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1 protection for the Pecos bluntnose shiner, a species listed as
2 threatened by the United States fish and wildlife service; and

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

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

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

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

21 WHEREAS, the quantity of supplemental water provided for
22 the silvery minnow in August and September 2000 exceeded the
23 entire native flows of the Rio Grande entering the middle Rio
24 Grande before any diversion for human activities or riparian
25 uses or conveyance losses, and in essence a new Rio Grande was

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1 created for the fish by draining reservoirs; and

2 WHEREAS, New Mexico has been enjoined by the United States
3 supreme court to annually deliver all of New Mexico's annual
4 delivery obligation pursuant to the Pecos River Compact to
5 Texas and has expended approximately fifty million dollars
6 (\$50,000,000) to date in penalties and programs to assure
7 deliveries; and

8 WHEREAS, provisions for supplemental water for the
9 bluntnose shiner in the Pecos river resulted in additional
10 water depletions that were not offset by the United States and
11 that have contributed to a serious shortfall in New Mexico's
12 deliveries to Texas in 2000; and

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

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

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

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

7 WHEREAS, in 1999, New Mexico convened the middle Rio
8 Grande Endangered Species Act workgroup for the purpose of
9 protecting and improving the status of endangered species while
10 protecting existing and future water uses and proceeding in
11 compliance with all applicable laws; and

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

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

24 WHEREAS, the legislature finds that the cooperative
25 program represents the best opportunity for providing a long-

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1 term solution to the complex problem of accommodating the needs
2 of threatened and endangered species, consistent with the
3 protection of private property rights, and expresses its
4 continued support for this non-litigative solution; and

5 WHEREAS, the lack of a similar program on the Pecos river
6 handicaps the parties' abilities to reach a solution that
7 protects the species consistently with private property rights
8 without impairment of New Mexico's ability to meet its
9 interstate compact obligations;

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

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

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

23 C. direct that the federal agencies promptly and
24 completely disclose to all interested parties all of the
25 biological and hydrologic data that bear on these problems and

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1 direct those agencies to cooperate and collaborate with New
2 Mexico and other parties and allow opportunities for these
3 parties to participate in all data collection and analysis
4 efforts that they may be able and willing to join or pursue
5 independently;

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

8 (1) respect the long-established property
9 rights of both Indian and non-Indian water users on these
10 stream systems so that there is no taking or impairment of
11 these rights without due process and fair compensation;

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

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

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

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

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

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