



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

Larry A. Delgado, *Mayor*
Jim Romero, *City Manager*

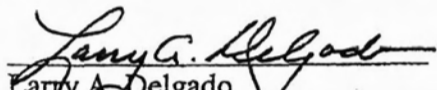
Councilors:

Carol Robertson-Lopez, Mayor Pro Tem, Dist. 4
Patti J. Bushee, Dist. 1
David Pfeffer, Dist. 1
Karen Heldmeyer, Dist. 2
Rebecca Wurzbarger, Dist. 2
Miguel M. Chavez, Dist. 3
David Coss, Dist. 3
Matthew E. Ortiz, Dist. 4

November 30, 2004

On October 7, 2004 a Joint Meeting of the respective Governing Bodies of the City of Santa Fe and Santa Fe County met to discuss regional water issues, the Buckman Direct Diversion and future cooperation.

The Principles of Agreement that are attached to this cover letter were discussed during a special Joint Meeting of the City and County. This Agreement was accepted by a role call vote of each of the Governing Bodies and will be drafted into a set of legal documents as described in Section 6.


Larry A. Delgado
City of Santa Fe Mayor

Joint Meeting of the City of Santa Fe and Santa Fe County

Regional Water Resource and Buckman Direct Diversion Principles of Agreement

October 7, 2004

The following Principles of Agreement were discussed during a special Joint Meeting of the City and County Governing Boards. This Agreement was accepted by a role call vote of each Governing Board and will be drafted into a set of legal documents as described in Section 6.

1. Buckman Direct Diversion Project (BDD): Title, Ownership
 - a. The City and the County will each own 50% of the BDD project and related infrastructure.
2. BDD Management
 - a. Governance will be through a five member board consisting of two County Commissioners and two City Councilors and a qualified person (to serve a one year term but without term limits) appointed by a majority of the four Elected Officials (hereinafter called the Governing Board"). The Governing Board shall govern the permitting, design, construction, operation and maintenance of the BDD, as described in the Environmental Impact Statement (EIS) for the project.
 - b. The City and the County will jointly hire an Owner's Agent to oversee design and construction of the BDD under a design/build delivery method. The owner's agent will report directly to the Governing Board. The Governing Board will approve the design and construction contract, approve any contract changes and have authority to approve any change orders.
 - c. The Sangre de Cristo Water Company will, through a contract with the BDD Governing Board, design, construct, operate and maintain the BDD. The contract with the Sangre de Cristo Water Company will terminate on December 1, 2015. The Board shall have authority to enter into a contract for the operation and maintenance of the BDD with any one of the following: (1) Sangre de Cristo Water Company; (2) the Santa Fe County Water Utility or (3) a Regional Entity. The contract will be reviewed at the discretion of the BDD Governing Board at least every seven years following implementation.
 - d. The City will provide fiscal agent services which will include serving as the procurement agent for the BDD Owner-Agent contract, and for the design, procurement, construction, operation and maintenance of the BDD pursuant to a fiscal agency agreement(s) (which will include a fee schedule for fiscal agent services) between the County and City. The fiscal agent services agreement will terminate on December 1, 2015 at which point the City and County will designate a new fiscal agent and enter into a new fiscal agent agreement with either the City, the County or the Regional Water Authority. Thereafter the fiscal agent agreement (s)

will be reviewed periodically at least every seven years following implementation. The fiscal agent will report to the BDD Governing Board and will need the Board's approval for decisions on expenditures over a given threshold to be specified in the fiscal agent agreement.

3. BDD Cost Sharing

- a. The City and County agree to contribute \$30 million each to design and construct the BDD.
- b. The City and the County agree to seek State and Federal assistance to help pay for the costs of the project.
- c. Outstanding design and construction costs (after crediting the City and County contributions of \$30 million each, State and Federal assistance, contributions to the project from Las Campanas, and other funding sources) will be shared between the City and County as follows: 50% City, 50% County
- d. Las Campanas will pay for its proportional share of that part of the system it will actually use (the diversion structure, sediment pond and related infrastructure).
- e. After implementation, the costs of operating, maintaining and repairing the BDD that can be attributable to each party's variable or proportionate share of water deliveries (such as electrical costs) shall be shared according to each party's proportionate share of water deliveries. After implementation, the costs of operating, maintaining and repairing the BDD that are fixed or capital costs and that are attributable to the facility as a whole shall be shared equally. The BDD Governing Board shall determine periodically which costs are fixed and which are variable.

4. San Juan Chama Water Rights and Wholesale Water Deliveries

- a. Of the 8,730 afy of BDD capacity: 5,230 afy shall be allocated to the City, 1,700 afy shall be allocated to the County, and 1,800 afy shall be allocated to Las Campanas. Each entity's diversions shall be based upon its own water right or contract right.
- b. Each entity is responsible for acquisition and maintenance of its own water rights.
- c. An allocation of 375 afy of San Juan Chama Project water to the County will be recognized. The 375 afy of water will be included in the total 1,700 afy County capacity in the BDD. An allocation of 5,230 afy of San Juan Chama Project water to the City will be recognized.
- d. The City and County will enter into a wholesale contract for the sale of up to 875 afy from the City to the County until implementation of the BDD. After water is diverted from the BDD, deliveries pursuant to the wholesale agreement shall be reduced to 500 afy and continue in perpetuity. The 500 afy of water delivered under the wholesale contract will be in addition to the total 1,700 afy County capacity in the BDD.

- e. Following implementation of the BDD, the County will pay its proportionate share of payments for San Juan Chama Project Water to the Bureau of Reclamation.
 - f. The City and the County will enter into a wheeling and system coordination agreement so that the City and County can make use each other's infrastructure where it makes sense to do so.
5. Conjunctive Use and Drought Protection
- a. The City and the County will develop a comprehensive City/County joint conjunctive use and sustainability strategy that places the use of surface water as a higher priority than groundwater pumping and which manages the regional aquifer on a sustainable basis. The strategy will include a shortage sharing agreement that will help guide management decisions made by the BDD Governing Board, the Growth Management Plan of the Regional Planning Authority, and incorporate the principle that the County and City consult prior to the drilling of new wells in the area around the City and County water systems as they exist at the time of signing of the agreement so as to encourage cooperation and avoid conflict and impairment of water rights. The City and County prioritize, using the RPA Plan and the Affordable Housing Task Force, the allocation of water from the BDD for affordable housing.
 - b. Under drought conditions (or other shortages) to be defined under 5.a., above, the City would provide the County additional water from its system, in an amount not to exceed 50% of the County's total 1,700 afy of diversion capacity from the BDD. After the diversion of water from the BDD has begun and when the County's diversion of surface water from the BDD drops below 850 afy (50% of 1,700 afy), the City would provide the County the necessary water to maintain 850 afy of delivery from the City system to the County utility. Drought protection provided by the City will be based on the amount of the County's use of the BDD in the year that the drought occurs. The wholesale water deliveries pursuant to paragraph 4.d. shall be subject to shortage sharing that provides for a pro-rata reduction in daily deliveries to the County.
 - c. The County reserves the right to drill in-Basin wells and commence permitting additional wells. The County will consult with the City on the locations of any proposed wells.
6. Forms of Agreement
- a. Forms of agreement implementing the principles in the document may consist of: (1) Memorandum of Understanding, (2) Joint Powers Agreement, (3) Operational Protocol, (4) Fiscal Agency Agreement, and (5) Water Wholesale Contract.

ITEM # 05-0041

**Water Resources Agreement between the City of Santa Fe
and Santa Fe County**

This Water Resources Agreement ("Agreement") is entered into by and between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico, this 11th day of January, 2005.

Recitals

WHEREAS, the City and County entered into the Agreement to Deliver Water (the "1994 City/County Agreement", and commonly referred to as the City/County Wheeling Agreement) on August 10, 1994, which agreement allows the County to take delivery of and pay for up to 500 acre feet of water per year (afy) at enumerated points of delivery and which incorporates by reference the City and County Negotiating Committee Report and Recommendations for Extension of Water Service and Water Delivery dated December 15, 1993; and

WHEREAS, the 1994 City/County Agreement expires July 3, 2005; and

WHEREAS, the City and County desire to supersede the 1994 City-County Agreement with a new agreement; and

WHEREAS, the City and County are parties to a San Juan-Chama Project (SJCP) Contract in the amount of 5,605 afy with the United States of America, Department of the Interior, Bureau of Reclamation, for the furnishing of a municipal water supply for the County and City dated November 23, 1976; and

WHEREAS, the City and County recognize that the use of SJCP water will be directly available to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the future; and

WHEREAS, the City and County have filed a joint application with the Office of the State Engineer to divert the SJCP Contract water using the proposed BDD Project; and

WHEREAS, the SJCP Contract grants to the County and City an exclusive right to allocate, consumptively use and dispose of 5,605 afy and there exists a dispute between the County and City concerning the allocation of water between the parties; and

WHEREAS, the County and City desire to resolve the allocation of the SJCP Contract water; and

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and

1 **WHEREAS**, the County and City will cooperate on the purchase of future water rights
2 for use in the BDD Project.

3
4 **NOW**, therefore, upon the mutual consideration described by this Agreement, including
5 the covenants and promises contained herein, the adequacy of which are acknowledged
6 by the parties, the County and City agree as follows:

7
8 **Definitions.** Capitalized words or phrases used in this Agreement, as defined below,
9 shall have the following meanings:

10
11 **afy** means acre feet per year.

12
13 **Agreement** means this "Water Resources Agreement between the City of Santa Fe
14 and Santa Fe County".

15
16 **BDD Board** means the governing board of directors of the BDD Project as established by
17 the BDD Joint Powers Agreement.

18
19 **BDD Joint Powers Agreement** means the "Joint Powers Agreement between the City of
20 Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project" which
21 is executed contemporaneously with this Agreement.

22
23 **BDD Project** means the planned Buckman Direct Diversion Project which will divert
24 surface water from the Rio Grande at Buckman, as described in the draft Environmental
25 Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a
26 diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment,
27 transmission and related works used to deliver water to the respective Independent Water
28 Systems of the City and County.

29
30 **BOR** means the federal United States Bureau of Reclamation.

31
32 **Independent Water System** means the respective water works of the City and the
33 County, as such works exist now and as such works may change or expand in the future.

34
35 **ISC** means the New Mexico Interstate Stream Commission.

36
37 **OSE** means the New Mexico Office of the State Engineer.

38
39 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605
40 acre-feet per year acquired by the City and the County under contract with the U.S.
41 Bureau of Reclamation, dated November 23, 1976, and as it may be amended, renewed,
42 converted or replaced.

43
44

Agreement

1
2
3 **1. Term.** The term of this Agreement shall be perpetual and shall commence as of the
4 effective date of approval by the respective governing bodies of the City and the County.

5
6 **2. Quantity. Wholesale Water Delivery to the County Independent Water System.**
7 From the effective date of this Agreement until deliveries of water from the BDD Project
8 begin, the City Independent Water System shall provide up to 875 afy to the 3 points of
9 delivery currently serving the County Independent Water System. After deliveries of
10 water from the BDD Project begin, the City Independent Water System shall provide up
11 to 500 afy in perpetuity to the 3 points of delivery of the County Independent Water
12 System. Wholesale Water Delivery shall be subject to Shortage Sharing, Section 9, of
13 this Agreement.

14
15 **3. Quantity. Delivery to City customers outside the City limits using the City**
16 **Independent Water System.** The Wholesale Water Delivery provided to the County
17 Independent Water System shall not include the quantity necessary to supply City
18 customers outside the City limits using City Independent Water System infrastructure.

19
20 **4. Quantity. Re-delivery to City customers using County Independent Water**
21 **System.** The Wholesale Water Delivery provided to the County Independent Water
22 System shall not include the quantity necessary to supply City customers on the County
23 Independent Water System. The City shall supply the County Independent Water System
24 sufficient water supply to serve the City's customers on the County Independent Water
25 System. The City and County shall jointly prepare a report of 'Re-delivery to City
26 customers using County Independent Water System infrastructure' within 6 months of
27 the effective date of this Agreement and present it to respective governing bodies of the
28 City and County.

29
30 **5. Quantity. Allocation of the City and County jointly owned San Juan Chama**
31 **Project (SJCP) Contract.** The City and County shall cooperate on the amendment,
32 renewal, conversion or replacement of the jointly owned San Juan Chama Project (SJCP)
33 Contract. The City and the County agree that the jointly owned SJCP Contract for 5,605
34 afy shall be allocated as follows; the County's allocation of the SJCP Contract shall be
35 375 afy and the City's allocation of the SJCP Contract shall be 5,230 afy. The City and
36 County shall cooperate and provide notification to the other party of any agreements
37 affecting the jointly owned SJCP Contract which require the signature of the other party.
38 The City and the County agree that this allocation is a complete and full resolution of the
39 SJCP Contract allocation issue. Beginning on January 1, 2005, the County will be
40 responsible for its 2005 SJCP Contract allocation and all future year allocations,
41 including payments to the BOR, storage, permitting and use. The SJCP Contract
42 allocation is separate from the Wholesale Water Delivery, Section 2, of this Agreement.

43
44 **6. Cooperative Water Right Transfers of County Water Rights into the City's**
45 **Buckman Groundwater System for Offset Purposes.** The County may transfer, for
46 offsetting purposes only, up to 1325 afy (1700 afy County BDD Project capacity - 375

1 afy County SJCP Contract water) into the City's Buckman well permit, RG-20516;
2 provided, that the City is a co-applicant on all such transfers and that the County takes
3 responsibility for such transfers, including all costs associated with protested
4 applications. The City shall be advised of all settlement discussions and proposed
5 conditions of approval regarding such applications and shall cooperate with the County
6 on all such transfers provided that such transfers do not adversely affect the City's water
7 rights. The County acknowledges that it shall not obtain water deliveries from the City's
8 Buckman well permit, RG-20516, as a result of such transfers, unless the parties
9 otherwise agree in writing. The County may, at a time in the future, transfer the rights
10 that have been moved to the City's Buckman well permit, RG-20516, to the BDD Project.
11 This paragraph replaces and supersedes the "Water Right Transfer Agreement between
12 the City of Santa Fe and Santa Fe County", dated June 30, 2004.
13

14 **7. Drought Protection for the County Independent Water System.** Under drought /
15 catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions,
16 OSE/ISC restrictions), the City shall provide the County Independent Water System an
17 amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity
18 from the BDD Project. After the deliveries of water from the BDD Project begin and
19 when the County's diversion of surface water from the BDD Project drops below 850 afy
20 (50% of 1,700 afy), the City Independent Water System shall provide the County
21 Independent Water System the necessary water to maintain deliveries of no less than 850
22 afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section
23 9, of this Agreement. The City and County shall be separately responsible for the
24 acquisition and maintenance of their own water right portfolios and any applicable limits
25 placed on water rights contained in their own water right portfolios. The Drought
26 Protection provision is separate from the Wholesale Water Delivery, Section 2, of this
27 Agreement and the SJCP Allocation, Section 5, of this Agreement.
28

29 **8. Conjunctive Use and Sustainability.** The City and County agree to implement
30 conjunctive use management by relying on surface water when it is available and using
31 groundwater only as necessary. The City and County shall prioritize the allocation of
32 water from the BDD Project for affordable housing using the Regional Planning
33 Authority (RPA) Plan and the Affordable Housing Task Force report.
34

35 The City and the County will develop a 'Comprehensive Joint Conjunctive Use and
36 Sustainability Water Resource Strategy' that places the use of surface water as a higher
37 priority than the use of groundwater and which manages the regional aquifer on a
38 sustainable basis. The Strategy shall include a shortage sharing agreement that will help
39 guide management decisions made by the BDD Board and the Regional Planning
40 Authority. The Strategy shall incorporate the principle that the County and the City will
41 consult prior to the drilling of new wells in the area around the City and County
42 Independent Water Systems, as they exist at the time of signing of this Agreement, so as
43 to encourage cooperation, avoid conflict and avoid the impairment of City or County
44 water rights.
45

1 The County reserves the right to drill in-Basin groundwater wells and commence the
2 permitting of additional groundwater wells. The County shall consult with the City on
3 the location of any proposed groundwater wells.
4

5 **9. Shortage Sharing for Wholesale Water Delivery.** The County agrees to a pro rata
6 reduction in the daily Wholesale Water Delivery in the event of a shortage of water
7 supply to the City Independent Water System. The pro rata reduction in the daily
8 delivery to the County Independent Water System shall be computed from actual use and
9 shall be based on the reduction to other City customers from the City Independent Water
10 System under the City's Water Emergency Management Plan Ordinance, currently in
11 effect or as may be amended in the future. The pro rata reduction in the daily Wholesale
12 Water Delivery shall be implemented at the points of delivery currently serving the
13 County Independent Water System.
14

15 **10. Treated Wastewater Effluent Return Flow.** The City shall gain all interest, right
16 or title to return flow received at the City's wastewater treatment plant. The County shall
17 gain no interest, right or title to any return flow received at the City's wastewater
18 treatment plant. The County shall gain the interest, right or title to water delivered to the
19 County Independent Water System which is not received at the City's wastewater
20 treatment plant.
21

22 **11. Points of Delivery.** The Wholesale Water Delivery shall be delivered to the County
23 Independent Water System at any one (1) or all three (3) points of delivery currently
24 serving the County Independent Water System. Additional points of delivery may be
25 requested by the County with the consent of the City, which consent shall not be
26 unreasonably withheld.
27

28 **12. Rates.** The County shall pay to the City a Monthly Meter charge (\$435.21 / 10 inch
29 meter / month) and a Wholesale Water Delivery rate (\$3.50 / 1000 gallons) as determined
30 by the 2004 Cost of Service Study prepared for the City Independent Water System.
31

32 **13. Adjustment of Rates.** The City may adjust the Monthly Meter charge and
33 Wholesale Water Delivery rate over the term of this Agreement. The City shall provide
34 the County at least one hundred eighty (180) days written notice of its intent to adjust the
35 Monthly Meter charge or the Wholesale Water Delivery rate. The City and County
36 acknowledge that the appropriate methodology for computing the Monthly Meter charge
37 and Wholesale Water Delivery rate shall be based on an embedded cost of service study.
38 The Directors of the City and County Independent Water Systems shall resolve any
39 dispute regarding the adjustment of rates in a manner as set forth in Dispute Resolution,
40 Section 16, of this Agreement.
41

42 **14. Metering.** The City shall maintain the meters and related equipment for measuring
43 the quantity of water delivered to the County Independent Water System at the points of
44 delivery. The City shall read the meters and report the readings in monthly billings to the
45 County. Meter reading reports shall include the meter readings for re-delivery to those
46 City customers connected to the County Independent Water System pursuant to Quantity.

1 Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at
2 the request of either the City or the County, not more than once during each twelve (12)
3 month period, and the City and the County shall share the expense of calibration equally.
4 The Directors of the City and County Independent Water Systems shall resolve any
5 inconsistency in billing, metering or calibration in a manner as set forth in Dispute
6 Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60
7 days shall initiate the notice provision and related procedures described in Dispute
8 Resolution, Section 16, of this Agreement.
9

10 **15. Conditions of Delivery.** The City Independent Water System shall furnish water to
11 the County Independent Water System at a reasonably consistent supply and pressure at
12 the points of delivery. The City Independent Water System shall at all times operate and
13 maintain the system in a manner and shall take such action as may be necessary to furnish
14 the County Independent Water System with the quality and quantity of water required by
15 this Agreement. Emergency failures of pressure or water supply shall excuse the City
16 Independent Water System from this provision for such reasonable time as may be
17 necessary to restore service. The City Independent Water System shall furnish water to
18 the County Independent Water System of such quality as is required for a residential and
19 a commercial customer under applicable water quality regulations. The County shall
20 bear those costs where unusual and / or special conditions exist (such as elevation,
21 terrain, or other conditions) and which result in increased costs to the City Independent
22 Water System.
23

24 **16. Dispute Resolution.** The City and County agree to use any and all methods of
25 dispute resolution, up to and including binding arbitration, to resolve any conflicts arising
26 under this Agreement, the expenses of which shall be shared equally by the City and
27 County. Disputes shall be first discussed by representatives of each party having the
28 authority, if necessary, to bind the party that they represent. Such representatives shall
29 use their best efforts to amicably and promptly resolve the dispute. If the parties are
30 unable to resolve the dispute through informal mechanisms or mediation within 30 days
31 of the occurrence of the event or circumstances giving rise to the dispute, either party
32 may give notice to the other party that the dispute is to be submitted to binding
33 arbitration. Any dispute requiring notice shall be reported to the next meeting of the
34 respective City and County governing bodies. Such notice shall contain the name of a
35 proposed arbitrator, and in the event the other party does not agree with the proposed
36 arbitrator, the model guidelines of the American Arbitration Association shall be used to
37 select an arbitrator and govern the conduct of the arbitration, rendering of an award and
38 enforcement of the award consistent with New Mexico state law. Within 60 days of
39 notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall
40 prepare an award. The arbitrator's award shall be binding on the parties.
41

42 **17. Entire Agreement.** This Agreement contains the Entire Agreement between the
43 City and County with regard to the matters set forth herein.
44

45 **18. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of
46 the parties and their respective representatives, successors, and assigns.

1
2 **19. Counsel.** The City and County acknowledge that they have freely entered into this
3 Agreement with the advice of their respective legal counsel.
4

5 **20. Other Documents.** The parties agree to execute such further and other agreements
6 as reasonably may be required from time to time to carry out the provisions of this
7 Agreement.
8

9 **21. Law.** The laws of the State of New Mexico shall govern this Agreement.
10

11 **22. Notices.** Any notice, demand, request, or information authorized or related to this
12 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
13 delivered or faxed as follows:
14

15 **To the City:** Director of the Sangre de Cristo Water Division
16 City of Santa Fe
17 PO Box 909
18 Santa Fe, NM 87501
19 Phone: 955-4200
20 Fax: 955-4352
21

22 **With a copy to:** City Manager
23 City of Santa Fe
24 PO Box 909
25 Santa Fe, NM 87501
26 Phone: 955-6509
27 Fax: 955-6683
28

29 City Attorney
30 City of Santa Fe
31 PO Box 909
32 Santa Fe, NM 87501
33 Phone: 955-6511
34 Fax: 955-6748
35

36 **To the County:** Santa Fe County Utilities Director
37 Santa Fe County
38 205 Montezuma
39 Santa Fe, N.M. 87505
40 Phone: 986-6210
41 Fax: 992-8421
42

43 **With a copy to:** County Manager
44 Santa Fe County
45 P.O. Box 276
46 Santa Fe, N.M. 87504

1 Phone: 986-6200

2 Fax: 986-6362

3

4 County Attorney

5 Santa Fe County

6 P.O. Box 276

7 Santa Fe, N.M. 87504

8 Phone: 986-6279

9 Fax: 986-6362

10

11

12 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of

13 Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its

14 duly authorized representatives as of the date specified below.

15 

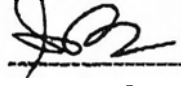
16

17 Chairman,

18 Board of Santa Fe County Commissioners

1-12-05

Date

19 

20

21 Approved as to form

22 Santa Fe County Attorney

1-11-05

Date

23 

24 Valerie Espinoza

25 Santa Fe County Clerk

1/11/05

Date



26

27

28

29

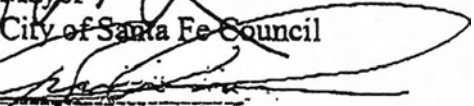
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31 Mayor

32 City of Santa Fe Council

1-15-05

Date

33 

34

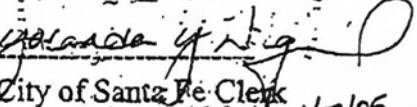
35

36 Approved as to form

37 City of Santa Fe Attorney

1/14/05

Date

38 

39 City of Santa Fe Clerk

40 City 1/12/05

1-18-05

Date

Kyle took for
DFA's signature
1-28-05

ITEM # 05-0042

Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project

This Joint Powers Agreement ("Agreement") is entered into pursuant to the Joint Powers Agreement Act, NMSA 1978, Section 11-1-1 through 11-1-7 by and is entered into by and between the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico and the County of Santa Fe ("County"), a political subdivision of the State of New Mexico, as of the effective date defined below.

Recitals

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and

WHEREAS, the City and County recognize that the use of SJCP water will be directly available to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the future; and

WHEREAS, in a joint meeting of the City of Santa Fe Council and County of Santa Fe Board of Count Commissioners held on October 7, 2004, the respective governing bodies approved the Regional Water Resource and Buckman Direct Diversion Principles of Agreement; and

WHEREAS, this Joint Powers Agreement is intended to begin implementation of those provisions of the October 7, 2004 Agreement concerning the Buckman Direct Diversion Project; and,

WHEREAS, it is in the best interest of the citizens of the City and the County that the City and the County jointly undertake to plan, fund, construct, operate, manage and own the Buckman Direct Diversion Project.

NOW, therefore, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the adequacy of which is acknowledged by the parties, the County and City agree as follows:

Definitions. Capitalized words or phrases used in this Agreement, as defined below, shall have the following meanings:

afy means acre feet per year.

Agreement means this "Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project".

BDD Board means the governing board of directors of the BDD Project as established by the this Agreement.

1 **BDD Project** means the planned Buckman Direct Diversion Project which will divert surface
2 water from the Rio Grande at Buckman, as described in the draft Environmental Impact
3 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity
4 of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works
5 used to deliver water to the respective Independent Water Systems of the City and County.

6
7 **BOR** means the United States Bureau of Reclamation.

8
9 **Design Build Contract** means a contract entered into between the BDD Board and the Design
10 Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.

11
12 **Design Build Contractor** means the contractor hired pursuant to the Design Build Contract to
13 design and build the BDD Project.

14
15 **Facility Operations and Procedures Agreement (FOPA)** means the agreement between the City,
16 the County and Las Campanas governing the operations and procedures of the BDD Project.

17
18 **Independent Water System** means the respective water works of the City and the County, as
19 such works exist now and as such works may change or expand in the future.

20
21 **ISC** means the New Mexico Interstate Stream Commission..

22
23 **Owners' Consultant** means a consultant specializing in providing professional services to the
24 Project Owners to manage and oversee the design build process on a public water project on
25 behalf of the Project Owners, including, but not limited to, providing all professional services for
26 the Project Owners that are necessary to fully develop, procure, design, construct and initially
27 operate the BDD Project.

28
29 **Owners' Consultant Contract** means the contract between the City and the County as Project
30 Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.

31
32 **OSE** means the New Mexico Office of the State Engineer.

33
34 **Project Management and Fiscal Services (PMFS) Contract** means a contract between the
35 BDD Board and the Project Manger for the provision of the management and fiscal services as
36 described in Section 12 of this Agreement.

37
38 **Project Manager** means the designated entity that provides the management and fiscal services
39 as required by the PMFS Contract.

40
41 **Project Owners** means the City and County.

42
43 **Regional Entity** means an entity which includes both the City and County that seeks to

1 cooperatively manage water supply and delivery from the BDD Project on a regional basis.

2
3 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605 acre-feet
4 per year acquired by the City and the County under contract with the U.S. Bureau of
5 Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or
6 replaced.

7
8 **Sangre de Cristo Water Division** means the operating water utility division of the City's
9 Independent Water System.

10
11 **Water Resources Agreement** means the "Water Resources Agreement between the City of
12 Santa Fe and the County of Santa Fe", executed contemporaneously with this Agreement.

13 14 Agreement

15
16 **1. Purpose.** The purpose of this Agreement includes the formation of the BDD Board to oversee
17 the BDD Project and the establishment of the terms and conditions governing the ownership,
18 planning, procurement, financing, permitting, design, construction, operations, allocation of
19 capacity and management of the BDD Project.

20
21 **2. Ownership.** The City and the County shall each own fifty percent (50%) of the BDD Project,
22 subject to Section 15 of this Agreement.

23
24 **3. Establishment of the BDD Board.** The City and the County hereby establish the BDD Board
25 and delegate to it all powers, necessary or implied, to oversee the planning, procurement,
26 financing, permitting, design, construction, operations and management of the BDD Project. The
27 BDD Board's responsibilities for operations and management include the duty and authority to
28 maintain, repair, replace and obtain approvals for the BDD Project.

29
30 **4. Responsibilities and Duties of the BDD Board.** It shall be the duty of the BDD Board to
31 divert, treat, transmit and deliver Rio Grande surface water by means of the BDD Project to the
32 City and the County Independent Water Systems in accordance with their respective diversion
33 allocations and delivery demands. Such powers and duties are subject to the limits and
34 conditions provided in this Agreement.

35
36 The BDD Board shall manage the Owners' Consultant Contract and supervise the performance
37 of the Owners' Consultant, as provided in Section 10 of this Agreement.

38
39 The BDD Board shall enter into the Design Build Contract and supervise performance of the
40 Design Build Contractor, as provided in Section 11 of this Agreement.

41
42 The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract
43 and supervise the performance of the Project Manager, as provided in Section 12 of this

1 Agreement.

2
3 The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with
4 Las Campanas, as provided in Section 15 of this Agreement.

5
6 **5. Appointment of BDD Board Members and Chairperson.** The BDD Board shall be
7 managed by a board of directors organized and comprised as follows:

8
9 Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's
10 Mayor with the approval of the Governing Body. The members shall serve for such a period as
11 may be determined from time to time by the Mayor with the approval of the Governing Body.
12 The Mayor may appoint, with the approval of the Governing Body, a third member of the
13 Governing Body to serve as an alternate in the event one of the two regular members is unable to
14 attend a BDD Board meeting.

15
16 Two members of the Board of Santa Fe County Commissioners shall be appointed and approved
17 by the Board of Santa Fe County Commissioners. The members shall serve for such period as
18 may be determined from time to time by the Board of Santa Fe County Commissioners. The
19 Board of Santa Fe County Commissioners may appoint a third member of the Board of Santa Fe
20 County Commissioners to serve as an alternate in the event one of the two regular members is
21 unable to attend a BDD Board meeting.

22
23 One citizen member at large shall be appointed by a majority vote of the four other members for
24 a two-year term and who may be re-appointed without limit. Prior to the end of any term, the
25 citizen member may only be removed by unanimous action of the four other members. In the
26 event that the citizen member's term expires but a citizen member has not been appointed for the
27 following term, the citizen member shall continue to serve as a member of the BDD Board for an
28 additional sixty (60) days. After the expiration of the citizen member's term and if the BDD
29 Board has not appointed a citizen member within the sixty-day period, the Chief Judge of the
30 First Judicial District Court shall appoint that member.

31
32 Upon the expiration of a term of office or on account of death, illness, resignation, or three
33 consecutive absences from duly called meetings, the entity that appointed the director shall
34 thereupon appoint a director to the new term or to complete the term vacated. The BDD Board
35 shall be duly constituted and established upon appointment of the citizen member and election of
36 the chairperson and chairperson pro-tempore. The BDD Board shall annually elect a chairperson
37 and a chairperson pro-tempore for the purposes of holding meetings, doing business and
38 executing documents as required and consistent with the terms of this Agreement.

39
40 Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-
41 Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this
42 Agreement.

1 **6. Meetings of the BDD Board.** The BDD Board shall have at least one regularly scheduled
2 meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A
3 quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board
4 members is present. A simple majority of BDD Board members who are present at a duly called
5 meeting of the BDD Board at which a quorum is present shall act for the BDD Board with
6 respect to all matters brought before the BDD Board at that meeting.

7
8 **7. BDD Board Annual Budget.** Each year the BDD Board shall prepare and recommend an
9 annual budget, which shall be finalized for recommendation after a public hearing and shall not
10 be formally adopted or implemented unless and until it is approved by each of the governing
11 bodies of the City and the County. If, for any reason, the BDD Board fails to have an approved
12 annual budget for a fiscal year as of the first day of that year, the annual budget for the prior
13 fiscal year shall be effective for the subsequent fiscal year until such time as an annual budget is
14 adopted and approved for the subsequent fiscal year.

15
16 **8. BDD Project Financing.** The BDD Board may apply for grants, loans, financial guarantees,
17 and other financial assistance from private or public sources. The BDD Board shall not obligate
18 itself by loan or encumber the BDD Project or any other real property or assets held or owned by
19 it, unless and until each of the governing bodies of the City and the County approves such loan or
20 encumbrance.

21
22 **9. Limits of BDD Board Authority.** The BDD Board's authority and duties do not encompass
23 the distribution of water to customers, the assessment or collection of water charges, the
24 regulation of water use by customers or the ownership, acquisition or permitting of use of water
25 rights or contract water rights. Those functions, and any others not delegated by this Agreement,
26 are reserved to the City and County in the supervision and operation of their respective
27 Independent Water Systems.

28
29 **10. Owners' Consultant.** The City and the County agree to execute the Owners' Consultant
30 Contract as expeditiously as possible. Once the BDD Board is established, the City and the
31 County shall assign to the BDD Board the authority to approve any necessary changes in the
32 Owners' Consultant Contract. The Owners' Consultant shall thereafter report to the BDD Board.
33 The day-to-day oversight of the Owners' Consultant will be performed by the Project Manager,
34 Section 12, of this Agreement.

35
36 **11. Design Build Contractor.** The City and the County delegate to the BDD Board the authority
37 to enter into the Design Build Contract. The BDD Board shall have the authority to approve any
38 necessary changes in the Design Build Contract. The Design Build Contractor shall report to the
39 BDD Board. The day-to-day oversight of the Design Build Contractor shall be performed by the
40 Project Manger, Section 12 of this Agreement.

41
42 **12. Project Management and Fiscal Services.** The City and the County delegate to the BDD
Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible

for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the design and construction of the BDD Project; (3) the operation and management the BDD Project after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for the Owners' Consultant Contract, Design Build Contract, and all other fiscal services related to the design, procurement, construction, operation and maintenance of the BDD Project, including managing all revenues, maintaining all accounts, procuring necessary property, goods and services, and receiving and disbursing all funds. The Project Manager will report directly to the BDD Board, and the BDD Board shall have authority to supervise the performance of the Project Manager.

The PMFS Contract shall contain a fee schedule for the fiscal agent services to be provided under the PMFS Contract. It shall, at a minimum, specify that funds of the BDD Project shall be held in one or more separate accounts and shall not be commingled with the funds of any of the parties to this Agreement, and shall specify that the Project Manager may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds. The PFMS Contract shall specify the types and threshold amounts of expenditures that require approval of the BDD Board in advance.

13. Designation of Project Manager. The City and County agree that the Sangre de Cristo Water Division will be the initial Project Manager and that the BDD Board shall enter into the PMFS with the City.

Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board shall have authority to enter into a new PMFS Contract with any one of the following: (1) Sangre de Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.

After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the functions performed under the PMFS Contract may continue to be combined in a single new PMFS Contract or may be separated into two or more replacement PMFS Contracts.

14. BDD Project Capacity Allocation. In accordance with the Environmental Impact Statement for the BDD Project the 8,730 afy of diversion capacity of the BDD Project shall be allocated as follows: 5,230 afy to the City, 1,700 afy to the County, and 1,800 afy to Las Campanas. Each entity's diversions shall be based upon its own water right or contract right and each entity is responsible for acquisition and maintenance of its own water rights.

15. Inclusion of Las Campanas. The 1,800 afy allocation of BDD Project capacity reserved for Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as part of the Facility Operations and Procedures Agreement.

1
2 **16. Cost Sharing for Design and Construction Costs for the BDD Project.** The City and
3 County agree to contribute \$30 million each to design and construct the BDD Project. The City
4 and the County shall disburse funds in accordance with the annual budget duly approved by
5 them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the
6 BDD Board, and contributions to support the budget shall be incorporated in each of the parties'
7 annual budgets.
8

9 The City and the County agree to seek additional State and Federal assistance to help pay for the
10 costs of the Project. As part of the Facility Operations and Procedures Agreement, the City and
11 County intend that Las Campanas will pay for its proportionate share of that part of the system
12 allocated to its use (the diversion structure, sediment pond and related infrastructure). After
13 applying the City's and County's combined \$60 million contribution, all state and federal
14 financial assistance, the contribution of Las Campanas and any other funding, the City and
15 County agree to contribute equally to pay the balance of design and construction costs.
16

17 An accounting of the City and County contributions already made towards Project costs that shall
18 be credited towards the City and County's respective contribution requirements shall be made a
19 part of the PMFS Contract.
20

21 **17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable
22 and necessary costs and expenses attributable to the operation and maintenance of the BDD
23 Project shall be included by the BDD Board in its annual budget and shall be apportioned among
24 the parties and Las Campanas. The BDD Board shall determine periodically which costs are
25 fixed and which are variable or proportionate.
26

27 The costs of operating, maintaining and repairing the BDD Project that can be attributable to
28 each party's variable or proportionate share of water deliveries (such as electrical costs) shall be
29 shared according to each party's proportionate share of water deliveries.
30

31 The costs of operating, maintaining and repairing the Project that are fixed or capital costs and
32 that are attributable to the facility as a whole shall be shared equally by the City and County after
33 applying any contribution by others, including Las Campanas.
34

35 **18. Term.** The date on which this Agreement shall be effective shall be the date on which this
36 Agreement is approved. This Agreement shall become effective upon approval of the
37 Department of Finance and Administration, State of New Mexico. This Agreement shall be in
38 effect from the effective date through the date of termination, as provided in Section 19 of this
39 Agreement.
40

41 **19. Termination.** The parties may terminate this Agreement only by the formal action of the
42 Governing Body of the City of Santa Fe and the Board of County Commissioners.

1 If upon termination of this Agreement, a successor public entity is authorized to carry on the
2 activities of the BDD Board and assume its rights, obligations and responsibilities, then such
3 rights, obligations and responsibilities shall be transferred to the successor public entity in
4 accordance with law. If upon termination of this Agreement and a successor public entity is not
5 authorized to carry on the activities of the BDD Board, then any property, rights and assets of the
6 BDD Board (other than the BDD Project) shall be divided among the parties according to the
7 respective contributions (ownership interests) of the parties.
8

9 **20. Strict Accountability, Records, Audits, Reports.** As provided in NMSA 1978 Section 11-
10 1-4 (as amended), the BDD Board and the parties hereto shall be strictly accountable for all
11 receipts and disbursements, and shall maintain adequate, complete and correct records and
12 statements pertaining to receipts, disbursements, and other financial matters pertaining to the
13 Project. Each year, the Project Manager shall cause an annual audit of the BDD Project to be
14 performed by an independent certified public accountant; the audit shall be provided to each of
15 the City and the County and shall be made available to the public. The records and statements
16 prepared by the BDD Board pursuant to this paragraph shall be open to inspection at any
17 reasonable time by the parties hereto, their accountants and agents. Within ninety (90) days after
18 the end of each fiscal year, the BDD Board shall prepare and present to the parties a comprehensive
19 annual report of the BDD Board's activities and finances during the preceding year. The BDD
20 Board shall prepare and present such reports as may be required by law, regulation or contract to
21 any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such
22 reports and accounting as the parties hereto may from time to time request.
23

24 **21. Amendment.** This Agreement may not be modified, amended, supplemented or rescinded
25 except by a written agreement executed by each of the City and the County in the manner in
26 which this Agreement was executed by the City and the County.
27

28 **22. Severability.** The provisions of this Agreement shall be interpreted and construed so as to be
29 consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void,
30 voidable or otherwise unenforceable the remainder of this Agreement shall continue in full force
31 and effect and only so much of this Agreement as is necessary shall be separated herefrom and
32 made unenforceable.
33

34 **23. Insurance.** The BDD Board shall obtain and carry public liability insurance coverage
35 (including directors and officers coverage) consistent with its responsibilities as a public entity
36 under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* and with combined
37 single limits of no less than \$1,000,000. The BDD Board shall carry and maintain fire and
38 extended insurance coverage on all of the BDD Project buildings, structures and improvements,
39 and upon all of the contents and other personal property. The Public Liability insurance policy
40 shall provide occurrence-based coverage against losses arising out of all operations conducted
41 on the premises, contractual liability coverage, crime, automobile, directors' and officers'
42 coverage, and other appropriate coverages. The BDD Board shall also carry and maintain
43 workers' compensation insurance (or create and administer a program of self insurance approved

1 by the Director of the Workers' Compensation Administration) that complies with the
2 requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et
3 seq., if applicable. The expense of obtaining and maintaining the required insurance shall be
4 included in the annual budget of the BDD Board. The insurance provided for under this Section
5 shall be maintained in full force and effect throughout the duration of this Agreement. A copy of
6 any insurance policy shall be provided to any party at the party's request.

7
8 **24. Liability.** No party hereto shall be responsible for liability incurred as a result of one of the
9 other party's acts or omissions in connection with this Agreement. Any liability incurred in
10 connection with this Agreement shall be subject to the privileges and immunities of the New
11 Mexico Tort Claims Act (as amended).

12
13 **25. Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create
14 in the public, any member thereof, or any person, any rights whatsoever such as, but not limited
15 to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to
16 maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

17
18 **26. Dispute Resolution.** The City and County agree to use any and all methods of dispute
19 resolution, up to and including binding arbitration, to resolve any conflicts arising under this
20 Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall
21 be first discussed by representatives of each party having the authority, if necessary, to bind the
22 party that they represent. Such representatives shall use their best efforts to amicably and
23 promptly resolve the dispute. If the parties are unable to resolve the dispute through informal
24 mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving
25 rise to the dispute, either party may give notice to the other party that the dispute is to be
26 submitted to binding arbitration. Any dispute requiring notice shall be reported to the
27 next meeting of the respective City and County governing bodies. Such notice shall contain the
28 name of a proposed arbitrator, and in the event the other party does not agree with the proposed
29 arbitrator, the model guidelines of the American Arbitration Association shall be used to select
30 an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of
31 the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be
32 appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's
33 award shall be binding on the parties.

34
35 **27. Entire Agreement.** This Agreement contains the Entire Agreement between the City and
36 County with regard to the matters set forth herein.

37
38 **28. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the
39 parties and their respective representatives, successors, and assigns.

40
41 **29. Counsel.** The City and County acknowledge that they have freely entered into this
42 Agreement with the advice of their respective legal counsel.

1 **30. Other Documents.** The parties agree to execute such further and other agreements as
2 reasonably may be required from time to time to carry out the provisions of this Agreement.

3
4 **31. Law.** The laws of the State of New Mexico shall govern this Agreement.

5
6 **32. Notices.** Any notice, demand, request, or information authorized or related to this
7 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
8 delivered or faxed as follows:

9
10 **To the City:** Director of the Sangre de Cristo Water Division
11 City of Santa Fe
12 PO Box 909
13 Santa Fe, NM 87501
14 Phone: 955-4200
15 Fax: 955-4352

16
17 **With a copy to:** City Manager
18 City of Santa Fe
19 PO Box 909
20 Santa Fe, NM 87501
21 Phone: 955-6509
22 Fax: 955-6683

23
24 City Attorney
25 City of Santa Fe
26 PO Box 909
27 Santa Fe, NM 87501
28 Phone: 955-6511
29 Fax: 955-6748

30
31 **To the County:** Santa Fe County Utilities Director
32 Santa Fe County
33 205 Montezuma
34 Santa Fe, N.M. 87505
35 Phone: 986-6210
36 Fax: 992-8421

37
38 **With a copy to:** County Manager
39 Santa Fe County
40 P.O. Box 276
41 Santa Fe, N.M. 87504
42 Phone: 986-6200
43 Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

1-12-05
Date

Approved as to form
Santa Fe County Attorney

1-11-05
Date

Valerie Espinoza
Santa Fe County Clerk

1/11/05
Date

Larry A. Delgado
Mayor
City of Santa Fe Council

1-15-05
Date

Approved as to form
City of Santa Fe Attorney

1-14-05
Date

Yolanda G. Nigam
City of Santa Fe Clerk

1-18-05
Date

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration

By: _____
Date: _____

