

JOINT POWERS AGREEMENT
SAN JUAN WATER COMMISSION

This Joint Powers Agreement (herein the "Agreement") creating the SAN JUAN WATER COMMISSION (herein the "Commission") is made and entered into to be effective on the date hereinafter stated by and between THE CITIES OF AZTEC, BLOOMFIELD and FARMINGTON (herein referred to individually by name or collectively as the "Cities"), THE COUNTY OF SAN JUAN (herein the "County"), and the SAN JUAN RURAL WATERS USERS ASSOCIATION (herein the "Association"), all of such entities being political subdivisions or public agencies as defined in the Joint Powers Agreements Act and located in San Juan County, New Mexico and empowered to enter into a Joint Powers Agreement under the laws of the State of New Mexico;

RECITALS

WHEREAS, all of the parties are interested in the Animas La Plata Project (herein "ALP" or "Project") and in the proper storage and use of untreated water; and,

WHEREAS, pursuant to the Definite Plan Report for the Project approximately 38,400 acre feet of deliverable Municipal and Industrial water (herein "M & I water"), of which 7,600 acre feet is allotted to the Shiprock area and the balance of 30,800 acre feet is estimated to be available for the use and benefit of citizens, municipalities, water users associations and industrial users in the remaining area of San Juan County; and,

WHEREAS, the parties agree that such water should be held for the use and benefit of all the citizens, municipalities, water users associations and other water users in San Juan County, New Mexico; and

WHEREAS, the "first start appropriation" from Congress to start construction of the Project cannot be used until an agreement for cost sharing and financing during construction is entered into between the Secretary of Interior and the non-federal water users; and

WHEREAS, the Congress has authorized the Secretary of the Interior and the Bureau of Reclamation to enter into an agreement with the non-federal water users providing that the non-federal entities will pay during construction a share of the cost of the construction of the Project; and the release of said funds appropriated is conditioned upon such agreement; and

WHEREAS, "cost-sharing" during construction is presently projected to be 18.2 million dollars for M & I Water to be used in San Juan County; and

WHEREAS, the Cities, the Association, and the County desire to from a commission whose functions shall be to receive, divide and administer the water as well as to pay the cost-sharing during construction together with the operation and maintenance and other repayment costs required by the BOR; and

WHEREAS, it is the desire that the Commission have the power to acquire additional water rights, storage and distribution facilities for untreated water and to do all things necessary and proper to carry out the terms of this Agreement subject only to any restrictions imposed by law upon any of the contracting parties hereto; and

WHEREAS, the parties have agreed that the Commission joined by the parties shall enter into a contract with the BOR for the full amount of ALP untreated water upon the condition that if the Commission be dissolved that contracts with the BOR for ALP untreated water shall automatically revert back to the Cities and to the County as trustee for the Association.

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

I

AUTHORIZING STATUTES

A. This Agreement is entered into pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

II

PURPOSES

A. The purposes of this Agreement are to:

1. Protect and utilize future and existing water rights and water resources of the parties which are allocated to the Commission in a manner consistent with the needs of the parties as a group;

2. Provide for equitable distribution of water rights and untreated water resources allocated to the Commission according to the needs of the parties;

3. Provide a mechanism, through the creation of the Commission, for the parties to acquire, finance, protect and conserve additional water rights and water resources as though each were acting on its own authority; and

4. Provide a mechanism for implementation of plans or projects with reference to water rights, rights to water, and the

use and development of untreated water and untreated water resources, including the financing of untreated water storage and conveyance projects.

III

CREATION OF AND AGREEMENTS OF THE
SAN JUAN WATER COMMISSION

A. There is hereby created the Commission pursuant to the authority granted by Sec. 11-1-5 NMSA 1978 composed of five (5) members to be appointed by the parties to this Agreement in the manner selected by each party for the appointment of its representative member as follows:

1. City of Farmington -----one member
2. City of Aztec -----one member
3. City of Bloomfield -----one member
4. San Juan County -----one member
5. San Juan Rural Water
Users Association -----one member

B. Each party to the Agreement shall, in addition to the appointment of a member, appoint at least one alternate member to the Commission, who shall act in the absence or incapacity of the regular member. The alternate member shall have all of the powers, duties and responsibilities of the regular member when serving as a member of the Commission. Alternate members may attend all meetings of the Commission and may participate in discussions of the Commission but may vote only in the absence or incapacity of the regular member.

C. Each member or alternate member serving in the absence of the regular member shall be entitled to one vote.

D. A party may not frustrate conduct of the business of the Commission by failing or refusing to attend the meetings or to address the business of the Commission. If the Commission shall determine that the members appointed by a party have failed to attend regular meetings of the Commission, the Commission shall give written notice to the party affected by personal service or by certified mail, return receipt requested, demanding the replacement of either the regular member, the alternate member or both such members, and setting forth the reasons for such demand. The affected party shall, within thirty (30) days of the service of such notice upon the affected party appoint a new member and/or alternate member pursuant to the demand contained in such notice. If the affected party fails or refuses to appoint another member and/or alternate within such thirty (30) days, the Commission shall appoint a member and/or alternate for such affected party who shall serve until such time as the

affected party replaces the member or members so appointed by the Commission, provided, however, that any party may bring an action in the District Court of San Juan County, New Mexico, contesting the decision of the Commission to replace a member or members.

E. At the first official meeting of the Commission the members shall select a chairman who shall serve for one (1) year or until his successor is duly elected and qualified.

F. The Commission shall meet in compliance with the Open Meetings Act of the State of New Mexico

G. The Commission shall not conduct business unless a majority of the members or alternates of the parties are present.

H. The Commission is entitled to receive public funds to defray the operational and administrative costs of this agreement, including, but not limited to, salaries, wages, transportation and administrative overhead. Advances of public funds may be made by the parties to this Agreement, provided that such advances shall be repaid by the Commission at the time funds are available to the Commission from its operations for such repayment purposes, and provided that the Commission shall not be required to repay money advanced to it by the County under the tax levy herein contemplated. The remaining parties to this Agreement who advance funds for the operation of the Commission may waive this repayment provision by appropriate action at their respective legislative bodies or boards.

I. The Commission shall not sell or transfer ownership of, or lease or rent any water, water rights or assets of the Commission unless approved by the vote of four (4) members of the Commission.

J. Except as provided in Article VIII-C and Article X a vote by a majority of the members of the Commission shall be required for conduct of all other business before the Commission.

K. The Commission's authority shall be limited to the acquisition and holding of water rights, rights to water, storage of untreated water, and distribution of untreated water for the benefit of all the parties to this agreement and the residents of San Juan County.

L. Subject to the provisions of subsection N below, the Commission and this Agreement shall continue and shall not be terminated or revoked until the ALP has been substantially completed and the first water has been delivered to the Ridges Basin Reservoir. It is further contemplated that the Commission shall continue after the construction of ALP for the purposes set forth in Article II-A and Article V-A of this agreement.

M. In the event that the ALP is abandoned, terminated or never started and the water allocated to New Mexico through the Secretary of the Interior is available or may be made available to citizens in San Juan County, the Commission shall continue in existence and the funds available to it or held by the County in trust for it shall be used for the purposes enumerated herein to make said water available to the parties and their constituents.

N. The Commission shall provide a monthly operating statement to the parties to this Agreement which shall be due not later than twenty (20) days following the end of the reporting month. The Commission shall adopt approved budget and accounting procedures which will result in the strict accountability of all receipts and disbursements. During the normal budget process, the expenditures of the Commission shall be subject to the review and approval of the County. All other members shall be afforded input into the budget process.

IV

AGREEMENTS OF THE CITIES

A. The Cities, in consideration of the agreement of the County to establish the mill levy herein referenced, agree that the right to the use of water from the Animas La Plata Project shall be allocated as follows:

1. Aztec	<u>3,000</u>	acre feet	<u>(9.7403%)</u>
2. Bloomfield	<u>3,000</u>	acre feet	<u>(9.7403%)</u>
3. Farmington	<u>10,000</u>	acre feet	<u>(32.4675%)</u>
4. Association	<u>4,800</u>	acre feet	<u>(15.5844%)</u>
5. Reserve	<u>10,000</u>	acre feet	<u>(32.4675%)</u>
<u>Total</u>	<u>30,800</u>		<u>(100.0000%)</u>

B. The foregoing allocation is based upon the assumption that an estimated 30,800 acre feet of water is available to the parties to this Agreement from the ALP according to the ALP Definite Plan Report. Any diminishment of or increase in the 30,800 acre feet of water shall result in a proportional decrease or increase based upon the percentage of the base of 30,800 as allocated above. The above allocation does not include water which is or may be allocated to the Shiprock Area of the Navajo Tribe of Indians.

V

AGREEMENTS OF COUNTY

A. The County, in consideration of the allocation of water to the Commission, as the party with general County-wide fund raising powers, agrees to implement, maintain and keep in force a mill levy of approximately three (3) mills upon all real and personal property in San Juan County including the municipalities, for the purpose of creating a sinking fund to pay for the construction cost in accordance with requirements of the BOR contract for the ALP. After the sinking fund contains a sufficient amount to assure payment of the construction costs and upfront cost sharing of the ALP, the County shall implement, maintain and keep in force a mill levy to generate revenues to (1) pay for operation and maintenance expense for the ALP under contracts with the BOR, (2) pay for operation and maintenance expense of the Commission, and (3) may provide a sinking fund to be used for the acquisition of additional water rights, facilities for the storage and distribution of untreated water, and to fulfill other purposes of the Commission, including the development and utilization of water rights for the use and benefit of New Mexico and specifically for the governmental entities of San Juan County if the ALP is not constructed and the rights now held by the Secretary of the Interior are relinquished.

B. The County shall, at all times, sitting as the County Board of Finance, have control over the investment of funds raised by the mill levy and shall prudently invest such monies for the benefit of the fund which shall be a fund held in trust by the County for the parties and for the purposes of this Agreement.

C. The County, as trustee and custodian of funds raised under the mill levy, shall, at the beginning of each fiscal year, transfer to the Commission from such trust funds sufficient monies to meet the budget requirements of the Commission for the ensuing quarter and shall remit quarterly payments required by the Commission for the succeeding and ensuing fiscal quarter year, provided that if progress payments are to be made to the BOR or any other agency designated by the Secretary of the Interior to receive such payments, the County may, as custodian of the funds, elect to make such payments when due so that the earning value of the funds shall not be diminished by untimely sales or early redemption of securities or deposits which carry a penalty for early redemption.

D. The County shall assign to the Commission all rights that the county may acquire as a result of the failure of ALP.

VI

TITLE TO ASSETS HELD BY COMMISSION

A. Title to all water rights and assets acquired by the

Commission shall only be taken in a manner which has been agreed upon by members of the Commission. Title to any water rights or property which is taken in the name of the Commission shall be held in trust by the Commission for the use and benefit of the parties. In the event the Commission is terminated, it shall transfer title to all of its assets by official action prior to its dissolution according to the terms of this Agreement. Should the Commission fail to make such a transfer of title prior to dissolution, any of the parties to this Agreement may apply to the District Court in San Juan County requesting the appointment of a special master to transfer title to the assets of the Commission in accordance with this Agreement. The parties expressly agree to be bound by such Court-ordered transfer whether or not the party is a Co-Plaintiff in the District Court Action.

VII

BOOKS AND RECORDS

A. Detailed records of all transactions of the Commission shall be kept and maintained by the Commission and shall be open for inspection and audit at all reasonable times by any member of the Commission or for inspection and audit by any person designated by the governing body of any member who may be appointed to conduct such inspection and audit.

B. Books and records of the Commission shall be subject to inspection pursuant to applicable statutes.

VIII

MUTUAL AGREEMENTS OF THE PARTIES

A. The Commission shall deal only with untreated water. The use of public funds derived from ad valorem taxes may not be used under this Agreement for the acquisition of a water supply system and the powers granted hereunder to the Commission are hereby expressly limited to contracts involving raw or untreated water, pursuant to the prohibition set out in Sec. 72-4-8 NMSA 1978.

B. The Commission shall, within its available resources, use every reasonable effort to acquire additional water and water rights and shall make every effort to obtain water rights at least equal in amount to the water rights allocated to the Commission from the ALP as soon as possible after sufficient funds have been raised from the mill levy to pay for the construction of the ALP as herein contemplated.

C. Nothing herein contained shall be construed to prohibit 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 which it presently owns; provided that if any water or water rights are offered for sale to any of the parties to this Agreement by any third party, the party shall notify the Commission of the proposed purchase and the terms thereof. In such event, the Commission shall thoroughly study and review any such proposed offer to determine if it would be advisable for the Commission to purchase the water or water rights being offered. The Commission shall consider, among other things, the hardship, if any, which might be imposed upon the party to whom the water or water right has been offered, the technical problems and the expense which might be involved with the acquisition of the water and water rights and the willingness of the offering party to deal with the Commission. If the Commission wishes to acquire the water or water rights, the Commission shall notify the parties proposing to sell and to purchase the water or water rights within thirty (30) days of being notified of the proposal whether or not the Commission wishes to enter into the purchase. The Commission shall enter into any such purchase by the same terms and conditions as those offered to the party. If the Commission, for any reason, decides not to exercise its option hereunder, the party or parties involved may purchase said water or water rights and said rights shall be the sole and separate property of the party so purchasing.

D. If any party leases or sells water for industrial use outside of its city limits or, in case of a rural water association, outside of its service area as such service area is determined by the Commission, water so leased or sold shall not be replaced by water from the Commission unless the Commission shall approve such replacement provided that, for the purpose of this Article, water which Farmington may require to supply to the San Juan Generating Station for the City of Farmington's share of San Juan Unit 4 shall be considered to be water supplied within the Farmington City limits and within the service area of the City of Farmington. It is estimated that the City of Farmington will require approximately 625 acre feet of untreated water for this purpose.

E. Member Cities shall be given the opportunity to participate in leases of untreated water to other users should the Cities so desire in order to allow member Cities to use their existing assets and water rights to the fullest extent.

F. That, in the event of dissolution of the Commission,

contracts with the BOR for ALP water shall continue in the names of the Cities and the County as trustee for the rural water users association with the continued support of the mill levy by the County.

G. The Commission shall develop standards for determining who is entitled to untreated water according to demonstrated need for untreated water.

H. The parties agree that the allocations of water set out in Article IV above represent a fair and equitable distribution of the water available under the ALP.

IX

DISTRIBUTION OF ASSETS

A. In the event of dissolution of the Commission for any reason, or termination of this Agreement, member Cities and the County as trustee for the Association shall have the absolute right to continue under independent or cooperative contracts with the BOR for the purchase of the water allocated to each member under Article IV together with a pro-rata share of the Reserve water. The assets of the Commission, including the water rights acquired by the Commission shall be distributed to the Cities and to the County as trustee for the rural water users association under the same formula.

X

CONTRACTS WITH BOR

A. It is expressly understood and agreed that the matter of contracts which may be entered into with the BOR pertaining to the ALP is of great importance to the Cities and to the parties. The Commission shall not enter into any contract pertaining to the ALP unless the contract or contracts with the BOR contain the signatures of the members and unless such contract or contracts are entered into with the unanimous agreement of all parties.

B. It is further expressly agreed that any contract entered into with the BOR or which otherwise pertains to the ALP shall contain provisions which shall be binding upon the BOR and which shall absolutely assure to the members the right, based upon the opinion of special counsel to each member experienced in

water law and federal contracts, to contract directly with the BOR for ALP project water in the amounts allocated herein plus a pro-rata share of reserve water should the County discontinue or be unable to continue payment upon the ALP contracts as herein contemplated or should the Commission be dissolved or terminated for any reason whatsoever.

XI

BATEMAN ACT; CONSTITUTIONAL PROHIBITIONS SOURCE OF FUNDS FOR PAYMENT

A. The funds raised by the levy herein contemplated shall be special funds created for the purpose of this Agreement. If such special funds are not available, nothing herein contained shall be construed to create an indebtedness beyond the current year of any member political subdivision in violation of the Bateman Act nor shall this Agreement or anything herein contained be construed to create an obligation on the County or the Cities which constitute the general obligation or indebtedness or the Cities or the County within the meaning of Article IX, Section 12 or Section 13 of the Constitution of the State of New Mexico and shall never constitute a charge against the general credit or taxing power of the Cities or the County.

XII

SEVERABILITY

A. It is hereby declared to be the intention of the parties that the Articles, Sections, and Sub-sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, section or Article of this Agreement shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections and articles of this Agreement, since the same would have been entered into by the parties without such invalid portion.

XIII

EFFECTIVE DATE

A. This Agreement shall become effective when executed by the parties pursuant to official authorization by the governing bodies, boards, councils or commission of the County, Cities or domestic water users associations; provided that this Agreement must be submitted to and approved by the New Mexico State Department of Finance and Administration, pursuant to Sec. 11-1-3

NMSA 1978 before it is legally binding and effective.

XIV

AMENDMENT

A. This Agreement may be amended with the consent of all parties as evidenced by written approval of the governing body of each party.

XV

VENUE AND GOVERNING LAW

A. This Agreement shall be interpreted under the law of the State of New Mexico. Venue for any suit brought upon this agreement shall lie in the District Court of San Juan County, New Mexico.

IN WITNESS WHEREOF THE PARTIES have hereunto set their hands and seals by their duly authorized officers, agents or representatives below named.

DATED this 5 day of March, 1986.

CITY OF AZTEC
A Municipal Corporation

Attest:

*signature on file
Debi Lee, City Clerk

By: *signature on file
Doug Madlock, Mayor

CITY OF BLOOMFIELD
A Municipal Corporation

Attest:

*signature on file
Patsy Milligan
City Clerk

By: *signature on file
Erva Lynch, Mayor

CITY OF FARMINGTON
A Municipal Corporation

Attest:

*signature on file
Joyce G. Harris
City Clerk

By: *signature on file
Dee Montano, Mayor

SAN JUAN COUNTY
BOARD OF COUNTY COMMISSIONERS

Attest:

signature on file
Sandra Townsend
County Clerk

By: signature on file
Chairman

SAN JUAN RURAL WATER USERS
ASSOCIATION

Attest:

*signature on file
Secretary

By: *signature on file
President

APPROVED:

DEPARTMENT OF FINANCE & ADMINISTRATION

By: *signature on file
Secretary

Date: 3-38-86

*Copies of the Joint Powers Agreement containing original signatures are available at the San Juan Water Commission office, 7450 E. Main Street, Suite B, Farmington, NM, 87402.