

RESOLUTION NO. 2015-17

**AUTHORIZING THE MAYOR TO ENTER INTO A JOINT POWERS AGREEMENT
PROVIDING FOR MEMBERSHIP IN THE NEW MEXICO
CENTRAL ARIZONA PROJECT (CAP) ENTITY.**

Sponsored by Mayor Michael S. Morones

WHEREAS, On June 10, 2015 the Interstate Stream Commission, an agency of the State of New Mexico, created a final draft Joint Powers Agreement which would create a New Mexico CAP entity for the purpose of undertaking the duties and obligations of planning, designing, construction, operation of a New Mexico Unit which shall include diversion projects on the Gila and San Francisco Rivers; and

WHEREAS, the Town of Silver City would be one of an undetermined number of members, with undetermined financial obligations in perpetuity, committed to the beneficial use of waters diverted from the Gila and San Francisco Rivers; and

WHEREAS, the Town of Silver City commits to providing financial support for the New Mexico Unit in perpetuity, if in the discretion of the present or any future Town Council it is able to do so through the issuance of bonds, the levy of taxes, the assessment of membership dues, and the assessment of user fees; and

WHEREAS, the Town Council of the Town of Silver City does hereby find that entering the described Joint Powers Agreement is necessary for the health, safety and welfare of the Town and its inhabitants;

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN
OF SILVER CITY, NEW MEXICO, that:**

1. The Mayor of the Town of Silver City is authorized to cause the Town of Silver City to enter

the Joint Powers Agreement (JPA) dated June 10, 2015 as sponsored by the Interstate Stream Commission, providing for membership in the New Mexico Central Arizona Project (CAP), a copy of which is appended hereto and by this reference, incorporated herein.

2. The Town Council hereby authorizes the Mayor to execute all documents, commitments, and undertakings required by said JPA, and of the New Mexico Unit Agreement which may be drafted in the future.

PASSED, APPROVED AND ADOPTED THIS 23rd day of June, 2015.

(Seal)

Michael S. Morones, Mayor

Attest:

Ann L. Mackie, Town Clerk

**JOINT POWERS AGREEMENT
NEW MEXICO CAP ENTITY**

This Joint Powers Agreement (the “Agreement”) creating the New Mexico CAP Entity (the “New Mexico CAP Entity”) is entered into by and between the Cities of _____ (collectively the “Cities”), the Counties of _____ (collectively the “Counties”), other parties recognized by the State of New Mexico as political subdivisions, _____ (collectively the “Other Parties”), 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. 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, 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

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 and (2) 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.

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 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 exclusively for the planning, design, construction, operation and maintenance, of a NM Unit, or all or any combination of those responsibilities, and for development of the AWSA water.
- (f) 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.

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.
- (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 the planning, design, construction, operation and maintenance of a NM Unit.

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. _____ | One representative |
| 3. _____ | One representative |
| 4. _____ | One representative |
| 5. _____ | One representative |
| Etc.... | |

- (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 1st 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 1st and ends on June 30th 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 1st 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 AWSA-related revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity. As used in this Agreement, the term “AWSA-related” 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. AWSA-related 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, “AWSA-related 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 AWSA-related 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. AWSA-related revenues shall be used in perpetuity and exclusively for the

planning, design, construction, operation and maintenance of a NM Unit, or 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 11th 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.

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

APPENDIX

represented and warranted that they have the full authority to bind their respective bodies to this Agreement.

NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____

Date: _____