



Middle Rio Grande
Endangered Species
Collaborative Program

Draft Program Document

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I. Statement of Purpose and Goals

The Executive Committee (EC) of the Middle Rio Grande Endangered Species Collaborative Program (Collaborative Program or Program) has decided to advance the Collaborative Program through the structure of a recovery implementation program (RIP) to further the interests of efficiency and increased emphasis on species recovery and Endangered Species Act (ESA) compliance. Hereinafter, the Collaborative Program shall perform its functions through implementation of the RIP. This Program Document describes, among other things, the RIP's purpose and goals, its scope, the organizational structure and governance protocols (Appendix __) for RIP implementation, the substantive RIP Action Plan (Appendix __) elements, criteria for measuring progress, and principles for compliance under the ESA.

A. Purpose

The general purpose of the RIP is:

To protect and improve the status of species listed pursuant to the ESA within the Middle Rio Grande (MRG) by implementing certain recovery activities to benefit those species and their associated habitats, with special emphasis on the Rio Grande silvery minnow (*Hybognathus amarus*; silvery minnow) and the Southwestern Willow Flycatcher (*Empidonax traillii extimus*; flycatcher);

and, simultaneously,

To protect existing and future water uses while complying with applicable state and federal laws, rules and regulations, and to serve as the ESA coverage vehicle for water uses and management actions in the Program area (see area map on page 7).

B. Goals

The goals of the RIP are to:

1. Alleviate jeopardy to the listed species and adverse modification of their designated critical habitats in the MRG Program area
 - Avoid actions that preclude survival or recovery of the listed species
 - Continually identify the critical scientific questions and uncertainties that will be addressed through adaptive management (AM) in support of a hydrologically and biologically sustainable MRG water operations Biological Opinion¹ (BO)

¹ The U.S. Army Corps of Engineers submitted a Biological Assessment and has requested a separate BO.

2. Conserve and contribute to the recovery of the listed species within the constraints of the RIP
 - Stabilize existing populations through ongoing and future management activities
 - Support the development of self-sustaining populations
3. Protect existing and future water uses
 - Provide a mechanism for ESA compliance for identified federal and non-federal actions that do not create additional net depletions to the MRG
 - Provide a process for streamlined Section 7 consultation for future water uses needing compliance with the ESA

C. Principles

The RIP may not impair state water rights of individuals and entities or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; or the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations. Water to be acquired or otherwise made available for endangered species benefits must be from a willing donor, seller or lessor and be used in compliance with applicable federal law and the laws of the State of New Mexico including, but not limited to, permitting requirements.

The RIP will use adaptive management processes pursuant to Section VII.

The RIP will be implemented in a manner that is transparent to stakeholders, the public, and other interested parties.

II. History of Program

A. Species Listings, Critical Habitat Designations, and Resulting Actions

The silvery minnow was listed as endangered by the U.S. Fish and Wildlife Service (Service) in 1994 and the flycatcher was listed in 1995. Critical habitat was designated for the silvery minnow in 2003 and revised for the flycatcher in 2005; both areas include the MRG (excluding Pueblo lands).

Drought conditions in 1996 and the realization that the needs of the endangered species could conflict with the needs of MRG water users served as impetus for increased cooperation among affected entities to develop proactive solutions. Supplemental water management to support ESA compliance and MRG water operations began in 1996.

In 1997, federal agencies joined to outline alternatives to satisfy the water needs of the silvery minnow and accommodate the needs of the MRG water users. The alternatives were presented in a white paper and included water acquisition, water management, and water-use efficiencies. The white paper also recommended the development of a plan of action. In 1998, certain environmental community members formed the Alliance for the Rio Grande Heritage and worked to develop a green paper because they felt the white paper lacked specific recommendations. The green paper stated that the long-term solution: 1) needed to include all the key players and interested participants; 2) must assure adequate river flows; and 3) had shared responsibility among all who benefit from the river. The green paper proposed acquisition and storage of water for conservation purposes. In 1998, interested parties began meeting and exchanging information to evaluate and prioritize potential solutions and define future collaborative actions. Participating organizations included American Rivers, Defenders of Wildlife, Forest Guardians, Land and Water Fund, National Audubon Society-New Mexico, New Mexico Sportsmen, Rio Grande Restoration, Sierra Club, City of Albuquerque, City of Santa Fe, Middle Rio Grande Conservancy District (MRGCD), New Mexico Interstate Stream Commission (NMISC), New Mexico Office of the State Engineer (OSE), the Service, U.S. Army Corps of Engineers (Corps), and Bureau of Reclamation (Reclamation).

Despite their efforts, in 1999 a complaint was filed, on behalf of the silvery minnow, against Reclamation and the Corps for alleged ESA and National Environmental Policy Act violations. However, all parties remained active in the collaborative process.

Court-ordered mediation in 2000 led to an Agreed Order² that provided additional supplemental water for both ESA and irrigation purposes. Subsequent efforts involved pumping from the Low Flow Conveyance Channel, the development of the City of Albuquerque's silvery minnow naturalized refugium, and support for improved metering and water transport efficiency of the MRGCD.

²[Cite to the Agreed Order.]

B. History of the Collaborative Program, MRG Water Management ESA Section 7 Consultations, and Related Legislation

In 2001, the Collaborative Program first received congressional appropriations for implementing projects beneficial to federally listed species, and Reclamation and the Corps (the action agencies) began consultations with the Service over their MRG water operations and maintenance. The Service issued a three-year BO that provided ESA compliance for continued water deliveries and for implementation of Collaborative Program activities.

In April 2002, a Memorandum of Understanding was signed to recommit the parties and formalize the Collaborative Program's governance.

In 2003, Reclamation and the Corps again consulted with the Service and the Service issued a 10-year BO in March. This 2003 BO had a significant number of required flow and non-flow activities and offered broad ESA coverage utilizing a broad water depletions-based analysis.

As directed by Congress (P.L. 108-199), the Secretary of the Interior established an Executive Committee (EC) in 2004 to increase the efficiency of the Collaborative Program and implement a 75/25 federal/non-federal cost sharing provision. The EC consists of designated representatives of signatory members of the Collaborative Program and has operated to assist in making priority decisions and meeting specific goals. The Collaborative Program approved Program By-laws in October 2006 and approved a Long Term Plan (LTP) in November 2006.

In 2008, the EC adopted a Memorandum of Agreement (MOA) establishing the Collaborative Program in accordance with the 2006 By-laws. The Consolidated Appropriations Act, 2008 (Appendix ___) determined that the acquisition of water necessary to comply with the 2003 BO or in furtherance of objectives set forth in the Collaborative Program LTP shall be at full federal expense, and established that the non-federal share of activities shall be 25 percent.

The Omnibus Appropriations Act, 2009 (Appendix ___) authorized the Secretary of the Army to carry out and fund planning studies, watershed surveys and assessments, or technical studies at 100 percent federal expense to accomplish purposes of the 2003 BO, any related subsequent BO, and the Collaborative Program LTP. It also authorized the Secretary of Interior (acting through the Commissioner of Reclamation), in collaboration with the EC, to enter into any grants, contracts, cooperative agreements, interagency agreements, or other agreements that the Secretary determines to be necessary to comply with the 2003 BO or any related subsequent BO or in furtherance of the objectives set forth in the Collaborative Program LTP. This recognized a 25% non-federal cost share in cash or in-kind contributions; specified that the acquisition of water and any administrative costs shall be at full federal expense; and provided that not more than 15% of amounts appropriated shall be made available for administrative expenses.

In 2009, the EC directed efforts to pursue implementation of the Collaborative Program through a RIP to enhance the focus on recovery activities, and serve as an ESA compliance vehicle using a new LTP (Appendix __) as a mechanism for advancing the Program based on the framework of the silvery minnow and flycatcher recovery plans.

C. RIP Documents

Formal documents for the RIP are this Program Document, an Action Plan, [\[the LTP\]](#), and a Cooperative Agreement (Appendix __). The EC decided to develop these documents in 2011 for inclusion in the ESA Section 7 consultation for proposed federal and non-federal MRG water use and management actions. Also in 2011, the EC agreed to follow an AM approach throughout the recovery implementation process and an AM guidance document (Adaptive Management Plan Version 1 (AMP-1)) (Appendix __) was produced.

III. Program Scope

A. Program Area

The RIP geographic area consists of the headwaters of the Rio Chama watershed and the Rio Grande, including tributaries, from the New Mexico-Colorado state line downstream to the intersection of the Rio Grande with the northernmost boundary of the full pool of the Elephant Butte Reservoir as illustrated in the Basin map. Indian Pueblo and Tribal lands and resources within the RIP area will not be included in the RIP without the express written consent of the affected Indian Pueblo or Tribe. This definition does not preclude the Program from funding activities outside of this geographic area pursuant to the RIP Governance Procedures.³

(Updated map to be inserted)

³ It is anticipated that certain contributions by ISC under this RIP will also contribute toward ESA compliance for the Elephant Butte temporary channel which will be addressed in a separate consultation.

B. Listed Species and Critical Habitat

The RIP is currently scoped to address two species listed under the ESA: the silvery minnow and the flycatcher. The EC may decide to include other listed species or candidate species at any time in the future.

Silvery Minnow

On July 20, 1994, the Service published a final rule to list the silvery minnow as an endangered species with proposed critical habitat (59 Fed. Reg. 36988-36995)⁴. The Service initiated a five-year review of the status of the species in 2010 (75 Fed. Reg. 15454-15456). A five-year review considers all new information available at the time of the review. There is no regulatory timeframe for completing the review; however, the Service currently has a target date of December 2012.

Critical habitat was designated for silvery minnow in 1999 (64 Fed. Reg. 36274-36290), with revisions published on February 19, 2003 (68 Fed. Reg. 8088-8135). Designated critical habitat in the Rio Grande extends through Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico generally beginning at Cochiti Reservoir downstream to the utility line crossing the Rio Grande at the upstream end of the Elephant Butte Reservoir pool. The utility line marks the northern boundary of Reclamation's Rio Grande Project. The lateral extent of critical habitat includes those areas bounded by existing levees. In areas without levees, the lateral extent of critical habitat is defined as 300 feet (91.4 meters) of riparian zone adjacent to each side of the river.

The designation also includes a five mile segment of the Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, Sandoval County. Pueblo lands in Santo Domingo, Santa Ana, Sandia, and Isleta Pueblos are excluded from critical habitat. The Service considered the Rio Grande around Big Bend National Park in Texas and the Pecos River between Ft. Sumner Dam and Brantley Reservoir in New Mexico as essential to conservation but did not designate as critical habitat.

Flycatcher

A final rule was published in the February 27, 1995 Federal Register to list the southwestern U.S. population of the flycatcher as an endangered species under the ESA with proposed critical habitat. However, the final rule designating critical habitat for the species range-wide (published on July 22, 1997) did not include the Rio Grande (62 Fed. Reg. 39129) at that time. A proposal to re-designate critical habitat was published October 12, 2004 (69 Fed. Reg. 60706), with a final designation published October 19, 2005 (70 Fed. Reg. 60886). The 2005 final designation of critical habitat defines two units located along the Rio Grande: the Upper Rio Grande Management Unit which includes 664 hectares (ha) (1,640 acres), encompassing 66 kilometers

⁴ The silvery minnow is currently listed as endangered on the New Mexico state list of endangered species, having first been listed on May 25, 1979 as an endangered endemic population of the Mississippi silvery minnow (*Hybognathus nuchalis*).

(km) (41 miles), and the MRG Management Unit which includes 13,410 ha (33,137 acres) along 135 km (84 miles). The Service released a new proposal for critical habitat on August 15, 2011 (76 Fed. Reg. 50542).

C. Water Uses and Management Operations (Covered Actions)

Water uses and management operations as proposed by federal and non-federal agencies include the following:

1. Reclamation proposes the following water management operations:
 - a. Operation of Heron Dam and Reservoir as part of the SJC Project to store and deliver water to downstream users;
 - b. Operation of El Vado Dam and Reservoir as part of the MRG Project; and
 - c. River maintenance.
2. The Corps proposes the following action:
 - a. Operation and maintenance of Abiquiu Dam and Reservoir, Cochiti Dam and Lake, Galisteo Dam, and Jemez Canyon Dam and Reservoir for flood control, water storage, and sediment control.
3. Non-federal entities propose the following actions:
 - a. The MRGCD proposes the following actions:
 - i. Operation of the MRG Project Diversion Dams for the purpose of delivering water to district lands to meet agricultural demand of lands with appurtenant water rights, including the lands of the Six MRG Pueblos; and
 - ii. Operation of irrigation drains and wasteways to return water to the river.
 - b. The State of New Mexico proposes coverage for the following actions:
 - i. Discretionary actions related to administration of the Rio Grande Compact and surface and groundwater resources in the upper and middle Rio Grande;
 - ii. Non-discretionary actions to administer surface and groundwater resources in the upper and middle Rio Grande;

- iii. River maintenance actions;
- iv. Other legal existing non-federal non-Pueblo water related actions up to an additional 10 cubic feet per second (cfs) of impact on the Rio Grande at Albuquerque.

D. RIP Activities

The RIP activities are intended to minimize the effects of the actions in Section III.C above for purposes of ESA coverage and will contribute to the recovery of the species.

The RIP activities will address elements such as species reproduction and survival, minnow captive propagation and augmentation, and research and monitoring, as described in Section V of this document and detailed in the RIP Action Plan.

IV. RIP Organizational Structure and Governance Procedures

A. Organizational Structure and Membership

The following describes the roles and responsibilities of committees/groups and staff associated with the RIP, and the membership composition of each group.

1. Executive Committee

The EC, as the governing committee of the RIP, is responsible for all decision-making related to the RIP and for ensuring that the goals of the RIP are achieved in a timely manner. The EC sets policy and directs the work of the RIP including the activities of the Executive Director, Program staff, and advisory committees, and makes assignments to the Independent Science Panel. Primary responsibilities for the EC are detailed in the By-laws (to be revised) (Appendix _). The EC, through the Executive Director, serves as the primary point of contact for all requests to the RIP. The EC may coordinate with local or regional conservation initiatives and other interests, consistent with the goals of the RIP. The EC will have a reasonable opportunity to address any conflict resolution within the RIP as needed.

The initial EC for the RIP shall be comprised of all members serving on the EC for the Collaborative Program who execute the RIP Cooperative Agreement with the Service. If an EC member chooses to withdraw from the RIP, a letter shall be submitted to the EC which describes its reason(s) and the EC will attempt to resolve any problem(s). If an EC member's participation in the RIP is essential to implementing a Reasonable and Prudent Alternative (RPA), a Reasonable and Prudent Measure (RPM), or maintaining the existing BO coverage, the withdrawal of such an entity may result in reinitiation of consultation under the ESA related to the concern(s) at issue.

An entity may apply to become a member of the EC provided there are membership openings available on the EC and such entity submits a letter of interest and signs the Cooperative Agreement⁵. The EC may consider the following criteria in determining whether to accept an application from another entity to become a member of the EC. An applicant need not meet all criteria, and meeting the criteria does not guarantee an applicant's acceptance as a member of the EC. These criteria shall apply to any entity that reapplies to the EC following a cessation of membership on the RIP. These criteria include, but are not limited to:

- a. Representation of a sizable constituency, for example through public outreach or membership;

⁵ The EC shall maintain a wait list of such applicants in the event no membership openings are available, and shall consider applications in the order in which they appear in the list.

- b. Contribution to the non-federal cost share, reported annually including in-kind services;
- c. Ownership of an interest affected by the Program, such as land, water, or other property rights;
- d. Jurisdictional or regulatory responsibility, including sovereignty; and
- e. Commitment to participation.

Decisions whether to accept an application for EC membership shall be made by the EC pursuant to the voting procedures described in the By-laws. Within one week following EC action on an application, the co-chairs will notify the applicant in writing of the EC's decision.

EC members shall designate one primary and one alternate member to the EC; this shall be provided in writing to the Executive Director upon an entity's approved membership on the EC. Primary and alternate members of the EC and applicable staff are allowed attendance during closed sessions. All meetings shall allow for public comments and be open to the public with the exception of closed sessions.

On *[insert date]*, the following entities executed a Cooperative Agreement with the Service committing their participation as members of the RIP's EC:

[Insert entities]

2. RIP Participants

The execution of the Cooperative Agreement commits an entity to participate in the RIP as described in the Program Document. Participation in the RIP is voluntary, and in no way alters the Secretary of Interior's ultimate responsibility for administering the ESA, nor shall it affect the authorities and responsibilities of the State, districts and Tribes to manage and administer their water and fish and wildlife resources. RIP participants must make independent judgments to determine their ability to perform RIP activities, and each is responsible for assessing how the goals of the RIP are being accomplished.

If a RIP participant chooses to withdraw from the RIP, a letter shall be submitted to the EC which describes its reason(s) and the EC will attempt to resolve any problem(s). If a RIP participant's activities in the RIP are essential to implementing a RPA or RPM, or maintaining the existing BO coverage, the withdrawal of such entity may result in reinitiation of consultation under the ESA related to the concern(s) at issue.

3. Executive Director & Staff [\[EC needs to decide\]](#)

The EC will hire an Executive Director to carry out the directions of and to serve at the pleasure of the EC. The Executive Director will hire and supervise Program staff consisting of at least a

Science Coordinator and an Administrative Assistant. Additional staff positions could include scientist(s), engineer(s), contract specialist(s), public affairs specialist, etc. In addition to the reporting requirements described in Section V below, the Executive Director will prepare quarterly expenditure reports and progress reports, decision papers, and white papers, as needed. Fundamental to the Executive Director position is to coordinate and provide staff for activities of EC advisory committees; communicate with local governments, Pueblos, the public, media, and federal and state agencies; and establish and maintain an independent science panel. The Executive Director and staff will also prepare solicitation packages for EC approval, execute contracts and agreements with successful bidders, and review and approve invoices for payment.

The Science Coordinator and other Program staff will provide technical support to the RIP at the direction of the Executive Director. Primary responsibility of the Science Coordinator is to provide guidance on scientific issues, as well as assign tasks to and oversee the work of the RIP. Other responsibilities include being the scientific lead for adaptive management planning and implementation, conducting technical reviews of Program projects including research objectives, monitoring implementation and oversight, data syntheses, and other technical duties as assigned. The Science Coordinator will assist the Executive Director in preparing and updating the Long Term Plan, RIP Action Plan, and Annual Work Plan described below. All products produced by or under the direction of the Science Coordinator are subject to approval by the Executive Director or EC, as determined by the EC.

4. EC Advisory Committees

The EC may establish technical, stakeholder, or policy advisory committees or sub-committees as needed to provide recommendations on issues or interests consistent with the goals of the RIP. The EC will provide clear direction on the goals, objectives, and activities of any advisory committees including expectations, responsibilities, processes and reporting requirements. Advisory committees will establish charters for approval by the EC. Technical advisory committees will be described in RIP Action Plan and may change over time. Committee membership may consist of EC members, Program staff, staff from EC members/RIP participants, or individual(s) obtained through contracts or financial assistance agreements.

5. Independent Science Panel [[EC needs to decide.](#)]

The Independent Science Panel (ISP) will, at the direction of the EC and independent of the Science Coordinator and advisory committees, provide the EC with feedback on technical/scientific issues, input to adaptive management and peer reviews, priority recommendations for recovery activities, and perform other review-based duties as assigned by the EC. As directed by the EC, the ISP will perform annual reviews on selected aspects of the RIP, such as habitat construction and monitoring, species management, adaptive management assessments, and flow augmentation and comprehensive programmatic reviews as needed.

B. U. S. Fish and Wildlife Service Roles and Responsibilities

The Service will:

- Serve regulatory role and partnership role in the RIP
 - Conduct Section 7 consultations as needed on new RIP activities or new actions coming in for coverage under the RIP
 - Conduct ESA permitting as needed for new RIP activities
 - Provide advice and recommendations during implementation of the RIP to facilitate meeting the goals of the RIP
- Assess annual sufficient progress
- Assist in developing annual work plan [\[and approve the plan – see question below\]](#)
- Assist in developing annual water operations plan [to be updated for consistency with RIP Action Plan]

C. Governance Procedures

The EC makes decisions regarding Program policy and management, including budgets, annual work plans, procedures, organizational structure, and membership. Decisions may be made only when a quorum of EC members is present, meaning that ___% or greater of EC members are present. EC meeting agendas will specify decision items, and EC members and their alternates will be provided with appropriate background material related to each voting decision identified on the agenda. Meeting procedures applicable to the EC are set forth in the By-laws. All designated members of the EC are allowed a single vote during decision-making procedures. The EC shall seek consensus in reaching decisions. In lieu of consensus, a decision may be deferred to the next scheduled EC meeting. At such meeting the decision may be approved by a super majority of the EC (75%) pursuant to the By-laws. If a non-consensus decision is made, the minority may submit a report to the EC for its administrative record. Certain decisions require unanimous consent, as noted in Section IX of the Program Document.

The federal action agencies reserve the right to ensure appropriate use of federal funds consistent with applicable laws and regulations. The other EC members reserve the right to ensure appropriate use of their respective funding contributions consistent with applicable laws, regulations, and authorities.

[\[Should certain decision items require the affirmative vote of the regulatory and funding agencies?\]](#)

V. Implementation of the RIP

A. Long Term Plan

[The nature and role of the LTP is to be described herein for purposes of consultation; draft LTP to be revised pursuant to an initial task under the Action Plan].

The Long-Term Plan (LTP) is a background guidance document that provides an inventory describing beneficial activities that may be implemented by the RIP to meet its purposes and goals.

The RIP's LTP will be based on the framework of the silvery minnow and flycatcher recovery plans approved by the Service in 2010 and 2002, respectively. Addition of future activities into the LTP will incorporate new information on the hydrology of the MRG and on the life history of the species and will consider any revised recovery plan actions. The LTP will also incorporate principles of adaptive management pursuant to Section VII.

The RIP's LTP will consist of categories of RIP activities including: physical habitat restoration and management; water management; predator/non-native control; population augmentation/propagation (silvery minnow only); water quality management (silvery minnow only); research, monitoring, and adaptive management; policies and laws; public information and outreach; and Program management. Goals, actions, and tasks will be identified under each of the categories. The goals will specify desired outcomes for particular activities, and the tasks will describe specific activities that may be undertaken. The RIP's LTP will present a long-term schedule that will provide general guidance as a roadmap for the sequence and approximate timing of activities over an extended period of time. While the RIP participants do not currently agree upon the criteria in the Service's current species recovery plans, nor upon all activities and tasks in the draft LTP, the participants will seek to come to agreement on these activities and tasks so that the LTP can be viewed as a guidance document for the RIP Action Plan with confidence, recognizing that both the LTP and RIP Action Plan will undergo routine reviews and updates to ensure that implemented activities advance the accomplishment of the RIP's goals.

B. RIP Action Plan

The RIP's LTP will be used as a foundational document from which necessary beneficial activities will be drawn for the ongoing 5-year RIP Action Plan. The RIP Action Plan will identify the specific activities and tasks that will be implemented by the RIP on an ongoing basis.

The RIP Action Plan will be updated on an annual basis in a manner consistent with the RIP's purposes and goals. The annual update shall be completed each year so as to assist in annual work plan development, budget decisions, and activity implementation. The annual update of the RIP Action Plan shall consider new information from the adaptive management process,

input from the Service regarding adjustments to the RIP Action Plan activities or metrics, and input from other RIP evaluations concerning improvements to or modification of the management activities. All updates or revisions to the RIP Action Plan shall be approved by the EC.

C. Annual Work Plan

The RIP Executive Director will develop an annual work plan for EC approval that tiers from the RIP Action Plan and reflects the specific activities and tasks to be implemented by the RIP during the year.

Thus, the RIP will implement activities identified in an Annual Work Plan that tiers from the RIP Action Plan. Those documents will draw from the LTP, which is based on the framework of the species recovery plans. The EC will update RIP documents in a manner consistent with the RIP's purposes and goals and in consideration of new information from the adaptive management process, input from the Service, and other RIP evaluations. These linkages are designed to assure that the RIP provides meaningful benefits to the species and continues to serve as the ESA compliance vehicle under the 2013 BO.

D. Annual Water Management Planning

[Under development: RIP water management plan; entity-specific Water Management Agreements?]

VI. Principles for ESA Compliance

A. Regulatory Certainty under the RIP

The signatories to the Cooperative Agreement intend that the inclusion of the RIP as the conservation measure in the new BO provides regulatory certainty under the ESA for the actions referenced in Section III.C of this Program Document (covered actions). ESA compliance⁶ will be afforded through the [contemplated] programmatic BO which relies on implementation of the RIP. The RIP Action Plan includes activities from the LTP inventory for which there is commitment from the responsible entities and which are based on recovery actions from the silvery minnow and flycatcher recovery plans. Through implementation of the RIP Action Plan there are linkages to recovery actions that are expected to achieve progress toward recovery of the species.

Nothing herein shall limit the Service in fulfilling its independent statutory obligations under the ESA. Nor shall anything herein change the legal standards under Section 7 of the ESA applicable to the covered actions.

B. Sufficient Progress Determination

The Service will make an annual determination [in January?] of each year of whether the RIP is making sufficient progress towards recovery of listed species. This determination of sufficient progress [provided the RIP serves to minimize effects of the proposed water use and management actions] ensures continued ESA compliance for covered actions. The Service's annual assessment will consider sufficient progress factors⁷ that address the reduction of threats to the species and the status of the species and their habitats. These factors are broad categories that will be identified in the [contemplated] BO, and are intended to remain consistent as long as the [contemplated] BO remains in effect.

The RIP will adopt criteria (metrics) by which these factors are assessed. The metrics will address (1) implementation of tasks under the RIP designed to reduce threats to the species and improve their status, and (2) measurements of the status of the species. These metrics will be

⁶ “ESA compliance” will include: (1) the RIP serving as the conservation measure minimizing effects of actions evaluated in the [contemplated] programmatic BO to the listed species and critical habitat; (2) a finding that such actions are not likely to jeopardize listed species or destroy or adversely modify their critical habitat under Section 7 of the ESA [note: if the Service concludes that the Proposed Action including the conservation measure will cause jeopardy or adverse modification, then a reasonable and prudent alternative would be developed or the Proposed Action modified such that jeopardy and adverse modification are avoided]; and (3) the Incidental Take Statement supporting the [contemplated] programmatic BO providing the reasonable and prudent measures exempting those actions from ESA Section 9 take prohibitions. The composition of the measures will be identified during the [contemplated] formal Section 7 consultation.

⁷ These factors relate to the implementation of recovery activities and species status, population responses, captive population, threat reduction, flow, and habitat.

used by the Service as its criteria for sufficient progress determination. These metrics may change from year to year, though they remain supportive of the broad sufficient progress factors per the [contemplated] BO.

RIP activities tier from species recovery plans. Because the RIP will implement recovery activities identified in an annual work plan [approved by the Service] and reduction of threats to species recovery will be addressed, the RIP expects to achieve sufficient progress towards recovery.

If there are circumstances that undermine the RIP's ability to implement priority recovery activities on schedule, it may not be possible to fully meet all sufficient progress factors and metrics considered. A deficiency that is temporary or is limited to a single or few metrics may not result in a lack of overall progress toward recovery. If the metrics are not being met and the Service makes an initial determination that the RIP is not making sufficient progress, the Service will notify the EC and request its assistance in resolving the situation. If such attempts at resolution are unsuccessful, the Service may document the situation regarding the lack of sufficient progress and make a written request of the EC to take corrective action. It is fully intended that it will be feasible for the EC to take whatever corrective actions are needed to achieve sufficient progress and that resolution will occur. If the potential deficiency towards achieving progress to recovery is not resolved by the EC, it is recognized that the Service may conclude that sufficient progress toward recovery has not been maintained. Lack of sufficient progress may or may not trigger re-initiation of consultation. Failure of the RIP to continue to minimize the effects of the covered actions may trigger reinitiation of consultation related to the concerns at issue. The Service and federal action agencies agree to work expeditiously on any such re-initiation. The Service further agrees to consider the benefits from the potential continuation of contributions by RIP entities during any reinitiated consultations, including in the development of new reasonable and prudent alternatives or other measures in new or revised BO(s).

1. Reduction of Threats

The Service has identified threats to the species in its species listing rules and in the recovery plan for each species. Each recovery plan includes recovery actions that are intended to reduce or eliminate the threats. The RIP Action Plan draws from the LTP inventory which is based on the framework of the Service's silvery minnow and flycatcher recovery plans. The RIP Action Plan activities are designed, in part, to reduce the threats to the species identified in those documents. The Action Plan activities and associated metrics⁸ will be approved by the EC, and will be updated on an annual basis pursuant to the procedures in Section VI.D below. It is anticipated that reduction of threats will be accomplished based upon timely implementation of the recovery activities in the RIP Action Plan that link to addressing threats specified in Section

⁸ The metrics may be defined quantitatively or qualitatively. They will be defined in quantitative terms to the extent possible.

IV. F of the flycatcher recovery plan and Chapter 5.0 of the silvery minnow recovery plan as validated by monitoring and modified through adaptive management.

2. Status of Species

a. Silvery Minnow

A priority activity under the RIP Action Plan is to develop a RIP monitoring program by the end of the second year of the RIP that builds upon existing population and genetics monitoring efforts. This priority activity recognizes that the current monitoring protocols are not sufficiently precise and sensitive to be endorsed by the RIP for purposes of measuring species response to specific management activities and progress toward recovery, given year-to-year population variability. Based upon the RIP monitoring program, the RIP will work to develop demographic metric(s) to assess population trends and progress toward recovery under the RIP. During the first two years of RIP implementation, the RIP will consider the results of ongoing monitoring in its implementation of activities and annual update of the RIP Action Plan, but will not use such data in a sufficient progress metric. Rather, the EC will work together during this period to determine an appropriate and scientifically supportable metric to assess the status of the species. Sufficient progress will be assessed during this interim period by reference to implementation of RIP activities including procedures to develop the metrics to assess species' status. It is recognized that annual sufficient progress toward recovery may be maintained notwithstanding a failure to meet one or more of the demographic metrics.

b. Flycatcher

[To be completed]

C. Annual RIP Report

The Executive Director will prepare a RIP Annual Progress Report by [December 1?] of each year summarizing the status of the metrics and implementation efforts under the RIP Action Plan, for approval by the EC. The Service will consider that report in its annual evaluation of sufficient progress towards recovery and will, as a member of the EC, identify changes, if any, it believes necessary as part of the annual updating process.

D. RIP Action Plan Updates

The RIP Action Plan will be updated on an annual basis in a manner consistent with the RIP's purposes and goals. The annual update shall be completed by [March 1?] of each year so as to assist in the annual work plan and budget decision and execution process for the RIP. The annual update of the RIP Action Plan shall consider new information from the adaptive management process, input from the Service regarding adjustments to the RIP Action Plan activities or metrics, and input from other RIP evaluations. All updates or revisions to the RIP

Action Plan shall be approved by the EC. Subsequent annual work plans will tier off those Action Plans (see Section V.C).

E. Linkage to Programmatic Biological Opinion

The signatories intend that this RIP be implemented, following its evaluation during the programmatic ESA Section 7 consultation(s) on water operations, river maintenance, flood control, and related non-federal activities in the MRG, to avoid jeopardy to the listed species, to avoid adverse modification of their designated critical habitats, and to contribute to their conservation and ultimate recovery. It is anticipated that implementation of this RIP will be identified in the [contemplated] 2013 programmatic BO(s) and any subsequent opinions as a means to minimize the effects of the actions described in Section III.C for purposes of ESA compliance.

F. Reliance on the RIP for ESA Compliance

Section 7(a)(2) of the ESA requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat (see 50 C.F.R. 402.01). Jeopardy occurs when an action is reasonably expected, directly or indirectly, to diminish a species' numbers, reproduction, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced. This ESA requirement also includes any non-federal actions that have a federal nexus, where a federal agency funds, authorizes, or carries out the action in whole or in part. Section 9 of the ESA prohibits federal and non-federal parties subject to the jurisdiction of the United States from "taking" endangered species. In the MRG Basin, a variety of federal and non-federal activities related to water operations, water management and use, river maintenance, and flood control are subject to the ESA. The term "ESA Coverage" as used in this Program Document includes obtaining both an exemption from prohibitions for incidental take as well as assurance that actions proposed in the biological assessments are not likely to jeopardize listed species or destroy or adversely modify critical habitat under the [contemplated] BO.

Compliance with the [contemplated] BO will convey ESA coverage for included actions identified in the Proposed Actions put forth in separate biological assessments by the Corps and Reclamation. For any federal or non-federal party to receive ESA coverage through the BO(s), that party's actions must be assessed in the effects analysis of the biological assessments. For non-federal actions, there must also be a link to the appropriate responsible federal agency for providing that coverage (through a federal nexus such as participation in the RIP or as an activity interrelated or interdependent to the Proposed Action).

Signatories may withdraw from the RIP upon a 90-day written notice to the other signatories and seek ESA compliance through other avenues. Signatories undertaking or proposing to undertake any activity that may affect MRG endangered species are not required to rely on the RIP for purposes of ESA compliance. Non-federal signatories' reliance on the RIP shall be voluntary. In the event an entity chooses not to so rely, or chooses to discontinue reliance on the RIP in the

future, the Service will not consider the RIP as the means for ESA compliance for such entity. An entity withdrawing from the RIP may trigger reinitiation of ESA Section 7(a)(2) consultation.

G. ESA Compliance Protocols for Individual Actions

1. Section 7 Consultation documentation procedures for covered actions

Actions described in the Reclamation and Corps biological assessments and addressed in the programmatic BO effects analysis and described in Section III.C of this Program Document will have been consulted on as part of that Section 7 consultation and may rely on the RIP as the means for ESA compliance, provided that the RIP as addressed in the BO adequately minimizes the effects of the actions, the proponent of the action signs the Cooperative Agreement with the Service if not already a signatory to the Cooperative Agreement, and the RIP is maintaining sufficient progress toward recovery as determined by the Service pursuant to the procedures in Section VI.A above.

Federal action agencies may choose to request and obtain confirmation from the Service of coverage for such individual actions upon submission of documentation establishing that the action is within the scope of actions covered by the programmatic BO and that the proponent is a signatory to the Cooperative Agreement.

2. MRG Section 7 Consultation procedures for other actions

Actions not covered by the analysis in the programmatic BO may benefit from the action-specific consultation procedures described in Appendix__ [\[to be developed in concert with the Service's draft MRG Section 7 Guidelines for Consultation\]](#). These guidelines have been adopted by the EC and have been found by the Service to be consistent with the ESA and its implementing regulations at 50 C.F.R. Part 402 [\[pending\]](#). It is recognized that the determination of whether RIP activities provide RPAs and RPMs for such actions is solely the responsibility of the Service.

VII. Adaptive Management

A. Role of Adaptive Management

1. The RIP intends to use adaptive management as a structured and systematic approach for designing, implementing, monitoring and evaluating management actions to maximize learning about critical scientific questions and uncertainties that affect management decisions regarding the use of Program resources to achieve the RIP goals of (1) alleviating jeopardy to listed species and adverse modification of their critical habitats in the MRG Program area, (2) conserving and contributing to the recovery of the listed species, and (3) protecting existing and future water uses.
2. Learning resulting from adaptive management activities and monitoring will be used as a tool to improve management decisions in order to more quickly and cost-effectively attain RIP objectives.

B. Science and Management Coordination Meeting

[frequency and purpose to be determined]

C. AMP-1 and Next Steps in Refining Adaptive Management

1. AMP-1 (Appendix __) provides a potential framework for the development of a scientifically defensible adaptive management design specific to the RIP. It also includes a set of principles for designing adaptive management actions and examples of management actions and appropriate monitoring plans. As an important priority, the RIP will use guidance in AMP-1 and the adaptive management experience of this and other programs to develop a formal Adaptive Management Plan, ideally within the first year of the RIP's existence. The RIP will identify specific management activities, monitoring, and research that will be used to evaluate and improve management decisions and will identify the decision-making framework for flexible water management and non-flow related activities that provide for meeting the RIP goals.
2. Adaptive management is not intended as a broad-based research program. In keeping with the purpose of adaptive management, only learning relevant to management decision-making will be sought through the adaptive management process.
3. Adaptive management will be implemented within the existing financial and hydrological resources available to the RIP.

VIII. Data and Peer Review

A. Transparency for Data and Science Used by the RIP

1. In order for the RIP to achieve its goals, it is imperative that best available scientific information be considered in management decision-making.
2. All RIP participants, including but not limited to Cooperative Agreement signatories and their representatives and contractors and their representatives, will abide by the Scientific Code of Conduct for the Middle Rio Grande Endangered Species Collaborative Program, which has been approved by the EC (Appendix __).
3. All contracts, grants, or other vehicles pursuant to which scientific activities may be conducted on behalf of the RIP shall require that all data collected in carrying out the scientific activities be made available to the RIP in a form accessible and usable by the RIP concurrent with the submission of the deliverables.
4. All data used in management or sufficient progress decisions shall be made available to the RIP upon request in a form accessible and usable by the RIP.
5. The RIP will develop policies and procedures by which data is collected, stored, and made available for the RIP.

B. Peer Review Process

1. The RIP recognizes the importance of peer review to a scientifically-based resource management program. The EC may submit any RIP activity or management decision option for peer review.
2. The EC will adopt formal written Internal Review Procedures (Appendix __) [placeholder].
3. The EC will also adopt a formal External Peer Review Process for the RIP (Appendix __) [placeholder]. In the interim, the RIP will follow the Interim External Peer Review Process set forth in Appendix__.

IX. Program Modification

A. Amendment of the RIP Program Document

1. The RIP Program Document has been approved and adopted by all of the signatories to the Cooperative Agreement [\[pending\]](#). Modifications to the RIP Program Document may be made by following the RIP governance and decision-making protocol, as referenced in section IV.C, without requiring modification of the Cooperative Agreement.
2. Notwithstanding subsection (1) above, the following changes to the RIP Program Document will require unanimous consent of the EC members:
 - a. A change to provisions which recognize that the RIP may not impair state water rights of individuals or entities or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; or the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations. Also a change to the provision of the RIP recognizing that water to be acquired or otherwise made available must be from a willing donor, seller or lessor.
 - b. A change to Section VI of the Program Document regarding the principles governing ESA compliance and regulatory predictability under the RIP.

X. RIP Budget Guiding Principles

It is anticipated that funding to the RIP will be provided by entities to address ESA covered actions. Funding provided can be in the form of cash or in-kind contributions. Reclamation's authorizing language requires non-federal entities to provide a 25 percent cost share, which can be in the form of in-kind contributions on all Collaborative Program activities, except Reclamation's water acquisitions and administrative expenses. Historical funding levels from the federal and non-federal entities are found in Table 1. In support of proposed budget categories and levels of funding in Table 3, a breakdown of Reclamation's historical funding by category is found in Table 2.

Table 1 – Historical MRG Program Funding Levels

Year	AMOUNT		
	Reclamation	USACE	Non-Fed
2001	\$ 5,688,000	NA	\$ 588,965.02
2002	\$ 16,000,000	NA	\$ 676,315.23
2003	\$ 13,467,000	NA	\$ 2,119,560.27
2004	\$ 10,070,671	NA	\$ 1,112,419.25
2005	\$ 10,185,020	NA	\$ 1,361,120.11
2006	\$ 12,619,000	NA	\$ 1,662,484.28
2007	\$ 14,189,580	NA	\$ 2,133,267.22
2008	\$ 16,010,000	NA	\$ 2,353,754.38
2009	\$ 12,769,000	\$ 196,000.00	\$ 1,451,655.77
2010	\$ 10,687,000	\$ 2,981,686.28	\$ 1,292,156.34
2011	\$ 11,252,000	\$ 2,469,979.04	\$ 111,605.00
Total	\$ 132,937,271	\$ 5,647,665	\$ 14,863,303
Average	\$ 12,085,206	\$ 1,882,555	\$ 1,351,209

Table 2 – Reclamation’s Collaborative Program Funding Categories and Levels

Historical Budget Categories	Percent of Total Budget				Average
	2008	2009	2010	2011	
Program Management, Assessment and Outreach	16%	13%	13%	11%	13%
Activities Supporting Development of a new BA/BiOp	0%	11%	7%	8%	9%
Captive Propagation	8%	15%	16%	10%	12%
Habitat Improvement (Construction, Planning and Fish Passage)	22%	12%	14%	13%	15%
Other Monitoring and Research and Rescue/Salvage	16%	12%	6%	11%	11%
Program Technical Support	0%	0%	2%	2%	1%
Water Operations and Management	37%	35%	41%	45%	40%
Water Quality	1%	2%	1%	0%	1%

The following budget categories and spending percentages are intended to assist the Executive Director in preparing the annual work plan and budget. The approximate breakdown of funding by historical Collaborative Program activity is provided as a starting point for budget development based on the foreseeable needs of the RIP and not as hard targets for spending. It is anticipated that additional RIP participants may or may not affect these budget categories and levels of funding.

Table 3 – RIP Budget Categories and Funding

Budget Category	Percent of Total Budget	Range of Historical Funding
Program Administration and Outreach ^{a*}		
Adaptive Management Assessments		
Species Management, surveys, monitoring, augmentation, captive propagation & genetic integrity		
Flow protection, management, augmentation, and monitoring		
Habitat Construction and Monitoring		
Independent Science Panel & Peer Review		

^{a*} Program Administration includes: Executive Director, Science Coordinator, other administrative staff, technical staff, website, public outreach, contracting support, facilitation, note taking, annual report preparation, etc.

Potential Appendices (in no particular order)

- RIP Action Plan (under development)
- MRG Section 7 Guidelines for Consultation (under development)
- Procedure for other actions to be included in the RIP (to be developed if necessary)
- Scientific Code of Conduct for the Middle Rio Grande Endangered Species Collaborative Program
- RIP External Peer Review Process [place holder]
- RIP Internal Review Procedures [place holder]
- Adaptive Management Plan Version 1 (AMP-1)
- Cooperative Agreement (under development)
- Governance Protocols (RIP By-laws [place holder]; RIP Advisory Committee Charters [place holder])
- New MOA [place holder, if needed for funding]
- Federal Authorizations