

File No.



NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO APPROPRIATE



(check applicable boxes):

For fees, see State Engineer website: <http://www.ose.state.nm.us/>

<input checked="" type="checkbox"/> Application to Appropriate Surface Water (72-5-1)
<input type="checkbox"/> Application to Appropriate Groundwater (72-12-3)
<input type="checkbox"/> Temporary Request - Requested Start Date: _____ Requested End Date: _____

1. APPLICANT(S)

Name: WildEarth Guardians	Name:
Contact or Agent: Jen Pelz or Carol Norton <input type="checkbox"/> check here if Agent	Contact or Agent: _____ <input type="checkbox"/> check here if Agent
Mailing Address: 516 Alto Street	Mailing Address:
City: Santa Fe	City:
State: NM Zip Code: 87501	State: _____ Zip Code: _____
Phone: 303-884-2702 <input type="checkbox"/> Home <input checked="" type="checkbox"/> Cell Phone (Work): Same	Phone: _____ <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work): Same
E-mail (optional): jpelz@wildearthguardians.org	E-mail (optional): _____

2. PURPOSE OF USE AND AMOUNT OF WATER

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Other Use (specify): <u>See Exhibit A</u>	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section. Diversion: <u>30,000 AF</u> Consumptive Use: <u>0</u> Other (include units): <u>0</u>
Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): <u>stream use</u>	

3. COUNTY WHERE WATER RIGHT WILL BE USED

See Exhibit A

C-410273

FOR OSE INTERNAL USE

Application for Permit, Form wr-05, Rev 6/14/12

File No. 2011 MAR 21 AM 11:00	Trn No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
PCW/LOG Due Date:	PBU Due Date:	

OFFICE OF STATE ENGINEER SANTA FE, NEW MEXICO

4. POINT(S) OF DIVERSION (POD)

<input checked="" type="checkbox"/> Surface POD OR <input type="checkbox"/> Ground Water POD (Well)			
Name of ditch, acequia, or spring: Abiquiu Reservoir			
Stream or water course: Rio Chama		Tributary of: Rio Grande	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<p>POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84). District II (Roswell) and District VII (Cimarron) customers, provide a PLSS location in addition to above.</p>			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone		<input type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input type="checkbox"/> Zone 13N	
<input checked="" type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 th of second)			
POD Number:	X or Easting or Longitude:	Y or Northing or Latitude:	<p>Provide if known: -Public Land Survey System (PLSS) (<i>Quarters or Halves , Section, Township, Range</i>) OR - Hydrographic Survey Map & Tract; OR - Lot, Block & Subdivision; OR - Land Grant Name</p>
See Exhibit A			
<p>NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional POD descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, how many _____</p>			
Point of Diversion is on Land Owned by: N/A			
Other description relating point of diversion to common landmarks, streets, or other: See Exhibit A			
<p>Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.</p>			
Approximate depth of well (feet):		Outside diameter of well casing (inches):	
Driller Name:		Driller License Number:	

File No.:	Trn No.:
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5. PLACE(S) OF USE

List each individually

(not applicable)

a. <u> N/A </u> Acres of Irrigated Land Described as Follows (if applicable):				
b. Legally Described By: <input type="checkbox"/> Public Land Survey System (PLSS) <input type="checkbox"/> Hydrographic Survey Report or Map <input type="checkbox"/> Irrigation or Conservation District Map <input type="checkbox"/> Subdivision	c. PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	d. PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	e. PLSS Range	f. Acres
PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey or District, <u>and/or</u> Name and County of Subdivision				
See Exhibit A				
g. Other description relating place of use to common landmarks, streets, or other: See Exhibit A				
h. Place of use is on land owned by (required): N/A				
i. Are there other sources of water for these lands? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:				

Note: If on Federal or State Land, please provide copy of lease.

FOR OSE INTERNAL USE

Application for Permit, Form wr-05

File No.:	Trn No.:
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6. ADDITIONAL STATEMENTS OR EXPLANATIONS

See Exhibit A

ACKNOWLEDGEMENT

I, We (name of applicant(s)), Carol Norton, Associate Director, WildEarth Guardians
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.



Applicant Signature

Applicant Signature

ACTION OF THE STATE ENGINEER

This application is:

approved partially approved denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this _____ day of _____ 20 _____, for the State Engineer,

_____, State Engineer

By: _____
Signature

Print

Title: _____
Print

2013 MAR 21 AM 11:00
OFFICE OF STATE ENGINEER
SANTA FE, NEW MEXICO

FOR USE INTERNAL USE

Application for Permit, Form wr-05

File No.:	Trn No.:
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EXHIBIT A

2. PURPOSE OF USE AND AMOUNT OF WATER

Purpose of Use: Storage in the Abiquiu Environmental Pool (see item 4 below) for the purpose of reregulating flows to provide instream uses in the Rio Chama and Rio Grande from the outlet of Abiquiu Dam to San Marcial.

Instream uses (as described in our companion application for an instream flow permit) including, but are not limited to: (1) protecting and restoring healthy river and riparian ecosystems on the Rio Chama and Rio Grande from the outlet of Abiquiu Dam to the San Marcial stream gauge (as described in more detail in item 4 below); (2) protecting native species and restoring aquatic and riparian habitat of such native species, including use of water to inundate the Rio Grande floodplain (to mimic the historic spring floods) to restore and regenerate the Bosque, to create overbanking and backwater habitat for aquatic and riparian species (e.g. the Rio Grande silvery minnow, yellow-billed cuckoo, Southwestern willow flycatcher, New Mexico meadow jumping mouse, etc.); (3) ensuring that the amount and timing of flows in the Rio Chama and Rio Grande mimic the natural hydrograph and maintain the perennial nature of the rivers; and (4) as may be necessary for compliance with the Rio Grande Compact, provided that any water used for such delivery must (a) flow in the channel of the Rio Grande itself; (b) be delivered during the irrigation season in line with the historic hydrograph; and (c) secure a benefit for native species of fish, wildlife and plants.

Amount of Use, Other: 30,000 acre-feet of storage per year.

3. COUNTY WHERE WATER RIGHT WILL BE USED

The water will be used in Rio Arriba, Los Alamos, Santa Fe, Sandoval, Bernalillo, Valencia and Socorro counties.

4. POINTS OF DIVERSION (CONTROL OVER NON-CONSUMPTIVE USE RIGHT)

The Abiquiu Environmental Pool is 30,000 acre-feet of storage space in Abiquiu Reservoir. See Exhibit D for Abiquiu Storage Agreement. The point of diversion for Abiquiu Reservoir is USGS stream gauge 08286500 (Rio Chama above Abiquiu Reservoir, NM), which is located at latitude 36°19'07.76"; longitude 106°35'58.31" (NAD83). See the maps attached as Exhibits B and C. Water released from the Environmental Pool will be used for instream purposes (as described in our companion application for an instream flow permit) from the outlet of Abiquiu Reservoir to the USGS stream gauge at San Marcial as described below:

(1) Rio Chama below Abiquiu Dam, NM (USGS 08287000). The gauge is located at latitude 36°14'14"; longitude 106°25'02.7" (NAD83) in Rio Arriba County, New Mexico.

(2) Rio Grande Floodway at San Marcial, NM (USGS 08358400). The gauge is located at latitude 33°40'44.7"; longitude 106°59'49.2" (NAD 83) in Socorro County, New Mexico.

5. PLACE OF USE

The water stored in the Abiquiu Environmental Pool will be released to support the instream flow right sought in Guardians' companion application (filed simultaneously with this application). The place of use of the stored water for instream uses is depicted in the maps attached as Exhibits B and C, and includes:

- (1) the channel of the Rio Chama from the outlet of Abiquiu Dam (described in item 4, above) to the confluence of the Rio Chama and the Rio Grande in Rio Arriba County, NM;
- (2) the channel of the Rio Grande from its confluence with the Rio Chama to Cochiti Dam (located at latitude 35°37'04.8"; longitude 106°19'26.2" in Sandoval County, NM);
- (3) the channel of the Rio Grande from the outlet of Cochiti Dam to the stream gauge at San Marcial (described in item 4 above); and
- (4) the active floodplain of the Rio Grande from Cochiti Dam to San Marcial.

5d and e. The place of use for water stored in the Abiquiu Environmental Pool will be released to provide instream uses in the channel and active floodplain of the Rio Chama and the Rio Grande located in the following PLSS Township and Ranges:

Township	Range
T23N	R5E
T23N	R6E
T23N	R7E
T22N	R7E
T19N	R8E
T19N	R7E
T16N	R5E
T14N	R5E
T14N	R4E
T13N	R3E
T11N	R2E
T10N	R2E
T10N	R3E
T9N	R3E
T8N	R3E

5g. The place of use for water stored in the Abiquiu Environmental Pool will be released to provide instream uses in the channel and active floodplain of the Rio Chama and the Rio Grande located in the following land grants:

Albuquerque
Angostura
Angostura/San Felipe Pueblo
Bartolome Sanchez
Belen
Belen/Casa Colorado

Belen/Sevilleta
Bernalillo or Felipe Gutierrez
Black Mesa
Bosque del Apache
Caja del Rio
Cochiti Pueblo
Cochiti Pueblo/La Majada
Cochiti Pueblo/Santo Domingo Pueblo
El Ranchito
El Ranchito/San Felipe Pueblo
Elena Gallegos
Gutierrez and Sedillo
Isleta Pueblo
Juan Jose Lobato
La Majada
La Majada/Caja del Rio
Lo de Padilla
Nicolas Duran De Chavez
Pajarito
Pedro Armendariz No. 33
Pedro Armendariz No. 34
Polvadera/Juan Jose Lobato
Ramon Vigil
San Clemente
San Felipe Pueblo
San Felipe Pueblo/Santa Rosa de Cubero
San Felipe Pueblo/Santo Domingo & San Felipe Pueblos
San Ildefonso Pueblo
San Juan Pueblo
Sandia Pueblo
Santa Clara Pueblo
Santa Cruz
Santo Domingo & San Felipe Pueblo
Santo Domingo Pueblo
Santo Domingo Pueblo/Santo Domingo & San Felipe Pueblo
Sevilleta
Tome
Town of Alameda
Town of Alameda/Sandia Pueblo
Town of Atrisco
Town of Socorro

6. ADDITIONAL STATEMENTS OR EXPLANATIONS

WildEarth Guardians understands that the State Engineer has determined based on the existing water rights and permits issued for the Rio Grande that there is no unappropriated water. However, the State Engineer has assumed that the Middle Rio Grande Conservancy District will be able to

prove beneficial use of all the water claimed in Permit Nos. 0620 and 1690. Reported data by the State and others suggests that the District has not and will not be able to irrigate the claimed acreage and/or store the full amount of water claimed in the permits.

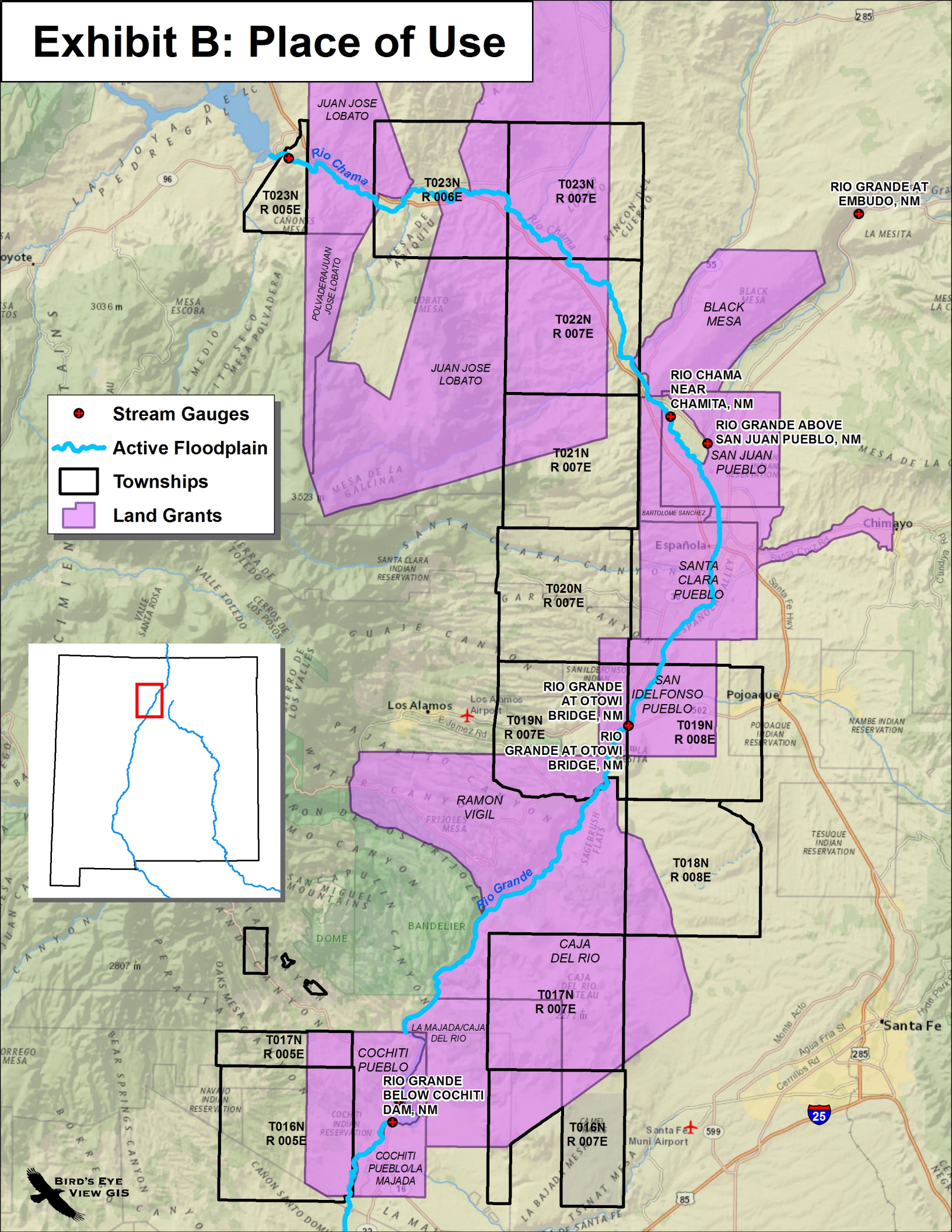
The State Engineer has a mandatory statutory duty to compel proof of beneficial use or cancel the permits. NMAC § 19.26.2.13(C). In addition to this application, WildEarth Guardians today will file a mandamus action against the State Engineer seeking to compel cancellation of Permit Nos. 0620 and 1690, or in the alternative, a date certain that proof of beneficial use will be filed for the permits. The result of this mandamus action could be cancellation of the permits or completion of proof of beneficial use and the issuance of a license by the State Engineer for the amount of water actually put to beneficial use under Permit Nos. 0620 and 1690. In either of these circumstances, water may become available for appropriation for beneficial use.





WildEarth Guardians files this application seeking a permit to store 30,000 acre-feet of storage in Abiquiu Reservoir for later release for instream uses.¹ The storage for instream use would (as described in more detail in Item 2 above) serve to help remedy the environmental challenges created by the existing system of water management, including, but not limited to: 1) the narrowing of the historic floodplain; 2) encroachment of the floodplain by invasive species such as salt cedar and Russian olive; 3) the loss of sediment transport due to flood control and diversion dams; 4) loss of connectivity between aquatic habitats; and 5) a growing list of threatened and endangered species. Furthermore, based on the predicted severe impacts of climate change on flows in the Rio Grande, future environmental needs may not be met without a dedicated storage and instream right to the river and its ecosystem.

This appropriation will provide benefits far beyond those to the applicant and is in the public interest. The Rio Grande's water belongs to the public and is held in trust by the State for the benefit of New Mexico's citizens. *See* N.M. Const. Art. XVI § 2; *Sanders-Reed v. Martinez*, 2015-NMCA-063 ¶ 15, 350 P.3d 1221 (holding that Art. XX § 21 “recognizes that a public trust duty exists for the protection of New Mexico’s natural resources . . . for the benefit of the people of this state.”). The trust obligation of the state to its citizens extends to finding solutions to the reduced flows associated with water use and climate change and developing solutions that will serve to maintain the river that serves as the lifeblood of the region. The appropriation will provide flexibility in water management in the region and include benefits to the State and other water users for meeting their obligations to deliver water to protect and recover endangered species and for Rio Grande Compact compliance purposes.

¹ Guardians also filed a related companion application (simultaneously with this application) for permit to appropriate all the unappropriated water in the Rio Grande for instream uses. We view these permits as complimentary and should be read together.

Exhibit B: Place of Use



-  **Stream Gauges**
-  **Active Floodplain**
-  **Townships**
-  **Land Grants**

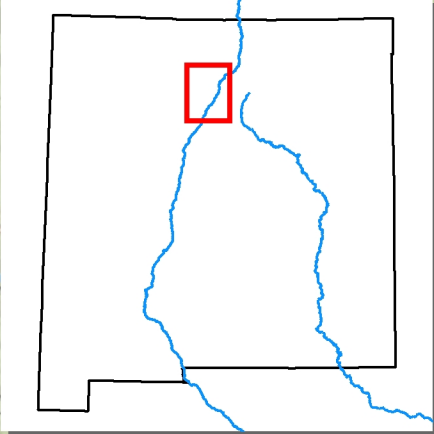
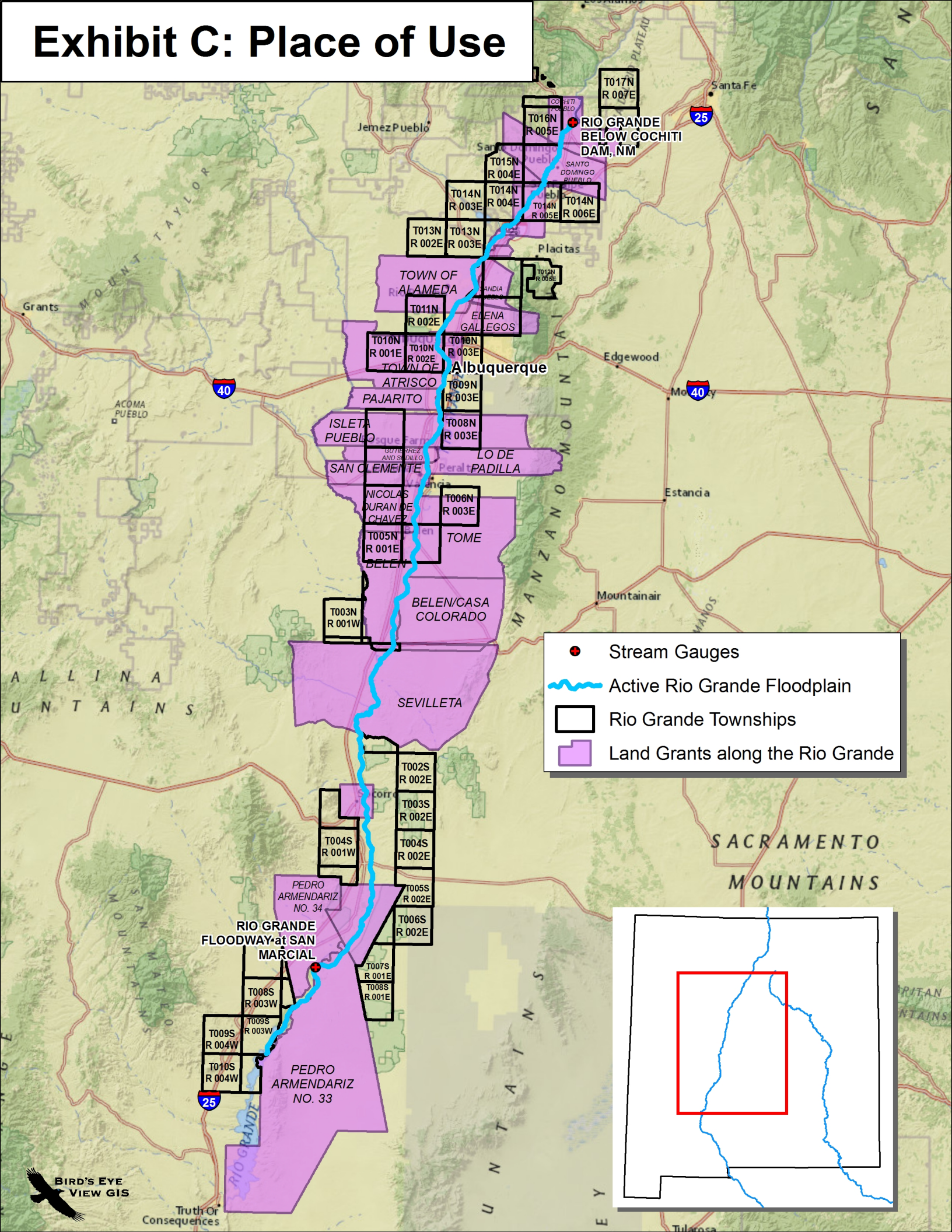
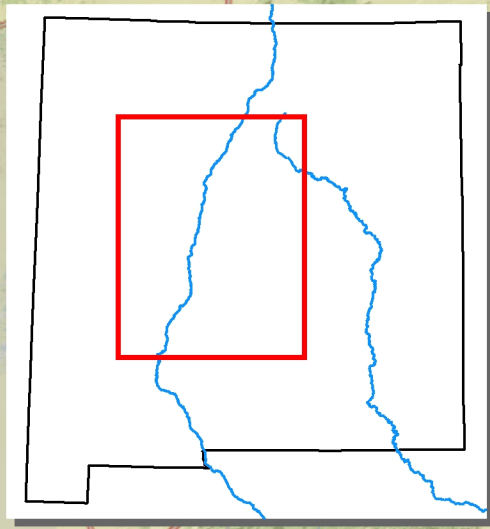


Exhibit C: Place of Use



● Stream Gauges
~ Active Rio Grande Floodplain
 Rio Grande Townships
 Land Grants along the Rio Grande



**AGREEMENT BETWEEN THE RIO GRANDE SILVERY MINNOW
PLAINTIFFS AND THE ALBUQUERQUE BERNALILLO COUNTY WATER
UTILITY AUTHORITY TO SUBALLOT STORAGE SPACE IN ABIQUIU
RESERVOIR**

This Agreement to suballot Abiquiu Reservoir Storage Space between the Albuquerque Bernalillo County Water Utility Authority and the plaintiffs in Rio Grande Silvery Minnow v. Keys, 99CV 1320JP/RHS (DNM) ("Plaintiffs") (collectively "Parties"), is made this 16th day of August, 2013.

WHEREAS, the Albuquerque Bernalillo County Water Utility Authority ("Water Authority") is the successor in interest and rights of the City of Albuquerque under Contract No. DACW47-86-C-0009 dated March 20, 1986 with the U.S. Army Corps of Engineers for water storage space in Abiquiu Reservoir (the "Contract"); and

WHEREAS, WildEarth Guardians is the successor in interest and rights of plaintiff Forest Guardians pursuant to the Certificate of Amendment of WildEarth Guardians No. 3343423 dated February 12, 2008.

WHEREAS, the Water Authority has the right to store up to 170,900 acre-feet of San Juan-Chama Project Water under its Contract and the ability to suballot storage space; and

WHEREAS, the U.S. Army Corps of Engineers ("Corps") is not a party to this agreement and incurs no obligation under it and has no discretionary authority other than that specified in the Contract;

WHEREAS, the Water Authority has implemented the San Juan-Chama Drinking Water Project to divert and fully utilize the Water Authority's contracted share of San Juan-Chama water in Abiquiu Reservoir; and

WHEREAS, the Water Authority and the Plaintiffs negotiated a settlement on claims related to the Rio Grande Silvery Minnow litigation (99 CV 1320 JP/RHS (DNM)); and

WHEREAS, the Settlement Agreement provides for the Water Authority to suballot at no charge up to 30,000 acre-feet of storage space in Abiquiu Reservoir for use as an Environmental Pool for the storage of San Juan-Chama water acquired by Plaintiffs ("Conservation Water") through lease, purchase, or donation; and

WHEREAS, the Settlement Agreement states that that the storage space would become available within twelve (12) months, or as otherwise agreed to by the Parties to this Agreement, after commencement of full diversions by the Water Authority for the Drinking Water Project; and

WHEREAS, the Water Authority has and continues to provide storage space in Abiquiu Reservoir for Environmental Purposes under an existing suballotment with the Bureau of Reclamation as part of the Supplemental Water Program; and

WHEREAS, the Water Authority began full diversions in June 2012 and the Parties have agreed that storage space is available at Abiquiu Reservoir; and

WHEREAS, the purpose of the Environmental Pool shall be to benefit the Rio Grande, Bosque habitat and species protected under the Endangered Species Act in a manner consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program; and

WHEREAS, the Water Authority and the Plaintiffs wish to enter into this Agreement to allow the Plaintiffs to suballot a portion of the Authority's storage space subject to Corps approval.

NOW THEREFORE, upon the mutual consideration described by this Agreement and the Settlement Agreement, including all covenants and promises contained herein, the adequacy of which are acknowledged by the Parties, the Water Authority and the Plaintiffs agree as follows:

1. The Water Authority agrees to provide up to 30,000 acre-feet of storage space in Abiquiu Reservoir at no charge to the Plaintiffs to benefit species protected under the Endangered Species Act consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program.
2. The term of the suballotment shall be 10 years and if the Plaintiffs wish to renew the suballotment agreement the Water Authority shall renew it, however such renewal is subject to Corps approval.
3. The Plaintiffs agree to provide written notification to the Water Authority when Conservation Water is to be delivered to Abiquiu Reservoir for storage under the terms of this Agreement. When the Water Authority receives notification from the Plaintiffs, the Water Authority will notify the Corps when Conservation Water is to be delivered.
4. The Parties agree that the 30,000 acre-feet of suballotted storage space referred to in this agreement is governed by the following provisions:
 - a. The provision of storage space for the Environmental Pool shall be subject to any requisite regulatory approvals and the Plaintiffs agree to work with the Water Authority to obtain the necessary regulatory permits for storage of Conservation Water.
 - b. The Water Authority shall retain title authority regarding its property and flowage easements interests, and jurisdiction over its Contract and such

storage space and no rights are given to Plaintiffs as to such storage space or the Water Authority's property rights or operations other than as specifically set forth in this Agreement.

- c. In accordance with the Parties' Settlement Agreement, the Water Authority shall not be obligated to provide space for the Environmental Pool during any time where space is unavailable for all or part of the Environmental Pool due to factors or conditions outside the control of the Water Authority, and nothing in this Agreement shall allow operation of Abiquiu Reservoir in a manner which would otherwise impair or impede the Water Authority's ability to store and release water for Water Authority purposes.
 - d. Conservation Water acquired by Plaintiffs through lease, purchase, or donation shall be released from the Environmental Pool to benefit species listed under the Endangered Species Act consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program. The Water Authority will notify the Corps of Conservation Water releases to be made from the Environmental Pool. Conservation Water releases from the Environmental Pool will be made in accordance with Plaintiffs instructions to the Water Authority.
 - e. The Water Authority reserves the right to utilize for any purpose whatever space is available from the Environmental Pool that cannot be used by the Plaintiffs in a given year. That space shall be computed as the difference between 30,000 acre-feet and that amount of Conservation Water from any source that is available to be stored in a given year ("Available Space"). The Water Authority agrees that such temporary storage shall be not be utilized so as to impair the ability to store 30,000 acre-feet of Conservation Water in subsequent years in the Environmental Pool.
 - f. The Water Authority has the right to use any Available Space in the Environmental Pool for storage of Conservation or Supplemental Water it may hold or acquire or to make such space available to third parties other than Plaintiffs through suballotments for purposes of storing Conservation Water to be used in accordance with this Agreement.
3. Should the Parties agree that this Agreement is no longer needed because storage space for an Environmental Pool has been made available in other reservoirs or for other reasons, the parties agree this Agreement can be terminated by providing one year's advanced notice of termination in writing.
 4. The water stored under this agreement for the Plaintiffs in the Environmental Pool shall suffer evaporative losses in proportion to the total amount stored.

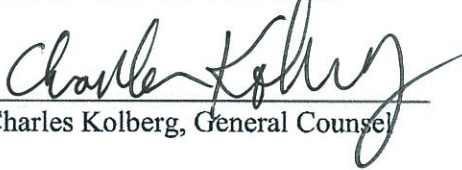
IN WITNESS WHEREOF, the Plaintiffs and the Water Authority have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date written above.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**



Mark S. Sanchez, Executive Director
Albuquerque Bernalillo County Water Utility Authority

APPROVED AS TO FORM:



Charles Kolberg, General Counsel

PLAINTIFFS


John C. Horning (Jun 28, 2013)

By _____
John C. Horning, Executive Director
WildEarth Guardians (f/k/a Forest Guardians)


Kevin Bixby (Jun 28, 2013)

By _____
Kevin Bixby, Executive Director
Southwest Environmental Center


Judy Liddell (Jun 29, 2013)

By _____
Judy Liddell, President
New Mexico Audubon Council


Susan Lunden (Jul 9, 2013)

By _____
Susan Lunden, Chief Operating Officer
National Audubon Society

By  _____
John Buchser, New Mexico Chapter Chair
Sierra Club


Michael Senatore (Jun 28, 2013)

By _____
Michael Senatore, Vice President, Conservation Law
Defenders of Wildlife

Acknowledged by:

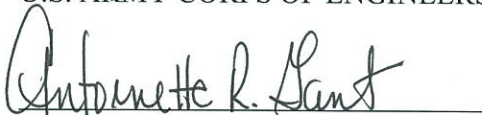
UNITED STATES OF AMERICA



Mike Hamman, P.E.
Area Manager, Albuquerque Area Office
Bureau of Reclamation

Approved by:

U.S. ARMY CORPS OF ENGINEERS



Antoinette R. Gant
Lieutenant Colonel, U.S. Army
District Commander

File No.



NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO APPROPRIATE



(check applicable boxes):

For fees, see State Engineer website: <http://www.ose.state.nm.us/>

- Application to Appropriate Surface Water (72-5-1)
- Application to Appropriate Groundwater (72-12-3)

Temporary Request - Requested Start Date:

Requested End Date:

1. APPLICANT(S)

Name: WildEarth Guardians	Name:
Contact or Agent: Jen Pelz or Carol Norton <input type="checkbox"/> check here if Agent	Contact or Agent: <input type="checkbox"/> check here if Agent
Mailing Address: 516 Alto Street	Mailing Address:
City: Santa Fe	City:
State: NM Zip Code: 87501	State: Zip Code:
Phone: 303-884-2702 <input type="checkbox"/> Home <input checked="" type="checkbox"/> Cell Phone (Work): Same	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work): Same
E-mail (optional): jpelz@wildearthguardians.org	E-mail (optional):

2. PURPOSE OF USE AND AMOUNT OF WATER

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Other Use (specify): <u>See Exhibit A</u>	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.
Describe a specific use If applicable (i.e. sand & gravel washing, dairy etc): <u>stream use</u>	Diversion: <u>0</u> Consumptive Use: <u>0</u> Other (include units): <u>0</u>

3. COUNTY WHERE WATER RIGHT WILL BE USED

See Exhibit A

6-40273

FOR OSE INTERNAL USE

Application for Permit, Form wr-05, Rev 6/14/12

MAR 21 AM 11:11
OFFICE OF STATE ENGINEER
SANTA FE, NEW MEXICO

File No.:	Trn No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
LOG Due Date:	PBU Due Date:	

4. POINT(S) OF DIVERSION (POD)

<input checked="" type="checkbox"/> Surface POD OR <input type="checkbox"/> Ground Water POD (Well)			
Name of ditch, acequia, or spring:			
Stream or water course: Rio Grande and Rio Chama		Tributary of:	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84). District II (Roswell) and District VII (Cimarron) customers, provide a PLSS location in addition to above.			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone		<input type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input type="checkbox"/> Zone 13N	
<input checked="" type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 th of second)			
POD Number:	X or Easting or Longitude:	Y or Northing or Latitude:	Provide if known: -Public Land Survey System (PLSS) (<i>Quarters or Halves , Section, Township, Range</i>) OR - Hydrographic Survey Map & Tract; OR - Lot, Block & Subdivision; OR - Land Grant Name
See Exhibit A			
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional POD descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, how many _____			
Point of Diversion is on Land Owned by: N/A			
Other description relating point of diversion to common landmarks, streets, or other: See Exhibit A			
Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.			
Approximate depth of well (feet):		Outside diameter of well casing (inches):	
Driller Name:		Driller License Number:	

File No.:	Trn No.:
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5. PLACE(S) OF USE

List each individually

(not applicable)

a. <u> N/A </u> Acres of Irrigated Land Described as Follows (if applicable):				
b. Legally Described By: <input type="checkbox"/> Public Land Survey System (PLSS) <input type="checkbox"/> Hydrographic Survey Report or Map <input type="checkbox"/> Irrigation or Conservation District Map <input type="checkbox"/> Subdivision	c. PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	d. PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	e. PLSS Range	f. Acres
PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey or District, <u>and/or</u> Name and County of Subdivision				
See Exhibit A				
g. Other description relating place of use to common landmarks, streets, or other: See Exhibit A				
h. Place of use is on land owned by (required): N/A				
i. Are there other sources of water for these lands? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:				

Note: If on Federal or State Land, please provide copy of lease.

File No.:	Trn No.:
-----------	----------

6. ADDITIONAL STATEMENTS OR EXPLANATIONS

See Exhibit A

ACKNOWLEDGEMENT

I, We (name of applicant(s)), Carol Norton, Associate Director, WildEarth Guardians
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Carol Norton
Applicant Signature

Applicant Signature

ACTION OF THE STATE ENGINEER

This application is:

approved partially approved denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this _____ day of _____ 20 _____ , for the State Engineer,

_____, State Engineer

By: _____
Signature Print

Title: _____
Print

2013 MAR 21 AM 10:00
OFFICE OF STATE ENGINEER
SANTA FE, NEW MEXICO

FOR USE INTERNAL USE Application for Permit, Form wr-05
File No.: _____ Trn No.: _____

EXHIBIT A

2. PURPOSE OF USE AND AMOUNT OF WATER

Purpose of Use: Instream uses including, but not limited to: (1) protecting and restoring healthy river and riparian ecosystems on the Rio Chama and Rio Grande from the outlet of Abiquiu Dam to the San Marcial stream gauge (as described in more detail in item 4 below); (2) protecting native species and restoring aquatic and riparian habitat of such native species, including use of water to inundate the Rio Grande floodplain (to mimic the historic spring floods) to restore and regenerate the Bosque, to create overbanking and backwater habitat for aquatic and riparian species (e.g. the Rio Grande silvery minnow, yellow-billed cuckoo, Southwestern willow flycatcher, New Mexico meadow jumping mouse, etc.); (3) ensuring that the amount and timing of flows in the Rio Chama and Rio Grande mimic the natural hydrograph and maintain the perennial nature of the rivers; and (4) as may be necessary for compliance with the Rio Grande Compact, provided that any water used for such delivery must (a) flow in the channel of the Rio Grande itself; (b) be delivered during the irrigation season in line with the historic hydrograph; and (c) secure a benefit for native species of fish, wildlife and plants.

Amount of Use, Other: Non-consumptive use of all the unappropriated water in the Rio Grande, including water flowing from the Rio Chama and other tributaries to the Rio Grande, and including without limitation flood flows, surface runoff, seepage, springs, seeps and other inflows into the Rio Grande and Rio Chama.

3. COUNTY WHERE WATER RIGHT WILL BE USED

The water will be used in Rio Arriba, Los Alamos, Santa Fe, Sandoval, Bernalillo, Valencia and Socorro counties.

4. POINTS OF DIVERSION (CONTROL OVER NON-CONSUMPTIVE USE RIGHT)

WildEarth Guardians seeks to non-consumptively use all the unappropriated water in the Rio Grande, in Rio Arriba, Los Alamos, Santa Fe, Sandoval, Bernalillo, Valencia and Socorro counties, to create an instream flow right from the outlet of Abiquiu Reservoir to the USGS stream gauge at San Marcial, as depicted in the maps attached to this application as Exhibits B and C, as described more fully in Item 5. This includes water flowing in and from the Rio Chama and other tributaries to the Rio Chama and Rio Grande, and including without limitation flood flows, surface runoff, seepage, springs, seeps and other inflows into the Rio Chama and Rio Grande.

WildEarth Guardians will exercise dominion and control over the water to be used as proposed in this application. The control is exercised by WildEarth Guardians' management of the water stored in the environmental storage pool in Abiquiu Reservoir. The agreement between WildEarth Guardians and the Albuquerque Bernalillo County Water Utility Authority is attached as Exhibit D. The location of the dam is more specifically described as 36°14'14"; longitude 106°25'02.7" (NAD83) in Rio Arriba County, New Mexico.

In addition, WildEarth Guardians will monitor the following stream flow gauges to demonstrate its control of the water use:

(1) Rio Chama below Abiquiu Dam, NM (USGS 08287000). The gauge is located at latitude 36°14'14"; longitude 106°25'02.7" (NAD83) in Rio Arriba County, New Mexico.

(2) Rio Chama near Chamita, NM (USGS 08290000). The gauge is located at latitude 36°04'24.8"; longitude 106°06'42.1" (NAD83) in Rio Arriba County, New Mexico.

(3) Rio Grande at Otowi Bridge, NM (USGS 08313000). The gauge is located at latitude 35°52'28.2"; longitude 106°08'32.8" (NAD83) in Santa Fe County, New Mexico.

(4) Rio Grande below Cochiti Dam, NM (USGS 08317400). The gauge is located at latitude 35°37'04.8"; longitude 106°19'26.2" (NAD83) in Sandoval County, New Mexico.

(5) Rio Grande Floodway at San Marcial, NM (USGS 08358400). The gauge is located at latitude 33°40'44.7"; longitude 106°59'49.2" (NAD 83) in Socorro County, New Mexico.

5. PLACE OF USE

The place of use for the instream flow right is depicted in the maps attached as Exhibits B and C, and includes:

- (1) the channel of the Rio Chama from the outlet of Abiquiu Dam (described in item 4, above) to the confluence of the Rio Chama and the Rio Grande in Rio Arriba County, NM;
- (2) the channel of the Rio Grande from its confluence with the Rio Chama to Cochiti Dam (located at latitude 35°37'04.8"; longitude 106°19'26.2" in Sandoval County, NM);
- (3) the channel of the Rio Grande from the outlet of Cochiti Dam to the stream gauge at San Marcial (described in item 4 above); and
- (4) the active floodplain of the Rio Grande from Cochiti Dam to San Marcial.

5d and e. The place of use for the instream flow includes the channel and active floodplain of the Rio Chama and the Rio Grande located in the following PLSS Township and Ranges:

Township	Range
T23N	R5E
T23N	R6E
T23N	R7E
T22N	R7E
T19N	R8E
T19N	R7E
T16N	R5E
T14N	R5E
T14N	R4E
T13N	R3E
T11N	R2E
T10N	R2E
T10N	R3E
T9N	R3E

T8N	R3E
-----	-----

5g. The place of use for the instream flow includes the channel and the active floodplain of the Rio Chama and the Rio Grande located in the following land grants:

Albuquerque
Angostura
Angostura/San Felipe Pueblo
Bartolome Sanchez
Belen
Belen/Casa Colorado
Belen/Sevilleta
Bernalillo or Felipe Gutierrez
Black Mesa
Bosque del Apache
Caja del Rio
Cochiti Pueblo
Cochiti Pueblo/La Majada
Cochiti Pueblo/Santo Domingo Pueblo
El Ranchito
El Ranchito/San Felipe Pueblo
Elena Gallegos
Gutierrez and Sedillo
Isleta Pueblo
Juan Jose Lobato
La Majada
La Majada/Caja del Rio
Lo de Padilla
Nicolas Duran De Chavez
Pajarito
Pedro Armendariz No. 33
Pedro Armendariz No. 34
Polvadera/Juan Jose Lobato
Ramon Vigil
San Clemente
San Felipe Pueblo
San Felipe Pueblo/Santa Rosa de Cubero
San Felipe Pueblo/Santo Domingo & San Felipe Pueblos
San Ildefonso Pueblo
San Juan Pueblo
Sandia Pueblo
Santa Clara Pueblo
Santa Cruz
Santo Domingo & San Felipe Pueblo
Santo Domingo Pueblo
Santo Domingo Pueblo/Santo Domingo & San Felipe Pueblo

Sevilleta
Tome
Town of Alameda
Town of Alameda/Sandia Pueblo
Town of Atrisco
Town of Socorro

6. ADDITIONAL STATEMENTS OR EXPLANATIONS

WildEarth Guardians understands that the State Engineer has determined based on the existing water rights and permits issued for Rio Grande that there is no unappropriated water. However, the State Engineer has assumed that the Middle Rio Grande Conservancy District will be able to prove beneficial use of all the water claimed in Permit Nos. 0620 and 1690. Reported data by the State and others suggests that the District has not and will not be able to irrigate the claimed acreage and/or store the full amount of water claimed in the permits.

The State Engineer has a mandatory statutory duty to compel proof of beneficial use or cancel the permits. NMAC § 19.26.2.13(C). In addition to this application, WildEarth Guardians today will file a mandamus action against the State Engineer seeking to compel cancellation of Permit Nos. 0620 and 1690, or in the alternative, a date certain that proof of beneficial use will be filed for the permits. The result of this mandamus action could be cancellation of the permits or completion of proof of beneficial use and the issuance of a license by the State Engineer for the amount of water actually put to beneficial use under Permit Nos. 0620 and 1690. In either of these circumstances, water may become available for appropriation for beneficial use.

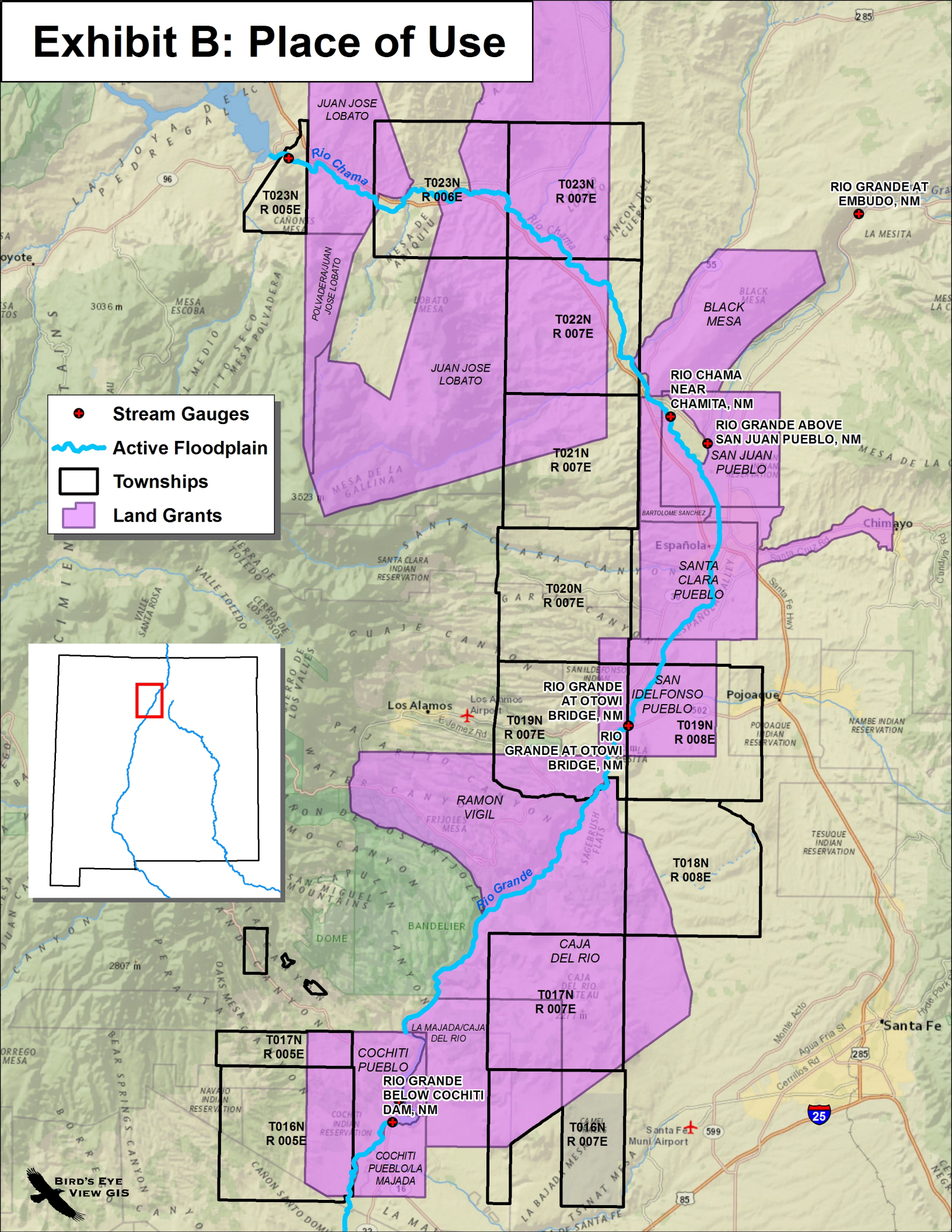
WildEarth Guardians files this application seeking any and all the unappropriated water in the Rio Grande for instream flow purposes.¹ This unappropriated water would (as described in more detail in Item 2 above) serve to help remedy the environmental challenges created by the existing system of water management, including, but not limited to: 1) the narrowing of the historic floodplain; 2) encroachment of the floodplain by invasive species such as salt cedar and Russian olive; 3) the loss of sediment transport due to flood control and diversion dams; 4) loss of connectivity between aquatic habitats; and 5) a growing list of threatened and endangered species. Furthermore, based on the predicted severe impacts of climate change on flows in the Rio Grande, future environmental needs may not be met without a dedicated right to the river and its ecosystem.





This appropriation will provide benefits far beyond those to the applicant and is in the public interest. The Rio Grande's water belongs to the public and is held in trust by the State for the benefit of New Mexico's citizens. *See* N.M. Const. Art. XVI § 2; *Sanders-Reed v. Martinez*, 2015-NMCA-063 ¶ 15, 350 P.3d 1221 (holding that Art. XX § 21 “recognizes that a public trust duty exists for the protection of New Mexico's natural resources . . . for the benefit of the people of this state.”). The trust obligation of the state to its citizens extends to finding solutions to the reduced flows associated with water use and climate change and developing solutions that will serve to maintain the river that serves as the lifeblood of the region. The appropriation will provide flexibility

¹ Guardians also filed a related companion application (simultaneously with this application) for permit to appropriate surface water for storage in the 30,000 acre-foot environmental pool in Abiquiu Reservoir. We view these permits as complimentary and should be read together.

in water management in the region and include benefits to the State and other water users for meeting their obligations to deliver water to protect and recover endangered species and for Rio Grande Compact compliance purposes.

Exhibit B: Place of Use



-  Stream Gauges
-  Active Floodplain
-  Townships
-  Land Grants

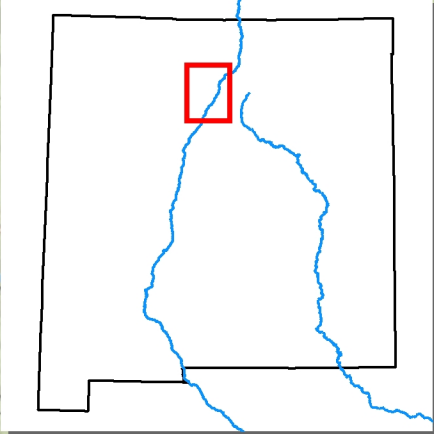
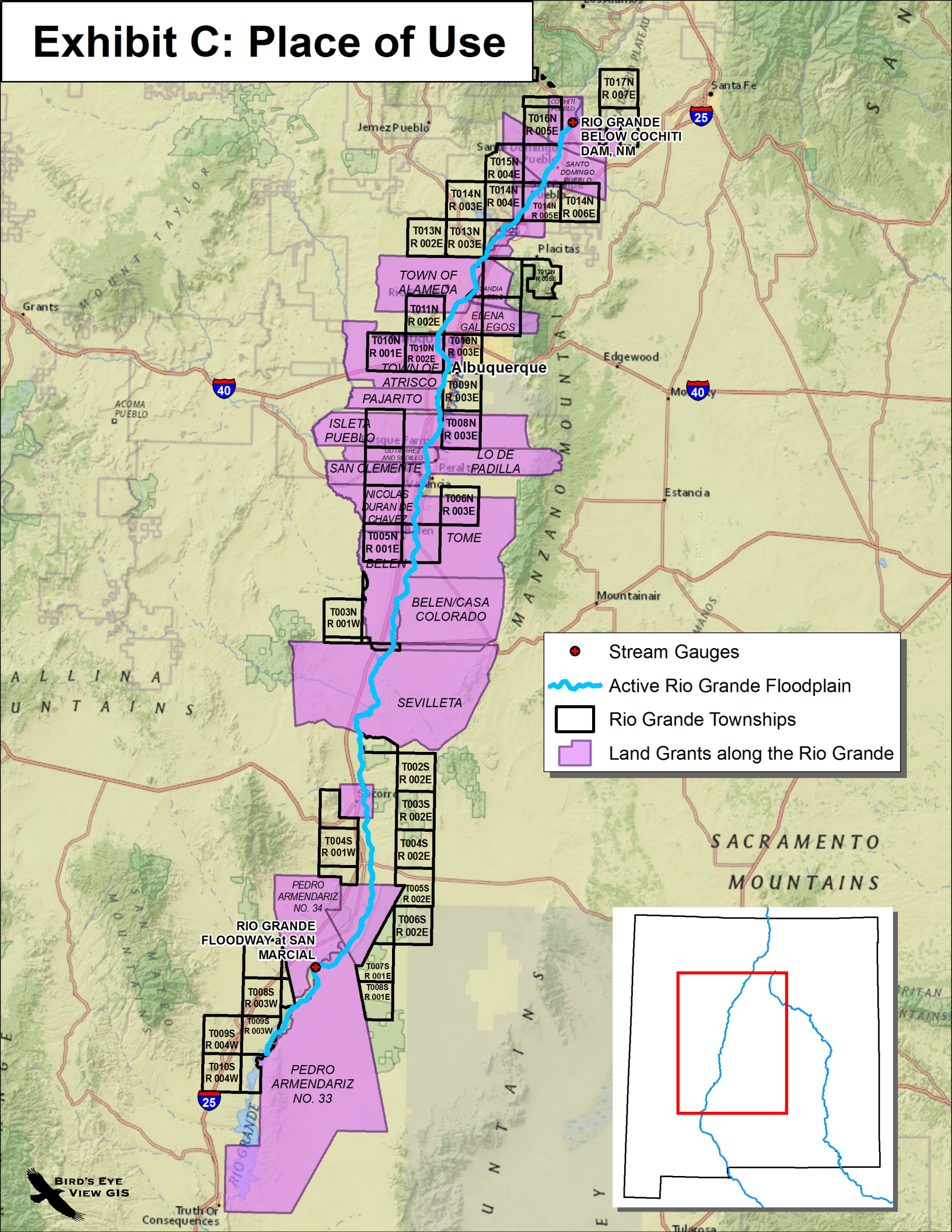
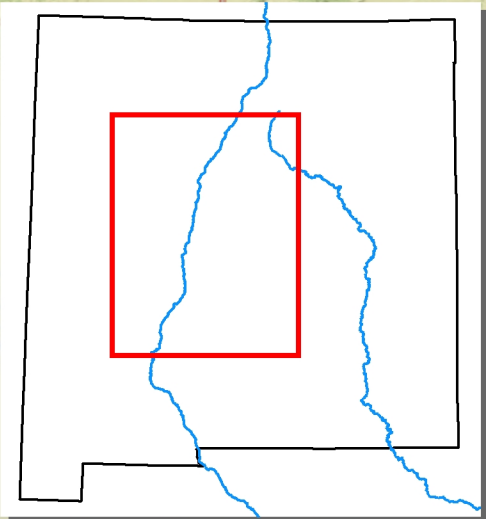


Exhibit C: Place of Use



- Stream Gauges
- ~ Active Rio Grande Floodplain
- Rio Grande Townships
- Land Grants along the Rio Grande



Truth Or Consequences

**AGREEMENT BETWEEN THE RIO GRANDE SILVERY MINNOW
PLAINTIFFS AND THE ALBUQUERQUE BERNALILLO COUNTY WATER
UTILITY AUTHORITY TO SUBALLOT STORAGE SPACE IN ABIQUIU
RESERVOIR**

This Agreement to suballot Abiquiu Reservoir Storage Space between the Albuquerque Bernalillo County Water Utility Authority and the plaintiffs in Rio Grande Silvery Minnow v. Keys, 99CV 1320JP/RHS (DNM) (“Plaintiffs”) (collectively “Parties”), is made this 16th day of August, 2013.

WHEREAS, the Albuquerque Bernalillo County Water Utility Authority (“Water Authority”) is the successor in interest and rights of the City of Albuquerque under Contract No. DACW47-86-C-0009 dated March 20, 1986 with the U.S. Army Corps of Engineers for water storage space in Abiquiu Reservoir (the “Contract”); and

WHEREAS, WildEarth Guardians is the successor in interest and rights of plaintiff Forest Guardians pursuant to the Certificate of Amendment of WildEarth Guardians No. 3343423 dated February 12, 2008.

WHEREAS, the Water Authority has the right to store up to 170,900 acre-feet of San Juan-Chama Project Water under its Contract and the ability to suballot storage space; and

WHEREAS, the U.S. Army Corps of Engineers (“Corps”) is not a party to this agreement and incurs no obligation under it and has no discretionary authority other than that specified in the Contract;

WHEREAS, the Water Authority has implemented the San Juan-Chama Drinking Water Project to divert and fully utilize the Water Authority’s contracted share of San Juan-Chama water in Abiquiu Reservoir; and

WHEREAS, the Water Authority and the Plaintiffs negotiated a settlement on claims related to the Rio Grande Silvery Minnow litigation (99 CV 1320 JP/RHS (DNM)); and

WHEREAS, the Settlement Agreement provides for the Water Authority to suballot at no charge up to 30,000 acre-feet of storage space in Abiquiu Reservoir for use as an Environmental Pool for the storage of San Juan-Chama water acquired by Plaintiffs (“Conservation Water”) through lease, purchase, or donation; and

WHEREAS, the Settlement Agreement states that that the storage space would become available within twelve (12) months, or as otherwise agreed to by the Parties to this Agreement, after commencement of full diversions by the Water Authority for the Drinking Water Project; and

WHEREAS, the Water Authority has and continues to provide storage space in Abiquiu Reservoir for Environmental Purposes under an existing suballotment with the Bureau of Reclamation as part of the Supplemental Water Program; and

WHEREAS, the Water Authority began full diversions in June 2012 and the Parties have agreed that storage space is available at Abiquiu Reservoir; and

WHEREAS, the purpose of the Environmental Pool shall be to benefit the Rio Grande, Bosque habitat and species protected under the Endangered Species Act in a manner consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program; and

WHEREAS, the Water Authority and the Plaintiffs wish to enter into this Agreement to allow the Plaintiffs to suballot a portion of the Authority's storage space subject to Corps approval.

NOW THEREFORE, upon the mutual consideration described by this Agreement and the Settlement Agreement, including all covenants and promises contained herein, the adequacy of which are acknowledged by the Parties, the Water Authority and the Plaintiffs agree as follows:

1. The Water Authority agrees to provide up to 30,000 acre-feet of storage space in Abiquiu Reservoir at no charge to the Plaintiffs to benefit species protected under the Endangered Species Act consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program.
2. The term of the suballotment shall be 10 years and if the Plaintiffs wish to renew the suballotment agreement the Water Authority shall renew it, however such renewal is subject to Corps approval.
3. The Plaintiffs agree to provide written notification to the Water Authority when Conservation Water is to be delivered to Abiquiu Reservoir for storage under the terms of this Agreement. When the Water Authority receives notification from the Plaintiffs, the Water Authority will notify the Corps when Conservation Water is to be delivered.
4. The Parties agree that the 30,000 acre-feet of suballotted storage space referred to in this agreement is governed by the following provisions:
 - a. The provision of storage space for the Environmental Pool shall be subject to any requisite regulatory approvals and the Plaintiffs agree to work with the Water Authority to obtain the necessary regulatory permits for storage of Conservation Water.
 - b. The Water Authority shall retain title authority regarding its property and flowage easements interests, and jurisdiction over its Contract and such

storage space and no rights are given to Plaintiffs as to such storage space or the Water Authority's property rights or operations other than as specifically set forth in this Agreement.

- c. In accordance with the Parties' Settlement Agreement, the Water Authority shall not be obligated to provide space for the Environmental Pool during any time where space is unavailable for all or part of the Environmental Pool due to factors or conditions outside the control of the Water Authority, and nothing in this Agreement shall allow operation of Abiquiu Reservoir in a manner which would otherwise impair or impede the Water Authority's ability to store and release water for Water Authority purposes.
 - d. Conservation Water acquired by Plaintiffs through lease, purchase, or donation shall be released from the Environmental Pool to benefit species listed under the Endangered Species Act consistent with the goals of the Middle Rio Grande Endangered Species Collaborative Program. The Water Authority will notify the Corps of Conservation Water releases to be made from the Environmental Pool. Conservation Water releases from the Environmental Pool will be made in accordance with Plaintiffs instructions to the Water Authority.
 - e. The Water Authority reserves the right to utilize for any purpose whatever space is available from the Environmental Pool that cannot be used by the Plaintiffs in a given year. That space shall be computed as the difference between 30,000 acre-feet and that amount of Conservation Water from any source that is available to be stored in a given year ("Available Space"). The Water Authority agrees that such temporary storage shall be not be utilized so as to impair the ability to store 30,000 acre-feet of Conservation Water in subsequent years in the Environmental Pool.
 - f. The Water Authority has the right to use any Available Space in the Environmental Pool for storage of Conservation or Supplemental Water it may hold or acquire or to make such space available to third parties other than Plaintiffs through suballotments for purposes of storing Conservation Water to be used in accordance with this Agreement.
3. Should the Parties agree that this Agreement is no longer needed because storage space for an Environmental Pool has been made available in other reservoirs or for other reasons, the parties agree this Agreement can be terminated by providing one year's advanced notice of termination in writing.
 4. The water stored under this agreement for the Plaintiffs in the Environmental Pool shall suffer evaporative losses in proportion to the total amount stored.

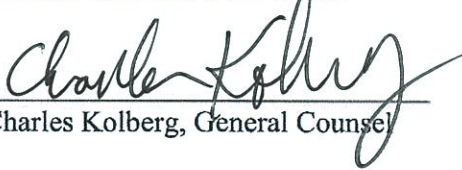
IN WITNESS WHEREOF, the Plaintiffs and the Water Authority have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date written above.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**



Mark S. Sanchez, Executive Director
Albuquerque Bernalillo County Water Utility Authority

APPROVED AS TO FORM:



Charles Kolberg, General Counsel

PLAINTIFFS


John C. Horning (Jun 28, 2013)

By _____
John C. Horning, Executive Director
WildEarth Guardians (f/k/a Forest Guardians)


Kevin Bixby (Jun 28, 2013)

By _____
Kevin Bixby, Executive Director
Southwest Environmental Center


Judy Liddell (Jun 29, 2013)

By _____
Judy Liddell, President
New Mexico Audubon Council


Susan Lunden (Jul 9, 2013)

By _____
Susan Lunden, Chief Operating Officer
National Audubon Society

By  _____
John Buchser, New Mexico Chapter Chair
Sierra Club


Michael Senatore (Jun 28, 2013)

By _____
Michael Senatore, Vice President, Conservation Law
Defenders of Wildlife

Acknowledged by:

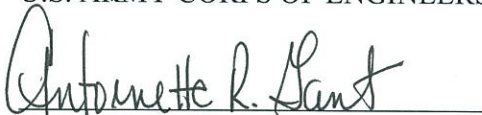
UNITED STATES OF AMERICA

A handwritten signature in black ink, appearing to read "Mike Hamman", written over a horizontal line.

Mike Hamman, P.E.
Area Manager, Albuquerque Area Office
Bureau of Reclamation

Approved by:

U.S. ARMY CORPS OF ENGINEERS

A handwritten signature in black ink, appearing to read "Antoinette R. Gant", written over a horizontal line.

Antoinette R. Gant
Lieutenant Colonel, U.S. Army
District Commander