



# City of Santa Fe Water

801 W. San Mateo, Santa Fe, N.M. 87505

[www.santafenm.gov/water](http://www.santafenm.gov/water)

Jesse Roach PE PhD, Director

Bradley Prada, BDD Facility Manager

John Del Mar PE, Engineering Manager

Jonathan Montoya, Source of Supply Manager

Mike Moya, Transmission and Distribution Manager

Bill Schneider PG, Water Resources and Conservation Manager

## MEMO

**Date:** October 31, 2024

**To:** Governing Body

**Via:** Finance Committee

Public Works and Public Utilities Committee

Marcos Martinez, Senior Assistant City Attorney *Marcos Martinez*

John Dupuis, Public Utilities Director   
John Dupuis (Oct 31, 2024 09:46 MDT)

**From:** Jesse Roach, Water Division Director 

### ITEM

Agreement for the City to provide potable water to the lower Acequia Madre in exchange for a reduced delivery obligation for Santa Fe River water at the Acequia Madre headgate.

### BACKGROUND

#### *Maximize Availability of Santa Fe River water*

Since 2011 when the Buckman Direct Diversion (BDD) came online City of Santa Fe Water has shifted to a management strategy of using river water preferentially and sparing use of well water to allow our aquifers to recover and maximize their availability for use when needed. Santa Fe River water treated at the Canyon Road Water Treatment Plant (CRWTP) is used preferentially over river water treated at BDD due to large differences in energy costs associated with pumping water from the Rio Grande into Santa Fe. In this management framework, we seek to maximize availability of the Santa Fe River.

#### *82.404 Acre Feet Santa Fe River Delivery Obligation to Acequia Madre*

Based on an existing agreement between the Acequia Madre and City of Santa Fe, the City is obligated to deliver 82.404 acre-feet per year of water to the Acequia Madre headgate near where Alameda crosses the Santa Fe River and becomes Camino de La Cruz Blanca. Of this amount, 60.912 acre-feet per year are to serve fields at the lower end of the Acequia system in the traditional village of Agua Fria. We will refer to this section of the Acequia as the lower Acequia Madre.

#### *Lower Acequia Madre Infrastructure Problems and Opportunity for Win-Win Agreement*

The Acequia Madre itself is no longer an efficient way to move water from the headgate to the lower Acequia Madre. As a result, deliveries of water diverted at the headgate to farmers on the lower Acequia



are unreliable. Due to this lack of reliability, the farmers on the lower Acequia would prefer the certainty of 20 acre-feet per year of pressurized potable water to the uncertainty of how much of the 60.912 acre-feet per year diverted at the headgate will reach them and be available for use. Despite costs associated with treatment and distribution, because of the value of Santa Fe River water, the City is willing to deliver 20 acre-feet of potable water to the lower Acequia instead of delivering 60.912 acre-feet of untreated river water to the Acequia Madre headgate.

### *Other Terms of the Agreement*

The proposed agreement allows either party to revert to the current agreement locations and amounts in any year where notice is given before the end of February. With the agreement of the Acequia Madre, the City may apply on its behalf for funding to improve or repair the Acequia.

### *Financial and Water Right Considerations*

Variable water treatment costs (costs that only change with amount of water treated) at CRWTP are estimated to be approximately \$0.26 per 1000 gallons, while they are estimated to be approximately \$0.8 per 1000 gallons at BDD due largely to pumping requirements. With this agreement in place there will be almost 61 acre-feet of new water available for treatment at CRWTP, 20 acre-feet of which wouldn't have been treated otherwise and will go to the Lower Acequia Madre, and 41 acre-feet of which would have otherwise been treated at BDD. The savings realized by treating 41 acre-feet at CRWTP instead of at BDD outweigh the costs of treating 20 acre-feet of water for the lower Acequia Madre making this agreement financially beneficial to City of Santa Fe Water.

Another way to think about this agreement is that in most years the amount of water available to be treated at CRWTP is limited not by our right to divert (5040 acre-feet per year), but by availability. In years where we can't divert our full right this agreement effectively adds almost 41 acre-feet of diversion rights along the upper Santa Fe River. Water rights on the upper Santa Fe River are not available for purchase, but for context, less scarce water rights on the Middle Rio Grande are worth over \$30,000 per acre-foot.

### **REQUEST**

Approval of "Second Amended Stipulated Operating Agreement by City of Santa Fe and Acequia Madre de Santa Fe Community Ditch Association".

**SECOND AMENDED STIPULATED OPERATING AGREEMENT**  
**BY CITY OF SANTA FE AND ACEQUIA MADRE DE SANTA FE**  
**COMMUNITY DITCH ASSOCIATION**

WHEREAS, the City of Santa Fe (“City”) and the Acequia Madre de Santa Fe Community Ditch Association (“Acequia Madre”) (sometimes referred to herein in the singular as “Party” and in the plural as “the Parties”) jointly submitted this Second Amended Stipulated Operating Agreement (“Second Amended Stipulation”) to counsel for the State of New Mexico for its approval and joinder as a party to the Second Amended Stipulation for submission to the Court for approval and entry of an Order; and

WHEREAS, the State declined to become a party to the Second Amended Stipulation on the grounds that it does not impact any of the obligations or responsibilities of the State; and

WHEREAS, the State advised the City and Acequia Madre that the State has no objection to alternative administration of the water rights of the Parties proposed by the Second Amended Stipulation nor to the Acequia Madre and City entering into the proposed alternative administration.

Therefore, the Parties hereby stipulate and agree as follows:

1. This Second Amended Stipulation amends the January 28, 2015 Amended Stipulated Operating Agreement (“Amended Stipulation”), previously entered into by these Parties or their predecessors in interest and adopted by the February 10, 2015 Order of the Court, a copy of which is attached hereto as Attachment 1. This Second Amended Stipulation only amends and supersedes those provisions of the Amended Stipulation as expressly stated herein and all provisions of the Amended Stipulation not amended herein remain in effect.
2. The amended stipulations, agreements, descriptions of water right “requirements” and all other matters set forth herein are solely for the purpose of settlement and are without waiver

of or prejudice to any water right claims or any positions taken in respect to such claims, or other rights or defenses of the parties, and do not constitute a concession of the validity of any position asserted by the Parties.

3. The Parties enter this Second Amended Stipulation for the purpose of enabling the more efficient delivery of water by the City and the Acequia to 11.28 irrigated acres adjudicated under Subfile Nos. 11.381 to 11.382, which are located at the southern end of the Acequia (“Montoya Tracts”). The Parties recognize and agree that because of the distance involved, under recent and existing circumstances the delivery of water to the Montoya Tracts in the amounts adjudicated for those Tracts via diversion of water from the Santa Fe River at the Acequia’s headgate and conveyance through the Acequia, results in excessive loss of water through evaporation and seepage, such that in most years no deliveries of water can be made to the Montoya Tracts.
4. Paragraph 3 of the Amended Stipulation is deleted and replaced by the following:

“3. A. This Amended Stipulation is based on a total number of irrigated acres served by the Acequia Madre of 15.26 acres. The Parties agree that the irrigation water requirements in an average weather year for the 15.26 irrigated acres served by the entire Acequia Madre, both the upper, eastern section (“upper Acequia”) and the lower Acequia Madre which serves Subfile Nos. 11.381/11.382A, 11.381/11.382B, 11.381/11.382C, 11.381/11.382D and 11.381/11.382E (“lower Acequia”), is as follows: total Project Delivery Requirement (“PDR”) is 82.404 acre feet per year (15.26 times the per acre PDR of 5.4); total Farm Delivery Requirement (“FDR”) is 41.202 acre feet per year (15.26 times the per acre FDR of 2.7).

”

3.B. The Parties agree that, even though the adjudicated PDR and FDR for the 11.28 acres of lower Acequia are 5.4 acre feet per acre per year (“AFA”) and 2.7 AFA, respectively, and without amending or modifying the adjudication of those amounts in any way, an Alternative Delivery Schedule may be desirable to benefit the lower Acequia Madre, such that the City may meet its delivery obligation of water for the lower Acequia by delivering twenty (20.0) acre feet per year (“AFY”), west of Henry Lynch Road and north of La Paz Lane (“lower Acequia Madre delivery location”). The following provisions will apply to the City’s delivery of water to the lower Acequia under the Alternative Delivery Schedule:

- i. The City of Santa Fe will make up to 20.0 AFY of water available at the lower Acequia Madre delivery location during the months of April through October. This delivery may consist of non-potable water delivered via surface flow in the Acequia itself, or potable water available on demand delivered through the City’s distribution system via a three inch or smaller meter with a backflow preventer and downstream valve. Measurement devices for either option will be installed and maintained by the City. The City will provide members of the Acequia Madre access to flow measurements from all utilized devices via the internet. The City may remove measurement devices, and associated backflow related infrastructure from November through March to avoid vandalism and prevent freezing.
- ii. If the City elects to provide water via non-potable surface flow in the Acequia itself, the City will provide to the Acequia Madre projected monthly delivery volumes, and the lower Acequia Madre may supplement flows with potable water on demand

if and when needed subject to fees associated with excess annual potable use as described in 3.B.iv below.


- iii. The Acequia Madre shall be responsible for installation and maintenance of all Acequia infrastructure downstream of the lower Acequia Madre delivery location. If the Acequia Madre does not maintain infrastructure sufficient to fully contain all water until it is delivered to the lower Acequia, the Acequia Madre will be responsible for de-chlorination or any other water quality requirement necessary for surface discharge of potable water into an open channel.
- iv. Any potable water deliveries in excess of 20.0 AFY will be billed at established rates for City water provided for irrigation purposes through the meter size utilized. Apart from these possible charges for excess annual use, there will be no charges to the Acequia Madre for potable water delivered through the lower Acequia Madre meter.
- v. If there is an outstanding balance on the Acequia Madre account, the City of Santa Fe reserves the right to halt service following standard procedures for an overdue utility account.
- vi. The required delivery of Santa Fe River water to the upper Acequia at the Acequia Madre headgate will be reduced from 82.404 AF/yr to 21.492 AF/yr during years in which the Alternative Delivery Schedule is used.
- vii. If the Acequia Madre agrees in writing to shortage sharing operations with the City at its headgate, that agreement may include a consistent percent reduction in annual deliveries that year to the lower Acequia Madre meter.


- viii. The Alternative Delivery Schedule shall apply in every calendar year, provided that the original delivery schedule set forth in the Amended Stipulation will be used if either party notifies the other in writing by February 28 of any year that the original delivery schedule and location will be used for that year.
  - ix. The Parties acknowledge that this Second Amended Stipulation provides for delivery of amounts of water to the lower Acequia less than the FDR adjudicated by the Court and agree that this reduced delivery under the Alternative Delivery Schedule does not constitute a waiver of the validity or enforceability of the full adjudicated rights for the water rights under Subfile Nos. 11.381 to 11.382. The Parties agree that this Second Amended Stipulation and the delivery of water to the lower Acequia for Subfile Nos. 11.381 to 11.382 pursuant thereto shall not be construed as admissions against interest by the Acequia Madre or the owners of water rights under Subfile Nos. 11.381 to 11.382, or submitted in evidence or used in any manner in any forum or legal proceeding as the basis for claims of abandonment or forfeiture of any part of those water rights.
5. The Parties agree that after consultation with the Acequia Madre and with its agreement the City may apply for funding which may be available to improve, repair, or rehabilitate the Acequia Madre. Any such application for funding will be pursuant to a funding or fiscal service agreement between the City and the Acequia Madre and any other joint action agreement between the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signature by the required approval authorities below.


ACEQUIA MADRE DE SANTA FE  
COMMUNITY DITCH ASSOCIATION


By:


  
Date: 10/14/2024  
Dave Staples, Commissioner

  
Miche Boyé Garcia, Commissioner  
Date: 14 Oct 2024

  
Date: 10/14/2024  
David Maes, Commissioner

  
Date: 10-14-24  
Gilbert Montoya, Commissioner

  
Date: 10.14.24  
Eric Montoya, Mayordomo

  
Date: 10-14-24  
Rebecca Dempsey  
CUDDY & McCARTHY, LLP  
Attorney for Acequia Madre  
Post Office Box 4160  
Santa Fe, New Mexico 87502-4160  
(505) 988-4476  
(505) 954-7373 (Fax)

**CITY OF SANTA FE:**

\_\_\_\_\_  
Alan M. Webber, Mayor

\_\_\_\_\_  
Date

Attest:

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Andrea Salazar, City Clerk

Approved as to form:

Marcos Martinez  
Marcos Martinez (Sep 23, 2024 15:33 MDT)

Marcos D. Martinez, Senior Assistant City Attorney

Approved as to Finance:

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Emily Oster, Finance Director