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NOVEMBER 2007
AGREEMENT OF THE NEW MEXICO INTERSTATE STREAM COMMISSION AND THE
COLORADO WATER CONSERVATION BOARD TO PROVIDE FUNDS FOR WEATHER
MODIFICATION PROGRAMS IN SOUTHWESTERN COLORADO

This Agreement between the New Mexico Interstate Stream Commission (Commission) and the Colorado Water Conservation Board (Board) facilitates weather modification programs for the San Juan Mountains within the State of Colorado (Parties).

The Commission and Board enter into this Agreement to extend, expand or modify weather modification programs in the San Juan Mountains in southwestern Colorado so as to result in increased water supply available for use in Colorado and New Mexico within the San Juan River Basin above Shiprock, New Mexico, and improve water supply within the Colorado River System at and above Lake Powell, Arizona-Utah. This Agreement furthers the April 23, 2007, Agreement Concerning Colorado River Management and Operations entered into by each of the Colorado River Basin States. The weather modification activities to be implemented through this Agreement consist of acquiring and installing generators, cloud seeding appropriate orographic storms, reporting cloud seeding efforts, and undertaking other activities to increase precipitation in the Eastern San Juan target area and parts of the Western San Juan target area of the San Juan/Dolores River Basin weather modification program as identified in this Agreement or any amendments thereto.

This Agreement consists of a base Agreement and any amendments in the form of Exhibits and incorporated by reference that describe weather modification activities and funding levels for a given water year.

RECITALS

A. Parties.

1. The Commission pursuant to NMSA 1978, Section 72-14-3, is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise.
2. The Board is a division of the State of Colorado, Department of Natural Resources, created for the purpose of aiding in the protection and development of the waters of the State of Colorado. The Board is responsible for administering the weather modification programs within the State of Colorado, pursuant to C.R.S., Section 36-20-101, et seq.

B. Background.

1. On May 2, 2005, the Secretary of the Interior announced her intent to undertake a process to develop Lower Basin shortage guidelines and explore management options for the coordinated operation of Lakes Powell and Mead under low reservoir conditions. On June 15, 2005, the Bureau of Reclamation published a notice in the *Federal Register*, announcing its intent to implement the Secretary's direction.
2. On August 25, 2005, the Governors' Representatives for the seven Colorado River Basin States wrote a letter to the Secretary of the Interior expressing conceptual agreement in the development and implementation of three broad strategies for improved management and operation of the Colorado River:

coordinated reservoir management under low reservoir conditions and Lower Basin shortage guidelines, system efficiency and management, and augmentation of supply.

3. In furtherance of the August 25, 2005, letter, the Governors' Representatives for the seven Colorado River Basin States via letter dated February 3, 2006, forwarded to the Secretary of the Interior a preliminary proposal for coordinated operations of Lakes Powell and Mead and for Lower Basin shortage criteria for an interim period. The February 3, 2006 letter also contained a draft agreement among the Basin States addressing the preliminary proposal and concurring in the pursuit of projects to improve system efficiency, conserve water and augment system water supplies.

4. On February 28, 2007, the Bureau of Reclamation issued the Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, which included a Basin States' Alternative that incorporated the key elements of the seven Colorado River Basin States' February 3, 2006, preliminary proposal.

5. The Governors' Representatives for the seven Colorado River Basin States entered into an Agreement Concerning Colorado River Management and Operations effective April 23, 2007. The Basin States' agreement finalized the Colorado River Basin States' February 3, 2006, draft agreement. On April 30, 2007, the Basin States submitted to the Secretary of the Interior their final proposed alternative, which incorporated and provided further definition to each of the elements of the February 3, 2006, preliminary proposal and the Basin States' Alternative in the February 28, 2007, Draft Environmental Impact Statement.

6. The New Mexico State Engineer via letter dated June 6, 2006, to the Upper Colorado River Commissioner expressed the State of New Mexico's continued willingness to work with the State of Colorado and through the seven Colorado River Basin States process to identify and help bring to fruition water augmentation opportunities, including implementation of weather modification programs, throughout the Colorado River Basin.

7. In a letter dated April 5, 2007, the Southwestern Water Conservation District, a political subdivision of the State of Colorado, requested that the State of New Mexico budget funds to provide financial assistance for weather modification programs to augment snowpack in the San Juan Mountains within Colorado for the 2007-2008 winter season so as to increase water supplies in the San Juan River and its tributary streams in 2008 for the benefit of water users in the San Juan River Basin in both Colorado and New Mexico.

8. In furtherance of the Basin States' letter of April 30, 2007, the New Mexico State Engineer's letter of June 6, 2006, and the Southwestern Water Conservation District's request of April 5, 2007, the Commission and the Board have reached agreement to take additional actions for their mutual benefits, which actions are designed to increase the water supply in Colorado and New Mexico within the San Juan River Basin drainage above Shiprock, New Mexico, and to augment the water supply of the Colorado River System below Shiprock.

C. Guiding Principles.

1. States in the Upper Colorado River Basin have implemented a variety of existing operational and experimental weather modification programs within the Colorado River Basin. These programs are funded, operated and regulated at the state and local level.

2. The Board has established a weather modification program within the State of Colorado (C.R.S. §36-20-102 et al.). The Board receives appropriations for the program from the Colorado Legislature, which has also determined that the Board may accept funds from other entities (C.R.S. §37-60-121).
3. Appropriately designed winter season orographic weather modification programs may increase winter snowpack in the Colorado River Basin. Such increases in snowpack within the San Juan Mountains may increase water supply within the San Juan River Basin and the entire Colorado River System by increasing precipitation and runoff.
4. Water users in the San Juan River Basin within the States of Colorado and New Mexico directly benefit from any increase of water supply in the San Juan River above Shiprock due to cloud seeding programs targeting the San Juan Mountains. Other Colorado River Basin States also benefit either directly or indirectly from any increase of water supply in the Colorado River System.
5. Detailed efforts to quantify the effectiveness of weather modification may be appropriate to conduct. However, activities funded through this Agreement will not include analyses linking specific cloud seeding measures to flow in the Colorado River, the San Juan River or their tributaries.
6. Economic benefits can be derived for the people of Colorado from weather modification. Operations, research, experimentation and development in the field of weather modification shall therefore be encouraged. In order to minimize possible adverse effects, weather modification activities shall be conducted with proper safeguards, and accurate information concerning such activities shall be made available for purposes of regulation (C.R.S. § 36-20-102).
7. The Board has regulatory authority over cloud seeding operators within the State of Colorado. The Board reviews specific proposals for orographic cloud-seeding and issues permits for those proposals that meet specific criteria, including lack of substantial harm to the environment or to other water users (C.R.S. § 36-20-112).
8. Notwithstanding these safeguards, there may be risks associated with cloud seeding that are outside the current state of scientific knowledge. The Commission and the Board agree to consult to identify and assess any reasonably foreseeable impacts that might arise. In addition, the Commission and the Board will consider funding measures to address or otherwise mitigate effects should they materialize.
9. It is not the intent of this Agreement to allow the Parties to claim a right to any increase in water supply or use resulting from weather modification programs funded herein. Any increase in water supply resulting from these programs is considered Colorado River System water, the use of which is subject to the provisions of the Colorado River Compact and the Upper Colorado River Basin Compact.
10. Although the primary use of the funds collected pursuant to this Agreement is for increasing the water supply of the drainage of the San Juan River above Shiprock, New Mexico, and the Colorado River System, nothing in this Agreement shall be construed to prevent the Board from expending Funds in future years as identified in future Exhibits or from expending Funds in other basin programs besides the San Juan River Basin if the Parties agree.

AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Commission and the Board agree as follows:

1. Recitals. The Recitals set forth above are material facts that are relevant to and form the basis for the Agreement.
2. Definitions. As used in this Agreement, the following terms have the following meanings:
 - A. Activities. Those weather modification practices, performances, transactions, studies, research, operations, or other actions undertaken pursuant to this Agreement or any amendments thereto.
 - B. Colorado River System. This term shall have the meaning as set forth in Article II(a) of the Colorado River Compact of 1922 and as interpreted by any federal court having jurisdiction within the Ninth or Tenth Circuits of the United States Courts.
 - C. Evaluations. Scientific studies to assess the effectiveness of Operations in increasing snowpack.
 - D. Exhibits. A description of Operations, Evaluations and other Activities and funding commitments for a Water Year, to be executed by the Parties as an amendment to this Agreement.
 - E. Funds. Those monies contributed by the Commission to the Board for its administration and disbursement for Activities pursuant to this Agreement.
 - F. Operations. Winter orographic cloud seeding by professional operators which hold permits granted by the Board, excluding cloud seeding conducted for purposes other than increasing snowfall.
 - G. Parties. The parties to this Agreement, being the Commission and the Board.
 - H. Sponsors. Local agencies within the State of Colorado which fund or help fund cloud seeding projects in their service areas or areas of jurisdiction.
 - I. Water Year. The period of time from October 1 of any calendar year for a twelve-month period ending September 30 of the next calendar year.
3. Consistency with Existing Law. The Parties intend that the implementation of this Agreement, and any uses of water resulting from Operations under this Agreement, be consistent with existing law, including but not limited to the Colorado River Compact, the Upper Colorado River Basin Compact, the La Plata River Compact, the Animas-La Plata Project Compact, and the Colorado River Basin Project Act of 1968.
4. Reaffirmation of Existing Law. Nothing in this Agreement is intended to, nor shall this Agreement be construed so as to, diminish or modify the rights or entitlements of either Party, or of water users, under existing law to waters from the Colorado River System, including from the San Juan River system.
5. Term. The term of this Agreement begins on the date of the last Party's execution of this Agreement. The term of this Agreement ends on September 30, 2012, unless this Agreement is terminated prior to the end date as set forth in Paragraph 14.

6. Funding. The Commission agrees to provide funding for weather modification Activities in the State of Colorado as provided by this Agreement. The Commission will not make administrative or other decisions regarding certification or implementation of Activities undertaken through this Agreement.

6.1 The Board shall deposit all monies contributed by the Commission for Activities under this Agreement into a separate account within the Board's Construction Fund established pursuant to Colorado law.

6.2 Any funds provided to the Board pursuant to this Agreement which are unused and uncommitted by the end of a Water Year shall be moved to the next Water Year and credited against future Operations in accordance with the terms of this Agreement and any amendments thereto.

6.3 The Board shall keep full and complete records of Funds and expenditures made pursuant to this Agreement and its Exhibits according to commonly accepted standards of accounting. These records shall be available for inspection, audit and reproduction by the Commission without charge during normal business hours. At the end of each Water Year, the Board shall provide an itemized statement to the Commission documenting how the Funds were spent, and any credits that are available to be applied to the next Water Year should Funds received exceed expenditures made.

6.4 The Parties agree that the Commission will not fund any weather modification practices, performances, transactions, studies, research, operations or similar activities outside of this Agreement with any Colorado public entity unless such activities are specifically approved in writing by the Board.

6.5 The Board shall expend Funds contributed by the Commission only for Activities identified in the Exhibits.

6.6 The annual availability of funds for the Commission to contribute to Activities under this Agreement is subject to annual appropriations by the New Mexico Legislature and annual approval by the Commission. Nothing in this Agreement shall bind the New Mexico Legislature to make appropriations in any year to fund Activities under this Agreement. Also, nothing in this Agreement shall bind the Commission to contribute any amount of funds in Water Year 2008 or succeeding years; except, that the Commission may enter into an agreement to contribute funds for Activities in any Water Year as may be provided in an Exhibit pursuant to Paragraph 9 below.

6.7 To the extent that the Commission may receive funds from quasi-governmental or governmental entities to effectuate this Agreement, the Board shall be authorized under this Agreement to accept those funds directly from said entity.

7. Services to be Performed. The Board shall provide the services of its staff to perform and carry out the duties and responsibilities required under this Agreement at no additional cost to the Commission.

7.1 The Operations services to be performed under this Agreement will be performed only by entities permitted by the Board for weather modification. Copies of the permits for each weather modification project that is subject to this Agreement will be provided to the Commission. A description of the Operations, generally, to be performed for each Water Year shall be included in any Exhibit to this Agreement.

7.2 Any Evaluations to be conducted as part of any Water Year Activities will be performed as described in the Exhibits.

7.3 Routine and daily communications under this Agreement shall be between the Director of the Board and the Director of the Commission, or their designees. Each Party may change its designated contact person by written notification to the other Party.

8. Commencement and Completion of Services. The Parties may provide input and review on major features of the Activities, including costs, schedules and any other items or proposed decisions that will have a direct impact on the proposed Activities funded pursuant to this Agreement and its Exhibits.

9. Exhibits. Yearly Operations shall be described in Exhibits as may be duly executed by the Parties. These Exhibits to the Agreement shall describe the Activities in Colorado to be implemented in any Water Year, and shall contain at a minimum: (1) a description of that Water Year's cloud seeding objectives; (2) the amount of financial contributions from the Commission; and (3) a budget and implementation schedule for the Water Year.

10. Modification. This Agreement or any amendments thereto may be supplemented, amended or modified only by written agreement.

11. Joint Defense Against Third Party Claims. The Parties may in the future enter into an agreement for joint defense against third party claims.

12. Liability.

12.1 The Board shall ensure that each of its weather modification vendors maintains a valid general liability insurance policy for \$1,000,000, adds the Parties as insured parties as part of the vendor's insurance policy, and provides verification of such to the Commission.

12.2 No Party, its directors, officers, agents, employees or authorized volunteers shall be responsible for any damage or liability occurring by reason of an act or omission of the other Party in connection with any work, obligation, authority, or any criteria arising out of this Agreement.

13. Governing Law. Nothing in this Agreement is intended to conflict with the laws of the State of Colorado. In the event a court of competent jurisdiction determines that there is a conflict between Colorado law and this Agreement, Colorado law shall prevail; provided, that if a court of competent jurisdiction determines there is a conflict between Colorado law and federal law under this Agreement, federal law shall prevail.

14. Termination. This Agreement may be terminated and weather modification permits may be modified or terminated as follows:

14.1 Nothing herein shall limit the ability of either the Colorado Director of Natural Resources or the Board's Director to immediately modify, temporarily suspend, or revoke a weather modification permit in accordance with Colorado law (C.R.S. § 36-20-115). If a permit is so modified, temporarily suspended, or revoked, the Board's Director will notify the Commission within ten days, and the Parties will consult to determine whether a new amendment to this Agreement is necessary.

14.2 This Agreement may be terminated in its entirety by written agreement of the Parties, or by either Party giving thirty (30) days written notice of such termination to the other Party. Unilateral termination of this Agreement by the Commission will result in forfeiture of all Funds paid to the Board by the Commission, whether spent or not; otherwise, the Board within thirty (30) days of termination of this Agreement will refund to the Commission all Funds not expended as of the effective date of termination.

15. Availability of Information.

15.1 For Activities performed under this Agreement, all information and data obtained or developed by the Board and its operators pursuant to the terms and conditions of their permit, and between the Board and its vendors as allowed by their contracts, shall be available upon request, except where prohibited by law, to the Commission without further charge. Use of said reports, data and information shall appropriately reference the source of such information.

15.2 The Parties recognize that the information obtained or developed from Activities performed under this Agreement, exclusive of intra-governmental communications, may be public information that is available for release upon request.

16. Counterparts. This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument with the same force and effect as though all signatures appeared on a single document.

17. Integrated Agreement. This Agreement, and the Exhibit(s), contain the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral.

18. Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement and its Exhibit(s). A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

19. Third-Party Beneficiaries. This Agreement is made for the benefit of the Parties, of water users from the San Juan River stream system in Colorado and New Mexico, and of the Colorado River System as a whole. Nonetheless, no Party to this Agreement intends for this Agreement to confer any right or entitlement to benefits from this Agreement upon any person or entity that is not a signatory to this Agreement upon a theory of third-party beneficiary or otherwise.

20. Assignment. No Party may assign its rights or obligations under this Agreement to another person or entity without written consent of the other Party.

21. Notices and Authorized Representatives.

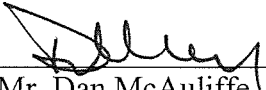
21.1 Notice given pursuant to the provisions of this Agreement, or which is necessary to carry out its provisions, must be in writing and delivered personally to whom the notice is to be given, or mailed, postage prepaid, addressed to that authorized representative. The Parties' authorized representatives and their addresses for this purpose are as follows:

Mr. Estevan Lopez, Director
New Mexico Interstate Stream Commission
Post Office Box 25102
Santa Fe, New Mexico 87504-5102

Mr. Dan McAuliffe, Acting Director
c/c Mr. Joe Busto, Weather Modification Program
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203


21.2 Any Party may change the address or addressee to which communications or copies are to be sent by giving notice of such changes of address or addressee to the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement.




Mr. Dan McAuliffe, Acting Director
Colorado Water Conservation Board

11/30/07
Date



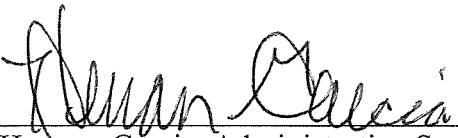
Mr. Estevan Lopez, Director
New Mexico Interstate Stream Commission

11/27/07
Date



Ms. Tanya Trujillo, General Counsel
New Mexico Interstate Stream Commission

11/15/07
Date



Mr. Herman Garcia, Administrative Services Director
New Mexico Office of the State Engineer/ISC

19 Nov 07
Date