

6-2008

## An Environmental Perspective on Rio Grande Reservoirs

Kara Gillon

Follow this and additional works at: [https://digitalrepository.unm.edu/utton\\_pubs](https://digitalrepository.unm.edu/utton_pubs)

 Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Environmental Law Commons](#), [Food and Drug Law Commons](#), [Indian and Aboriginal Law Commons](#), [International Law Commons](#), [Land Use Law Commons](#), [Litigation Commons](#), [Natural Resources Law Commons](#), and the [Water Law Commons](#)

---

### Recommended Citation

Gillon, Kara. "An Environmental Perspective on Rio Grande Reservoirs." (2008).  
[https://digitalrepository.unm.edu/utton\\_pubs/29](https://digitalrepository.unm.edu/utton_pubs/29)

This Presentation is brought to you for free and open access by the The Utton Transboundary Resources Center at UNM Digital Repository. It has been accepted for inclusion in Publications by an authorized administrator of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu), [lsloane@salud.unm.edu](mailto:lsloane@salud.unm.edu), [sarahrk@unm.edu](mailto:sarahrk@unm.edu).

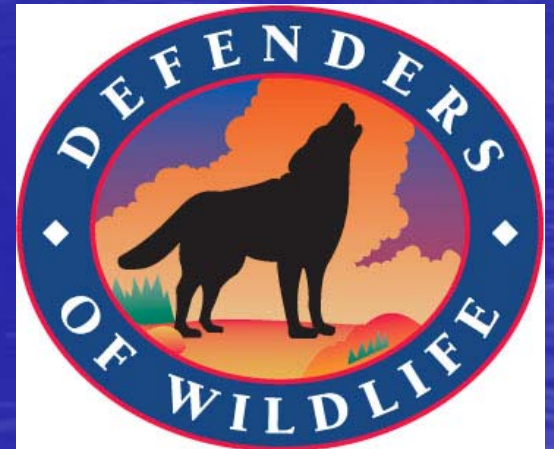
# An Environmental Perspective on Rio Grande Reservoirs

Kara Gillon  
Staff Attorney

Utton Center

Rio Grande Reservoir Symposium

April 22, 2006



# Happy Earth Day!



Artwork by **Jacob Adriaan Leeuwenburgh**, [www.earthday.net](http://www.earthday.net)

# Green Paper: A Water Plan for the Future

- All Major Players Involved
- Adequate River Flows Must Be Assured
- Share the Responsibility
- Supply Adequate Water To All Valid Rights and Needs
- All Legal and Financial Requirements Must Be Met



# Green Paper (cont'd)

- Sources for River Flows
  - Flood waters; Bureau of Reclamation; MRGCD; Albuquerque; ISC
- River Structures and Modifications
  - Diversion dams; levees; LFCC
- Institutional Reforms
  - Measurement and control of diversions; reauthorizations; water trust; funding

# *Rio Grande Silvery Minnow v. Keys*

- ESA Consultation
- Federal discretion in water management
  - Bureau of Reclamation and Corps of Engineers
  - Reclamation projects and contracts
- Related issue of ownership



# *Rio Grande Silvery Minnow v. Keys*

- June 2001 biological opinion
- April 2002 opinion ([www.nmcourt.fed.us](http://www.nmcourt.fed.us))
- September 2002 biological opinion
- September 2002 opinion and injunction
- March 2003 biological opinion ([www.fws.gov/mrgesacp](http://www.fws.gov/mrgesacp))
- June 2003 10<sup>th</sup> Circuit opinion, 333 F.3d 1109 (10<sup>th</sup> Cir. 2003) ([www.findlaw.com](http://www.findlaw.com))
- November 2005 opinion



# State of New Mexico

*Office of the Governor*

**Bill Richardson**  
*Governor*

For immediate release  
9/10/03

Contact: Gilbert Gallegos  
505.476.2217

## **Governor Bill Richardson Postpones Silvery Minnow Talks Pending Federal Legislative Action**

SANTA FE – Governor Bill Richardson today announced that discussions on meeting silvery minnow habitat needs in the Rio Grande have been temporarily postponed because the time frame for reaching consensus was too tight before pending federal legislation.

"Because of the short time remaining, the Bureau of Reclamation informed us they would be unable to come to a final agreement before congressional action commences on silvery minnow legislation," Governor Bill Richardson said. "Therefore, we will postpone further discussions until that legislative rider process is completed."

Reclamation Commissioner John Keys praised Governor Richardson's efforts in the discussions.

"I want to congratulate the State of New Mexico for its contributions in bringing diverse interests together to look for ways to identify the issues surrounding supply and use of Middle Rio Grande Basin water," Keys said. "The state's efforts provide a valuable foundation for continuing discussions over water use in the Middle Rio Grande Valley."



# Settlement Agreement, April 2005

**SETTLEMENT AGREEMENT BETWEEN  
RIO GRANDE SILVERY MINNOW v. KEYS PLAINTIFFS,  
THE CITY OF ALBUQUERQUE AND THE  
ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY**

**Section I. Parties**

The Parties to this Settlement Agreement ("Agreement") are the Plaintiffs in *Rio Grande Silvery Minnow v. Keys*, 99 CV 1320 JP/RHS (DNM) ("Plaintiffs"), the City of Albuquerque ("Albuquerque" or "the City"), and the Albuquerque-Bernalillo County Water Utility Authority ("Authority") (collectively "the Parties").

**Section II. Purposes of the Agreement**

The purposes of this Agreement are to take steps towards protecting and restoring the ecological integrity of the Rio Grande and to provide greater certainty for the Authority to develop and utilize a reliable water supply. The City and Authority recognize that the health and vitality of the Rio Grande and the Bosque and fish and wildlife that depend on them, including the endangered Rio Grande silvery minnow and Southwestern willow flycatcher, contribute to the cultural, economic and environmental well-being of the City and the State of New Mexico. The Plaintiffs recognize that the Authority requires a reliable water supply to ensure the future vitality and economic viability of the City and the region.

In order to provide certainty to the Parties and to further these purposes, the Parties agree to work together to implement the provisions of this Agreement.

“The Court commends the Plaintiffs, the City of Albuquerque, the Albuquerque-Bernalillo County Water Utility Authority, and their attorneys for amicably resolving their disputes following highly contentious battles in this case.”

*Rio Grande Silvery Minnow v. Keys*, No. CV-99-1320, slip op. at 13 (D.N.M. Nov. 22, 2005)

# Storage Space in Abiquiu Reservoir

- "Environmental pool"
- Albuquerque sublease to plaintiffs, free of charge
- 30,000 acre-feet for storage of native or SJC waters
- Lease, purchase, or donation
- After DWP begins full diversions
- Subject to regulatory approvals



# Corps Management of Abiquiu

- Operating criteria ... P.L. 86-645 (1960)
- Corps authority to enter into agreements for SJC water storage ... P.L. 97-140 (1981)
- Contract between Albuquerque/Authority and the Corps ... No. DACW47-86-C-0009
- Corps authority to store native Rio Grande water ... P.L. 100-522 (1988)

# Environmental Pool

- Abiquiu authorized to store native Rio Grande water in SJC storage space when not needed (approx. 183,000 acre-feet)
- Storage subject to:
  - State engineer permit
  - Corps deviation from normal operations
  - Compliance with the Rio Grande Compact
  - Consent of Rio Grande Compact Commission

# Conservation Water Agreement

**RESOLUTION  
OF THE  
RIO GRANDE COMPACT COMMISSION  
REGARDING**

**THE STORAGE OF NATIVE NEW MEXICO RIO GRANDE WATER IN U.S. ARMY  
CORPS OF ENGINEERS MIDDLE RIO GRANDE PROJECT RESERVOIRS**

April 11, 2001  
Albuquerque, New Mexico

WHEREAS, the states of Colorado, New Mexico, and Texas entered into the Rio Grande Compact, signed in 1938, regarding the waters of the Rio Grande above Fort Quitman, Texas; and

WHEREAS, Article VI of the Rio Grande Compact provides for annual computation of all credits and debits of Colorado and New Mexico; and

WHEREAS, the U.S. Army Corps of Engineers (Corps) and the U.S. Bureau of Reclamation (Reclamation) operate and maintain water storage and conveyance facilities on the Rio Grande; and

WHEREAS, litigation under the federal Endangered Species Act, Cause No. 99-CIV-1320, styled *Minnow v. Martinez*, filed in the United States District Court for the District of New Mexico in Albuquerque, New Mexico, was initiated in late 1999 on the middle Rio Grande in New Mexico seeking protection for the endangered Rio Grande silvery minnow; and

WHEREAS, New Mexico has recently proposed in an offer of settlement of *Minnow v. Martinez* to make available for lease by Reclamation, for a period of three years, a total of 100,000 acre-feet of New Mexico's native Rio Grande water and to establish a Middle Rio Grande Endangered Species Conservation Pool (Conservation Pool) in the Corps' Middle Rio Grande Project Reservoirs; and

WHEREAS, New Mexico proposes to capture and store native Rio Grande water during 2001 through 2003 at times when Rio Grande flows are in excess of downstream diversion demands in New Mexico above Elephant Butte Reservoir; such water, if not stored, would have flowed downstream to Elephant Butte Reservoir and contributed to New Mexico's compact delivery; and

WHEREAS, the native Rio Grande water that New Mexico stores in the Middle Rio Grande Endangered Species Conservation Pool would be released at a sufficient flow rate to maintain flow at points in the Rio Grande critical for the silvery minnow, with total releases over the three-year term not to exceed 90,000 acre-feet, with no more than 30,000 acre-feet (plus any carryover water from the prior year) released in any one calendar year; and

WHEREAS, the Flood Control Act of 1960 (Public Law 86-645) requires the advice and consent of the Rio Grande Compact Commission for any departure from the normal operation schedules of the Corps' Middle Rio Grande Project Reservoirs; and

NOW, THEREFORE, BE IT RESOLVED that, in accordance with the Flood Control Act of 1960 (Public Law 86-645), the Rio Grande Compact Commission hereby favorably advises and consents

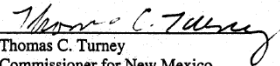
to the departure from normal operation schedules of the Corps' Middle Rio Grande Project Reservoirs for a term of not more than three years to allow the operation of the Middle Rio Grande Endangered Species Conservation Pool as described above; and

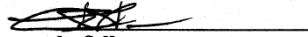
BE IT FURTHER RESOLVED that by approval of this resolution, the States of Colorado and Texas in no way change the obligations of New Mexico under the Rio Grande Compact.

BE IT FURTHER RESOLVED PROVIDED, HOWEVER, that the State of Texas reserves the right to rescind its approval of this resolution on March 21, 2002, and again on March 20, 2003, if Texas determines that Texas has been or will be harmed by the departure from normal operation schedules, by providing written notice of the rescission of its approval to the States of Colorado and New Mexico through each state's respective Rio Grande Compact Commissioner.

BE IT FURTHER RESOLVED that the Secretary of the Rio Grande Compact Commission transmit copies of this resolution to the Secretary of the Interior; the Commissioner, Regional Director, and Albuquerque Area Office Manager of Reclamation; the Director, Regional Director, and the New Mexico Ecological Services Field Office Supervisor of the U.S. Fish and Wildlife Service, and the Commander, Division Engineer, and District Engineer of the U.S. Army Corps of Engineers.

\_\_\_\_\_  
Hal D. Simpson  
Commissioner for Colorado

  
Thomas C. Turney  
Commissioner for New Mexico

  
Joe G. Hanson  
Commissioner for Texas



# Opportunities

- Compact deliveries
- Endangered species protection and recovery
- Ecosystem management
- Strategic Water Reserve

# Next Steps:

- Seek permit from Office of the State Engineer
- Seek agreement with others who store water in Abiquiu regarding management of pool
- Environmental compliance (e.g., Environmental Assessment)

And one last thing ...

**find water!**