

SAN JUAN-CHAMA PROJECT
NEW MEXICO

SUBCONTRACT

Between the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
and the
INCORPORATED COUNTY OF LOS ALAMOS

TO LEASE THE USE OF
SAN JUAN-CHAMA PROJECT WATER

THIS SUBCONTRACT (Subcontract), made this _____ day of _____, 2018, between the UNITED STATES OF AMERICA, hereafter styled the United States, acting through the Secretary of the Interior (Secretary), Bureau of Reclamation (Reclamation), acting pursuant to the Act of June 17, 1902 (ch. 1093, 32 Stat. 388) and Acts amendatory thereof or supplementary thereto, particularly the authority granted the Secretary under Section 14 of the Reclamation Project Act of August 4, 1939 (ch. 418, 53 Stat. 1197; 43 U.S.C. § 389), and the Act of June 13, 1962 (76 Stat. 96), and the Act of December 28, 1973 (87 Stat. 884), particularly Section 1536 (a) (1) (16 U.S.C. §§ 1531-1543), more commonly known as the Endangered Species Act, and the INCORPORATED COUNTY OF LOS ALAMOS, a municipal corporation in the State of New Mexico, herein styled "County."

WITNESSETH THAT:

EXPLANATORY RECITALS

WHEREAS, the Colorado River Storage Project was authorized by the Act of April 11, 1956 (70 Stat. 105), as amended and supplemented by, among other statutes, the Act of June 13, 1962 (76 Stat. 96), which authorized the San Juan-Chama Project (SJCP) as a participating project in the Colorado River Storage Project as set out in 43 U.S.C. §615pp, and the Act of December 29, 1981 (PL. 97-140, 95 Stat. 1717); and

WHEREAS, on January 10, 1977, the Department of Energy entered into Contract No. 7-07-51-X0883 (also known as Department of Energy Contract No. EY-77-A-32-3856) with the United States Department of the Interior, as amended, for a permanent water supply from the SJCP, to be measured at the outlet of Heron Reservoir in the delivery of up to 1,200 acre-feet per year; and

WHEREAS, the Department of Energy has assigned that contract to the County and said assignment was approved by Reclamation on August 28, 1998; and

WHEREAS, the County, on September 27, 2006, entered into Repayment Contract No. 05-WC-40-560 with the United States which supersedes Contract No. 7-07-51-X0883 in its entirety; and

WHEREAS, the County has SJCP water available in Heron Reservoir in excess of its current needs which can be made available to Reclamation for beneficial use under terms and conditions further described herein, all consistent with applicable State and Federal law; and

WHEREAS, the Rio Grande silvery minnow (minnow) has the status of a federally-listed endangered species and can be found in a reach of the Rio Grande between Cochiti Dam and San Marcial, New Mexico, which is prone to critically low flows during the irrigation season lasting from March 1 through October 31 each year; and

WHEREAS, until permanent strategies for managing the existing limited water supply to meet the needs of the Middle Rio Grande water users can be effectuated, minnow recovery efforts need to be made by meeting flow targets contained in the December 2, 2016 Biological Opinion; and

WHEREAS, it is Reclamation's and the County's understanding that the Middle Rio Grande Conservancy District (District) intends to operate its irrigation and drainage system to meet required flow targets with native Rio Grande water; and

WHEREAS, the District's intended operation would likely result in a need for an additional water supply to meet the irrigation needs of its water users; and

WHEREAS, Reclamation desires to augment the District's water supply by leasing up to 1,200 acre-feet of the County's 2018 SJCP water allocation remaining in Heron Reservoir for the purpose of irrigation within the District.

NOW, THEREFORE, it is agreed as follows:

COUNTY DELIVERABLES

1. a) The County agrees to lease to Reclamation the use of up to 1,200 acre-feet of its 2018 SJCP water released from Heron Reservoir.

b) The County concurs with the terms of the Waiver described below in Article 5. c), that this water is to be used to augment the total water supply to the Middle Rio Grande Valley and is expected to be released from Heron Reservoir by September 30, 2019.

c) The County agrees that no liability shall accrue to the United States should it become necessary for Reclamation to terminate the Waiver so that Reclamation can take prudent action to ensure that the Project's ability to store water is not impacted, as provided for under the terms and conditions of the Waiver.

d) The County agrees that Reclamation will call for the release of water from Heron Reservoir as necessary, and that it will cooperate with Reclamation as may be needed to facilitate such releases. The points of measurement for deliveries to the United States pursuant to this Subcontract will be at the outlet works of Heron Reservoir. The parties agree that the water leased pursuant to this Subcontract is not subject to evaporation losses until it is released from Heron Reservoir.

e) All previous contracts between the County and the United States shall remain in full force and effect during the term of this Subcontract.

RECLAMATION DELIVERABLES

2. a) Reclamation will pay the County \$48.00 per acre-foot up to a maximum of 1,200 acre-feet of water released from Heron Reservoir pursuant to this Subcontract. Reclamation will pay the County only for water it calls for and releases for beneficial use, under terms and conditions pursuant to this Subcontract.

b) As consideration for the water provided under the terms of this Subcontract, Reclamation will pay \$5,760.00, ten percent (10%) in advance of the total payment described under Article 3. a), upon execution of this Subcontract. The advancement of funds is made in good faith to assist the County with any administrative and legal costs it may incur. Should Reclamation not call for the release of any water, under this Subcontract, advanced funds will not be recovered by Reclamation.

c) Within 30 days of the final release of water under the terms of this Subcontract, Reclamation will provide the County an accounting of the amount of leased water released under this Subcontract. Reclamation's accounting and Summary Of Release provide both parties with the total quantity used in final calculation of payment as described below in Article 3. b).

d) Reclamation will not make any further payment for any leased water spilled from Heron Reservoir, or any water that may revert to the firm yield pool, should Reclamation find it necessary to take prudent action to ensure that the Project's ability to store water does not become impacted; as such, the Waiver and this Subcontract granted to the County will be terminated. The County agrees that no liability shall accrue to the United States as a result of such termination and that every effort will be made on Reclamation's behalf to notify the County prior to any action being taken.

e) National Environmental Policy Act (NEPA) compliance for this Subcontract action is by the 2016-2021 Supplement to the Rio Grande Supplemental Water Programmatic Final Environmental Assessment and Finding of No Significant Impact.

PAYMENT

3. a) Payment under this Subcontract shall not exceed \$57,600.00 for the term of this Subcontract. If Reclamation does not call for the release of any of the 1,200 acre-feet during the term of this Subcontract, the County shall not be entitled to any further payment from Reclamation beyond the \$5,760.00 non-refundable advance payment described under Article 2. b).

b) Upon execution of the Subcontract and based upon Reclamation's accounting of all the water actually released from Heron Reservoir, Reclamation will make payment to the County via electronic funds transfer under the terms of this Subcontract at a cost of \$48.00 per acre-foot. Reclamation will not require an invoice from the County.

c) Correspondence related to this Subcontract should be submitted to Reclamation by e-mail to bmendoza@usbr.gov or delivered to:

Bureau of Reclamation
Albuquerque Area Office
Attention: ALB-623
555 Broadway NE, Suite 100
Albuquerque NM 87102

d) The County is responsible to register and maintain registration on sam.gov as required to receive electronic payments. Any correspondence from Reclamation to the County should be directed to the following address:

Incorporated County of Los Alamos
Department of Public Utilities
1000 Central Ave., Suite 130
Los Alamos NM 87544

TERM OF SUBCONTRACT

4. This Subcontract shall be effective from the date of execution and expire upon final payment by Reclamation, under terms and conditions described herein, pursuant to this Subcontract.

WAIVER OF CARRYOVER PROVISIONS

5. a) It is agreed by both parties that all water released under this Subcontract will be in accordance with all applicable State and Federal laws.

b) All provisions of Repayment Contract No. 05-WC-40-560, except as provided below, between the County and Reclamation, dated September 27, 2006, shall remain in full force and effect, and the agreements entered herein shall not be interpreted in any manner to amend, modify, or affect that contract, or relieve either the County or Reclamation from any obligations or requirements agreed to therein.

c) Reclamation has determined it would benefit the minnow to waive subarticle 6(c), entitled “Annual Water Carryover Prohibited,” of the Repayment Contract No. 05-WC-40-560 (the “Waiver”, does not apply to “Waiver of this Subcontract” in Article 8 below). Waiver of this provision allows the County to keep any of its remaining 2018 allocation of SJCP water in Heron Reservoir until September 30, 2019, contingent upon the Project’s ability to store such water.

d) Should natural events occur that could potentially impact the Project’s ability to store spring runoff, the release of waived water from Heron Reservoir may need to occur prior to September 30, 2019, and would be released in a manner consistent with State and Federal law. As such, Reclamation will make every effort to notify the County in advance prior to the release of any waived water. The County agrees to assume all risk of any lost water under said Waiver if Reclamation is not able to make beneficial use of the leased water under the terms of the forthcoming proposed lease agreement. Any losses incurred will be charged to the County after releases are made from Heron Reservoir.

e) This extension of storage time is applicable to the 2018 water year allocation only and should not be construed in any way to affect any future allotments, nor shall it be considered to be a permanent change to the above Repayment Contract, except as specified herein.

WATER QUALITY

6. The County makes no warranty or representation regarding, and Reclamation assumes all responsibility for, the quality of water released by the County to Reclamation hereunder.

WATER RIGHTS PROTECTION

7. No party hereto shall assert that any activity under this Subcontract shall affect the validity of any existing water rights or rights to water held by any other party.

WAIVER OF THIS SUBCONTRACT

8. Waiver of any breach of this Subcontract by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Subcontract.

ASSIGNMENT LIMITED-- SUCCESSORS AND ASSIGNS OBLIGATED

9. The provisions of this Subcontract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Subcontract or any right of interest therein by either party shall be valid until approved in writing by the other party.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

10. The expenditure or advance of any money or the performance of any obligation of the United States under this Subcontract shall be contingent upon appropriation or allotment of funds. Absence of

appropriation or allotment of funds shall not relieve the County from any obligations under this Subcontract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

11. No Member or Delegate to Congress, Resident Commissioner, or Federal or State Official, shall be admitted to any share or part of this Subcontract, or to any benefit that may arise therefrom.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names, the date and year first above written.

APPROVED:

UNITED STATES OF AMERICA

Office of the Regional Solicitor

Regional Director
Upper Colorado Region
Bureau of Reclamation

ATTEST:

INCORPORATED COUNTY OF LOS ALAMOS

LOS ALAMOS COUNTY CLERK

Naomi D. Maestas

Timothy A. Glasco, P.E.
Utilities Manager

APPROVED AS TO FORM:

Office of the County Attorney
J. Alvin Leaphart IV, County Attorney