

NATIVE ENDANGERED & THREATENED SP.
CANDIDATE CONSERVATION

Permit Number: PER4611962-0

Version Number: 0

Effective: 2023-11-01 Expires: 2033-11-01

**Candidate Conservation Agreement with Assurances for the
Trinity River Authority of Texas****Issuing Office:**

Department of the Interior
U.S. FISH AND WILDLIFE SERVICE
ES Albuquerque Permit Office
500 Gold Avenue S.W., P.O. Box 1306
Albuquerque, New Mexico 87103-1306

Permittee:

Mr. Kevin Ward, General Manager
Trinity River Authority of Texas
5300 S. Collins St.
Arlington, Texas 76018
U.S.A.

Digitally signed by*Deputy Regional Director***Authority:**

Statutes and Regulations: 16 U.S.C. § 1539(a), 16 U.S.C. § 1533(d); 50 C.F.R. § 17.22, 50 C.F.R. § 17.32, 50 C.F.R. § 13.

Name of Agreement: Candidate Conservation Agreement with Assurances for Six Species in the Trinity River Basin

Location where authorized activity may be conducted:

Non-federal lands within the Trinity River basin in Texas. (see Figure 1 of the Candidate Conservation Agreement with Assurances (CCAA)).

Reporting requirements:

Annual REPORT DUE: March 1 of each year for the duration of the Permit. See Permit terms and conditions for specific reporting requirements.

Terms and Conditions:**A. Acceptance**

Acceptance of the Permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of this Permit and all applicable sections of 50 C.F.R. Parts 13 and 17 pertinent to the issued Permit. Terms and Conditions of the Permit are inclusive. Any activity not specifically permitted is prohibited. Violations of Permit terms and conditions may result in the Permit being suspended or revoked. Violations of the Permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) may also subject you to criminal or civil penalties pursuant to Section 11 of the ESA.

B. Acknowledgment

The person listed above must counter-sign the Permit to acknowledge receipt and signify agreement to fully abide by and implement this Permit. You must return an original signature copy to the Regional Office, as provided in Condition T.

Permittee Signature: _____ **Date:** _____



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C. Definitions

Terms used in this Permit and specifically defined under the ESA or in regulations adopted by the U.S. Fish and Wildlife Service (USFWS) under the ESA, have the same meaning as defined under the ESA and those implementing regulations unless this Permit expressly provides otherwise.

D. General Conditions

General conditions set out in subpart D of 50 C.F.R. Part 13, and specific conditions contained in Federal regulations cited above in Authority, are hereby made a part of this Permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal, of this Permit is subject to complete and timely compliance with all applicable conditions, including filing all required information and reports.

E. Observance of Applicable Laws

The validity of this Permit is conditioned upon strict observance of all applicable foreign, State, local, or other Federal law.

F. Validity

This Permit is valid for use only by Permittee named above.

G. Compliance

The authorization granted by this Permit will be subject to full and complete compliance with, and implementation of, the 2023 Trinity River Authority (TRA) CCAA and all specific conditions contained in this Permit. The Permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the CCAA or other program documents.

H. Covered Species

The following is a list of the species covered under this Permit:

<u>Common Name</u>	<u>Scientific Name</u>	<u>Federal Listing Status</u>
Texas Fawnsfoot (TF)	(<i>Truncilla macrodon</i>)	Proposed Threatened
Texas Heelsplitter (TH)	(<i>Potamilus amphichaenus</i>)	Proposed Endangered
Trinity Pigtoe (TP)	(<i>Fusconaia chunii</i>)	No Status
Louisiana Pigtoe (LP)	(<i>Pleurobema riddellii</i>)	Proposed Threatened
Alligator Snapping Turtle (AST)	(<i>Macrochelys temminckii</i>)	Proposed Threatened
Western Chicken Turtle (WCT)	(<i>Deirochelys reticularia miaria</i>)	Under Review

I. Incidental Take Authorized

Should any Covered Species become listed as either threatened or endangered, incidental take, as described below, is authorized for the Covered Species at levels consistent with Covered Activities documented in the CCAA, for the Permittee and entities enrolled in the CCAA through Certificates of Inclusion (CIs).

Incidental take of the Covered Species is authorized, in the form of harm, injury and mortality caused by the following Covered Activities: operation of existing water supply, operation of existing reservoirs, routine maintenance of existing instream structures (e.g., intake, outfalls, boat docks, boat ramps) and levees, wastewater treatment, emergency activities, operation and maintenance of existing pipelines, invasive aquatic plant control, and conservation measures designed to benefit the Covered Species. The following conditions apply to this incidental take authorization provided through this Enhancement of Survival Permit:



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1. **Analysis of Incidental Take:**

Four categories of take associated with this CCAA were evaluated, 1) conservation activities, 2) facilities maintenance, 3) water quality, and 4) hydrology. Estimates of take were based on a combination of basic life history traits, abundance, and the proximity of occupied areas to wastewater outflows, water supply, or other Covered Activities that could impact the Covered Species. The potential impacts of Covered Activities were considered based on the best available scientific information and as they relate to current habitat conditions that exist in the basin today.

2. **Levels of Authorized Incidental Take:**

- Western Chicken Turtle – not to exceed 1 WCT over the 10-year term of the CCAA.
- Alligator Snapping Turtle – not to exceed 10 ASTs over the 10-year term of the CCAA.
- Trinity Pigtoe, Louisiana Pigtoe, Texas Heelsplitter, and Texas Fawnsfoot – impacted stream miles were used as a proxy to estimate incidental take of the Covered Species of freshwater mussels. The LP is believed extirpated and is not known to currently occupy areas within the Trinity River basin. The remaining 3 mussels currently occupy a total of 595 river miles in the basin covered by the agreement. Incidental take of these four mussels in the form of harm, harassment, injury and mortality, as measured by river miles (i.e., mussel habitat occupied by any of the four species within the Covered Area) that are impacted or disturbed by Covered Activities, will not exceed 54 river miles over the 10-year term of the CCAA. This impacted area represents less than 9% of the currently occupied habitat.

3. **Tracking and Reporting of Incidental Take:** Because incidental take of these mussel species will be difficult to detect and monitor, the Covered Parties will track river miles impacted and notify the USFWS if they expect their activities to affect more than a total of 54 miles of occupied mussel habitat, as described in Section 12.3 of the CCAA, cumulatively over the 10-year term of this agreement. The Covered Parties will also notify the USFWS if they expect their activities will result in take of more than 1 Western Chicken Turtle or 10 Alligator Snapping Turtles, as described in Section 12.2 of the CCAA, over the 10-year term of the agreement.

4. **Annual Reports:** The Permittee, or designated Representative, will monitor, track, and report take of Covered species in the form of direct harm or mortality and in the form of stream disturbing activities that impact habitat occupied by the four Covered Species of mussels, as set forth in Section 14 of the CCAA. Within 60 days of permit acceptance or as soon as practicable, Permittee will meet with the Service to discuss reporting processes, formats, and other items to fulfill all required reporting requirements.

5. **Take Authorization:** Incidental take authorization will become effective, if and at such a time that any of the Covered Species become listed as either threatened or endangered, at the level consistent with activities documented in the CCAA. Incidental take of the species will be exceeded when: the level of authorized Take (harm to individual WCT or AST, or as measured by impacted stream miles for mussels) is exceeded by the Permittee, if the Permittee is not implementing their conservation commitments, or the Covered Activities have changed such that the level of effects on the Covered Area is not consistent with the level of effects analyzed under the CCAA and this permit.

6. **CCAA Implementation:** This incidental take is authorized based upon the full implementation of the CCAA and is based upon all habitat affected or impacted by the Permittee.

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7. **Take associated with Conservation Actions:** Incidental take related to short-term adverse effects from recovery or conservation actions that provide long-term benefit to the Covered Species are authorized if implemented by the Permittee or designated representative.
8. **Permit Amendment:** If, during the tenure of this Permit, the project design and/or the extent of the habitat impact is altered, such that there may be an increase in the anticipated take of the Covered Species above the impacts provided for in this Permit, the Permittee is required to contact the USFWS and begin working on an amendment of the Permit before commencing any activities that might result in incidental take or habitat loss beyond that described in this Permit.
9. **Exceedance of Authorized Take:** If actions associated with implementation of the CCAA are shown to result in incidental take of listed species not covered by this Permit, those activities that are shown to cause take must cease immediately and any take that has occurred must be reported to the Arlington Texas Ecological Services Field Office at 682-348-7397 within 48 hours.
10. **Intentional or Purposeful Take:** Intentional take of the Covered Species cannot be authorized under 50 CFR 17.21(d) or 17.32(d) through this permit. If the any of the Covered Species are listed as threatened or endangered, any party implementing actions under the Plan, such as research, monitoring or other recovery action, that requires the purposeful harassment, harm, or mortality of the Covered Species must secure a separate section 10(a)(1)(A) Research and Recovery Permit from the Service.

J. Disposition

Upon locating a dead, injured, or sick individual of the Covered Species, or any other endangered or threatened species, the Permittee is required to contact the USFWS's Law Enforcement Office (501 West Felix Street, Suite 1105, Fort Worth, Texas, 76115, 817-334-5202) for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

K. Covered Activities

Covered Activities are described in detail in Section 7 of the CCAA. The Covered Activities include the following:

- Conservation activities;
- Water supply and reservoir operations;
- Maintenance of levee, dams, bulkheads, boat docks, boat ramps, and instream structures;
- Wastewater Treatment;
- Maintenance of pipelines;
- Invasive aquatic plant control; and
- Boat dock and pier permitting

L. Plan Duration

The Plan and Permit will have a duration of 10 years from the date of the last signature accepting the original Permit. Should the AST, WCT, TF, LP, TH, or TP be listed as threatened or endangered, and all other requirements are met, the Permit will become effective upon the effective date of listing and all Participants



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will be covered from that date until the end of their participation in the CCAA, either through expiration of the Plan and Permit or termination of their Permit or CI.

M. Conservation Program

The CCAA is intended to remove or reduce threats to the Covered Species in the Trinity River basin of Texas. Those threats that cannot be avoided and result in incidental take of the Covered Species as measured through impacts to individual Covered Species or disturbance/loss of occupied mussel habitat, as described in the CCAA, shall be reduced, eliminated, and offset as described in Section 8 of the CCAA and Participant CIs.

N. Enrollment

Upon listing of any of the Covered Species, no additional enrollments under the CCAA may occur after the effective listing date. Upon an effective listing date for a Covered Species, the Permittee will provide the USFWS with a summary of landowners enrolled through Certificates of Inclusion.

O. Covered Area

The Covered Area for this CCAA is all areas within the Trinity River basin where the Permittee or landowners enrolled through CIs have authority, jurisdiction or control.

P. Participation in the Trinity River Authority CCAA

Participation in the CCAA is limited to non-Federal Participants. The Permittee is responsible for implementing and administering the CCAA. This includes the management of CCAA Participants to ensure compliance with this Permit. The following conditions apply:

1. TRA will enroll property owners as participants in the CCAA and issue CIs that support the main objectives of the CCAA.
2. The USFWS will review each CI to confirm the CI is consistent with the CCAA for the applicable Covered Activities.
3. Participants will actively implement conservation measures for the Covered Species, as described in the CCAA.
4. TRA will process and monitor all CIs to ensure conservation measures implemented on the enrolled properties provide a conservation benefit to the Covered Species. Furthermore, TRA is responsible for documentation that these conservation measures are being properly implemented under the CCAA.
5. The CCAA will cover Participants from the date the CI is signed until the end of their participation in the CCAA under this Permit, either through expiration or termination.
6. Terms and conditions of this Permit shall be binding on, and for the benefit of, the Permittee and holders of valid CIs.

Q. Biennial Meetings

Within the first 6 months of Permit issuance, the Permittee will host a Work Plan kickoff meeting with the USFWS and Texas Parks and Wildlife Department (TPWD) to develop a Work Plan and develop specific strategies to accomplish goals outlined in the Work Plan. The Permittee will, at a minimum, host meetings every two years thereafter to review the Work Plan, discuss progress in recovery of Covered Species, discuss factors that may be having positive and negative effects on Covered Species, discuss actions that could benefit Covered Species, and ensure Work Plan goals are achieved through adaptive management. TRA will also keep

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USFWS and TPWD updated annually about research activities through the Texas Freshwater Mussel Workgroup.

R. Technical Assistance

The Permittee, along with representatives from the USFWS, will meet with Participants at their request to provide technical assistance on implementation of the CCAA and associated conservation activities, including potential funding options for implementing conservation on their enrolled property.

S. Monitoring

As described in the CCAA, the Permittee will be responsible for the following monitoring activities:

1. Monitoring conservation actions, Covered Species, water quality, hydrology, and levels of incidental take associated with Covered Activities in the Covered Area (i.e., areas of the Trinity River basin wherever the Covered Parties have property, operations, management authority, or otherwise some level of control) to ensure compliance with the CCAA, assess efficacy of conservation measures, and determine if adaptation is needed;
2. Monitoring all CIs to ensure conservation measures are implemented on the enrolled properties and are providing a conservation benefit to the Covered Species; and
3. Tracking expenditure of funds.

A full description of monitoring programs can be found in Section 8 of the CCAA.

T. Reporting

Each year, an annual report will be submitted by March 1 to the Arlington Texas ESFO at the address below and will describe the previous calendar year's activities and compliance with this Permit and the CCAA (as described in Section 14 of the CCAA). Elements covered in the reports will include the following: 1) a summary of activities related to each of the Conservation Measures found in Section 8 of the CCAA; 2) estimates of mortality, injury, or disturbance of mussel habitat (take) of the Covered Species; 3) results of any freshwater mussel surveys or relocations conducted by or on behalf of the Covered Parties; 4) a review and summary of water quality and hydrologic conditions for each Conservation Zone; 5) a summary of public outreach efforts, and 6) a description of any adaptive management needed or implemented. Electronic submission to the appropriate e-mail address is preferred. Upon final completion of the 10-year CCAA, the Permittee(s) must submit a final annual report summarizing full compliance with the permit and CCAA.

U.S. Fish and Wildlife Service
Arlington Texas Ecological Services Field Office
501 West Felix Street, Suite 1105
Fort Worth, Texas 76115
Email Address: ARLES@fws.gov

A copy of the annual report must also be submitted to the USFWS's Regional Office at the following address:

U.S. Fish and Wildlife Service, Region 2
Branch of Environmental Review
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103
FW2_HCP_Permits@fws.gov



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U. No Surprises Assurances

The Covered Species listed above are considered adequately addressed under the Trinity River Authority CCAA and are, therefore, covered by "No Surprises" assurances provided in 50 C.F.R. 17.22(d)(5) and 50 C.F.R. 17.32(d)(5). If the USFWS demonstrates that unforeseen circumstances exist during the life of the Permit and additional measures are deemed necessary to respond to those circumstances, the USFWS may require additional measures of the Permittee where the CCAA is being properly implemented, but only through coordination with the Permittee and only if such measures are limited to modifications to the CCAA's operating conservation program for the Covered Species, and maintain the original terms of the CCAA to the maximum extent practicable. Notwithstanding the foregoing, the USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species without the consent of the Permittee.

V. Transferring

This Permit may be transferred pursuant to 50 C.F.R. §§ 13.24 and 13.25. Pursuant to 50 C.F.R. § 13.24, upon the death of or bankruptcy of the Permittee a successor of the Permittee shall furnish the USFWS a revised permit within ninety (90) days from the date the successor begins to carry on the permitted activities. However, the successor is subject to the determination of the USFWS that the successor meets the criteria under 50 C.F.R. § 13.24 (c). Similarly, the Permittee may transfer the permit in whole or in part by joint submission of the Permittee and proposed transferee. This joint submission must adhere to and will be subject to the requirements under 50 C.F.R. § 13.25. In the event the Permittee sells their conservation lands prior to the end of the "Duration of Conservation" for those lands under the CCAA, they will notify the USFWS at least 60 days in advance of the potential sale and notify the prospective landowner of the existence of the CCAA in order for the potential new owner to decide whether to participate in the CCAA. If the new landowner does not become a party to the CCAA and the CI is not transferred, or a new CI is not issued, he/she will not receive the benefits of the Permit authorizing incidental take of the Covered Species (AST, WCT, TF, LP, TH, and TP).

The Covered Activities proposed or in progress under the original Permit may not be interrupted provided the conditions of the Permit are being followed.

W. Amendments

This Permit may be amended in accordance with the provisions of 50 C.F.R. §13.23. The Permittee must provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects, including its effects on Covered Species. The activities proposed or in progress under this Permit may not be interrupted, provided the required conditions of this Permit are being followed. The USFWS may amend the Permit at any time for just cause, and upon written finding of necessity.

If the Covered Activities and/or the extent of the impacts described in the CCAA are altered during the life of the Permit, such that there may be an increase in the anticipated take of Covered Species, the Permittee is required to contact the USFWS and amend this Permit before commencing any activities that might result in take beyond that described in the CCAA.

Any change in the names or addresses or other administrative correction or alteration of the Permit will be in accordance with 50 C.F.R. § 13.23.

X. Suspension and Revocation

Suspension: The USFWS may suspend this Permit if the Permittee is not in compliance with the conditions of this Permit, the CCAA, or any applicable Federal laws and regulations. The procedures applicable to any suspension shall be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 C.F.R. § 13.27 in existence on the effective date. The suspension shall remain in effect until the USFWS determines that the Permittee has corrected the deficiencies, or the Permit is revoked.



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Revocation: The USFWS shall not revoke this Permit for any reason except those listed in 50 C.F.R. § 13.28(a)(1)-(4), or unless the Covered Activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, this Permit will only be revoked if the USFWS, the Permittee, and other interested parties have not been successful in remedying any such inconsistency through other means.

Y. Renewals

The Permittee may apply for the renewal of the Permit prior to its expiration date in accordance with the provisions of 50 C.F.R. § 13.22. Renewal determinations are new Federal decisions and require consideration of issuance criteria and include required associated determinations.

Z. Discontinuance of Permit Activity

In the event the Permittee discontinues activities authorized by the Permit, the Permittee must within 30 days of discontinuance return the Permit to USFWS with a written statement of surrendering the permit for cancellation. The Permittee remains responsible for any outstanding minimization and mitigation measures required by the Permit until USFWS deems the Permit cancelled. The Permit will be cancelled only upon a USFWS determination that minimization and mitigation measures were implemented.

***** End of Permit Terms and Conditions for Permit # PER4611962-0 *****