

APPENDIX C

ATTACHMENT C1

**TUCUMCARI PROJECT
WATER RIGHT PERMIT**
and
**Excerpts from
RECLAMATION CONTRACT RESERVING
THE RIGHT TO PROJECT GROUNDWATER**

10. If used for MANUFACTURING, MINING, POWER OR LIKE PURPOSES fill in the following:
 (a) Application is hereby made for None second feet of water to be used for _____ purposes;
 (b) power to be generated _____ horsepower; (c) conducted by _____
 _____ (give size and description of conduit)
 _____ feet in length; (d) from a point in the _____ quarter of _____ quarter of Section _____, Township _____, Range _____, N. M. P. M., (e) to a point where the water will be returned to the stream substantially undiminished in quantity in the _____ quarter of Section _____, Township _____, Range _____ whence the _____ of Section _____ Township _____, Range _____ bears _____ feet distant; (f) the amount of water which will be consumptively used in the above operation is: _____

11. Describe diversion dam, stating construction materials, character of foundation, dimensions, etc.
None

12. Hydraulic properties of main canal or conduit Conchas Canal (name or number);
 Bottom width 24.0 feet; depth of water at full operating capacity 8.65 feet;
 total depth including freeboard 13.0 feet; side slopes 1-1/2 horizontal to 1 vertical;
 diameter (pipe line or circular flume) _____ feet; slope 0.12 feet per 100 feet;
 hydraulic radius 5.80 feet; coefficient of roughness (n) 0.0225; velocity at full capacity 2.19 feet per second; capacity 700 cubic feet per second;
 length of canal 75 Miles the location being as shown on the filing maps accompany this application.

12a. Hydraulic properties of main canal or conduit _____ (name or number)
 Bottom width _____ feet; depth of water at full operating capacity _____ feet;
 total depth including freeboard _____ feet; side slopes _____ horizontal to 1 vertical;
 diameter (pipe line or circular flume) _____ feet; slope _____ feet per 100 feet;
 hydraulic radius _____ feet; coefficient of roughness (n) _____; velocity at full capacity _____ feet per second; capacity _____ cubic feet per second;
 length of canal _____ the location being as shown on the filing maps accompanying this application.

13. Hydraulic properties of storage dam: Maximum height above foundation 235 feet;
 length of crest 1250 feet; maximum width at base 197 feet;
 crest width 20 feet; slope of upstream face 1.6:10;
 slope of downstream face 7.7:10; elevation at crest of dam 4240 feet; elevation of spillway crest 4201 feet; elevation of flow line of outlet conduit 418.0 feet; freeboard (above high water line at maximum spill) 10 feet; width of spillway (Service) 300' (Emergency) 3000 feet;
 discharge capacity of spillway (Comb.) 660,000 cubic feet per second; size and character of outlet conduit 6 sluicing conduits 4 ft. x 5 ft.; 2 regulation, 48" dia. 1 irrigation 11 ft. horseshoe; 1 - 18" dia.; 1 - 24" dia.
 discharge capacity of outlet under full head Sluicing 12,840 cubic feet per second;
 type of dam, construction material, etc. 1250 feet of concrete straight gravity 4,740 lineal feet of earth wing dams. 8,320 lineal feet earth dikes

Elevation	Area of Water Surface, Acres	Storage Capacity, Acre Feet	Remarks
4152.5	3094	82,785	Bottom of emergency pumping pool
4155	3310	90,788	
4157.35	3523	98,814	Flow line of Conchas Canal
4160	3774	108,879	
4165	4317	128,636	
4170	4917	151,721	
4175	5518	177,806	
4180	6123	206,909	
4185	6867	239,319	
4190	7666	275,641	
4195	8498	316,037	
4201	9594	370,185	At spillway crest
4218	13552	566,163	Emergency spillway crest.

14. Additional data or explanations _____

15. Estimated costs: Main canal or conduit \$ _____
Storage Dam \$ 16,250,000
Irrigation & Drainage System \$ 16,452,000
Total cost \$ 32,702,000

16. Time required to begin construction _____;
time required to complete the works _____;
time required to fully apply water to beneficial use _____

17. References: _____
Not applicable

I, Robert W. Jennings Regional Director, Region 5, applicant
being first duly sworn, upon my oath, depose and say that I have read the foregoing statements and that the
same are true to the best of my knowledge and belief:

Robert W. Jennings Bureau of Reclamation, Applicant
Regional Director - Region 5
Subscribed and sworn to before me this _____ day of _____, 19____

(Notary Public)
My commission expires _____

Approval of State Engineer

Number of this permit 2305 Date received corrected _____
Recorded in Book L1a Page 2305 Publication of Notice ordered _____
Notice of Intention received Dec. 5, 1938 Name of Paper _____
Formal Application received May 10, 1955 Affidavit of Publication filed _____
Date returned for correction _____ Date of approval July 2, 1956

This application is approved for _____ acre feet of water
by direct diversion and _____ acre feet of storage water from
_____ (source of supply)
provided it is not exercised to the detriment of any others having prior valid and existing rights to the use of
the waters of this stream system This application is approved for the appropriation of
300,000 acre feet of water per annum, by direct diversion or by storage in
Conchas Reservoir. Source of supply is Canadian River and tributaries for
use on Bureau of Reclamation's Tucumcari Project.

Construction of works to be completed on or before May 13, 1955
Water to be applied to beneficial use on or before May 13, 1955

This is to certify that I have examined the above application for permit to appropriate the public surface
waters of the State of New Mexico and hereby approve the same subject to the foregoing provisions and conditions.
Witness my hand and seal this 2nd day of July, A. D., 1956

S. E. Reynolds
State Engineer

By: AS - BS OL
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Wat
ATTACHMENT 1

MEMORANDUM

State Engineer Office
Santa Fe, New Mexico

November 19, 1970

TO David Hale

FROM M. B. Compton

SUBJECT Records relating to the appropriation of water from Conchas Reservoir.

Water rights on record are as follows:

Arch Hurley Conservancy District - File 2305

1. On August 7, 1935, the State Engineer for State of New Mexico filed Notice of Intention No. 2091 to appropriate 1,000,000 acre feet of water per annum by storage, from the Canadian River.
2. On August 6, 1938, said Notice was assigned to Arch Hurley Conservancy District.
3. On August 6, 1938, Arch Hurley Conservancy District filed Formal Application under file 2091 to appropriate 1,265,700 acre feet of water per annum, by storage at Conchas Reservoir site.
4. On December 5, 1938, the United States Department of Interior, Bureau of Reclamation filed a Notice No. 2305 wherein they reserved a volume of water to the extent of 300,000 acre feet per year at Conchas Dam Site for uses on the Tucumcari Federal Reclamation Project.
5. By letter dated February 28, 1939, the Arch Hurley Conservancy District notified the State Engineer to withdraw Application No. 2091.
6. For purpose of completing the records of the State Engineer Formal Application by Bureau of Reclamation was filed May 10, 1955, covering the annual appropriation of 300,000 acre feet. State Engineer endorsed his approval on the application on July 2, 1956.
7. On July 13, 1956, License was issued to U.S. Department

of Interior, Bureau of Reclamation with a priority of Bureau's Notice dated December 5, 1938, to appropriate 300,000 acre feet of water per annum from Canadian River and tributaries, by means of direct diversion or storage in reservoir impounded by Conchas Dam for the irrigation of 42,213.7 acres of land.

New Mexico State Park Commission - File 2305-A

1. On February 16, 1967, the New Mexico State Park Commission obtained a permit to transfer the water rights from 62.59 acres of land within the Arch Hurley Conservancy District to the irrigation of Conchas Lake State Park's golf course and miscellaneous grasses. The actual water allotment is set each year by the Arch Hurley Conservancy District and is the same as allocated for irrigation of equal acreage under the project.
2. License on the change was issued July 1, 1970. The works consist of a pump located in Conchas Lake and a 6-inch and 8-inch pipeline to storage thence use via sprinkler system. The system is on the south side of Conchas Lake.

Bell Ranch - Red River Valley Co. - File 2166

1. On May 1, 1937, the Red River Valley Co. filed Notice of Intention No. 2166 wherein they requested 8,000 acre feet per year to be diverted from Conchas Reservoir for irrigation and domestic purposes. Statement on Notice was: "Applicant claims right of storage in and use of water from Conchas Reservoir under deed from applicant to David Chavez, et al dated May 8, 1936, and recorded May 14, 1936, in Book 114 of Deeds, Page 452 in office of the County Clerk of San Miguel County, New Mexico, and under contract between applicant and David Chavez, Jr. et al., Members of the Interstate Stream Commission of the State of New Mexico, dated November 13, 1935."
2. Formal application was filed on August 25, 1937, requesting 3928.9 acre feet of water per annum from Conchas Reservoir for domestic purposes and irrigation of 1306.3 acres of land.

3. On October 23, 1937, application was protested by the Interstate Stream Commission and the Arch Hurley Conservancy District.
4. By letter dated November 20, 1937, and telegram dated November 29, 1937, the protests were withdrawn provided annual use was limited to 2,500 acre feet per annum.
5. On November 30, 1937, application was approved as follows:

"This application is approved provided it is not exercised to the detriment of any others having prior, valid and existing rights to the use of the water of this stream system; and further provided that this permit is restricted such that it shall not exceed 2500 acre feet per annum as agreement with Arch Hurley Conservancy District and Interstate Stream Commission as shown in minutes of meeting dated November 23rd, 1937."
6. Certificate of Construction was issued January 13, 1941, and works connect into an 18-inch pipe outlet through Conchas Dam. Capacity of system is 25 cfs and serves lands on the north side of the Canadian River.
7. License issued May 11, 1943, to appropriate 2500 acre feet of Canadian River water per annum from Conchas Reservoir with priority of May 1, 1937, for irrigation of 1002 acres of land and domestic purposes.
8. Change of Ownership of Water Right described in License No. 2166 was filed August 8, 1947, showing Sam C. Arnett and Sam C. Arnett, Jr., of Lubbock, Texas as owners.

There are no other water right filings on record.

File 2305 does contain a copy of a memorandum of understanding between the War Department and the Department of the Interior, represented by the Chief of Engineers and the Commissioner of Reclamation, was signed July 19, 1941, wherein it was stated

that the reservoir capacity in Conchas Reservoir of approximately 300,000 acre feet between elevation 4155 and 4201 feet above sea level shall be available each year, to the Bureau of Reclamation for storage and withdrawal of water for uses in connection with the Tucumcari Project. The memorandum further stated that the rights of the Bureau of Reclamation were subject to the prior rights of the Corps of Engineers not to exceed 3,000 acre feet per annum for operation of a 150 KW hydroelectric service unit and to the Corps of Engineers or other public agencies as may be designated by the Chief of Engineers and the Reclamation Engineer, the aggregate use, at or near the site of the Conchas Project of approximately 5 acre feet per annum for domestic and local development purposes. The Corps of Engineers made no application with the State Engineer for the use of the water covered in the memorandum.

I talked to Bill Kreuch of State Park and Recreation Commission and he advised that the domestic water supply for both the north and south side recreational areas are obtained from the Corps of Engineers water system. The State Park Commission is billed monthly by the Corps for the water used. The Corps water system does not supply the Hooverville development located on the south side of the lake. He further advises that Hooverville has their own pump system in Conchas Reservoir which diverts to a storage tank. John Wright advises that water for Hooverville is chlorinated and when last checked met their standards.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
TUCUMCARI PROJECT, NEW MEXICO

*Contract approved
August 2, 1938
Serial No. 5960*

CONTRACT BETWEEN THE UNITED STATES AND THE ARCH HURLEY
CONSERVANCY DISTRICT PROVIDING FOR THE CONSTRUCTION OF
THE TUCUMCARI PROJECT, NEW MEXICO

This contract, made this 27th day of December, 1938,
in pursuance of the Act of Congress of June 17, 1902, (32 Stat.
388) and acts amendatory thereof and supplementary thereto and
particularly the Act of August 2, 1937, 50 Stat. 557 as amended
by the Act of April 9, 1938, Public - No. 477 - 75th Cong., 3d
Sess., all collectively herein styled, the Federal Reclamation
Law, between the United States of America, herein styled the
United States, represented by ~~the~~ Harry Slattery, the ^{Under} Secretary
of the Interior, herein styled the Secretary, and the Arch Hurley
Conservancy District, a conservancy district, body corporate and
political subdivision of the State of New Mexico, duly organized
and existing pursuant to the laws thereof, with its principal
office in the City of Tucumcari, State of New Mexico, herein
styled the District:

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS the United States has investigated, planned and
proposes to construct the Tucumcari project, herein referred to
as the Project, for diversion, carriage, distribution and beneficial

Project Water Supply

16. The District will cause all water filings for the Project, made in its name or in its behalf or held by it through assignment, to be assigned to the United States; and all water filings so assigned or those made by the United States for the Project, shall be made and held primarily for domestic, irrigation and municipal uses in the District, and for such use and development of hydroelectric energy by the United States as may be made of the waters thus appropriated incident to their storage, carriage, diversion and distribution to and for such domestic, irrigation and municipal uses, or otherwise.

There is claimed and reserved by the United States for the use of the District primarily for domestic, municipal and irrigation uses, all of the increment, waste, seepage and return flow water which may result from the construction and operation of the Project.

It is agreed that the District may, subject to the Secretary's approval, or that the Secretary may, to the extent now or hereafter authorized by law, contract to dispose of any of the project water supply within the District for other than irrigation use or without the District for any use not detrimental to the primary uses herein specified. Any funds received by the District from any such disposals shall be paid over to the United States promptly, and in no event later than 15 days of their receipt. Revenues from disposals

APPENDIX C

ATTACHMENT C2

**Excerpts from
U.S. SUPREME COURT DECREE
OKLAHOMA AND TEXAS v. NEW MEXICO
No. 109, Original Decided December 13, 1993**

SUPREME COURT OF THE UNITED STATES

**STATE OF OKLAHOMA AND STATE OF TEXAS v.
NEW MEXICO**

**ON JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT
AND DECREE**

No. 109, Original. Decided December 13, 1993

The joint motion for entry of stipulated judgment and decree, as modified, is granted.

STIPULATED JUDGMENT, AS MODIFIED

1. New Mexico has been in violation of Article IV(b) of the Canadian River Compact from 1987 to date.

2. Pursuant to Paragraph 8 of the Decree entered in this case, New Mexico shall release from Ute Reservoir in 1993 sufficient water to result in an aggregate of not more than 200,000 acre-feet of conservation storage below Conchas Dam in New Mexico, including conservation storage in the other reservoirs subject to the limitation under Article IV(b) of the Canadian River Compact. The release of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

3. New Mexico shall also release from Ute Reservoir an additional 25,000 acre-feet of storage below the Article IV(b) limitation. New Mexico shall operate Ute Reservoir through the year 2002 at or below the elevations set forth in the schedule below and in accordance with the provisions of Paragraph 8 of the Decree entered in this case. The schedule includes annual adjustments for sediment accumulation in Ute Reservoir and assumes the other reservoirs subject to the Article IV(b) limitation maintain storage at their total capacity of 6,760 acre-feet. The schedule shall be adjusted by the parties to reflect additional amounts of water in conservation storage in any reservoir enlarged or constructed, after 1992. Releases of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

Ute Reservoir Operating Schedule

<u>Year</u>	<u>Authorized Elevation</u>	<u>Reduced Storage Amount</u>	<u>Corresponding Reduced Elevation</u>
After release in 1993	3781.58	25,000	3777.86
1994	3781.66	25,000	3777.95
1995	3781.74	25,000	3778.04
1996	3781.83	25,000	3778.14
1997	3781.91	25,000	3778.23
1998	3781.99	20,000	3779.08
1999	3782.08	15,000	3779.91
2000	3782.16	6,250	3781.28
2001	3782.24	3,125	3781.80
Refilled in 2002	3782.32	-0-	3782.32

4. Within seventy-five (75) days after entry of judgment New Mexico shall pay as attorneys' fees \$200,000 to Texas and \$200,000 to Oklahoma. The parties agree that such payments do not constitute and shall not be considered as an admission, express or implicit, that New Mexico has any liability to Texas or Oklahoma for attorneys' fees.

5. Oklahoma and Texas shall release New Mexico from all claims for equitable or legal relief, other than the relief embodied in the Decree of the parties, arising out of New Mexico's

.ATTACHMENT 2

violation of the Canadian River Compact during the years 1957 through the date this Stipulated Judgment is entered.

6. In the event of a conflict between this Judgment and the Decree entered in this case, the provisions of the Judgment shall control.

7. The costs of this case shall be equally divided among the parties.

DECREE, AS MODIFIED

1. Under Article IV(a) of the Canadian River Compact ("Compact"), New Mexico is permitted free and unrestricted use of the waters of the Canadian River and its tributaries in New Mexico above Conchas Dam, such use to be made above or at Conchas Dam, including diversions for use on the Tucumcari Project and the Bell Ranch and the on-project storage of return flow or operational waste from those two projects so long as the recaptured water does not include the mainstream or tributary flows of the Canadian River; provided that transfers of water rights from above Conchas Dam to locations below Conchas Dam shall be subject to the conservation storage limitation of Compact Article IV(b).. Nothing in this paragraph shall be deemed to determine whether or not the place of use of water rights may be transferred to locations outside the Canadian River basin in New Mexico.

2. Under Compact Article IV(b), New Mexico is limited to storage of no more than 200,000 acre-feet of the waters of the Canadian River and its tributaries, regardless of point of origin, at any time in reservoirs in the Canadian River basin in New Mexico below Conchas Dam for any beneficial use, exclusive of water stored for the exempt purposes specified in Compact Article II(d) and on-project storage of irrigation return flows or operational waste on the Tucumcari Project and Bell Ranch as provided for in Paragraph 1 of this Decree.

3. Quantities of water stored primarily for flood protection, power generation or sediment control are not chargeable as conservation storage under the Compact even though incidental use is made of such waters for recreation, fish and wildlife or other beneficial uses not expressly mentioned in the Compact. In situations where storage may be for multiple purposes, including both conservation storage and exempt storage, nothing in this Decree shall preclude the Canadian River Commission ("Commission") from exempting an appropriate portion of such storage from chargeability as conservation storage.

4. Water stored at elevations below a dam's lowest permanent outlet works is not chargeable as conservation storage under the Compact unless the primary use of that storage is for a non-exempt purpose, or unless other means, such as pumps, are utilized to discharge such storage volumes from the reservoir. No change in the location of a dam's lowest permanent outlet works to a higher elevation shall provide the basis for a claim of exempt status for all water stored below the relocated outlet works without prior approval of the Commission, which shall not be unreasonably withheld. Water stored for non-exempt purposes behind a dam with capacity in excess of 100 acre-feet and with no outlet works is chargeable as conservation storage.

5. Future designation or redesignation of storage volumes for flood control, power production or sediment control purposes must receive prior Commission approval to be exempt from chargeability as conservation storage, which approval shall not be unreasonably withheld.

6. All water stored in Ute Reservoir above elevation 3725 feet is conservation storage; provided that at such time as the authorization and funding of the Eastern New Mexico Water Supply Project or other project results in changed circumstances at Ute Reservoir, New Mexico may seek exemption of a reasonable portion of such water from the Commission under Paragraph 5- of this Decree and, if an exemption

ATTACHMENT 2

is denied, may petition the Court for appropriate relief under Paragraph 11 of this Decree.

7. In 1988 there were 63 small reservoirs in New Mexico with capacities of 100 acre-feet or less with a total capacity of about 1,000 acre-feet, which the Commission has treated as de minimis by waiving storage volume reporting obligations.

Water stored in these reservoirs or in similarly sized reservoirs in the future is not chargeable as conservation storage, unless otherwise determined by the Commission.

8. Based on the elevation-capacity relationship of Ute Reservoir effective January 1, 1993, and adjustments pursuant to Paragraph 9 of this Decree, New Mexico shall make and maintain appropriate releases of water from Ute Reservoir or other conservation storage facilities in excess of 100 acre-feet of capacity at the maximum rate consistent with safe operation of such reservoirs so that total conservation storage in the Canadian River basin below Conchas Dam in New Mexico is limited to no more than 200,000 acre-feet at any time; provided that operation of Ute Reservoir for the period 1993-2002 shall be pursuant to the schedule contained in the Judgment entered in this case; and provided that, no violation of this paragraph will occur during any period in which the outlet works of Ute Reservoir are discharging water at the maximum safe discharge capacity (currently 350 cubic feet per second) following the first knowledge that the 1993-2002 schedule or the Article IV(b) limitation after 2002 probably would be exceeded; and provided further that Texas shall be notified by New Mexico prior to a release and may allow New Mexico to retain water in conservation storage in excess of the 1993-2002 schedule or the Article IV(b) limitation after 2002, subject to the call of Texas and subject to the provisions of Article V of the Compact. The outlet works of Ute Reservoir shall be maintained in good working order and shall not be modified to reduce the safe discharge capacity without prior approval of the Commission, which shall not be unreasonably withheld.

9. Sediment surveys of Ute Reservoir shall be conducted at least every ten years by New Mexico, unless such requirement is waived by the Commission. Conservation storage in Ute Reservoir shall be determined from the most recent sediment survey and an annual estimate of the total additional sediment deposition in the reservoir using an annual average of sediment accumulation during the period between 1963 and the most recently completed survey.

10. Nothing in this Decree is intended to affect a state's rights or obligations under the Compact, except as specifically addressed herein.

11. The Court retains jurisdiction of this suit for the purposes of any order, direction, or modification of this Decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy; provided, that any party requesting the Court to exercise its jurisdiction under this paragraph or answering such request shall certify that it has attempted to negotiate in good faith with the other parties in an effort to resolve the dispute sought to be brought before the Court.

APPENDIX C
ATTACHMENT C3
CANADIAN RIVER COMPACT

72-15-2. [Canadian River Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

CANADIAN RIVER COMPACT

The state of New Mexico, the state of Texas, and the state of Oklahoma, acting through their commissioners, John H. Bliss, for the state of New Mexico, E. V. Spence for the state of Texas, and Clarence Burch for the state of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the president as the representative of the United States of America, have agreed respecting Canadian river as follows:

ARTICLE I

The major purposes of this compact [this section] are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; and to provide for the construction of additional works for the conservation of the waters of Canadian river.

ARTICLE II

As used in this compact:

- (a) the term "Canadian river" means the tributary of Arkansas river which rises in northeastern New Mexico and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian river and all other tributaries of said Canadian river;
- (b) the term "North Canadian river" means that major tributary of Canadian river officially known as North Canadian river from its source to its junction with Canadian river and includes all tributaries of North Canadian river;
- (c) the term "commission" means the agency created by this compact for the administration thereof;
- (d) the term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

ARTICLE III

All rights to any of the waters of Canadian river which have been perfected by beneficial use are hereby recognized and affirmed.

ARTICLE IV

- (a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian river above Conchas dam.
- (b) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian river in New Mexico below Conchas dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian river below Conchas dam shall be limited to an aggregate of 200,000 acre-feet.
- (c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian river shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

ARTICLE V

Texas shall have free and unrestricted use of all waters of Canadian river in Texas, subject to the limitations upon storage of water set forth below:

- (a) the right of Texas to impound any of the waters of North Canadian river shall be limited to storage on tributaries of said river in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food and feed for the householders and domestic livestock actually living or kept on the property;

(b) until more than 300,000 acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian river and exclusive of reservoirs in the drainage basin of Canadian river east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian river, shall be limited to 500,000 acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to 200,000 acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian river in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian river and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this Paragraph (b);

(c) should Texas for any reason impound any amount of water greater than the aggregate quantity specified in Paragraph (b) of this article, such excess shall be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian river in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the commissioner for Oklahoma the remainder of any such excess quantity of water in storage shall be released into the channel of Canadian river at the greatest rate practicable.

ARTICLE VI

Oklahoma shall have free and unrestricted use of all waters of Canadian river in Oklahoma.

ARTICLE VII

The commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no state shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve months; and provided further that no state or user of water within any state shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

ARTICLE VIII

Each state shall furnish to the commission at intervals designated by the commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this compact [this section].

ARTICLE IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian river commission." The commission shall be composed of three commissioners, one from each of the signatory states, designated or appointed in accordance with the laws of each such state, and if designated by the president an additional commissioner representing the United States. The president is hereby requested to designate such a commissioner. If so designated, the commissioner representing the United States shall be the presiding officer of the commission, but shall not have the right to vote in any of the deliberations of the commission. All members of the commission must be present to constitute a quorum. A unanimous vote of the commissioners for the three signatory states shall be necessary to all actions taken by the commission.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States shall be borne equally by the three states and be paid by the commission out of a revolving fund hereby created to be known as the "Canadian river revolving fund." Such fund shall be initiated and maintained by

equal payments of each state into the fund in such amounts as will be necessary for administration of this compact. Disbursements shall be made from said fund in such manner as may be authorized by the commission. Said fund shall not be subject to the audit and accounting procedures of the states. However, all receipts and disbursements of funds handled by the commission shall be audited by a qualified independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the commission.

(c) The commission may:

- (1) employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this compact;
- (2) enter into contracts with appropriate federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records, and for the preparation of reports;
- (3) perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The commission shall:

- (1) cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper administration of the compact, independently or in cooperation with appropriate governmental agencies;
- (2) make and transmit to the governors of the signatory states on or before the last day of March of each year, a report covering the activities of the commission for the preceding year;
- (3) make available to the governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the governors of the states, or their representatives, or by authorized representatives of the United States.

ARTICLE X

Nothing in this compact shall be construed as:

- (a) affecting the obligations of the United States to the Indian tribes;
- (b) subjecting any property of the United States, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;
- (c) subjecting any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact;
- (d) applying to, or interfering with, the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this compact;
- (e) establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been ratified by the legislature of each state and approved by the congress of the United States. Notice of ratification by the legislature of each state shall be given by the governor of that state to the governors of the other states and to the president of the United States. The president is hereby requested to give notice to the governor of each state of approval by the congress of the United States.

In witness whereof, the commissioners have executed four counterparts hereof, each of which shall be and constitute an original, one of which shall be deposited in the archives of the department of state of the United States, and one of which shall be forwarded to the governor of each state.

Done at the city of Santa Fe, state of New Mexico, this 6th day of December, 1950.

/s/ JOHN H. BLISS

John H. Bliss

Commissioner for the state of
New Mexico

/s/ E. V. SPENCE

E. V. Spence

Commissioner for the state of
Texas

/s/ CLARENCE BURCH

Clarence Burch

Commissioner for the state of
Oklahoma

APPROVED:

/s/ BERKELEY JOHNSON

Berkeley Johnson

Representative of the United
States of America

APPENDIX C

ATTACHMENT C4

**THREATENED AND ENDANGERED SPECIES
OF NEW MEXICO**

**Excerpts from
2004 BIENNIAL REVIEW
New Mexico Department of Game and Fish**

**THREATENED AND ENDANGERED SPECIES
OF NEW MEXICO**

**2004 BIENNIAL REVIEW—
FINAL DRAFT RECOMMENDATION**

AUGUST 2004



**New Mexico Department of Game and Fish
Conservation Services Division**

THREATENED AND ENDANGERED SPECIES OF NEW MEXICO
2004 Biennial Review and Recommendations

Authority: Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46, 1978)

EXECUTIVE SUMMARY: A total of 118 species and subspecies are on the 2004 list of threatened and endangered New Mexico wildlife. The list includes 2 crustaceans, 25 mollusks, 23 fishes, 6 amphibians, 15 reptiles, 32 birds and 15 mammals (Tables 1, 2). An additional 7 species of mammals has been listed as restricted to facilitate control of traffic in federally protected species within New Mexico. A species is endangered if it is in jeopardy of extinction or extirpation from the state; a species is threatened if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range in New Mexico. Only species or subspecies of mammals, birds, reptiles, amphibians, fishes, mollusks, and crustaceans native to New Mexico may be listed as threatened or endangered under the Wildlife Conservation Act. During the Biennial Review, species may be upgraded from threatened to endangered, or downgraded from endangered to threatened, based upon data, views, and information regarding the biological and ecological status of the species. Investigations for new listings or removals from the list (delistings) can be undertaken at any time, but require additional procedures from those for the Biennial Review.

The 2002 Biennial Review contained a recommendation for maintaining the status for each of the 125 species and subspecies listed as threatened, endangered, or restricted under the New Mexico Wildlife Conservation Act. The New Mexico State Game Commission approved this recommendation in October 2002.

The 2004 Biennial Review contains a recommendation regarding listing status for each of the 125 species or subspecies listed as threatened, endangered, or restricted under the New Mexico Wildlife Conservation Act. Of these, 123 are recommended to retain their current listing status. Two species are proposed for uplisting from threatened to endangered. These species are the Jemez Mountains salamander and sand dune lizard. Both species persist within very limited ranges and have been experiencing increasing threats to their habitats within recent years. Uplisting from threatened to endangered confers no regulatory authority to the Department over the habitat of these species. However, the Department believes that a state-endangered status will emphasize the importance of, and demonstrate the ability for state-level management to support the long-term persistence of otherwise imperiled native wildlife.

A summary of the distribution, current status, threats (intended, possible, existing, or past actions that create uncertainty of species persistence), and recommendations regarding listing status and conservation actions are presented for each species or subspecies on the state list. Species accounts contain only key references. The Department's database on these species consists of over 2000 pages. Databases for individual species are available on the internet (<http://www.cmiweb.org/states/>).

The Department emphasizes the need for identifying and protecting endangered wildlife in New Mexico. The State of New Mexico has lost, and continues to lose, its wildlife diversity. More than 75 taxa have been extirpated from one or more counties, including six that are considered to be extinct (i.e., no longer exist anywhere), and 19 others which have been extirpated from the state (but continue to exist elsewhere). Eighteen taxa have been extirpated from Bernalillo County alone.

2004 BIENNIAL REVIEW—FINAL DRAFT RECOMMENDATION

Table 1. Summary of review and recommendation for 2002 New Mexico endangered species list.

TAXA and 2002 STATUS	Number of Species, Subspecies	
	No Change	Recommended for uplisting or downlisting
INVERTEBRATES		
Endangered	13	0
Threatened	14	0
FISHES		
Endangered	10	0
Threatened	13	0
AMPHIBIANS		
Endangered	3	0
Threatened	2	1
REPTILES		
Endangered	6	0
Threatened	8	1
BIRDS		
Endangered	12	0
Threatened	20	0
MAMMALS		
Endangered	6	0
Threatened	9	0
CITES	7	0
TOTAL	123	2

Table 2. Taxonomic review of New Mexico threatened and endangered species. Taxa listed as subspecies under the Wildlife Conservation Act are denoted by placing subspecies name in parentheses.

INVERTEBRATES

Endangered:

no change: (13)

Socorro isopod, *Thermosphaeroma thermophilum*
 Noel's amphipod, *Gammarus desperatus*
 paper pondshell, *Utterbackia imbecillis*
 Texas hornshell, *Popenaias popeii*
 Koster's springsnail, *Juturnia kosteri*
 Alamosa springsnail, *Psuedotryonia alamosae*
 Chupadera springsnail, *Pyrgulopsis chupaderae*
 Socorro springsnail, *Pyrgulopsis neomexicana*
 Roswell springsnail, *Pyrgulopsis roswellensis*
 Pecos assimineia, *Assimineia pecos*
 wrinkled marshsnail, *Stagnicola caperata*
 shortneck snaggletooth, *Gastrocopta dalliana dalliana*
 Florida mountainsnail, *Oreohelix florida*

Threatened:

no change: (14)

lake fingernailclam, *Musculium lacustre*
 swamp fingernailclam, *Musculium partumeium*
 long fingernailclam, *Musculium transversum*
 Lilljeborg peaclam, *Pisidium lilljeborgi*
 Sangre de Cristo peaclam, *Pisidium sanguinichristi*
 Gila springsnail, *Pyrgulopsis gilae*
 Pecos springsnail, *Pyrgulopsis pecosensis*
 New Mexico hot springsnail, *Pyrgulopsis thermalis*
 star gyro, *Gyraulus crista*
 ovate vertigo, *Vertigo ovata*
 Hacheta Grande woodlandsnail, *Ashmunella hebardi*
 Cooke's Peak woodlandsnail, *Ashmunella macromphala*
 Mineral Creek mountainsnail, *Oreohelix pilsbryi*
 Doña Ana talussnail, *Sonorella todseni*

FISHES

Endangered:

no change: (10)

Gila chub, *Gila intermedia*
 Chihuahua chub, *Gila nigrescens*
 roundtail chub, *Gila robusta*
 Rio Grande silvery minnow, *Hybognathus amarus*
 Arkansas River shiner, *Notropis girardi*
 southern redbelly dace, *Phoxinus erythrogaster*
 Colorado pikeminnow, *Ptychocheilus lucius*
 (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*
 blue sucker, *Cycleptus elongatus*
 Pecos gambusia, *Gambusia nobilis*

Threatened:

no change: (13)

Gila trout, *Oncorhynchus gilae*
Mexican tetra, *Astyanax mexicanus*
Arkansas River speckled chub, *Macrhybopsis tetranema*
spikedace, *Meda fulgida*
(Pecos) bluntnose shiner, *Notropis simus pecosensis*
suckermouth minnow, *Phenacobius mirabilis*
loach minnow, *Tiaroga cobitis*
gray redhorse, *Scartomyzon congestum*
Pecos pupfish, *Cyprinodon pecosensis*
White Sands pupfish, *Cyprinodon tularosa*
Gila topminnow, *Poeciliopsis occidentalis*
greenthroat darter, *Etheostoma lepidum*
bigscale logperch, *Percina macrolepidia*

AMPHIBIANS

Endangered:

no change: (3)

lowland leopard frog, *Rana yavapaiensis*
mountain toad, *Bufo boreas*
Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

Threatened:

no change: (2)

Sacramento mountain salamander, *Aneides hardii*
Sonoran desert toad, *Bufo alvarius*

recommended for uplisting to endangered: (1)

Jemez Mountains salamander, *Plethodon neomexicanus*

REPTILES

Endangered:

no change: (6)

Gila monster, *Heloderma suspectum*
gray-checked whiptail, *Aspidoscelis dixoni*
gray-banded kingsnake, *Lampropeltis alterna*
Mexican gartersnake, *Thamnophis eques*
plain-bellied water snake, *Nerodia erythrogaster*
(New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

Threatened:

no change: (8)

western river cooter, *Pseudemys gorzugi*
Slevin's bunch grass lizard, *Sceloporus slevini*
canyon spotted whiptail, *Aspidoscelis burti*
mountain skink, *Eumeces callicephalus*
green ratsnake, *Senticolis triaspis*
narrow-headed gartersnake, *Thamnophis rufipunctatus*
western ribbonsnake, *Thamnophis proximus*
(mottled) rock rattlesnake, *Crotalus lepidus lepidus*

recommended for uplisting to endangered: (1)

sand dune lizard, *Sceloporus arenicolus*

BIRDS

Endangered:

no change: (12)

brown pelican, *Pelecanus occidentalis*
 aplomado falcon, *Falco femoralis*
 white-tailed ptarmigan, *Lagopus leucurus*
 whooping crane, *Grus americana*
 piping plover, *Charadrius melodus*
 least tern, *Sterna antillarum*
 common ground-dove, *Columbina passerina*
 buff-collared nightjar, *Caprimulgus ridgwayi*
 elegant trogon, *Trogon elegans*
 northern beardless-tyrannulet, *Camptostoma imberbe*
 (southwestern) willow flycatcher, *Empidonax traillii extimus*
 thick-billed kingbird, *Tyrannus crassirostris*

Threatened:

no change: (20)

neotropic cormorant, *Phalacrocorax brasilianus*
 bald eagle, *Haliaeetus leucocephalus*
 common black-hawk, *Buteogallus anthracinus*
 peregrine falcon, *Falco peregrinus*
 (Gould's) wild turkey, *Meleagris gallopavo mexicana*
 whiskered screech-owl, *Megascops trichopsis*
 boreal owl, *Aegolius funereus*
 broad-billed hummingbird, *Cynanthus latirostris*
 white-eared hummingbird, *Hylocharis leucotis*
 violet-crowned hummingbird, *Amazilia violiceps*
 lucifer hummingbird, *Calothorax lucifer*
 Costa's hummingbird, *Calypte costae*
 Gila woodpecker, *Melanerpes uropygialis*
 Bell's vireo, *Vireo bellii*
 gray vireo, *Vireo vicinior*
 Abert's towhee, *Pipilo aberti*
 (Arizona) grasshopper sparrow, *Ammodramus savannarum amolegus*
 Baird's sparrow, *Ammodramus bairdii*
 yellow-eyed junco, *Junco phaeonotus*
 varied bunting, *Passerina versicolor*

MAMMALS

Endangered:

no change: (6)

Arizona shrew, *Sorex arizonae*
 Mexican long-nosed bat, *Leptonycteris nivalis*
 (Peñasco) least chipmunk, *Tamias minimus atristriatus*
 (Arizona) montane vole, *Microtus montanus arizonensis*
 gray wolf, *Canis lupis*
 (desert) bighorn sheep, *Ovis canadensis mexicana*

Threatened:

no change: (9)

least shrew, *Cryptotis parva*
 southern long-nosed bat, *Leptonycteris curasoae*
 spotted bat, *Euderma maculatum*

western yellow bat, *Lasiurus xanthius*
white-sided jackrabbit, *Lepus callotis*
(Organ Mountains) Colorado chipmunk, *Tamias quadrivittatus australis*
southern pocket gopher, *Thomomys umbrinus*
meadow jumping mouse, *Zapus hudsonius*
American marten, *Martes americana*

Restricted Species (CITES):

no change: (7)

leopard, *Panthera pardus*
clouded leopard, *Neofelis nebulosa*
snow leopard, *Panthera uncia*
jaguar, *Panthera onca*
Florida panther, *Felis concolor coryi*
tiger, *Panthera tigris*
ocelot, *Felis pardalis*

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APPENDIX C

ATTACHMENT C5

**Excerpts from
Charles DuMars**

**ANALYSIS OF DIVERSIONS OF CAPTURED CARRIAGE LOSS
FROM CONCHAS LAKE TO THE PECOS RIVER**

February 2002

Fish ¹	Canadian River	Pecos River
Arkansas River Speckled Chub - T(NM)	In New Mexico, historically limited to South Canadian River from near the confluence of Ute Creek downstream ²	
Arkansas River Shiner - T(US), E(NM)	52 river-km (32 river-mi) of the Canadian River and a short segment of Revuelto Creek (decreased 73 % from historical range) ³	
Pecos Bluntnose Shiner - T(US, NM)		Historically occupied the Pecos River from near Santa Rosa downstream to the vicinity of what is now Brantley Reservoir ⁴
Suckermouth Minnow - T(NM)	In New Mexico, native range includes only South Canadian and Dry Cimarron rivers; the species there has a discontinuous distribution ⁵	Has been introduced, probably via bait bucket ⁶
Southern Redbelly Dace - E(NM)	Limited to headwaters of the Mora River, particularly Coyote Creek, and tributaries to Black Lake ⁷	
Blue sucker - E(NM)		In New Mexico, historically occurred from confluence of the Rio Conchos downstream to the confluence with the Pecos River, the Pecos River from just north of Carlsbad downstream to the Texas/New Mexico border and may have occurred as far upstream as Santa Rosa; currently inhabit Pecos River downstream of Brantley Dam to Texas/New Mexico border, lower reaches of Black River, and seasonally the larger irrigation

¹ T = Threatened, E = Endangered; listings by United States or New Mexico indicated in parentheses.

² Propst, *supra* at 29.

³ Final Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner, 66 Fed. Reg. 18,002, 18,008 (April 4, 2001) (codified at 50 C.F.R. pt. 17).

⁴ Propst, *supra* at 36.

⁵ Propst, *supra* at 39.

⁶ Propst, *supra* at 39.

⁷ Propst, *supra* at 41.

		canals of the Carlsbad Irrigation District. ⁸
Gray Redhorse T(NM)		In New Mexico, historic range was the Rio Grande downstream of Socorro and in the Pecos River from about Roswell downstream to the Texas/New Mexico border. ⁹
Mexican Tetra - T(NM)		In New Mexico, native range was the Rio Grande downstream of Caballo Reservoir and the Pecos River from the confluence of the Rio Grande and Pecos River upstream to near Santa Rosa. ¹⁰
Pecos Gambusia E(US, NM)		Endemic to springs and spring systems of the Pecos River basin; in New Mexico the only regular occurrence was on Bitter Lake National Wildlife Refuge (near Roswell) and Blue Spring and its outflow (near White City); it did not regularly inhabit the Pecos River. ¹¹
Pecos Pupfish		The Pecos River and in sinkholes and springs from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, Chaves County, New Mexico, downstream approximately 650 kilometers (km) (404 miles (mi)) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas, and in Salt Creek, Reeves County, Texas (historical range). ¹²

⁸ Propst, *supra* at 52.

⁹ Propst, *supra* at 54.

¹⁰ Propst, *supra* at 56.

¹¹ Propst, *supra* at 61.

¹² Withdrawal of Proposed Rule to List the Pecos Pupfish (*Cyprinodon pecosensis*) as Endangered, 65 Fed. Reg. 14,513 (March 17, 2000).