

NM-CAP JPA

Categories:

Membership:

-No prerequisites for membership: **(Introductions)**

- Only needs to be a public agency under the JPA laws of the state.
- No requirements of financial assets, revenue stream, or expertise in managing complex business enterprises.
- No disclosure requirements regarding past financial audits, litigation, and unresolved claims.

-Unknown number of prospective JPA members. **Vb, Intro, Vg**

- Each additional member changes quorum, dilutes voting power of other members.
- Since power to commit rests with a majority of a quorum, which may contain empty pocketed parties who can bind the whole. No protection for large municipalities or counties with assets and population base, whose individual vote is no more valuable than the smallest public district. This also is true for the CAP Entity as it allocates water under **V (X)**.

Unknown cost of NM Unit design, construction, maintenance and repair in perpetuity.

- No business plan
- No analysis of present or future customers
- No analysis of representations that each member will put the water to beneficial use. **III b**
- The CAP entity will be obligated to pay the cost for replacement water which includes the costs of operations, maintenance, replacement and delivery of CAP water to the Indian Community. These costs are unknown, but at present, the value of replacement water is at least \$600 / acre foot, which will create a recurrent reimbursement from the CAP entity of \$6,000,000 for each 10,000 acre feet of water. **III f,b,c**

Unknown sources of repayment. **III f**

- Funding now limited to AWSA allocations. No commitment from ISC or State of New Mexico for any additional funding. Any further allocations from federal or State government is subject to appropriate by legislative bodies. No indication that such funding would ever be available.
- Additional funding for the New Mexico Unit is anticipated to come from sales of water, which must be within Southwest New Mexico. The JPA implies that additional funding can come from issuing revenue bonds and assessments against members, some of whom have no financial resources, or taxes to be imposed on the inhabitants of the member jurisdictions. The JPA does not expressly authorize bonding, taxing, or non-dues assessments, which is required under the Joint Powers Act. **III f**

Obligations of the JPA Entity: **IV a 1**

- Execute a New Mexico Unit Agreement with the Secretary of the Interior, containing at least the provisions of Exhibit 2.48 of the CUFA.
- Commit to design, build operate and maintain the New Mexico Unit,(ie. the

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diversion, storage and transmission construction project) in perpetuity.

III f,b

- Each member's governing board must formally resolve to commit to the beneficial use of AWSA water. (SC and municipalities of mining district provide water to 24,000 of the 29,000 persons in Grant County) **VI**

Warrantees and Representations:

- The signatories warrant and represent that collectively and individually, the constituent parties undertake the planning designing, construction, operation and maintenance of the NM Unit. **III a**

- That each party is committed to beneficially using the water available to New Mexico. (at any cost!) **III b**

- That each party has the ability to perform all, or any combination of the listed duties, including the design, building, operation, and maintenance of the New Mexico Unit. **III d**

Legal Ambiguities, contradictions, and misrepresentations:

- The JPA contains a paragraph which states that the CAP entity shall comply with all provisions of the yet to be drafted New Mexico Unit Agreement except as otherwise limited by the JPA. (Since this project is under federal jurisdiction, the New Mexico Unit Agreement is a federal contract, which will supersede any limitations in the JPA. The JPA limitations probably won't stand). **V w pg. 11**

-Notwithstanding the warrantees and representations, the JPA members reserve the discretion not to fund the project and the uses of water to which they have committed, recognizing explicitly that failure of local financial support, the NM Unit may not become a reality. So, the reserved discretion to refuse local financial support contradicts and violates the commitments made regarding the project and the beneficial use of the water. **III f, V o**

- JPA Section 10(d) states that a withdrawing party prior to termination shall be obligated to honor all commitments made to the NM CAP entity before withdrawing. Those commitments as described in the JPA include the obligation to plan, design, construct, operate and maintain a New Mexico Unit, and to beneficially use the water obtained through the AWSA. So, there's really no way to withdraw. **X d**

-The "effective date" of the JPA is said to occur "once it has been executed by signatories for all the parties hereto." Without knowing who are to be the signatories, how do you know when the sign-up period has expired, and thus, when the agreement becomes effective? (I have heard that a definitive date is out there just not in the document) **XII**

Financial:

-All monies from all sources shall be used exclusively for the planning, design, construction, operation and maintenance. No money is authorized to fund administration and legal defense. **III e**

- ISC and State of New Mexico explicitly state that they shall not be obligated to provide any funding outside of what is allocated by the federal government in AWSA. All subsequent financial burden remains on the CAP Entity and its

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constituent members, which includes the taxpayers thereunder. **V s**

-The CAP entity is not authorized under this JPA to issue bonds or to tax. Such specific authorization is required under the New Mexico Joint Powers Act. Thus, it will fall to the member party to tax or issue bonds for use in the NM Unit project.

III f, IV a, b, c

-ISC retains complete budget and expenditure control, including the authority to deny reimbursement. **V r**

- Warrantees of financing by JPA members are contradicted by the local discretion to withhold funding clause.

V o, III b, IV a 1, VI

Legal protections:

- Each party is responsible for its own negligence, limited to the caps imposed by the New Mexico Tort Claims Act. However, the most likely source of litigation will not be in tort, but in contract, which is not covered by the Tort Claims Act, or any insurance through state or municipal risk management. **V y**

Definition:

SE-Beneficial Use of Water : The use of water by man for any purpose which benefits are derived, such as domestic, municipal, irrigation, livestock, industrial, power development, and recreation. Under the New Mexico constitution beneficial use is the basis, the measure and the limit of the right to use water; therefore, beneficial use of public water diverted or impounded by manmade works is an essential element in the development of a water right.

Exhibit 2.48 “Terms of NM Unit Agreement:

2.17 “Consumptively Use” means the act of Consumptive Use.

2.21 “Gila River” means the Gila River, its tributaries and underground water sources at or above the Ashurst-Hayden Diversion Dam, other than the San Francisco River, its tributaries and underground water sources.