

UTE RESERVOIR WATER CONTRACT

CONTRACT BETWEEN
THE NEW MEXICO INTERSTATE STREAM COMMISSION
AND THE UTE RESERVOIR WATER COMMISSION
FOR THE OPTION TO PURCHASE AND THE PURCHASE OF WATER

The NEW MEXICO INTERSTATE STREAM COMMISSION ("ISC") and the UTE RESERVOIR WATER COMMISSION ("URWC") enter into this contract ("Contract") for the option to purchase and the purchase of water in Ute Reservoir by URWC from the ISC. The EASTERN NEW MEXICO WATER UTILITY AUTHORITY ("ENMWUA") and the CITY OF TUCUMCARI ("Tucumcari") enter this Contract solely with respect to Articles 15 and 16.

WITNESSETH:

WHEREAS, the ISC has the authority "to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of New Mexico, interstate or otherwise" pursuant to NMSA (1978)§ 72-14-3;

WHEREAS, the ISC has constructed and modified the Ute Dam and Reservoir Project, hereinafter the "Project", located in Quay, Harding, and San Miguel Counties, New Mexico; and

WHEREAS, the New Mexico Office of the State Engineer issued Surface Permit No. 2900 to the ISC to use Ute Dam and Reservoir for active and inactive storage; flood control; irrigation, municipal, recreation, fish and wildlife, and domestic uses; power generation; and sediment control; and

WHEREAS, the URWC, established by a Joint Powers Agreement, as amended, is composed of and represents 12 members (Cities of Clovis, Tucumcari, Portales; Villages of Grady, Logan, Melrose, San Jon, and Texico; Town of Elida; and Curry, Roosevelt, and Quay Counties), who are water users in eastern New Mexico and are interested in the acquisition and distribution of water; and

WHEREAS, the URWC wishes to obtain an option to purchase water and to purchase water from the Project for beneficial consumptive uses including municipal, industrial, sanitation, recreational and commercial irrigation uses; and

WHEREAS, in March 1997, the ISC entered a contract with the URWC to make water available to the URWC and where the option period in this contract was extended in 2006 and 2008; and

WHEREAS, the ENMWUA has the authority to plan, design, develop, purchase, acquire, own, operate, establish, construct and maintain the Eastern New Mexico Rural Water System Project ("ENMRWSP"), authorized under P.L. 111-11, Sect. 9103 (2009), and the URWC does not want to maintain the rights and responsibilities for ENMRWSP facilities;

WHEREAS, the City of Tucumcari, Quay County, and the URWC have entered a Memorandum of Agreement, dated February 3, 2010, whereby the URWC assigned its responsibilities under the March 1997 Contract to Tucumcari and Quay County to operate and maintain, measure and report diversions at an interim intake structure along the south side of Ute Reservoir; and

WHEREAS, the ISC enters this Contract with the URWC to make water available to the URWC under the terms and conditions described below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

(a) "City of Tucumcari" means the City of Tucumcari, a municipality incorporated in the State of New Mexico under NMSA (1978) § 3-2;

(b) "Eastern New Mexico Rural Water System Project" ("ENMRWSP") means the water delivery project, authorized under Public Law 111-11, Section 9103 (2009), designed to deliver approximately 16,500 acre-feet of water per year from Ute Reservoir to the cities of Clovis, Elida, Grady, Melrose, Portales, and Texico and other locations in Curry, Roosevelt, and Quay Counties in New Mexico;

(c) "Eastern New Mexico Water Utility Authority" ("ENMWUA") means the water utility authority, defined in NMSA (2010) § 73-27-3, and created coextensive with the boundaries of Curry and Roosevelt Counties and the territory physically occupied by the water facilities of the authority to plan, design, develop, purchase, acquire, own, operate, establish, construct and maintain the ENMRWSP pipelines and waterworks;

(d) "Facilities" means the intake structure, pumps, pipelines, and all other diversion facilities required to take, measure, and withdraw water;

(e) "initial payment price" means that amount due for the total acre-feet of water purchased for the first year the contract obligation is incurred;

(f) "Interstate Stream Commission" ("ISC") means the New Mexico Interstate Stream Commission and its members, authorized under NMSA (1978) § 72-14-3, and "ISC staff" means the Executive Director and other employees of the ISC;

- (g) "notice to purchase" means the URWC's written notice to the ISC that the URWC will exercise its option to purchase a stated quantity of water during a calendar year;
- (h) "obligation to purchase water" means the URWC's responsibility to purchase water annually from the time the URWC purchased water through the contract term;
- (i) "Office of the State Engineer" ("OSE") means the N.M. Office of the State Engineer;
- (j) "operation and maintenance fee" means the ISC's annual fee assessed to the URWC for the operation and maintenance of Ute Dam and Reservoir;
- (k) "option period" means the period of time from the effective date of this Contract through December 31, 2020;
- (l) "option price" means the annual price (\$1.50 per acre-foot for available water up to 24,000 acre-feet) the URWC pays to the ISC to maintain a right to purchase up to 24,000 acre-feet of water annually through the Contract's option period;
- (m) "option to purchase" means the URWC's right to purchase water through the Contract's option period;
- (n) "payment price" means the annual price (\$25.00 per acre-foot of available water from Ute Reservoir) the URWC would pay to the ISC for a stated quantity of water to be diverted from Ute Reservoir;
- (o) "purchase of water" means the URWC has acted on its option to purchase, demonstrated by providing the ISC with written notice of its interest in purchasing a quantity of water for the duration of the Contract term;
- (p) "termination date" means the contract term, or from the effective date of this contract to January 1, 2050, for all water purchased before the end of the option period, or December 31, 2020;

(q) "Ute Reservoir Water Commission" ("URWC") means the entity formed under the Joint Powers Administrative Act, NMSA (1978)§ 11-1-5, to perform many responsibilities related to protecting and utilizing future and existing water rights and water resources of URWC members;

(r) "URWC member entities" means the 12 members (Cities of Clovis, Tucumcari, Portales; Villages of Grady, Logan, Melrose, San Jon, and Texico; Town of Elida; and Curry, Roosevelt, and Quay Counties) of the URWC; and

(s) "water users" means members of the URWC or other entities that have contracted with the ISC to purchase water at Ute Reservoir.

2. TIME PERIOD OF CONTACT.

(a) Contract Term. This Contract shall be effective as of the date of the last signature by the parties and shall remain in effect until January 1, 2050 unless extended by the ISC or earlier terminated under Article 11.

(b) Option Period Term. Unless earlier released by URWC pursuant to Articles 2 or 11 hereof, this Contract shall terminate on December 31, 2020 as to that portion of the 24,000 acre-feet of water identified by this Contract for which the URWC has not exercised its option to purchase pursuant to the provisions of Article 3.

(c) Water purchased prior to Contract termination date.

(1) Unless earlier released by the URWC pursuant to Articles 2 or 11 hereof, this Contract shall terminate on January 1, 2050 as to that portion of the 24,000 acre-feet of water identified by this Contract for which the URWC has exercised its option to purchase, pursuant to the provisions of Article 2, and that water purchased by the URWC in January 2010.

(2) Termination as provided herein shall not relieve the URWC of its obligation to pay for water where such obligation became fixed prior to the termination date.

3. AVAILABILITY OF WATER AND EXERCISE OF OPTION.

On the terms and conditions set forth below, the ISC grants to the URWC, subject to URWC or its delegates and assignees complying with all applicable OSE requirements, the right during the term of this Contract to have water delivered annually at Ute Reservoir in the amounts specified in this Article upon URWC's purchase and payment for water as provided in Article 3.

(a) Option to Purchase Water.

(1) Subject to the payment provisions of Article 3(a), the URWC shall have the option, until December 31, 2020, to purchase up to 24,000 acre-feet of water, or such lesser amount as the ISC staff may deem available, every calendar year until January 1, 2050.

(2) The URWC shall exercise its option to purchase water by tendering written notice thereof to the ISC before December 31, 2020.

(3) The URWC agrees that the exercise of its option to purchase all or any portion of the 24,000 acre-feet described in this Contract fixes its obligation to purchase that same amount of water each and every calendar year thereafter through December 31, 2049.

(4) If the URWC exercises its option to purchase less than 24,000 acre-feet of water, the URWC agrees to continue payment of the option price set forth in Article 3(a) for the remaining acre-feet of water available up to 24,000 acre-feet until URWC makes a subsequent exercise of its option or the option period expires. Any quantity of water for

which the URWC has not exercised its option to purchase and has not been received by the ISC by December 31, 2020 shall be irrevocably released by URWC from this Contract.

(b) Third-Party, Multi-Year Purchase.

(1) If, prior to December 31, 2020, the ISC receives a firm offer or offer from a third-party or parties to purchase for periods in excess of one year all or any part of the 24,000 acre-feet of water identified by this Contract not already purchased by the URWC, and if the ISC staff determines there is no other water available for sale from Ute Reservoir, the ISC may enter a third-party contract for a term of more than one year.

(2) To enter a contract under this section, ISC staff must notify the URWC in writing of the quantity of water considered for such a third-party contract and allow the URWC to exercise its option to purchase that same quantity. The URWC shall have up to 18 months after receiving the ISC's written notice to purchase the noticed quantity of water.

(3) Any sale of water to a third-party or parties for period of one year or more under this Article shall be concluded prior to January 1, 2021 and shall not affect the right of the URWC to exercise its option or to purchase the third-party contracted water in succeeding calendar years in accordance with Article 2(a).

(4) No such sale to a third-party, however, shall affect URWC's obligation to pay the option price set forth in Article 3(a) (1).

(c) Third-Party, Less than One Year Water Purchase.

(1) Prior to December 31, 2020, the ISC has the right to sell to a third-party or parties for periods of one year or less all or any part of the 24,000 acre-feet of water described by this Contract for which the URWC retains its option but does not intend to exercise its option to purchase during the calendar year.

(2) To enter a contract under this section, ISC staff must first notify the URWC in writing of such proposed sale, and the URWC must reply in writing within 30 days upon receiving the ISC's notice stating whether the URWC will exercise its option to purchase said quantity of water.

(3) The sale of water to a third-party or parties for periods of one year or less under this Article shall not affect the right of the URWC to reserve by option or to purchase water in succeeding calendar years in accordance with Article 2(a) or (b), nor shall such sale relieve the URWC from its obligation to make annual payments under Article 4(a).

(d) The URWC's entitlement to withdraw water purchased by it in any calendar year shall expire on December 31 of that year.

(e) The URWC, on behalf of its member water users and in accordance with the Joint Powers Agreement by which it is formed, may exercise its option to purchase any portion of the water available to it under this Contract for the benefit of any or all of its member water users by diversion from Ute Reservoir at such location or locations as the ISC may approve, subject to the ISC Permit No. 2900, as amended, and subject further to Articles 6, 7, 15, and 16 of this Contract.

4. RATE AND METHOD OF PAYMENT FOR WATER.

The URWC shall pay an option price for the quantity of water reserved by option payment or a purchase price for water, whether or not the URWC diverts and uses the water purchased, at the price, time of payment, and conditions of payment set forth under this Article.

(a) Option Price.

(1) The URWC shall pay to the ISC an annual option price of \$1.50 per acre-foot, per calendar year, for all water for which it has not purchased by December 31, 2020.

(2) Option payments shall be due annually on January 10th of every succeeding calendar year through December 31, 2020.

(3) In the event that the ISC staff determines in any calendar year that less than 24,000 acre-feet of water will be available, URWC's option payment shall be adjusted proportionally.

(b) Purchase Price.

(1) The URWC shall pay to the ISC annually a purchase price of \$25.00 per acre-foot, in addition to an operation and maintenance charge, for water purchased by the URWC and made available for the URWC's diversion from Ute Reservoir.

(2) The initial purchase price payment shall be due from the URWC 30 days after ISC staff acknowledges, in writing, the URWC's notice to purchase.

(3) Subsequent purchase price payments shall be due January 10th of every succeeding calendar year thereafter during the term of this Contract.

(c) Operation and Maintenance Price.

(1) An operation and maintenance fee will be assessed to the URWC annually and shall be prorated based on the proportion which the quantity of water purchased by the URWC bears to the amount of water available per year, generally 24,000 acre-feet per year.

(2) The initial operation and maintenance payment due from the URWC shall be due within 90 days after the ISC staff acknowledges, in writing, the URWC's notice to purchase.

(3) The ISC shall thereafter annually consider the projected expenses and anticipated revenues collected by the ISC for the operation and maintenance of Ute Dam and Reservoir to determine the amount to be assessed the URWC. The ISC shall annually notify the URWC in writing of the URWC's per acre-foot, operation and maintenance fee assessment at least 180 days prior to January 10.

(4) Ute Dam and Reservoir Cost of Service Studies.

a. Initial Cost of Service Study. Within 2 years of entering this Contract, the ISC will conduct a cost of service study on the operation, maintenance, and recovery costs associated with Ute Dam and Reservoir. Upon completion of the initial study, the ISC and URWC will review the study results, and the ISC will develop a plan to implement the study findings and recommendations, which may include amending the operation and maintenance fee assessed under this section.

b. Subsequent Cost of Service Studies. Following the initial cost of service study, the ISC shall conduct, no later than every 10 years, a cost of service study on the operation, maintenance, and recovery costs associated with Ute Dam and Reservoir. The ISC and URWC shall review the study results, and the ISC will develop a plan to implement the studies' findings and recommendations, which may include amending the operation and maintenance fees assessed under this section.

5. PENALTY UPON DELINQUENCY IN PAYMENTS.

(a) If any payment due from the URWC to the ISC pursuant to this Contract remains unpaid after it shall become due and payable, the URWC agrees to pay a penalty at the rate of one percent (1%) per month on the amount of such delinquent charge from and after the date when it became due until paid.

(b) No penalty shall be charged or be paid by the URWC unless such delinquency continues for more than 30 days after the payment is due.

(c) The ISC reserves the right to withhold delivery of water at any time the URWC is delinquent in payment.

6. CONSTRUCTION AND OPERATION OF FACILITIES.

(a) The URWC shall, at its own expense, construct, install, operate, and maintain facilities at Ute Reservoir. The URWC shall retain the facilities during and after the term of this Contract.

(b) The URWC shall obtain written approval of plans and specifications from ISC staff prior to constructing, installing, operating, or maintaining any facilities on ISC fee property or where the ISC maintains a flowage easement.

(c) At the URWC's expense, the URWC shall obtain written approval from ISC staff for easements that may be required for constructing, installing, operating, or maintaining facilities.

(d) Exceptions.

(1) Under Article 15, the ENMWUA, and not the URWC, shall have the rights and responsibilities described in this Article for facilities for the ENMRWSP.

(2) Under Article 16, Tucumcari, and not the URWC, shall have the rights and responsibilities described in this Article for facilities pertaining to Ute Reservoir Water Commission's Interim Intake #1 ("Interim Intake #1).

7. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION.

(a) The URWC agrees to accept delivery of water under this Contract at Ute Reservoir. The URWC further agrees, at its own expense, to make any necessary arrangements for diversion and/or conveyance of water from that point of delivery to the place of use.

(b) Reporting at Diversions. The URWC shall measure water diverted from Ute Reservoir at the points of diversion approved by ISC staff. The URWC will supply and use a meter of a type acceptable to OSE and ISC staff and shall annually calibrate the meter. The URWC shall tender meter readings therefrom to the OSE and ISC staff at such regular intervals as the ISC staff may prescribe for a particular point of diversion.

(c) Limited License to Access ISC Property. To the extent reasonably required to use purchased water, the URWC shall be entitled to enter upon the ISC's property as necessary for the diversion and conveyance of water from Ute Reservoir by the URWC if the ISC has approved facilities and uses described in Article 5.

(d) Exceptions.

(1) Under Article 15, the ENMWUA, and not the URWC, shall have the rights and responsibilities described in this Article for facilities for the ENMRWSP.

(2) Under Article 16, Tucumcari, and not the URWC, shall have the rights and responsibilities described in this Article for facilities for the Interim Intake #1.

8. REPRESENTATIONS AND WARRANTIES BY THE ISC.

(a) ISC NOT RESPONSIBLE FOR QUALITY OF WATER.

This Contract is for untreated water from Ute Reservoir and the ISC assumes no responsibility or liability to the URWC or any user of said water with respect to the quality of said water and disclaims all warranties, express or implied, including without limitation, warranties of merchantability and fitness for a particular purpose, in connection with the sale of water under this Contract.

(b) ISC NOT LIABLE FOR WATER SHORTAGES.

(1) The URWC acknowledges and agrees that the annual amount of 24,000 acre-feet of water from Ute Reservoir described by this Contract exceeds the estimated annual firm yield of Ute Reservoir. There may, for whatever reason, occur a shortage in any calendar year in the total annual quantity of water available to the URWC pursuant to this Contract.

(2) Unavailability of water may be due to circumstances beyond the control of the ISC, including, but not limited to, drought, evaporation, loss of reservoir capacity, or releases deemed necessary by the State Engineer.

(3) The URWC agrees that the ISC, its officers, agents, and employees shall not be liable for any damages which may result directly or indirectly to the URWC or others from the unavailability of water under this Contract; provided, however, that in the event water is not available in the amount reserved or purchased under this Contract, payment will be required only for the amount available for delivery.

(4) A determination that water is not available under this Contract rests exclusively with the ISC staff and shall be final.

(5) Water delivery when ISC has determined purchased water is not available.

a. In any year prior to January 1, 2021, the supply available, or anticipated to be available, will be allocated first to the URWC as to all amounts for which URWC has exercised its option to purchase, and then to short term third-party purchasers.

b. In the event of a shortage of water, or prospective shortage of water, for whatever cause, in any year after January 1, 2021, the supply available, or anticipated to be available, will be allocated first to the URWC, on a first-in-time, first-in-right priority basis determined by the date of URWC's exercise of option to purchase and all other purchasers' dates of purchase.

c. Sections a. and b. of this subsection apply to this Contract unless and until the ISC and URWC approve a drought management plan or other agreement that addresses water delivery in the event of a shortage of water and agree to amend this subsection accordingly.

(c) FLUCTUATION OF WATER LEVEL.

It is agreed by and between the parties that the ISC shall not be responsible for any injury, damages, or inconvenience to the URWC that may result from fluctuations in water level of Ute Reservoir.

(d) ISC NOT LIABLE, GENERAL PROVISIONS.

(1) The URWC agrees that the ISC shall not be responsible for any injury or damages resulting from or arising out of any defect in design, construction, or operation of the Facilities which may be constructed, operated, or maintained in connection with this Contract, and the URWC agrees that it shall defend, hold harmless and indemnify, to the maximum extent provided by law, the ISC, its officers, agents, and employees

from any claim or liability resulting from, or arising out of the design, construction, operation, or maintenance of the Facilities or the ISC's approval of any design or plan for the construction, operation, or maintenance of the Facilities which may be submitted by the URWC to the ISC for its approval pursuant to this Contract.

(2) The ISC shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water taken by the URWC hereunder and the URWC shall defend, hold harmless and indemnify, to the maximum extent provided by law, the ISC and its officers, agents, and employees for any damages or claims of damages of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the diversion, control, carriage, handling, use, disposal, or distribution of such water by the URWC.

(3) After exercise of its option to purchase, but prior to any commencement of any construction and prior to any planning or investigatory activities which require access to ISC lands or easements, URWC shall secure and maintain at all times thereafter during the term of this contract, comprehensive liability insurance, in such amounts and in such form as the parties shall agree, to meet URWC's defense and indemnity obligations set forth in this Article.

(4) The URWC shall secure and maintain comprehensive liability insurance, in such amounts and in such form as the parties shall agree, to meet the URWC's obligations under Articles 6, 7, and 8.

9. REMEDIES – WAIVERS.

Nothing contained in this Contract shall be construed as in any manner abridging, limiting, or depriving the ISC of any means of enforcing any remedy, either at law or in equity,

for the breach of any of the provisions hereof which it would otherwise have. Any waiver at any time by either party to this Contract of its rights with respect to default, or any other matters arising in connection with this Contract, shall not be deemed to be a waiver with respect to any subsequent default of the same nature.

10. ASSIGNMENT LIMITED; SUCCESSORS AND ASSIGNS OBLIGATED.

The provisions of this Contract shall apply to and bind the successors and assigns of the respective parties, but no assignment of this Contract or any part thereof shall be valid unless and until approved by the ISC in writing.

11. TERMINATION OF CONTRACT.

(a) This Contract may be terminated by one or more of the following events:

- (1) termination upon mutual agreement of the parties;
- (2) automatic termination in the event the URWC ceases to exist as a legal entity due to the lapse of the Joint Powers Agreement which established it; or
- (3) the ISC has determined that the URWC has failed to perform its obligations under this Contract.

(b) Termination for Cause.

- (1) ISC staff will notify the URWC in writing of the ISC's intention to terminate this Contract.
- (2) The ISC's notice of intent to terminate shall specify each failure of the URWC and shall further provide that the URWC shall, within 90 days from the date of said notice, present the ISC with a program for correction of such deficiencies.

(3) Approving and implementing a corrective program. If the ISC staff accepts the URWC's proposed corrective program, ISC staff will notify the URWC of its approval in writing. The URWC shall have nine (9) months after the ISC's approval to implement the corrective program and cure deficiencies.

(4) Withdrawing ISC's termination letter and cure deficiencies. If within the nine-month period, ISC staff determines the URWC's deficiencies are cured, the termination notice shall be deemed to have been withdrawn and the Contract will continue in full force and effect.

(5) Termination for failure to cure deficiencies. In the event the URWC fails to cure its deficiencies to the satisfaction of ISC staff within the nine-month period, this Contract shall automatically terminate.

12. NOTICES.

(a) Except as specified under Articles 15 and 16, any notice authorized or required by this Contract shall be deemed properly given if sent by certified mail, return receipt requested, postage prepaid, to the ISC or to the URWC, as appropriate, in the care of the following addresses:

(1) For the ISC: Director, New Mexico Interstate Stream Commission, Post Office Box 25102, Santa Fe, NM 87504-5102.

(2) For the URWC: Ute Reservoir Water Commission, c/o Eastern Plains Council of Governments, 418 Main Street, Clovis, NM 88101.

(b) If requested by the URWC, the ISC may send courtesy copies of correspondence and items subject to this Article by first class mail, fax, or electronic mail to URWC member

entities directly. To receive such copies, it is the responsibility of URWC member entities to ensure the ISC has current and accurate contact information.

13. AMENDMENT.

This Contract shall not be amended, altered, or modified except by a writing executed by the Parties.

14. RECORDATION.

This Contract, and any amendments, shall be recorded in the Official Records of Quay County, New Mexico. The ISC shall bear the cost of recordation.

15. EASTERN NEW MEXICO RURAL WATER SYSTEM PROJECT.

(a) For the limited purposes described herein, the ISC, the URWC, and the ENMWUA agree that the terms of this Article shall apply only to these parties and for the ENMRWSP facilities at Ute Reservoir. Except as otherwise stated in this Article, the ENMWUA shall have no other rights and responsibilities under the Contract.

(b) Construction and Operation of Facilities.

(1) The ENMWUA shall, at its own expense, construct, install, operate and maintain facilities at Ute Reservoir for the ENMRWSP. The ENMWUA shall retain the facilities during and after the term of this Contract.

(2) The ENMWUA shall obtain written approval of plans and specifications from ISC staff prior to constructing, installing, operating, or maintaining facilities for the ENMRWSP on ISC fee property or where the ISC maintains a flowage easement.

(3) At the ENMWUA's expense, the ENMWUA shall obtain written approval from ISC staff for easements that may be required for constructing, installing, operating, or maintaining facilities for the ENMRWSP.

(4) For purposes of this Article, the URWC shall have no responsibility for the construction and operation of facilities for the ENMRWSP.

(c) Measurement and Responsibility for Distribution.

(1) The ENMWUA agrees to accept delivery of water under this Article at the ENMRWSP Intake at Ute Reservoir. The ENMWUA further agrees, at its own expense, to make any necessary arrangements for diversion and/or conveyance of water from the ENMRWSP intake or point of delivery to the place of use.

(2) Reporting at Diversions. The ENMWUA shall measure water diverted from Ute Reservoir at the ENMRWSP Intake as approved by ISC staff. The ENMWUA shall supply and use a meter of a type acceptable to OSE and ISC staff and shall annually calibrate the meter. The ENMWUA shall tender meter readings therefrom to the OSE and ISC staff at such regular intervals as the ISC staff may prescribe for that point of diversion.

(3) Limited License to Access ISC Property. To the extent reasonably required to use purchased water, the ENMWUA shall be entitled to enter upon the ISC's property as necessary for the diversion and conveyance of water from Ute Reservoir at the ENMRWSP by the ENMWUA if the ISC has approved facilities and uses described in this Article.

(4) For purposes of this Article, the URWC shall have no responsibility for the measurement and distribution of water from Ute Reservoir at the ENMRWSP Intake.

(d) The ENMWUA hereby accepts

(1) the ISC's warranties and representations described in Article 8(a), (b), (c), and (d);

(2) the obligation to secure comprehensive liability insurance for such obligations arising under this Article and commensurate with its obligations under Article 8;

(3) the remedies available to the contract parties described in Article 9; and

(4) the right to amend this Article of the contract pursuant to Article 13.

(e) Termination. The ISC, URWC, and ENMWUA may terminate this Article of the Contract upon mutual agreement of the three parties.

(f) Notice. Any notice authorized or required by this Article of the Contract shall be deemed properly given if sent by certified mail, return receipt requested, postage prepaid,

(1) To the ISC or to the URWC: pursuant to Article 12.

(2) For the ENMWUA: Chairperson, Eastern New Mexico Water Utility Authority, c/o City of Clovis, P.O. Box 760, 321 N. Connelly, Clovis, NM 88102.

16. TUCUMCARI & UTE RESERVOIR WATER COMMISSION INTERIM INTAKE #1.

(a) For the limited purposes described herein, the ISC, the URWC, and Tucumcari agree that the terms of this Article shall apply only to these parties and for the Interim Intake #1 and related facilities at Ute Reservoir. Except as otherwise stated in this Article, Tucumcari shall have no other rights and responsibilities under the Contract except for those rights, responsibilities, or status Tucumcari maintains as a URWC member entity.

(b) Construction and Operation of Facilities.

(1) Tucumcari shall, at its own expense, construct, install, operate, and maintain facilities at Ute Reservoir for Interim Intake #1. Tucumcari shall retain the facilities during and after the term of this Contract, unless Article 16(g) becomes effective.

(2) Tucumcari shall obtain written approval of plans and specifications from ISC staff prior to constructing, installing, operating, or maintaining facilities for Interim Intake #1 on ISC fee property or where the ISC maintains a flowage easement.

(3) At Tucumcari's expense, Tucumcari shall obtain written approval from ISC staff for easements that may be required for constructing, installing, operating, or maintaining facilities for Interim Intake #1.

(4) For purposes of this Article, the URWC shall have no responsibility for the construction and operation of the Interim Intake #1.

(c) Measurement and Responsibility for Distribution.

(1) Tucumcari agrees to accept delivery of water under this Article at Interim Intake #1 at Ute Reservoir. Tucumcari further agrees, at its own expense, to make any necessary arrangements for diversion and/or conveyance of water from Interim Intake #1 to the place of use.

(2) Reporting at Diversions. Tucumcari shall measure water diverted from Ute Reservoir at Interim Intake #1 as approved by ISC staff. Tucumcari shall supply and use a meter of a type acceptable to OSE and ISC staff and shall annually calibrate the meter. Tucumcari shall tender meter readings therefrom to the OSE and ISC staff at such regular intervals as the ISC staff may prescribe for that point of diversion.

(3) Limited License to Access ISC Property. To the extent reasonably required to use purchased water, Tucumcari shall be entitled to enter upon the ISC's property as necessary for the diversion and conveyance of water from Ute Reservoir at Interim Intake #1 by Tucumcari if the ISC has approved facilities and uses described in this Article.

(4) For purposes of this Article, the URWC shall have no responsibility for the measurement and distribution of water from Ute Reservoir at Interim Intake #1.

(d) Tucumcari hereby accepts

(1) the ISC's warranties and representations described in Article 8(a), (b), (c), and (d);

(2) the obligation to secure comprehensive liability insurance for such obligations arising under this Article and commensurate with its obligations under Article 8;

(3) the remedies available to the contract parties described in Article 9; and

(4) the right to amend this Article of the contract pursuant to Article 13.

(e) Termination. The ISC, URWC, and Tucumcari may terminate this Article of the Contract upon mutual agreement of the three parties.

(f) Notice. Any notice authorized or required by this Article of the Contract shall be deemed properly given if sent by certified mail, return receipt requested, postage prepaid,

(1) To the ISC or to the URWC: pursuant to Article 12.

(2) For Tucumcari: City Manager, City of Tucumcari, 215 East Center Street, P.O. Box 1188, Tucumcari, NM 88401.

(g) Limited Substitution for Tucumcari for Purposes of Article 16 and the Interim Intake #1.

(1) The ISC, URWC, and Tucumcari may agree to and approve substituting Tucumcari as a limited party to this Contract solely for the purposes of Article 16 and the Interim Intake #1. Approval of the substituted limited party shall be noticed in official records of the ISC, URWC, Tucumcari, and the substituting limited party.

(2) The ISC and URWC may consider the following entity as an appropriate substitute limited party for Tucumcari: a Quay County, regional water entity, formed under the New Mexico Joint Powers Agreements Act (NMSA (1978) § 11-11-1 through § 11-1-7) or specifically authorized under law, that has the authority to enter this Contract as a limited party and the capacity to perform all rights and responsibilities under this Article.

(3) Recordation. The ISC shall follow Article 14 and record the termination of Tucumcari as a limited party to this Contract and the information of the substituted entity as a limited party to this Contract solely for the purposes of Article 16. The document recorded will constitute part of this Contract, and be included as Schedule 1.

(4) The substitution of Tucumcari with a substitute limited party under (g)(1) is final, and there shall be no further substitution under this Article.

17. RENEWAL OF CONTRACT.

This Contract may, at the ISC's discretion, be extended for up to an additional forty (40) years beginning January 1, 2050, under terms similar to those contained in this Contract, provided that the time period, water prices, and reservoir yield available under any such extension shall be re-negotiated between the ISC and the URWC prior to any extension of this Contract. First right of refusal will be given to the URWC for any sales contracts which may be approved by the ISC beginning January 1, 2050, for water in Ute Reservoir up to that amount of

water for which the URWC had exercised its option under this Contract, or the reservoir yield available after January 1, 2050, whichever is less.

18. ENTIRE CONTRACT; EFFECT OF PRIOR CONTRACT.

This Contract supersedes the March 1997 Contract, as amended; merges all previous negotiations between the Parties hereto; and constitutes the entire Contract as agreed to and understood by the Parties with respect to the subject matter hereto.

19. EFFECTIVENESS, DATE.

The Contract will become effective when all the parties have signed it. The date this Contract is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Contract.

WHEREFORE, on the date of the last signature of the parties, we agree to be bound by the terms and conditions contained in this Contract.

[Signatures of the Parties appear on following page.]

NEW MEXICO INTERSTATE STREAM COMMISSION

By: *Estevan López*

Estevan López, P.E., Director

Date: 11/12/10

UTE RESERVOIR WATER COMMISSION

By: 11-18-10

Darrel Bostwick, Chairman

Date: *Darrel Bostwick*

EASTERN NEW MEXICO WATER UTILITY AUTHORITY,

Solely with respect to Article 15

By: *Gayla Brumfield*

Gayla Brumfield, Chairperson

Date: 11-18-10

CITY OF TUCUMCARI,

Solely with respect to Article 16

By: *James Witcher*

James Witcher, Mayor

Date: 11-19-10

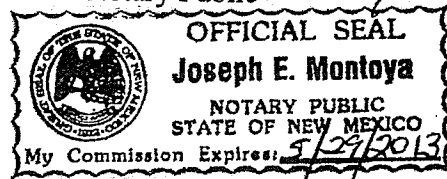
ACKNOWLEDGMENTS

STATE of NEW MEXICO)
)
) SS
COUNTY OF Santa Fe)

This instrument was acknowledged before me on the 12th day of November, 2010, by Estevan López as Director of the New Mexico Interstate Stream Commission.

Joseph E. Montoya
Notary Public

My Commission Expires: **May 29, 2013**



STATE of NEW MEXICO)
)
) SS
COUNTY OF Curry)

This instrument was acknowledged before me on the 18 day of November, 2010, by ~~Gayla Brownfield~~ ^{Eastern New Mexico} ~~Darrel Bestwick~~ as Chairman of the ~~Ute Reservoir~~ ^{Unity Authority} Water Commission.

Terry D. Lee
Notary Public

My Commission Expires: 12-6-11

ACKNOWLEDGMENTS (cont.)

STATE of NEW MEXICO)
)
COUNTY OF Curry) SS

This instrument was acknowledged before me on the 18th day of November, 2010, by Darrel Pasturek and Gayla Drumfield as Chairperson of the Ute Reservoir Commission Eastern New Mexico Water Utility Authority.



OFFICIAL SEAL
SANDY CHANCEY
NOTARY PUBLIC-NEW MEXICO
My Commission Expires 1-13-10

Sandy Chancey
Notary Public

My Commission Expires: 0-13-2012

STATE of NEW MEXICO)
)
COUNTY OF Quay) SS

This instrument was acknowledged before me on the 19th day of November, 2010, by James Witcher as Mayor of the City of Tucumcari.



OFFICIAL SEAL
JENNY VARGAS
NOTARY PUBLIC - State of New Mexico
My Commission Expires 4-29-2014

Jenny Vargas
Notary Public

My Commission Expires: 4-29-2014

VILLAGE OF LOGAN PAGE 01

**JOINT POWERS AGREEMENT
UTE RESERVOIR WATER COMMISSION**

This Joint Powers Agreement (herein the "Agreement") creating the Ute Reservoir Water Commission (herein the "Commission") is made and entered into to be effective on the date hereinafter stated by and between the communities of Clovis, Tucumcari, Portales, San Jon, Logan, Texico, Melrose, Elida, and Grady; the Counties of Curry, Roosevelt, and Quay; (herein referred to individually by name or collectively as the "Parties"), all of such entities being political subdivisions or public agencies as defined in the Joint Powers Agreements Act and located in either Quay, Roosevelt, or Curry County, New Mexico and empowered to enter into a Joint Powers Agreement under the laws of the State of New Mexico.

RECITALS

WHEREAS, all of the parties are interested in the acquisition and distribution of waters from Ute Reservoir; Quay County, New Mexico; and,

WHEREAS, the parties have a common interest in entering into a contract with the New Mexico Interstate Stream Commission, the object of said agreement being to reserve 24,000 acre feet of water per year from Ute Reservoir.

WHEREAS, the parties agree that water from Ute Reservoir should be held for the benefit of all of the parties to this Agreement; and,

WHEREAS, the Ute Reservoir Water Commission has served as a viable organization for the planning, development, and acquisition of water from Ute Reservoir, and provides a unified means for the acquisition of water from Ute Reservoir for the benefit of those parties to this Agreement; and,

WHEREAS, the parties desire to continue the Commission, first organized on November 19, 1987, and continued by Joint Powers Agreement effective June 30, 1989, and July 1, 1991, and,

WHEREAS, it is the desire that the Commission have the power to carry out the purposes and functions as set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL CONVENANTS AND UNDERTAKINGS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

I.

AUTHORIZING STATUTES

This Agreement is entered into pursuant to the Joint Powers Agreement Act [SS11-1-1 to 11-1-7, N.M.S.A. 1978, as amended].

II

PURPOSES

The purposes of this Agreement are to:

- A. Protect and utilize future and existing water rights and water resources of the parties which are to be allocated herein.
- B. Provide a mechanism, through the adoption of future joint powers agreements, for the parties to plan, develop acquire and finance a water supply and distribution system or systems to furnish, supply, and provide water for the use of the parties from sources in, upon, along, and tributary to the Canadian River and the Ute Reservoir Project and groundwater within the State of New Mexico, including the financing of water storage, conveyance and water treatment projects.

III.

CREATION OF THE UTE RESERVOIR WATER COMMISSION

A. There is hereby created a Commission pursuant to the authority granted by Section 11-1-5, N.M.S.A. 1978, composed of twelve (12) members to be appointed by the parties to this Agreement in the manner selected by each party for the appointment of its representative member as follows:

- | | | |
|-----|---------------------|------------|
| 1. | City of Clovis | One Member |
| 2. | City of Tucumcari | One Member |
| 3. | City of Portales | One Member |
| 4. | City of San Jon | One Member |
| 5. | Village of Texico | One Member |
| 6. | City of Melrose | One Member |
| 7. | Village of Grady | One Member |
| 8. | Town of Elida | One Member |
| 9. | County of Curry | One Member |
| 10. | County of Roosevelt | One Member |
| 11. | County of Quay | One Member |
| 12. | Village of Logan | One Member |

B. The United States of America, by and for the benefit of Cannon Air Force Base, shall be a non-voting ex-officio member, unless specified otherwise, when the terms "party" and "member" are referred to in this agreement, they shall not include the United States of America.

C. Each Party to the Agreement shall, in addition to the appointment of a member, appoint at least one alternate member to the Commission, who shall act in the absence or incapacity of the regular member.

The alternate member shall have all of the powers, duties, and responsibilities of the regular member then serving as a member of the Commission. Alternate members may attend all meetings of the Commission and may participate in discussions of the Commission but may vote only in the absence or incapacity of the regular member.

D. Each member or alternate member serving in the absence of a regular member shall be entitled to one vote.

E. A member may not frustrate conduct of the business of the Commission by failing or refusing to attend the meetings or to address the business of the Commission. If the Commission shall determine that the members appointed by a party have failed to attend regular meetings of the Commission, the Commission shall give written notice to the party affected by personal service or by certified mail, return receipt required, requesting the replacement of either the regular member, the alternate member or both such members, and setting forth the reasons for such request. The affected party shall, within thirty (30) days of the service of such notice upon the affected party appoint a new member and/or alternate member pursuant to the request contained in such notice. If the affected party fails or refuses to appoint another member and/or alternate within such thirty (30) days, the Commission shall appoint a member and/or alternate for such affected party who shall serve until such time as the affected party may bring an action in the District Court of Quay, Roosevelt, or Curry County, New Mexico, contesting the decision of the Commission to replace a member or members.

F. The Commission shall select a chairman and other officers who shall serve for one (1) year or until their successors are duly elected and qualified.

G. The Commission shall meet in compliance with the Open Meetings Act of the State of New Mexico.

H. The Commission shall not conduct business unless a majority of the members or alternates of the parties are present.

I. Except as otherwise provided by this Agreement, a vote by a majority of the members of the Commission shall be required for conduct of all business before the Commission.

J. The Commission's authority shall be limited to the execution of an agreement with the Interstate Stream Commission for the reservation of 24,000 acre feet of water and the reallocation of water reserved in those circumstances where a party has withdrawn from the agreement or the party desires to reduce its allocation. The Commission shall also have the authority to make recommendations for future joint powers agreements that would involve the acquisition and holding of water rights, rights to water, facilities for storage, treatment and distribution of water and the planning, developing and financing of the storage, distribution and treatment of water for the benefit of all the parties to this Agreement.

IV.

AGREEMENTS OF THE PARTIES

A. **WATER ALLOCATION.** The estimated annual yield of Ute Reservoir is approximately 24,000 acre feet. This amount may be varied under the terms and conditions of the Reservation Contract between the New Mexico Interstate Stream Commission and the Ute Water Commission. The parties agree to the following allocation of water available in the following amounts:

<u>City</u>	<u>Acre Feet</u>
Clovis	12,292
Melrose	250
Texico	250
Grady	75
Curry County	100
Elida	50
Portales	3,333
Roosevelt County	100
San Jon	150
Tucumcari	6,000
Quay County	1,000
Logan	400
	<u>24,000</u>

B. Any diminishment of or increase in the 24,000 acre feet of water shall result in a proportional decrease or increase based upon the percentage of the base of 24,000 as allocated above. No party's allocation as set forth above can be increased or decreased without the consent of that party.

C. **RESERVATION OPTION.** The parties agree, effective January 1, 1996 to share the costs incurred by reservation contract with the Interstate Stream Commission for the reservation of water from Ute Reservoir in the proportions set forth below. The cost of the option for reservation of the water shall be based upon the water reservation contract between the New Mexico Interstate Stream Commission and the Ute Water Commission.

	<u>Percentage</u>	<u>Cost</u>
Clovis	51.21%	18,438.00
Elida	0.21%	75.00
Grady	0.31%	112.00
Melrose	1.04%	375.00
Portales	13.88%	5,000.00
San Jon	.63%	225.00
Texico	1.04%	375.00
Logan	1.67%	600.00
Tucumcari	25.00%	9,000.00
Curry County	.42%	150.00
Roosevelt County	.42%	150.00
Quay County	<u>4.17%</u>	<u>1,500.00</u>
	100.00%	\$36,000.00

D. Reservation option payments to be made under Paragraph "C" of this section shall be due and payable within 90 days of invoice. Any member that does not pay option payments within the time specified, shall not be entitled to vote on any matter before the Commission until all delinquent option payments have been paid in full. Any jurisdiction with continued delinquency in paying reservation or other costs for a full year will result in the automatic forfeiture of all reservation and purchase rights under this agreement.

E. PLANNING AND DEVELOPMENT. Parties to this Agreement recognize the importance of maintaining efforts in the planning of the Ute Water Development Project. Any and all costs to be incurred in the future for planning and development shall be contained in future joint powers agreements.

V.

TITLE TO ASSETS HELD BY COMMISSION

Rights to purchase Ute Reservoir water shall be retained for the benefit of all of the parties herein, until such time as the option to receive water is exercised, or until such time as a subsequent agreement with the New Mexico Interstate Stream Commission shall be negotiated. Rights to purchase water, or property which is taken in the name of the Commission shall be held in trust by the Commission for the benefit of the parties. In the event the Agreement is terminated, the Commission shall transfer title to all of the assets acquired by official action prior to the dissolution according to the terms of this Agreement. Should the Commission fail to make such a transfer of title prior to dissolution, any of the parties of this Agreement may apply to the District Court in either Quay, Roosevelt, or Curry County requesting the appointment of a Special Master to transfer title to the assets of the Commission in accordance with this Agreement. The parties expressly agree to be bound by such Court ordered transfer whether or not the party is a Co-Plaintiff in the District Court action.

VI.

BOOKS AND RECORDS

A. Detailed records of all transactions of the Commission shall be kept and maintained by the Commission and shall be open for inspection and audit at all reasonable times by any member of the Commission or for inspection and audit by any person designated by the governing body of any party who may be appointed to conduct such inspection or audit.

B. Books and records of the Commission shall be subject to inspection pursuant to applicable statutes.

VII.

MUTUAL AGREEMENTS OF THE PARTIES

A. Nothing herein contained shall be construed to prohibit any party from exercising its power or right to condemn, purchase or otherwise acquire water or water right on its own behalf, nor

shall this Agreement be construed as a limitation on the right of the parties to deal with water or water rights which it presently owns; any member or group of members is authorized to exercise their option to purchase their proportionate share of the annual yield, subject to terms and conditions of the ISC contract.

B. Parties agree that the allocation of water and the distribution of costs set out in Article IV above represent a fair and equitable distribution and are accepted by the parties.

VIII.

TERMINATION AND DISTRIBUTION OF ASSETS

A. This Agreement and the Commission created hereby shall expire on July 1, 2006, unless otherwise extended. In the event of dissolution of the Commission for any reason, or termination of this Agreement, parties shall have the absolute right to continue under independent or cooperative agreements for the purchase of water allocated to each party under Article IV. The assets of the Commission, including any water rights or rights to water acquired by the Commission shall be distributed to the parties under the same formula.

B. In the event of dissolution, termination, or withdrawal, parties shall not be entitled to a refund of amounts paid.

IX.

SEVERABILITY

It is hereby declared to be the intention of the parties that the articles, sections, subsections, paragraphs, sentences, clauses, and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, section, or article of this Agreement shall be declared unconstitutional by the valid judgement or decree of any Court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, and articles of this Agreement, since the same would have been entered into by the parties without such invalid portion.

X.

EFFECTIVE DATE

This Agreement shall be effective as of December 1, 1995, when executed by the parties pursuant to official authorization by the parties; provided that this Agreement must be submitted to and approved by the New Mexico State Department of Finance and Administration, pursuant to Section II-1-3, N.M.S.A. 1978, before it is legally binding and effective.

XI.

AMENDMENT

This Agreement may be amended with the consent of all parties as evidences by written approval of each party.

XII.

VENUE AND GOVERNING LAW

This Agreement shall be interpreted under the law of the State of New Mexico. Venue for any suit brought upon this Agreement shall lie in the District Court of Curry, Roosevelt, or Quay County, New Mexico.

IN WITNESS WHEREOF the parties hereunto have set their hands and seals by their duly authorized officers, agents, or representatives named below.

DATED this ____ day of _____, 1995.

CITY OF CLOVIS
a municipal corporation

BY: *Jan B. Moss*
Mayor

Attest:

Nancy Clement
Asst. City Clerk

CITY OF TUCUMCARI
a municipal corporation

BY: *Ralph F. Meyer*
Mayor

Attest:

Rache [Signature]
City Clerk

CITY OF PORTALES
a municipal corporation

Attest:

Jana Martinez Terry
City Clerk

BY: *Donald W. Davis*
Mayor

VILLAGE OF SAN JON
a municipal corporation

Attest:

Bobby Love
Village Clerk

BY: *Fern White*
Mayor

VILLAGE OF LOGAN
a municipal corporation

Attest:

Angelica Cardona
Village Clerk

BY: *Guido Lobo*
Mayor

CITY OF TEXICO
a municipal corporation

Attest:

Maria Christensen
City Clerk

BY: *Nathan L. Davis*
Mayor

VILLAGE OF MELROSE
a municipal corporation

Attest:

Cathy Christensen
Village Clerk

BY: *Ray Hester*
Mayor

TOWN OF ELIDA
a municipal corporation

Attest:

Madie Swagerty
Town Clerk

BY: Bennie J. Johnson
Mayor

VILLAGE OF GRADY
a municipal corporation

ATTEST:

Linda Brown
Village Clerk

BY: Creola Owens
Mayor

COUNTY OF CURRY

Attest:

Paul Johnson
County Clerk

BY: Frank H. Blackburn
Commission Chairperson

COUNTY OF QUAY

Attest:

Jeanette Maddaford
County Clerk

BY: Glen Bissell
Commission Chairperson

COUNTY OF ROOSEVELT

Attest:

Margaret Haragan
County Clerk

BY: John D. Parris
Commission Chairperson

APPROVED BY:

Approved only as ^{compliance} with the SPA act *How*

DEPARTMENT OF FINANCE AND ADMINISTRATION

BY: *[Signature]*

DATE: 2/26/96