

Memorandum of Understanding
Among
Texas Parks and Wildlife Department
And
The United States Department of the Interior
National Park Service, Big Bend National Park
And
U.S. Fish and Wildlife Service, Region 2
And
U.S. Geological Survey, Central Region, Texas Water Science Center
And
U.S. Geological Survey, Biological Resources Division, Fort Collins Science Center

This Memorandum of Understanding (MOU) is entered into by and between the National Park Service (NPS), Big Bend National Park; the U.S. Fish and Wildlife Service (FWS), Region 2; the U.S. Geological Survey (USGS), Central Region, Texas Water Science Center and Biological Resources Division, Fort Collins Science Center; and the Texas Parks and Wildlife Department (TPWD). Throughout this agreement the NPS, FWS, USGS, and TPWD may be referred to collectively as “the Parties.”

ARTICLE I – AUTHORITIES

Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401), as amended 1946, 1958, 1978 and 1995.

Fish and Wildlife Act of 1956, 16 U.S.C 742(f) et. Seq.

National Park Service Organic Act of 1916, 16 U.S.C. §§ 1 and 2-4, as amended

U.S. Geological Survey Organic Act, 43 USC 31 et seq., and 43 USC 36c.

ARTICLE II -- PURPOSE

The purpose of this MOU is to promote collaborative working relationships to advance the scientific basis for conservation actions and the effectiveness of their applications in the Big Bend Region to include Big Bend National Park, the Rio Grande Wild and Scenic River, Black Gap, Elephant Mountain and Sierra Diablo Wildlife Management Areas, Balmorhea, Big Bend Ranch, Chinati Mountains, Davis Mountains, Franklin Mountains, Hueco Tanks, Monahans Sandhills, and Seminole Canyon State Parks, and the Devils River State Natural Area. The Parties recognize the mutual benefits that would arise from cooperative programs relating to strategic planning and coordinated implementation of their respective programs, including research and management of natural and cultural resources in the Rio Grande Basin and Chihuahuan Desert.

The Parties are currently cooperating in a bi-national effort to develop science-based resource management practices for conservation of the Rio Grande and Chihuahuan Desert, including activities related to identifying, planning, and implementing desirable watershed management; improving water quality; protecting groundwater; conserving rare and vulnerable species, habitats, and ecosystems; and assessing and addressing the effects of climate change. With this MOU, the Parties intend to formalize this partnership under the name Big Bend Conservation Cooperative and will work together to include other conservation partners with subsequent MOUs and agreements.

ARTICLE III – BACKGROUND

The Chihuahuan Desert includes grasslands, scattered mountains, and water resources that support a diverse array of imperiled, rare, and endemic species and are globally important for migratory birds. Plants and animals within the Chihuahuan Desert exhibit remarkable adaptation to a harsh environment and climate, yet these species rely on a delicate balance of limited natural resources and are thus extremely vulnerable to climate change and human-induced stressors. The Rio Grande, which runs through the heart of the northern Chihuahuan Desert in the Big Bend region, is the centerpiece of an emerging bi-national system of lands dedicated to conservation. Protected lands on both sides of the U.S. Mexico border within the greater Big Bend ecosystem are approaching three million acres.

In May 2009, United States Secretary of the Interior Ken Salazar and Mexican Minister of Environment and Natural Resources Juan Elvira announced their commitment to strengthen cross-border conservation efforts in the Big Bend region. This presents a unique opportunity to unify Department of the Interior (DOI) agencies for the purpose of providing leadership in strategic conservation planning, design, and implementation at broad, bi-national scales.

The heart of conservation efforts in the northern Chihuahuan Desert is the Rio Grande/Rio Bravo, which serves as the international boundary between the United States and Mexico. The Parties collaborate on identifying and implementing monitoring, research, and habitat improvement projects with a bi-national group of landowners, managers, and other interested parties, along the Big Bend reach of the Rio Grande/Rio Bravo in Texas and Mexico (from Fort Quitman to Amistad Reservoir).

The collective goals of this group are to improve ecological function and fish and wildlife habitat while respecting political and legal limitations. Initial priorities of the group include supporting the re-introduction of the Rio Grande silvery minnow (*Hybognathus amarus*; minnow); working with water managers on the Rio Conchos in Mexico to develop an experimental flows program; controlling nonnative, invasive plant species, such as salt cedar (*Tamarisk spp.*) and giant reed (*Arundo donax*); and establishing a protocol for long-term hydrological, geophysical, biological, and ecological monitoring and research. Activities associated with these priorities are currently underway within Big Bend National Park, the Rio Grande Wild and Scenic River, and eight other public and private protected areas along the Rio Grande in the Big Bend region in the United States and Mexico.

The Parties are interested in working together on strategic conservation planning and expanding existing collaborative efforts related to the Rio Grande to include grassland restoration within the watersheds that drain into the Rio Grande. The FWS Partners for Fish and Wildlife program and TPWD would like to apply techniques for grassland, riparian and stream restoration/conservation that are being developed by the NPS and other conservation partners in the Big Bend area to surrounding private lands.

ARTICLE IV – INTENT AND ACTIVITIES

Specifically, the Parties recognize the mutual benefits from initiating activities and programs, including but not limited to the following:

- (1) Working together to increase the scientific understanding of the effects of climate change on the natural resources of Big Bend National Park and the Chihuahuan Desert, including working closely with the Desert Landscape Conservation Cooperative (LCC) to apply Strategic Habitat Conservation

planning and cutting-edge mitigation and adaptation strategies to priority species and habitats that are impacted by climate change. The Parties will facilitate information exchange regarding biological planning, conservation design and implementation, monitoring, and research among the Desert LCC and existing partnerships in the Chihuahuan Desert in Texas and Mexico. The Parties will also work together to craft practical, landscape-level strategies for managing climate-change impacts.

(2) Working together to conserve the Rio Grande, its tributary watersheds, and the Rio Grande silvery minnow through cooperative research and management. Specific scientific investigations and monitoring may include ready-response data collection, modeling aquatic habitat availability over a range of river flows, and initiating a long-term monitoring program for the Rio Grande and the minnow.

(3) Working together to conserve the grasslands of the Chihuahuan Desert, including research that relates to grassland restoration and the role of fire in adaptive management. Specific scientific investigations and monitoring may include ready-response data collection and initiating a long-term monitoring program for Chihuahuan Desert grasslands.

(4) Working with our partners to develop a watershed planning and restoration toolbox for public and private landowners interested in watershed planning, conservation, and restoration.

(5) Working together to monitor and manage invasive and exotic species.

(6) Integrating the capabilities of the Parties with the Texas Instream Flows Program to develop recommendations, an adaptive management approach, and comprehensive study design for environmental flows for the Big Bend reach.

(7) Improving coordination of environmental review under the Endangered Species Act and the National Environmental Policy Act, as well as other planning activities as they relate to projects of mutual interest.

(8) Engaging our conservation partners in the United States and in Mexico, as well as the public, in the development of sound natural and cultural resource management objectives, programs, and activities.

(9) Initiating other intra- or inter-agency agreements, as needed, to accomplish the intent of this MOU.

(10) Investigating the potential for MOUs with other agencies and stakeholders that advance the intent of this MOU.

(11) To advance the intent of the MOU, the Parties will address integration of efforts and expansion of capacity, as needed.

ARTICLE V – GENERAL PROVISIONS

- (1) The provisions of any statutes and/or regulations cited in this MOU may contain legally binding requirements. The MOU itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Thus, this MOU does not impose legally binding requirements on the parties, nor does it create a legal right of action for the parties or any third party.
- (2) Nothing in this MOU may be construed to obligate any party to any current or future expenditure of resources. Nor does this MOU obligate any party to expend funds on any particular project or purpose, even if funds are available.
- (3) Unless expressly provided by law, personnel or volunteers of one party shall not be considered to be agents or employees of the other party for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. The personnel and volunteers of one party are not entitled to any of the benefits that the other party provides for its employees or volunteers.
- (4) This MOU shall not make or be deemed to make any party to this MOU an agent for or the partner of any other party.
- (5) On behalf of itself, its officers, directors, members, employees, agents, and representatives, each party agrees that it will be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of any other party, nor the results thereof. Each party therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the party's own operations and/or the operations of its agents, employees, and/or volunteers under this MOU. Each party further releases and waives all claims against every other party for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this MOU, including without limitation any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the other party's negligence, provided, however, that any party may agree to voluntarily compensate another party for damage to equipment.
- (6) If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this MOU, then each party shall pay its own attorney's fees and costs. Each party shall be solely responsible for its own actions, and no party shall be liable in monetary damages to any other party for any breach of this MOU, any performance or failure to perform a mandatory or discretionary obligation imposed by this MOU, or any other cause of action arising from this MOU.
- (7) This MOU is not a federal contract, rule, or regulation. This MOU shall not be construed as or interpreted to be final federal agency action.
- (8) If any provision of this MOU is held invalid, the other provisions shall not be affected thereby.
- (9) This MOU may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which when taken together shall constitute one and the same MOU.
- (10) No member of or delegate to Congress shall be entitled to any share or part of this MOU or to any benefit that may arise from it.

(11) Nothing in this MOU may be interpreted to imply that the United States, the DOI, or the federal agencies endorse any product, service or policy of the Texas Parks and Wildlife Department. No party shall take any action or make any statement that suggests or implies such an endorsement.

(12) This MOU is subject to all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352); and (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683 and 1685-1686).

(13) Nothing in this MOU may be construed to obligate the Parties to any current or future expenditure of resources either in the advance of appropriations from Congress or when funds are available. Should the agencies mutually agree to an expenditure of resources, and Interagency Agreement would be executed in accordance with applicable Federal statutes and regulations.

(14) This MOU may be renewed, amended or extended by written mutual agreement of TPWD, FWS, NPS and the USGS.

(15) This MOU does not restrict the State or Federal parties from participating in similar activities with other public or private agencies, organizations, or individuals.

(16) All data and other information produced as a result of this MOU shall be available to the Federal parties hereto in connection with ongoing programs.

(17) This MOU does not commit the Federal parties to enter into any specific interagency agreements for the purpose of this MOU. The parties to it understand that projects involving cost-sharing or reimbursable funding between them will require follow-on interagency agreements.

(18) Notwithstanding other provisions of this MOU, nothing contained herein shall constitute or be interpreted as a waiver of sovereign immunity by any party to this MOU.

Article VI - INTEGRATION

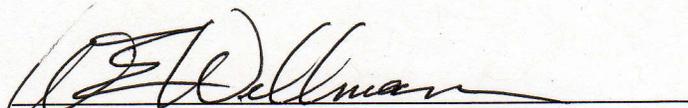
This MOU supersedes all prior or contemporaneous communications and negotiations, both oral and written, and constitutes the entire MOU between the Parties relating to the work set out above. Any amendment to this MOU shall only be effective if it is in writing and signed by the parties.

Article VII - TERM OF MOU

Progress in achieving the intent and purpose of the MOU will be reviewed annually. This MOU is effective upon the date of last signature and will remain in effect for 5 years. The Parties may terminate their participation in the MOU by providing 60-day advance written notice.

SIGNED:

National Park Service, Big Bend National Park

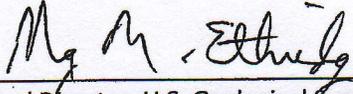

Superintendent, Big Bend National Park

Date: 10/4/10

Fish and Wildlife Service, Southwest Region

ACTING Joy E. Nikolopoulos Date: OCT 27 2010
Regional Director, U.S. Fish and Wildlife Service, Southwest Region

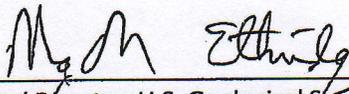
U.S. Geological Survey, Central Region, Texas Water Science Center



Regional Director, U.S. Geological Survey, Central Region

Date: 9/27/10

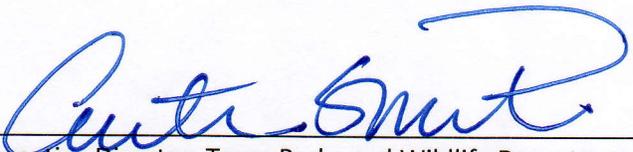
U.S. Geological Survey, Central Region, Biological Resources Division, Fort Collins Science Center



Regional Director, U.S. Geological Survey, Central Region

Date: 9/27/10

Texas Parks and Wildlife Department


Executive Director, Texas Parks and Wildlife Department

Date: 9/22/2010