

**A JOINT MEMORIAL**

**REQUESTING THE UNITED STATES SECRETARY OF THE INTERIOR AND THE UNITED STATES ATTORNEY GENERAL TO SUPPORT A COOPERATIVE SCIENCE-BASED FEDERAL-STATE RESOLUTION OF ENDANGERED SPECIES ACT LITIGATION ON THE RIO GRANDE AND THE PECOS RIVER.**

**WHEREAS, New Mexico is an arid state and its desert rivers are the lifeblood of its citizens; and**

**WHEREAS, litigation under the federal Endangered Species Act has been initiated on the middle Rio Grande basin seeking protection for the Rio Grande silvery minnow, a species listed as endangered by the United States fish and wildlife service; and**

**WHEREAS, litigation under the Endangered Species Act has also been initiated on the Pecos river basin, seeking protection for the Pecos bluntnose shiner, a species listed as threatened by the United States fish and wildlife service; and**

**WHEREAS, the Rio Grande and the Pecos river are desert stream systems, with highly variable flows and unavoidable intermittency; and**

**WHEREAS, these rivers are also fully appropriated for beneficial uses and have been so for nearly one hundred years; and**

**WHEREAS, the extensive systems of the United States**

bureau of reclamation's and the United States army corps of engineers' projects on these rivers, made possible by a history of cooperation and partnership between New Mexico and the United States, have been a major factor in the ability of New Mexicans to develop these beneficial uses while complying with the downstream water delivery requirements of interstate stream compacts; and

WHEREAS, the parties to these lawsuits have made extraordinary efforts to provide additional water to the rivers for protection of the silvery minnow and the bluntnose shiner habitats; and

WHEREAS, the quantity of supplemental water provided for the silvery minnow in August and September 2000 exceeded the entire native flows of the Rio Grande entering the middle Rio Grande before any diversion for human activities or riparian uses or conveyance losses, and in essence a new Rio Grande was created for the fish by draining reservoirs; and

WHEREAS, New Mexico has been enjoined by the United States supreme court to annually deliver all of New Mexico's annual delivery obligation pursuant to the Pecos River Compact to Texas and has expended approximately fifty million dollars (\$50,000,000) to date in penalties and programs to assure deliveries; and

WHEREAS, provisions for supplemental water for the bluntnose shiner in the Pecos river resulted in additional

water depletions that were not offset by the United States and that have contributed to a serious shortfall in New Mexico's deliveries to Texas in 2000; and

WHEREAS, operation of the Pecos river system in 2001 as it was operated in 2000 may cause New Mexico to violate the United States supreme court's injunction, with enormous economic costs to New Mexico and its water users; and

WHEREAS, the extraordinary efforts in 2000 to provide water for these endangered and threatened species are not hydrologically sustainable due to the lack of water in these desert rivers; and

WHEREAS, New Mexico sued the United States fish and wildlife service for violating federal law in its designation of critical habitats with the result that a federal judge has condemned the United States fish and wildlife service's action as the essence of arbitrary and capricious conduct; and

WHEREAS, New Mexico believes that viable long-term solutions to the problems of the silvery minnow and bluntnose shiner can only be achieved through a cooperative process based on adequate science and open partnerships pursued in good faith and recognizing the hydrologic realities of these desert rivers; and

WHEREAS, in 1999, New Mexico convened the middle Rio Grande Endangered Species Act workgroup for the purpose of

protecting and improving the status of endangered species while protecting existing and future water uses and proceeding in compliance with all applicable laws; and

WHEREAS, a memorandum of understanding was signed by federal, state, local and private participants of the Endangered Species Act workgroup to develop a long-term cooperative program for the middle Rio Grande, initiate recovery of the silvery minnow in the middle valley and secure initial funding for the program; and

WHEREAS, the Endangered Species Act workgroup has fulfilled its commitments under the memorandum of understanding, implementing initial recovery efforts, securing initial federal and state funding and producing a draft cooperative agreement that is now being reviewed by all participants; and

WHEREAS, the legislature finds that the cooperative program represents the best opportunity for providing a long-term solution to the complex problem of accommodating the needs of threatened and endangered species, consistent with the protection of private property rights, and expresses its continued support for this non-litigative solution; and

WHEREAS, the lack of a similar program on the Pecos river handicaps the parties' abilities to reach a solution that protects the species consistently with private property rights without impairment of New Mexico's ability to meet its

interstate compact obligations;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the United States secretary of the interior and the United States attorney general be requested to direct their agencies, including the United States fish and wildlife service and the United States bureau of reclamation, to:

A. recognize that the imposition of a requirement of continuous flows throughout these desert rivers is in conflict with the hydrologic reality;

B. recognize that a long-term solution to these problems cannot be achieved through the imposition of hydrologically unrealistic flow requirements and will require a true collaborative, open and science-based process;

C. direct that the federal agencies promptly and completely disclose to all interested parties all of the biological and hydrologic data that bear on these problems and direct those agencies to cooperate and collaborate with New Mexico and other parties and allow opportunities for these parties to participate in all data collection and analysis efforts that they may be able and willing to join or pursue independently;

D. recognize that both short-term actions and long-term solutions must:

(1) respect the long-established property

rights of both Indian and non-Indian water users on these stream systems so that there is no taking or impairment of these rights without due process and fair compensation;

(2) be accomplished within the state law of water rights and water administration; and

(3) not impair the ability of the state to make its compact delivery obligations as required by federal law and supreme court orders.

E. commit to the ongoing cooperative process on the middle Rio Grande as the only vehicle capable of achieving a workable long-term solution for the silvery minnow; and

F. commit to the establishment of a similar cooperative process for the long-term solution of the bluntnose shiner problems on the Pecos river; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the United States secretary of the interior, the United States attorney general and the New Mexico congressional delegation.