

MEMORANDUM OF AGREEMENT

Between the

NEW MEXICO INTERSTATE STREAM COMMISSION
and the
UNITED STATES ARMY CORPS OF ENGINEERS

To utilize a portion of Abiquiu Reservoir's sediment and flood control space to provide a temporary conservation pool in Abiquiu Reservoir to be managed for the benefit of the Rio Grande silvery minnow

This agreement is pursuant to the Flood Control Act of 1948 (Public Law 858-80th Congress, Chapter 771), the Flood Control Act of 1950 (Public Law 516-81st Congress, Chapter 188), and the Flood Control Act of 1960 (Public Law 645-86th Congress, 74 Stat. 493) and is between the New Mexico Interstate Stream Commission, herein referred to as the "Commission", and the U. S. Army Corps of Engineers, herein referred to as the "Corps".

WHEREAS, Abiquiu Dam and Reservoir is a Corps' constructed and operated facility.

WHEREAS, the Rio Grande silvery minnow is listed as endangered by the U.S. Fish and Wildlife Service.

WHEREAS, the State of New Mexico has presented a draft Settlement Proposal in *Minnow v. Martinez*, No. 99-CIV-1320 (D.N.M.).

WHEREAS, the Commission and the Corps support the primary objective of the State of New Mexico's draft Settlement Proposal, which includes the establishment of a conservation pool for the benefit of the Rio Grande silvery minnow ("Conservation Pool").

WHEREAS, upstream storage space is needed to facilitate the draft Settlement Proposal.

WHEREAS, temporary storage space is available within the sediment and flood control space of Abiquiu Reservoir.

NOW, THEREFORE, it is agreed as follows:

1. That subject to the Commission's authorization or a permit issued by the New Mexico State Engineer, and subject to and contingent upon the continuing full force and effect of separate agreements between the United States and the State of New Mexico relative to the *Minnow v. Martinez* settlement agreement, the Corps will store and release native Rio Grande Basin water in Abiquiu Reservoir.

2. That in the event that a settlement proposal is not executed prior to June 30, 2001, all parties agree to evacuation of water stored under the terms of this agreement between November 1, 2001, and March 1, 2002, at times and in quantities specified by the Commission after consultation with the Corps.
3. That the Commission will seek and this agreement is subject to receiving the advice and consent of the Rio Grande Compact Commission for deviation of normal operations of Abiquiu Reservoir for a term of not more than three years to allow establishment and operation of Abiquiu Reservoir portion of the Conservation Pool.
4. That water stored in the Conservation Pool (“Conservation Pool Water”) will be managed to support efforts to conserve and recover the Rio Grande silvery minnow.
5. That Conservation Pool Water stored in Abiquiu Reservoir (“Abiquiu Conservation Pool Water”) will be released from storage proportionally with Conservation Pool Water stored in other reservoirs.
6. That the Corps accepts no responsibility for procedures or methodology used in accounting for the Abiquiu Conservation Pool Water.
7. That the Corps accepts no responsibility for the seepage, leakage, evaporation, and transpiration losses of Abiquiu Conservation Pool Water.
8. That storage, regulation, and the releases will be accomplished with the existing service gates and that the Corps will not be liable or responsible for any loss of Abiquiu Conservation Pool Water due to any malfunction of the service gates or inspection and maintenance of the gates that may be necessary to assure the proper and safe operation of the project.
9. That Abiquiu Conservation Pool Water shall be considered temporarily stored.
10. That the Corps may evacuate the Abiquiu Conservation Pool Water, or any portion thereof, as necessary to meet flood control operations or emergency situations, including but not limited to operations to permit maintenance or repair of the dam or appurtenant structures. The emergency situations discussed above specifically exclude releases for endangered or listed species emergencies.
11. That the State of New Mexico, in its sole discretion, may assign any permit it may obtain in connection with this agreement to the U. S. Bureau of Reclamation.
12. That the term of this agreement is from the last date of signature by the parties until January 31, 2004, unless modified by unanimous consent of the signatories, and that this agreement may be executed in multiple counterparts.

13. That nothing in this agreement shall affect any party's rights under New Mexico or federal law; and that nothing in this agreement shall be construed or applied in a manner that is inconsistent with New Mexico or federal law.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

NEW MEXICO INTERSTATE STREAM COMMISSION

Richard P. Cheney, Chairman
Bataan Memorial Building, Room 101
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

Date: _____

UNITED STATES ARMY CORPS OF ENGINEERS

Raymond G. Midkiff, District Engineer
Lieutenant Colonel, EN
4101 Jefferson Plaza NE
Albuquerque, New Mexico 87109-3435

Date: _____

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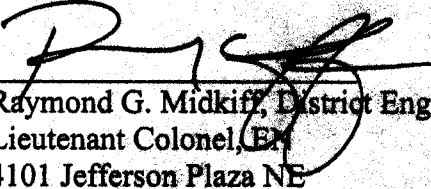
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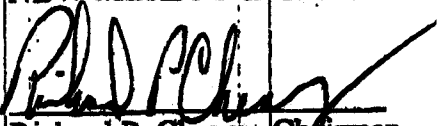
Raymond G. Midkiff, District Engineer
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