



# **INTERSTATE STREAM COMMISSION MEETING**

**Office of the State Engineer  
5550 San Antonio Drive NE  
Albuquerque, New Mexico**

**December 6, 2018**

**New Mexico Interstate Stream Commission Meeting Notice  
Final Draft Agenda**

Office of the State Engineer/Interstate Stream Commission Conference Room  
5550 San Antonio Drive NE, Albuquerque, New Mexico

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**December 6, 2018 – 9:00 a.m. to 12:50 p.m.**

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- I. **Opening Business – 9:00am – 10:05am**
  - A. Call to Order
  - B. Pledge of Allegiance
  - C. Approval of the Agenda
  - D. Approval of the Minutes from the November 16, 2018 Meeting
  - E. Public Comment
  - F. Secretary Report
  - G. Staff Report
  - H. Introduction of new NMISC staff
  
- II. **Presentation by NMISC staff and request Commission adoption of:**
  - A. Presentation on the 2018 State Water Plan, and;
  - B. Request adoption of the 2018 State Water Plan  
**10:05am – 10:25am – Lucia Sanchez**
  
- III. **Request by NMISC staff for Commission authorization of:**
  - A. NMISC Contract Manager to execute and submit to the State Purchasing Division for final approval Amendment #1 to Contract No. 80-550-17-00750, with Kiewit New Mexico Co., to extend the term of the contract for On Call River Channel Maintenance Services.  
**10:25am – 10:30am Marcos Mendiola**
  
- IV. **Presentation by Pecos Valley Artesian Conservancy District and NMISC staff on:**
  - A. Development of a possible Pecos Basin Water Bank  
**10:30am – 10:50am – Hannah Riseley-White and Aron Balok, PVACD Superintendant**
  
- V. **Request by NMISC staff for Commission concurrence:**
  - A. in the State Engineer executing all documents related to Drought Contingency Plans for the Colorado River Basin  
**10:50am – 11:05am – Tom Blaine**
  
- VI. **Request by NMISC Acting Director for Commission to renew designation of:**
  - A. NMISC Program Manager as the representative of the NMISC on the New Mexico CAP Entity and to designate NMISC Director as the NMISC’s alternative representative on the New Mexico CAP Entity  
**11:05am – 11:10am - John Longworth**
  
- VII. **Request by Director of the NM CAP Entity, Anthony Gutierrez of approval for:**
  - A. Approval of a budget increase in the amount of \$180,000 for additional engineering services in FY 2019
  - B. Approval of a budget increase in the amount of \$25,360.27 for an outstanding FY 2018 year expenditure  
**11:10am – 11:40am - Anthony Gutierrez, NM CAP Entity, Executive Director**

- VIII. Presentation by NMISC staff and NM CAP Entity's Executive Director and request for delegation of authority on:**
- A. Presentation of the Second Amended Joint Powers Agreement (JPA) for the New Mexico CAP Entity; and
  - B. Request Commission delegate authority to the NMISC Chairman to execute the Second Amended JPA on behalf of the NMISC  
**11:40am – 12:10pm – Dominique Work and Anthony Gutierrez, NM CAP Entity, Executive Director**
- IX. Request by NMISC staff Commission delegation of**
- A. Authority to the NMISC Acting Director to direct State Investment Council to invest additional \$12 million from the NM Unit Fund based on dollar cost averaging approach, in accordance with the Joint Powers Agreement between the NMISC and the State Investment Council  
**12:10pm – 12:25pm - John Longworth and Marcos Mendiola**
- X. Closed session discussion pursuant to NMSA 1978, Chapter 10, Article 15, Section 1, Subsection (H)(7) regarding:**
- A. Pending administrative litigation related to protests of water rights applications in the lower Pecos Basin  
**12:25pm – 12:45pm**
- XI. Concluding Business:**
- A. Set future meeting date, other business and informational items not requiring NMISC action; and Adjournment  
**12:45pm – 12:50pm – John Longworth**

The mission of the New Mexico Interstate Stream Commission (NMISC): to investigate, conserve, protect, and develop the water resources and stream systems of New Mexico and carry out plans and programs for beneficial uses in the state, all in accordance with the law.

In accordance with the current NMISC Resolution directing compliance with the Open Meetings Act a final draft agenda will be available 72 hours in advance of the meeting: 1) on the Office of the State Engineer/NMISC website <http://www.ose.state.nm.us/ISC>; 2) it will be posted and available in the Commission's office at Bataan Building, 407 Galisteo Street, Room 101, Santa Fe; and, 3) it will be emailed or faxed to persons making a specific request for the final draft agenda by calling the Commission's office at (505) 827-6160. In addition, materials provided to the Commission in advance of each meeting will be posted for public viewing on the above referenced website.

**DRAFT MINUTES OF THE  
NEW MEXICO INTERSTATE STREAM COMMISSION  
TELEPHONIC MEETING  
November 16, 2018**

A regular meeting of the New Mexico Interstate Stream Commission (NMISC) was called to order at 1:32 p.m. on November 16, 2018 by Chairman Mark Sanchez via teleconference. The meeting was held at the Office of the State Engineer, 5550 San Antonio Drive NE, Albuquerque, New Mexico via telecommunication.

**QUORUM OF MEMBERS PRESENT:**

Commissioner Mark Sanchez, Chairman

**OSE/ISC STAFF PRESENT:**

John Longworth, Acting Director

Gloria Varela

Marcos Mendiola

Dominique Work

**MEMBERS PARTICIPATING VIA  
PHONE:**

Commissioner Topper Thorpe, Vice Chairman

Secretary Tom Blaine

Commissioner Blane Sanchez

Commissioner Samuel Gonzales

Commissioner Carrie Hollifield

Commissioner Franklin McCasland

Commissioner Jack King

**AGENDA ITEM #I – OPENING BUSINESS:**

**A. CALL TO ORDER**

Chairman Sanchez called the meeting to order at 1:32 p.m.

**B. APPROVAL OF THE AGENDA**

Commissioner Thorpe moved, seconded by Commissioner Gonzales, approval of the agenda. The motion carried unanimously.

**C. APPROVAL OF THE MINUTES FROM THE OCTOBER 5, 2018 MEETING**

Commissioner Thorpe moved, seconded by Commissioner Hollifield, approval of the October 5, 2018 minutes. The motion carried unanimously.

**D. PUBLIC COMMENT**

None requested.

**AGENDA ITEM #II – REQUEST COMMISSION APPROVAL OF:**

- A. EXTENSION OF NOVEMBER 24, 2018 DEADLINE FOR THE GILA BASIN IRRIGATION COMMISSION (GBIC) TO SECURE ADDITIONAL FUNDING FOR CONSTRUCTION OF GBIC ARIZONA WATER SETTLEMENT ACT (AWSA) NON-NM UNIT PROJECT**

David Ogilvie, Chairman of GBIC requested Commission approval of an extension of November 24, 2018 deadline for the Gila Basin Irrigation Commission (GBIC) to secure additional funding for construction of GBIC Arizona Water Settlement Act (AWSA) Non-NM Unit Project.

**Questions from the Commission followed.**

**Secretary Blaine moved, seconded by Commission King, to extend the November 24, 2018 deadline for the Gila Basin Irrigation Commission (GBIC) to secure additional funding for construction of GBIC Arizona Water Settlement Act (AWSA) Non-NM Unit Project to December 31, 2019 and that quarterly updates be submitted to NMISC staff to report to the Commission on the progress of design and acquisition for additional funding. Commissioner Thorpe abstained, the motion carried.**

**AGENDA ITEM #III – REQUEST BY NMISC STAFF FOR COMMISSION TO:**

**A. TRANSFER TO THE NMISC ACTING DIRECTOR THE AUTHORITY GIVEN TO THE NMISC DIRECTOR AT THE APRIL 19, 2018 COMMISSION MEETING TO APPROVE THE FOLLOWING:**

- a. PROJECTS AND RELATED PROFESSIONAL SERVICES CONTRACTS UP TO \$50,000 FOR FY2019**
- b. NON-PROFESSIONAL CONTRACTS UP TO \$60,000 FOR FY2019**
- c. LOAN REQUESTS FROM ACEQUIAS OR OTHER LOCAL GOVERNMENTS UP TO \$100,000 FOR FY2019**

John Longworth, NMISC Acting Director requested the Commission transfer to the NMISC Acting Director the authority given to the NMISC Director at the April 19, 2018 Commission meeting to approve the following:

- a. Projects and related professional services contracts up to \$50,000 for FY2019
- b. Non-professional contracts up to \$60,000 for FY2019
- c. Loan requests from acequias or other local governments up to \$100,000 for FY2019

**Questions from the Commission followed.**

**Commissioner Thorpe moved, seconded by Commissioner Sanchez, transfer of authority to the NMISC Acting Director the authority given to the NMISC Director at the April 19, 2018 Commission meeting to approve: a) Projects and related professional services contracts up to \$50,000 for FY2019; b) Non-professional contracts up to \$60,000 for FY2019; and, c) Loan requests from acequias or other local governments up to \$100,000 for FY2019. The motion carried unanimously.**

**AGENDA ITEM # IV - CONCLUDING BUSINESS:**

**A. SET FUTURE MEETING DATE, OTHER BUSINESS AND INFORMATIONAL ITEMS NOT REQUIRING NMISC ACTION**

The next meeting will be on December 6, 2018 in Albuquerque at the Office of the State Engineer, 5550 San Antonio Drive NE, Albuquerque, New Mexico.

**B. ADJOURNMENT**

**Commissioner Thorpe moved, seconded by Commissioner Gonzales to adjourn. The motion carried unanimously.**

The Commission adjourned the meeting at 1:32 p.m.

Minutes were prepared by Gloria Varela and edited by John Longworth.

Approved at the December 6, 2018 meeting of the New Mexico Interstate Stream Commission and if necessary a telephonic meeting.

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Mark Sanchez, Chairman

Date

**New Mexico Interstate Stream Commission Meeting**  
Office of the State Engineer/Interstate Stream Commission Conference Room  
5550 San Antonio Drive NE, Albuquerque, New Mexico

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**December 6, 2018**

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**Presentation by NMISC staff and request Commission adoption of:**

- A. Presentation on the 2018 State Water Plan, and;
- B. Request adoption of the 2018 State Water Plan

**Lucia Sanchez**

# NEW MEXICO INTERSTATE STREAM COMMISSION



December 6, 2018

**RE: 2018 New Mexico State Water Plan**

## Dear New Mexicans:

The New Mexico Interstate Stream Commission and the New Mexico Office of the State Engineer are pleased to present this **2018 New Mexico State Water Plan**, prepared in accordance with NMSA §72-14-3.1.

## Organization

The **2018 New Mexico State Water Plan** includes three parts:

**2018 New Mexico State Water Plan Part I: Policies** presents a concise, big-picture view of the highest priority water issues in New Mexico and the policies, goals, and strategies needed to address them, as well as information about the agencies and resources available to assist with these issues.

The eight policy topics include:

1. **Water Infrastructure**
2. **Data Collection, Accessibility, and Monitoring**
3. **Drought**
4. **Watershed Management**
5. **Water Supply and Demand**
6. **Water Conservation**
7. **Water Quality**
8. **Water Planning**

**2018 New Mexico State Water Plan Part II: Technical Report** integrates water resource information from the Regional Water Plans completed in 2016-2017, including estimated water supply and demand, projections of population, and strategies proposed by stakeholders to address key water issues.

**2018 New Mexico State Water Plan Part III: Legal Landmarks** provides information about historical New Mexico water law decisions, events, and circumstances that shaped New Mexico's legal structures for water resource administration.

The **2018 New Mexico State Water Plan** is a strategic management tool to assist and inform decision-makers at all levels, ranging from legislators to citizens, in addressing water resource issues. The plan provides a range of strategies for consideration in addressing the diverse and complex water issues facing New Mexico.



## Relation to Previous Water Planning Efforts

The **2018 New Mexico State Water Plan** builds on earlier water planning work in New Mexico. The **2003 New Mexico State Water Plan** outlined goals and strategies organized by statute (State Water Plan Act) that overlap many of the recommended strategies in **2018 New Mexico State Water Plan Part I: Policies**. Like the 2003 plan, the 2018 plan does not attempt to prioritize one strategy, or one type of water use over another, but instead reflects the common priorities and objectives that were identified during the regional water planning process and in the December 2017 State Water Plan Town Hall.

New Mexico's State Water Plan presents a generalized assessment of the current and future water supply and demand statewide to provide decision-makers with a basic understanding of the water resource problems facing New Mexico. It is a living document and will continue to be updated. While the 2003 plan was organized by each statement in the State Water Plan Act, the 2018 plan is organized by objectives that arose from the regional water plans and the 2017 Town Hall. The objectives and strategies presented in the 2003 plan remain valid and are consistent with the policies included in this 2018 plan. Accordingly, the eight policy topics presented in the 2018 plan are complementary to, and not intended to replace, policies from the 2003 plan.

The 2018 plan also addresses some of the unfinished tasks of the 2003 plan. For example, the State Water Plan Act states that regional water plans must be integrated into the State Water Plan. This was not possible until the **2013 Updated Regional Water Planning Handbook: Guidelines to Preparing Updates to New Mexico Regional Water Plans** was revised to include a standardized method of estimating water supply, demand, and population for each planning region, which provided the basis for the water supply and demand estimates presented in this **2018 New Mexico State Water Plan Part II: Technical Report**.

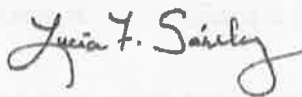
The 2013 Handbook was also revised to provide a framework for capturing the infrastructure needs of the planning regions; thus, the recent update of the regional water plans includes detailed lists of the projects, programs, and policies that are needed to address local and regional problems. The New Mexico Interstate Stream Commission appreciates the input by the numerous stakeholders to help capture the infrastructure needs of the regions and help build a foundation for estimating the costs statewide for addressing infrastructure needs and other projects, programs, and policies. Costs were provided for about 60% of the suggested programs, policies, and projects, with an estimated total cost of \$4.3 billion over the next few years.

The New Mexico Interstate Stream Commission would like to thank the many individuals and organizations who reviewed the draft state water plan and provided thoughtful comments to help improve it. The input from all these entities, including federal and state agencies and pueblos in New Mexico, have offered valuable constructive feedback, and helped to identify many areas for future collaboration.

Going forward, the New Mexico Interstate Stream Commission Water Planning Program intends to initiate additional water planning outreach and education activities in 2019 and beyond. Upcoming events will be designed to address each topic. Future goals include convening a diverse range of participants and engaging in information-sharing, collaboration, and problem-solving to improve New Mexico water planning efforts.

See you there.

Sincerely,



Lucia F. Sanchez

Water Planning Program Manager

New Mexico Interstate Stream Commission

**Request by NMISC staff for Commission authorization of:**

- A. NMISC Contract Manager to execute and submit to the State Purchasing Division for final approval Amendment #1 to Contract No. 80-550-17-00750, with Kiewit New Mexico Co., to extend the term of the contract for On Call River Channel Maintenance Services.

**Marcos Mendiola**

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
TOPPER THORPE, Cliff  
TOM BLAINE, P.E. Secretary  
BLANE SANCHEZ, Isleta  
CAROLYN HOLLIFIELD, Roswell  
SAMUEL GONZALES, Aztec  
FRANKLIN McCASLAND, Tucumcari  
JACK KING, Alto



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

## MEMORANDUM

Date: November 19, 2018

To: New Mexico Interstate Stream Commission

From: Karla Saiz, Contract Manager

RE: Request Commission approval of Amendment #1 to Contract No. 80-550-17-00750, Kiewit New Mexico Co., to extend the term of the contract for On Call River Channel Maintenance Services.

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The New Mexico Interstate Stream Commission ("NMISC") approved the list of contractors for each type of contractual services to be used by the NMISC at their May 18, 2018 meeting. This list included Contract No. 80-550-17-00750 with Kiewit New Mexico Co. This contract was procured through an RFP issued by the State Purchasing Division ("SPD") and approved by the Commission at their November 16, 2017 meeting. The contract with Kiewit New Mexico Co. expires on December 31, 2018 and ISC staff is requesting Commission authorization for the ISC Contract Manager to execute and submit to SPD for final approval, Amendment #1 to Contract No. 80-550-17-00750 with Kiewit New Mexico Co., to extend the term of the contract to December 31, 2019.

**Presentation by Pecos Valley Artesian Conservancy District and NMISC staff on:**

A. Development of a possible Pecos Basin Water Bank

**Hannah Riseley-White and Aron Balok, PVACD Superintendant**

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
TOPPER THORPE, Vice Chair, Cliff  
TOM BLAINE, P.E. Secretary  
BLANE SANCHEZ, Isleta  
CAROLYN HOLLIFIELD, Roswell  
SAMUEL GONZALES, Aztec  
FRANKLIN McCASLAND, Tucumcari  
JACK KING, Alto



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SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6160  
FAX: (505) 827-6188

## MEMORANDUM

**DATE:** November 26, 2018

**FROM:** Hannah Riseley-White  
Pecos Basin Manager

**TO:** NMISC Commissioners

**RE:** Presentation by the Pecos Valley Artesian Conservancy District (PVACD) on a Possible Pecos Basin Water Bank

Representatives from the PVACD together with the Pecos Basin Manager will give a brief presentation on discussions related to a possible Pecos Basin water bank. This presentation is intended to provide the Commission with an overview of current discussions and to gather any initial feedback.

In 2006, the New Mexico Legislature passed a water banking statute for the Pecos Basin below Sumner Lake. (See NMSA 72-1-2.3, attached.) The New Mexico Interstate Stream Commission (NMISC) is to propose and recommend to the State Engineer for adoption rules for recognition of a water bank that satisfy certain requirements as laid out in the statute. To date, the NMISC has not proposed such rules.

Over the last year PVACD has initiated discussions with NMISC staff related to Pecos Basin water banking. In October they provided NMISC staff with draft regulations for a possible water bank for Roswell Artesian Basin water rights. That draft is currently under discussion.

The purpose of any water bank created under the statute is compliance with the Pecos River Compact.

No Commission action is requested.

## **2006 New Mexico Statutes - Section 72-1-2.3**

### **Lower Pecos river basin below Sumner lake water bank; acequia and community ditch water banks; interstate stream commission.**

A. The interstate stream commission may recognize a water bank established by an irrigation district, a conservancy district, an artesian conservancy district, a community ditch, an acequia or a water users association in the lower Pecos river basin below Sumner lake for purposes of compliance with the Pecos River Compact [ 72-15-19 NMSA 1978].

B. The interstate stream commission shall propose and recommend to the state engineer for adoption rules for recognition of a water bank that include:

- (1) criteria, terms and conditions for deposit of a water right in the bank;
- (2) terms and conditions for the accrual, pooling, exchange, assignment and conditions of the deposit of a water right;
- (3) procedures for recording and annual reporting of all transactions to the interstate stream commission and the state engineer; and
- (4) procedures for the water bank to temporarily transfer deposited water to new purposes and places of use and points of diversion without formal proceedings before the state engineer.

C. A lower Pecos river basin below Sumner lake water bank may contract with a person to accrue, pool, exchange, assign or lease water rights to facilitate compliance with the Pecos River Compact [ 72-15-19 NMSA 1978]. A transaction and transfer of water by a water bank in the Pecos river basin shall:

- (1) not impair other water rights;
- (2) not deplete water in the system above that level that would have occurred in the absence of the transaction;
- (3) comply with state law; and
- (4) be within the same stream system or underground water source.

**Request by Director of the NM CAP Entity, Anthony Gutierrez of approval for:**

- A. Approval of a budget increase in the amount of \$180,000 for additional engineering services in FY 2019
- B. Approval of a budget increase in the amount of \$25,360.27 for an outstanding FY 2018 year expenditure

**Anthony Gutierrez, NM CAP Entity, Executive Director**

# New Mexico CAP Entity

Darr Shannon – Chair (HSWCD)

Vance Lee – Vice Chair (Hidalgo County)

Bucky Allred – Secretary (Catron County)

Aaron Sera – Member (City of Deming)

John Sweetser – Member (Luna County)

Richard Bauch – Member (Village of Santa Clara)

Robert Agnew – Member (UGIC)

Howard Hutchinson – Member (SFSWCD)

Marcos Mendiola – Member (ISC)

Frank Madrid – Member (City of Lordsburg)

Gabe Ramos – Member (Grant County)

Allen Campbell – Member (HSIC)

Joe Runyan – Member (GFIC)

Ty Bays – Member (GSWCD)

Esker Mayberry – Member (FWIC)

November 19, 2018

John Longworth – Director ISC

Bataan Memorial Building

407 Galisteo Street

Suite #101

Santa Fe, NM 87501

Mr. Longworth,

On November 8<sup>th</sup> 2018 the NM CAP Entity Board voted to request a budgetary increase for professional services in order to continue moving forward with the planning process and NEPA analysis of the NM Unit plus monies to pay for an outstanding invoice from the 2017-2018 fiscal year.

As you know the budget for the NM CAP Entity was limited to \$700,000 in the last legislative budgetary process and the demand for data related to the proposed action increased substantially. Although we have been able to provide information to move the EIS forward we feel that there will need to be additional data needed as the analysis moves forward. Alternative review may also be needed after the draft EIS is released.

I am including an estimate from Stantec Engineering for the additional work that may be needed as well as the invoice that was submitted after the end of the last fiscal year. The total of the increase is \$205,400 this includes \$180,000 for professional services and \$25,360.27 for the outstanding invoice. I would like to formally request that this be placed as an agenda item for consideration of the commission at the December regular meeting. I appreciate your consideration and assistance.

Sincerely,



Anthony Gutierrez

Executive Director NM CAP Entity





Date: November 1, 2018  
To: Anthony Gutierrez, Executive Director – NM CAP Entity  
From: Dave Maxwell, PE Project Manager  
Subject: **Additional Services that may be Needed for NEPA Support  
New Mexico Unit of the Central Arizona Project**

**Background:**

Stantec has completed preliminary NEPA Support work needed for the Draft EIS. It is anticipated that additional support will be needed to verify and refine elements of the proposed action and to provide additional engineering support as requested by the CAP Entity.

Additional Services may include the following:

- 1) Update diversion and yield modeling
- 2) Update return flow analysis
- 3) Preliminary geotechnical Investigation
- 4) Supplemental topographical mapping
- 5) Provide additional support for the NEPA analysis
- 6) Develop business case for proposed action

**1) Update Diversion and Yield Modeling**

Diversion and Yield Models for each of the three project sites have already been developed by AECOM. Stantec would use these models to evaluate changes that have occurred in the proposed action since the modeling was completed.

The diversion and yield model submitted by AECOM for the Cliff-Gila Valley area was completed before the latest change to the proposed action by the CAP Board at the October 2, 2018 meeting. The changes included elimination of Pond 6P, reduction in the size of Pond 5P and increasing the size of Pond 2P (Winn Canyon Dam). These changes will affect the yield for the project and modeling should be completed considering the revised infrastructure components. AECOM's report also indicates that the ASR component below Ponds 2P and 3P was ineffective, stating that among other factors, a conservative value of saturated hydraulic conductivity was used in their analysis due to a lack of available data. It is recommended that field testing be completed to obtain saturated hydraulic conductivity values and that yield modeling then be completed to confirm the effectiveness of the proposed ASR component. If the ASR component is not effective, then the yield modeling should be completed without the ASR component and with lining of Ponds 2P and 3P.



Additional yield modeling for the three project sites, that is not part of this proposed scope of work, will be needed during the 30% design phase to optimize the capacity of the infrastructure components.

## **2) Update Return Flow Analysis:**

Since the CAP will have to pay for AWSA water that is diverted and with approval of the technical committee, receive credit for diverted water that is returned to the river system, it is important that a realistic assessment of return flow be completed. The feasibility of the project/s will be evaluated in part based on a benefit to cost comparison. It is critical that credits for return flow be included in the assessment of project costs.

AECOM completed return flow analysis for the three project sites using the Interstate Streams Commission (ISC) Consumptive Use (CU) model to determine crop irrigation requirements for three crop types (pecans, pasture and corn) and three irrigation application efficiencies (90%, 75% and 60%). Most of the work needed for refinement of the return flows has been accomplished by AECOM. However, the proposed action includes six crops. In addition to the three crops evaluated by AECOM, the proposed action includes grapes, cotton and alfalfa. The crop irrigation requirements for those three crops also needs to be determined using the Blaney-Criddle method. The proposed action also assumes a mix of irrigation methods from which a project irrigation application efficiency can be determined. The return flow analysis that was completed by AECOM for each of the three project sites can then be refined to represent the proposed action.

AECOM's return flow analysis only accounts for return flows from irrigation applications and does not include seepage losses from canals or storage reservoirs. This also needs to be included.

## **3) Geotechnical Investigation:**

Stantec has based design of infrastructure components in the proposed action on limited available geotechnical information. The proposed investigation will not be sufficient in scope and detail for design purposes but is needed to provide a level of comfort concerning the presence of any characteristics that could indicate a fatal flaw or need for significant modification.

- 1) Soil classification and permeability of soils in five Cliff-Gila pond sites and two Virden Valley pond sites. Fourteen pits would be needed.
- 2) Soil classification and permeability of clay source materials for lining in Cliff-Gila Valley and Virden Valley areas. Three pits will be needed.
- 3) One hole in the Winn Canyon Dam area to obtain soil classification and permeability data. The saturated hydraulic conductivity of the aquifer will be determined.

**4) Supplemental Topographic Mapping:**

Conceptual design of infrastructure components was completed using very limited topographical data. Completion of field surveys and mapping in sufficient detail (not design level) to confirm and in some cases refine the conceptual design. Based on limited topographic information in the Cliff-Gila Valley, Stantec determined that two of the four ponds would be gravity flow in and pumping out. The other two ponds would be gravity flow both in and out. Field surveys are needed to confirm this. Sizing of conveyance facilities is based on limited topographic information pertaining to the slope. Slopes need to be verified.

**5) Provide Additional Support for NEPA Analysis:**

As the NEPA process continues, it is expected that clarifications pertaining to the proposed action will be needed, requiring additional analysis. Additional data gaps in the information provided could also be discovered to which analysis may be required for the necessary responses. Requests will be directed to Stantec to provide additional analysis and information. Coordination meetings with the NMISC, USBR, EMPSI (NEPA Contractor) and the CAP Entity will also be necessary. Stantec will attend all CAP Entity Board meetings and provide reports as requested.

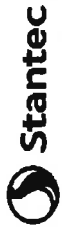
**6) Develop Business Case for Proposed Action:**

On December 29, 2014, the Department of Agricultural Economics and Agricultural Business, New Mexico State University (NMSU) submitted a report to the NMISC entitled "*Economic Study of Agriculture in Southwest New Mexico from the 2004 Arizona Settlement Act (AWSA) Water and Funding*". The report was based upon a model and combined data on crop profitability, irrigated land in production, crop water requirements, and additional water supply that would be provided by AWSA water. The objective of the model and report was to analyze the economic value of 9,500 acre-feet of AWSA water for agricultural use in the Cliff-Gila, Virden and Deming areas.

NMSU will update the model for the economic value of 4,861 acre-feet of water for agricultural use in the Cliff-Gila, Virden and San Francisco River Valley areas per the proposed action and submit a revised report.

**Budget:**

The proposed scope of work would be completed on a time and expense basis as task orders with detailed scope of work descriptions are approved by the CAP Executive. The proposed budgets for each of the scope of work items are shown below.



Task Description	Principal Engineer	Project Manager	Project Engineer	Civil Designer	Engineering Technician	Direct & Sub-Consultant
Update Diversion and Yield Model	24	2	56			
Update Return Flow Analysis	24	2	40			
Geo-Technical Investigation	4	8	4			\$ 33,000.00
Supplemental Topographic Mapping	4	2	4		80	
Provide Additional Support for NEPA Analysis	140	2	80	120		\$ 3,772.00
Develop Business Case for Proposed Action	16	8				\$ 53,044.00
Total Hours	212	24	184	120	80	
Hourly Rate (\$/hr)	\$ 180.00	\$ 129.00	\$ 137.00	\$ 121.00	\$ 115.00	
Amount	\$ 38,160.00	\$ 3,096.00	\$ 25,208.00	\$ 14,520.00	\$ 9,200.00	\$ 89,816.00

Total Amount \$ 180,000.00

	Description	FY 19	Budget Increase
<b>REVENUE</b>			
370-37241	ISC-ASWSA	\$ 700,000.00	
<b>EXPENSE</b>			
410-41020	FULL TIME POSITIONS-OFFICE	\$ 94,500.00	
410-41060	TERMINAL LEAVE (4%)	\$ 3,780.00	
420-42010	FICA-REGULAR	\$ 5,859.00	
420-42020	FICA-MEDICARE	\$ 1,370.25	
420-42021	RETIREMENT	\$ 11,151.00	
420-42040	HEALTH INSURANCE	\$ 12,625.44	
420-42050	RETIREE HEALTH CARE	\$ 1,890.00	
420-42080	WORKERS COMPENSATION	\$ 10.00	
430-43010	MILEAGE REIMBURSEMENT	\$ 6,000.00	
430-43020	PER DIEM	\$ 4,000.00	
430-43030	TRANSPORTATION EXPENSE	\$ 2,000.00	
440-44020	MAINTENANCE CONTRACTS (software & copy machine maintenance)	\$ 5,000.00	
440-44040	MAINTENANCE VEHICLE/FURNITURE/FIXTURE	\$ 2,500.00	
450-45020	ATTORNEY FEES	\$ 200,000.00	
450-45010	Audit Contracts	\$ 15,000.00	
450-45030	PROFESSIONAL SERVICES (Engineer, Translator, Transcriber)	\$ 289,000.00	\$ 205,400.00
450-45032	COMPUTER SERVICES	\$ 500.00	
450-45900	OTHER CONTRACTUAL SERVICES	\$ -	
450-45922	ADMINISTRATIVE FEE	\$ 35,000.00	
460-46010	SUPPLIES(OFF/FIELD/EDU/RECREATION)	\$ 1,000.00	
460-46020	NON-CAPITAL FURN/FIX/EQUIP	\$ 2,000.00	
470-47040	EMPLOYEE TRAINING	\$ 1,000.00	
470-47070	POSTAGE AND MAIL SERVICES	\$ 500.00	
470-47080	PRINTING/PUBLISHING (INCL ADVER)	\$ 4,314.31	
470-47140	SUBSCRIPTIONS AND DUES	\$ 500.00	
470-47150	TELEPHONE	\$ 500.00	
470-47060	Insurance	\$ -	
480-48070	Vehicle	\$ -	
<b>TOTAL</b>		\$ 700,000.00	\$ 905,400.00

**Request by NMISC staff for Commission concurrence:**

- A. in the State Engineer executing all documents related to Drought Contingency Plans for the Colorado River Basin

Tom Blaine

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
TOPPER THORPE, Vice Chairman, Cliff  
TOM BLAINE, P.E., Secretary  
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FRANKLIN McCASLAND, Tucumcari  
JACK KING, Alto



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## MEMORANDUM

DATE: November 26, 2018

TO: New Mexico Interstate Stream Commission

FROM: Dominique Work

RE: Request Commission concurrence in the State Engineer executing three agreements for New Mexico as part of the Colorado Drought Contingency Plan

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Over the past several years, the seven Colorado Basin States (Arizona, California, Nevada, Colorado, New Mexico, Utah and Wyoming) have been working a drought contingency planning. In 2018, those efforts culminated in the final drafting of five agreements to be executed by either the Upper Basin States (Colorado, New Mexico, Utah and Wyoming), the Lower Basin States (Arizona, California and Nevada), or all seven States. This effort will also include federal legislation to allow certain modifications to the "Law of the River," the complex set of documents that govern management of the Colorado River.

New Mexico is a signatory to three of those five agreements. They are the Drought Response Operations Agreement, the Demand Management Agreement and the "Companion" Agreement. A brief summary of each of those three agreements is included herein.

**Drought Response Operations Agreement:** This is an agreement on a process to use all the Colorado River Storage Project Act (CRSPA) Initial Units, Flaming Gorge, Aspinall, Navajo and Powell, to respond to emergency drought conditions. The main goal of this agreement is to protect elevation 3,525 feet above mean sea level at Lake Powell. This will be done initially through operational adjustments at Lake Powell, but will involve releases for the other CRSPA Initial Units if necessary and not futile (i.e., if the water released can reach Lake Powell). Recovery of any water released is an integral part of the plan to be developed to respond to drought. The process outlined in this agreement would be triggered by certain projections made by the U.S. Bureau of Reclamation in its continued monitoring of the Colorado River and its reservoirs.

**Demand Management Agreement:** This agreement commits the Upper Basin States to try and develop a Demand Management Program for voluntary, compensated water conservation in those states provided that Congress authorizes the Department of the Interior to make unfilled storage capacity at the CRSPA Initial Units available free of charge. This is one of the reasons

the Drought Contingency Plan requires federal legislation. Once legislation is passed, the Upper Basin States will work on putting together a Demand Management Program that is acceptable to all four states and the Upper Colorado River Commission. This program would be initially capped at conserving up to 500,000 acre-feet of water that would otherwise have been beneficially used. The States will need to agree, among themselves and with the Department of the Interior and the Lower Basin States, on methods for verification and accounting of the conserved water. Any water conserved through this program can be used only to assure continued compliance with Article III of the Colorado River Compact

**Companion Agreement:** The Companion Agreement is the one agreement to be signed by all seven Basin States. It allows each Basin to have a recourse in case of disagreements as to how the other Basin implements its DCP. The parties to this agreement will be all those that sign the other DCP agreements. This agreement attaches and incorporates all the other DCP agreements and includes consultation provisions on implementation and operation of *both DCPs*. It also contains a dispute resolution provision and a statement that each party reserves its rights.

The strategy is that the seven Basin States will jointly seek to introduce legislation in Congress directing the Secretary of the Interior to sign and implement the DCPs. Efforts have already begun towards this goal. Once that legislation is passed and signed into law, representatives from the seven Basin States will sign all the necessary agreements at the same time.

**Request for action:** The New Mexico State Engineer, as the Principal for New Mexico and the Upper Colorado River Commissioner for New Mexico, will sign the three agreements described above on behalf of our State. No significant changes are expected to the versions that have been provided to you in your packets. The State Engineer requests concurrence of the ISC in his signing of those documents in substantially the same form as those included in your packet.



## **AGREEMENT FOR DROUGHT RESPONSE OPERATIONS AT THE INITIAL UNITS OF THE COLORADO RIVER STORAGE PROJECT ACT**

This Agreement for Drought Response Operations (“Drought Response Operations Agreement”) at the Glen Canyon Dam, Flaming Gorge Dam, Curecanti (the “Aspinall Unit”), and Navajo Dam authorized by the Colorado River Storage Project Act (collectively referred to as the “CRSPA Initial Units” and individually as “CRSPA Initial Unit”), an element of the Upper Colorado River Basin’s Drought Contingency Plan, is hereby made and entered into by and between the Upper Colorado River Division States of Colorado, New Mexico, Utah, and Wyoming (“Upper Division States”), through the Upper Colorado River Commission (“Commission”), and the Secretary of the Interior (“Secretary”) hereinafter collectively referred to as the “Parties.” The Secretary may delegate his or her duties under this Drought Response Operations Agreement to the Bureau of Reclamation (“Reclamation”).

### **I. INTRODUCTION**

#### **A. BACKGROUND/OBJECTIVE**

Since 2000, drought conditions in the Colorado River Basin have led to marked fluctuations and decreases in water elevations at key Colorado River reservoirs. The Upper Division States, through the Commission, have developed a drought contingency plan to address the possibility of reservoir storage at Lake Powell declining below a target elevation. This Drought Response Operations Agreement is one element of that plan. Its primary goals are to minimize the risk of Lake Powell falling below a target elevation and thereby:

1. Help ensure the Upper Division States will continue fulfilling their interstate water compact obligations while exercising their rights to develop and utilize the Upper Colorado River Basin’s (“Upper Basin”) Colorado River System compact apportionment.
2. Maintain the ability to generate hydropower at Glen Canyon Dam so as to protect:
  - a. Continued operation and maintenance of the CRSPA Initial Units and participating projects authorized under the 1956 Colorado River Storage Project Act, as amended (“CRSPA”);
  - b. Continued funding and implementation of environmental and other programs that are beneficial to the Colorado River System;
  - c. Continued electrical service to power customers including municipalities, cooperatives, irrigation districts, federal and state agencies and Native American Tribes, and the continued functioning of the western Interconnected Bulk Electric System that extends from Mexico to Canada and from California to Kansas and Nebraska; and

- d. Safety contingencies for nuclear power plant facilities within the Colorado River Basin.
3. Minimize adverse effects to resources and infrastructure in the Upper Basin.

## **B. INTENT**

The Parties intend through this Drought Response Operations Agreement to:

1. Prepare, in advance of drought conditions, drought response operations that will minimize the risk of low water storage conditions at Lake Powell, as well as ensure timely recovery of storage water at the upstream CRSPA Initial Units;
2. Reach consensus on a contingency framework for utilizing the CRSPA Initial Units to respond to drought conditions in the Upper Basin; and
3. Promote communication, coordination, and cooperation among themselves to provide additional certainty in Colorado River water management.

## **C. FRAMEWORK**

The framework for this Drought Response Operations Agreement is developed in recognition of, and consistent with, the law and practice relevant to the Upper Basin as summarized herein:

1. The CRSPA directed and authorized the Secretary to construct and operate the CRSPA Initial Units to, among other things, allow the Upper Division States to utilize their apportionment of the Colorado River consistent with the Colorado River Compact.
2. Project-specific criteria govern the operation of each of the CRSPA Initial Units, including applicable Records of Decision and Biological Opinions to satisfy the requirements of the National Environmental Policy Act and the Endangered Species Act, the authorized purposes for each facility, and state water right systems and decrees.
3. The 1977 Department of Energy Organization Act (“DOE Act”) generally transferred power marketing and transmission (“construction, operation, maintenance, and delivery”) functions, including the responsibility to market and deliver power and energy from the applicable CRSPA Initial Units, from the Department of the Interior to Western Area Power Administration.
4. Articles IV(c) of the Colorado River Compact and XV(b) of the Upper Colorado River Basin Compact (“Upper Basin Compact”) expressly recognize each compacting state’s rights and powers to regulate within its boundaries the appropriation, use, and control of water apportioned and available to the states by the Colorado River and Upper Basin Compacts.

5. Article VIII(d) of the Upper Basin Compact also establishes the Commission, which is composed of a commissioner representing each of the Upper Division States and a commissioner representing the United States, to perform all functions required by the Upper Basin Compact and do all things necessary, proper, or convenient in the performance of its duties either independently or in cooperation with any state or federal agency.
6. Federal law and practice (including, but not limited to, Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act, and the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead) contemplate that in the coordinated operations of Lake Powell and Lake Mead, the Secretary will consult with the Colorado River Basin States through Governors' Representatives, who represent the Governors and their respective state agencies.

## II. AGREEMENT

In consideration of the above introduction and covenants contained herein, the Parties agree as follows:

### A. BASES OF MUTUAL AGREEMENT

1. Best Efforts: The Parties agree to implement their best efforts to coordinate and collaborate on an ongoing basis to achieve the purposes and implement the provisions of this Drought Response Operations Agreement.
2. Target Elevation: For purposes of this Drought Response Operations Agreement only, Lake Powell surface elevation 3,525 feet mean sea level ("msl") will be considered the "Target Elevation" for minimizing the risk of Lake Powell declining below minimum power pool (approximately elevation 3,490 feet msl) and to assist in maintaining Upper Division compliance with the Colorado River Compact. The Parties agree that this elevation appropriately balances the need to protect infrastructure, compact obligations, and operations at Glen Canyon Dam, as storage approaches minimum power pool with the Upper Division States' rights to put Colorado River System water to beneficial use.
3. Principles for Drought Response Operations: The Parties agree to consider the following principles when identifying appropriate drought response operations (see Section II.A.4 "Drought Response Process") at any CRSPA Initial Unit:

- a. *Definition of Drought Response Operations:* For purposes of this Drought Response Operations Agreement “drought response operations” refers to operational adjustments or releases made at or from the CRSPA Initial Unit(s) to minimize the risk of Lake Powell declining below the Target Elevation, as well as to provide for actions at the CRSPA Initial Unit(s) in subsequent years to recover storage at the same facility/facilities.
- b. *Scope of Drought Response Operations:* Any drought response operation, including drought response releases and recovery of storage operations, at a CRSPA Initial Unit will be managed with the maximum flexibility practicable consistent with: the Colorado River Compact; the Upper Colorado River Basin Compact; the Colorado River Storage Project Act; the Colorado River Basin Project Act; the San Juan-Chama Project Act (P.L. 87-483); the Northwestern New Mexico Rural Water Projects Act (P.L. 111-11); the project-specific criteria for each CRSPA Initial Unit, including the relevant Records of Decision, Biological Opinions and authorized purposes for each Unit (see Section I.C.2); legal obligations, including existing and future contracts related to water and/or hydropower; states’ water right administration systems and decrees; and all applicable rules and regulations promulgated thereunder.
- c. *Participation from all CRSPA Initial Units:* Recognizing the shared risk of extended drought and acknowledging the Upper Division States’ continuing responsibilities to maintain compact compliance within the Upper Basin, a drought response operation contemplated by this Drought Response Operations Agreement shall ensure that ALL CRSPA Initial Units will be considered for drought response operations. To this end:
  - i. *Operational Adjustments at Lake Powell:* Operational adjustments in monthly volumes at Glen Canyon Dam will be considered first to minimize the risk of Lake Powell declining below the Target Elevation consistent with the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs, which is currently implemented through the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
  - ii. *All Initial Units Considered:* If operational adjustments at Glen Canyon Dam would not be sufficient to fully minimize the risk of Lake Powell declining below the Target Elevation, operations at all other CRSPA Initial Units will be uniformly considered through evaluations that include but are not limited to water availability, hydrology, resource conditions and operational limitations at each Initial Unit in

conjunction with adjustments at Glen Canyon Dam to provide additional drought protection at Lake Powell.

iii. Multiple Drought Response Releases: If a CRSPA Initial Unit has participated in a drought response release, it will not be considered for another drought response release in subsequent years unless drought response releases from the other CRSPA Initial Units do not fully reduce the risk of Lake Powell declining below the Target Elevation. In such instances, a CRSPA Initial Unit may participate in subsequent drought response releases regardless of whether it has fully recovered storage following a prior drought response release, but only to the extent that a) water is available at that CRSPA Initial Unit for the drought response operation; and, b) contributions from the other CRSPA Initial Units cannot otherwise protect the Target Elevation at Lake Powell.

d. Effectiveness: The Parties agree that a drought response release from a CRSPA Initial Unit may be recommended even if it is determined that such release would not, by itself, fully achieve the intent or goals of this Drought Response Operations Agreement. Such releases, however, may not be recommended if they are ultimately determined to be futile to achieve the goals or intent of this Drought Response Operations Agreement.

e. Recovery of Storage at CRSPA Initial Units: Recovery of storage at the CRSPA Initial Units is essential to any drought response operation. Consistent with Section II.A.3.b-c, the drought response operations process will be completed only after each CRSPA Initial Unit has recovered the storage as defined below. When implementing recovery of storage at the CRSPA Initial Units, the following considerations will apply:

- i. Recovery of Storage Definition: For purposes of this Drought Response Operations Agreement, storage at a CRSPA Initial Unit is recovered when the first of either of the following occurs:
  1. The CRSPA Initial Unit, operating consistent with Section II.A.3.b, has recovered the cumulative volume of water that was released for implementation of drought response operations to minimize the risk of Lake Powell declining below the Target Elevation; or
  2. Water elevation at the CRSPA Initial Unit has reached the regular operating target elevation for that facility, for example, deicing target elevation at the Aspinall Unit, the current end-of-water-year storage target at Navajo Reservoir,

or the May 1 Upper Level Drawdown Elevation target at Flaming Gorge Reservoir.

- ii. *Dual Operations*: Hydrologic variability within the Upper Basin may render releases from a CRSPA Initial Unit ineffective in achieving the intent and goal of this Drought Response Operations Agreement, see Section II.A.3.d, to reduce the risk of Lake Powell declining below the Target Elevation. However, such a CRSPA Initial Unit could still recover storage following a prior drought response release. Moreover, drought response releases from any CRSPA Initial Unit do not preclude recovery of storage actions at another Unit simultaneously.
- f. *Natural Resource Considerations*: Drought response operations at the CRSPA Initial Units will consider the timing, duration, and magnitude of water releases to help minimize, to the extent practicable, impacts to natural resources conditions, recognizing the overall purpose of the drought response operations, and within the scope identified in Section II.A.3.b.
- g. *Impacts to Basin Fund and Bulk Electric System*: Drought response operations at CRSPA Initial Units will consider the timing, duration, and magnitude of water releases to help minimize, to the extent practicable, impacts to the Upper Colorado River Basin Fund and impacts to the reliability of the western Interconnected Bulk Electrical System, within the scope identified in Section II.A.3.b.
- h. *Monitoring*: The Parties agree to include monitoring activities as appropriate as part of any drought response operations (release or recovery of storage). The Parties will incorporate the results of such monitoring into consideration of whether to begin, end, or modify drought response operations.
- i. *Forecast Uncertainty*: Because modeling projections that will be considered and relied upon for any drought response operations cannot predict precise conditions at any given time in the Upper Basin, plans for drought response operations developed in accordance with Section II.A.4.b shall provide sufficient flexibility to begin, end, or adjust operations as needed based on actual hydrologic conditions.
- j. *Emergency<sup>1</sup> Action*: In light of the potential uncertainty associated with modeling projections, the Parties agree that notwithstanding the principles for implementing a drought response operation set forth in this subsection 3,

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<sup>1</sup> The term “emergency” as used in this Drought Response Operations Agreement does not identify, describe or otherwise define what constitutes a general emergency under federal or state laws or other emergency situation at a Reclamation reservoir, a deficiency in the system under the Colorado River Compact, or an extraordinary drought under the 1944 Water Treaty between the United States and Mexico regarding the Colorado River.

the Secretary retains all applicable authority to make releases from the CRSPA Initial Units and perform subsequent recovery of storage operations if actual hydrology or actual operating experience demonstrate an imminent need to protect the Target Elevation at Lake Powell. Such action shall be performed, to the greatest extent practicable, with advance consultation and coordination with the Upper Division States, through the Commission, and following consultation with the Governors' Representatives of the Colorado River Basin States consistent with the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement").

4. Drought Response Process: In an effort to achieve the primary goals of this Drought Response Operations Agreement, and to implement the "Principles" outlined in Section II.A.3, the Parties agree that, subject to Section II.A.3.j "Emergency Action", they will work to minimize the risk of Lake Powell declining below the Target Elevation by:
  - a. *Initiating drought response process*: The Parties will initiate a drought response process, which will include at a minimum:
    - i. *Notice*: The Secretary will notify the Commission and the Lower Division States when Reclamation's 24-Month Study model, using Minimum Probable hydrology based upon the inflow forecast provided by the Colorado Basin River Forecast Center, projects Lake Powell's elevation at or below the Target Elevation at any time during the subsequent 24-month period, or when emergency action becomes necessary as set forth in Section II.A.3.j.
    - ii. *Modeling*: The Secretary will commence monthly modeling of Minimum Probable, Maximum Probable and Most Probable hydrology for the subsequent 24-month period until the Minimum Probable 24-Month Study projects that Lake Powell will consistently remain above the Target Elevation for a 24-month period. Reclamation will report such modeling results to the Upper Division States and the Commission during monthly calls, see Section II.A.4.a.iii.
    - iii. *Monthly Calls/Meetings*: The Secretary will commence monthly drought operations planning and coordination calls or meetings with the Upper Division States and the Commission to discuss monthly modeling and tracking of hydrology forecasts, system conditions, and status of CRSPA Initial Units; each Party may, in its sole discretion, choose the individuals or entities that will attend.

- iv. *Duration*: The Secretary will continue the initiation of the drought response process under this subsection (a) until either:
  - 1. The 24-Month Study Minimum Probable hydrology projects Lake Powell elevations to be above the Target Elevation at all times during the subsequent 24-month period, at which time the drought response process may be suspended; or
  - 2. The 24-Month Study Most Probable hydrology projects Lake Powell elevations to be at or below the Target Elevation at any time during the subsequent 24-month period, at which time the Parties will begin developing a Draft Drought Response Operations Plan as set forth below in Section II.A.4.b.
- b. *Developing Draft Drought Response Operations Plan*: The Parties agree to develop a Draft Drought Response Operations Plan by:
  - i. Continuing the Monthly Calls/Meetings described in Section II.A.4.a.iii.
  - ii. Considering the Drought Response Principles set forth in Section II.A.3, including: *Definition of Drought Response Operations; Scope of Drought Response Operations, Participation from all CRSPA Initial Units; Effectiveness, Recovery of Storage; Natural Resource Considerations; Effects to Basin Fund and Bulk Electric System; Monitoring: Forecast Uncertainty; and Emergency Operations*. In doing so, the Draft Plan will to the greatest extent practicable identify how to: (1) Minimize the risk of Lake Powell declining below the Target Elevation; (2) Provide for timely adjustments in drought response operations based upon actual monthly hydrology to achieve the purpose and intent of this Drought Response Operations Agreement; and (3) Allow for subsequent recovery of storage at the CRSPA Initial Units, consistent with water contract obligations, relevant Records of Decision and Biological Opinions, and other state or federal legal requirements relevant to each facility.
  - iii. Providing the terms of a Draft Drought Response Operations Plan as contemplated by the Parties to the Lower Division States for review, and consulting with the Governors' Representatives of the Lower Division States consistent with the Companion Agreement to consider and address, as appropriate, any questions or concerns regarding the terms of the Draft Drought Response Operations Plan as contemplated by the Parties.
  - iv. Continuing the process described in Section II.A.4.b.i-iii until either:



1. The 24-Month Study Most Probable hydrology projects Lake Powell to remain above the Target Elevation at all times during the subsequent 24-month period, at which time the Parties will revert to the drought response process described in Section II.A.4.a; or
  2. The April 24-Month Most Probable hydrology projects Lake Powell to be at or below the Target Elevation at any time in the next 12-month period, at which time the Parties will finalize the Draft Drought Response Operations Plan as described in Section II.A.4.c.
- c. *Finalize Drought Response Operations Plan:* The Parties will finalize the Drought Response Operations Plan as follows:
- i. The Commission will review and consider a Final Drought Response Operations Plan after consultation with the Governors' Representatives of the Lower Division States as provided in Section II.A.4.b.iii.
  - ii. Upon approval of the Final Drought Response Operations Plan by both the Upper Division State Commissioners and the Commission, the Commission will forward that Final Drought Response Operations Plan to the Secretary for consideration and approval.
  - iii. In the event of any dispute or disagreement arising from development of the Plan, or if the Secretary wishes to modify or reject the Plan, the Secretary and Commission agree to meet to jointly assess what other drought contingency options may be available.
- d. *Implement Drought Response Operations Plan:* Upon the Secretary's approval of the Drought Response Operations Plan, the Parties agree to:
- i. Implement drought response operations at the agreed-upon CRSPA Initial Unit(s) in accordance with the Drought Response Operations Plan, and coordinate weekly, or at such other intervals as otherwise agreed to, on such operations.
  - ii. Be available to respond to the Lower Division States' questions or concerns, should they arise, regarding ongoing implementation of Drought Response Operations.
  - iii. Conclude the Drought Response Operations only after the CRSPA Initial Units have recovered the storage that would have otherwise been available to each Unit but for implementation of Drought Response Operations, as determined in accordance with Section II.A.3.e.
  - iv. If the Parties agree that the finalized Drought Response Operations Plan needs to be modified, amended, or supplemented for the purpose of

more specifically clarifying the scope and detail of recovery of storage, they will consult with the Lower Division States consistent with Section II.A.4.b.iii.

- v. In the event of any dispute or disagreement regarding implementation of the Drought Response Operations Plan, the Parties agree to meet to jointly assess what other drought contingency options may be available.
  - e. *Emergency Action*: Notwithstanding efforts to develop and implement a Drought Response Operations Plan as outlined above, in the event that actual hydrology or actual operating experience demonstrate an imminent need to protect the Target Elevation as set forth in Section II.A.3.j, the Secretary retains all applicable authority to make releases from the CRSPA Initial Units and perform subsequent recovery of storage operations. Such action shall be performed, to the greatest extent practicable, with advance consultation and coordination with the Upper Division States, through the Commission, and following consultation with the Governors' Representatives of the Colorado River Basin States consistent with the Companion Agreement.
5. Public Outreach: The Parties will coordinate on any public outreach for drought response operations at the CRSPA Initial Units. Such coordination will begin prior to outreach activities with the goal of streamlining discussions and avoiding or resolving differences. Except when an imminent need does not permit sufficient time, public outreach regarding drought response operations will include, but may not be limited to, notifying Native American Tribes, local governments, interested stakeholders, and operational and technical workgroups relevant to the respective CRSPA Initial Units of plans and concepts for drought response operations as they become available.
6. Term for Drought Response Operations: Drought response operations as contemplated through this Drought Response Operations Agreement will not extend beyond the term for operations as set forth in the Record of Decision for the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (December 31, 2025 but after finalization of the 2026 Annual Operating Plan, unless terminated sooner). Operations to recover storage after a drought response operation has been implemented will continue as long as necessary to recover from any drought response operations taken before October 1, 2026.

7. Voluntary Efforts: Drought response operations agreed to pursuant to this Drought Response Operations Agreement are voluntary and in the interest of comity. Nothing in this Drought Response Operations Agreement shall be construed to diminish or modify the rights of any Party under existing law.
8. Consistency with Existing Law and Compliance: For the purposes of this Drought Response Operations Agreement, storage of water in and release of water from the CRSPA Initial Units to accomplish a drought response operation does not, and shall not be construed to, violate the Colorado River Compact, Upper Colorado River Basin Compact, Colorado River Storage Project Act, Colorado River Basin Project Act, the San Juan-Chama Project Act (P.L. 87-483), the Northwestern New Mexico Rural Water Projects Act (P.L. 111-11), Records of Decision for each facility, Biological Opinions for each facility, or contracts for water or power, states' water right systems and decrees and all applicable rules and regulations promulgated thereunder.

## **B. ADDITIONAL PROVISIONS**

1. Participation in Similar Activities: This Drought Response Operations Agreement in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations and individuals, as state and federal law may allow.
2. Term: This Drought Response Operations Agreement shall be effective as of the date all Parties provide their written approval and shall be effective as to any additional Party as of the date of execution by such Party. This Drought Response Operations Agreement will not extend beyond the term for operations as set forth in the Record of Decision for the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (December 31, 2025 but after finalization of the 2026 Annual Operating Plan, unless terminated sooner) without the written consent of all the Parties.
3. Amendments and Modifications: This Drought Response Operations Agreement may be amended or modified, but only by the written agreement of the Parties after consultation as set forth in Paragraph I of the Companion Agreement.

4. Resolution of Claims or Controversies: The Parties recognize that judicial or administrative proceedings are not the preferred alternatives to the resolution of claims or controversies regarding this Drought Response Operations Agreement. In furtherance of this Drought Response Operations Agreement, the Parties desire to avoid judicial and administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy triggered by this Drought Response Operations Agreement. If any Party becomes concerned that there may be a claim or controversy under this Drought Response Operations Agreement, or as a result of implementing this Drought Response Operations Agreement such Party shall notify all other Parties via electronic mail or other writing and the Parties shall in good faith meet in order to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative proceeding against any other Party under this Drought Response Operations Agreement, or as a result of implementing this Drought Response Operations Agreement until such consultation has been completed. Notwithstanding any other provision of this Demand Management Storage Agreement, this Paragraph shall survive the termination or expiration of this Demand Management Storage Agreement
5. Reservation of Rights and Authorities: Nothing in this Drought Response Operations Agreement alters the rights, obligations and authorities of the respective Parties. Moreover, nothing in this Drought Response Operations Agreement affects or shall be interpreted to affect the obligations that each Party may have related to natural resources at or around the CRSPA Initial Units under applicable law. Nor have the Parties waived any rights, claims, or defenses now or in the future under any applicable federal or state law or administrative rule, regulation or guideline.
6. No Waiver: The failure of any Party to enforce a provision of this Demand Management Storage Agreement shall not be deemed to constitute a waiver of that provision.
7. No Precedent: The Parties represent and agree that nothing in this Drought Response Operations Agreement, nor the execution of this Drought Response Operations Agreement, established or acts as any precedent for managing or operating the CRSPA Initial Units or administering water from the Colorado River System in the Upper Colorado River Basin. This Drought Response Operations Agreement also shall not be interpreted or construed as establishing a precedent for employing the plans or operational tools contemplated by this Drought Response

Operations Agreement. The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop the water of the Colorado River System. Notwithstanding anything in this Drought Response Operations Agreement to the contrary, this provision shall survive termination of this Demand Management Storage Agreement

8. Actual Operating Experience: Adoption of this Drought Response Operations Agreement does not preclude exploration of additional approaches for operational flexibility in light of actual operating experience.
9. Uncontrollable Forces: No Party shall be considered to be in default in the performance of any of its obligations under this Drought Response Operations Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Drought Response Operations Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.
10. Governing Law: This Drought Response Operations Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Drought Response Operations Agreement shall be in an appropriate Federal court within the Upper Basin.
11. Successors and Assigns: The provisions of this Drought Response Operations Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Drought Response Operations Agreement or any right or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.
12. Drafting Considerations: Each Party and its counsel have participated fully in the drafting, review, and revision of this Drought Response Operations Agreement, each of whom is sophisticated in the matters to which Drought Response Operations

Agreement pertains, and no one Party shall be considered to have drafted this Drought Response Operations Agreement.

13. Notices: All notices and requests required or allowed under the terms of this Drought Response Operations Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

[INSERT CONTACT INFORMATION:]

A Party may change its address by giving the other Parties notice of the change in writing.

14. No Third-Party Beneficiaries: This Drought Response Operations Agreement is made for the benefit of the Parties. No Party to this Drought Response Operations Agreement intends for this Drought Response Operations Agreement to confer any benefit upon any person or entity not a signatory to this Drought Response Operations Agreement upon a theory of third-party beneficiary or otherwise.
15. Authority for Signing: The persons and entities executing this Drought Response Operations Agreement on behalf of the Parties are recognized by the Parties as representing the respective Upper Division States and the Commission and the Department of the Interior in matters concerning the Colorado River and operation of the CRSPA Initial Units, and as those persons authorized to bind the respective Parties to the terms hereof. Each person executing this Drought Response Operations Agreement represents that he or she has the full power and authority to bind the respective Party to the terms of this Drought Response Operations Agreement. This Drought Response Operations Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. No Party shall challenge the authority of any person or Party to execute this Drought Response Operations Agreement and bind such Party to the terms hereof, and the Parties waive the right to challenge such authority.
16. Joint Defense Against Third-Party Claims: The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Drought Response Operations Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this

Drought Response Operations Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Drought Response Operations Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the Drought Response Operations Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Drought Response Operations Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Drought Response Operations Agreement under this Paragraph.

17. Counterparts: This Drought Response Operations Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Drought Response Operations Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Drought Response Operations Agreement on the day and year written above.

[INSERT SIGNATURES]

**AGREEMENT REGARDING STORAGE AT COLORADO RIVER STORAGE PROJECT ACT RESERVOIRS  
UNDER AN UPPER BASIN DEMAND MANAGEMENT PROGRAM**

**I. INTRODUCTION**

The Upper Colorado River Division States of Colorado, New Mexico, Utah, and Wyoming (“Upper Division States”) through the Upper Colorado River Commission (“Commission”), and the Secretary of the Interior (“Secretary”), collectively referred to as the Parties, hereby enter into this Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program (“Demand Management Storage Agreement”), this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ to secure storage capacity at Initial Units authorized under the Colorado River Storage Project Act (“CRSPA”) pursuant to an operational Upper Basin Demand Management Program, if finalized and approved in the future. The Secretary may delegate his or her duties under this Demand Management Storage Agreement to the Bureau of Reclamation (“Reclamation”).

**A. Recitals**

1. Since 2000, the Colorado River Basin has experienced drought conditions that have contributed to decreased water supplies at key Colorado River reservoirs and increased uncertainty regarding water availability to sustain existing uses throughout the Basin.
2. The Parties have worked together and with the Lower Colorado River Division States of Arizona, California and Nevada (“Lower Division States”), relevant federal agencies and interested stakeholders to identify and develop a Drought Contingency Plan that will help minimize and mitigate the risks associated with drought in the Upper Basin. This Demand Management Storage Agreement is one element of that Plan.
3. For purposes of this Demand Management Storage Agreement, the Upper Basin Drought Contingency Plan includes exploring the feasibility of developing and implementing an Upper Basin Demand Management Program.
4. The purpose of an Upper Basin Demand Management Program will be to temporarily reduce Consumptive Uses in the Upper Basin or augment supplies with Imported Water, if needed in times of drought, to help assure continued compliance



with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.

5. The Parties have learned through investigating aspects of demand management that no Upper Basin Demand Management Program is likely to conserve enough water in any single year to help assure continued compliance with the Colorado River Compact during extended drought conditions. The Parties, therefore, recognize that an Upper Basin Demand Management Program will require the ability to store conserved water over multiple years.
6. The Parties acknowledge that securing the authorization for storage capacity for a Upper Basin Demand Management Program does not certify, warrant or otherwise guarantee the development and implementation of such a Program, nor does it predetermine the type of any Program that may be adopted in the future. However, the Parties understand that without securing the authorization for storage capacity at the CRSPA Initial Units for an Upper Basin Demand Management Program, investigation regarding the feasibility into development and implementation of such a Program is likely unwarranted.

#### **B. Intent**

Through this Demand Management Storage Agreement, the Parties intend to:

1. Secure the authorization for storage capacity at CRSPA Initial Units to preserve the Parties' ability to explore the feasibility and development of an Upper Basin Demand Management Program, and implement such a Program if it is finalized;
2. Agree upon the minimum conditions under which the authorized storage capacity will be available for an Upper Basin Demand Management Program; and
3. Promote communication, coordination and cooperation among themselves to provide additional certainty in Colorado River water management and to remove causes of future controversy.

## **II. AUTHORIZATION**

Upon approval of this Demand Management Storage Agreement by the Congress of the United States and full execution by the Parties, the Secretary is authorized to make Unfilled Storage Capacity at the CRSPA Initial Units available for use by the Upper Division States, through the Commission, at no charge and in accordance with the terms of this Demand Management Storage Agreement. The Secretary shall make such storage capacity available provided that the Commission requests use of the storage capacity for the purpose of storing water conserved as

part of an Upper Basin Demand Management Program. The authorization in this Section II shall not expire, and shall survive the termination of this Demand Management Storage Agreement.

### III. AGREEMENT

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

#### A. Definitions

For purposes of this Demand Management Storage Agreement, the following definitions shall apply:

1. “Colorado River Basin” shall have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
2. “Colorado River System” shall have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
3. “Consumptive Use” means the depletion of water for domestic and agricultural beneficial uses as those terms are defined and referred to in the 1922 Colorado River Compact. For purposes of this definition, Consumptive Use also includes the full amount of water: (i) consumed in association with the production of electrical power other than hydropower; and (ii) diverted from the Upper Colorado River System for which there are no return flows to that system, including, for example, diversions outside the natural Colorado River watershed.
4. “CRSPA Initial Units” refers to Glen Canyon Dam, Flaming Gorge, Curecanti (the “Aspinall Unit”), and Navajo Reservoir as authorized under the 1956 Colorado River Storage Project Act.
5. “Effective Date” means the date that all of the Commissioners to the Upper Colorado River Commission and the Secretary sign this Demand Management Storage Agreement.
6. “Imported Water” means water introduced to the Upper Colorado River System from outside the Colorado River System for the specific purpose of augmenting the supplies available for, or storing water as part of, an Upper Basin Demand Management Program. Such Imported Water need not have been previously consumptively used in its basin of origin.
7. “Unfilled Storage Capacity” means the storage space available at a given CRSPA Initial Unit after satisfying the legal storage obligations applicable to that Unit, consistent with applicable water rights administration requirements and decrees.

8. “Upper Basin” shall refer to the Upper Colorado River Basin and have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
9. “Upper Basin Demand Management Program” refers to a program approved by the Upper Colorado River Commission and each Upper Division State, acting through its Commission representative, consistent with this Demand Management Storage Agreement to reduce Consumptive Uses or augment water supplies with Imported Water, if needed, to help assure compliance with Article III of the Colorado River Compact without impairing the right to exercise any existing Upper Basin water rights in the future.
10. “Upper Colorado River System” means the Colorado River System within the Upper Basin.
11. “Verification” means the confirmation of the actual volume of Consumptive Use that is conserved, or Imported Water that is introduced, conveyed to and stored in a CRSPA Initial Unit under an Upper Basin Demand Management Program.

#### **B. Upper Basin Demand Management Program**

The Upper Division States, through the Commission, shall have access to the Unfilled Storage Capacity authorized in Section II only upon development and approval of an Upper Basin Demand Management Program. In developing and approving such a Program, the following conditions and requirements, at a minimum, must be satisfied:

1. Feasibility: The Upper Division States, through the Commission, must investigate the feasibility of developing and implementing an Upper Basin Demand Management Program, and reach consensus on, among other things:
  - a. Verification of and accounting for the actual volume of conserved Consumptive Use;
  - b. Conveyance of the conserved Consumptive Use to appropriate destinations, and accounting for associated conveyance losses;
  - c. Providing for storage at and release from the CRSPA Initial Units of any conserved Consumptive Use;
  - d. Administration of an Upper Basin Demand Management Program;
  - e. Funding of an Upper Basin Demand Management Program; and
  - f. Compliance with federal and state laws within each Upper Division State.
2. Program Development: If the Upper Division States, through the Commission, agree that an Upper Basin Demand Management Program is feasible and pursue development of a Program, it must include, at a minimum, the following water conservation, storage and release considerations:

- a. Water conserved shall only be recognized as part of any Upper Basin Demand Management Program if:
  - i. The source of conserved water is Upper Colorado River System water, or Imported Water;
  - ii. The water is conserved, stored and released for the specific purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact;
  - iii. For Upper Colorado River System water, the water must have been beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management Program;
  - iv. For Upper Colorado River System water, the water must have been physically available for diversion in the year it was conserved, and would have been beneficially and consumptively used within a state or states of the Upper Division but for the conservation for the benefit of an Upper Basin Demand Management Program; and
  - v. The conserved or Imported Water has arrived at a CRSPA Initial Unit after accounting for any conveyance and associated losses.
- b. Any conserved water or Imported Water to be stored in a CRSPA Initial Unit for the purposes of an Upper Basin Demand Management Program shall be subject to:
  - i. Assessment of its proportionate share of evaporation during storage;
  - ii. Available Unfilled Storage Capacity;
  - iii. An annual creation limitation at the CRSPA Initial Units combined, which volume shall be determined as part of the feasibility investigation;
  - iv. A maximum combined storage limitation of 500,000 acre-feet at the CRSPA Initial Units;
  - v. Reduction, in any year in which water flows over or through the spillway at Glen Canyon Dam, by the amount of that flow on an acre-foot for acre-foot basis up to the full amount of water stored under an Upper Basin Demand Management Program; and
  - vi. Annual Verification by the Upper Division States, through the Commission, and the Secretary of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units.
- c. Any conserved water stored and released from a CRSPA Initial Unit under an Upper Basin Demand Management Program shall:
  - i. Be accounted for consistent with the provisions in Section III.B.2.b and this Section III.B.2.c until 2057;

- ii. Through the year 2057, not be released or cause a different release from Lake Powell than would have otherwise occurred under the 2007 Interim Guidelines or post 2026 operational rules. This provision shall survive termination of this Demand Management Storage Agreement through 2057; and
  - iii. Be subject to release from any of the CRSPA Initial Units only at the request of the Commission to help assure continued compliance with Article III of the Colorado River Compact. This provision shall survive termination of this Demand Management Storage Agreement through 2057.
- 3. Upper Basin Demand Management Program Approval: The following findings, agreement, consultation, and approvals must be made before any Upper Basin Demand Management Program can be finalized and made operational in the Upper Basin:
  - a. *Commission Findings*: The Commission must make findings that demand management activities are necessary to help assure continued compliance with Article III of the Colorado River Compact;
  - b. *Agreement and Consultation*: The Upper Division States, through the Commission, and the Secretary must enter into agreement(s) on the methodology, process and documentation for Verification and accounting for the creation, conveyance, and storage of conserved water to be stored in and released from a CRSPA Initial Unit as part of an Upper Basin Demand Management Program. Before entering into such agreement(s), the Commission and Secretary must consult with the Lower Division States using the consensus-based approach as agreed to in the Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”);
  - c. *Commission Approval*: The Commission must approve the Upper Basin Demand Management Program; and
  - d. *State Approval*: In addition to Commission approval, each Upper Division State, acting through its Commission representative, must approve the Upper Basin Demand Management Program.
- 4. Considerations - Post-2025: A position has not been formally expressed regarding implementation of an Upper Basin Demand Management Program after 2025. The Parties acknowledge and expect that operation and implementation of an Upper Basin Demand Management Program following the Term of this Demand Management Storage Agreement will be informed by and considered as part of the Secretary’s formal review to evaluate the effectiveness of the 2007 Interim Guidelines in consultation with the seven Colorado River Basin States, which is

scheduled to begin no later than December 31, 2020. (See Section XI.G.7.D of 2007 Interim Guidelines).

The Upper Division States and the Commission also acknowledge and expect that, at a minimum, any Upper Basin Demand Management Program implemented after 2025 would include the terms for feasibility and program development set forth in Section III.B.1 and III.B.2.a of this Demand Management Storage Agreement as well as the findings and approval provisions set forth herein.

### **C. Term**

This Demand Management Storage Agreement will remain in effect from the Effective Date through December 31, 2025 (through preparation of the 2026 Annual Operating Plan) except for those provisions that survive termination of this Demand Management Storage Agreement.

### **D. Additional Provisions**

1. No Waiver: The failure of any Party to enforce a provision of this Demand Management Storage Agreement shall not be deemed to constitute a waiver of that provision.
2. No Precedent: Except for the Authorization provided in Section II of this Demand Management Storage Agreement, the Parties represent and agree that nothing in this Demand Management Storage Agreement establishes or acts as precedent for any future agreement or undertaking. In particular, this Demand Management Storage Agreement shall not be interpreted or construed as establishing a precedent for employing the operational tools contemplated in this Demand Management Storage Agreement. The Parties hereby affirm the entitlement and right of each State under existing law to use and develop the water of the Colorado River System. Notwithstanding anything in this Demand Management Storage Agreement to the contrary, this provision shall survive termination of this Demand Management Storage Agreement.
3. Reservation of Rights: Except as expressly provided herein, the Parties reserve, and nothing in this Demand Management Storage Agreement shall be deemed to diminish or waive, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue after the term hereof, under any existing federal or state law, including without limitation the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in *Arizona v.*

*California*, the Colorado River Storage Project Act, the Colorado River Basin Project Act.

4. Uncontrollable Forces: No Party shall be considered to be in default in the performance of any of its obligations under this Demand Management Storage Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Demand Management Storage Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.
5. Representations and Warranties: Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this Demand Management Storage Agreement, the following:
  - a. The Party has all legal power and authority to enter into this Demand Management Storage Agreement and to perform its obligations hereunder on the terms set forth in this Demand Management Storage Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a party or by which each Party is bound.
  - b. The individual executing this Demand Management Storage Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Demand Management Storage Agreement.
  - c. This Demand Management Storage Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.
6. Governing Law: This Demand Management Storage Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Demand Management Storage Agreement shall be in an appropriate Federal court within the Upper Basin.
7. Successors and Assigns: The provisions of this Demand Management Storage Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Demand Management Storage Agreement or any right

or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

8. Amendments or Modifications: Section II of this Demand Management Storage Agreement cannot be modified without a subsequent act of Congress. The remainder of this Demand Management Storage Agreement may be amended or modified, but only by the written agreement of the Parties after consultation among the Parties and the Lower Division States as set forth in Paragraph I of the Companion Agreement.
9. Drafting Considerations: Each Party and its counsel have participated fully in the drafting, review, and revision of this Demand Management Storage Agreement, each of whom is sophisticated in the matters to which this Demand Management Storage Agreement pertains, and no one Party shall be considered to have drafted this Demand Management Storage Agreement.
10. Notices: All notices and requests required or allowed under the terms of this Demand Management Storage Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

[INSERT CONTACT INFORMATION:]

A Party may change its address by giving the other Parties notice of the change in writing.

11. No Third Party Beneficiaries: This Demand Management Storage Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Demand Management Storage Agreement intends for this Demand Management Storage Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.
12. Resolution of Claims or Controversies: The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the Law of the River. In furtherance of this Demand Management Storage Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. If any Party becomes concerned that there may be a claim or controversy under this Demand Management Storage Agreement or, specific to the Secretary, Section 601 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1551), and all applicable rules and regulations promulgated thereunder, such Party shall notify all other Parties in writing, and shall in good faith



meet to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative proceeding arising out of this Demand Management Storage Agreement against any other Party, and no claim hereunder shall be ripe, until such consultation has been completed. Notwithstanding any other provision of this Demand Management Storage Agreement, this Paragraph shall survive the termination or expiration of this Demand Management Storage Agreement.

13. Joint Defense Against Third-Party Claims: The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Demand Management Storage Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this Demand Management Storage Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Demand Management Storage Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the Demand Management Storage Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Demand Management Storage Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Demand Management Storage Agreement under this Paragraph.
14. Counterparts: This Demand Management Storage Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Demand Management Storage Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Demand Management Storage Agreement on the day and year written above.

## AGREEMENT CONCERNING COLORADO RIVER DROUGHT CONTINGENCY MANAGEMENT AND OPERATIONS

This Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and among [INSERT PARTIES TO THE UB AND LB DCPs]

### RECITALS

#### A. Background

1. Federal law and practice (including, but not limited to, Section 16 of the Boulder Canyon Project Act, 43 U.S.C § 6170 and Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act, and the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”)) contemplate that in the operation of Lakes Powell and Mead, the Secretary of the Interior (“Secretary”) consults with the Colorado River Basin States and such state representatives as each Governor may designate. Through this law and practice, the Governors’ representatives and state agencies have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation. This Companion Agreement is entered into in furtherance of this law and practice.
2. The signatories to the April 23, 2007, Agreement Concerning Colorado River Management and Operations (“2007 Seven States’ Agreement”) intended to improve cooperation and communication among them; provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System; and avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the Law of the River.<sup>1</sup>
3. The signatories to the 2007 Seven States’ Agreement subsequently submitted to the Secretary a recommendation (“States’ Recommendation”) for operation of the Colorado River System, including proposed guidelines to be incorporated in a record of decision at the conclusion of a decision-making process pursuant to the National

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<sup>1</sup> The “Law of the River” as mentioned in this Companion Agreement refers to the body of law existing on the date of this Companion Agreement and affecting the interstate and international use, management, and allocation of water in the Colorado River System, including the 1922 Colorado River Compact, the Mexican Water Treaty of 1944, the 1948 Upper Colorado River Basin Compact, several United States Supreme Court decisions, the Consolidated Decree of the Supreme Court in *Arizona v. California*, and a host of federal laws and administrative regulations.

Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347.

4. On December 13, 2007, the Secretary adopted a record of decision, based in large part on the States' Recommendation, entitled the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, effective through December 31, 2025 (through preparation of the 2026 Annual Operating Plan) ("Interim Period").
5. Consistent with and pursuant to provisions in the 2007 Seven States' Agreement and the 2007 Interim Guidelines, the Parties have regularly consulted regarding various issues that have arisen prior to and during implementation of the 2007 Interim Guidelines.
6. Based on the actual operating experience gained after the adoption of the 2007 Interim Guidelines and emerging scientific information regarding the increasing variability and anticipated decline in Colorado River flow volumes, the Parties recognize and acknowledge that those relying on water from the Colorado River System face increased individual and collective risk of temporary or prolonged interruptions in water supplies, with associated adverse impacts on the society, environment, and economy of the Colorado River Basin. Therefore, the Parties have agreed that it is necessary and beneficial to pursue additional actions beyond those contemplated in the 2007 Interim Guidelines to reduce the likelihood of reaching critical elevation levels in Lake Powell and Lake Mead through the Interim Period.
7. The Parties have developed two drought contingency plans: the Upper Basin Drought Contingency Plan ("Upper Basin DCP"), which affects operations above Lee Ferry, and the Lower Basin Drought Contingency Plan ("Lower Basin DCP"), which affects operations below Lee Ferry. Both the Upper Basin DCP and the Lower Basin DCP are supplemental to and in furtherance of the goals of the 2007 Interim Guidelines.
8. Beginning in 2008, the Parties began discussions with the International Boundary and Water Commission ("IBWC") and representatives of Mexico regarding potential cooperative actions in the Colorado River Basin pursuant to the United States-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("1944 Water Treaty"), culminating in several agreements ("Minutes") designed to implement the Treaty terms.
9. From 2015 through 2017, the Parties participated in negotiations with the IBWC and representatives of Mexico on Minute 323 to the 1944 Water Treaty, titled Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.
10. Minute 323, approved on September 27, 2017, includes a Binational Water Scarcity Contingency Plan for Mexico to participate in the equivalent of drought contingency

plan if a Lower Basin Drought Contingency Plan is put into effect in the United States. The Binational Water Scarcity Contingency Plan is intended to allow Mexico to undertake water savings in parity with U.S. savings for drought contingencies which would be recoverable under specifically improved reservoir conditions.

B. Purpose

The Parties intend that the actions contemplated in and recognized by this Companion Agreement will allow the development and testing, on an interim basis, of tools to provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by the System and to avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the Law of the River.

**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 Parties agree as follows:

A. Support for the Upper Basin DCP

For purposes of this Companion Agreement, the Upper Basin DCP includes the Agreement for Drought Response Operations at the Initial Units of the Colorado River Storage Project Act and the Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program (“Demand Management Storage Agreement”) which are attached and incorporated herein as Attachments A1 and A2. The Parties agree that, when executed, the additional agreement(s) specified in Section III.B.3.b of the Demand Management Storage Agreement shall constitute additional components of the Upper Basin DCP. The Parties agree that the components of the Upper Basin DCP are likely to have a beneficial effect on the management of the Colorado River System. The Parties further agree to support steps necessary to achieve final adoption and implementation of the Upper Basin DCP.

B. Support for the Lower Basin DCP

The Lower Basin DCP, entitled Lower Basin Drought Contingency Plan Agreement (including Exhibit 1 entitled Lower Basin Drought Contingency Operations), is attached and incorporated herein as Attachment B. The Parties agree that the components of the Lower Basin DCP are likely to have a beneficial effect on the management of the Colorado River System. The Parties further agree to support steps necessary to achieve final adoption and implementation of the Lower Basin DCP.

C. Federal Legislation

Pursuant to Paragraph B of the Agreement Regarding Notice From the Secretary of the Interior for the Purpose of Implementing Section IV of Minute 323, the non-Federal Parties have worked through a consensus-based effort to develop and seek federal legislation to implement the Upper Basin and Lower Basin DCPs. The legislation developed by the non-Federal Parties is attached hereto as Attachment C.

D. Resolution of Claims or Controversies Related to the Upper Basin DCP or the Lower Basin DCP

Consistent with the purpose of this Companion Agreement, the Parties agree to pursue a consultative approach to resolution of any potential claim or controversy arising under or related to this Companion Agreement, the Upper Basin or Lower Basin DCPs, or the associated federal legislation. In the event any Party becomes concerned that there may be a claim or controversy under this Companion Agreement, the Upper Basin or Lower Basin DCPs, or the associated federal legislation, such Party shall notify all other Parties in writing, and the Parties shall meet in good faith in order to resolve such claim or controversy by mutual agreement. Further, the non-Federal Parties agree that before initiating any judicial or administrative proceeding against any other Party, no claim thereunder shall be ripe until such dispute resolution process set forth in this Paragraph D has been completed. All non-Federal Parties shall comply with any request by the Secretary for consultation in order to resolve any claim or controversy. Notwithstanding anything in this Companion Agreement to the contrary, the terms of this Paragraph shall survive the termination or expiration of this Companion Agreement.

E. Implementation and Enforcement

The Parties acknowledge and agree that implementation and operation of the Upper Basin and Lower Basin DCPs consistent with this Companion Agreement are intended to further the goals and coordinated operations of Lake Powell and Lake Mead pursuant to the 2007 Interim Guidelines, and to enhance conservation of water in the Colorado River System for the benefit of each of the Colorado River Basin States.

The Secretary shall provide and describe 24-Month Study assumptions and projected operations, including those related to Lower Basin water use, to the Parties prior to the completion of the April and August 24-Month Studies under the 2007 Interim Guidelines. In addition to the consultations under the Annual Operating Plan, the Secretary shall also provide and describe to the Parties an evaluation of actual calendar-year operations and identify any substantial variations from modeling assumptions.

The Parties agree to comply with this Companion Agreement, including the Upper Basin and Lower Basin DCPs. The Parties agree to act in good faith and with fair dealing entering into, implementing and performing their obligations under this Companion Agreement, including the Upper Basin and Lower Basin DCPs. In the event of failure to comply with this provision, any affected non-Federal party may maintain an action to enforce pursuant to 43 U.S.C. §1551(c).

F. Past Consultation

Consistent with the 2007 Interim Guidelines and the 2007 Seven States' Agreement, and consistent with the recent history of collaboration on the Colorado River to address and avoid circumstances that could form the basis for claims or controversies, consultation on the terms and application of this Companion Agreement and the Upper Basin and Lower Basin DCPs, has occurred between the Governors' Representatives, Colorado River Basin States and the Secretary of the Interior. Such consultation was limited to the terms of this Companion Agreement and the Upper Basin and Lower Basin DCPs, and was not for the purpose of the Secretary's formal review required in Section XI.G.7.D of the 2007 Interim Guidelines.

G. Consultation on Operations

Any Party may request consultation with the other Parties on implementation or operation of this Companion Agreement including the Upper Basin and Lower Basin DCPs. Upon such request, the Parties shall consult in good faith with each other to address questions, concerns or issues that may arise regarding implementation or operation of this Companion Agreement including the Upper Basin and Lower Basin DCPs.

H. Consultation Regarding Future Implementation

The Demand Management Storage Agreement contemplates certain future actions under specified conditions. Because the implementation of an Upper Basin Demand Management Program would relate to interests, rights and obligations regarding the Colorado River, the Parties agree to work together to seek consensus in finalizing an Upper Basin Demand Management Program. Specifically, the Upper Division States and the Secretary agree to consult with the Lower Division States regarding the following:

1. Verification of and accounting for the actual volume of conserved consumptive use, including consideration of water uses that may be eligible for designation as conserved consumptive use under a Demand Management Program, prior to reaching consensus on the feasibility thereof;
2. The methodology, process and documentation for verification of and accounting for the actual volume of conserved consumptive use considered during the Program Development stage prior to entering into any of the agreement(s) identified in Section III.B.3.b of the Demand Management Storage Agreement; and
3. Annual verification by the Upper Division States, through the Commission, and the Secretary of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units as set forth in Section III.A.4, III.A.11, and III.B.2.b.vi of the Demand Management Storage Agreement.

I. Consultation on Amendments or Modifications

No substantive amendment or modification of the Companion Agreement shall be made

without the written consent of the Parties.

No substantive amendment or modification to the Upper Basin and Lower Basin DCPs shall be made without prior consultation among the Parties. If a Party requests consultation for amendments or modifications pursuant to this Paragraph, the Parties shall consult in good faith to assess and consider suggested amendments or modifications.

Notwithstanding the above provisions, no amendments or modifications to this Companion Agreement or the Upper Basin and Lower Basin DCPs shall be made without a subsequent act of Congress if such amendments or modifications would conflict with the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in *Arizona v. California*, the Colorado River Storage Project Act or the Colorado River Basin Project Act.

J. Reservation of Rights

Notwithstanding the terms of this Companion Agreement, including the Upper Basin and Lower Basin DCPs, in the event that for any reason the Parties cannot reach consensus on any matter after the processes set forth in this Companion Agreement have been satisfied, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue after the term hereof, under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in *Arizona v. California*, the Colorado River Storage Project Act, the Colorado River Basin Project Act and any other applicable provision of federal law, rule, regulation, or guideline.

Nothing in this Companion Agreement, including the Upper Basin and Lower Basin DCPs, or any related or enabling legislation referenced in Paragraph C of this Companion Agreement shall be utilized against any other Party in any administrative, judicial or other proceeding, except for the sole purpose of enforcing the terms of this Companion Agreement, including the Upper Basin and Lower Basin DCPs. Notwithstanding anything in this Companion Agreement to the contrary, the terms of this Paragraph shall survive the termination or expiration of this Companion Agreement.

K. No Precedent/Reaffirmation of Existing Law

Except as provided in Section II of the Demand Management Storage Agreement, the Parties represent and agree, that nothing in this Companion Agreement, including the Upper Basin and Lower Basin DCPs, or any related or enabling legislation referenced in Paragraph C of this Companion Agreement, shall be interpreted or construed as establishing a precedent for employing the operational tools contemplated by the Upper Basin or Lower Basin DCPs and any related federal legislative approval beyond the terms of the Upper Basin and Lower Basin DCPs. The Parties hereby affirm the entitlement and right of each State under such existing law to use

and develop the water of the Colorado River System. Notwithstanding anything in this Companion Agreement to the contrary, this Paragraph shall survive the termination or expiration of this Companion Agreement.

L. Scope

The Parties represent and agree that actions to be employed under the Upper Basin DCP are limited to Colorado River operations above Lee Ferry, and actions to be employed under the Lower Basin DCP are limited to Colorado River operations below Lee Ferry.

M. Term

This Companion Agreement shall be effective as of the date that all Parties have executed this Companion Agreement. Unless earlier termination is agreed to, in writing, by all Parties, this Companion Agreement shall be effective through the Interim Period, unless otherwise specified in this Companion Agreement, including the Upper Basin and Lower Basin DCPs.

N. Representations and Warranties

Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this Companion Agreement, the following:

1. The Party has all legal power and authority to enter into this Companion Agreement and to perform its obligations hereunder on the terms set forth in this Companion Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a Party or by which each Party is bound.
2. The individual executing this Companion Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Companion Agreement.
3. This Companion Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

O. No Third-Party Beneficiaries

This Companion Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Companion Agreement intends for this Companion Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

P. The Parties are hereby notified of A.R.S. section 38-511.



Q. Governing Law

This Companion Agreement shall be interpreted, governed by, and construed under applicable Federal law.

R. Actual Operating Experience

Adoption of this Companion Agreement does not preclude exploration of additional approaches for operational flexibility in light of actual operating experience.

S. Uncontrollable Forces

No Party shall be considered to be in default in the performance of any of its obligations under this Companion Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Companion Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

T. Successors and Assigns

The provisions of this Companion Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Companion Agreement or any right or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

U. Drafting Considerations

Each Party and its counsel have participated fully in the drafting, review, and revision of this Companion Agreement, each of whom is sophisticated in the matters to which this Companion Agreement pertains, and no one Party shall be considered to have drafted this Companion Agreement.

V. Notices

All notices and requests required or allowed under the terms of this Companion Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to

the following entities at the following addresses:

[INSERT CONTACT INFORMATION:]

A Party may change its address by giving the other Parties notice of the change in writing.

W. Joint Defense Against Third-Party Claims

The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Companion Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this Companion Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Companion Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the Companion Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Companion Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Companion Agreement under this Paragraph.

X. Counterparts

This Companion Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Companion Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Companion Agreement on the day and year written above.

[Signatures begin on following page.]

**Presentation by NMISC staff and NM CAP Entity's Executive Director and request for delegation of authority on:**

- A. Presentation of the Second Amended Joint Powers Agreement (JPA) for the New Mexico CAP Entity; and
- B. Request Commission delegate authority to the NMISC Chairman to execute the Second Amended JPA on behalf of the NMISC

**Dominique Work and Anthony Gutierrez, NM CAP Entity, Executive Director**

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
TOPPER THORPE, Vice Chairman, Cliff  
TOM BLAINE, P.E., Secretary  
BLANE SANCHEZ, Isleta  
CAROLYN HOLLIFIELD, Roswell  
SAMUEL GONZALES, Aztec  
FRANKLIN McCASLAND, Tucumcari  
JACK KING, Alto



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

## MEMORANDUM

DATE: November 26, 2018

TO: New Mexico Interstate Stream Commission

FROM: Dominique Work

RE: Presentation by NMISC Staff and Request Approval of Second Revised Joint Powers Agreement of the New Mexico CAP Entity

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Staff will project and explain a redline version of the edits proposed by the NM CAP Entity to address concerns expressed by ISC Commissioners regarding the August draft of the Second Amended Joint Powers Agreement (“JPA”) for the New Mexico CAP Entity.

The Entity will vote on those edits at its December 4<sup>th</sup> meeting.

**SECOND AMENDED JOINT POWERS AGREEMENT  
NEW MEXICO CAP ENTITY**

This Second Amended Joint Powers Agreement (the “Agreement”) creating the New Mexico CAP Entity (the “New Mexico CAP Entity”) is entered into by and between the Village of Santa Clara, the Cities of Deming, Lordsburg, the Counties of Catron, Grant, Luna, and Hidalgo, other parties recognized by the State of New Mexico as political subdivisions: the Upper Gila Irrigation Association, the Fort West Irrigation Association, the Gila Farm Irrigation Association, the Gila Hotsprings Irrigation Association, the Hidalgo Soil & Water Conservation District, the San Francisco Soil & Water Conservation District , the -Grant Soil & Water Conservation District, and the Interstate Stream Commission (the “ISC” or the “Commission”), and Grant Soil & Water Conservation District, all such entities being political subdivisions as defined in the Joint Powers Agreements Act, NMSA 1978, Section 11-1-2. The entities listed above shall collectively be referred to as the Parties to this Agreement. This Agreement will become effective upon approval by the Department of Finance and Administration pursuant to NMSA 1978, Section 11-1-3. Once this Agreement has been approved by the Department of Finance and Administration, the ISC will designate the New Mexico CAP Entity, defined below, as being formed by this Agreement.

**RECITALS**

WHEREAS, pursuant to the Colorado River Basin Project Act of 1968 and the Arizona Water Settlements Act of 2004, Pub. L. 108-451, 118 Stat. 3478 (“AWSA”), an annual average of 14,000 acre-feet per year of AWSA water is allocated to New Mexico for beneficial use in New Mexico (“AWSA water”); and

WHEREAS, as identified in Section 212(i) of the AWSA, the NM Unit Fund is a fund established in the State Treasury and administered by the ISC;

WHEREAS, Section 212(i) of the AWSA provides that withdrawals from the NM Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico;

WHEREAS, in 2012, the Bureau of Reclamation made the first of ten (10) equal, annual deposits into the New Mexico Unit Fund in accordance with Section 107(a)(2)(D)(i) of the AWSA;

WHEREAS, on November 24, 2014, the ISC, in an open meeting, voted to pursue a New Mexico Unit of the Central Arizona Project (“NM Unit”) and to notify the Secretary of the Interior that the State of New Mexico intends to construct a NM Unit; and

WHEREAS, a NM Unit means the unit or units of the Central Arizona Project in New Mexico to be designed, constructed, operated and maintained to use the AWSA water; and

WHEREAS, pursuant to the AWSA, the Secretary of the Interior has the authority to design, build, operate and maintain a NM Unit, but must transfer that authority to the New Mexico CAP Entity upon request by the New Mexico CAP Entity; and

WHEREAS, the Secretary of the Interior shall divert water and exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement (“CUFA”) as ratified by the AWSA, solely for the benefit of the New Mexico CAP Entity and for no other purpose; and

WHEREAS, the Parties agree that, once diverted or stored, the AWSA water should be managed solely for the benefit of the New Mexico CAP Entity, subject to all governing laws; and

WHEREAS, pursuant to the AWSA, the New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the New Mexico Unit Agreement; and

WHEREAS, the New Mexico Unit Agreement (“NM Unit Agreement”) is a contract ~~to~~ ~~be~~ entered into between the Secretary of the Interior and the New Mexico CAP Entity to effectuate the terms of the AWSA and the CUFA; and

WHEREAS, pursuant to the CUFA, as ratified by the AWSA, the State of New Mexico, acting through the ISC, has the authority to form or designate the New Mexico CAP Entity; and

WHEREAS, the Parties desire to create and serve as the New Mexico CAP Entity, for the purposes of planning, designing, building, operating and maintaining a NM Unit and for the purpose of developing other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico; and

WHEREAS, consistent with the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties jointly have and will exercise the powers described in this Agreement; and

WHEREAS, the Parties desire to obtain all benefits from (1) the diversion and beneficial use of the AWSA water (2) the development of other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico, and (3) the exercise of rights and authorities by the Secretary of the Interior pursuant to Section 212(c)(4) of the AWSA, Pub. L. 108-451, 118 Stat. at 3528.

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

**I. Authorizing Law**

This Joint Powers Agreement (“JPA” or “Agreement”) is entered into pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

**II. Purposes**

The purposes of this Agreement are to:

- (a) Create the New Mexico CAP Entity.
- (b) Allow the New Mexico CAP Entity to exercise its authority and power to execute and implement the NM Unit Agreement.
- (c) Allow the New Mexico CAP Entity to investigate and/or obtain, through lease, purchase or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI) as a water utilization alternative to meet water supply demands in the Southwest Water Planning Region of New Mexico pursuant to Section 212(i) of the AWSA.
- (d) -Allow, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019) and the development of specific policies and criteria for the evaluation, prioritization and implementation of proposed projects, a portion of the NM Unit Fund to be used for the planning, design, and construction of other



water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.

### **III. Representations and Warranties**

Consistent with the AWSA and the Joint Powers Agreement Act, the Parties to this Agreement warrant and represent the following:

- (a) That they, both individually and collectively, have authority to bind themselves to the terms of this Agreement and to undertake the planning, designing, construction, operation and maintenance of the NM Unit.
- (b) That they are committed to beneficially using the water available to New Mexico pursuant to both the Colorado River Basin Project Act of 1968 and the AWSA.
- (c) That they can undertake the responsibility of planning the NM Unit.
- (d) That, upon request to the Secretary of the Interior, they will have the ability to perform all, or any combination of, the following duties listed in the AWSA:
  - Design the NM Unit
  - Build the NM Unit
  - Operate the NM Unit
  - Maintain the NM Unit

- (e) That they have identified an objective to investigate and/or obtain, through lease, purchase, or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI).
- (f) That the construction and operation of the NM Unit (Development of the AWSA Water) is and remains a the highest priority
- (g) That the ISC approves all projects and expenditures of the NM Unit Fund in consultation with the NM CAP Entity.

(h) That they have identified an objective to create a program whereby applications for project funding from the ~~New Mexico~~NM Unit Fund for the planning, design and construction of water utilization alternatives in the Southwest Planning Region of New Mexico may be submitted to, and evaluated and approved by, the New Mexico CAP Entity. Beginning after the issuance of the Record of Decision , which is to be issued by December 31, 2019, the Parties will formulate specific management policies and criteria for the evaluation, prioritization and implementation of proposed projects. Once the policies and criteria have been finalized, applications for project funding will be accepted.

~~(i) Applications for project funding will not be accepted prior to the issuance of the Record of Decision by the Secretary of the Interior for the proposed NM Unit, which is to be issued by December 31, 2019. After that date, approved project applications may be funded through the provisions contained in the NM Unit Fund Act.~~

(j) That funds from the New Mexico Unit Fund made available to the New Mexico CAP Entity may be used for the following purposes. The use of all funds or income available through the AWSA or derived from the AWSA, or made available to, the New Mexico CAP Entity from all sources, regardless of where those funds are deposited, shall be used for the planning, design, construction, operation and maintenance, of a NM Unit, or all or any combination of those responsibilities, for development of the AWSA water. Funds from the New Mexico Unit Fund may also be used to investigate and/or obtain, through lease, purchase, or other transfer mechanism, water resources and infrastructure currently owned by FMI and for the operation, management and/or utilization of such water resources and infrastructure upon lease, purchase or other transfer to the New Mexico CAP Entity.

~~(h)~~(k) After the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), and after development of policies and criteria as forth in Paragraph (h) above, funds from the NM Unit Fund may also be used for the planning, design, and construction of other water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.

(i)(l) The Parties agree that they may provide financial support to the extent they are able to, in each Party's individual discretion, as necessary in perpetuity

to plan, design, construct, operate and maintain the NM Unit, including, without limitation, the issuance of bonds, the levy of taxes, the assessment of membership dues, and the assessment of user fees.

~~(j)~~(m) The Parties agree that this Amendment to the JPA shall not divest the ISC of any authority with regard to the allocations made by the ISC to non-NM Unit water utilization projects in the Region to date.

#### **IV. Joint Powers**

- (a) As provided in the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties to this Agreement have and will jointly exercise:
- (1) The authority and power to execute and implement the NM Unit Agreement pursuant to the AWSA, 118 Stat. at 3482;
  - (2) The authority and power to designate fiscal agents; and
  - (3) The authority and power to request, at some point in the future, that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity, or all or any combination of those authorities and to carry out those responsibilities; and
  - (4) The authority and power to implement this JPA as amended.
- (b) This Agreement provides a mechanism for the Parties to plan, design, build, operate, and maintain a NM Unit in order to divert, store and beneficially use AWSA water from the Gila River Basin, including the San Francisco River, in New Mexico, and to ultimately provide AWSA water for uses allowed under the CUFA and AWSA.
- (c) This Agreement pertains only to (1) the planning, design, construction, operation and maintenance of a NM Unit, ~~and~~ (2) investigating and/or obtaining, through lease,

purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI, and (3) the proposed program to allocate funds from the NM Unit Fund, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), for the planning, design, and construction of other water utilization programs in the Southwest Planning Region of New Mexico, as described in Section III(h).

**V. Creation of the New Mexico CAP Entity**

(a) There is hereby created a New Mexico CAP Entity pursuant to the authority granted by Section 2 of the AWSA, 118 Stat. 3478, 3482-83, Section 212 of the AWSA, 118 Stat. 3527 *et seq.*, by Section 2.26A of the CUFA, a document ratified by passage of the AWSA, and by Chapter 11, Article 1 of the New Mexico Statutes Annotated.

(b) The New Mexico CAP Entity is composed of the Parties listed below. Parties to the New Mexico CAP Entity, except the ISC, must be located entirely within Catron, Hidalgo, Luna, or Grant Counties. Representatives to the New Mexico CAP Entity shall be members of the Parties' respective governing bodies, or public employees, or appointees who are residents or members in good standing of the respective Parties, appointed in writing by the Parties in the manner selected by each Party for the appointment of its representative as follows:

- |                                      |                               |
|--------------------------------------|-------------------------------|
| 1. Interstate Stream Commission      | One non-voting representative |
| 2. Upper Gila Irrigation Association | One representative            |
| 3. Fort West Irrigation Association  | One representative            |

- |   |                    |
|---|--------------------|
| 4. Gila Farm Irrigation Association                     | One representative |
| 5. Gila Hotsprings Irrigation Association               | One representative |
| 6. Catron County  | One representative |
| 7. Grant County   | One representative |
| 8. Luna County  | One representative |
| 9. Village of Santa Clara                               | One representative |
| 10. Hidalgo Soil & Water<br>Conservation District       | One representative |
| 11. Hidalgo County                                      | One representative |
| 12. City of Deming                                      | One representative |
| 13. San Francisco Soil & Water<br>Conservation District | One representative |
| 14. City of Lordsburg                                   | One representative |
| 15. Grant Soil & Water<br>Conservation District         | One representative |

- (c) New Parties to this Agreement may be added by a 2/3 majority approval following written request.
- (d) Representatives are appointed to the New Mexico CAP Entity for a 3-year term. A representative may be reappointed to serve on the New Mexico CAP Entity. No representative shall represent more than one Party.
- (e) A representative may not frustrate the conduct of the business of the New Mexico CAP Entity by failing or refusing to attend the meetings or to address the business of the New Mexico CAP Entity.

- (f) The New Mexico CAP Entity must hold its first meeting within thirty (30) days after written approval of this Agreement by the Department of Finance and Administration.
- (g) Each Party is entitled to one vote, except the ISC, who is a non-voting member.
- (h) The Parties may have alternate representatives. Alternates shall be members of the governing body of each Party, or public employees, or appointees who are residents or members in good standing of each Party, appointed in the same manner as the Party's representative. Alternates may attend meetings of the New Mexico CAP Entity along with the designated representative, but shall not vote if the representative is present and able to vote. If a Party's representative is absent or unable to vote, its alternate may vote on behalf of the Party it represents.
- (i) The New Mexico CAP Entity shall meet in compliance with the Open Meetings Act of the State of New Mexico, NMSA 1978, Sections 10-15-1 through 10-15-4.
- (j) At its first meeting, the New Mexico CAP Entity shall select a Chairman, a Vice-Chairman, and a Secretary who shall serve for one (1) year or until their successors are duly elected and qualified. Thereafter, the New Mexico CAP Entity shall adopt bylaws governing the conduct of its business.
- (k) The New Mexico CAP Entity shall not meet unless a quorum of the Parties of the New Mexico CAP Entity is present. A quorum is defined as a majority of the Parties to this Agreement.
- (l) Except as otherwise provided by Paragraphs V(c), V(t) and X(a)(3) of this Agreement, a vote by a quorum of the representatives of the New Mexico CAP

Entity shall be required in order for any action or decision by the New Mexico CAP Entity to be valid.

(m) Upon full execution of this Agreement by all the Parties and by the Department of Finance and Administration, the New Mexico CAP Entity will submit a budget to the ISC for the current fiscal year. The ISC will review this budget and vote on it at its first meeting after the fully-formed New Mexico CAP Entity transmits a budget to the Commission. Thereafter, the Parties agree that, by May 1<sup>st</sup> of every year, the New Mexico CAP Entity will develop a budget for the upcoming state fiscal year. The state fiscal year begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> of the following calendar year. This annual budget, which will include an operating budget, shall be presented to the Interstate Stream Commission for approval at the first ISC meeting following May 1<sup>st</sup> of each year. This budget will include information showing all expenditures from the NM Unit Fund and all expenditures from all other sources. All budgeted expenditures are subject to approval by the ISC. The budget may not be implemented by the New Mexico CAP Entity until it has been approved by the ISC. The budget shall outline all anticipated expenses for the upcoming year, and indicate the anticipated source of funding for each expense. In the event that the New Mexico CAP Entity must amend its budget after the budget has been approved by the ISC, the New Mexico CAP Entity will be required to present its amended budget to the ISC at a meeting of the ISC, and to obtain ISC approval before it can be reimbursed for expenses contained in the amended budget.



- (n) The ISC shall be the fiscal agent (“First Fiscal Agent”) for the New Mexico CAP Entity for all financial transactions related to all money awarded to New Mexico pursuant to Section 107(a) of the AWSA, and for any and all additional monies accruing to the NM Unit Fund from any source or activity undertaken in accordance with the 1968 Colorado River Basin Project Act, the AWSA or the CUFA, including any interest earned on the NM Unit Fund.
- (o) The Parties to the New Mexico CAP Entity acknowledge that, without local financial support, the construction of a NM Unit may not become a reality.
- (p) The Parties to this Agreement shall designate a political subdivision of the State, other than the ISC, who is a signatory to this Agreement as a second fiscal agent (“Second Fiscal Agent”) for the New Mexico CAP Entity. This Second Fiscal Agent shall receive and manage all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity. As used in this Agreement, the term additional revenues includes all funds or income made available to the Second Fiscal Agent through the AWSA or generated by the New Mexico CAP Entity as a result of the AWSA, or otherwise derived, directly or indirectly, from the AWSA, including reimbursements from the NM Unit Fund pursuant to an operating budget approved by the ISC. Additional revenues shall include, without limitation, proceeds from issuance of bonds, levy of taxes, assessment of membership dues and assessment of user fees. For purposes of this paragraph, “additional revenues specifically excludes any funds available to the State of New Mexico, through the ISC pursuant to Section 107 of the AWSA and deposited into the NM Unit Fund. This Second Fiscal Agent is subject to the Governmental

Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

- (q) The New Mexico CAP Entity's Second Fiscal Agent shall account for all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity in a separate fund ("Second Fund"). The monies in the Second Fund shall be subject to budget approval by the ISC pursuant to Paragraph V(m) above. Additional revenues shall be used exclusively for (1) the planning, design, construction, operation and maintenance of a NM Unit, (2) to investigate and/or obtain, through lease, purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI; or (3) all or any combination of those responsibilities.
- (r) In addition, the ISC shall reimburse the New Mexico CAP Entity's Second Fiscal Agent for invoiced expenses that have been approved by the ISC pursuant to its approval of the New Mexico CAP Entity's annual budget and that are directly related to the planning, design, building, operation and maintenance of a NM Unit; provided, however, that ISC reimbursement shall not be required for any invoice or expense that contains, in the discretion of the ISC, procedural defects in the procurement or submission of the expense.
- (s) The ISC shall reimburse the New Mexico CAP Entity's Second Fiscal Agent only until the NM Unit Fund is exhausted. Nothing in this Agreement shall be construed as committing the State of New Mexico, or the ISC, to reimburse any expenses of the New Mexico CAP Entity once the monies of the NM Unit Fund have been exhausted.

- (t) The New Mexico CAP Entity shall have the authority to enter into and execute the NM Unit Agreement with the Secretary of the Interior as required by the AWSA. *See* Pub. L. 108-451, 118 Stat. 3478, 3483, 3527-28. The New Mexico CAP Entity is allowed by the AWSA, and by this Agreement, to request that the Secretary of the Interior transfer to the New Mexico CAP Entity the responsibility to design, build, or operate and maintain the NM Unit, or all or any combination of those responsibilities, provided that the Parties to the New Mexico CAP Entity elect to do so by a vote of 2/3 of the Parties.
- (u) Upon such a request, the Secretary is obligated by the AWSA to transfer the requested responsibilities to the New Mexico CAP Entity, provided that, as set out in the CUFA, the Secretary of the Interior shall not transfer the authority to divert water; and, provided further, that the Secretary of the Interior shall remain responsible to the parties to the CUFA for the New Mexico CAP Entity's compliance with the terms and conditions of the CUFA.
- (v) The New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the NM Unit Agreement. The New Mexico CAP Entity shall be responsible for its share of operations, maintenance, and replacement costs of the NM Unit. In determining payment for CAP water under the NM Unit Agreement, the New Mexico CAP Entity shall be responsible for its share of operations, maintenance and replacement costs for delivery of CAP water in exchange for consumption of AWSA water from the Gila River and its tributaries in New Mexico by the NM Unit. No capital costs attendant to other

units or portions of the Central Arizona Project shall be charged to the New Mexico CAP Entity.

- (w) After the NM Unit Agreement has been signed, the New Mexico CAP Entity shall comply with all provisions of the NM Unit Agreement. Except as otherwise limited by this Agreement, the New Mexico CAP Entity shall have the authority to take all actions necessary to comply with the provisions of the NM Unit Agreement and with this JPA, including, but not limited to, the authority to contract through its Fiscal Agents, the authority to assess membership dues among the members of the New Mexico CAP Entity, in accordance with the bylaws to be adopted pursuant to Paragraph V(j) above, and the authority to manage revenues from other sources, including those identified in Paragraph V(o), through its Second Fiscal Agent for purposes determined by the Parties.
- (x) The New Mexico CAP Entity shall allocate among its Parties, or manage for the benefit of its Parties, the AWSA water for which it has contracted with the Secretary of the Interior.
- (y) The New Mexico CAP Entity shall be an entity that, as required by the CUFA as ratified by the AWSA:
1. Does not have sovereign immunity;
  2. Does not have the protection of the 11<sup>th</sup> Amendment of the Constitution; and
  3. Continues to satisfy all those conditions throughout its existence.

However, pursuant to NMSA 1978, Section 11-1-6, all the privileges and immunities from liability, exemptions from laws, ordinances, and rules, and other benefits which apply to the activity of officers, agents or employees of the Parties when performing their respective functions within the territorial limits of their respective public agencies shall apply to the Parties to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

Nothing in this Agreement shall be construed as creating liability on the part of the Parties hereto for the actions or decisions of the New Mexico CAP Entity.

Each Party shall be responsible only for its own acts or omissions to the extent provided under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, and all other applicable laws.

(z) The New Mexico CAP Entity agrees that it shall be subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

(aa) The New Mexico CAP Entity has and may exercise the following authority and powers:

1. Authority and Power to execute and implement the NM Unit Agreement with the Secretary of Interior;
2. Authority and Power to designate a second Fiscal Agent;

3. Authority and Power to request that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity; and
4. Authority and power to implement this JPA as amended.

## **VI. Resolutions**

Membership in the New Mexico CAP Entity is conditioned upon participation in this Agreement. Each Party shall provide a resolution to the ISC of its respective governing body identifying its signatory and representing that the body has allowed its signatory to sign this Agreement and that such signature represents that Party's commitment to beneficial use of the AWSA water.

## **VII. Ownership**

Contractual rights or property rights related to the subject matter of this Agreement shall be retained and held in trust by either the First Fiscal Agent or the Second Fiscal Agent as prescribed by the New Mexico CAP Entity for the benefit of the New Mexico CAP Entity until or unless the New Mexico CAP Entity has become a legislatively-recognized political subdivision of the State.

## **VIII. Books and Records**

- (a) This Agreement requires strict accountability of all receipts and disbursements in accordance with NMSA 1978, Section 11-1-4(D).
- (b) Detailed records of all transactions of the New Mexico CAP Entity shall be kept and maintained by the New Mexico CAP Entity, or its Fiscal Agents, and shall be open for inspection and audit at reasonable times in accordance with all applicable laws.

(c) Both fiscal agents designated under this Agreement are subject to the Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14. As the First Fiscal Agent for the New Mexico CAP Entity, the ISC will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the ISC will conduct on behalf of the New Mexico CAP Entity. The Second Fiscal Agent for the New Mexico CAP Entity will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the Second Fiscal Agent will conduct on behalf of the New Mexico CAP Entity.

**IX. Construction of this Agreement**

Nothing contained herein shall be construed as prohibiting any Party from exercising its power or right to condemn, purchase or otherwise acquire water or water rights 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 they own.

**X. Termination and Distribution of Assets**

(a) This Agreement shall expire upon the earliest of the events described below:

- (1) If the New Mexico CAP Entity becomes a legislatively recognized political subdivision of the State, that is to say, a body created by an Act of the New Mexico Legislature that is not an arm of the State of New Mexico; or
- (2) If this Agreement is superseded by another agreement;

Provided, however, that unless the reason for termination of this Agreement is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any

bonds issued in connection with the AWSA are outstanding, i.e., so long as there has not been full payment or defeasance of such bonds; or

(3) If this Agreement is terminated by a vote of 2/3 of the Parties or in accordance with the provisions of Paragraph X(f) herein, provided that, unless the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any bonds issued in connection with the AWSA are outstanding.

(b) At the time this Agreement terminates, pursuant to NMSA 1978, Section 11-1-4, any funds remaining in the NM Unit Fund will remain under the control of the ISC for continued disbursement to the New Mexico CAP Entity or to others in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute, and any other applicable law. Any remaining unexpended operating budget funds provided by the ISC from the NM Unit Fund will be returned to the NM Unit Fund. If the reason for termination is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, then the ISC, upon approval by the Board of Finance and the New Mexico legislature, as necessary, will turn over to the New Mexico CAP Entity title to any assets the ISC may own related to the NM Unit. Title to all NM Unit assets owned by the Second Fiscal Agent for the New Mexico CAP Entity shall pass to the legislatively authorized New Mexico CAP Entity in accordance with all governing laws. If the reason for termination is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, any bonds



that were issued on behalf of the New Mexico CAP Entity or any other debt assumed on behalf of the New Mexico CAP Entity by a Party to this JPA, including but not limited to the New Mexico CAP Entity's Second Fiscal Agent, shall transfer from the debt holder to the legislatively-authorized New Mexico CAP Entity.

- (c) Upon termination of this Agreement that would result in the dissolution of the New Mexico CAP Entity, any funds remaining in the NM Unit Fund will remain under the control of the ISC for disbursement in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute and any other applicable law. Any funds held by the Second Fiscal Agent on behalf of the New Mexico CAP Entity shall be refunded to all Parties to this Agreement in proportion to their contributions, except the ISC. Any assets related to the NM Unit owned or held in trust for the New Mexico CAP Entity by the ISC at the time of termination of this Agreement may be disposed of in accordance with all laws and regulations governing the ISC, upon approval by the Interstate Stream Commission and, if necessary, the New Mexico Board of Finance and the New Mexico legislature. Any assets owned by the Second Fiscal Agent at the time of termination of this Agreement related to the NM Unit will be disposed of in accordance with all laws and regulations governing the Second Fiscal Agent, and the proceeds of such disposal will be distributed among all Parties to this Agreement in proportion to their contributions, except the ISC.
- (d) In the event of withdrawal by a Party from this Agreement prior to termination of this Agreement, the withdrawing Party shall be obligated to honor all

commitments made to the New Mexico CAP Entity before the withdrawing Party's withdrawal. Moreover, the withdrawing Party shall not be entitled to a refund of any amounts paid.

(e) In the event of dissolution of the New Mexico CAP Entity, the provisions of this Agreement shall govern distribution of assets and funds.

(f) If membership in the New Mexico CAP Entity falls to three (3) voting Parties and the ISC, the remaining Parties shall be entitled, but not obligated, to terminate this Agreement in a writing signed by all remaining Parties. If there remain only two voting members, or if the ISC is the last remaining Party, this Agreement shall automatically terminate.

#### **XI. Severability**

The articles, sections, subsections, paragraphs, sentences, clauses and phrases of this Agreement are severable. If any phrase, clause, sentence, paragraph, section, or article of this Agreement is declared unconstitutional, illegal, invalid or unenforceable by a final judgment or decree of any court of competent jurisdiction, this declaration shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections and articles of this Agreement, as if the Agreement had been entered into by the Parties without the part declared unconstitutional, illegal, invalid or unenforceable.

#### **XII. Effective Date**

This Agreement shall be effective once it has been executed by signatories for all the Parties hereto, pursuant to official authorization by the Parties, and submitted to, and approved by, the New Mexico Department of Finance and Administration, pursuant to NMSA 1978, Section 11-1-3.

**XIII. Amendments**

This Agreement may be amended only by a writing signed by duly authorized representatives of each Party hereto and approved by the Department of Finance and Administration.

**XIV. Venue and Governing Law**

This Agreement shall be interpreted under the laws of the State of New Mexico. Venue for any suit brought upon this Agreement shall lie in the Sixth Judicial District Court in New Mexico.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals by and through their duly authorized officers, agents or representatives, named below who have represented and warranted that they have the full authority to bind their respective bodies to this Agreement.

NEW MEXICO INTERSTATE STREAM COMMISSION

By: \_\_\_\_\_  
| [Mark Sanchez Caleb Chandler](#)

Date: \_\_\_\_\_

UPPER GILA IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Robert J. Agnew

Date: \_\_\_\_\_

FORT WEST IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Esker Mayberry

Date: \_\_\_\_\_

GILA FARM IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Wendel Hann

Date: \_\_\_\_\_

GILA HOTSPRINGS IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Allen Campbell

Date: \_\_\_\_\_

CATRON COUNTY

By: \_\_\_\_\_  
County Representative

Date: \_\_\_\_\_



GRANT COUNTY

By: \_\_\_\_\_  
Brett Kasten

Date: \_\_\_\_\_

LUNA COUNTY

By: \_\_\_\_\_  
County Representative

Date: \_\_\_\_\_

VILLAGE OF SANTA CLARA

By: \_\_\_\_\_  
Village Representative

Date: \_\_\_\_\_

HIDALGO SOIL & WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Stan Jones

Date: \_\_\_\_\_

HIDALGO COUNTY

By: \_\_\_\_\_  
Marianne Stewart

Date: \_\_\_\_\_

CITY OF DEMING

By: \_\_\_\_\_

Benny L. Jasso

Date: \_\_\_\_\_

SAN FRANCISCO SOIL & WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Howard Hutchinson

Date: \_\_\_\_\_

CITY OF LORDSBURG

By: \_\_\_\_\_  
Arthur Clark Smith

Date: \_\_\_\_\_



Grant Soil & Water Conservation District

By: \_\_\_\_\_  
Tyson Bays

Date: \_\_\_\_\_

DEPARTMENT OF FINANCE AND ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SECOND AMENDED JOINT POWERS AGREEMENT  
NEW MEXICO CAP ENTITY**

This Second Amended Joint Powers Agreement (the “Agreement”) creating the New Mexico CAP Entity (the “New Mexico CAP Entity”) is entered into by and between the Village of Santa Clara, the Cities of Deming, Lordsburg, the Counties of Catron, Grant, Luna, and Hidalgo, other parties recognized by the State of New Mexico as political subdivisions: the Upper Gila Irrigation Association, the Fort West Irrigation Association, the Gila Farm Irrigation Association, the Gila Hotsprings Irrigation Association, the Hidalgo Soil & Water Conservation District, the San Francisco Soil & Water Conservation District , the Grant Soil & Water Conservation District, and the Interstate Stream Commission (the “ISC” or the “Commission”), , all such entities being political subdivisions as defined in the Joint Powers Agreements Act, NMSA 1978, Section 11-1-2. The entities listed above shall collectively be referred to as the Parties to this Agreement. This Agreement will become effective upon approval by the Department of Finance and Administration pursuant to NMSA 1978, Section 11-1-3.

**RECITALS**

WHEREAS, pursuant to the Colorado River Basin Project Act of 1968 and the Arizona Water Settlements Act of 2004, Pub. L. 108-451, 118 Stat. 3478 (“AWSA”), an annual average of 14,000 acre-feet per year of AWSA water is allocated to New Mexico for beneficial use in New Mexico (“AWSA water”); and

WHEREAS, as identified in Section 212(i) of the AWSA, the NM Unit Fund is a fund established in the State Treasury and administered by the ISC;

WHEREAS, Section 212(i) of the AWSA provides that withdrawals from the NM Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico;

WHEREAS, in 2012, the Bureau of Reclamation made the first of ten (10) equal, annual deposits into the New Mexico Unit Fund in accordance with Section 107(a)(2)(D)(i) of the AWSA;

WHEREAS, on November 24, 2014, the ISC, in an open meeting, voted to pursue a New Mexico Unit of the Central Arizona Project (“NM Unit”) and to notify the Secretary of the Interior that the State of New Mexico intends to construct a NM Unit; and

WHEREAS, a NM Unit means the unit or units of the Central Arizona Project in New Mexico to be designed, constructed, operated and maintained to use the AWSA water; and

WHEREAS, pursuant to the AWSA, the Secretary of the Interior has the authority to design, build, operate and maintain a NM Unit, but must transfer that authority to the New Mexico CAP Entity upon request by the New Mexico CAP Entity; and

WHEREAS, the Secretary of the Interior shall divert water and exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement (“CUFA”) as ratified by the AWSA, solely for the benefit of the New Mexico CAP Entity and for no other purpose; and

WHEREAS, the Parties agree that, once diverted or stored, the AWSA water should be managed solely for the benefit of the New Mexico CAP Entity, subject to all governing laws; and

WHEREAS, pursuant to the AWSA, the New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the New Mexico Unit Agreement; and

WHEREAS, the New Mexico Unit Agreement (“NM Unit Agreement”) is a contract entered into between the Secretary of the Interior and the New Mexico CAP Entity to effectuate the terms of the AWSA and the CUFA; and

WHEREAS, pursuant to the CUFA, as ratified by the AWSA, the State of New Mexico, acting through the ISC, has the authority to form or designate the New Mexico CAP Entity; and

WHEREAS, the Parties desire to create and serve as the New Mexico CAP Entity, for the purposes of planning, designing, building, operating and maintaining a NM Unit and for the purpose of developing other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico; and

WHEREAS, consistent with the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties jointly have and will exercise the powers described in this Agreement; and

WHEREAS, the Parties desire to obtain all benefits from (1) the diversion and beneficial use of the AWSA water (2) the development of other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico, and (3) the exercise of rights and authorities by the Secretary of the Interior pursuant to Section 212(c)(4) of the AWSA, Pub. L. 108-451, 118 Stat. at 3528.

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

**I. Authorizing Law**

This Joint Powers Agreement (“JPA” or “Agreement”) is entered into pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

## **II. Purposes**

The purposes of this Agreement are to:

- (a) Create the New Mexico CAP Entity.
- (b) Allow the New Mexico CAP Entity to exercise its authority and power to execute and implement the NM Unit Agreement.
- (c) Allow the New Mexico CAP Entity to investigate and/or obtain, through lease, purchase or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI) as a water utilization alternative to meet water supply demands in the Southwest Water Planning Region of New Mexico pursuant to Section 212(i) of the AWSA.
- (d) Allow, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019) and the development of specific policies and criteria for the evaluation, prioritization and implementation of proposed projects, a portion of the NM Unit Fund to be used for the planning, design, and construction of other water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.

## **III. Representations and Warranties**

Consistent with the AWSA and the Joint Powers Agreement Act, the Parties to this Agreement warrant and represent the following:

- (a) That they, both individually and collectively, have authority to bind themselves to the terms of this Agreement and to undertake the planning, designing, construction, operation and maintenance of the NM Unit.
- (b) That they are committed to beneficially using the water available to New Mexico pursuant to both the Colorado River Basin Project Act of 1968 and the AWSA.
- (c) That they can undertake the responsibility of planning the NM Unit.
- (d) That, upon request to the Secretary of the Interior, they will have the ability to perform all, or any combination of, the following duties listed in the AWSA:
  - Design the NM Unit
  - Build the NM Unit
  - Operate the NM Unit
  - Maintain the NM Unit
- (e) That they have identified an objective to investigate and/or obtain, through lease, purchase, or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI).
- (f) That the construction and operation of the NM Unit (Development of the AWSA Water) is and remains a the highest priority
- (g) That the ISC approves all projects and expenditures of the NM Unit Fund in consultation with the NM CAP Entity.

(h) That they have identified an objective to create a program whereby applications for project funding from the NM Unit Fund for the planning, design and construction of water utilization alternatives in the Southwest Planning Region of New Mexico may be submitted to, and evaluated and approved by, the New Mexico CAP Entity. Beginning after the issuance of the Record of Decision , which is to be issued by December 31, 2019, the Parties will formulate specific policies and criteria for the evaluation, prioritization and implementation of proposed projects. Once the policies and criteria have been finalized, applications for project funding will be accepted.

(i) That funds from the New Mexico Unit Fund made available to the New Mexico CAP Entity may be used for the following purposes. The use of all funds or income available through the AWSA or derived from the AWSA, or made available to, the New Mexico CAP Entity from all sources, regardless of where those funds are deposited, shall be used for the planning, design, construction, operation and maintenance, of a NM Unit, or all or any combination of those responsibilities, for development of the AWSA water. Funds from the New Mexico Unit Fund may also be used to investigate and/or obtain, through lease, purchase, or other transfer mechanism, water resources and infrastructure currently owned by FMI and for the operation, management and/or utilization of such water resources and infrastructure upon lease, purchase or other transfer to the New Mexico CAP Entity



- (j) After the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), and after development of policies and criteria as forth in Paragraph (h) above, funds from the NM Unit Fund may also be used for the planning, design, and construction of other water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.
- (k) The Parties agree that they may provide financial support to the extent they are able to, in each Party's individual discretion, as necessary in perpetuity to plan, design, construct, operate and maintain the NM Unit, including, without limitation, the issuance of bonds, the levy of taxes, the assessment of membership dues, and the assessment of user fees.
- (l) The Parties agree that this Amendment to the JPA shall not divest the ISC of any authority with regard to the allocations made by the ISC to non-NM Unit water utilization projects in the Region to date.

#### **IV. Joint Powers**

- (a) As provided in the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties to this Agreement have and will jointly exercise:
  - (1) The authority and power to execute and implement the NM Unit Agreement pursuant to the AWSA, 118 Stat. at 3482;
  - (2) The authority and power to designate fiscal agents; and

- (3) The authority and power to request, at some point in the future, that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity, or all or any combination of those authorities and to carry out those responsibilities; and
  - (4) The authority and power to implement this JPA as amended.
- (b) This Agreement provides a mechanism for the Parties to plan, design, build, operate, and maintain a NM Unit in order to divert, store and beneficially use AWSA water from the Gila River Basin, including the San Francisco River, in New Mexico, and to ultimately provide AWSA water for uses allowed under the CUFA and AWSA.
- (c) This Agreement pertains only to (1) the planning, design, construction, operation and maintenance of a NM Unit, (2) investigating and/or obtaining, through lease, purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI, and (3) the proposed program to allocate funds from the NM Unit Fund, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), for the planning, design, and construction of other water utilization programs in the Southwest Planning Region of New Mexico, as described in Section III(h).

**V. Creation of the New Mexico CAP Entity**

- (a) There is hereby created a New Mexico CAP Entity pursuant to the authority granted by Section 2 of the AWSA, 118 Stat. 3478, 3482-83, Section 212 of the AWSA, 118 Stat. 3527 *et seq.*, by Section 2.26A of the CUFA, a document ratified

by passage of the AWSA, and by Chapter 11, Article 1 of the New Mexico Statutes Annotated.

(b) The New Mexico CAP Entity is composed of the Parties listed below. Parties to the New Mexico CAP Entity, except the ISC, must be located entirely within Catron, Hidalgo, Luna, or Grant Counties. Representatives to the New Mexico CAP Entity shall be members of the Parties' respective governing bodies, or public employees, or appointees who are residents or members in good standing of the respective Parties, appointed in writing by the Parties in the manner selected by each Party for the appointment of its representative as follows:

- |   |                               |
|---|-------------------------------|
| 1. Interstate Stream Commission                   | One non-voting representative |
| 2. Upper Gila Irrigation Association              | One representative            |
| 3. Fort West Irrigation Association               | One representative            |
| 4. Gila Farm Irrigation Association               | One representative            |
| 5. Gila Hotsprings Irrigation Association         | One representative            |
| 6. Catron County                                  | One representative            |
| 7. Grant County                                   | One representative            |
| 8. Luna County                                    | One representative            |
| 9. Village of Santa Clara                         | One representative            |
| 10. Hidalgo Soil & Water<br>Conservation District | One representative            |
| 11. Hidalgo County                                | One representative            |
| 12. City of Deming                                | One representative            |
| 13. San Francisco Soil & Water                    |                               |

Conservation District	One representative
14. City of Lordsburg	One representative
15. Grant Soil & Water	

Conservation District	One representative
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- (c) New Parties to this Agreement may be added by a 2/3 majority approval following written request.
- (d) Representatives are appointed to the New Mexico CAP Entity for a 3-year term. A representative may be reappointed to serve on the New Mexico CAP Entity. No representative shall represent more than one Party.
- (e) A representative may not frustrate the conduct of the business of the New Mexico CAP Entity by failing or refusing to attend the meetings or to address the business of the New Mexico CAP Entity.
- (f) The New Mexico CAP Entity must hold its first meeting within thirty (30) days after written approval of this Agreement by the Department of Finance and Administration.
- (g) Each Party is entitled to one vote, except the ISC, who is a non-voting member.
- (h) The Parties may have alternate representatives. Alternates shall be members of the governing body of each Party, or public employees, or appointees who are residents or members in good standing of each Party, appointed in the same manner as the Party's representative. Alternates may attend meetings of the New Mexico CAP Entity along with the designated representative, but shall not vote if the representative is present and able to vote. If a Party's representative is absent or unable to vote, its alternate may vote on behalf of the Party it represents.

- (i) The New Mexico CAP Entity shall meet in compliance with the Open Meetings Act of the State of New Mexico, NMSA 1978, Sections 10-15-1 through 10-15-4.
- (j) At its first meeting, the New Mexico CAP Entity shall select a Chairman, a Vice-Chairman, and a Secretary who shall serve for one (1) year or until their successors are duly elected and qualified. Thereafter, the New Mexico CAP Entity shall adopt bylaws governing the conduct of its business.
- (k) The New Mexico CAP Entity shall not meet unless a quorum of the Parties of the New Mexico CAP Entity is present. A quorum is defined as a majority of the Parties to this Agreement.
- (l) Except as otherwise provided by Paragraphs V(c), V(t) and X(a)(3) of this Agreement, a vote by a quorum of the representatives of the New Mexico CAP Entity shall be required in order for any action or decision by the New Mexico CAP Entity to be valid.
- (m) Upon full execution of this Agreement by all the Parties and by the Department of Finance and Administration, the New Mexico CAP Entity will submit a budget to the ISC for the current fiscal year. The ISC will review this budget and vote on it at its first meeting after the fully-formed New Mexico CAP Entity transmits a budget to the Commission. Thereafter, the Parties agree that, by May 1<sup>st</sup> of every year, the New Mexico CAP Entity will develop a budget for the upcoming state fiscal year. The state fiscal year begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> of the following calendar year. This annual budget, which will include an operating budget, shall be presented to the Interstate Stream Commission for approval at the first ISC meeting following May 1<sup>st</sup> of each year. This budget will include

information showing all expenditures from the NM Unit Fund and all expenditures from all other sources. All budgeted expenditures are subject to approval by the ISC. The budget may not be implemented by the New Mexico CAP Entity until it has been approved by the ISC. The budget shall outline all anticipated expenses for the upcoming year, and indicate the anticipated source of funding for each expense. In the event that the New Mexico CAP Entity must amend its budget after the budget has been approved by the ISC, the New Mexico CAP Entity will be required to present its amended budget to the ISC at a meeting of the ISC, and to obtain ISC approval before it can be reimbursed for expenses contained in the amended budget.

- (n) The ISC shall be the fiscal agent (“First Fiscal Agent”) for the New Mexico CAP Entity for all financial transactions related to all money awarded to New Mexico pursuant to Section 107(a) of the AWSA, and for any and all additional monies accruing to the NM Unit Fund from any source or activity undertaken in accordance with the 1968 Colorado River Basin Project Act, the AWSA or the CUFA, including any interest earned on the NM Unit Fund.
- (o) The Parties to the New Mexico CAP Entity acknowledge that, without local financial support, the construction of a NM Unit may not become a reality.
- (p) The Parties to this Agreement shall designate a political subdivision of the State, other than the ISC, who is a signatory to this Agreement as a second fiscal agent (“Second Fiscal Agent”) for the New Mexico CAP Entity. This Second Fiscal Agent shall receive and manage all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity. As used in this Agreement, the

term additional revenues includes all funds or income made available to the Second Fiscal Agent through the AWSA or generated by the New Mexico CAP Entity as a result of the AWSA, or otherwise derived, directly or indirectly, from the AWSA, including reimbursements from the NM Unit Fund pursuant to an operating budget approved by the ISC. Additional revenues shall include, without limitation, proceeds from issuance of bonds, levy of taxes, assessment of membership dues and assessment of user fees. For purposes of this paragraph, “additional revenues specifically excludes any funds available to the State of New Mexico, through the ISC pursuant to Section 107 of the AWSA and deposited into the NM Unit Fund. This Second Fiscal Agent is subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

- (q) The New Mexico CAP Entity’s Second Fiscal Agent shall account for all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity in a separate fund (“Second Fund”). The monies in the Second Fund shall be subject to budget approval by the ISC pursuant to Paragraph V(m) above. Additional revenues shall be used exclusively for (1) the planning, design, construction, operation and maintenance of a NM Unit, (2) to investigate and/or obtain, through lease, purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI; or (3) all or any combination of those responsibilities.
- (r) In addition, the ISC shall reimburse the New Mexico CAP Entity’s Second Fiscal Agent for invoiced expenses that have been approved by the ISC pursuant to its

approval of the New Mexico CAP Entity's annual budget and that are directly related to the planning, design, building, operation and maintenance of a NM Unit; provided, however, that ISC reimbursement shall not be required for any invoice or expense that contains, in the discretion of the ISC, procedural defects in the procurement or submission of the expense.

- (s) The ISC shall reimburse the New Mexico CAP Entity's Second Fiscal Agent only until the NM Unit Fund is exhausted. Nothing in this Agreement shall be construed as committing the State of New Mexico, or the ISC, to reimburse any expenses of the New Mexico CAP Entity once the monies of the NM Unit Fund have been exhausted.
- (t) The New Mexico CAP Entity shall have the authority to enter into and execute the NM Unit Agreement with the Secretary of the Interior as required by the AWSA. *See Pub. L. 108-451, 118 Stat. 3478, 3483, 3527-28.* The New Mexico CAP Entity is allowed by the AWSA, and by this Agreement, to request that the Secretary of the Interior transfer to the New Mexico CAP Entity the responsibility to design, build, or operate and maintain the NM Unit, or all or any combination of those responsibilities, provided that the Parties to the New Mexico CAP Entity elect to do so by a vote of 2/3 of the Parties.
- (u) Upon such a request, the Secretary is obligated by the AWSA to transfer the requested responsibilities to the New Mexico CAP Entity, provided that, as set out in the CUFA, the Secretary of the Interior shall not transfer the authority to divert water; and, provided further, that the Secretary of the Interior shall remain



responsible to the parties to the CUFA for the New Mexico CAP Entity's compliance with the terms and conditions of the CUFA.

- (v) The New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the NM Unit Agreement. The New Mexico CAP Entity shall be responsible for its share of operations, maintenance, and replacement costs of the NM Unit. In determining payment for CAP water under the NM Unit Agreement, the New Mexico CAP Entity shall be responsible for its share of operations, maintenance and replacement costs for delivery of CAP water in exchange for consumption of AWSA water from the Gila River and its tributaries in New Mexico by the NM Unit. No capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the New Mexico CAP Entity.
- (w) After the NM Unit Agreement has been signed, the New Mexico CAP Entity shall comply with all provisions of the NM Unit Agreement. Except as otherwise limited by this Agreement, the New Mexico CAP Entity shall have the authority to take all actions necessary to comply with the provisions of the NM Unit Agreement and with this JPA, including, but not limited to, the authority to contract through its Fiscal Agents, the authority to assess membership dues among the members of the New Mexico CAP Entity, in accordance with the bylaws to be adopted pursuant to Paragraph V(j) above, and the authority to manage revenues from other sources, including those identified in Paragraph V(o), through its Second Fiscal Agent for purposes determined by the Parties.

- (x) The New Mexico CAP Entity shall allocate among its Parties, or manage for the benefit of its Parties, the AWSA water for which it has contracted with the Secretary of the Interior.
- (y) The New Mexico CAP Entity shall be an entity that, as required by the CUFA as ratified by the AWSA:
1. Does not have sovereign immunity;
  2. Does not have the protection of the 11<sup>th</sup> Amendment of the Constitution; and
  3. Continues to satisfy all those conditions throughout its existence.

However, pursuant to NMSA 1978, Section 11-1-6, all the privileges and immunities from liability, exemptions from laws, ordinances, and rules, and other benefits which apply to the activity of officers, agents or employees of the Parties when performing their respective functions within the territorial limits of their respective public agencies shall apply to the Parties to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

Nothing in this Agreement shall be construed as creating liability on the part of the Parties hereto for the actions or decisions of the New Mexico CAP Entity.

Each Party shall be responsible only for its own acts or omissions to the extent provided under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, and all other applicable laws.

(z) The New Mexico CAP Entity agrees that it shall be subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

(aa) The New Mexico CAP Entity has and may exercise the following authority and powers:

1. Authority and Power to execute and implement the NM Unit Agreement with the Secretary of Interior;
2. Authority and Power to designate a second Fiscal Agent;
3. Authority and Power to request that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity; and
4. Authority and power to implement this JPA as amended.

## **VI. Resolutions**

Membership in the New Mexico CAP Entity is conditioned upon participation in this Agreement. Each Party shall provide a resolution to the ISC of its respective governing body identifying its signatory and representing that the body has allowed its signatory to sign this Agreement and that such signature represents that Party's commitment to beneficial use of the AWSA water.

## **VII. Ownership**

Contractual rights or property rights related to the subject matter of this Agreement shall be retained and held in trust by either the First Fiscal Agent or the Second Fiscal Agent as prescribed by the New Mexico CAP Entity for the benefit of the New Mexico CAP Entity until

or unless the New Mexico CAP Entity has become a legislatively-recognized political subdivision of the State.

### **VIII. Books and Records**

- (a) This Agreement requires strict accountability of all receipts and disbursements in accordance with NMSA 1978, Section 11-1-4(D).
- (b) Detailed records of all transactions of the New Mexico CAP Entity shall be kept and maintained by the New Mexico CAP Entity, or its Fiscal Agents, and shall be open for inspection and audit at reasonable times in accordance with all applicable laws.
- (c) Both fiscal agents designated under this Agreement are subject to the Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14. As the First Fiscal Agent for the New Mexico CAP Entity, the ISC will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the ISC will conduct on behalf of the New Mexico CAP Entity. The Second Fiscal Agent for the New Mexico CAP Entity will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the Second Fiscal Agent will conduct on behalf of the New Mexico CAP Entity.

### **IX. Construction of this Agreement**

Nothing contained herein shall be construed as prohibiting any Party from exercising its power or right to condemn, purchase or otherwise acquire water or water rights 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 they own.

### **X. Termination and Distribution of Assets**

(a) This Agreement shall expire upon the earliest of the events described below:

(1) If the New Mexico CAP Entity becomes a legislatively recognized political subdivision of the State, that is to say, a body created by an Act of the New Mexico Legislature that is not an arm of the State of New Mexico; or

(2) If this Agreement is superseded by another agreement;

Provided, however, that unless the reason for termination of this Agreement is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any bonds issued in connection with the AWSA are outstanding, i.e., so long as there has not been full payment or defeasance of such bonds; or

(3) If this Agreement is terminated by a vote of 2/3 of the Parties or in accordance with the provisions of Paragraph X(f) herein, provided that, unless the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any bonds issued in connection with the AWSA are outstanding.

(b) At the time this Agreement terminates, pursuant to NMSA 1978, Section 11-1-4, any funds remaining in the NM Unit Fund will remain under the control of the ISC for continued disbursement to the New Mexico CAP Entity or to others in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute, and any other applicable law. Any remaining unexpended operating budget funds provided by the ISC from the NM Unit Fund will be returned to the NM Unit Fund. If the reason for termination is that the New Mexico CAP Entity has

become a legislatively-authorized political subdivision of the State, then the ISC, upon approval by the Board of Finance and the New Mexico legislature, as necessary, will turn over to the New Mexico CAP Entity title to any assets the ISC may own related to the NM Unit. Title to all NM Unit assets owned by the Second Fiscal Agent for the New Mexico CAP Entity shall pass to the legislatively authorized New Mexico CAP Entity in accordance with all governing laws. If the reason for termination is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, any bonds that were issued on behalf of the New Mexico CAP Entity or any other debt assumed on behalf of the New Mexico CAP Entity by a Party to this JPA, including but not limited to the New Mexico CAP Entity's Second Fiscal Agent, shall transfer from the debt holder to the legislatively-authorized New Mexico CAP Entity.

- (c) Upon termination of this Agreement that would result in the dissolution of the New Mexico CAP Entity, any funds remaining in the NM Unit Fund will remain under the control of the ISC for disbursement in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute and any other applicable law. Any funds held by the Second Fiscal Agent on behalf of the New Mexico CAP Entity shall be refunded to all Parties to this Agreement in proportion to their contributions, except the ISC. Any assets related to the NM Unit owned or held in trust for the New Mexico CAP Entity by the ISC at the time of termination of this Agreement may be disposed of in accordance with all laws and regulations governing the ISC, upon approval by the Interstate Stream Commission and, if

necessary, the New Mexico Board of Finance and the New Mexico legislature. Any assets owned by the Second Fiscal Agent at the time of termination of this Agreement related to the NM Unit will be disposed of in accordance with all laws and regulations governing the Second Fiscal Agent, and the proceeds of such disposal will be distributed among all Parties to this Agreement in proportion to their contributions, except the ISC.

- (d) In the event of withdrawal by a Party from this Agreement prior to termination of this Agreement, the withdrawing Party shall be obligated to honor all commitments made to the New Mexico CAP Entity before the withdrawing Party's withdrawal. Moreover, the withdrawing Party shall not be entitled to a refund of any amounts paid.
- (e) In the event of dissolution of the New Mexico CAP Entity, the provisions of this Agreement shall govern distribution of assets and funds.
- (f) If membership in the New Mexico CAP Entity falls to three (3) voting Parties and the ISC, the remaining Parties shall be entitled, but not obligated, to terminate this Agreement in a writing signed by all remaining Parties. If there remain only two voting members, or if the ISC is the last remaining Party, this Agreement shall automatically terminate.

## **XI. Severability**

The articles, sections, subsections, paragraphs, sentences, clauses and phrases of this Agreement are severable. If any phrase, clause, sentence, paragraph, section, or article of this Agreement is declared unconstitutional, illegal, invalid or unenforceable by a final judgment or decree of any court of competent jurisdiction, this declaration shall not affect any of the

remaining phrases, clauses, sentences, paragraphs, sections and articles of this Agreement, as if the Agreement had been entered into by the Parties without the part declared unconstitutional, illegal, invalid or unenforceable.

**XII. Effective Date**

This Agreement shall be effective once it has been executed by signatories for all the Parties hereto, pursuant to official authorization by the Parties, and submitted to, and approved by, the New Mexico Department of Finance and Administration, pursuant to NMSA 1978, Section 11-1-3.

**XIII. Amendments**

This Agreement may be amended only by a writing signed by duly authorized representatives of each Party hereto and approved by the Department of Finance and Administration.

**XIV. Venue and Governing Law**

This Agreement shall be interpreted under the laws of the State of New Mexico. Venue for any suit brought upon this Agreement shall lie in the Sixth Judicial District Court in New Mexico.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals by and through their duly authorized officers, agents or representatives, named below who have represented and warranted that they have the full authority to bind their respective bodies to this Agreement.

NEW MEXICO INTERSTATE STREAM COMMISSION



By: \_\_\_\_\_  
Mark Sanchez

Date: \_\_\_\_\_

UPPER GILA IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Robert J. Agnew

Date: \_\_\_\_\_

FORT WEST IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Esker Mayberry

Date: \_\_\_\_\_

GILA FARM IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Wendel Hann

Date: \_\_\_\_\_

GILA HOTSPRINGS IRRIGATION ASSOCIATION

By: \_\_\_\_\_  
Allen Campbell

Date: \_\_\_\_\_

CATRON COUNTY

By: \_\_\_\_\_  
County Representative

Date: \_\_\_\_\_

GRANT COUNTY

By: \_\_\_\_\_  
Brett Kasten

Date: \_\_\_\_\_

LUNA COUNTY

By: \_\_\_\_\_  
County Representative

Date: \_\_\_\_\_



VILLAGE OF SANTA CLARA

By: \_\_\_\_\_  
Village Representative

Date: \_\_\_\_\_

HIDALGO SOIL & WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Stan Jones

Date: \_\_\_\_\_

HIDALGO COUNTY

By: \_\_\_\_\_  
Marianne Stewart

Date: \_\_\_\_\_

CITY OF DEMING

By: \_\_\_\_\_  
Benny L. Jasso

Date: \_\_\_\_\_

SAN FRANCISCO SOIL & WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Howard Hutchinson

Date: \_\_\_\_\_

CITY OF LORDSBURG

By: \_\_\_\_\_  
Arthur Clark Smith

Date: \_\_\_\_\_

Grant Soil & Water Conservation District

By: \_\_\_\_\_  
Tyson Bays

Date: \_\_\_\_\_

DEPARTMENT OF FINANCE AND ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_



**Request by NMISC staff Commission delegation of**

- A. Authority to the NMISC Acting Director to direct State Investment Council to invest additional \$12 million from the NM Unit Fund based on dollar cost averaging approach, in accordance with the joint powers agreement between the NMISC and the State Investment Council

**John Longworth and Marcos Mendiola**

# JPANEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
TOPPER THORPE, Vice Chairman, Cliff  
TOM BLAINE, P.E., Secretary  
BLANE SANCHEZ, Isleta  
CAROLYN HOLLIFIELD, Roswell  
SAMUEL GONZALES, Aztec  
FRANKLIN McCASLAND, Tucumcari  
JACK KING, Alto



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

November 26, 2018

TO: New Mexico Interstate Stream Commission

FROM: John Longworth, Acting Director

RE: Request the Commission delegate Authority to the NMISC Acting Director to direct State Investment Council to invest additional \$12 million from the NM Unit Fund based on dollar cost averaging approach, in accordance with the Joint Powers Agreement (JPA) between the NMISC and the State Investment Council

At the August 18, 2016 meeting the Commission delegated authority to the NMISC Director to execute a joint powers agreement (JPA) with the State Investment Council (SIC) directing SIC's investment of NM Unit Funds; and, adoption of an investment policy regarding the investment of NM Unit Funds.

Currently, NMISC would like to invest an additional \$12 million from the NM Unit Fund based on dollar cost averaging approach, in accordance with the JPA between the NMISC and the State Investment Council and is requesting approval from the Commission.

2016 SEP 13 PM 1:44  
357A W BLDG. RM 160  
SANTA FE, NEW MEXICO 87501

**JOINT POWERS AGREEMENT  
BETWEEN  
THE NEW MEXICO INTERSTATE STREAM COMMISSION  
AND  
NEW MEXICO STATE INVESTMENT COUNCIL**

THIS AGREEMENT is made and entered into by and between the New Mexico Interstate Stream Commission ('Commission') and the New Mexico State Investment Council ('SIC'); the SIC and together with the Commission, the parties ('Parties'), pursuant to § 11-1-1 *et seq.*, NMSA 1978 and subject to the approval of the Secretary of Finance and Administration of the State of New Mexico.

In consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Purpose.

A. The Commission hereby appoints the SIC as the fiduciary authorized to invest the long-term reserves of the Commission and all investment income thereon (collectively the 'Long-Term Reserves'), through SIC Long-Term Pooled Investment Funds (the 'Pooled Investment Funds'). All right, title and interest in and to the Long-Term Reserves (including all interest earnings) will at all times be vested in the Commission.

B. The SIC acknowledges and agrees that it is a fiduciary with respect to the Commission and the Pooled Investment Funds in which the Commission's Long-Term Reserves are invested. The SIC will invest the Long-Term Reserves in the Pooled Investment Funds in accordance with the Commission's internal investment policies, attached as Exhibits A-1 (Commission New Mexico Unit Funds) and A-2 (Commission trust funds) hereto and as updated from time-to-time (collectively, the Commission's Investment Policy), the Allocation Instructions (as defined in the Investment Policy), and the SIC's investment standards described § 6-8-10, NMSA 1978. The SIC will manage the Pooled Investment Funds as a prudent investor, and in satisfying this standard, the SIC shall exercise reasonable care, skill and caution. The Commission acknowledges and agrees that the Pooled Investment Funds will be managed in accordance with SIC General Investment Policy, attached as Exhibit B hereto, which is in the process of being revised, and will be further updated from time-to-time. To the extent § 6-8-1 through § 6-8-22, NMSA 1978, and in particular § 6-8-7, conflicts with the Investment Policy, the foregoing statutory provisions shall control.

2. Responsibilities of the Commission.

A. The Commission will:

- i. Review its internal Investment Policy prior to the end of each fiscal year and, if appropriate, modify the Investment Policy and deliver a copy of the modified Investment Policy to the SIC within thirty (30) days after the commencement of the new fiscal year;

- ii. Review the actual asset allocation on a quarterly basis to determine if any asset class is out of range and, if so, the Commission will provide written instruction, pursuant to Section 7.B herein, to SIC staff to rebalance the asset allocation (the "Allocation Instructions");
- iii. Maintain internal accounting policies and procedures, maintain a general ledger, and prepare all financial statements and any other management information reports; and
- iv. From time to time, the Commission may provide written instructions, pursuant to Section 7.B herein, which indicate an additional person or persons authorized (each, along with the Commission Director, an "Authorized Person") to direct the SIC with respect to the Long-Term Reserves and any actions identified in this Agreement. An Approved List of Representatives is attached as Exhibit C hereto.

Commission's modifications to its Investment Policy, Allocation Instructions and/or Authorized Person(s) shall not require amendment to this Agreement, but shall be communicated pursuant to Section 7.B herein.

B. The SIC will:

- i. Provide the services set forth in subparagraphs B.ii through B.vi, and other ancillary services specifically set forth in this Agreement;
- ii. Manage the Pooled Investment Funds, including the Long-Term Reserves, as a fiduciary and prudent expert and as such, the SIC will utilize its special skills and expertise, as contemplated under the Uniform Prudent Investor Act, § 45-7-601 through § 45-7-612, NMSA 1978;
- iii. Unless otherwise instructed by the Commission in writing, ensure that deposits (*i.e.*, contributions and/or subscriptions) of Long-Term Reserves into or redemptions/withdrawals of Long-Term Reserves from the Pooled Investment Funds available from time to time are made in accordance with the Investment Policy and applicable Allocation Instructions;
- iv. So long as Allocation Instructions are received by the SIC no later than five (5) business days prior to the end of any month, rebalance the Long-Term Reserves, in accordance with the Allocation Instructions, to be effective on the first (1<sup>st</sup>) business day of the month following the date of the Allocation Instructions; however, for a transaction involving a redemption in an amount greater than ten million dollars (\$10,000,000), the Commission shall provide

written notice of its intended redemption not less than thirty (30) calendar days prior to the proposed effective date of said redemption;

- v. Provide the information and reports described in Section 3 of the Agreement;
- vi. From time to time as requested by the Commission, make appropriate SIC staff available to answer questions from the Commission, the Commission staff or, the Commission's consultant.

The SIC is not responsible for drafting or otherwise creating the Commission's Investment Policy or Allocation Instructions, or for Commission funding levels, benefits or rates. The SIC does not guarantee investment returns, and the Commission shall share proportionally in any gains or losses incurred by the Pooled Investment Funds. The Long-Term Reserves are not insured deposits.

3. Reporting.

A. The SIC acknowledges and agrees that the Commission requires current, complete, and accurate information to take necessary actions under the Agreement and the Investment Policy. As such, the SIC shall use its best efforts to provide the following reporting to the Commission within the time period described below:

B. Within five (5) business day of any transaction involving moving Long-Term Reserves in, out or among the Pooled Investment Funds, the SIC will deliver to Commission staff by electronic mail, as described in Section 7.B herein, confirmation respecting paragraph 2.B.iv. above;

C. As soon as practicable, but no later than thirty (30) days following the end of the preceding month, the SIC shall deliver a report showing all investment activity from the preceding month concerning the Long-Term Reserves including, but not limited to, the total investment in each Pooled Investment Fund, portfolio activity and investment performance. Total Direct Costs (defined in Section 4.C) shall be reported on a quarterly basis. Reporting shall be provided in a form and manner as determined by the State Investment Officer or Deputy State Investment Officer. Additional information may be requested by the Commission staff from time to time.

D. As soon as practicable, but no later than sixty (60) days following the end of the preceding fiscal quarter, the SIC will provide the Commission with a report that summarizes each Pooled Investment Fund's total performance through such fiscal quarter as provided by a third party performance measurement service or consultant;

E. Within thirty (30) days of the receipt by the SIC of the SIC's annual fiscal year-end audit report, a copy will be provided to the Commission.

F. The SIC will provide written notice to the Commission of any material change, as determined by the State Investment Officer or Deputy State Investment Officer, each as a fiduciary pursuant to Section 1.B, in (i) investment strategy, (ii) decision-making process, or (iii) retention of key SIC personnel or the SIC general investment consultant (the "Consultant"). A "material change" will always include any regulatory or self regulatory investigation or notice or legal or arbitration proceeding filed against the SIC or Consultant that may impact the Pooled Investment Funds or any legal or arbitration proceeding filed against the SIC or Consultant related to the Pooled Investment Funds

G. Upon written request and at a time mutually agreed upon, the SIC will make available to the Commission Board, the Commission staff, or the Commission's consultants, those records (other than those subject to the SIC's attorney-client privilege) pertaining to the duties and responsibilities of the SIC under this Agreement, and the Commission shall bear the SIC's full external cost of this reporting duty.

4. Payment of the Direct Cost of the Services.

A. The Commission shall be deemed to have paid to the SIC at least the direct cost of the Services, as contemplated by § 6-8-7.I, NMSA 1978, by agreeing, as provided herein, to the assessment of the Expense Reimbursement (as defined below).

B. The Commission shall fully reimburse the Direct Costs (as defined below) of providing the Services in an amount equal to the product obtained by multiplying (i) the total monthly Direct Costs assessed to each Pooled Investment Fund by (ii) a fraction the numerator of which is the Commission's percentage participation in each Pooled Investment Fund on each monthly valuation date and the denominator of which is one hundred percent (100%) (the "Expense Reimbursements"). The Expense Reimbursements will not be billed directly to the Commission. The Expense Reimbursements allocated to the Commission will be deducted from the Commission's account(s) on each monthly valuation date as an expense of each Pooled Investment Fund.

C. "Direct Costs" means all expenses incurred by the SIC with third-party service providers directly related to (1) investing the Long-Term Reserves and/or; (2) managing the Pooled Investment Funds. Direct Costs may include compensation and expense reimbursement paid to external investment managers, advisors, consultants, outside legal counsel, information agencies, banking and custody institutions, or other third-party providers of services to the Pooled Investment Funds in which the Commission participates. For purposes of this Agreement, Direct Costs do not include SIC internal operating costs, or any legal fees or costs associated with SIC pay-to-play litigation.

D. The Commission agrees that the costs associated with the Direct Costs may change from time-to-time.

E. In the event of a termination of the Agreement, the pro-rated Expense Reimbursement will be further pro-rated to reflect SIC Direct Cost for any partial month.

5. Term.

A. The Agreement shall be effective upon approval by the Secretary of Finance and Administration of the State of New Mexico and shall continue unless terminated pursuant to Section 5. B.

B. Either party may terminate the agreement upon thirty (30) days' written notice to the other party and such notice shall specify the termination date.

C. Upon any termination of the Agreement by either Party, to the extent directed by the Commission, the SIC shall continue to provide the Services, pursuant to the same terms and conditions, for the duration of the Transition Period, as provided in the Agreement. The SIC shall cooperate with the Commission in good faith to affect a smooth and orderly transfer of such services, assets and all applicable records. For purposes of this subsection, "Transition Period" means a period of up to three (3) months following the termination date of this Agreement during which the SIC continues to perform those services required under this Agreement in order to complete any transactions pending on the termination date and to facilitate an orderly transition of Services. In the event that a termination-related withdrawal of assets exceeds the current net cash position in a Pooled Investment Fund, (i) a reasonable withdrawal extension will be granted if cash is not available in a Pooled Investment Fund and (ii) the Transition Period will automatically continue until the date upon which all Long-Term Reserves have been delivered to the Commission.

D. Nothing in this Agreement shall be construed to limit either Party's remedies at law or in equity in the event of a material breach of this Agreement.

6. Strict Accountability. The SIC shall be held to a strict accountability, as described in Section 11-1-4.D, NMSA 1978, for all receipts from and disbursements made to the Commission under the terms of this Agreement.

7. Miscellaneous.

A. Ownership. The SIC acquires no ownership interest in the Commission's proportionate (pro-rata) share of the Pooled Investment Funds or in any other funds or accounts in which the Long-Term Reserves are held for management by the SIC. Neither this provision nor Section 1.A alter the Commission's obligations under Section 4 of this Agreement (Payment of the Direct Cost of the Services). No Commission ownership interest extends to any underlying securities, and the Commission shall not have the right or authority to direct the investment of the Pooled Investment Funds.

B. Notices. Notices will be provided in writing and will be deemed delivered as follows: (i) immediately upon personal delivery; (ii) three (3) days after deposit in the United States mail by certified or registered mail (return receipt requested); (iii) one (1) business day after its deposit with any nationally recognized overnight courier (prepaid); or (iv) immediately upon electronic transmission by facsimile or electronic mail; addressed to the other party at his or its address (or facsimile number or e-mail address, as applicable) as shown below, or to such other address as such Party may designate in writing from time to time.

If to the Commission: New Mexico Interstate Stream Commission  
Attn: Monica Trujillo, Chief Financial Officer  
Office of the State Engineer/Interstate Stream Commission  
495 Old Santa Fe Trail  
Post Office Box 25102  
Santa Fe, NM 87504-5102  
(505) 827-4413  
(505) 827-4692

If to the SIC: New Mexico State Investment Council  
Attention: Vince Smith, Deputy State Investment Officer  
41 Plaza La Prensa  
Santa Fe, NM 87505  
(505) 424-2510 (Facsimile)  
Vince.Smith@state.nm.us

C. Assurances. Consistent with the terms and conditions hereof, each Party will execute and deliver such certificates and other documents and take such other action as any other Party may reasonably require in order to carry out the Agreement and the transactions contemplated hereby.

D. Severability. If any provision of the Agreement becomes or is found to be illegal or unenforceable for any reason, such provision may be modified to the extent necessary to make this Agreement legal and enforceable. If such provision cannot be so modified, it shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect.

E. Amendment. The Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties.

F. Assignment. The Agreement or any of the rights, duties, or obligations of the Parties hereunder, shall not be assigned by either Party without the express written consent and approval of the other Party.

G. Successors and Assigns. This Agreement binds and inures to the benefit of the parties and, subject to the restrictions on transfer herein set forth, their respective successors, assigns and personal representatives.

H. Complete Agreement. The Agreement and the exhibits attached hereto contain the entire understanding of the Parties with respect to the transactions contemplated hereby and supersede all prior arrangements or understandings with respect thereto, including without limitation the October 28, 1996 Joint Power Agreement Between the SIC and the Commission, as amended. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein.



I. Headings. Section or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

J. Governing Law. This Agreement is governed by and is to be construed in accordance with the law of the State of New Mexico.

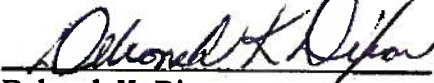
K. Counterparts. The Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement, each of which shall be an original for all purposes.

L. Waiver. Nothing in this Agreement constitutes a waiver of claims, rights or remedies available to either party prior to the Effective Date and no party shall be deemed to have waived any claim, or any power, right, privilege or remedy under this Agreement or otherwise, unless the waiver is expressly set forth in a written instrument duly executed and delivered on behalf of such party.


[Remainder of page left blank intentionally]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.


**NM INTERSTATE STREAM COMMISSION**

By:  Date: 8/28/2016  
Deborah K. Dixon  
Director  
Upon delegated authority pursuant to 8/18/16 motion of the Interstate Stream Commission

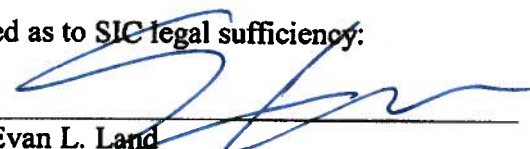
Approved as to Commission legal sufficiency:

By:  Date: 8/29/16  
Amy I. Haas  
General Counsel

**NEW MEXICO STATE INVESTMENT COUNCIL**

By:  Date: 9/6/16  
Steven K. Moise  
State Investment Officer  
Upon Delegated Authority Pursuant to Resolution of the State Investment Council


Approved as to SIC legal sufficiency:

By:  Date: 9/6/2016  
Evan L. Land  
General Counsel

Approved as to SIC budget sufficiency:

By:  Date: 9/6/2016  
Brent H. Shipp  
CFO, Director Administrative Services

**APPROVED:**

 Date: 9/16/16  
Duffy Rodriguez  
Acting Secretary, Department of Finance and Administration

## **EXHIBIT A-1**

### **NEW MEXICO INTERSTATE STREAM COMMISSION NEW MEXICO UNIT FUND**

#### **Statement of Commission Investment Objectives and Policy**

##### **I. Introduction**

This Statement of Investment Objectives and Policy (Policy) governs the investment of assets held in trust for the New Mexico Unit Fund (Fund).

This Policy is applicable to the Fund pursuant to a Joint Powers Agreement entered into between the New Mexico State Investment Council (SIC) and the New Mexico Interstate Stream Commission (Commission), an agency of the State of New Mexico. For purposes of this Policy, the contact person for the Commission designated in the Joint Powers Agreement between the SIC and the Commission shall be referred to as "Agency staff."

##### **II. The Unit Fund and its Mission**

The New Mexico Unit Fund is a fund in the New Mexico State Treasury created pursuant to NMSA 1978, Section 72-14-45. The Fund was created to comply with the terms of the Arizona Water Settlements Act (AWSA), Pub. L. 108-451, which was passed by Congress and signed into law in 2004. The AWSA specifies that: "The Secretary of the Interior shall deposit [funds appropriated by Congress] into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration."

##### **III. Statement of Policy Purpose**

The Policy is set forth by the Commission in order that the SIC and other interested parties are informed of the Commission's investment objectives with respect to the ongoing management of the Fund's assets.

In general, the purpose of the Policy is to:

- A. Establish a clear Commission understanding of the investment goals of the financial assets in the Fund.
- B. Develop specific guidelines and limitations on the Commission for the investment of the Fund's financial assets.
- C. Set forth Commission responsibilities and authorities in directing and monitoring the investments and management of the Fund's financial assets.
- D. Provide a basis for periodic review and evaluation of investment performance.

#### **IV. Objectives**

Based on its mission statement and risk tolerance, the Commission has established the following investment objectives for the Fund:

- A. Ensure the Fund is invested in a fiscally sound and responsible manner, consistent with generally accepted standards of fiduciary responsibility and other standards applicable to investments made by the SIC.
- B. Achieve an acceptable return from the investments that will provide an adequate level of growth to sustain the mission of the Fund and maximize the interest earned on cash balances in the Fund.
- C. Achieve a prudent balance recognizing risk and return tradeoffs. While interested in maximizing investment gains, the Commission will avoid undue risks. Accordingly, the Commission desires investments that maximize the return on invested assets consistent with this safety principle. Sufficient liquidity shall be maintained by the Commission to fund outflows.

#### **V. Agency Staff Responsibilities**

- A. The Agency staff will review this Policy annually to determine if modifications are necessary or desirable. If the Commission makes any modifications to this Policy, it shall promptly communicate the modified Policy to the SIC.
- B. The Agency staff will meet with the SIC as necessary to review its portfolio and investment results in the context of this Policy.
- C. The Agency staff will review the performance of the Fund quarterly.

#### **VI. Investment Guidelines**

Recognizing the objectives of the Fund that are identified in this Policy, the Commission does not expect the SIC to be reactive to short-term investment developments. The investment horizon is sufficiently long-term that investment competence must be measured over a meaningful period of time, typically defined as three to five years. The Fund will be invested in accordance with New Mexico statutory and constitutional guidelines.

##### **A. Asset Allocation**

The Fund's assets shall be broadly diversified by the Commission, with no disproportionate or extreme positions that might cause significant diminution of value given adverse developments.

The Commission's risk/return profile shall be maintained by describing a long-term strategic "target" asset allocation that is set forth in Schedule I of this Policy.

##### **B. Rebalancing**

The Agency staff will review the asset allocation and the performance of the Fund quarterly to deem whether performance is appropriate for the Fund objectives.

The Agency staff, on an ongoing basis and in accordance with market fluctuations, shall ensure that

the investment portfolio is rebalanced so it remains within the range of targeted allocations set forth in Schedule I.

The Commission desires a disciplined rebalancing program that avoids any temptation to “time the market.” As such, the following general rebalancing procedures shall be applied by the Commission:

1. At any time that an asset class falls outside of the ranges detailed in Schedule I, it shall be rebalanced back to its target allocation. Quarterly reports shall be used as a basis for this.
2. Proceeds from rebalancing shall be allocated to asset classes that are below their Policy target levels in a manner that brings the other categories as close to target as possible (asset classes that are most underweight should receive greater proportion, etc.).
3. Cash flows shall be used to the extent possible to aid in rebalancing the assets.

## **VII. Prudent/Ethical Operation**

### **A. Prudence**

The standard of prudence to be applied by the Commission and external service providers shall be the “prudent investor” rule.

This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the total portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the Fund.

In addition, the Commission:

1. Must conform to fundamental fiduciary duties of loyalty and impartiality;
2. Must act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents; and
3. May only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the Fund, and the skills of the participants.

## **VIII. Investment Manager Guidelines**

The Commission acknowledges that when it may be in the best interest of the Fund to invest in a commingled vehicle (i.e. pooled fund, collective fund or institutional mutual fund), it is not possible to dictate specific investment guidelines and prohibitions. Therefore, the SIC performance summary will be provided to and reviewed by Agency staff on a quarterly basis.

### **A. Actively-Managed U.S. Equity Investments**

The Commission’s overall investment objective for U.S. equity is to provide above-average long-term total returns relative to the broad U.S. equity market and to the returns of other funds with similar objectives and investment styles. Performance expectations are stated in Exhibit A.

### **B. Actively-Managed Non-U.S. Equity Investments**

The Commission's overall investment objective for Non-U.S. equity is to provide above-average long-term total returns relative to the broad equity market outside the United States and to the returns of other funds with similar objectives and investment styles. Performance expectations are stated in Exhibit A.

**C. Actively-Managed Fixed Income Investments**

The Commission's overall investment objective for fixed income is to provide above average, long-term total return relative to the fixed income market and to the returns of other fixed income funds through traditional fixed income management techniques. Performance expectations are stated in Exhibit A.

**D. Investments and Transactions that Are Not Permitted**

The Commission shall not invest the financial assets from the Fund in tax-exempt bonds, or bonds, notes or other indebtedness for which there is no public market.

**IX. APPLICABLE TO THE COMMISSION**

**Commission Performance Monitoring Return Expectations**

Commission performance measurement shall be based on total rate of return and shall be monitored over a sufficient time period to reflect investments over a full market cycle.

## **SCHEDULE I – ASSET ALLOCATION**

### **NEW MEXICO INTERSTATE STREAM COMMISSION**

#### **NEW MEXICO UNIT FUND**

##### **Total Portfolio**

The total account will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of a custom index based on the actual asset allocation (after fees) over a market cycle.

##### **Index (Passively-Managed) Investments**

The performance expectations for asset classes set forth below apply to actively managed portfolios. All index (or passively-managed) investments are expected to provide a risk and return profile comparable to the tracked benchmark on a gross of fees basis.

##### **Actively-Managed Large Cap U.S. Equities**

Equity accounts will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of the Russell 1000 Index (after fees) over a market cycle.
- B. Rank above median in a nationally recognized universe of equity managers possessing a similar style.

##### **Actively-Managed Small/Mid Cap U.S. Equities**

Equity accounts will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of the Russell 2500 Index (after fees) over a market cycle.
- B. Rank above median in a nationally recognized universe of equity managers possessing a similar style.

##### **Actively-Managed Non-U.S. Developed Equities**

Non-U.S. Developed Equity accounts will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of the MSCI EAFE Index (after fees) over a market cycle.
- B. Rank above median in a nationally recognized universe of international equity managers possessing a similar style.

### **Actively-Managed Non-U.S. Emerging Markets Equities**

Non-U.S. Emerging Markets Equity accounts will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of the MSCI Emerging Markets Index (after fees) over a market cycle.
- B. Rank above median in a nationally recognized universe of international equity managers possessing a similar style.

### **Actively-Managed Core Plus Fixed Income**

Core plus fixed income accounts will be evaluated quarterly. Specific performance objectives include, but may not be limited to, the following:

- A. Exceed the return of the Barclays U.S. Aggregate Bond Index (after fees) over a market cycle.
- B. Rank above median in a nationally recognized universe of fixed income managers possessing a similar style.

### **Asset Allocation**

The Commission supports a diversified asset allocation consisting of exposure to publicly-traded U.S. and International equities, as well as core (plus) fixed income for the New Mexico Unit Fund (Fund). Therefore, the Commission has opted for an asset allocation structure for the Fund of 55% equity and 45% core fixed income investments. The Commission desires to invest in the asset classes identified in Figure 1, in accordance with management approach "active" or "passive", also contained in Figure 1.

**Figure 1**

	<b>Active/Passive</b>	<b>55% Equity</b>
Large/Mid Cap US Equity	Passive	25
Small Cap US Equity	Active	8
Developed Large/Mid Int'l Equity	Passive	17
Emerging Markets Equity	Active	5
Int. Duration Fixed Income	Active	45



The Commission further desires to invest each asset class in accordance with the following target range percentages contained in Figure 2.

**Figure 2**

<b>Asset Class</b>	<b>Minimum</b>	<b>Target</b>	<b>Maximum</b>
<b>Large Cap U.S. Equity</b>	22%	25%	28%
<b>Small/Mid Cap U.S. Equity</b>	6.5%	8%	9.5%
<b>Non-U.S. Developed Equity</b>	15%	17%	19%
<b>Non-U.S. Emerging Markets</b>	4%	5%	6%
<b>Core Plus Bonds</b>	40%	45%	50%

**NEW MEXICO INTERSTATE STREAM COMMISSION  
TRUST FUNDS INVESTMENT OBJECTIVES STATEMENT**

**I. PREAMBLE**

The New Mexico Interstate Stream Commission (Commission) is the custodian of two Trust Funds, the Improvement of the Rio Grande Income Fund (IRGIF) and the Irrigation Works Construction Fund (IWCF). The Commission prepares budgets and plans for the use of the income in these funds and administers the cash balance of the funds. The Legislature may also appropriate funds from IWCF and IRGIF for projects in addition to those of the Commission.

In the course of planning for the long-term use of these Trust Funds, the Commission is in need of professional investment management. The Commission has entered a Joint Powers Agreement with the New Mexico State Investment Council (SIC) to provide investment services in accordance with the Joint Powers Agreement and this Investment Objectives Statement. For the purpose of describing these investments, the combined cash balances of the IRGIF and IWCF shall be referred to as the "Investment Fund".

**II. INVESTMENT OBJECTIVES**

A. Income Sources: Income sources for the IRGIF and IWCF include, but are not limited to, earnings on the Funds' share of the State's Permanent Fund, land rentals and leases collected by the State Land Office and earnings on the cash balances of the IWCF and IRGIF. The intent of this statement is to maximize the interest earned on cash balances of the IWCF and the IRGIF.

B. Liquidity Requirements: All income credited to the IWCF and IRGIF, and the cash balance, support continuing programs consistent with the purposes of these Funds. A portion of the cash balance of the Investment Fund must be available for unforeseen needs which arise during the fiscal year, in accordance with Article III.B.

C. Rate of Return Objectives: The long term objective of this statement is to provide sufficient interest income revenue from the Investment Fund such that when combined with Permanent Fund Income and State Land Office Revenue there will be sufficient revenue available to fund entirely the regular programs without reducing the size of the Investment Fund.

D. Fiduciary Standards: The Investment Fund shall be invested in a manner that is consistent with generally accepted standards of fiduciary responsibility and the Prudent Man Rule as well as standards applicable to Permanent Fund investments made by the SIC. All transactions that utilize

assets of the IWCF and IRGIF will be undertaken for the sole benefit of the IWCF and IRGIF.

### III. INVESTMENT GUIDELINES

A. Permissible Investments: The Investment Fund will be invested in accordance with New Mexico statutory and constitutional guidelines for the Permanent Fund.

B. Asset Mix: Annually the Commission will provide the SIC with a schedule that tabulates balance of IWCF and IRGIF available for investment of more than one year, a schedule of estimated expenditure projections, and revenue required for the upcoming 12 month period with a quarterly distribution schedule. Upon review and consideration of the schedule, amounts transferred into an account set up for investment purposes at the State Treasurer shall be invested by the SIC using the following guidelines:

	<u>Long Term Target</u>	<u>Allowable Range</u>
Cash and Cash Equivalents	2%	1% - 10%
Fixed Income	43%	35% - 50%
Equities	55%	45% - 65%

C. Cash and Cash Equivalent Investments: The assets of the Investment Fund committed to cash and cash equivalents should have an average weighted maturity of one year or less.

D. Fixed Income Investments: The assets of the Investment Fund committed to fixed income should be committed to bonds or debt securities with an average maturity of seven years. During the first six years, this portion of the Trust Funds should be invested in a laddered structure so that revenue will become available each year, in amounts necessary to meet expenditure projections.

E. Equity Investments: The assets of the Investment Fund committed to equity should be invested in a diversified manner consistent with fiduciary standards applicable to Permanent Fund.

### IV. INVESTMENTS AND TRANSACTIONS THAT ARE NOT PERMITTED

A. Tax-exempt bonds.

B. Bonds, notes or other indebtedness for which there is no public market.

V. OTHER POLICIES

A. Investment Manager Discretion: The State Investment Office is to have full discretionary investment authority over the assets for which it has responsibility to manage, subject to the guidelines and policies set forth in this document and the Joint Powers Agreement by and between the Commission and the SIC.

B. Use of Commingled Funds: The State Investment Office may invest Commission Investment Fund assets in commingled funds provided that:

1. Such investments are consistent with the guidelines established herein; and
2. Securities held in the commingled funds are permissible investments for the Investment Fund.

C. Securities Trading: The emphasis of securities trading should be on a best price and execution basis, i.e., the highest proceeds to the Investment Fund for the lowest cost, net of all transactions expenses. Placement of orders should be based on the financial viability of the brokerage firm and the assurance of a prompt and efficient execution.

VI. REVIEW PROCEDURES

A. Review and Modification of Investment Objectives Statement: The Commission shall from time-to-time review this Investment Objectives Statement to determine if modifications are necessary or desirable. If modifications are made, they shall be promptly communicated to the SIC.

B. Meeting with the State Investment Office: The Commission or its designee(s) shall meet with the State Investment Office at least semi-annually to review its portfolio and investment results in the context of this Investment Policy Statement.

The State Investment Office will provide monthly written reports on portfolio activity and investment performance, and will provide economic and market analyses, quarterly. Additionally, any significant changes in investment strategy, decision-making processes, styles or personnel should be communicated as soon after the change is known as practical. The Commission staff and its staff are invited to attend the State Investment Council monthly meetings.

C. Performance Measurement: The Commission intends to review quarterly the performance of the Investment Fund and the SIC relative to the objectives and guidelines described herein.

D. Performance Benchmarks: The Commission expects to achieve the following performance benchmarks over a fair market cycle of three to five years.

1. **Equity Components of the Investments of the Trusts:** A compound time-weighted rate of return in excess of the S & P 500 (with dividends).
2. **Fixed Income Components of the Investments of the Trusts:** A compound time-weighted rate of return in excess of the rate of return on 3 to 6 year U.S. Government Securities.

This Investment Objective Statement is approved by action of the New Mexico Interstate Stream Commission at its meeting held on 16 November 1993.

APPROVED

  
Albert E. Utton, Chairman  
New Mexico Interstate Stream Commission

Receipt Acknowledged

  
State Investment Officer

  
Date

by: isoprogrammed

**EXHIBIT B**

# **NEW MEXICO STATE INVESTMENT COUNCIL**



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## **INVESTMENT POLICY STATEMENT**

**Adopted on July 24, 2012**

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## **I. Mission Statement**

The mission of the New Mexico State Investment Council ("NMSIC") is to protect and grow the State's permanent endowment funds for current and future generations, through prudent, professional investment management.

## **II. Investment Authority**

The NMSIC is a non-cabinet level agency charged with managing New Mexico's Permanent Funds ("Funds"). The NMSIC was established by an act of the 23rd Legislature, which was approved on March 28, 1957 and subsequently ratified by a constitutional amendment adopted by the citizens of New Mexico in the general election of 1958. The enabling legislation of the NMSIC is located at section 6-8-1, NMSA 1978. According to the terms of the legislation, responsibility for the investment of the Land Grant Permanent Fund ("LGPF") was transferred to the State Investment Officer, subject to the policy direction of the State Investment Council. The NMSIC was assigned the responsibility for managing the Severance Tax Permanent Fund ("STPF") in 1983. In 1991 the Legislature authorized the NMSIC to provide investment management services for other State agencies. The 1997 legislature further expanded this client authorization to include all political subdivisions of New Mexico and the New Mexico Finance Authority. In 2000 the NMSIC began to manage the Tobacco Settlement Permanent Fund, and in 2006 the Legislature created the Water Trust Permanent Fund with a \$40 million allocation.

## **III. Statement of Purpose**

### **A. Permanent Endowment Trust Funds**

The purpose of New Mexico's Permanent Endowment Trust Funds is to contribute recurring revenues for the operating budget of the State and to provide resources to various fund beneficiaries. These Funds are assets which largely represent the depletion of the State's natural resources and land grant proceeds, and are intended to provide ongoing and growing benefits for New Mexicans.

The NMSIC's primary responsibility is management of New Mexico's Land Grant Permanent Fund, Severance Tax Permanent Fund, Tobacco Settlement Permanent Fund, and Water Trust Permanent Fund. In addition, the NMSIC manages investments for other governmental clients. The Land Grant Permanent Fund and Severance Tax Permanent Fund are the state's two largest permanent funds, broadly diversified, and birthrights for New Mexicans.

The Land Grant Permanent Fund ("LGPF") is New Mexico's largest endowment. It was established through, and continues to be maintained in part by, fees the State charges for 13.4 million acres of mineral resources and 8.8 million acres of surface land. Significant portions of LGPF distributions go to New Mexico public schools and public education.

The Severance Tax Permanent Fund ("STPF") was established to receive severance taxes collected on natural resources extracted from New Mexico lands. State severance taxes have historically been used to retire debt from bond issues that have funded capital projects. Currently, severance tax revenues first pay the required debt service on severance tax bonds issued by the state; remaining revenues are then transferred to the STPF.

The Tobacco Settlement Permanent Fund ("TSPF") was established as the result of a legal settlement. Presently, half of the annual settlement payments are deposited into the TSPF. The remainder is transmitted directly to the State's general fund for government operations.

The Water Trust Permanent Fund ("WTPF") provides annual funding for infrastructure projects in New Mexico, as identified by the Water Trust Board. The WTPF was created in 2006 by the legislature with a \$40 million allocation.

As provided by law, the State Investment Office may invest other state agency or local government funds pursuant to a Joint Power Agreement in any type of investment permitted for the LGPF under the same standard of care applicable to investments of the LGPF. It shall be the responsibility of the client agencies to establish asset allocations and direct the movement of their funds.

#### **B. Investment Policy**

This Investment Policy Statement ("Policy") governs the investment of assets for the Funds and is established to provide a framework for the management of those assets. It sets forth in a comprehensive way the NMSIC's investment objectives, philosophy, guidelines and practices and has been developed as a reference point for the management of Funds' assets. The Policy is not intended to be a static, one-time document but is designed to capture investment opportunities while providing parameters that ensure prudence and care in the execution of the investment program. No investment or action pursuant to an investment may be taken unless permitted by this Policy or by action of the NMSIC.

The Policy provides guidance for fiduciaries which include the NMSIC, the State Investment Officer and Staff, investment consultants, investment managers, and custodians. It is the intent of the Policy to provide the foundation for management of the Funds' assets in a prudent manner including the standards by which the NMSIC can evaluate Staff, investment consultants, investment managers, custodians and other service providers.

#### **IV. Investment Objective**

The NMSIC investment goals are to preserve the Permanent Endowment Funds for future generations and to provide future benefits by growing the Funds at a rate at least equal to inflation.

The NMSIC seeks to manage the Funds to ensure that future generations receive the same or greater benefits as current beneficiaries, while maximizing current distributions through time to provide current revenue sources to the state's General Fund. Total return, which includes realized and unrealized gains, plus income, less expenses, is the primary goal of the Funds.

#### **V. Investment Philosophy**

In order to meet the investment objective, the NMSIC has adopted the following principles:

- Strategic asset allocation is a fiduciary duty and allocation across asset classes is the most important determinant of return variability and long-term total return.
- Risk is an unavoidable component of investing and is a major factor that must be taken into account in assessing investment policy and strategy.
- Diversification by asset class and within asset classes is a primary risk control element.
- To preserve the purchasing power of the corpus and to provide benefits to current and future generations the Funds should have a strategic asset allocation and investment strategy for a long-term investment horizon.
- Sufficient liquidity will be maintained to meet the anticipated cash flow requirements of the Funds.

##### **A. Capital Markets Theory**

###### **1. Return**

In order to meet the Funds' objective, the NMSIC strives to achieve the highest level of investment performance that is compatible with its risk tolerance and prudent investment practices. Due to the long-term nature of the Funds and the inherent risks in short-term tactical investing, the NMSIC must maintain a long-term perspective in formulating and implementing its investment policies, and in evaluating its investment performance. As such, the NMSIC: (1) seeks to adopt a long-term rate of return goal for the Funds, (2) adopts an allocation policy that seeks to meet the rate of return goal over long periods of time, while minimizing volatility (risk) and (3) strives to minimize the costs associated with implementation of the asset allocation through efficient use of internal and/or external resources.

## **2. Risk**

The investment risk philosophy for the Funds is based on the principles of capital market theory that are generally accepted and followed by institutional investors, who by definition are long-term oriented investors. This philosophy holds that:

- Increasing risk is rewarded with compensating returns over time and, therefore, prudent risk taking is a necessary element of long term investing.
- Risk can be mitigated through diversification of asset classes and investment approaches, as well as diversification of individual securities.
- The primary determinant of long-term investment performance is the strategic or long-term allocation of assets among various asset classes.
- Relative performance of various asset classes is unpredictable in the short term and attempts to shift tactically between asset classes or implementation strategies are unlikely to be rewarded.

Given these principles, the NMSIC has established a long-term asset allocation policy that balances the returns intended to meet the Funds' objectives and the risk level that is appropriate under existing and anticipated circumstances. In determining its risk posture, the NMSIC has considered, in addition to its fiduciary obligations and statutory requirements, each Fund's purpose and characteristics, current and projected financial condition, liquidity needs, sources of contribution, income and general business conditions.

## **3. Diversification**

The NMSIC will rely on an investment strategy utilizing an appropriate long-term, diversified asset allocation approach. Diversification distributes a portfolio across many investments to avoid excessive exposure to any one source of risk. Investors generally diversify their portfolios along the following lines: asset classifications (stocks, fixed income, credit, real estate, real assets, hedge funds, private equity, short-term investments, etc.), domestic, international, industries, and maturity sectors. Other considerations in asset allocation modeling should take into account the purpose of the Fund, the size and financial condition of the Fund, and general business conditions. The factors mentioned here are not intended to be limiting; rather, they are outlined as a general indication of the importance of diversification to proper asset allocation. Under such an allocation, the Funds' assets may be invested by some combination of external and/or internal managers, by active and/or passive managers, and by diverse investment strategies and styles within each asset class. The NMSIC will determine the proper allocation among asset classes and investment managers, based on advice and analysis provided by Staff and/or Consultants.

#### **4. Formal Review Schedule**

The NMSIC recognizes that even though the investments are subject to short-term volatility, the NMSIC shall maintain a long-term investment focus. This prevents ad-hoc revisions to the philosophy and policies in reaction to either speculation or short-term market fluctuations. In order to preserve this long-term view, the NMSIC has adopted the following formal review schedule:

<b>Formal Review Agenda Item</b>	<b>Formal Review Schedule</b>
Asset Allocation Policy	At least every three years
Manager Structure Policy	At least every three years
Investment Policy	At least every three years
Total Fund Performance	At least quarterly
Asset Class Composite Performance	At least quarterly
Investment Manager Performance	At least quarterly

## **VI. Roles and Responsibilities**

### **A. New Mexico State Investment Council**

The NMSIC is the primary body charged with overseeing investment activities relating to the Funds. Members of the NMSIC are fiduciaries subject to the statutory and common law duties of a fiduciary. NMSIC is a non-cabinet level agency charged with managing New Mexico's Permanent Funds. The NMSIC is dedicated to seeing the New Mexico State Investment Office accomplish its mission of ensuring intergenerational equity for New Mexicans, by providing consistently excellent, prudent investment performance.

The NMSIC's mandate, in turn, is to manage New Mexico's Permanent Funds ethically and optimally, working to maximize returns within acceptable levels of risk, so as to ensure future generations receive the same or greater benefits as current beneficiaries. The NMSIC must work diligently to enact positive policy, to assure that such policy is implemented, and to inject transparency into operations. NMSIC stewardship recognizes that the public demands and deserves not only above average returns from the Funds, but also ethical and best-in-class investment practices in our efforts to grow the state's permanent trust dollars.

The NMSIC is responsible for prudent investment and expenditure of the Funds and assets. The NMSIC will operate the investment program in compliance with all applicable federal and State laws and regulations. The NMSIC is responsible for

establishing and maintaining all policies and guidelines by which the Funds are managed, and by which the State Investment Office operates.

The NMSIC relies on both internal Staff and external contractors in order to properly administer the Funds and implement the Fund's investment strategies. Because of the number of parties involved, the roles of each party as fiduciaries must be clearly identified. Such identification increases operational efficiency, ensures clear lines of responsibility and reduces or eliminates duplication of effort.

**B. Council Investment Committee**

The Council Investment Committee (CIC) is a standing subcommittee of the NMSIC with express purpose of assisting the NMSIC in carrying out their investment responsibilities for the Funds. All members of the CIC shall be appointed by the NMSIC. The NMSIC shall elect annually a Chair from among the members of the CIC and may elect other officers as necessary.

The CIC is charged with reviewing and making recommendations to the NMSIC on all investment related matters, other than those under the purview of the Private Equity Investment Advisory Committee ("PEIAC"). The CIC's principal responsibilities are to ensure that funds managed by the NMSIC are managed in accordance with the Uniform Prudent Investor Act for the benefit of the citizens of the State of New Mexico. The CIC assists the NMSIC on investment actions including, but not limited to, the following responsibilities:

1. Formulating and recommending investment policies and guidelines regarding asset classes, asset allocation targets and ranges and prohibited investments.
2. Formulating and recommending return objectives and benchmarks for the Fund as a whole and for individual asset classes;
3. Reviewing and recommending the retention or termination of any investment consultant;
4. Reviewing and recommending the investment, reinvestment, redemption or termination of funds managed by the NMSIC, including the retention or termination of any investment manager, custodian, securities lending agent, or transition management agent;
5. Evaluating investment performance of funds overseen by the NMSIC based on a comparison of actual returns with the NMSIC's return objectives, benchmarks and relevant external peer groups;
6. Reviewing periodically the rebalancing activities undertaken by the State Investment Office staff;
7. Attending to such other matters as the NMSIC may from time-to-time request.

**C. Private Equity Investment Advisory Committee**

The Private Equity Investment Advisory Committee (PEIAC) is composed of the State Investment Officer, one sitting member of the State Investment Council (SIC) and three other members appointed by the Council itself. All appointees are to have extensive experience in investment and finance fields and serve their fiduciary roles as a public service.

**D. State Investment Office Investment Staff**

The Internal Investment Staff ("Staff") reports directly to the Deputy State Investment Officer who in turn reports to the State Investment Officer ("SIO"). The Deputy State Investment Officer functions as Chief Investment Officer ("CIO") with primary responsibility for the implementation of the investment program consistent with the NMSIC-adopted investment policy and applicable state and federal laws. The CIO, with assistance of Investment Staff, monitors the performance of the investment portfolio, ensures that funds are invested in accordance with NMSIC policies, communicates with the NMSIC and SIO, studies, recommends, and implements policy and operational procedures that will enhance the investment program of the State Investment Office and ensures that proper internal controls are developed to safeguard the assets of the State Investment Office. In fulfilling these investment responsibilities, the CIO relies heavily on the Investment Staff and Consultant(s). The Staff exercises the same fiduciary responsibility under applicable law as the NMSIC.

**E. Investment Consultant**

The Consultant is hired by and reports directly to the NMSIC. The Consultant's duty is to assist the NMSIC, its CIC and Staff in the management of the investment process. This includes regular meetings with the NMSIC to provide an independent perspective on the Funds' goals, structure, performance and managers. In the course of the Consultant's normal functions, the Consultant will work directly with Staff to review asset allocation, asset class structure and performance, investment manager performance, and make recommendations to the NMSIC as appropriate. The Consultant will assist Staff and the Committee with external investment manager selection and will promptly inform the State Investment Office and discuss the impact of material changes taking place within any current manager's organization or investment process. The NMSIC may elect to retain one or more Consultants that specialize in specific areas of asset consulting. Performance of Investment Consultant(s) will be subject to review by the Staff, CIC and NMSIC.

**F. External Investment Managers**

The external Investment Managers ("Managers") serve at the pleasure of the NMSIC. The Managers will be provided with explicit written individual investment guidelines providing detail, clarification of permissible securities and investment strategies, and performance evaluation criteria. Each will select, buy, and sell specific securities or investments within the parameters specified in their contractual guidelines and in adherence to this Investment Policy or to other policies set forth by the NMSIC. Managers will construct and manage investment portfolios that are consistent with the investment philosophy and disciplines for which they were hired by the NMSIC. Managers will provide performance reporting to the Staff utilizing standardized reporting formats and at intervals specified by Staff.

**G. Custodian**

The Custodian(s) will collect income and safekeep all cash and securities, and will regularly summarize these holdings, along with both their individual and collective performance, for Staff's review. The Custodian will provide data and performance reports to the Staff and Consultant at intervals specified by the NMSIC's written policy or New Mexico Department of Finance and Administration's contract. In addition, a bank or trust depository arrangement will be utilized to accept and hold cash flow prior to allocating it to the Investment Managers, and to invest such cash in liquid, interest-bearing instruments. The NMSIC shall determine asset allocation guidelines; in order to maintain these targets, Staff will direct the Custodian to allocate cash and/or securities to the System's Investment Managers as necessary. The Custodian may also, at the direction of the NMSIC, engage in a Securities Lending program.

**VII. Standards of Care**

**A. The Uniform Prudent Investor Act**

The Uniform Prudent Investor Act ("UPIA") [45-7-601 to 45-7-612 NMSA 1978] governs the NMSIC and the State Investment Office. The statutes are the foundation for the NMSIC's Investment Policy. In summary, the UPIA states that all persons responsible in making investment decisions for the NMSIC shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Investments are to be diversified so as to minimize the risk of large losses, unless under the circumstances, it is clearly prudent not to do so. In addition, investment and management decisions respecting individual assets will be evaluated not in isolation but in the context of the portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the NMSIC.

**B. Conflicts of Interest**

Members of the NMSIC, Staff, consultants and investment managers involved in the investment process will refrain from personal business activity that could conflict with the proper execution and management of the NMSIC investment program, or that could impair their ability to make impartial recommendations and decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process.

**VIII. Asset Allocation**

**A. Strategic Asset Allocation**

The NMSIC recognizes that the most important determinant of long-term return and risk is the asset allocation decision. The asset allocation decision is intended to reflect the return objective and risk tolerance expressed in this Investment Policy Statement. It is



designed to provide the highest probability of meeting the Funds' objectives at a level of risk and liquidity that is acceptable to the NMSIC. In establishing its risk tolerance, the NMSIC considers the Funds' ability to withstand short- and intermediate-term volatility in investment performance and fluctuations in financial condition of the Funds.

To determine the strategic allocation, the NMSIC, with assistance from Staff and Consultants, examines the historical and projected risk and return of the approved asset classes, the correlation among these asset classes as well as the effect the expected investment performance will have on the obligations of the Funds. Based on its long-term return expectations and its determination of the appropriate risk tolerance for the Funds, the NMSIC has chosen the following Strategic Asset Allocation Policy for the LGPF and the STPF (without the Economically Targeted Investments):

<b>Asset Class</b>	<b>Strategic Asset Allocation Target</b>
Broad US Equity	31%
Broad International Equity	15%
Fixed Income	16%
Real Return	10%
Core Real Estate	10%
Absolute Return	8%
Private Equity	10%

The NMSIC and Staff will review the Strategic Asset Allocation Policy at least annually for reasonableness relative to significant economic and market changes or to changes in the Funds' long-term goals and objectives. A formal asset allocation study will be conducted at least every three years to verify or amend the targets.

Recognizing that a long-term target allocation utilizing alternative asset classes can take a matter of years to implement prudently, the NMSIC delegates implementation of Strategic Asset Allocation Policy to Staff including funding of alternative asset classes and setting interim asset allocation targets.

**B. Rebalancing Strategy**

Rebalancing is the term that describes the periodic movement of funds from one asset or asset class to another in order to realign assets to the Strategic Asset Allocation target. A rebalancing strategy is an important element of asset allocation policy. Systematic re-balancing can reduce portfolio volatility and increase portfolio return over the long term. However, frequent rebalancing resulting from excessively tight ranges can lead to unnecessary transaction costs.

The NMSIC has chosen to adopt a rebalancing policy governed by allocation ranges rather than time periods. Upper and lower allocation limits have been established for each asset class. These ranges, specified in the table below, are a function of the

volatility of each asset class and the proportion of the total fund allocated to the asset class.

**Strategic Asset Allocation and Re-Balancing Ranges<sup>1</sup>**

<b>Asset Class</b>	<b>Lower Limit</b>	<b>Strategic Asset Allocation Target</b>	<b>Upper Limit</b>
Broad US Equity	26%	31%	36%
Broad International Equity	0%	15%	15%
Fixed Income	13%	16%	19%
Real Return	7%	10%	13%
Core Real Estate	7%	10%	13%
Absolute Return	6%	8%	10%
Private Equity	7%	10%	13%

The NMSIC has authorized the Staff to rebalance the portfolio in accordance with these policy guidelines. While the allocation to all asset classes remains within these limits, Staff will use cash flow, as available, to maintain the overall allocation as close as possible to the strategic target. When any one of the public market asset classes violates a lower or upper limit, the entire Fund may be rebalanced to within its strategic asset allocation target range. Recognizing that it may be impractical or costly to reallocate illiquid alternative assets, if an alternative asset class breaches an upper or lower limit, the asset class will be rebalanced to within its strategic asset allocation range as soon as is practically possible, subject to reasonable transaction costs.

Within the guidelines set by the NMSIC,

Staff is responsible for developing and implementing a rebalancing plan that is appropriate for existing market conditions, with a primary objective of minimizing transaction costs, market impact, opportunity costs and portfolio disruptions. Managers on the Watch List will not receive additional allocations without CIC approval. Even if a lower or upper limit is not breached, Staff may still make minor changes among asset classes and within individual asset classes, as needed, to more effectively maintain proper exposure to the NMSIC-approved Strategic Asset Allocation and asset class portfolio structures. Staff will report the results of all rebalancing activity to the CIC and the NMSIC at their regular meetings.

**IX. Investment Manager Structure**

The NMSIC must make certain strategic decisions regarding the structure of the portfolio and the structure of the individual asset classes. The NMSIC will formally evaluate on a periodic basis certain strategic decisions regarding the portfolio structure. The major types of strategic structure decisions typically include but are not limited to:

<sup>1</sup> Rebalancing required by State Statutes: (1) Broad US equities plus Broad International equities shall not be greater than 65% of the total LGPF, STPF or TSPF, measured separately, and (2) international investments shall not be greater than 15% of the total LGPF or TSPF, measured separately.

1. The passive vs. active management mix;
2. The internal vs. external management mix;
3. Any strategic overweights/underweights based on market capitalization, investment style or sector allocations.

The NMSIC has elected to utilize a combination of internal and external management, active and passive management, and to maintain a neutral investment strategy based on size, styles, and sectors across asset classes. However, on a periodic basis, the NMSIC will formally evaluate strategic decisions regarding the structure of the individual asset classes. The structure of the individual asset classes, based on recommendations by Staff and Consultant, will support the Strategic Asset Allocation described in the previous section and will be approved by the NMSIC. Staff, with the assistance of Consultants, will be responsible for implementation of the NMSIC-approved asset class structures, supervision of the managers, performance monitoring and reporting. Updates will be provided to the NMSIC (i) based on the schedule outlined in Section V, (ii) as requested by the NMSIC, the CIC, and (iii) as deemed necessary by Staff and Consultant.

In order to adequately diversify the roster of investment managers, the NMSIC has established ten percent of the total fund as the maximum percentage of assets allowed under management by a single active investment management firm, including a parent and any wholly or partially owned affiliates, subsidiaries, or joint venture firms. Deviations above ten percent caused by market fluctuations will not result in an automatic withdrawal of funds from the manager. However, the manager will not be eligible to receive additional funds resulting from rebalancing or from a new mandate as long as the asset level remains above ten percent.

## **X. Investment Manager Evaluation**

When analyzing any investment manager the NMSIC believes it is important not to review it in isolation, but within the context of the structure of the entire asset class and portfolio structure. A key to portfolio construction is diversification, not just by asset class but within each asset class. The goal of diversification is to be exposed to different strategies, which will have different performance and risk patterns. Diversification is optimal when strategies are complementary.

### **A. Search and Selection**

The NMSIC has established the following guidelines for hiring external investment managers. In establishing these guidelines, it is the NMSIC's intention to assure all interested parties that decisions made in carrying out these actions occur in a full disclosure environment characterized by competitive selection, objective evaluation and proper documentation. Any action to hire a manager should be based on one or more of the following observations:

- Identification of a new asset class or approach which has been approved in advance by the NMSIC;
- A need for diversification of managers and styles within an existing asset class; and/or

- A need to replace an investment manager terminated by the SIC or pending termination;
- A need to retain additional managers in order to reach an asset class structure target.

The process outlined in the NMSIC Procurement Policy will be used for selection of external managers. The selection of new investment managers will adhere to a consistent process to ensure an open and competitive manager universe, proper evaluation and due diligence of all candidates, and selection of candidates that are best able to demonstrate the characteristics sought in a specific search. All efforts should be conducted in an open, competitive and transparent environment in order to assure that qualified service providers are identified, that the objectives for the manager's mandate are clearly articulated, and that pricing is at market. The evaluation process will include a member of the NMSIC, Staff and Consultant and will include but not be limited to the following steps:

1. Establish investment manager election criteria;
2. Identify qualified candidates through minimum qualification screen;
3. Quantitative screen;
4. Qualitative screen;
5. Additional cuts based on additional qualitative/quantitative inputs;
6. Additional cuts based on manager interviews at the State Investment Office;
7. Analysis of quantitative and qualitative factors including portfolio fit and structure;
8. On-site due diligence;
9. Recommendation to Council Investment Committee;
10. Council Investment Committee recommendation to the NMSIC.

Consultant and Staff will prepare proper documentation and full disclosure of the complete search process. When reviewing the documentation regarding the hiring of an external investment service provider, the primary focus of the Council Investment Committee and the NMSIC shall be on ensuring that the NMSIC will be able to satisfy any interested party that decisions were well reasoned, thoroughly considered, and prudent. The written supporting documentation will include disclosure of all relevant issues, including the investment search process, investment sourcing and related due diligence. Potential service providers or candidates may, at the pleasure of the NMSIC, CIC or upon the recommendation of Staff and Consultant, be asked to make a formal presentation to the Committee and/or NMSIC at any time.

Each NMSIC member's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Fund.

#### **B. Monitoring and Evaluation**

The decision to retain a manager can have the same potential impact on the returns of an asset class composite as manager selection decisions and should be given the same degree of attention. The NMSIC recognizes investment and management decisions

directed at individual managers must be evaluated not in isolation but in the context of the overall structure of the asset class and the Fund's portfolio as a whole. To maintain the discipline necessary for a long-term focus, the NMSIC has adopted a framework for identification of existing and potential problems outlining how and when specific concerns and events should be addressed to avoid untimely decisions that could impact returns. This framework applies to all of the NMSIC's external public market managers and is intended to accomplish these objectives:

- Foster a long-term approach to manager evaluation;
- Provide a review of the manager's "fit" in the overall asset class composite;
- Provide a logical and statistically valid framework for manager skill evaluation;
- Promote timely and appropriate responses to actual and potential performance issues;
- Provide flexibility to allow application across all asset classes, management styles and market environments.

The framework for retention analysis relies on a formal performance reporting process that includes:

1. Monthly performance reports from Custodian and Consultant to Staff. These reports will detail overall performance of the Funds, asset class composites and the performance of individual managers;
2. Quarterly reports from Staff and Consultant at the CIC and the NMSIC meetings. These reports will detail performance of the Funds, asset class composites and the performance of individual managers as well as peer ranks for each category;
3. Quarterly performance reports from the investment managers to Staff.

The formal performance reports are supplemented by qualitative analysis generated in the course of regular, on-going contact between the investment managers, Staff and the Consultant.

### **C. Watch List**

The objective of a Watch List Policy is to help identify managers that deserve closer scrutiny and ongoing monitoring. Watch Lists are not action lists and managers should not be terminated simply for being on the Watch List for a stated period of time. Consultant and Staff will provide, at least quarterly, in depth analysis on each manager that is on NMSIC's Watch List.

#### **Quantitative Factors Resulting in Watch List Additions**

The NMSIC understands that past performance alone is a poor indicator of future performance and performance consistency is important, but periodic underperformance should be expected.

The following are guidelines that Staff and the Consultant will use when making a recommendation to the CIC to place a manager on the Watch List:

- Test 1** If the manager's rolling, three-year return (gross of fees) falls below the rolling, three-year benchmark return for three (3) consecutive quarters;
- Test 2** If the manager's rolling, three-year return (gross of fees) for three (3) consecutive quarters ranks in the bottom third of the Consultant's peer group universe;

#### Qualitative Factors Resulting in Watch List Additions

Qualitative factors should be central elements of the evaluation process. The following are examples of significant and potentially adverse events that will be considered as reasons to add a manager to the Watch List:

1. Turnover of one or more key personnel;
2. Change in firm ownership or structure;
3. Significant loss of clients and/or assets under management;
4. Significant and persistent lack of responsiveness to client requests;
5. Litigation;
6. Failure to disclose significant information, including potential conflicts of interest;
7. Chronic violations of Policy; or
8. Any other issue or situation of which the NMSIC, CIC, Staff or Consultant become aware that is deemed material.

Once a manager is placed on a Watch List for either quantitative or qualitative reasons, Staff will notify the Manager that their firm, process and performance will be closely monitored and scrutinized. The manager will remain on the Watch List subject to a subsequent recommendation by Staff and Consultant to the CIC and the NMSIC. After one or more periods of rolling, three-year returns above the respective benchmark or above the bottom quartile, the CIC and NMSIC may consider removing the manager from the Watch List.

This framework provides guidelines that are useful in determining the conditions under which a contract relationship between a Manager and the Funds should be called into question. In addition, circumstances may arise in which the NMSIC may elect to terminate a manager for cause (all of the Funds' public market investment manager contracts may be terminated, with or without cause, immediately upon notification).

A manager retention decision is very important to the continued success of the Funds' investment strategy. As such, it should not be taken lightly or made solely on quantitative or qualitative guidelines. The ultimate decision rests in the collective judgment and authority of the NMSIC, which may consult with the CIC,

Staff, and Consultant.

**D. Investment Manager Termination Guidelines**

From time to time it will be necessary for the NMSIC to terminate a contractual relationship with an Investment Manager and these actions must be viewed in the context of the entire portfolio and as a business decision. The NMSIC has established the guidelines to assist in making these termination decisions. In establishing these guidelines, it is the intent of NMSIC to assure all interested parties that decisions made occurred with full disclosure characterized by competitive bidding, objective evaluation and proper documentation. The overriding consideration with respect to all decisions is that they shall be made solely in the best interest of the beneficiaries of the Funds.

Any action to terminate a manager should be based on one or more of the following criteria:

1. Significant changes in firm ownership and/or structure;
2. Loss of one or more key personnel;
3. Significant loss of clients and/or assets under management;
4. Shifts in the firm's philosophy or process;
5. Significant and persistent lack of responsiveness to client requests;
6. Changes in NMSIC's investment strategy eliminating the need for a particular style or strategy;
7. Violations of the Investment Policy or guidelines;
8. Unsatisfactory investment performance;
9. Identification of a new asset class or approach which has been approved in advance by the NMSIC;
10. Need for diversification of styles within an existing asset class; or
11. Any other issue or situation of which the Staff, Consultant and/or Committee become aware that is deemed material;
12. Need to reduce exposure to a single manager.

Prior to the termination decision, the NMSIC prefers to have all relevant considerations identified and documented in CIC and NMSIC minutes, and supporting documents. Although it may not be possible in every situation, it is the NMSIC's intent to have a plan in place before termination of any manager.

**XI. Performance Benchmarks**

**A. Total fund benchmark**

In addition to the objective stated in Section IV., an important return objective to be considered when evaluating the Funds' performance is measured by applying the investment performance of the asset class benchmarks to the Funds' Strategic Asset Allocation target. The Policy Index permits the NMSIC to compare the Funds' actual performance to its total fund benchmark, and to measure the contribution of active investment management and policy adherence.

The NMSIC has selected the following Policy Index:

<b>Asset Class</b>	<b>Policy Index</b>	<b>Strategic Asset Allocation Target</b>
Broad US Equity	Russell 3000 Index	31%
Broad International Equity	MSCI All Country Ex US Index	15%
Fixed Income	Barclays Capital Aggregate Index	16%
Real Return	Custom Index	10%
Core Real Estate	NCREIF ODCE Index (AWA)	10%
Absolute Return	HFRI FOF Composite Index	8%
Private Equity	Venture Economics All Private Equity Index	10%

Recognizing that a long-term target allocation to alternative asset classes can often take a matter of years to implement prudently, the NMSIC will also review an Interim Policy benchmark which will be adjusted as Staff makes progress towards its long-term Strategic Asset Allocation target.

**B. Asset class benchmarks**

A composite of the mandates within each asset class will be compared to its respective Policy Index (see table, XI.A.).

**C. Mandate-level benchmarks**

Individual managers will be evaluated using the following standards:

1. Against appropriate market indices on a nominal and risk-adjusted basis;
2. Against peers within their style group;
3. Based on adherence to their stated investment philosophy and style; and
4. Based on adherence to this Policy and the guidelines established in their contract.

Specific performance criteria for each sub-asset class are outlined as follows. Not all sub-asset classes will necessarily be in place at one time and exceptions may apply to the benchmarks stated below as detailed in the investment manager's contract:

<b>Sub-Asset Class</b>	<b>Index</b>	<b>Peer Universe</b>
US Large Cap Value Equity	Russell 1000 Value Index	Large Cap Value Equity
US Large Cap Core Equity	Russell 1000 Index	Large Cap Core Equity
US Large Cap Growth Equity	Russell 1000 Growth Index	Large Cap Growth Equity
US Mid Cap Value Equity	Russell Mid Cap Value Index	Mid Cap Value Equity
US Mid Cap Core Equity	Russell Mid Cap Index	Mid Cap Core Equity



US Mid Cap Growth Equity	Russell Mid Cap Growth Index	Mid Cap Growth Equity
US Small/Mid Cap Value Equity	Russell 2500 Value Index	Small/Mid Cap Value Equity
US Small/Mid Cap Core Equity	Russell 2500 Index	Small/Mid Cap Core Equity
US Small/Mid Cap Growth Equity	Russell 2500 Growth Index	Small/Mid Cap Growth Equity
US Small Cap Value Equity	Russell 2000 Value Index	Small Cap Value Equity
US Small Cap Core Equity	Russell 2000 Index	Small Cap Core Equity
US Small Cap Growth Equity	Russell 2000 Growth Index	Small Cap Growth Equity
Non-US Developed Equity	MSCI EAFE Index	International Large Cap Equity
Non-US Small Cap Equity	MSCI World Ex US Small Cap Index	International Small Cap Equity
Non-US Emerging Equity	MSCI Emerging Markets Index	Emerging Markets Equity
Global Equity	MSCI All Country World Index	Global Equity
Global Fixed Income	BC US Aggregate Bond Index	Global Fixed Income
Core Fixed Income	BC US Aggregate Bond Index	US Broad Core Fixed Income
Core Plus Fixed Income	BC US Universal Bond Index	US Broad Core Plus Fixed Income
High Yield Fixed Income	BC US Corporate: High Yield Index	US High Yield Bonds
Credit & Structured Finance	45 % ABX.HE.BBB-06-1, 45% S&P/LTSA 1100 Names Index, & 10% CDX 15	N/A
Cash Equivalents	BofA ML 3 Month T-Bill Index	N/A
TIPS	BC U.S. TIPS Index	US TIPS
Commodities	Dow Jones-UBS Commodity Index	N/A
Energy	S&P GSCI Light Energy Index	N/A
Value Added Real Estate	NCREIF Townsend Value Added Index	N/A
Opportunistic Real Estate	NCREIF Townsend Opportunistic Index	N/A
Venture Capital Private Equity	Venture Economics All Venture Capital Index	N/A
Buyout Private Equity	Venture Economics All Buyouts Index	N/A

## **XII. Transition Management**

Transition management is defined as the professional management of trading out of one portfolio of marketable securities ("legacy" portfolio) and into another portfolio of marketable securities ("target" portfolio), while controlling for the timeliness of trades, explicit and implicit costs, and market exposure relative to a predetermined benchmark. Transition management includes, but is not limited to, the termination and hiring of investment managers. It also may apply to rebalancing between asset classes, large cash contributions/withdrawals to and from a manager and strategy changes within the fund. Transitions are an important and inevitable element of portfolio management. The optimal method to use in executing a transition may vary significantly from one transition to another based on the types of assets involved, the timeframe in question and market conditions. The primary objective in a manager transition is to implement the movement of assets in a cost-effective, timely manner while maintaining the appropriate market exposure. It is imperative to note that the cost of transition is not commissions alone, but also bid/ask spread, market impact and opportunity cost. Efforts should be made to minimize the total cost rather than any single cost component.

Staff will manage the transition manager pool selection process. The transition manager pool consists of NMSIC approved transition managers. To be considered for inclusion in the transition manager pool, transition managers must complete the Transition Management Request for Proposal. Proposals will be evaluated based upon the following criteria: quality, completeness of the response, ability to fulfill the requirements of the scope of services, qualifications, experience and the overall costs and/or fees. Staff will manage each transition. Staff may seek transition bids from one or all of the managers in the transition manager pool.

In most instances transition management services will be executed by a transition manager in the NMSIC's approved transition manager pool. However, in some instances Staff may believe it is more appropriate for one of the investment managers to provide these services.

Staff will provide a summary of transition activity to the CIC and the NMSIC at the conclusion of each transition.

## **XIII. Permitted Investments<sup>1</sup>**

The NMSIC may invest in the following securities and investment activities as long as such investments comply with the UPIA. Fund of Fund strategies are allowable in any of the asset classes. All investments are subject to approval of the NMSIC and satisfactory legal review of applicable contractual terms and conditions.

### **A. Equity**

1. Preferred stock, common stock, initial public offerings, Real Estate Investment Trusts ("REITS"), securities of foreign issuers listed on U.S. Exchanges, and any security convertible to common stock or American Depository Receipts ("ADRs")

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<sup>1</sup> Investments listed here are for general information purposes only. Each manager retained by the NMSIC will be given specific guidelines with regard to permissible investments relevant to their mandate.

that are registered by the U.S. Securities and Exchange Commission ("SEC") of any corporation whose securities are listed on at least one U.S. stock exchange that has been approved by or is controlled by the SEC or on the National Association of Securities Dealers ("NASD"). Global mandates may be considered.

2. Preferred stock, common stock, and convertible issues of any non-U.S. Corporation; which may be denominated in non U.S dollars, provided that the securities are traded on one or more national stock exchanges or included in a nationally recognized list of stocks; and NMSIC shall not be invested in more than ten percent of the voting stock of any company.

**B. Fixed Income**

1. Bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations, or instrumentalities for which the credit of the United States government is pledged for the payment of the principal and interest. Global mandates may be considered.
2. Bonds, notes or other obligations issued by a state, its municipalities or other political subdivisions, that have received an investment grade bond rating, and are registered by the SEC or the Municipal Securities Rulemaking Board ("MSRB").
3. Bonds, notes, commercial paper or other obligations of any corporation organized and operating within the United States.
4. Debt obligations of non-U.S. governmental or quasi-governmental entities, these may be denominated in foreign currencies; obligations, including but not limited to bonds, notes or commercial paper with an investment grade rating (unless otherwise approved by the NMSIC) of any corporation organized outside of the United States. Currency transactions, including spot or cash basis currency transactions, forward contracts and buying or selling options or futures on foreign currencies, shall be permitted for the purposes of hedging foreign currency risk.
5. Collateralized obligations, including but not limited to mortgages, held in trust that: (1) are publicly traded and are registered by the SEC or other Self Regulatory Organization ("SRO") and (2) have underlying collateral that is either an obligation of the United States government or else has a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system or their equivalent by a national rating agency approved by the NMSIC (unless otherwise approved by the NMSIC).
6. The Credit and Structured Finance Fund within the Fixed Income allocation will invest in various classes of securities of credit, structured finance, including but not limited to, collateralized debt obligations, collateralized loan obligations, credit opportunity funds, leveraged loan portfolios and other structured finance instruments. Eligible investments will include both rated and non-rated securities. Rated securities will include those rated investment grade and those rated below investment grade. One or more external managers may be retained to manage all or a portion of the Fund. Appropriate investment vehicles will include partnership interests, separate accounts and pooled vehicles. Pooled vehicles may be structured as publicly traded securities or private placements.

**C. Real Estate**

1. Real Estate Partnerships, including investments in private vehicles through limited partnerships or limited liability companies that have an ownership interest in direct real estate properties, whether income-producing or non-income producing. The investment strategies may include "core", "value added" strategies, which derive their return from both income and appreciation, and "opportunistic," which derive their return primarily through appreciation.
2. REITS, including equity investments in publicly traded securities of a company dedicated to owning, and/or, operating income-producing real estate, including but not limited to apartments, shopping centers, offices and warehouses.

**D. Real Return**

1. Inflation-indexed bonds, including investments in actively or passively managed investment vehicles. Treasury Inflation Protected Securities (TIPS) are an example of inflation-indexed bonds.
2. Commodities, including but not limited to futures and/or swaps on individually traded commodities or indexes comprising groups of commodities like the Goldman Sachs Commodity Index (GSCI) or Dow Jones – AIG Commodity Index (DJ-AIGCI). Commodities may be used as an overlay strategy on TIPS or other publicly traded instruments.
3. Timber Partnerships, including but not limited to, investments in limited partnerships or limited liability companies that have an ownership interest in properties where the majority value of the property is derived from income-producing timber.
4. Energy Partnerships, including but not limited to limited partnerships or limited liability companies that have an ownership interest in energy-related businesses. Investments may include those across the industry spectrum from upstream (exploration and production), to midstream (processing and transportation), to downstream (refining and distribution).
5. Infrastructure

**E. Absolute Return (Hedge Funds)**

1. Multi-strategy hedge funds that invest using a combination of the following strategies.
2. Hedge funds shall invest primarily in publicly traded securities and derivatives and use long and short positions and leverage, within limits as specified in each hedge fund's governing documents, to reduce market exposure in order to profit from security selection.
3. Market Neutral strategies such as equity market neutral, fixed income arbitrage, and convertible bond arbitrage.
4. Credit strategies that typically invest in high yield bonds, bank loans and structured credit products.
5. Distressed strategies that seek to take advantage of corporate securities in default, under bankruptcy protection, in distress or heading toward such a condition or in liquidation.
6. Event Driven strategies that take advantage of transaction announcements and other one-time events, including merger arbitrage, spin-offs and restructurings.

7. Equity long/short strategies where there is a combination of long and short positions primarily in publicly traded equities, with a net market exposure less than that of the overall equity market. Strategies may be focused on U.S., non-U.S., and/or specialty mandates.
8. Global Macro strategies such as all market portfolios, opportunistic long-only, managed futures, currency, dedicated short selling strategies or other specialty strategies.

**F. Private Equity**

PEAIC is responsible for the Private Equity portfolio and works under a separate investment policy.

**G. Cash Investment Guidelines**

Staff will focus on quality when investing cash positions. Cash is an asset class that should emphasize minimal risk. Cash positions will be kept to the minimum necessary for liquidity, distributions and ongoing investment activities. The following guidelines apply:

1. Eligible securities include:
2. Repos secured by U. S. obligations or other securities backed by the U.S., A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less, or asset-backed securities rated AAA. All repo collateral must have a market value of at least 102% of the market value of the contract;
3. Commercial paper issued by corporations organized and operating within the U.S. and rated "prime" quality by a national rating service;
4. Prime bankers' acceptances issued by money center banks;
5. Funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and
6. Time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

**H. Derivatives Investment**

If utilized, derivatives will be managed to protect market value and to maximize total returns under the following guidelines:

1. Eligible applications include, but are not limited to, the purchase, sale, exchange, conversion or other trade of exchanged traded index option contracts, over-the-counter options, domestic equity index futures, international equity index futures, international fixed income futures, commodity futures, domestic fixed income futures and swaps.
2. The total relative economic impact risk of each derivative application will be monitored on a daily basis by the most appropriate risk management tools for the particular derivatives application.
3. In order to limit the financial risks associated with derivative applications, rigorous counterparty selection criteria and netting agreements shall be

required to minimize counterparty risk. If utilized, the counterparty must be of an investment grade credit and the agreement must be marked to market no less frequently than monthly.

#### **XIV. General Investment Restrictions and/or Guidelines**

- A. All investments made shall be subject to the quality and diversification restrictions established by the UPIA.
- B. Assets may be held in commingled funds and/or privately managed separate accounts. Exposure through commingled funds shall be evaluated on a case-specific basis through analysis of the fund's "offering document." Upon review by the Staff and Consultant, and approval by the Board, the "offering document" becomes the specific investment guidelines for that allocation.
- C. No more than 65% of the fair value of the LGPF, STPF and TSPF may be invested in stocks at any given time.
- D. No more than 5% of the stock of any corporation may be purchased.
- E. Without prior Staff approval, the securities representing debt and equity of any one company shall not exceed 6% of the market value of any Manager's portfolio. Staff will confirm approval with the CIC and NMSIC at the following scheduled meetings.
- F. No investment or action pursuant to an investment may be taken unless expressly permitted by this Policy. Exceptions may be made subject to prior review by and express written authorization from the NMSIC.
- G. Cash equivalents held by Managers can be disruptive to the allocation process. Unless otherwise authorized, Managers are expected to be fully invested at all times in the types of securities for which they have responsibility, with the exception of brief periods between the sale of an existing security and the purchase of a replacement security.
- H. Any use of leverage will be consistent with the strategy for which the NMSIC hired the Manager. Use of leverage will be controlled as appropriate in the Manager's specific guidelines, and will be subject to review by Staff and Consultant.
- I. The Funds are exposed to currency risk through its international equity, fixed , absolute return and private equity mandates. Over long periods of time, currency movements do not add significant returns to the portfolio. However, exposure to currency risk increases diversification due to lack of correlation with other portfolio risks. Also, hedging currency risk incurs significant expenses. Therefore, NMSIC utilizes unhedged benchmarks and does not require its Managers to hedge the currency exposure in their portfolios.
- J. The Staff is authorized to engage in securities lending in accordance securities lending policies and procedures which are contained in a separate policy document.
- K. Proxies shall be voted in the best economic interests of the NMSIC. Proxy voting policies and procedures are contained in a separate policy document.
- L. The staff is authorized to instruct external managers to direct a portion of their brokerage costs to commission re-capture managers provided that in doing so, the Funds will obtain the best execution of our brokerage orders. Best execution means seeking to achieve the most favorable price and execution available, having in mind the Funds' best interest, while considering all factors.

## **XV. Derivatives**

The State Investment Council seeks to protect the market value of the funds from losses attributable to declines in the market. The State Investment Office intends to use derivatives to improve long-term performance through protection of principal during market declines. Derivatives provide means to improve investment risk/return in declining market environments.

The Staff may buy, sell, exchange, convert or otherwise trade in exchanged traded index option contracts, over-the-counter options, domestic equity index futures, international equity index futures, international fixed income futures, commodity futures and domestic fixed income futures in order to protect the market value of designated security holdings or to: increase returns through cash securitization and synthetic rebalancing; improve tracking relative to target allocations through maintaining positions during transitions/reallocations and synthetic rebalancing; and improve portfolio efficiency/flexibility through tactical moves in market exposures. The positions will remain in place over a period consistent with detailed guidelines or until it is determined that an option/futures hedge/overlay is no longer needed. Derivatives shall only be utilized to reduce the risk of adverse price movements in a particular asset class or group of assets. Derivatives shall not be used to speculate.

## **XVI. Economically Targeted Investments ("ETI")**

Economically Targeted Investments ("ETI") in the Severance Tax Permanent Fund have two objectives in the statutes: first, to obtain a risk-adjusted rate of return under the Prudent Investor Rule, and second, to enhance the economy of New Mexico. To achieve these two objectives, the following specific goals will apply to the portfolio. Staff will ensure that:

- Credit quality is maintained and risk is minimized;
- Market-based yields that are proportional to the assumed risks are obtained;
- Each investment will stimulate the economy of New Mexico on a continuing basis;
- Each investment will expand business activity in the state; and
- Each investment will promote the creation and preservation of jobs.

## **XVII. Performance Monitoring**

Performance reviews are a critical part of the portfolio management process. The NMSIC will rely on its, Managers, Custodian, Consultant(s), and Staff to provide periodic performance reviews.

### **A. Managers**

As directed by Staff, each Manager will provide periodic performance reports utilizing a standardized reporting format for public market separate accounts. Managers may provide their standard performance information in a different format as supplemental information only, at their discretion. Managers may be asked to make periodic performance presentations to Staff, the Consultant and/or the NMSIC.

**B. Custodian**

The Custodian will, as directed by Staff, provide periodic performance reports to Staff and Consultant. These reports shall detail the individual performance of Managers and the overall performance of the Funds. In addition, the Custodian shall report the results of any securities lending activities undertaken during the reporting period.

**C. Consultant**

The Consultant will provide quarterly performance reports to Staff, CIC and the NMSIC at its regular meetings. In preparing these reports, the Consultant will rely upon asset values and performance calculations reported by the Custodian.

**D. Staff**

Staff is responsible for ensuring that performance reports are received in a timely manner from the above-listed parties and will provide continual supervision of external performance reporting on the portfolio. Staff will confirm that managers are using standardized, industry-wide principles when calculating and reporting their investment results. Staff will work with the Consultants to complete a detailed performance measurement booklet on a quarterly basis. An executive summary will, at a minimum, include information for the one, three, five-year periods for the Total Fund and asset class composites.

**XVIII. Review and Approval of Investment Policy**

The NMSIC will review the Policy from time-to-time to determine if modifications are necessary or desirable but will delegate Staff to review the Policy on an annual basis. Staff will recommend modifications as warranted. If modifications are made, they shall be promptly communicated to all investment managers and other interested persons.

Modifications may occur due to:

- A. Operational problems that become apparent during the investment management process;
- B. Changes in economic prospects, Funds characteristics, the development of new investment instruments or strategies, or sponsoring employer organizations;
- C. Other causes as determined by the NMSIC.

By signing this Statement of Investment Policy the NMSIC indicates its agreement therewith.

By: \_\_\_\_\_

New Mexico State Investment Council



## Glossary of Terms

**Agency Security** – a U.S. government-issued security that was not issued by the Treasury Department and may be backed by the full faith and credit of the United States depending upon the issuing agency.

**Agent** – any individual or entity acting on behalf of another.

**Alpha** – the premium an investment portfolio earns above a certain benchmark (such as the Standard & Poor's 500 Index). A positive alpha indicates the investor earned a premium over that index.

**American Depository Receipts (ADRs)** – certificates issued by a U.S. bank and traded in this country as domestic shares. The certificates represent the number of foreign securities the U.S. bank holds in that security's country of origin. ADRs make trading foreign securities easier by eliminating currency exchange, legal obstacles, foreign ownership transfers, and the need to trade on a foreign exchange.

**Asset Allocation Decision** – choosing among broad asset classes such as equities, fixed-income securities and real estate.

**Basis Point** – one one-hundredth of one percent.

**Benchmark** – a gauge in the securities market by which investment performance can be measured, such as the Standard & Poor's 500 Index.

**Buyouts** - investments in acquisitions, growth equity, recovery investments, subordinated debt, and special situations, which represent a diversified strategy across many sub-categories.

**Commingled Fund** – a pooling of funds from multiple investors, managed as one account. The client owns units in the pool. Similar to a mutual fund.

**Commodities** – investments in basic goods often used as inputs in the production of other goods or services. Notable examples include oil, natural gas, gold, and other precious metals.

### Credit Quality -

<u>S&amp;P</u>	<u>Moody's</u>	<u>Explanation</u>
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#### Higher Credit Quality - Investment Grade

AAA	Aaa	Prime grade, highest safety
AA+	Aa1	High credit quality
AA	Aa2	
AA-	Aa3	
A+	A1	Upper-medium credit quality
A	A2	
A-	A3	
BBB+	Baa1	Lower-medium credit quality

BBB	Baa2	
BBB-	Baa3	
<b>Lower Credit Quality - Speculative Grade</b>		
BB+	Ba1	Speculative - low quality
BB	Ba2	
BB-	Ba3	
	B1	Highly speculative
B	B2	
	B3	
<b>Extremely Low Credit Quality - High Speculative or In Default</b>		
CCC+	Caa	Very high risk, poor quality
CCC		
CC	Ca	May be in default soon
C	C	Very speculative
CI		For income bonds - interest not being paid
D		Securities already in default

**Credit Strategies** – a hedge fund strategy that typically invests in high yield bonds, bank loans and structured credit products.

**Discretionary Authority** – the authority provided to investment managers and consultants to make investment decisions on behalf of NMSIC.

**Distressed Debt** – investments in the debt instruments of companies which may be publicly traded or privately held that are financially distressed and are either in bankruptcy or likely candidates for bankruptcy.

**Distressed Strategies** – a hedge fund strategy that seeks to take advantage of corporate securities in default, under bankruptcy protection, in distress or heading toward such a condition or in liquidation.

**Diversification** – spreading a portfolio over many investments (or many types of investments) to avoid excessive exposure to any one source of risk.

**Duration** – the average time to receipt of all the cash flows of a bond weighted by the present value of each of the cash flows. The duration value of the bond gives bond investors an indication of how interest rate changes will affect the bond's price. It is the percentage by which the bond's price will move, given a 100 basis point change in yield.

**EAFE** – the **MSCI EAFE** Index is a stock market index that is designed to measure the equity market performance of developed markets (Europe, Australasia, Far East), excluding the US & Canada.

**Energy Partnership** – investments in private vehicles with a focus on oil and gas exploration, or other alternative energy strategy.

**Equity Investment** – claims held by the residual owners of a firm. May also be referred to as common stock. Investments in Real Estate and certain Private Markets classifications may also be considered equity.

**Equity Long/Short Strategies** – a hedge fund strategy where there is a combination of long and short positions primarily in publicly traded equities, with a net market exposure less than that of the overall equity market. Strategies may be focused on U.S., non-U.S., and/or specialty mandates.

**ETFs** – Exchange Traded Funds.

**Event Driven Strategies** – a hedge fund strategy that takes advantage of transaction announcements and other one-time events, including merger arbitrage, spin-offs and restructurings.

**Fiduciary** – one who can exercise discretionary authority or can control important aspects of a pension Fund's management.

**Fixed Income Investment** – a security issued by a borrower that obligates the issuer to make specified payments to the holder over a specific period. Fixed income may also be referred to as "debt" or "bonds."

**Fund-of-Fund Investment Vehicles** – an investment fund comprised of any number of underlying investment funds

**Global Macro Strategies** – a hedge fund strategy with a focus on all-market portfolios, opportunistic long-only, managed futures, currency, dedicated short selling strategies or other specialty strategies.

**HFRI** – Hedge Fund Research, Inc.

**Inflation-Indexed Bonds** - investments in bonds with the principal component linked to inflation. Treasury Inflation Protected Securities (TIPS) are the most common example of inflation-indexed bonds.

**Initial Public Offering (IPO)** – the first time an equity securities issue is available for the public to buy.

**In-Kind Distribution** - a distribution made in the form of a security rather than cash.

**Leverage** – in investments, this is the control of a large amount of money by a smaller amount of money, such as buying on margin. In finance, this is the relationship of debt to equity on a company's balance sheet in the form of the debt/equity ratio.

**Limited Partnership** – a partnership with at least one of the partners holding only a limited liability. Commonly utilized in the Private Equity asset class.

**Market Cycle or Full Market Cycle** – a period of time (typically three to five years) where a market experiences increasing prices (bull market), decreasing prices (bear market), and a return to the original starting point of market strength.

**Market Neutral Strategies** – a hedge fund strategy that seeks complete avoidance (zero correlation) of market risk. Various forms of hedging strategies are typically employed.

**Multi-Strategy Hedge Funds** – a hedge fund that invests using a combination of any number of hedge fund strategies.

**Proxy** – an instrument empowering an agent to vote for a shareholder.

**Qualitative Analysis** – a subjective analysis of a security, with the judgment not based on financial information, such as that found on a balance sheet or income statement. Instead, the judgment may be based on such issues as labor relations.

**Quantitative Analysis** – an analysis of a security, with the judgment based on financial information such as that found on a balance sheet or an income statement.

**Real Estate Partnerships** – investments in private vehicles through limited partnerships or limited liability companies that have an ownership interest in direct real estate properties, whether income-producing or non-income-producing. This may include “value added” strategies, which derive their return from both income and appreciation, and “opportunistic” strategies which derive their return primarily through appreciation.

**Re-balancing** – realigning the proportions of assets in a portfolio as needed.

**REITs** – equity investments in publicly traded securities of a company dedicated to owning and/or operating income-producing real estate, including but not limited to apartments, shopping centers, offices, and warehouses.

**Risk** – the chance that an investment’s actual return will be different than expected. This includes the possibility of losing some or all of the original investment. Risk is usually measured by calculating the standard deviation of the historical returns.

**Separate Account** – funds managed on an individual account basis; no pooling with other investors. The client owns the securities.

**Short-Term Investments** – any fixed income investment with less than one year to maturity.

**Split Rating** – situation where rating agencies have assigned different ratings to a particular issue or issuer.

**Spread** – the difference between the bid price and the ask price.

**Standard Deviation** – a measure of the degree to which an individual probability value varies from the distribution mean. The higher the number, the greater the risk.

**Timber Partnership** – investments in private vehicles with a focus on the timber industry.

**Total Return** – interest or dividend income plus any realized or unrealized capital gain (or loss) on an investment, net of any capital contributions or distributions from the corpus.

**UPIA** – Uniform Prudent Investor Act.

**Venture Capital** - investments in companies in a range of stages of development from start-up/seed-stage, early stage, and later/expansion stage.