

Memorandum of Understanding
between the
Colorado River Municipal Water District
and the
United States Fish and Wildlife Service

Article 1. Background

Section 1.1. The Colorado River Municipal Water District (District) was authorized in 1949 by an Act of the 51st Legislature of the State of Texas for the purpose of providing water to the District's member cities, which include Odessa, Big Spring, and Snyder, Texas. The District also provides water to the cities of Midland, San Angelo, Stanton, Robert Lee, Grandfalls, Pyote, and Abilene, Texas. The mission of the Colorado River Municipal Water District is to maintain an adequate supply of the best quality water possible, at a reasonable cost, for its service area in West Texas. The District owns and operates three major surface water supply reservoirs on the Colorado River, four groundwater well fields, and associated water delivery systems in west Texas.

Section 1.2. The mission of the U.S. Fish and Wildlife Service (Service) is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service administers the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

Section 1.3. The Concho water snake (*Nerodia harteri paucimaculata*) was federally listed as threatened on September 3, 1986 (51 FR 31412) and critical habitat was designated on June 29, 1989 (54 FR 27377). The District has consulted with the Service (under section 7 of the Act, through the U.S. Army Corps of Engineers, Clean Water Act, section 404

permitting process) concerning construction and operation of its water storage and delivery systems beginning in 1986 and culminating in a revised biological opinion (BO) from the Service, dated December 3, 2004 (2004 BO). Additional information on the consultation history, District operations, biology of the snake, and analysis of effects of the District operations on the snake and its habitat can be found in the 2004 BO.

Article 2. Purpose

Section 2.1. The purpose of this Memorandum of Understanding (MOU) is for the District to provide assurance that minimum reservoir releases will continue in perpetuity, consistent with the 2004 BO (“Future District Operations” pages 11-12). The release rates specified in Article 3 below will be maintained following removal of the snake from the Federal list of threatened species. In addition, the MOU ensures that individual snakes will be periodically moved to maintain genetic integrity of fragmented snake populations.

Article 3. Reservoir Releases

Section 3.1. As stated in the 2004 BO, the District will maintain flows in the Colorado River downstream of the E.V. Spence Reservoir as follows:

Section 3.1.1. To provide flow to support the aquatic ecosystem of the Concho water snake and to the extent there is inflow into Spence Reservoir, the District will maintain a minimum flow in the Colorado River below the Spence dam of not less than 4.0 cubic feet per second (cfs) (0.11 cubic meters per second, cms) during the months of April through September and 1.5 cfs (0.04 cms) during the months of October through March.

Section 3.1.2. These flows will maintain riverine habitat for the Concho water snake downstream from the E.V. Spence Reservoir. In addition to maintaining the minimum flows in the Colorado River below the E.V. Spence dam, the District will periodically make additional discharges of varying flow rates from the E.V.

Spence Reservoir as a part of its reservoir management activities and to manage water quality in the reservoir. Some of these discharges may be at high rates of flow coupled with flood runoff events. High discharges will function as channel maintenance flow to maintain suitable rock substrates and abate vegetation invasion of riffle habitat.

Section 3.1.3. The District may periodically cause a total cessation of flow for necessary dam maintenance activities. Flow cessation periods will vary in length; however, they will generally be infrequent and short-termed and will typically occur during the months of November through March.

Section 3.1.4. During periods of extended hydrologic drought and to provide water for the health and human safety needs of its customers, the District will not be required to maintain flow in the Colorado River below the Spence dam when the elevation of the E.V. Spence Reservoir is below elevation 1,843.5 feet (561.9 meters) MSL (mean sea level) (12.1 percent of the reservoir capacity).

Section 3.2. As stated in the 2004 BO, the District will maintain flows in the Colorado River downstream of the O.H. Ivie Reservoir as follows:

Section 3.2.1. To provide flow to support the aquatic ecosystem of the Concho water snake and to the extent there is inflow into Ivie Reservoir, the District will maintain a minimum flow in the Colorado River below the Ivie dam of not less than 8.0 cfs during the months of April through September and 2.5 cfs during the months of October through March.

Section 3.2.2. These flows will maintain riverine habitat for the range of the Concho water snake downstream from the O.H. Ivie Reservoir. In addition to maintaining the minimum flows in the Colorado River downstream of O.H. Ivie Reservoir, the District will periodically make additional discharges of varying flow rates from the O.H. Ivie Reservoir as a part of its reservoir management activities and to manage water quality in the reservoir. Some of these discharges may be at high

rates of flow coupled with flood runoff events. High discharges will function as channel maintenance flow to maintain suitable rock substrates and abate vegetation invasion of riffle habitat.

Section 3.2.3. The District may periodically cause a total cessation of flow for necessary dam maintenance activities. Flow cessation periods will vary in length; however, they will generally be infrequent and short-termed and will typically occur during the months of November through March.

Section 3.2.4. During periods of extended hydrologic drought and to provide water for the health and human safety needs of its customers, the District will not be required to maintain flow in the Colorado River downstream of O.H. Ivie Reservoir when the elevation of the O.H. Ivie Reservoir is below elevation 1,504.5 feet (458.6 meters) MSL (11.9 percent of the reservoir capacity).

Article 4. Movement of Concho Water Snakes

Section 4.1. In the springtime, the District, in coordination with the Service, should move 5 male snakes from below Spence and Freese dams to above these dams, once every 3 years. Moving snakes will be dependent upon availability of funding for the District.

Article 5. Monitoring

Section 5.1. In accordance with Section 4(g) of the Act, the Service, in coordination with the District, will develop and implement for at least 5 years, a post-delisting monitoring plan for the Concho water snake following removal of the species from the list.

Section 5.2. If during the post delisting monitoring period, or at any time following removal of the Concho water snake from the Federal list of threatened species, the Service finds that the species is endangered or likely to become so in the foreseeable future, the Service will take action to add the species back to the list. This includes action under the emergency listing provisions of Section 4 of the Act.

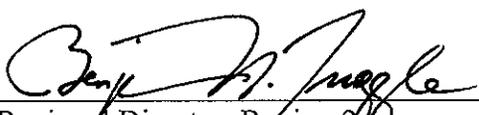
Article 6. General Provisions

Section 6.1. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the signatories to this MOU where creating such an obligation would be inconsistent with applicable federal, state, or local laws. No funding commitments are being made under this MOU. This MOU is subject to and is intended to be consistent with all applicable federal, state, and local laws.

Section 6.2. Both signatories to this MOU recognize that each have statutory responsibilities that cannot be delegated. Nothing in this MOU shall be construed to abrogate any of the statutory responsibilities of either signatory of the MOU.

Section 6.3. This MOU is effective on the date signed by both signatories.

United States Fish and Wildlife Service

By: 
Regional Director, Region 20

Date: FEBRUARY 11, 2008

Colorado River Municipal Water District

By: 
General Manager

Date: FEBRUARY 13, 2008