e. the District Engineer, Albuquerque District, U.S. Army Corps of Engineers; the Area Manager, Albuquerque Area Office, Bureau of Reclamation; and the Interstate Stream Engineer for the New Mexico Interstate Stream Commission), representatives from cooperating agencies, members of the Rio Grande Compact Commission, and key stakeholders invited by the executive committee.

Role of the Steering Committee: The purpose of the steering committee is coordination and exchange of information regarding the Project. The steering committee has no decision-making role.

Meetings: The executive committee will conduct steering committee meetings at least twice a year.