

## WARN Mutual Aid Agreement

WARN stands for Water / Wastewater Agency Response Network, and it is a private, voluntary agreement between systems to help each other out in emergency situations. The NMWARN agreement is modeled after several other state agreements, and based on actual experience and lessons learned in widespread disasters such as Hurricane Katrina and others. The main concept of the NMWARN is "utilities helping utilities."

This agreement sets out rules which will govern the request and provision of assistance process by drinking water and wastewater WARN members during any kind of emergency. Membership is open to all drinking water and wastewater utilities in New Mexico, public or private, and there is no cost to execute the agreement and join the NMWARN. Membership will allow any utility to request assistance or provide assistance during any kind of emergency (man-made or natural). It is important to remember that provision of assistance is strictly voluntary; no member of the WARN is required to provide assistance under any circumstances. Utilities may decide to discontinue membership in the WARN at any time.

The key to fast response in emergency situations is preparedness, and generally the most difficult things to work out are the legal details: liability, responsibility, reimbursement, etc. These seemingly minor details become large obstacles to effective response when disaster strikes. The NMWARN was developed to take care of these details beforehand and facilitate federal emergency funding in case of disaster. A signed agreement in place between systems allows for quick response, even before a disaster has been officially declared. Federal law prohibits responding utilities from receiving federal reimbursement money if there is no signed agreement in place prior to the declaration of a disaster.

### How to Join the NMWARN

Review the NMWARN agreement. If your governing body approves the agreement, have the board president, mayor, or other appropriately authorized person sign it. It is recommended that an attorney review the agreement on behalf of the utility and sign the agreement for your protection. Please note that the agreement has been finalized and will not be changed without a vote of the NMWARN committee. If your utility elects not to have the agreement reviewed by an attorney, please provide a second signature by an authorized person, such as the board secretary/treasurer. Make a copy for your records and return the original signed agreement to:

Bill Conner  
New Mexico Rural Water Association  
PO Box 92738  
Albuquerque, NM 87199

For more information, visit <http://www.nmrwa.org/warn.php>.

1 **New Mexico Mutual Aid and Assistance Agreement**  
2 **Water/Wastewater Agency Response Network (NMWARN)**  
3  
4

5 **AGREEMENT**  
6

7 This Agreement is made and entered into by public and private Water and Wastewater Utilities  
8 that have, by executing this Agreement, manifested their intent to participate in an Intrastate  
9 Program for Mutual Aid and Assistance.

10  
11 Statutory Authority – This Agreement is authorized under the Intrastate Mutual Aid Act (12-10B-  
12 1 NMSA 1978) which provides that Water and Wastewater Utilities may contract with each other  
13 to provide services.  
14

15 **ARTICLE I**  
16 **PURPOSE**  
17

18  
19 Recognizing that emergencies may require aid or assistance in the form of personnel,  
20 equipment, and supplies from outside the area of impact, the signatory utilities hereby establish  
21 an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance  
22 Program, Members coordinate response activities and share resources during emergencies.  
23 This Agreement sets forth the procedures and standards for the administration of the Intrastate  
24 Mutual Aid and Assistance Program.  
25

26 **ARTICLE II**  
27 **DEFINITIONS**  
28

- 29  
30 A. Authorized Official – An employee or officer of a Member utility that is authorized to:  
31 1. Request assistance;  
32 2. Offer assistance;  
33 3. Refuse to offer assistance, and/or  
34 4. Withdraw assistance under this agreement.  
35  
36 B. Emergency – A natural or human-caused event or circumstance causing, or imminently  
37 threatening to cause, loss of life, injury to person or property, human suffering or financial  
38 loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought,  
39 earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination,  
40 utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot,  
41 intentional acts, sabotage and war that is, or could reasonably be beyond the capability of  
42 the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program  
43 Member to fully manage and mitigate internally.  
44  
45 C. Members – Entities participating in the NMWARN fall into one or more of the following  
46 categories:  
47  
48 1. Regular Member – Any public or private Water or Wastewater Utility that manifests intent  
49 to participate in the Mutual Aid and Assistance Program by executing this Agreement.  
50 2. Associate Member – Any non-utility participant, approved by the NMWARN Committee,

1  
2  
3  
4  
5  
6  
7  
8  
9

**ARTICLE IV  
PROCEDURES**

10  
11  
12  
13  
14  
15  
16  
17  
18

The NMWARN Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program in coordination with members and state emergency management and public health officials. These procedures shall be reviewed at least annually and updated as needed by the NMWARN Committee.

19  
20  
21  
22  
23  
24  
25

**ARTICLE V  
REQUESTS FOR ASSISTANCE**

26  
27  
28  
29  
30  
31  
32  
33  
34

A. Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information (including 24-hour access or best available) and maintain resource information that may be available from the utility for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur, provided to the NMWARN Committee.

35  
36  
37  
38  
39  
40  
41  
42

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

43  
44  
45  
46  
47  
48  
49  
50  
51

B. Response to a Request for Assistance – Members of the agreement are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether it will respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. An Authorized Member's decisions on the availability of resources shall be final.

41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51

**ARTICLE VI  
RESPONDING MEMBER PERSONNEL**

A. National Incident Management System - When providing assistance under this Agreement, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

B. Control - While employees so provided may be under the supervision of the Responding Member, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System to address the

1 designated supervisor(s) must keep accurate records of work performed by personnel  
2 during the specified Period of Assistance. Requesting Member reimbursement to the  
3 Responding Member could consider all personnel costs, including salaries or hourly wages,  
4 overtime, costs for fringe benefits, indirect costs and outside professional services.  
5

6 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use  
7 of equipment during the specified Period of Assistance, including, but not limited to,  
8 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and  
9 loading/unloading of loaned equipment. All equipment shall be returned to the Responding  
10 Member in good working order as soon as is practicable and reasonable under the  
11 circumstances. As a minimum, rates for equipment use must be based on the Federal  
12 Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding  
13 Member uses rates different from those in the FEMA Schedule of Equipment Rates, the  
14 Responding Member must provide such rates orally or in writing to the Requesting Member  
15 prior to supplying the equipment. Mutual agreement on which rates are used must be  
16 reached prior to dispatch of the equipment, and confirmed in writing within one week after  
17 dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA  
18 Schedule of Equipment Rates must be developed based on actual recovery of costs. If  
19 Responding Member must lease a piece of equipment while its equipment is being repaired,  
20 Requesting Member shall reimburse Responding Member for such rental costs.  
21

22 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member  
23 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-  
24 returnable supplies. The Responding Member must not charge direct fees or rental charges  
25 to the Requesting Member for other supplies and reusable items that are returned to the  
26 Responding Member in a clean, damage-free condition. Reusable supplies that are  
27 returned to the Responding Member with damage must be treated as expendable supplies  
28 for purposes of cost reimbursement.  
29

30 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting  
31 Member for all expenses incurred by the Responding Member while providing assistance  
32 under this Agreement. The Responding Member must send the itemized bill not later than  
33 (90) ninety dates following the end of the Period of Assistance. The Responding Member  
34 may request additional periods of time within which to submit the itemized bill, and  
35 Requesting Member shall not unreasonably withhold consent to such request. The  
36 Requesting Member must pay the bill in full on or before the forty-fifth (45<sup>th</sup>) day following  
37 the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46<sup>th</sup>) day  
38 following the billing date, and once delinquent shall accrue interest at the rate of prime plus  
39 two percent (2%) per annum as reported by the Wall Street Journal.  
40

41 E. Records - Each Responding Member and their duly authorized representatives shall have  
42 access to a Requesting Member's books, documents, notes, reports, papers and records  
43 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of  
44 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member  
45 and their duly authorized representatives shall have access to a Responding Member's  
46 books, documents, notes, reports, papers and records which are directly pertinent to this  
47 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,  
48 maintenance or regulatory audit. Such records shall be maintained for at least three (3)  
49 years or longer where required by law.  
50  
51

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**ARTICLE XI**  
**WORKER'S COMPENSATION CLAIMS**

13 The Responding Member is responsible for providing worker's compensation benefits and  
14 administering worker's compensation for its employees. The Requesting Member is responsible  
15 for providing worker's compensation benefits and administering worker's compensation for its  
16 employees.  
17

18  
19  
20  
21  
22

**ARTICLE XII**  
**NOTICE**

23 A Member who becomes aware of a claim or suit that in anyway, directly or indirectly,  
24 contingently or otherwise, affects or might affect other Members of this Agreement shall provide  
25 prompt and timely notice to the Members who may be affected by the suit or claim. Each  
26 Member reserves the right to participate in the defense of such claims or suits as necessary to  
27 protect its own interests.  
28

29  
30  
31  
32

**ARTICLE XIII**  
**INSURANCE**

33 Members of this Agreement shall maintain an insurance policy or maintain a self insurance  
34 program that covers activities that it may undertake by virtue of membership in the Mutual Aid  
35 and Assistance Program.  
36

37  
38  
39  
40  
41

**ARTICLE XIV**  
**CONFIDENTIAL INFORMATION**

42 To the extent provided by law, any Member or Associate Member shall maintain in the strictest  
43 confidence and shall take all reasonable steps necessary to prevent the disclosure of any  
44 Confidential Information disclosed under this Agreement. If any Member, Associate Member,  
45 third party or other entity requests or demands, by subpoena or otherwise, that a Member or  
46 Associate Member disclose any Confidential Information disclosed under this Agreement, the  
47 Member or Associate Member shall immediately notify the owner of the Confidential Information  
48 and shall take all reasonable steps necessary to prevent the disclosure of any Confidential  
49 Information by asserting all applicable rights and privileges with respect to such information and  
50 shall cooperate fully in any judicial or administrative proceeding relating thereto.  
51

41  
42  
43  
44

**ARTICLE XV**  
**EFFECTIVE DATE**

45 This Agreement shall be effective after the Water and Wastewater Utility's authorized  
46 representative executes the Agreement and the NMWARN Committee Chair receives the  
47 Agreement. The NMWARN Committee Chair shall maintain a master list of all members of the  
48 Mutual Aid and Assistance Program.  
49  
50  
51

**ARTICLE XXI**  
**INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of New Mexico Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a Member of the New Mexico Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Water/Wastewater Utility: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Name

Approved as to form and legality

By: \_\_\_\_\_  
Attorney for Utility

\_\_\_\_\_  
Please Print Name