

INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE ANIMAS-LA PLATA
OPERATIONS AND MAINTENANCE ASSOCIATION

This Intergovernmental Agreement (“Agreement”) is entered into effective on this _____ day of _____, 2008 by and among: the Colorado Water Resources and Power Development Authority; the San Juan Water Commission, a political subdivision of the State of New Mexico, the La Plata Water Conservancy District, a political subdivision of the State of New Mexico; the Southern Ute Indian Tribe, a federally recognized Indian tribe; the Navajo Nation, a federally recognized Indian tribe; and the Ute Mountain Ute Tribe, a federally recognized Indian tribe (collectively “the Parties”).

1 RECITALS

1.1 The Animas La Plata Water Project (“ALP”) provides for the delivery of water from the Animas River by direct flow and reservoir storage and release. The ALP includes the physical structures of a dam, reservoir, pumping plant, inlet conduit, and other appurtenant facilities to divert and store water from the Animas River. The ALP was authorized by statutory enactments, including the Colorado River Storage Project Act of 1956, the Colorado River Basin Project Act of 1968, the Colorado Ute Indian Water Rights Settlement Act of 1988, and the Colorado Ute Settlement Act Amendments of 2000 (collectively the “Enabling Law”). Construction of the ALP by the United States began in 2001, and the ALP is anticipated to be operational beginning in 2012.

1.2 The Parties are each governments or governmental subdivisions entitled, pursuant to statutes, court decrees, permits, and/or contracts, to receive and use water from the ALP, who have elected to participate in and be responsible for the operation, maintenance and replacement of the ALP. Further, the Parties are empowered pursuant to law to cooperate or contract with one another and third parties to provide certain functions and services with regard to the operation, maintenance and replacement of the ALP.

1.3 The Animas La Plata Water Conservancy District (“ALPWCD”) assigned its interest in the ALP under the Enabling Law (“ALPWCD Interest”) to the Colorado Water Resources and Power Development Authority (“CWRPDA”) in 2001. In 2005, the ALPWCD and the CWRPDA entered into a contract whereby ALPWCD may purchase back a portion of the ALPWCD Interest.

1.4 The Parties, who have legal duties and obligations under the Enabling Law, desire to create an association, as a separate legal entity, to enter into appropriate agreements and to operate, maintain and replace or cause the operation, maintenance and replacement of the ALP. The Parties intend that the Association will enter into appropriate agreements with the

United States Bureau of Reclamation (“Reclamation”) to transfer operation, maintenance and replacement of the ALP to the Association (defined below).

Now therefore, the Parties hereto, for and in consideration of the mutual promises and covenants hereafter set forth, agree as follows:

2. THE ASSOCIATION

2.1 Establishment and General Purpose of the Association. The Parties hereby establish the Animas-La Plata Operation, Maintenance and Replacement Association (“Association”) to carry out the operation, maintenance and replacement (“OM&R”) activities and responsibilities of the Parties for the ALP in accordance with the provisions of this Agreement, the Enabling Law, and the Colorado Uniform Unincorporated Nonprofit Association Act, 7-30-101 et seq. CRS (2006) (the “Act”). The Association is a legal entity separate from the Parties and its Members and formed for the purposes of determining and enforcing rights and duties, and assuming liabilities in contract and tort. It is anticipated that the Association will enter into an agreement or agreements with the United States and with other entities for the OM&R of the ALP.

2.2 Status and Powers of the Association. The Association is comprised of various governmental entities, including political subdivisions of the State of Colorado and the State of New Mexico, and federally recognized Tribes, which each have a separate sovereign status. It is not the intention of the Parties to bind any other Party in a way that undermines existing governmental immunities, except to the extent such immunities are specifically waived herein. In addition, the Parties agree that the Act does not impose any liabilities or alter any immunities that would otherwise be available to the Parties as governments or governmental political subdivisions. The Association shall have the duties, privileges, immunities, rights, liabilities, and disabilities of an association under the Act, and the provisions of article 10.5 and 47 of title 11, CRS (2006) shall apply to monies of the Association. Further, the functions, services, and general powers of the Association, to the extent permitted by law, are set forth as follows:

- a. To conduct its business affairs and all other legally permissible activities for the benefit of the Parties and their successors or assigns that receive and use ALP water allocated by statute or contract to the Parties.
- b. To make and enter into contracts with the Parties, the United States, any State or local governmental organization, or any individual, company, association, or other entity.
- c. To obtain the services of staff and outside consultants as appropriate to carry out the functions and contractual obligations of the Association.

- d. To operate and maintain the ALP in accordance with and pursuant to the terms and conditions of any separate service or other agreements with the United States or others pertaining to the OM&R of the ALP.
- e. To acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of any real or personal property utilized for OM&R of the ALP.
- f. To sue and be sued in its own name.
- g. To adopt, by resolution, policies and/or procedures respecting the exercise of its powers and carrying out of its purpose.
- h. To exercise any other powers that are essential to the provision of functions, services, or facilities by the Association and that are specified in this Agreement or in any separate agreement or agreements among the Association, the Parties, the United States, or others.

2.3 Membership.

There shall be six (6) Members of the Association, and the initial Members shall be the Parties to this Agreement.

2.3.1 Additional Member. At the time of execution of this Agreement, the State of Colorado has not exercised its statutory entitlement to acquire an interest in the ALP. If it acquires an interest of at least 780 acre feet of annual depletions (or 1,560 acre feet of ALP water supply) no later than when the Final Cost Allocation (as defined in the Enabling Law) has been completed, then the State entity that owns the interest shall become a Party to this Agreement and a Member of the Association, subject to the Association's acceptance of that entity's applicable contract provisions, and the number of Members shall be enlarged to seven (7).

2.3.2 Transfers of ALP Interests by Members. It is anticipated that Members may assign or otherwise transfer some or all of their interests in the ALP to third parties. All Parties and Members shall receive written notice of a transfer of any interest in the ALP or in the Association by a transferring Party/Member within 30 days of such transfer. The written notice of transfer must include the status of the transferor's and transferee's voting rights in the Association as a result of the transfer. Once a transferor divests its interest entirely in the ALP, the transferor shall no longer be a Member in the Association and its successor(s) shall hold the membership rights. A Party/Member may be released of any or all of its obligations and duties under this Agreement only upon receipt of written consent from all the then-existing Members and such consent shall not be unreasonably withheld as long as the transferee can demonstrate it is financially capable of assuming the obligations set forth in this Agreement based on the reasonable application of standards normally applied by persons operating water storage projects. The Parties agree that the City of Durango and ALPWCD meet the financial criteria of

this Section and upon the transfer of the ALPWCD Interest held by the CWRPDA to one or both of the entities, the CWRPDA shall be released from its duties and obligations under this Agreement pro rata to the interests transferred.

2.4 Association Overhead Costs. To a reasonable extent, the Members shall minimize Association administration and overhead costs for the internal operation of the Association in carrying out the purposes set forth in Section 2.2 (“Association Overhead Costs”) and shall maximize in-kind services to the Association. The Association Overhead Costs shall be allocated among the Members in accordance with Paragraph 6.02 of the attached Concepts and Principles for the Operation and Allocation of the OM&R Costs of the Animas-La Plata Project, attached hereto as Exhibit A and incorporated herein (“Operation Principles”).

2.5 Project Operations. The Association shall operate the ALP in accordance with the Operation Principles and will cooperate as necessary with any legally authorized entity to that end. The Association shall operate the ALP in accordance with applicable decrees, compacts (including negotiated compact accounting principles) and other law.

2.6 Participation of the Bureau of Reclamation in the Association. Reclamation, while not a Member of the Association, will be paying the fixed OM&R costs identified in the Operation Principles of the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe as set forth in the Enabling Law. The Parties and Reclamation have consulted and agree to have Reclamation closely involved in the development of the annual fixed OM&R budget. The role of Reclamation shall be included in the Association’s bilateral agreement with Reclamation for the transfer of OM&R to the Association (defined in Section 2.7). Reclamation’s relationship with the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe, and the provisions for paying the Ute Tribes’ OM&R costs as set forth in the Enabling Law, will be further identified and defined in the Ute Tribes’ respective water delivery contracts with Reclamation.

2.7 Transfer of OM&R. It is the purpose of the Parties that the Association carry out the operation, maintenance, and replacement of the ALP pursuant to an agreement with Reclamation transferring such operation, maintenance, and replacement to the Association (“Transfer Agreement”).

3. THE MANAGEMENT COMMITTEE

3.1 General Powers. All powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under, the direction of its management committee (“Management Committee”).

3.1.1 Management Committee Activities. On behalf of the Association, the Management Committee shall: negotiate and enter into the Transfer Agreement; negotiate and enter into other agreements as necessary for the OM&R of the ALP; hire and supervise such staff and consultants as necessary for such OM&R; prepare annual and 3-year-projected budgets for such

OM&R and Association Overhead Costs; allocate, assess, collect, and pay OM&R costs as set forth in the Operation Principles; and take such other actions as may be necessary and appropriate to effect the OM&R of the ALP.

3.2 Management Committee Operations.

3.2.1 Representatives. Each Member shall designate a representative and an alternate to serve on the Management Committee. A Member may replace its representative or alternate on the Management Committee by providing written notice to the Management Committee at any time prior to the start of a meeting of the Management Committee.

3.2.2 Voting. Each Member shall have, through its representative (or alternate) on the Management Committee, one vote on all matters coming before the Management Committee. In the event that a Member transfers its interest in the ALP pursuant to Section 2.3.2 to more than one transferee, the transferring Member and the transferees shall determine how to cast the Member's one vote and who their representative and alternate on the Management Committee shall be.

3.2.3 Meetings. Regular meetings of the Management Committee shall be held at a time and place to be determined by the Management Committee from time to time. Special meetings of the Management Committee may be called by or at the request of the Chair or three of the Members.

3.2.3.1 Notice. Notice of the date, time, and place of any meeting shall be given to each Member, representative, and alternate at least ten days prior to the meeting by written notice either personally delivered or mailed to each Member, representative, and alternate at the business address provided by such member, representative and alternate, or by notice transmitted by private courier, telegraph, telex, electronically transmitted facsimile or other form of wire or wireless communication. If mailed, such notice shall be deemed to be given and to be effective on the earlier of (i) five days after such notice is deposited in the United States mail, properly addressed, with first class postage prepaid, or (ii) the date shown on the return receipt, if mailed by registered or certified mail return receipt requested, provided that the return receipt is signed by an agent of the Member to whom the notice is addressed. If notice is given by telex, electronically transmitted facsimile, or other similar form of wire or wireless communication, such notice shall be deemed to be given and to be effective when received, and with respect to a telegram, such notice shall be deemed to be given and to be effective when the telegram is delivered to the telegraph company. If a Member, representative, or alternate, has designated in writing more than one address or facsimile number for delivery of notice, notice sent by mail, telegraph, telex, electronically transmitted facsimile, or other form of wire or wireless communication shall be deemed to have been given or to be effective when sent to one of the addresses. Notice of a meeting may be waived by a writing signed by a Member or by its representative or alternate. Such waiver shall be delivered to the Secretary for filing with the corporate records, but such delivery and filing shall not be conditions to the effectiveness of the

waiver. Further, a representative's or alternate's attendance at or participation in a meeting shall waive the any required notice to him/her or the Member of the meeting unless at the beginning of the meeting, or promptly upon his/her later arrival, the representative or alternate objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Management Committee need be specified in the notice or waiver of notice of such meeting.

3.2.3.2 Telephonic Meetings. The Management Committee may permit any representative (or alternate) of a Member to participate in a meeting of the Management Committee through the use of any means of communication by which all representatives(or alternates) participating in the meeting can hear each other during the meeting. A representative (or alternate) participating in a meeting in this manner is deemed to be present in person at the meeting.

3.2.3.3 Quorum and Action. A quorum shall be required for action by the Management Committee on behalf of the Association. Representatives or alternates of a majority of the Members shall constitute a quorum. Once a quorum is established at a meeting, there shall remain a quorum until all business at that meeting is complete. Action by the Management Committee shall require the affirmative vote of a majority of the Member representatives (or alternates) present, except that amendment to the Operations Principles shall be in accordance with Section 4.6. There shall be no proxies or proxy voting allowed. In the event of an emergency, the operator hired by the Management Committee shall be authorized to act on behalf of the Association to protect the safety and integrity of the ALP facilities.

3.2.3.4 Presumption of Assent. A representative (or alternate) of a Member who is present at a meeting of the Management Committee at which action is taken shall be presumed to have assented to all action taken at the meeting unless (I) the representative (or alternate) objects at the beginning of the meeting, or promptly upon his arrival, to the holding of the meeting or the transaction of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting, (ii) the representative (or alternate) contemporaneously requests that his dissent or abstention as to any specific action taken be entered in the minutes of the meeting, or (iii) the representative (or alternate) causes written notice of his dissent or abstention as to any specific action to be received by the presiding officer of the meeting before its adjournment, or by the Secretary promptly after the adjournment of the meeting. A representative (or alternate) may dissent to a specific action at a meeting, while assenting to others.

3.2.4 Manner of Acting. Any action required or permitted to be taken by the Management Committee shall only be taken at a meeting of the Management Committee after proper notice. No informal action by representatives (or alternates) without a meeting shall be valid, and no such action can be subsequently ratified by the Management Committee. Action by the Management Committee pursuant to Section 3.2.3.3 shall constitute action of the

Association.

3.3 Officers. The Association shall have the following officers:

3.3.1 Chair. The Chair shall have general and active control of the Association's affairs and business as directed by the Management Committee. The Chair shall be responsible for setting and chairing Management Committee meetings, and maintaining contact with Reclamation and with any entity or entities retained to undertake day-to-day OM&R of the ALP.

3.3.2 Secretary. The Secretary shall (i) prepare and maintain as permanent records the minutes of the proceedings of the Management Committee, and a record of all actions taken by the Management Committee, and a record of all waivers of notice of meetings of the Management Committee; (ii) see that all notices are duly given in accordance with the provisions of this Agreement and as required by law; (iii) serve as custodian of the Association records; (iv) keep at the Association's registered office or principal place of business: (a) a record containing the names and addresses of all Members, successors, or assigns, (b) the originals or copies of this Agreement, the Operations Principles, the Transfer Agreement, and any other agreements of the Association, (c) minutes of all Management Committee meetings, and all written communications within the past three years to Members, (d) a list of the current representatives and alternates on the Management Committee, (e) a copy of the Association's most recent corporate report filed with the Colorado Secretary of State, and financial statements showing in reasonable detail the Association's assets and liabilities and (f) results of operations for the last three years; (v) authenticate records of the Association; and (vi) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the Secretary by the Management Committee. The Management Committee may designate a person other than the Secretary to keep the minutes of its meetings. Any books, records, or minutes of the Association may be in written form or in any form capable of being converted into written form within a reasonable time.

3.3.3 Treasurer. The Treasurer shall be the principal financial officer of the Association, shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association, and shall deposit the same in accordance with the instructions of the Management Committee. Subject to the limits imposed by the Management Committee, the Treasurer shall receive and give receipts and acquittances for money paid in on account of the Association, and shall pay out of the Association's funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The Treasurer shall perform all other duties incident to the office of the Treasurer and, upon request of the Management Committee, shall make such reports to it as may be required at any time. The Treasurer shall, if required by the Management Committee, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Management Committee, conditioned upon the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his possession or under the

Treasurer's control belonging to the Association. The Treasurer shall have such other powers and perform such other duties as may from time to time be prescribed by the Management Committee. The Treasurer shall also be the principal accounting officer of the Association. The Treasurer shall prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account as required by the Colorado Business Corporation Act, prepare and file any required local, state, and Federal tax returns, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the Management Committee statements of account showing the financial position of the Association and the results of its operations.

3.3.4 Appointment of Officers. The Chair shall revolve on an annual basis. The initial Chair shall be the representative of the Ute Mountain Ute Tribe, followed, in sequential order, by the representatives of: the San Juan Water Commission; the Colorado Water Resources and Power Development Authority; the Navajo Nation; the State of Colorado (if that entity becomes a member in accordance with Section 2.3.1); the La Plata Water Conservancy District; and the Southern Ute Indian Tribe. The Secretary and Treasurer shall be appointed by the Management Committee and shall serve at the will of the Management Committee. They need not be a representative or alternate of a Member, and one person may serve in both capacities. If any officer is temporarily unable to perform his duties, the Management Committee may appoint an interim officer to act until the officer can resume his duties.

3.4 Provision of Insurance. The Association may purchase and maintain insurance, in such scope and amounts as the Management Committee deems appropriate, on behalf of any person who is or was an officer, employee, fiduciary or agent of the Association, or who, while an officer, employee, fiduciary or agent of the Association, is or was serving at the request of the Association as an officer, employee, fiduciary or agent of any other foreign or domestic profit or nonprofit corporation or of any partnership, joint venture, trust, profit or nonprofit unincorporated association, limited liability company, other enterprise or employee benefit plan, against any liability asserted against, or incurred by, him in that capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under applicable law. Any such insurance may be procured from any insurance company designated by the Management Committee, whether such insurance company is formed under the laws of Colorado or of any other jurisdiction of the United States or elsewhere.

4. MISCELLANEOUS

4.1 Effective Date. This Agreement shall become binding upon the approval by the governing bodies of each of the Parties, and shall take effect only when fully executed by authorized representatives of all Parties. It shall continue in full force and effect until mutually terminated by the Parties, their successors or assigns to this Agreement, or until terminated by a court of law. If terminated, the Parties shall continue their duties, responsibilities and obligations under this Agreement until such time as Reclamation shall assume all aspects of the ALP OM&R.

4.2 Default. In the event that any Member (or Member's transferee) defaults in paying sums due for ALP OM&R costs on account of its interest in the ALP, or in meeting its other obligations under this Agreement and such default continues for a period exceeding fifteen (15) days, the Management Committee shall provide notice of the default to the defaulting Member (or transferee) and the defaulting Member (or transferee) shall have a period of sixty (60) days from the date of the notice in which to cure the default. If the default is not cured within the sixty-day cure period, then the Management Committee, acting as set forth in Section 3.2.3.3, may provide notice to the defaulting Member (or transferee), and thereafter withhold ALP water otherwise deliverable to that Member (or transferee) until the default is resolved to the satisfaction of the majority of the non-defaulting Members that voted to withhold water. A default may be cured by the payment of all amounts past due and out-of-pocket expenses incurred by the Association as a result of the default, whereupon ALP water for the year in which the payment is made shall be delivered to the curing Member (or transferee). The withholding of ALP water as set forth herein shall be the only remedy applied by the Members or the Association against a Member (or transferee) in Default, except for (i) judicial declaratory and/or injunctive relief as set forth in Sections 4.7 and 4.9, and (ii) relief from the Secretary of the Interior. The Management Committee may lease, at its discretion, and for no more than one year, any water withheld by virtue of the uncured default to Members and/or non-Members.

4.3 Binding Effect and Assignability. The terms and obligations contained in this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their successors and assigns, and the Members and the Members' transferees of interests in the ALP.

4.4 No Third Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities of the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto, except as set forth in Section 2.3.

4.5 Severability. Invalidation of any of the provisions of this Agreement, including the Operation Principles, or of any paragraph, section, sentence, clause, phrase, or word herein, or the application thereof in any circumstance, shall not affect the validity of the remainder of this Agreement or the Operation Principles.

4.6 Amendment. This Agreement may be amended or modified only by an amendment in writing signed by all Members, except for the Operation Principles, which may be amended or modified by unanimous vote of the Management Committee, provided that Paragraph 7.03 of the Operation Principles may only be changed as set forth therein.

4.7 Governmental Immunity. The Parties agree that neither any provision in this Agreement nor any action undertaken by a Party/Member or its officials and employees pursuant to this Agreement shall constitute a waiver of any right, immunity, or protection provided a Party/Member under applicable tribal, state or federal law concerning governmental immunity. Notwithstanding the previous sentence, if necessary under applicable law, the Parties waive

governmental immunity to allow for judicial declaratory and/or injunctive relief to require a Party/Member to comply with its obligations under this Agreement. The waiver of governmental immunity shall be limited to claims for nonmonetary relief.

4.8 Availability of Appropriations. Financial obligations or liabilities of the Parties are contingent upon funds for that purpose being appropriated by their respective entities.

4.9 Governing Law and Proper Venue. Except as provided in Section 4.7, all provisions of this Agreement are governed by the laws of the State of Colorado. Any judicial enforcement action required to resolve a dispute arising out of this Agreement shall be an action in a court of competent jurisdiction which relief shall be limited to an action to (i) contest a decision by the Association to withhold water resulting from an uncured default by a Party/Member or (ii) seek judicial declaratory and/or injunctive relief to enforce rights and obligations arising under this Agreement.

4.10 No Assumption of Obligations. It is the intention of the Parties that in every case where liability is established against the Association, only Association assets, funds, and insurance shall be available to satisfy such liability.

4.11 Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same Agreement.

4.12 Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law regulation, rule or document as it may be amended from time to time.

4.13 No Construction Against Drafter. This Agreement has been prepared by the combined efforts of the Parties and their respective legal counsel and, accordingly, the Parties agree there shall be no construction against the drafter of this Agreement should any dispute arise.

4.14 Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any portion of this Agreement.

SIGNATURE BLOCKS FOR PARTIES AND APPROVAL OF FORM BY COUNSEL

EXHIBIT A

**CONCEPTS AND PRINCIPLES FOR THE OPERATION
AND ALLOCATION OF THE OM&R COSTS
OF THE ANIMAS LA PLATA PROJECT**