



# MEMORANDUM

TO: Brian Snyder, City Manager

FROM: Rick Carpenter, Water Resources and Conservation Manager *RC*

VIA: Nick Schiavo, PUD and Water Division Director *NSA*

DATE: May 20, 2015

SUBJECT: RIO GRANDE WILDFIRE AND WATER SOURCE PROTECTION  
COLLABORATIVE CHARTER

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Please find the attached Charter. This document was presented twice to PUC and was subsequently approved, and has also been before City Council on the consent calendar. As you are aware, this is a non-binding charter that would allow the City of Santa Fe greater access to, and participation in, the regional collaborative Rio Grande Water Fund program. The collaborative program will work to manage watersheds, reduce fire risk, and improve water quality in regional river systems.

## **Recommendation**

Staff recommends that the City become a charter member of the Rio Grande Water Fund by executing the attached Charter.

RIO GRANDE WILDFIRE AND WATER SOURCE PROTECTION  
COLLABORATIVE CHARTER

THIS COLLABORATIVE CHARTER (“Charter”) is entered into by and among the Parties listed below (the “Signatories”), acting by and through their authorized representatives (a “Representative”), and is effective as of the date set forth below (the “Effective Date”).

WHEREAS, the Rio Grande and its tributaries within New Mexico (the “Rio Grande Watershed”) is a major source of water for more than half of the state’s population, including those living in metropolitan and rural communities and on Native American pueblos and tribal lands; and,

WHEREAS, severe wildfires and the resulting post-fire effects, as was seen after the 2011 Las Conchas fire, impact surface water sources and supplies by degrading water quality and introducing large quantities of sediments into reservoirs and the conveyance infrastructure that serve communities, acequias and irrigation districts in the Rio Grande Watershed, and with effects that may continue for several decades; and,

WHEREAS, New Mexico’s forests and grasslands are natural water storage reservoirs that have a key role in the hydrologic cycle and are a vital source of surface water and ground water recharge for the Rio Grande Watershed; and,

WHEREAS, the cost to federal, state, tribal and local governments of fighting severe wildfires is substantial as well as having considerable adverse effect on the New Mexico economy, including its agriculture, businesses, tourism, recreation, natural resources, cultural resources and property tax base; and,

WHEREAS, the Albuquerque Bernalillo County Water Utility Authority and the City of Santa Fe have expended tens of millions of dollars to develop projects to divert water from the Rio Grande and San Juan Chama Project to supply their respective water systems; and,

WHEREAS, New Mexicans will benefit from additional information about the essential role of the state’s watersheds to our water supply and economy and the on-going need for forest, shrub and grassland watershed restoration projects that will also have favorable outcomes for fish and wildlife habitat; and,

WHEREAS, approximately 600,000 acres of forests are proposed for thinning over the next twenty years to reduce the threat of severe wildfire in the Rio Grande Watershed; and,

WHEREAS, mechanical thinning and controlled burning of overgrown forests is a sound strategy to reduce fuel levels and the risk of high-severity wildfires; and,

WHEREAS, efforts to protect the Rio Grande Watershed from catastrophic wildfire will be most effective if federal, state, and local governmental entities, Native American pueblos and tribes, private persons and entities, and non-governmental organizations voluntarily collaborate on their individual forest, grassland and watershed restoration projects;

NOW THEREFORE, the Signatories hereby enter into this non-binding Charter to support collaborative efforts to protect forests in the Rio Grande Watershed from wildfire and to restore the watershed.

In furtherance of the purposes of this Charter, the Signatories agree as follows:

1. **RIO GRANDE WATERSHED.** For purposes of this Charter, the term “Rio Grande Watershed” shall encompass the Rio Grande and Rio Chama watersheds and all tributaries and lands thereto from the New Mexico-Colorado state line south to Belen (*see map in Rio Grande Water Fund Comprehensive Plan, July 2014, Figure 1* [http://www.nmconservation.org/RGWF/RGWF\\_CompPlan.pdf](http://www.nmconservation.org/RGWF/RGWF_CompPlan.pdf)).

2. **EXECUTIVE COMMITTEE; WORKING GROUPS.** The Signatories shall establish an executive committee (the “Executive Committee”) from among such Entities to facilitate their collaborative efforts to further the purposes of this Charter. The Executive Committee shall be composed of (i) Signatories that are either raising funds to be expended for forest, grassland and watershed restoration projects recommended pursuant to Section 3 or that will separately fund such projects from resources available to those Signatories, and (ii) additional representatives selected from those Signatories that will neither be raising such funds or separately funding recommended projects. The additional representatives will be selected to insure that the Executive Committee broadly represents all Signatories. The Executive Committee may establish working groups as needed to support and carryout the purposes of this Charter.

3. **CRITERIA FOR EVALUATING AND RECOMMENDING FOREST, GRASSLAND AND WATERSHED RESTORATION PROJECTS.** The Executive Committee shall develop criteria to evaluate and recommend proposed forest, grassland and watershed restoration projects. Priority shall be given to those projects within the following areas (the “Focal Areas”; *See Rio Grande Water Fund Comprehensive Plan, July 2014*):

- Sandia and Manzano Mountains and watersheds;
- Jemez Mountains and watersheds;
- San Juan-Chama Headwaters; and,
- Western slopes of the Sangre de Cristo Mountains and watersheds.

No lands within the Rio Grande Watershed, including without limitation, lands of Native American pueblos and tribes, shall be considered for recommendation as a forest, grassland and watershed restoration project without the express written consent of affected pueblo, tribe or landowner, which shall include permission to post a description of the project on a publicly available website.

The list of recommended projects shall be made available to all Signatories and publicly available on a website. The list of recommended projects shall be reviewed and revised periodically, but no less frequently than every other year, to take into account changes in conditions affecting the Rio Grande Watershed.

4. **FUNDING AND IMPLEMENTATION.** The Executive Committee's recommendation of a forest, grassland and watershed restoration project shall not require any of the Signatories to appropriate or make funding available for, or to implement, such project. The decision to fund or implement a forest, grassland and watershed restoration project is solely that of the individual Signatories. Funding for any such project is subject to the laws, appropriation and approval processes of the governing bodies of the respective federal, state, and local governments and pueblo or tribal Signatories, or in the case of non-governmental Signatories, to their respective means of determining the manner in which funds available to them will be expended.

5. **GOVERNING LAW.** The Signatories acknowledge that each of them is governed by federal, state or tribal law, as applicable and that this Charter is to be interpreted consistent with such law. This Charter does not modify, waive, abrogate or otherwise alter any provision of law governing a Signatory or delegate a Signatory's duties or obligations under law to another Signatory. The Signatories further acknowledge that public access to this Charter and any documents prepared to further its purpose is available subject to the provisions of the law governing each signatory, including without limitation, the Freedom of Information Act, 5 U.S.C. § 552, and the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 2.

6. **NONBINDING AGREEMENT.** This Charter is intended to facilitate voluntary collaboration among the Signatories on forest, grassland and watershed restoration projects. It does not obligate any Signatory to act or to refrain from acting in any manner and does not create any obligation, right, benefit, or trust responsibility, whether substantive or procedural, that is enforceable at law or in equity, by another Signatory or by a third-party. Nothing in this Charter creates in any Signatory or in a non-signatory individual or entity a third party beneficiary or authorizes anyone to bring an action requesting a court to require a Signatory to act or refrain from acting in accordance with, or to carry out, the terms of this Agreement.

7. **LIABILITY UNDER APPLICABLE LAW.** Signatory agrees that it will be solely liable for personal injury and property damage for which it is found legally responsible. By signing this Charter, issuing a letter indicating support for the purposes underlying it or serving on a working group, Signatories and other parties do not assume either new liabilities or expand their existing liabilities under law or in equity. This Charter shall not be construed as conferring any rights on any Party against another Party, or on any third person. Any liability that a Signatory might incur in connection with this Charter is subject to the immunities and limitations of the statutes and common or tribal law governing each individual Signatory, including without limitation, the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171, and 28 U.S.C., § 1346, and the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through -27. A Signatory shall not be responsible for liability incurred as a result of any other Signatories' act or omissions in connection with this Charter.

8. **NO REIMBURSEMENT.** Unless otherwise provided for in separate agreements, Signatories shall not be reimbursed by other Signatories for work performed to carry out the purposes of this Charter. Each Signatory shall absorb the costs it incurs in performing any such

work, including all costs associated with participating in the Executive Committee or working groups established to facilitate the purposes of this Charter.

9. FEDERAL TRUST RESPONSIBILITIES. Nothing in this Charter is intended to affect federal trust responsibilities to Native American pueblos and tribes. The Signatories acknowledge that federal agencies signing this Charter may have trust responsibilities under federal law to pueblos and tribes that have lands within the Rio Grande Watershed and will consult with those pueblos and tribes, regardless of whether they are Signatories, as required by federal law.

10. PUEBLO AND TRIBAL INVOLVEMENT. The determination to participate in this Charter is the separate and independent decision of each Native American pueblo and tribe with lands within Rio Grande Watershed. A Native American pueblo or tribe is not required to sign this Charter as the result of a federal agency with federal trust responsibilities to that pueblo or tribe signing the Charter or collaborating with other Signatories on forest, grassland and watershed restoration projects.

11. TERM; WITHDRAWAL OR TERMINATION OF PARTICIPATION. This Charter does not have an established term. Nevertheless, the Signatories shall review this Charter every five (5) years after the Effective Date to determine whether its continuation is appropriate. Any Signatory may withdraw from this Collaborative (a/k/a “terminate participation”) upon giving sixty (60) days written notice of such withdrawal to the other Signatories.

12. ADDITION OF SIGNATORIES. An entity, including an entity that was formerly a Signatory, may become a signatory by having its authorized representative execute this Charter and any amendments thereto which have been previously agreed to by the then-Signatories.

13. AMENDMENT OR MODIFICATION; SCOPE OF CHARTER; INCORPORATION AND MERGER. This Charter shall not be altered, amended or otherwise changed except by written instrument executed by each of the Signatories. No course or pattern of action shall serve to alter, amend or otherwise change the terms of this Charter. This Charter incorporates all agreements, covenants, and understandings between the Signatories concerning the subject matter hereof and all prior or contemporaneous agreements, covenants and understandings have been merged into this Charter. No prior agreement, covenant or understandings, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Charter.

14. AUTHORIZED REPRESENTATIVES. By executing this Charter, or any amendment or other document or writing contemplated by it, each Representative signing represents that he or she is authorized to take such action on behalf of the Signatory and no further action, resolution, or approval is necessary.<sup>1</sup> A Signatory may designate successor and

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<sup>1</sup> Interested parties are not precluded from issuing letters indicating support of this Charter and the purposes underlying it rather than signing the Charter itself (such parties being “Supporting Parties.”) The Signatories and the Supporting Parties will determine the role and level of involvement of Supporting Parties in working groups, etc.

*FOR SIGNATORY ORGANIZATIONS (12-1-2014)*

alternate Representatives, as well as any additional persons necessary to act on its behalf with respect to the activities contemplated by this Charter as it deems necessary.

15. EXECUTION OF MULTIPLE ORIGINALS; USE OF FACSIMILE AND E-MAILED SIGNATURES. This Charter may be executed in multiple counterparts, which when assembled together will constitute a fully executed original. Signatures transmitted by facsimile or e-mails shall be considered to be originals for purpose of execution of this Charter, any amendment, termination or withdrawal, and any actions taken pursuant to it. Upon establishment of the Executive Committee, it shall compile the Charter with all signature pages and transmit a copy of it to each Signatory.

*(SIGNATURES ON FOLLOWING PAGE)*

16. EFFECTIVE DATE. This Charter shall be effective as of \_\_\_\_\_ (the "Effective Date").

17. SIGNATORIES. IN WITNESS WHEREOF, the Signatories, acting by and through their respective Representatives, have executed this Charter effective as of the Effective Date set forth above.

\_\_\_\_\_  
(Entity Name)  
Address: \_\_\_\_\_  
Mail: \_\_\_\_\_  
\_\_\_\_\_  
Street: \_\_\_\_\_  
\_\_\_\_\_  
Phone(s): \_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
E-Mail \_\_\_\_\_

Representative Signature: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title (printed): \_\_\_\_\_  
Signature Date: \_\_\_\_\_

City of Santa Fe  
Address:  
Mail: P.O. Box 909  
Santa Fe, NM 87504  
Street: 200 Lincoln Ave  
Santa Fe, NM 87504  
Phone(s): 505-955-6848  
Fax: \_\_\_\_\_  
E-Mail \_\_\_\_\_

Representative Signature: \_\_\_\_\_  
Name (printed): Javier M. Gonzales,  
Title (printed): Mayor  
Signature Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

APPROVED AS TO FORM:

MDM 5/22  
Kelley A. Brennan, City Attorney