

Appendix C - PUBLIC INVOLVEMENT

Mailing List for Draft EA

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LETTERS RECEIVED REGARDING A DEVIATION AT ABIQUIU RESERVOIR

USACE received letters from the following agencies related to a deviation in the Water Control Plan (WCP) at Abiquiu Reservoir:

United States Department of the Interior dated November 22, 2019, signed by Timothy R. Petty, Assistant Secretary for Water and Science.

Albuquerque Bernalillo County Water Utility Authority dated February 4, 2021, signed by Mark S. Sanchez, Executive Director.

Bureau of Reclamation, received on August 18, 2020, signed by Jennifer Faler, Albuquerque Area Manager.

New Mexico Interstate Stream Commission dated December 15, 2021, signed by Hannah Riseley-White, Deputy Director.

Middle Rio Grande Conservancy District dated December 28, 2021, signed by Mike A. Hamman, Chief Engineer/CEO.

New Mexico Interstate Stream Commission dated January 20, 2022, signed by Rolf Schmidt-Petersen, Director.

Coalition of Six Middle Rio Grande Basin Pueblos dated January 28, 2022, signed by Stuart Paisano, Chairman.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

NOV 22 2019

The Honorable R.D. James
Assistant Secretary of the Army - Civil Works
Office of the Assistant Secretary of the Army
108 Army Pentagon
Washington, DC 20310-0108

Dear Assistant Secretary James:

The Bureau of Reclamation has an obligation to ensure that all federal Reclamation dams and appurtenant structures are compliant with the Safety of Dams Act of 1978 (Pub. L. 95-578, as amended). Its legal obligations and responsibility for sound asset management requires that Reclamation address deterioration and seepage issues associated with El Vado Dam's steel faceplate and rockfill embankment as well as deterioration of the steel liner on the service spillway.

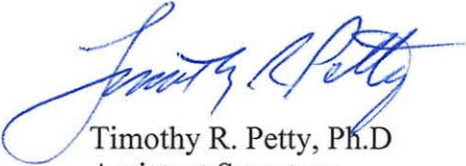
El Vado Dam is located 60 miles upstream of the United States Army Corp of Engineers' (USACE) Abiquiu Dam and Reservoir on the Rio Chama in the Rio Grande Basin. El Vado Reservoir has a total capacity of 196,500 acre-feet. In addition to its responsibility to preserve the structural safety of El Vado Dam, Reclamation has obligations to continue water management operations for authorized purposes pursuant to the Flood Control Acts of 1948 and 1950. Reclamation stores the flow of the Rio Chama as requested by the Middle Rio Grande Conservancy District (MRGCD) in El Vado Dam to ensure stable water deliveries to its stakeholders. Deliveries also include the six Middle Rio Grande Pueblos.

Construction on El Vado dam and spillway is expected to begin in 2022 and last about three years. During construction, Abiquiu dam, which currently stores transbasin San Juan Chama water, could serve as a vital backstop for storage of potential flood waters and assist Reclamation's construction project on El Vado Dam by storing native water which originates in the Rio Grande Basin.

The availability of Abiquiu Reservoir to store native water under a temporary permit from the New Mexico Office of the State Engineer and in consultation with the Rio Grande Compact Commission is essential for Reclamation to continue to meet its water management mission during the rehabilitation of El Vado Dam. Reclamation staff in Albuquerque have discussed its proposal with the local USACE's Albuquerque District staff, who suggested elevating its proposal to the Washington level.

Reclamation would appreciate the assistance of the USACE to help make native storage in Abiquiu available during the corrective action process at El Vado, improving the safety of aging infrastructure in the Rio Grande basin and facilitating this construction work. If you have any questions, please contact Jennifer Faler at (505) 462-3541 or email jfaler@usbr.gov.

Sincerely,



Timothy R. Petty, Ph.D
Assistant Secretary
for Water and Science

cc.

Lt. Col. Larry (Dale) Caswell, Jr.
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February 4, 2021

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Executive Director
Mark S. Sanchez

Website
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LTC Patrick M. Stevens V
Commander
4101 Jefferson Plaza
Albuquerque, NM 87109

**Re: Water Authority Contract Amendment for Native Water
Storage in Abiquiu Reservoir (DACW47-86-C-0009)**

Dear Lieutenant Colonel Stevens:

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) would like to thank the Corps of Engineers for their hard work and cooperation in supporting the Congressional Authorized language in the 2020 Water Resources Development Act (WRDA). The 2020 WRDA provides the ability to concurrently store both San Juan-Chama and native Rio Grande system ("native water") up to elevation 6230.00 NGVD29 and sets aside 29,100 acre-feet of space for other San Juan-Chama contractors to store San Juan-Chama, native water or both.

In addition to the Corps assistance, we received support from other entities that we expect will benefit from storing native water in Abiquiu including, but not limited to, the New Mexico Interstate Stream Commission (ISC), Rio Chama Acequia Association (RCAA), Ohkay Owingeh Pueblo, the City and County of Santa Fe, Bureau of Reclamation, Fish and Wildlife Service, Middle Rio Grande Conservancy District (MRGCD) and several environmental groups. The Water Authority views Abiquiu Reservoir as an important water resources management tool that can provide operational flexibility and to potentially assist in managing New Mexico's delivery obligation under the Rio Grande Compact. We intend to continue to work cooperatively with interested parties as this effort moves forward.

As you know, the Water Authority has been discussing the steps necessary to allow for native water storage in Abiquiu for many years. These steps include, but are not limited to, amending the Water Authority's existing storage contract, acquisition of the necessary property interests up to elevation 6230.00 NGVD29, a storage permit from the State Engineer, NEPA compliance and modification of the Corps Water Control Manual. The WUA would like to begin the discussions regarding the five steps listed and recommends they be addressed in the order they are listed.

Amending the Water Authority's Existing Storage Contract

We believe that the first step in the process is to amend the existing storage contract to allow for native water storage and to provide for the increase in storage for both native and San Juan-Chama water. This will also allow the establishment of the permanent

29,100 acre-feet set aside for other San Juan-Chama contractors allowing for their contracts to be initiated or amended. We understand that amending the contract would be considered a federal action subject to NEPA but given the nature of the existing contract and the Congressional authorizing language it should be at most an Environmental Assessment. There are several good arguments regarding why the contract amendment should proceed prior to initiation of the State Engineer permitting and NEPA compliance which are presented in detail on the following pages.

First, amending the Water Authority's existing contract along with the other San Juan-Chama contracts is consistent with the language in the Congressional authorizing language. The language states that the "Secretary shall" amend the contract up to elevation 6230.00 NGVD29 and shall retain or enter into new storage agreements with entities for a proportional allocation of 29,100 acre-feet. There are limitations in the authorizing language, but other than the need to obtain the necessary ownership and storage rights the limitations will continue in perpetuity whether the contract is amended first or last. In other words, storage of native water will always be subject to the provisions of the Rio Grande Compact and cannot interfere with the authorized purposes of Abiquiu Reservoir and each user will always be responsible for paying for the costs attributable to storage of that user's water.

Second, the Water Authority has been cooperating with the Middle Rio Grande Conservancy District (MRGCD), the Bureau of Reclamation (Reclamation) and the Corps to temporarily store native water in Abiquiu during the rehabilitation of El Vado reservoir. Reclamation has requested that the Water Authority enter into an agreement for temporary storage of native water while the construction work in El Vado proceeds. We realize the importance of the project and more particularly the safety of dams concerns and want to cooperate with all the parties to allow this to move forward. However, the Corps has consistently stated that there is no legal authority to store native water under our existing storage contract without an amendment. Amending the Water Authority's contract now will provide the legal authority to store native water and allow for Reclamation to store the water during the construction.

Third, the Water Authority will be seeking a native water storage permit from the State Engineer and it is likely that this action will be protested. We are concerned that a protestant could seek to administratively prevent the action from moving forward on the grounds that the Water Authority does not have the legal right to store native water so an application to the State Engineer is premature. Amending the contract now will allow for the permitting process to proceed without this potential legal impediment and the potential for significant delays in the process. When the Water Authority proceeded to obtain permit SP-4830 for diversion of our San Juan-Chama water, the State Engineer required that we provide evidence that we had a contract for storage of San Juan-Chama water in Abiquiu and required that a specified amount be stored in advance of beginning operation. We anticipate that the State Engineer would require that the Water Authority

provide evidence that we can store native water during the administrative process. Amending the contract in advance of the application to the State Engineer would provide the necessary proof of our ability to proceed.

Fourth, the Water Authority has expended millions of rate payer dollars to obtain the permanent right to store native and San Juan-Chama water up to elevation 6230.00 NGVD29. To date, we have about 97% of the permanent easements secured and the Water Authority should be allowed to store in the additional 30,000 acre-feet or so of additional space immediately upon securing the easement following review and approval by the Corps. The additional space would be advantageous and provide maximum flexibility during the rehabilitation of El Vado. We understand that the Water Control Manual along with the storage of native or San Juan-Chama water in the additional space is contingent on finalizing the acquisition of the real property interests.

Finally, having the ability to store native water in Abiquiu is consistent with the Water Authority's 100-year water plan (Water 2120) and is vitally important for the Middle Rio Grande. The State is embarking on the development and implementation of a 50-year Water Plan and Reclamation along with MRGCD and the Water Authority are leading the Rio Grande Basin Study. We understand that the Corps may be aiding the State Engineer for the 50-year water plan. Having the flexibility operationally to store native water will be important as both planning efforts consider the future of the Rio Grande. An important example of one alternative is the storage and release of native water by the Interstate Stream Commission to manage Rio Grande Compact deliveries to Elephant Butte. The Water Authority and the ISC have been discussing how important this could be for New Mexico. Amending the contract immediately will legitimize the alternative analysis for both studies.

Acquisition of Permanent Easements

As stated above, the Water Authority has been actively acquiring permanent easements to allow for storage of water (native or San Juan-Chama) up to elevation 6230.00 NGVD29. Currently, we are about 97% complete with the program and are anticipating completion by the end of 2021. We will transmit all the real estate information that we have obtained for the Corps review by the end of March 2021. Upon completion of the remaining easements, we will submit a complete package to the Corps for review and approval.

State Engineer's Permit

The Water Authority will be applying to the State Engineer for storage of native water. The application is being developed and will include the ability to store native water in all the Water Authority's space and we anticipate agreements for storage of native water by others. As with our existing contract, this would require review and approval by the

Corps which we would anticipate a request to the Corps for the existing sub allotment agreements already approved for Reclamation, City and County of Santa Fe, Ohkay Owingeh Pueblo, County of Los Alamos, City of Espanola, and others.

As stated above, we anticipate that there will be protests filed against the Water Authority's application for storage of native water and this process most likely will take several years. Amending the Water Authority's existing agreement along with the other agreements would allow consideration of native water storage for the above-mentioned entities in the State Engineer's permitting process and NEPA Compliance. It would also provide assurance that native water storage would be allowed upon completion of the permitting process without the risks mentioned above.

NEPA Compliance

We are proposing a two phased approach for NEPA compliance. The first phase would be the completion of an Environmental Assessment to amend the Water Authority's contract consistent with the Congressional Authorizing language. As mentioned above, this would provide the legal authority for the deviation necessary for storage of native water in Abiquiu during the rehabilitation of El Vado Dam which we understand is anticipated to start construction in Fall 2021.

The second phase would require the development of an Environmental Impact Statement (EIS) that will consist of the analysis of the impacts and mitigation measures for several storage alternatives. This process is complicated and will most likely take a couple of years to complete. This phase will allow for the modification of the Water Control Manual.

Water Control Manual

Modifying or revising the Water Control Manual would be necessary when the actions that the Corps feel have been completed which would provide for permanent storage of either native water or San Juan-Chama water by the Water Authority and others. We understand that all the necessary property interests would be required prior to finalizing the modification and physical storage of native water other than the deviation discussed above.

Summary

In summary, the Congressional legislation to concurrently storing native and San Juan-Cham water in Abiquiu reservoir has taken ten years. The Water Authority believes that the recently approved Congressional authorization provides for the existing storage contract to be amended immediately for the reasons set out in this letter. While we understand that amending the contract immediately will require language making the

LTC Patrick M. Stevens V, Commander
Water Authority Contract (DACW47-86-C-0009)
February 4, 2021
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storage contingent on approval of the State Engineers permit along with NEPA compliance and securing the property interests, we feel that having the certainty up front is important to our rate payers given the amount of time and expenditures that will be required. Having contingencies in the amended contract is consistent with the original storage agreement which also had several contingencies but has worked well for more than thirty years.

In discussions with your staff, the Corps is awaiting implementation guidance on the Congressional authorizing language. It is our understanding that there will be an opportunity to comment on the legislation prior to the development of implementation guidance. We will be submitting comments on that guidance consistent with the discussion in this letter during the public comment period. We would appreciate if the Corps would notify us when the request for comment has been published in the Federal Register so that we can make sure we meet the deadline. More importantly, we would appreciate your feedback on this letter so that the Water Authority and others can address any concerns you may have with moving forward.

The Water Authority has a great relationship with our federal partners including the Corps and native water storage is important to all of us. We would appreciate the opportunity to meet and discuss your response to this letter and moving forward with a Cooperative Agreement to provide the funding as required to start this process.

I can be reached at (505) 289-3101 or msanchez@abcwua.org to schedule a time to talk.

Sincerely,



Mark S. Sanchez
Executive Director

cc: Peter Auh, General Counsel
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United States Department of the Interior

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IN REPLY REFER TO:
ALB-100
2.1.1.04

VIA ELECTRONIC MAIL ONLY

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Subject: Request for Temporary Deviation from the United States Army Corps of Engineers'
(USACE) Abiquiu Reservoir Water Control Plan (WCP)

Dear LTC Stevens:

The Bureau of Reclamation has an obligation to ensure that all federal Reclamation dams and appurtenant structures are compliant with the Safety of Dams Act of 1978 (Pub. L. 95-578, as amended). Our legal obligations and responsibility for sound asset management require that Reclamation address deterioration and seepage issues associated with El Vado Dam, a facility owned and operated by Reclamation.

El Vado Dam is located approximately 30 miles upstream from the USACE's Abiquiu Dam and Reservoir on the Rio Chama within the Rio Grande Basin. El Vado Reservoir has a total capacity of 196,500 acre-feet. The unique steel faceplate dam was constructed in the early 1930s by the Middle Rio Grande Conservancy District (MRGCD) and was rehabilitated by Reclamation in the mid-1950s. Further decline of the faceplate, increased seepage through the dam, and deterioration of the steel liner on the service spillway have necessitated the repairs currently planned.

In addition to its responsibility to preserve the structural safety of El Vado Dam, Reclamation seeks to continue water management operations for authorized purposes pursuant to the Flood Control Acts of 1948 and 1950. Reclamation stores the flow of the Rio Chama in El Vado Reservoir as requested by the MRGCD to ensure stable water deliveries to its stakeholders. Water is also delivered, in coordination with the Bureau of Indian Affairs (BIA), to lands of the six Middle Rio Grande Pueblos.

Construction on El Vado Dam and spillway is expected to begin in May or June of 2021 and last about three years. From the start of construction until about December of 2021, El Vado Reservoir will retain a small surge pool but will have no storage for MRGCD. During that time, Abiquiu Dam and Reservoir, which currently stores transbasin San Juan – Chama Project (SJCP) water, could be key to ensuring water delivery to MRGCD irrigators.

The availability of Abiquiu Reservoir to store native water under a temporary permit from the New Mexico Office of the State Engineer and in consultation with the Rio Grande Compact Commission is essential for Reclamation to continue to meet its water management mission for irrigation and flood

control during the rehabilitation of El Vado Dam. In addition, Reclamation supports a change to Abiquiu Dam's authorizing legislation to permanently allow native storage in the Reservoir.

Reclamation formally requests a temporary deviation from the WCP at Abiquiu Reservoir to store up to 60,000 ac-ft of native Rio Grande water during this rehabilitation effort. This storage volume would be limited by stored transbasin SJCP water as well as maximum allowable storage, currently limited by elevation 6,220 feet (current storage of 186,820 ac-ft). The water would be used for irrigation within the MRGCD, including for the six Middle Rio Grande Pueblos. Reclamation requests that this temporary deviation extend through December 2023, although it is most urgent that this temporary storage be available beginning in April of 2021.

Reclamation would greatly appreciate the assistance of the USACE to make storage space in Abiquiu available during construction at El Vado through a temporary deviation from the current Abiquiu WCP. Granting this request would allow Reclamation and BIA to meet obligations to water users in the Middle Rio Grande, and specifically federal trust obligations related to the six Middle Rio Grande Pueblos' Prior and Paramount water rights.

To begin the process, Reclamation requests a meeting with appropriate USACE staff and key stakeholders. To set up this meeting, and/or if you have any questions, please contact Carolyn Donnelly at (505) 462-3607 or email cdonnelly@usbr.gov. For Text Telephone Relay Service access, call the Federal Relay System Text Telephone (TTY) number (800) 877-8339.

Sincerely,



Jennifer Faler, P.E.
Albuquerque Area Manager

Enclosure

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NEW MEXICO INTERSTATE STREAM COMMISSION

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December 15, 2021

Lt. Colonel Patrick Stevens V, PE, PMP
Albuquerque District Commander
U.S. Army Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM

VIA EMAIL: patrick.m.stevens@usace.army.mil

RE: Temporary Storage of Native Water in Abiquiu Reservoir

Dear Lt. Colonel Stevens:

The New Mexico Interstate Stream Commission (NMISC), U.S. Bureau of Reclamation (Reclamation), U.S. Army Corps of Engineers (Corps) and several other parties have been exploring options allowing the temporary storage of native water upstream of Elephant Butte Dam during the period El Vado Dam and Spillway are under repair. The NMISC believes the ability to temporarily replace the native water storage operation that would have occurred at El Vado Reservoir during this period is urgent.

The NMISC seeks to have the ability to store native Rio Grande Compact Relinquishment water in Abiquiu Reservoir for Compact management purposes. The NMISC understands that it is the Corps' position that the storage of Compact Relinquishment water in Abiquiu will require a deviation from the operating criteria specified in the Abiquiu Dam Water Control Manual (excepting emergencies). By this letter, the NMISC is requesting that the Corps begin the process for obtaining that deviation. The NMISC also understands that such a deviation will require the advice and consent of the Rio Grande Compact Commission (RGCC). We are ready to work with the Corps, Reclamation, and the RGCC to seek and hopefully obtain that advice and consent. Further, we have been speaking with the Albuquerque Bernalillo County Water Utility Authority (Water Authority) about this potential operation, as the Water Authority will need to authorize a portion of its storage space in Abiquiu Reservoir for the storage of Compact Relinquishment water.

The NMISC, the Corps, and Reclamation have also discussed storage options for Reclamation and the Bureau of Indian Affairs to provide water for the Coalition of Six Middle Rio Grande Pueblos' direct flow right to irrigate 8,847 acres of Pueblo land within the Middle Rio Grande Conservancy District during the period El Vado Reservoir is unavailable for that operation. At present, Reclamation is seeking to address that obligation by exploring an operation that would exchange San Juan Chama water within Heron Reservoir with native Rio Grande water in Abiquiu. If, for whatever reason, the Heron exchange operation is not available, then the NMISC would like to have further conversations with the Corps and Reclamation regarding options for protecting the Pueblos' direct flow rights using one of the Corps' reservoirs in the middle Rio Grande.

We appreciate your efforts in support of the deviation requested here, including your cooperation in seeking the advice and consent of the Rio Grande Compact Commission. The NMISC remains committed to working with the Corps to achieve lasting solutions for New Mexico water users while maintaining Compact compliance. Because the proposed storage and exchange operations outlined herein will not occur until mid-May 2022, we hope there is adequate time to obtain the required regulatory approvals and seek the advice and consent of the Rio Grande Compact Commission.

If you have any questions or need additional information, please contact me at (505) 695-5592 or Hannah.Riseley-White@state.nm.us.

Respectfully,



Hannah Riseley-White
Deputy Director New Mexico Interstate Stream Commission

cc:

Matt Garcia, Office of the Governor
Caroline Buerkle, Office of the Governor
Jennifer Faler, Albuquerque Area Manager, Bureau of Reclamation
Nabil Shafike, Water Management Section Chief, U.S. Army Corps of Engineers
Stuart Paisano, Chairman, Coalition of Six Middle Rio Grande Pueblos
Robert S. Skov, Commissioner for Texas
Kevin Rein, Commissioner for Colorado
Hal Simpson, Commissioner for the U.S.
Mike Hamman, Chief Engineer, Middle Rio Grande Conservancy District
Liz Anderson, Chief Planning Officer, Albuquerque Bernalillo County Water Utility
John R. D' Antonio, Jr., State Engineer and New Mexico Rio Grande Compact Commissioner
Rolf Schmidt-Petersen, NMISC Director
Mark Sanchez, Chair, NMISC
Nat Chakeres, Deputy General Counsel, OSE
Arianne Singer, General Counsel, NMISC
Myron Armijo, Tribal Liaison, OSE/NMISC
John Romero, Director Water Resource Allocation Program, OSE
Patricia Mattingly, Bureau of Indian Affairs

December 28, 2021



Mr. John D'Antonio, PE
New Mexico State Engineer
PO Box 25102
Santa Fe, NM 87504-5102

Re: Request for Emergency Storage Permit at Abiquiu Reservoir Under SP-1690 While El Vado Dam is Repaired

Dear Mr. D'Antonio:

The Middle Rio Grande Conservancy District (MRGCD) has been working cooperatively with a number of agencies for years for the US Army Corps of Engineers (USACE) to store native Rio Grande water in Abiquiu Reservoir in addition to the storage of imported San Juan-Chama Project water. A new federal (Congressional) authorization was achieved in 2020 for Abiquiu Reservoir with the passage of the Water Resources Development Act, and it was hoped that when El Vado Dam rehabilitation construction began in 2022 under the US Bureau of Reclamation's Dam Safety program, Rio Grande water usually stored in El Vado would be allowed to be moved to Abiquiu Reservoir under the USACE's new authority without an ACE "deviation" being required. However, the USACE's Albuquerque District Office has taken the position that WRDA 2020 does not apply at this time and, consequently, a "deviation" with the advice and consent of the full Rio Grande Compact Commission is required. The MRGCD respectfully disagrees with this interpretation and has requested a review at the Assistant Secretary for Civil Works Office.

The MRGCD, in consultation with the New Mexico Interstate Stream Commission, has determined that moving forward with a formal request to the USACE to store native Rio Grande basin water in Abiquiu Reservoir for the benefit of the six Middle Rio Grande Pueblos' prior and paramount lands and for relinquishment credit water allowed for under the Rio Grande Compact for middle valley uses is in the best interests of MRGCD and the state. Under this approach, we request approval by the State Engineer for emergency permit under State Statute §72.5.25 for storage of Rio Grande water in Abiquiu Reservoir under OSE Permit No. SP-1690 when storage is not available during the construction at El Vado Dam. The upper limit may be capped, but we suggest that an option to store up to 60,000 acre-feet, depending upon conditions applied and basin hydrology, would be appropriate to address irrigation demand, Rio Grande Compact compliance operations and endangered species commitments under the 2016 Biological Opinion.

Please contact me at your earliest convenience if you wish to discuss in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike A. Hamman".

Mike A. Hamman, PE
Chief Engineer/CEO

Cc: Rolf Schmitt-Peterson, Director
New Mexico Interstate Stream Commission

P.O. Box 581

87103-0581

1931 Second St. SW

Albuquerque, NM

87102-4515

505.247.0234

Fax # 505.243.7308

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

MARK SANCHEZ, Chair
JOHN T. ROMERO, P.E., Acting Secretary
ARON BALOK, Commissioner
GREGORY CARRASCO, Commissioner
PAULA GARCIA, Commissioner
STACY TIMMONS, Commissioner



BATAAN MEMORIAL BUILDING
ROOM 101
P.O. BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6160
FAX: (505) 827-6188

January 20, 2022

VIA EMAIL: Patrick.m.stevens@usace.army.mil; john.romero2@state.nm.us

John Romero, PE
Acting New Mexico State Engineer
Concha Ortiz y Pino Building
130 South Capitol
Santa Fe, NM 87504

LTC Patrick Stevens V, PE, PMP,
Albuquerque District Commander
U.S. Army Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109

**RE: New Mexico Interstate Stream Commission support of Middle Rio Grande
Conservancy District Request for Emergency Storage Permit at Abiquiu Reservoir
Under SP-1690**

Dear Mr. Romero and LTC Stevens,

The NM Interstate Stream Commission (NMISC) believes the need to temporarily store native Rio Grande water (Rio Grande water) at an alternate reservoir while the El Vado Dam and Spillway are under repair and unusable is urgent. The NMISC is working with a number of water management partners to explore options allowing such storage.

Throughout the 2021 fall and winter, the NMISC coordinated with its water management partners including, but not limited to, the Middle Rio Grande Conservancy District (MRGCD), the Albuquerque Bernalillo County Water Utility Authority (Water Authority), the U.S. Army Corps of Engineers (USACE), and the U.S. Bureau of Reclamation (Reclamation). This coordination has multiple goals: the first, is to allow for an amount of Rio Grande water storage in Abiquiu Reservoir in 2022 to reduce the potential for significant irrigation losses in the middle Rio Grande valley during the summer and second, is to deliver water into Elephant Butte Reservoir in 2022 to reduce New Mexico's accrued debit under the Rio Grande Compact. These goals will also benefit endangered species and provide support for Endangered Species Act (ESA) commitments under the 2016 Biological Opinion for Middle Rio Grande Water Operations.

As part of the effort, the NMISC Deputy Director, Hannah Riseley-White made a formal request to the USACE Albuquerque District Office in December 2021 to initiate USACE efforts requesting a deviation from normal operations of Abiquiu Reservoir (See Attached). In addition, in late December, the MRGCD filed a request to the Office of the State Engineer for an emergency storage permit at Abiquiu Reservoir under SP-1690 during the period El Vado Dam is under repair (Also Attached).

I'm writing to inform you that the NMISC and MRGCD requests are coordinated and related and seek similar if not the same outcome. The primary difference between the requests is that the MRGCD's Emergency Permit request seeks to allow all operations that would normally occur at El Vado Reservoir under State Permit SP-1690 to occur at Abiquiu Reservoir, while the NMISC request to the USACE is specific to storage and release of New Mexico's Rio Grande Compact relinquishment credit water at Abiquiu Reservoir.

The NMISC supports the MRGCD's Emergency Permit request and would like to expand the scope of its deviation request to the USACE to encompass the MRGCD's Emergency Permit request by allowing the storage of any native Rio Grande water in Abiquiu, up to a specific limit. If the MRGCD's Emergency Permit is granted and the USACE agrees to a deviation from normal Abiquiu Reservoir operations, the MRGCD, Reclamation, and the NMISC would coordinate with the USACE, Water Authority, Bureau of Indian Affairs, Rio Chama Acequia Association, the Coalition of Six Middle Rio Grande Pueblos, and the States of Colorado and Texas to negotiate specific operations for 2022 critical to reduce the likelihood of severe economic losses for irrigators, improve/increase Compact deliveries into Elephant Butte Reservoir, aid endangered species, and help meet biological opinion commitments.

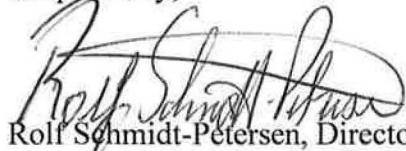
Pursuant to the Flood Control Act of 1960 (P.L. 86-645), any deviation from the operating criteria specified therein (excepting emergencies) requires the advice and consent of the Rio Grande Compact Commission. The coordination and approvals outlined above would form the basis of the USACE deviation advice and consent request to the Rio Grande Compact Commission.

NMISC staff and I are collaborating with the Water Authority and request their authorization to utilize a portion of its Abiquiu Reservoir storage space for this effort.

The NMISC's support of storage of Rio Grande water at Abiquiu Reservoir is based on the following conditions: first, all water exchanged, acquired and or stored and released shall be subject to the laws of the State of New Mexico, including but not limited to, Office of the State Engineer permitting requirements; and second, that storage and release of water from Abiquiu Reservoir is subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission.

Should you have any questions or concerns on this matter, please contact Hannah Riseley-White at hannah.riseley-white@state.nm.us, Page Pegram at page.peggram@state.nm.us, or myself at rolf.schmidt@state.nm.us, and we will be happy to answer any questions or meet with you.

Respectfully,



Rolf Schmidt-Petersen, Director
New Mexico Interstate Stream Commission

cc: Mike Connor, Assistant Secretary of the Army for Civil Works, Dept. of Defense
Nabil Shafike, USACE Albuquerque
Hal Simpson, RGCC Federal Chair
Robert S. Skov, RGCC Commissioner for Texas
Kevin Rein, RGCC Commissioner for Colorado
Camille Touton, Commissioner U.S. Bureau of Reclamation,
Katrina Grants, Deputy Regional Director, Bureau of Reclamation
Jennifer Faler, Albuquerque Area Manager, Bureau of Reclamation
Patricia Mattingly, Southwest Regional Director, Bureau of Indian affairs
Stuart Paisano, Chairman, Coalition of Six Middle Rio Grande Pueblos
Larry Phillips, Ohkay Owingeh Pueblo
Mike Hamman, Senior Water Advisor, Office of the Governor
Liz Anderson, Chief Planning Officer, Albuquerque Bernalillo County Water Utility Authority
Nat Chakeres, General Counsel, OSE
Myron Armijo, Tribal Liaison, OSE
Darel Madrid, Rio Chama Acequia Association

Enclosures: December 15, 2021 Letter Temporary Storage of native Water in Abiquiu Reservoir
December 28, 2021 letter Request for Emergency Storage permit at Abiquiu
Reservoir under SP-1690 while El Vado Dam is repaired.

Coalition of Six Middle Rio Grande Basin Pueblos
c/o Stuart Paisano, Chairman
Pueblo of Sandia, 481 Sandia Loop, Bernalillo, New Mexico 87004
(505) 867-3317, Fax (505) 867-9235

Via First-Class Mail and E-Mail

January 28, 2022

The Honorable Mr. Michael Connor
Assistant Secretary of the Army for Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Re: Storage of Pueblo Prior and Paramount Water at Abiquiu Reservoir

Dear Assistant Secretary Connor:

On behalf of the Governors of the Coalition of the Six Middle Rio Grande Basin Pueblos (Isleta, Sandia, Santa Ana, San Felipe, Santo Domingo and Cochiti — collectively the “Coalition Pueblos”), we first want to congratulate you on your new position as Assistant Secretary of the Army for Civil Works. We look forward to working with you as we collectively grapple with the on-going drought plaguing our region.

As you are probably aware, because of much needed repairs to El Vado Dam, the Coalition Pueblos have been told that there will be no water storage in El Vado Reservoir for the 2022 or 2023 irrigation season. Thus, we write to respectfully request that the United States Army Corps of Engineers (Corps) store the Coalition Pueblos’ Prior and Paramount (P&P) water in Abiquiu Reservoir beginning in 2022, and to continue this temporary arrangement until Bureau of Reclamation (Reclamation) completes the El Vado Dam repairs. We note that recently enacted Public Law 116-260 (2020) removes restrictions on the storage of native Rio Grande water in Abiquiu Reservoir thereby providing an alternate storage space for P&P water while El Vado is under repair.

For decades native Rio Grande water has been stored for the Coalition Pueblos each year in accordance with the 1981 Storage Agreement between the Bureau of Indian Affairs and Reclamation to ensure a sufficient supply for the Pueblos’ P&P water rights. Under the Agreement, a calculated quantity of P&P water is stored in El Vado beginning as early as January each year. However, with El Vado effectively out of commission, this storage needs to occur in another reservoir and there is capacity in Abiquiu Reservoir.

However, on October 7, 2021, during the Coalition's monthly meeting, representatives from the Corps' Albuquerque District informed the Coalition that it would not consider our request to temporarily store water sufficient to ensure that our P&P water needs are met. The Corps cited to Public Law 86-645 (1960), which it maintains requires the "advice and consent of the Rio Grande Compact Commission" for any deviations from normal operations. But Article XVI of the Rio Grande Compact explicitly provides that "Nothing in this Compact shall be construed as affecting the obligation of the United States of America..., or to the Indian Tribes, or as impairing the rights of the Indian Tribes." Moreover, in its March 26, 2021, letter to the Compact Commissioners, Reclamation affirmatively stated that the storage of native Rio Grande water in Abiquiu Reservoir "will comply with all Compact provisions." Additionally, Public Law 86-645 provides that the Corps may deviate from normal operations when "an emergency exists affecting the safety of major structures." An April 2020 El Vado Final Environmental Assessment report states that El Vado is "no longer safe to operate" and the issues associated with El Vado "have been estimated to pose risks above Reclamation's public protection guidelines." Thus, we submit that this is an emergency giving the Corps the justification and authority to deviate from normal operations.

Compounding our frustrations with the Corps, we recently learned that on December 1, 2021, the Corps' Albuquerque District hosted a meeting with Reclamation, the State of New Mexico, the Middle Rio Grande Conservancy District, and the Albuquerque-Bernalillo County Water Utility Authority to discuss storage of native water in Abiquiu Reservoir, but it chose not to invite any representative from the Coalition Pueblos or from the Bureau of Indian Affairs. We were frankly dismayed by the Corps' decision to exclude the Pueblos from these discussions.

We are facing another warm and dry winter and the very real likelihood of a significant surface water shortage this coming summer. It is therefore imperative that the United States take the necessary actions to ensure the storage of water sufficient to meet the Coalition Pueblos' P&P needs. We respectfully request your leadership on this and for the opportunity to meet with you, in person or virtually, in the coming weeks to discuss this issue. Additionally, we request that you direct the Albuquerque District to include the Coalition Pueblos in all future stakeholder meetings and future discussions concerning native water storage in Abiquiu Reservoir, and in water planning discussions generally for the Middle Rio Grande.

Thank you in advance for your consideration of our requests and if you have any questions or would like to discuss it further, please contact me at govspaisano@sandiapueblo.nsn.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stuart Paisano", written over a horizontal line.

Stuart Paisano, Chairman

Coalition of Six Middle Rio Grande Basin Pueblos

LETTERS RECEIVED IN RESPONSE TO THE SCOPING LETTER
FOR A DEVIATION AT ABIQUIU RESERVOIR

USACE received letters from the following agencies responding to the scoping letter that was emailed on February 8, 2022:

El Paso County Water Improvement District No. 1 dated February 17, 2022, signed by Jesus Reyes, General Manager.

El Paso County Water Improvement District No. 1, enclosure dated May 7, 2021, signed by Jesus Reyes, General Manager.

Coalition of Six Middle Rio Grande Basin Pueblos dated February 18, 2022, signed by Stuart Paisano, Chairman.

Albuquerque Bernalillo County Water Utility Authority dated February 18, 2022, signed by Elizabeth Anderson, Chief Planning Officer.

Rio Grande Compact Commission, dated February 21, 2022, signed by Robert S. Skov, Texas Rio Grande Compact Commissioner.

New Mexico Interstate Stream Commission dated February 21, 2022, signed by Page Pegram, Rio Grande Basin Manager.

Colorado Division of Water Resources date March 1, 2022, signed by Kevin G. Rein, Colorado Rio Grande Compact Commissioner.



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

February 07, 2022

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

Mr. Mark Sanchez
New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102

Dear Mr. Mark Sanchez,

The U.S. Army Corps of Engineers (USACE), Albuquerque District, is seeking comments on a request from the New Mexico Interstate Stream Commission (NMISC) to deviate from the current water control plan (WCP) at the Abiquiu Dam and Reservoir to retain and release native Rio Grande water that would normally be retained at El Vado Reservoir. The Bureau of Reclamation (Reclamation) is also asking to retain prior and paramount (P&P) water in Abiquiu. The request is for three (3) years until the completion of the El Vado Dam repairs, which are expected to start by the end of May 2022 and continue until December 2024. The water will be used to meet middle Rio Grande water users' demand.

Background

El Vado Dam is located on the Rio Chama and is managed by Reclamation to retain Rio Grande water for the Middle Rio Grande Conservancy District (MRGCD) and the six middle Rio Grande Pueblos for prior and paramount use. Reclamation will be conducting repairs and construction on El Vado Dam for up to three years. During the repairs and construction, El Vado will not be able to retain the amount of water that it normally would.

What is Being Proposed?

USACE is evaluating the pending deviation request from the Abiquiu WCP that may include one (1) or both of the following two (2) proposed actions.

The first proposed action is to retain native Rio Grande water in Abiquiu Reservoir up to 45,000 acre-feet per year and release it later in the season to meet middle Rio Grande irrigation demand. The water will be stored in the San Juan-Chama conservation pool below elevation 6,220 ft NGVD. The total amount that will be retained during the deviation period is 90,000 acre-feet,

with a maximum annual amount of 45,000 acre-feet. Unused stored water will be carried over to the following year.

The second proposed action is to retain native Rio Grande water in Abiquiu Reservoir up to 20,000 acre-feet/year to meet the six middle Rio Grande Pueblos' demand. The water will be retained in the San Juan-Chama conservation pool below elevation 6,220 ft NGVD. Unused water will be released between 01 November and 15 December of each year.

Why Have I Received this Letter?

The purpose of this scoping letter is to inform you about the pending deviation request, and provide the opportunity to communicate any issues, concerns, problems, and suggestions. We request any information you may have that may overlap with the pending deviation request, such as existing conditions, studies, Environmental Assessments, and Environmental Impact Statements. This information will assist USACE with determining the scope of issues to be discussed in the Environmental Assessment (EA) for the pending deviation request. Comments received, including contact information, such as names and addresses, will be part of the public record and available for public inspection.

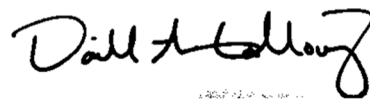
Comment Submittal

Please send written comments and questions to Dr. Michael Porter, U.S. Army Corps of Engineers.

Dr. Michael Porter
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109
abiquiu.deviation.2022@usace.army.mil

Please include "Abiquiu Pending Deviation Request" in the subject line of the email or letter. Indicate whether or not you would like to receive further correspondence from USACE electronically. Please provide initial comments for the pending deviation request by February 21, 2022.

Sincerely,



Danielle Galloway, Acting Chief
Environmental Resources Section



EL PASO COUNTY WATER IMPROVEMENT DISTRICT No. 1

P.O. Box 749 | 13247 Alameda Ave. Clint, Texas 79836-0749
(915) 872-4000 | Fax (915) 851-0091 | www.epcwid1.org

February 17, 2022

Dr. Michael Porter
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109

Via: abiquiu.deviation.2022@usace.army.mil

Re: Abiquiu Pending Deviation Request

Dear Dr. Porter:

I submit this letter on behalf of the El Paso County Water Improvement District No. 1 (District) in response to the February 7, 2022, request for comments concerning two requests for deviation from the current water control plan (WCP) for Abiquiu Dam and Reservoir, both occasioned by upcoming repairs to El Vado Dam. The New Mexico Interstate Stream Commission (NMISC) has requested that the Abiquiu WCP be altered to allow retention and release of native Rio Grande Water at Abiquiu Reservoir. The Bureau of Reclamation's request concerns retention of prior and paramount water in Abiquiu. The District directs its comments and concerns only to the NMISC request.

If the Corps of Engineers allows the WCP deviation that the NMISC requests, up to 45,000 acre-feet a year of native Rio Grande water, but no more than 90,000 acre-feet in all, would be retained in Abiquiu Reservoir over a three-year period. The purpose of the storage would be to hold the native water for release to meet Middle Rio Grande irrigation demand. Both El Vado and Abiquiu are upstream of Elephant Butte Reservoir.

The District has significant problems with the proposed NMISC WCP deviation. As presented, the proposal disregards the relationship between the proposed action on the one hand and the Rio Grande Compact (a federal law) and the Rio Grande Project (a federal reclamation project) on the other. As you are aware, the District, a Texas political subdivision, is one of two districts—the other being the Elephant Butte Irrigation District in southern New Mexico—forming the Rio Grande Project. Relatedly, the Rio Grande Compact includes provisions in Articles VI, VI, and VIII that specifically tie upstream storage and releases to Project storage in Elephant Butte.

As long as the present situation persists—in which New Mexico has an accrued debit to Texas—Texas (and with it, the Rio Grande Project) may claim the water New Mexico owes, plus the water New Mexico currently is obligated to deliver to it, before New Mexico users upstream of the San Marcial gauge are allowed access to Rio Grande water. The Compact, in the fourth paragraph of Article VI, allows for some flexibility in management of upstream storage issues by permitting a unanimous vote of the three-member Rio Grande Compact Commission to “authorize the release from” upstream storage of New Mexico Compact-debit water, as long as it is promptly replaced.

As summarized in your February 7th request, the NMISC request fails to take these legal requirements into account. Nothing is mentioned about conditioning the proposed WCP deviation on approval by the Rio Grande Compact Commissioners despite the fact that, absent such approval, NMISC's proposal would clash with Compact requirements.

In a previous letter to the Corps, the District provided a detailed analysis of the legal interaction of Section 337 of the Water Resources Development Act of 2020 (WRDA) with the Compact and preexisting statutory provisions concerning Abiquiu. See Comments by El Paso County Water Improvement District No. 1 on Water Resources Development Act of 2020 (May 7, 2021). A copy of that letter is attached, and I refer you to it for more detailed legal analysis, which I will just summarize here.

An unbroken line of congressional instructions to the Corps, starting with the 1948 authorization for Abiquiu and running through the 2020 WRDA's passage, requires that the Corps' operation of Abiquiu is subject to the Compact and the Rio Grande Compact Commission insofar as they interact or overlap. Under subsection (f)(1) of Section 337 of the WRDA, storage of Rio Grande system water in Abiquiu "shall be subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission." (emphasis added).

As a result of these congressional directives, as long as New Mexico is in debit to Texas under the Compact, the proposed WCP deviation for Abiquiu is not allowed unless unanimously approved beforehand by the Rio Grande Compact Commission. This means that, at least as characterized so far, the Corps cannot approve NMISC's deviation request in the absence of the Rio Grande Compact Commission's unanimous adoption of a resolution approving it.

Summing up, the Corps must make clear that any approval by it of NMISC's proposed WCP deviation for Abiquiu is conditioned on, and ineffective until, the Compact Commission's unanimous adoption of a resolution approving the deviation.

Sincerely,

 Jesus Reyes by 

Jesus Reyes, General Manager

Enclosed: May 7, 2021 Letter from Jesus Reyes to Corps Regarding WRDA Act of 1920

Cc: Texas Rio Grande Compact Commissioner for Texas, Bobby Skov
District Board of Directors
District Engineer, Dr. A.W. Blair
Attorneys for the District, Renea Hicks and Maria O'Brien



EL PASO COUNTY WATER IMPROVEMENT DISTRICT No. 1

P.O. Box 749 | 13247 Alameda Ave. Clint, Texas 79836-0749

(915) 872-4000 | Fax (915) 851-0091 | www.epcwid1.org

TAX OFFICE (915) 872-4009 | DISPATCHER (915) 872-4029

COMMENTS BY EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ON WATER RESOURCES DEVELOPMENT ACT OF 2020

The El Paso County Water Improvement District No. 1 ("District") submits these comments in response to the request for comments issued by the United States Department of the Army's Corps of Engineers ("COE"). 86 Fed. Reg. 13346 (March 8, 2021). The COE asked stakeholders and other interested parties to provide "input and recommendations" on provisions of the Water Resources Development Act of 2020 ("WRDA"), which the COE will consider in developing "implementation guidance" for the WRDA. The WRDA is Division AA of Pub. L. No. 116-260 (Dec. 27, 2020), an omnibus appropriations act.

Comment Focus is Section 3337 of WRDA

These comments are directed at Section 337 of WRDA and its interaction with preexisting statutory provisions concerning Abiquiu Reservoir in New Mexico. Guidance issued by COE in response to Section 337's enactment must take into account the totality of these provisions, including the Rio Grande Compact of 1938, Pub. L. No. 76-96 (May 31, 1939) ("Compact"), which equitably apportions the waters of the Rio Grande among New Mexico, Texas, and Colorado.

Special Interest of District

The District is a Texas political subdivision situated in El Paso County. Along with the Elephant Butte Irrigation District in New Mexico, it is one of the two districts that form the federal reclamation project known as the Rio Grande Project.

History of Restrictions on Abiquiu Operation and Storage

The Abiquiu Dam and Reservoir were first authorized in Section 203 of the Flood Control Act of 1948, Pub. L. No. 81-828, as part of the Middle Rio Grande project. (*The dam was not completed until 1963.*) The 1948 Act was specially crafted to "supplement . . . Federal reclamation laws," not to supplant them. Even more significantly, Congress directed the COE that "all project works shall be operated in conformity with" the Compact as "administered by the Rio Grande Compact Commission." Flood Control Act of 1948, § 203(d).

This Congressional restriction has remained operative ever since. Section 203 of the Flood Control Act of 1960, Pub. L. No. 86-645 (July 14, 1960), provided that Abiquiu Reservoir (along with other Middle Rio Grande project) is to be operated "solely for flood control and sediment control." Then, in subsection (d), the 1960 Act continues with the original instruction to COE that the operations of Abiquiu Reservoir are subject to the Compact and the Rio Grande Compact Commission, by providing that Abiquiu is to be operated "at all times in conformity" with the Compact and further that:

no departure . . . will be made except with the advice and consent of the Rio Grande compact, and no departure . . . will be made *except with the advice and consent of the Rio Grande Compact Commission*[.]

(emphasis added).

In 1988, Congress enacted Pub. L. No. 100-522 (Oct. 24, 1988), which in Section 1 contained the first authorization for the COE to store “Rio Grande system water” in Abiquiu Reservoir. But this authorization was strictly limited in Section 2 of the 1988 Act. The latter provision provided that the Section 1 storage authorization is “subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission.”

This unbroken line of congressional instructions to COE that its operation of Abiquiu reservoir is subject to the Rio Grande Compact and the Rio Grande Compact Commission continues with WRDA’s enactment. Even as subsection (b) of Section 337 modifies somewhat earlier statutory provisions for Abiquiu storage, the earlier limitations are kept in place. Specifically, subsection (f)(1) provides that storage of native Rio Grande system water in Abiquiu “shall be subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission.”

Abiquiu Storage and Operation of Rio Grande Water is Subject to the Rio Grande Compact and the Rio Grande Compact Commission

The necessary conclusion to be drawn from this history about congressional restrictions on COE operation of Abiquiu, including the congressional direction in December 2020, is that such operation must not only be consistent with the Compact, but also may only be made in conjunction with resolutions adopted by the Compact Commission.

COE operation of Abiquiu Reservoir remains subject to approval by the Rio Grande Compact Commission. Section 337(f)(1) of WRDA expressly continues the congressional direction that Abiquiu storage and operations are “subject to . . . the resolutions of the Rio Grande Compact Commission.” (*The phrase “subject to” means “subordinate” to and “governed or affected by.” Black’s Law Dictionary (6th ed.)*) This means that any change in Abiquiu storage or operation with respect to native Rio Grande system water requires advance approval by adoption of a resolution by the Rio Grande Compact Commission acting pursuant to Article XII of the Compact.

The history of the relation of the Compact Commission to Abiquiu operations bears out this point. In April 2001, the Compact Commission acted through a formal resolution to “favorably advise [] and consent [] to the departure from normal operations” of COE operation of Middle Rio Grande project reservoirs in order to authorize operation of the Middle Rio Grande Endangered Species Act Conservation Pool. This is just a concrete demonstration of the fact that the foregoing discussion of congressional restrictions on Abiquiu operations matches historical practice and procedure, as well as relations between the COE and the Compact Commission.

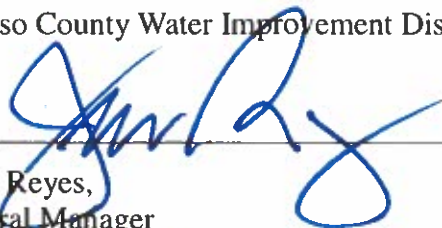
Under current circumstances, New Mexico is in debit on its Compact obligations, with accrued debits approaching 100,000 acre-feet. The usable water stored in Elephant Butte Reservoir is well below 400,000 acre-feet. As a result, storage in Abiquiu (a post-1929 reservoir) cannot be increased at this point because doing so would violate Article VII of the Compact. This provision prohibits increasing storage in Abiquiu “whenever there is less than 400,000-acre feet of usable water” in Project storage. As the last sentence of Article VII makes clear, it would take a unanimous vote of the Compact Commission to lift or modify this Compact restriction on Abiquiu operations.

Conclusion

Any guidance that the COE provides for Abiquiu operations and storage in light of WRDA's enactment should include the following:

No changes in storage and operation of native Rio Grande water in the Abiquiu Dam and Reservoir shall be made without the passage of a unanimous resolution of the Rio Grande Compact Commission.

El Paso County Water Improvement District No. 1



_____ May 7, 2021

Jesus Reyes,
General Manager
jreyes@epcwidl.org

P.O. Box 749
Clint, Texas 79836

Coalition of Six Middle Rio Grande Basin Pueblos
c/o Stuart Paisano, Chairman
Pueblo of Sandia, 481 Sandia Loop, Bernalillo, New Mexico 87004
(505) 867-3317, Fax (505) 867-9235

Via First-Class Mail and E-Mail

February 18, 2022

Michael Porter, Ph.D.
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, New Mexico 97109

Re: Abiquiu Reservoir Deviation Request

Dear Dr. Porter:

On behalf of the Governors of the Coalition of the Six Middle Rio Grande Basin Pueblos (Isleta, Sandia, Santa Ana, San Felipe, Santo Domingo and Cochiti — collectively the “Coalition Pueblos”), I write in response to the “scoping letter” letter from Danielle Galloway, Acting Chief, Environmental Resources Section, U.S. Army Corps of Engineers, Albuquerque District (USACE), dated February 7, 2022 (Letter). The Letter seeks our comments and questions on the requests from the New Mexico Interstate Stream Commission and the Bureau of Reclamation to deviate from the Abiquiu water control plan to store native Rio Grande water in Abiquiu Dam. As you know, water storage in Abiquiu Dam is necessary because of critically needed repairs to El Vado Dam — repairs that will preclude storage in El Vado Reservoir for upwards of 3 years.

We are pleased that the Corps is moving forward to complete any necessary NEPA compliance for storage of native water in Abiquiu Reservoir, particularly storage for our Prior and Paramount (“P&P”) lands. Thus, the Coalition Pueblos fully support the proposed storage of up to 20,000 acre-feet/year to meet the Coalition Pueblos’ needs. **So long as storage of P & P water is prioritized over any other native water storage**, the Coalition is also supportive of the proposed first alternative to store up to 45,000 acre feet of native Rio Grande water in Abiquiu. However, the Coalition is concerned that it may not be possible for the USACE to complete the Environmental Assessment (EA) in time to accomplish needed storage. Can the USACE confirm that it will be able to do so? Alternatively, is it possible for the USACE to proceed with the requested deviation under a Categorical Exclusion? The Coalition does not believe that water storage in Abiquiu, rather than the usual upstream in El Vado, would “have significant effects on the quality of the human environment” under 33 C.F.R. § 230.9.

Given current severe drought conditions and the likelihood of continued unusually warm and dry weather in the coming months, it is imperative that the United States take the necessary actions to store water sufficient to meet the Coalition Pueblos’ needs. As requested in the February 10, 2022, letter to Lt. Colonel Stevens, we would appreciate a meeting, in person or virtually, concerning the status of the effort to store native water in Abiquiu Reservoir and related issues.

Thank you for the opportunity to provide the Coalition Pueblos' comments and questions and again our appreciation for the USACE's efforts to ensure storage this coming irrigation season for the 6 Pueblos.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stuart Paisano", written over a horizontal line.

Stuart Paisano, Chairman

Coalition of Six Middle Rio Grande Basin Pueblos

February 18, 2022

Chair

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Mark S. Sanchez

Website
www.abcwua.org

Dr. Michael Porter
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109
abiquiu.deviation.2022@usace.army.mil

Re: Abiquiu Pending Deviation Request

Dear Dr. Porter:

This letter is in response to your office's request for Water Authority comments on proposals by the New Mexico Interstate Stream Commission and the U.S. Bureau of Reclamation to deviate from the current Abiquiu Dam and Reservoir water control plan. Under these proposals, the U.S. Army Corps of Engineers would use Abiquiu Reservoir for retention and release of native Rio Grande water during the repair of El Vado Dam between May of 2022 and December of 2024.

Our understanding is that the proposals contemplate: (1) storage of up to 45,000 acre-feet of native Rio Grande water per year but not more than 90,000 acre-feet total over the three-year period for use by the six Middle Rio Grande Pueblos and the Middle Rio Grande Conservancy District (MRGCD); and/or (2) storage of up to 20,000 acre-feet per year of Prior & Paramount (P&P) water for the Pueblos only.

In both scenarios, the native Rio Grande water would be stored within the San Juan-Chama conservation pool below elevation 6220.00 ft. NGVD, and unused water would be released by December 15th of the calendar year,

In short, the Water Authority supports a deviation to allow for native water storage, at least during the 2022 irrigation season. We do, however, have some concerns and suggestions:

1. Amendment of the Water Authority's Storage Contract

We believe that either proposal will legally require the amendment of the Water Authority's storage contract, since the existing contract does not allow for native water storage in space allotted to the Water Authority. Such an amendment is permissible within the provisions of Public Law 116-260 (2020 WRDA), which allows for concurrent storage of native and San Juan-Chama water "up to elevation 6230.00 NGVD29." Furthermore, the Water Authority must have a temporary storage contract with the Bureau of Reclamation for storing native Rio Grande water for the six MRG Pueblos and for the MRGCD in Water Authority space. Working with the Corps and other stakeholders, we believe the appropriate contract documents can be expeditiously prepared.

2. Revision to Water Control Manual

The proposals in question are deviations from historical reservoir operations but they are consistent with the uses of Abiquiu Reservoir currently authorized by Congress. Therefore, the Water Authority supports the proposed deviation request as an interim measure to fully use the authorized storage space in Abiquiu Reservoir while the Water Control Manual is revised to conform to the expanded authority provided by Congress.

The Water Authority believes that the most efficient way to move the deviation forward is to execute the requirements of 2020 WRDA, which directs the Corps "to amend or revise any existing operations documents, including the Water Control Manual or operations plan for Abiquiu Reservoir..." to facilitate native water storage.

3. NEPA

The Water Authority suggests that the NEPA analysis be conducted to allow for the future permanent arrangement of concurrent storage (native Rio Grande water and San Juan-Chama water) up to elevation 6230.00 NGVD29. The NEPA analysis completed by the Corps for the pending deviation request need only consider storing native Rio Grande water within the allowable pool under elevation 6220.00 ft. NGVD, but should be completed in a way that allows the NEPA process to address the expansion of the pool once the deviation is complete.

The Water Authority offers these suggestions in an effort to secure both the short-term and long-term benefits of concurrent storage up to elevation 6230.00 NGVD29 in accordance the 2020 WRDA.

I am interested in receiving further correspondence on this topic in electronic format at eanderson@abcwua.org and would be glad to meet with you to discuss the Water Authority's concerns and suggestions. As always, you can contact me at (505) 289-3004.

Sincerely,



Elizabeth Anderson, P.E.
Chief Planning Officer

cc: Jennifer Faler, Area Manager, Bureau of Reclamation
Mike Hamman, P.E., New Mexico State Engineer
Rolf Schmidt-Peterson, Director, Interstate Stream Commission



RIO GRANDE COMPACT COMMISSION

ROBERT S. SKOV
TEXAS COMMISSIONER

4695 NORTH MESA STREET
EL PASO, TEXAS 79912
TELEPHONE: (915) 764-0014
FAX: (915) 526-2869

February 21, 2022

By email: abiquiu.deviation.2022@usace.army.mil

Dr. Michael Porter
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109

Re: Abiquiu Pending Deviation Request

Dear Dr. Porter:

This letter is in response to your letter of February 7, 2022, seeking comments on the requests to the U.S. Army Corps of Engineers (Corps) from the New Mexico Interstate Stream Commission (NMISC) and the U.S. Bureau of Reclamation (Reclamation) to deviate from the current water control plan (WCP) for Abiquiu Dam and Reservoir to retain and release native Rio Grande water that would normally be retained in El Vado Reservoir. Your letter provided information about the pending deviation requests and an opportunity to communicate any issues, concerns, problems, and suggestions regarding the proposed actions.

Addressing the second proposal and request by Reclamation for Abiquiu Reservoir storage to meet the Prior and Paramount (P&P) demands of the six Middle Rio Grande (MRG) Pueblos, based on the requirements of Article XVI of the Rio Grande Compact of 1938 (Compact), Texas has no objections. We have coordinated with Reclamation to ensure that this action is in accordance with the Compact and will be limited to 20,000 acre-feet per year. Any

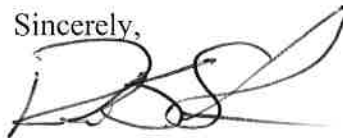
unused water will be released after irrigation season so it can be delivered to Elephant Butte Reservoir (EBR) in November and December of each year.

Regarding the NMISC request to store water in Abiquiu Reservoir for release to MRG water users during the El Vado Dam repairs, the Rio Grande Compact Commission of Texas (RGCC-Texas) opposes this action. Currently, the State of New Mexico has accrued a large Compact debit to Texas and has been unable to provide the water owed, as required by the provisions of Article VI and Article VIII of the Compact. Compounding this problem, at New Mexico's request, Texas approved the release of a portion of their stored debit water for MRG irrigation use in 2020, and New Mexico has not replaced this water as required by Article VI of the Compact. In January, the RGCC-Texas, pursuant to Article VIII of the Compact, formally demanded release of debit water retained in storage as was required under Articles VI and VIII of the Compact. New Mexico has been and is unable to satisfy this demand. Simply stated, storing native Rio Grande water for use in New Mexico for non-P&P water uses before the debit water owed to Texas is replaced violates the 1938 Rio Grande Compact. The Rio Grande Compact is federal law which binds absolutely the actions of the Corps of Engineers.

In any event, it is my understanding that, pursuant to the Water Resources Development Act of 2020, the Corps is required to obtain formal approval from the Rio Grande Compact Commission in order to undertake the proposed actions. Formal action by the Rio Grande Commission requires unanimous consent from the Rio Grande Compact Commission. As long as New Mexico is in an accrued debit condition, Texas will not approve the proposed deviation for Abiquiu Reservoir for storage and release to non-P&P MRG water users.

If you have questions or would like to discuss these issues, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSK', with a large, sweeping flourish extending to the right.

Robert S. Skov
Texas Rio Grande Compact Commissioner

cc: LTC Patrick Stevens V, U.S. Army Corps of Engineers
Jennifer Faler, U.S. Bureau of Reclamation
Mike Hamman, New Mexico Commissioner
Kevin Rein, Colorado Commissioner
Rolf Schmidt-Peterson, New Mexico Interstate Stream Commission
Suzy Valentine, Rio Grande Compact Commission
Priscilla Hubenak, Office of the Attorney General for Texas

Jesus Reyes, El Paso County Water Improvement District No. 1
Gary Esslinger, Elephant Butte Irrigation District
Craig Cotton, Colorado Department of Water Resources
Chad Wallace, Colorado Office of the Attorney General
Page Pegram, New Mexico Interstate Stream Commission
Chris Shaw, New Mexico Interstate Stream Commission

NEW MEXICO INTERSTATE STREAM COMMISSION

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FAX: (505) 827-6188

February 21, 2022

Submitted Electronically to: abiquiu.deviation.2022@usace.army.mil

Dr. Michael Porter
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109

Re: New Mexico Interstate Stream Commission Comment on Scoping for the Pending Abiquiu Deviation Request

The New Mexico Interstate Stream Commission (NMISC) hereby submit comments (Comments) pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h (NEPA). These Comments address the scoping request by the U.S. Army Corps of Engineers (USACE) for comments on a pending deviation from the current water control plan (WCP) at the Abiquiu Dam and Reservoir to store and release native Rio Grande water that would normally be stored at El Vado Reservoir (Temporary Deviation). The NMISC requested in a letter dated December 15, 2021, that the USACE begin the process for obtaining the Temporary Deviation. The NMISC supports the Temporary Deviation and believes the ability to replace the native storage operation that would have occurred at El Vado Reservoir during this repair period is urgent.

The NMISC is charged with administration of all interstate water compacts for New Mexico, as well as protecting, conserving, and developing the waters and stream systems of the State. NMSA 1978, § 72-14-3 (1943). In the Rio Grande basin, the NMISC performs numerous activities which may be affected by a Temporary Deviation, including monitoring water operations of the U.S. Bureau of Reclamation (Reclamation) and the USACE, conducting annual accounting of native Rio Grande and San Juan Chama Project water (SJCP), and assessing and determining Rio Grande Compact (Compact) compliance.

It is our hope that these comments will assist USACE in evaluating the effects of a Temporary Deviation of the WCP for Abiquiu Reservoir.

The following are the main Temporary Deviation issues that the NMISC would like the USACE to address: (1) the potential for the storage of native water in Abiquiu to impact Compact administration, accounting, and deliveries; (2) the potential for the storage of native water in

Abiquiu to impact administration of State water law; and (3) the potential for the storage of native water in Abiquiu to cumulatively impact water management on the Rio Chama and Rio Grande systems. The NMISC also offers additional information from the 2007 Upper Rio Grande Water Operation Review.

Potential Impact to Rio Grande Compact Administration

First and foremost, the USACE must address any impacts to the administration of the Rio Grande Compact (Compact). See Act of May 31, 1939, ch. 155, 53 Stat. 785 (the full text of the Compact). As outlined herein, the NMISC request the USACE address the effects a Temporary Deviation may have on Compact administration. Pursuant to the Compact, the storage of native water in Abiquiu Reservoir must not negatively affect the timing of Art. VII, and any additional depletions resulting from the storage of native water in Abiquiu should be offset. The NMISC request the USACE consider these Compact administration effects and coordinate with NMISC staff to address them.

The NMISC requests the USACE consider whether the Temporary Deviation will require USACE to determine the maximum space available for native water in combination with SJCP water. The Upper Rio Grande Water Operations Model (URGWOM) should be used to account for native and SJCP water separately and to quantify evaporation of native water separately from evaporation of SJCP water. The USACE should consider how native water is treated in the reservoir during flood control operations. The USACE should collaborate with both NMISC and Reclamation to ensure accurate accounting and administration of the Rio Grande Compact during the proposed deviation.

The NMISC requests that the USACE report the details of the temporary storage of native water in Abiquiu Reservoir operation to the Engineer Advisers and the Rio Grande Compact Commission at the annual Compact Commission meeting.

Potential Impact to State Water Law Administration

The NMISC request that the USACE coordinate with NM Office of the State Engineer (NMOSE) staff to ensure that the Temporary Deviation to store native water in Abiquiu Reservoir while El Vado is under repair does not impair State water rights administration, the direct flow needs of State water users, the efficient release of native water stored in Abiquiu Reservoir, that reservoir operations be conducted to minimize depletions in the Middle Rio Grande and that water is conserved to the greatest extent practicable.

Please note, that storage of native water in Abiquiu is subject to the State of New Mexico's administration of senior native surface water rights on the Rio Chama below Abiquiu Reservoir. Due to the complexity of the administration process the NMISC requests that the USACE coordinate with NMOSE staff. Also note that an NMOSE storage permit is required to store native water in Abiquiu, and that the Middle Rio Grande Conservancy District has submitted an application for such a permit.

Potential Impact to Overall Water Management

The NMISC notes that a Temporary Deviation might affect water management activities undertaken by the NMOSE. Therefore, the NMISC request that the USACE coordinate native water storage and release operations with NMOSE staff, including the Lower Chama River master. In addition to coordination, the NMISC request that the USACE continue to adhere to all current reservoir operation requirements for maintaining minimum bypass flows and flow target triggers for protection of irrigation rights and other acequia infrastructure downstream of Abiquiu.

The NMISC requests that any modification of the WCP and the storage and release of native water not impair Endangered Species Act (ESA) critical habitat needs for listed species, including for the Rio Grande silvery minnow.

Upper Rio Grande Water Operation Environmental Impact Statement

The NMISC suggests that the 2007 Environmental Impact Statement (EIS) and Record of Decision (ROD) for the Upper Rio Grande Water Operation Review has information relevant to the pending deviation request and should be used to analyze the issues considered in the planned Environmental Assessment. As a reminder, the NMISC repeats relevant information and conclusions from that EIS here.

The focus of the EIS was to evaluate then current water operations of the Upper Rio Grande basin, identifying operational flexibilities and developing an integrated operational plan. The EIS analyzed a range of native Rio Grande basin storage volumes in Abiquiu Reservoir to evaluate the reservoir's capability. The EIS served the purpose of allowing tiering for any subsequent required NEPA compliance related to implementing specific actions stemming from the actions and alternatives analyzed in the EIS.

Based on the evaluation, the USACE determined that the programmatic-level analysis was not sufficient to implement native storage. In the future the USACE agreed that it would evaluate the specific proposals for such storage. Any decision to implement native storage will be based, in part, on the following: determination of available space in lieu of San Juan-Chama contractors' needs; storage permit from the New Mexico State Engineer; coordination and negotiation regarding storage easements with the Albuquerque Bernalillo County Water Utility Authority; proposal-specific impact analysis; re-allocation of storage space and revision of the Abiquiu Dam and Reservoir water control plan; and specific compliance with environmental laws and regulations. Each joint agency issued its own record of Decision regarding its actions.

The NMISC supported implementation of preferred alternative E-3. Preferred Alternative E-3 included among other actions, that the NMISC would work with the USACE, Reclamation and other agencies or entities to implement native water storage in Abiquiu for Rio Grande Compact management purposes and environmental and other benefits in the middle valley (see NMISC Record of Decision, July 2007 Estevan Lopez, Director)

The Reclamation decision was to implement the elements of Preferred Alternative E-3 associated with extending the waiver date of San Juan-Chama project water at Heron Reservoir and to continue operating the Low Flow Conveyance Channel (LFCC) without diversions from the Rio Grande. Reclamation agreed to also refine and implement improved communication and coordination of water operations at other federal facilities. (See Reclamation Record of Decision, 2007)

The USACE decision was to not change current operations at facilities under its jurisdiction. However, the USACE would support future operational changes, contingent on the results of additional NEPA analysis and documentation. The safe channel capacities downstream from Abiquiu and Cochiti Dams would remain at 1,800 cfs and 7,000 cfs, respectively. Storage of native flows in Abiquiu would not be implemented until additional analyses are completed and NEPA documentation conducted tiered from the Final EIS in accordance with NEPA and Council on Environmental Quality regulations. (See June 29, 2007 Record of Decision, Lieutenant Colonel B.A. Estok)

Conclusion

We thank you for this opportunity to provide scoping comments for the EA on the pending deviation request. The NMISC looks forward to working with the USACE to ensure the deviation complies with the Rio Grande Compact and State water law rules and regulations. I am also interested in receiving further correspondence on this topic in electronic format at page.pegram@state.nm.us. If you have any further questions regarding this matter, please do not hesitate to contact me by email or at 505-695-5622.

Sincerely,



Page Pegram, Rio Grande Basin Manager
New Mexico Rio Grande Compact Engineer Adviser

cc: Mike A. Hamman, P.E., N.M. State Engineer, RG Compact Commissioner
Rolf Schmidt-Petersen, Director, NMISC
Ramona Martinez, NMOSE District 6 Manager
Chris Shaw, Rio Grande Basin Attorney, NMISC
Nat Chakeres, NMOSE General Counsel
NMISC files



COLORADO
Division of Water Resources
Department of Natural Resources

March 1, 2022

Dr. Michael Porter
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109
abiquiu.deviation.2022@usace.army.mil

Dear Dr. Porter,

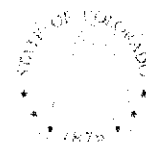
The State of Colorado has received your letter dated February 7, 2022 requesting comment regarding two proposed actions for Abiquiu Reservoir. Deviations in operations for Abiquiu Reservoir require unanimous approval from the Rio Grande Compact Commission. The two actions are summarized as follows:

The first proposed action is to retain native Rio Grande water in Abiquiu Reservoir up to 45,000 acre-feet per year and release it later in the season to meet middle Rio Grande irrigation demand. The water will be stored in the San Juan-Chama conservation pool below elevation 6,220 ft NGVD. The total amount that will be retained during the deviation period is 90,000 acre-feet, with a maximum annual amount of 45,000 acre-feet. Unused stored water will be carried over to the following year.

The second proposed action is to retain native Rio Grande water in Abiquiu Reservoir up to 20,000 acre-feet/year to meet the six middle Rio Grande Pueblos' demand. The water will be retained in the San Juan-Chama conservation pool below elevation 6,220 ft NGVD. Unused water will be released between 01 November and 15 December of each year.

Regarding the first proposed action, it is Colorado's understanding from a New Mexico Interstate Stream Commission letter of December 15, 2021, that it intends to store this water against its relinquishment credit. The Texas compact commissioner, in a letter dated February 21, 2022, denied consent for the first proposed action. Because consent by the Rio Grande Compact Commission must be unanimous for a deviation of reservoir operations by the United States Army Corps of Engineers, Texas' denial will prevent this action.

The water in the second proposed action may be stored in Abiquiu Reservoir to the extent it is consistent with New Mexico law. The Rio Grande Compact Commission has passed a resolution requesting federal agencies to comply with state water laws. Resolution of the Rio Grande Compact Commission Regarding the Need for Federal Agencies to Apply for State Permits in Compliance with State Water Law and Regulations, April 11, 2001. As this is a



matter for determination using New Mexico law, Colorado consents to the second proposed action.

In responding to this request for comment, Colorado is not waiving any rights under the Rio Grande Compact by not asserting them in this letter.



Kevin G. Rein
Director, Colorado Division of Water Resources
Colorado Rio Grande Compact Commissioner

cc: Michael Hammon, New Mexico Rio Grande Compact Commissioner
Robert Skov, Texas Rio Grande Compact Commissioner
Jennifer Faler, U.S. Bureau of Reclamation
Rolf Schmidt-Peterson, New Mexico Interstate Stream Commission
Craig Cotten, Engineer Advisor for Colorado
~~Suzy Valentine, Engineer Advisor for Texas~~
Page Pegram, Engineer Advisor for New Mexico
Priscilla Hubenak, Office of the Attorney General for Texas
Chris Shaw, New Mexico Interstate Stream Commission
Chad Wallace, Office of the Attorney General for Colorado
~~Preston Hartmann, Office of the Attorney General for Colorado~~