

Executive Committee Meeting
April 15, 2010

Meeting Materials:

Meeting Agenda

Meeting Minutes

**Middle Rio Grande Endangered Species Collaborative Program
Executive Committee Meeting
April 15, 2010, 9:00 am to 12:45 pm
Bureau of Reclamation Rio Grande Conference Room
555 Broadway NE, Suite 100, Albuquerque, NM**

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|---|---|---------------------|
| | 1. Introductions and Changes to the Proposed Agenda (Dave Sabo) | <i>(5 minutes)</i> |
| * | 2. Approval of March 18 EC Meeting Summary | <i>(10 minutes)</i> |
| | 3. Update on Appropriations Request/Trip to Washington D.C.
(Estevan Lopez) | <i>(10 minutes)</i> |
| | 4. Update on USACE Request to Offset Depletions from Proposed Overbanking Action (USACE/Reclamation) | <i>(15 minutes)</i> |
| | 5. Update on Lands Issue/10th Circuit Court of Appeals Decision
(MRGCD/Reclamation) | <i>(15 minutes)</i> |
| | 6. USFWS Update (Lori Robertson) | <i>(20 minutes)</i> |
| | a. Rio Grande Silvery Minnow 5-yr Status Review | |
| | b. Biology Update | |
| | c. PVA Update | |
| * | 7. Coordination Committee Report (Co-chairs) | <i>(30 minutes)</i> |
| | a. Revised LTP Development & Schedule | |
| | b. Recommendations: Workgroup Charters, 2009 Accomplishments and 2010 Work Plans | |
| | c. Decision: Approve/Revise Charter for Species Water Management (SWM) workgroup | |
| | d. Information: 2009 Accomplishments for Habitat Restoration (HR) workgroup | |
| | e. Decision: Approve/Revise 2010 Work Plan for HR workgroup | |
| * | 8. Program Manager Update (Yvette McKenna) | <i>(20 minutes)</i> |
| | a. Workgroup updates | |
| | b. Contract Update (Jericho Lewis) | |
| | c. Quarterly Financial Report Update | |
| | d. Recommendation: Draft Scientific Code of Conduct | |
| | e. Decision: Approve/Revise Draft Scientific Code of Conduct | |
| | f. Adaptive Management Plan Update | |
| | 9. Adaptive Management 101 (Reclamation) | <i>(30 minutes)</i> |
| | 10. BA/BO ESA Consultation Update (Consultation Team) | <i>(15 minutes)</i> |
| | 11. PHVA/Hydrology Update (Reclamation) | <i>(20 minutes)</i> |
| | 12. Public Comment | <i>(10 minutes)</i> |

13. Next Meeting: May 20, 2010

* *Denotes read ahead material provided for this item*

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Decisions

The March 18, 2010 EC meeting minutes were approved with changes.

The Charter for Species Water Management (SWM) was approved.

The 2010 Work Plan for Habitat Restoration workgroup (HRW) was approved.

The Scientific Code of Conduct was approved with the removal of the word Draft from the title.

Actions

Yvette McKenna will post the 10th Circuit Court of Appeals Decision regarding the lands issue on the Program website.

Recommendations

To ensure consideration of new information in this status review, Program entities wishing to comment on the USFWS 5-yr review for 14 species listed under the ESA are requested to do so during the official comment period which is open until June 28, 2010.

The EC recommended that the Code of Conduct be posted to the Program website.

Next EC Meeting May 20, 2010

Meeting Summary

- Dave Sabo called the meeting to order and asked whether a quorum was present. A quorum was confirmed and introductions were made around the table.
- The March 18 EC meeting minutes were approved with minor changes.
- The EC was given a brief update on the [non-federal Program Signatory Trip](#) to Washington D.C. The group met with Congressional members and staff, Ann Castle, and other Department of Interior staff, and U.S. Army Corps of Engineer representatives. The group shared with congress members their desire for broad ESA coverage via a long-term biological opinion (BO) (the possibility of multiple BOs was not yet confirmed). The group also emphasized that the Program needs a dedicated staff and reported how functional the Program has become. The group requested that the federal co-chair designation be submitted in letter form as required by the Program by-laws. The group felt that their message was well received and expressed thanks to all the non-federal signatories that provided letters of support and to Grace Haggerty and Amy Louise for their work towards

the visit. The group was also thanked by non-federal signatories for making the trip to Washington D.C.

- The EC was updated on the USACE Request to Offset Depletions from Proposed Overbanking Action. The Bureau of Reclamation will fund the offset one time from supplemental water, and Cochiti Pueblo has agreed to store water pending final approval from the Rio Grande Compact Commission. A joint Reclamation and USACE letter is going to the USFWS to support the action, and agencies were commended for working together. The USACE would like to start storing April 19 or 20, 2010. The White Paper shows updated models based on the NRCS April forecast. Based on these updated models the USACE may not need to store as much water as initially thought.
 - It was asked if storing water at Cochiti Reservoir would impact Article VII restrictions. It was answered that there should be no net affect from storing water at Cochiti.
 - The issue of potential flow damage and sediment plugging was discussed. The USACE is addressing the risk of sediment plug development. The flow increase is minimal and with close monitoring, potential damages and safety risks should not be an issue.
 - Based on favorable results of the Cochiti baseline study, it is anticipated that USACE could pursue authorization to acquire water. As flows over 5000 cfs occur about every 2 years, the need for a long-term monitoring program and enhanced opportunities for data collection was recognized.
- The EC was updated on [Lands Issue/10th Circuit Court of Appeals Decision](#).
 - The issue of how land ownership affects contracting was discussed. Reclamation is looking into opportunities and options that will affect projects as minimally as possible.
 - Yvette McKenna will post the 10th Circuit Court of Appeals Decision regarding the lands issue on the Program website.
- The EC was introduced to USFWS' new 10(j) re-introduction biologist, Mark Brennan. The EC was then shown a Power Point presentation on the [Rio Grande Silvery Minnow 5-yr Status Review](#) by Lori Robertson.
 - It was explained that this is a periodic analysis of the species' status as Endangered.
 - USFWS was asked how long the review of criteria to downlist would take. There is no regulated time frame but the goal is for the review to be completed by 2011.
 - To ensure consideration of new information in this status review, Program entities wishing to comment on the USFWS 5-yr review for 14 species listed under the ESA are requested to do so during the official comment period which is open until June 28, 2010.

- The EC was given a Biology update. USFWS assisted with monitoring on pueblo land. At Big Bend egg monitoring and larval fish collection were completed. The Big Bend draft report was submitted to Bureau of Reclamation. At the Rio Grande Silvery Minnow Sanctuary the installation of security fencing and water quality and operational testing needs to be completed. Fish trials are set to begin by September of 2010, and the facility will undergo the same phased permitting approach as the Los Lunas Refugium.
- The USFWS will have a letter out soon on the hydrologic year determination and incidental take.
- The EC was given a PVA update. Dave Campbell will be the federal co-chair of the PVA workgroup. The PVA hopes to have some products ready for review but has no specific schedule yet. The USFWS needs the PVA products for use in the consultation in time to evaluate the draft biological assessments (BAs), and to develop the new BO(s). A formal adaptive management process will allow for the incorporation of new information and build in flexibilities.
- The EC recognized Nancy Gloman's pending retirement. She will be going to work as Vice President of Field Conservation for Defenders of Wildlife in Washington D.C.
- The EC was shown examples of the long term plan (LTP) Activities tables and summaries. It was suggested that there be the addition of which goal was being met by a particular activity. The EC was updated that all comments on the Future Activities would be due April 30, GenQuest will compile and implement changes by May 15, and the CC plans to discuss revisions at their May 26, 2010 meeting.
- The [Charter for Species Water Management](#) (SWM) workgroup was approved.
- The [2010 Work Plan for Habitat Restoration](#) (HR) workgroup was approved.
- The [Scientific Code of Conduct](#) was approved with the removal of the word Draft from the title. The EC recommended that the Code of Conduct be posted to the Program website.
- In the Program Manager update the workgroups were recognized for their efforts in putting together the LTP Future Activity summaries. The EC was updated that at the CC working meeting on April 14, 2010 it was decided that the Population Estimation draft report would be recommended for peer review.
- The EC was given a BA/BO ESA Consultation update. The team has started to capture the process in text for review and is beginning to apply a schedule, which goes up to the end of the current BO. Non-federal participants include representatives from Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) and NM Interstate Stream Commission (ISC).
- In the PHVA/Hydrology update it was announced that the annual operating plan meeting would be tonight (April 15) at 6:00 pm. According to recent models, will be in Article VII until June 3, 2010. As a result there will be a very short period for storing and most of the runoff may be missed.

- The EC was given an Adaptive Management Plan development update. The Program is hoping to contract a facilitator and/or a technical team to help develop a long-term and clearly defined adaptive management process. Different aspects of the Program (i.e. Water Ops, etc.) should have their own adaptive management plan. The next step is to move forward with the request for proposal (RFP) to hire a contractor.
- The EC was then shown a [Power Point presentation](#) by Jeanne Dye intended to provide an overview of Adaptive Management. The Department of Interior Technical Guide on Adaptive Management has been posted to the Program website.
- It was summarized that the USFWS needs suitable product outputs/outcomes from the PVA models to use in the evaluation of the BAs. By the end of 2012, with a well-defined LTP and adaptive management process, the BO(s) could be completed.

Executive Committee (EC) Meeting Attendees
April 15, 2010 9:00 am to 12:45 pm

Attendees:

<i>Representative</i>	<i>Organization</i>	<i>Seat</i>
Dave Sabo	Dept. of the Interior	Federal co-chair, non-voting
Lisa Croft	Bureau of Reclamation	Bureau of Reclamation
Col. Kim Colloton	U.S. Army Corps of Engineers	U.S. Army Corps of
Engineers		
Kris Schafer	U.S. Army Corps of Engineers	U.S. Army Corps of
Engineers		
Nancy Gloman	U.S. Fish and Wildlife Service	
	U.S. Fish and Wildlife Service	
Estevan Lopez	NM Interstate Stream Commission	Non-Federal co-chair,
	NM Interstate Stream Commission	
Rick Billings	Albuquerque Bernalillo County	
	ABCWUA	
	Water Utility Authority	
Subhas Shah	MRGCD	MRGCD
Ann Moore	NM Attorney General	NMAGO
Frank Chaves	Pueblo of Sandia	Pueblo of Sandia
Ann Watson	Santo Domingo Tribe	Santo Domingo Tribe
Hilary Brinegar	U.S. Department of Agriculture	U.S. Department of
Agriculture		

Susan Kelly Mexico	University of New Mexico	University of New
Terina Perez	City of Albuquerque	City of Albuquerque
Brent Rhees John Stomp	Bureau of Reclamation Albuquerque Bernalillo County Water Utility Authority	Bureau of Reclamation ABCWUA
Cody Walker	Pueblo of Isleta	Pueblo of Isleta
Deborah Goss	Pueblo of Santa Ana Pueblo of Santa Ana	
<i>Others</i>		
Yvette McKenna – PM	Bureau of Reclamation	
Jericho Lewis	Bureau of Reclamation	
LeeAnn Summer	U.S. Army Corps of Engineers	
Susan Bittick	U.S. Army Corps of Engineers	
Monika Mann	U.S. Army Corps of Engineers	
Stacey Kopitsch	U.S. Fish and Wildlife Service	
Lori Robertson	U.S. Fish and Wildlife Service	
Janet Bair	U.S. Fish and Wildlife Service	
Grace Haggerty	NM Interstate Stream Commission	
Amy Louise	NM Interstate Stream Commission	
Chris Shaw	NM Interstate Stream Commission	
Brooke Wyman	MRGCD	
Patricia Dominguez	Senator Bingaman	
Jeanne Dye	Bureau of Reclamation	
Delfinia Montano	U.S. Fish and Wildlife Service	
Joe Jojola	Bureau of Indian Affairs	
Jen Bachus	U.S. Fish and Wildlife Service	
Mike Hamman	Bureau of Reclamation	
April Fitzner	U.S. Army Corps of Engineers	
Peter Wilkinson	NM Interstate Stream Commission	
Mark Brennan	U.S. Fish and Wildlife Service	
Brian Millsap	U.S. Fish and Wildlife Service	
Patrick Redmond	LRPA/MRGCD	
William DeRagon	U.S. Army Corps of Engineers	
Robert Hall	D.O.I. – Office of the Solicitor	

MEETING READ AHEADS

NEW MEXICO INTERSTATE STREAM COMMISSION

March 2010

Middle Rio Grande Endangered Species Collaborative Program (Program)

On behalf of the non-federal participants of the Program we request:

- 1) Your continued support of the Program including annual funding for Program activities to both Reclamation and the U.S. Army Corps of Engineers;
- 2) That the Congressional delegation request that Reclamation designate permanent staff to the Program; and
- 3) That the Congressional delegation work with the non-federal participants to develop and pass authorizing legislation for the Program to directly receive federal appropriations by end of 2012.

New Middle Rio Grande Water Operations Biological Opinion (BiOp):

Have 5 Specific Requests that we believe are essential for the new BiOp to be successful:

1. Best Science:

Establish a process for independent review of the relevant science.

Support the efforts of the existing Population Viability Assessment (PVA) process to utilize the best available information in modeling the viability of the Rio Grande silvery minnow.

Reclamation and the Fish & Wildlife Service re-dedicate technical staff, and staff involved in development of the new Biological Opinion, to the effort.

2. Term:

New Mexico Congressional Delegation: Request support for the position of the non-federal participants that the new Middle Rio Grande Water Operations Biological Opinion should have a term of at least 30-years with reasonable triggers for reinitiating consultation.

Department of the Interior (DOI): Request that Reclamation and the Fish and Wildlife Service be directed to develop a BiOp with at least a 30-year term with reasonable triggers for reinitiating consultation.

The non-federal participants understand that the USACE is seeking greater than 30-year ESA coverage for its operations and supports that effort.

3. Coverage:

New Mexico Congressional Delegation – Request support for the non-federal participant position that the new BiOp should provide equal or better coverage to New Mexico water users (i.e., ESA compliance and/or protection from ESA liabilities) than the 2003 BiOp.

DOI – Request that Reclamation be directed to use a scope of coverage equal to or better than the 2003 Biological Opinion updated for current conditions.

4. Timing: The non-federal participants seek a commitment from DOI and the USACE to complete the new BiOp within the first term of the current Administration (i.e., by 2012).

5. DOI Representative

Request that DOI designate a Departmental representative as the federal co-chair for the Program. This is particularly critical during the development of the new BiOp because the efforts of three Interior agencies (BOR, FWS, and BIA) must be coordinated. Given this need for coordination, the designee should be of sufficient stature to effectively coordinate the Interior agencies.

The non-federal participants of the Program request a decision on each of these points and will make formal requests, if appropriate.

March 26, 2010

PUBLISHElisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RIO GRANDE SILVERY MINNOW
(*Hybognathus amarus*);
SOUTHWESTERN WILLOW
FLYCATCHER (*Empidonax trailii*
extimus); DEFENDERS OF
WILDLIFE; FOREST GUARDIANS;
NATIONAL AUDUBON SOCIETY;
NEW MEXICO AUDUBON
COUNCIL; SIERRA CLUB; and
SOUTHWEST ENVIRONMENTAL
CENTER,

Plaintiffs-Appellees,

v.

BUREAU OF RECLAMATION, an
agency of the United States; ROBERT
L. VAN ANTWERP, Lt. Gen., Chief
Engineer, Army Corps of Engineers;
UNITED STATES ARMY CORPS OF
ENGINEERS, an agency of the United
States; UNITED STATES OF
AMERICA; KEN SALAZAR,
Secretary, Department of the Interior;
MICHAEL L. CONNOR,
Commissioner, Bureau of
Reclamation; LARRY WALKOVIK,
Regional Director, Bureau of
Reclamation; and KIMBERLY L.
COLLTON, Lt. Col., Albuquerque

No. 05-2293

District Engineer,*

Defendants-Cross-Defendants-
Appellees,

THE MIDDLE RIO GRANDE
CONSERVANCY DISTRICT,

Defendant-Intervenor-Cross-
Claimant-Appellant,

STATE OF NEW MEXICO; RIO DE
CHAMA ACEQUIA ASSOCIATION;
CITY OF ALBUQUERQUE,

Defendants-Intervenors.**

CITY OF SANTA FE,

Intervenor.***

* Pursuant to Fed. R. App. 43(c), we have substituted as the Defendants-Cross-Defendants-Appellees in this action: (1) Robert L. Van Antwerp, Lt. Gen., Chief Engineer, Army Corps of Engineers, for Joseph Ballard, General, Chief Engineer, Army Corps of Engineers; (2) Ken Salazar, Secretary, Department of the Interior, for Gale Norton, Secretary, Department of the Interior; (3) Michael L. Connor, Commissioner, Bureau of Reclamation, for Eluid L. Martinez, Commissioner, Bureau of Reclamation; (4) Larry Walkoviak, Regional Director, Bureau of Reclamation, for Michael R. Gabaldon, Regional Director, Bureau of Reclamation; and (5) Kimberly L. Colloton, Lt. Col., Albuquerque District Engineer, for Tom Fallin, Lt. Col., Albuquerque District Engineer.

** Two of the Defendants-Intervenors, State of New Mexico and City of Albuquerque, entered appearances on appeal but did not otherwise participate. Additionally, Defendant-Intervenor Rio de Chama Acequia Association entered an appearance in the district court but did not participate on appeal.

*** Intervenor City of Santa Fe entered an appearance in the district court but
(continued...)

**Appeal from the United States District Court
for the District of New Mexico
(D.C. No. CIV-99-1320-JP)**

Charles T. DuMars (Christina J. Bruff and David Seeley with him on the briefs), of Law & Resource Planning Associates, P.C., Albuquerque, New Mexico, for Defendant-Intervenor-Cross-Claimant-Appellant Middle Rio Grande Conservancy District.

Jennifer Scheller Neumann, Attorney, U.S. Department of Justice, Environment & Natural Resources Division, (Ellen S. Durkee and Andrew Smith, Attorneys, U.S. Department of Justice, Environment & Natural Resources Division; Sue Ellen Wooldridge, Assistant Attorney General; Megan Walline, Attorney, Office of the Solicitor, Department of the Interior, with her on the brief), Washington, D.C., for Defendants-Cross-Defendants-Appellees.

Alletta Belin of Belin & Sugarman, Santa Fe, New Mexico (Laurence (“Laird”) J. Lucas of Advocates for the West, Boise, Idaho, with her on the brief), for Plaintiffs-Appellees.

Before **HENRY**, Chief Judge, **BALDOCK** and **HOLMES**, Circuit Judges.

HOLMES, Circuit Judge.

The Middle Rio Grande Conservancy District (“MRGCD”) challenges a final judgment entered on its cross-claims brought pursuant to the Federal Quiet Title Act of 1972 (the “QTA”), 28 U.S.C. § 2409a, in favor of the Secretary of the Interior Ken Salazar, the Bureau of Reclamation (“BOR”), BOR officials, the United States Army Corps of Engineers (“Corps”), and Corps officials (collectively the “federal appellees”).

*** (...continued)
did not participate on appeal.

Specifically, following a bench trial, the district court held that MRGCD's claims were time-barred pursuant to 28 U.S.C. § 2409a(g). The court ruled in the alternative that, even if its claims were not time-barred, MRGCD was judicially estopped from claiming that it owned the properties in question, and, furthermore, the federal appellees were entitled to judgment on the merits. As to the limitations issue, we agree with the district court: MRGCD's quiet-title action is time-barred. It follows, however, that the district court did not have jurisdiction to decide the merits of that action. Therefore, we remand to the district court with instructions to vacate the portion of its judgment that resolves the merits of MRGCD's quiet-title action and to enter judgment on its jurisdictional dismissal of the claim.

I. BACKGROUND

“We begin with a comprehensive appraisal of the trial evidence, viewed through the proper evidentiary prism. That is to say, we review the record evidence in a light most favorable to both the district court's subsidiary and ultimate findings.” *Vail Assocs., Inc. v. Vend-Tel-Co.*, 516 F.3d 853, 858 (10th Cir. 2008). We highlight the features of the case that are most pertinent to our analysis of the QTA statute-of-limitations issue.

MRGCD was formed in 1925 to consolidate water rights and irrigation systems in the Middle Rio Grande Valley. In the 1930s, MRGCD built the El Vado Dam and Reservoir (“El Vado”) and diversion dams in New Mexico at Cochiti, Angostura, Isleta, and San Acacia. Essentially bankrupt by the 1940s, MRGCD defaulted on its bonds and was unable to repair and maintain its facilities. Financial difficulty, combined with

aggradation of the river channel and consequent flooding, resulted in development of the Middle Rio Grande Project (“Project”) by the BOR and the Corps. The Project was designed to rehabilitate and construct irrigation facilities, control flooding and sedimentation on the river, and improve the economy in the Middle Rio Grande Valley. The 1947 BOR Plan for Development contemplated as “an important and necessary part of the plan” that the United States would acquire “the existing works” of MRGCD. *Aplt. App.* at 1485. Moreover, the plan expressly identified the “principal features” of MRGCD to include, *inter alia*, the following: El Vado; the Cochiti, Angostura, Isleta, and San Acacia Diversion Dams; 767 miles of canals, acequias, and laterals; 342 miles of drains; and 180 miles of riverside levees. *Id.* at 1499.

The Flood Control Act of 1948, Pub. L. No. 80-858, § 203, 62 Stat. 1171, 1179, expressly incorporated the BOR and Corps plans for the Middle Rio Grande. The Act further authorized the United States to acquire the “bonds and other evidences of indebtedness of [MRGCD] . . . for the protection of the investment of the United States.” § 203, 62 Stat. at 1179. MRGCD was required to reimburse the United States for some of the improvements made to the Project works.

After Congress authorized the Project, the United States and MRGCD executed a contract (“1951 Contract”). The 1951 Contract contained several provisions relevant here. Pursuant to Article 26:

[MRGCD] shall convey to the United States with title satisfactory to the Contracting Officer such of [MRGCD] works now owned by [MRGCD], as shall be required to be conveyed to the United States

as determined by the Contracting Officer. But this contract is executed upon the express understanding and condition that while the legal title to [MRGCD] works conveyed to the United States under the terms of this contract or by any separate instruments executed pursuant to its terms may continue thereafter in the United States, upon full compliance by [MRGCD] with all covenants required to be performed by it under the terms hereof, including the repayment in full to the United States of all sums of money and at times, and on conditions as herein provided, *and on consent of Congress*, the United States will reconvey to [MRGCD] all [MRGCD] works transferred to the United States, under the provisions of this contract, and additions thereto

Aplt. App. at 1666–67 (emphasis added).¹ Moreover, Article 27 stated:

The United States shall not commence construction of any feature of the project within the boundaries of [MRGCD] until all necessary rights of way therefor have been secured [by MRGCD], or satisfactory contracts entered into for the purchase thereof All other rights of way required for constructing the reimbursable features of the project shall be acquired as hereinafter provided and payment made therefor by the United States and costs thereof in the amount so paid shall be a part of the reimbursable construction costs of the [P]roject.

Id. at 1667. Lastly, noting that MRGCD had “made certain water filings including filings for storage and use of water in the El Vado Reservoir,” the 1951 Contract required MRGCD to assign “any and all such filings” to the United States. *Id.*

¹ MRGCD’s Board of Directors expressed reservations when presented with a proposed contract containing terms conveying title to the United States. However, Board minutes reflect that while the Board did have these concerns, its members also clearly understood that the United States would not conduct work on the Project unless MRGCD transferred title and that MRGCD could not regain title absent an act of Congress. The United States insisted that, “in accordance with Reclamation Law,” even when the 1951 Contract was fully repaid, the United States would hold legal title to the Project properties until Congress voted to reconvey it. Aplt. App. at 1643. Although MRGCD suggested the addition of language providing that equitable title revert to it on full repayment, such language is absent from the executed document.

Article 29 provided that “[t]itle to all works” that the United States “constructed” under the contract, as well as to works that MRGCD conveyed to it, shall “continue to be *vested in the name of the United States* until otherwise provided for by Congress, notwithstanding the transfer hereafter of any such works to [MRGCD] for operation and maintenance.” *Id.* at 1668 (emphasis added). Additionally:

The term construction, as used in this contract, shall consist of rehabilitation and extension of the irrigation and drainage system of [MRGCD], rehabilitation and repair of El Vado Dam, repairs to diversion dams and related irrigation and drainage structures; acquisition of outstanding bonds; and rectification of the Rio Grande Channel.

Id. at 1657.

Ultimately, the United States funneled more than \$231 million into the Project. MRGCD, by comparison, was obligated to reimburse approximately \$15,709,000 over around a fifty-year period.

Because preparing complete legal descriptions of the thousands of properties constituting the Project’s works would have delayed construction, the parties settled on an interim solution—a blanket Grant of Easement (“1953 Grant of Easement”)—which provided:

[MRGCD] . . . assigns and conveys to the United States of America all [MRGCD] works *and* real property required for accomplishment of the purposes set forth in that contract between [MRGCD] and the United States dated September 24, 1951 . . . , *together with* the right, privilege and easement to construct, replace, operate and maintain any structure the United States of America may deem necessary or desirable for the construction, operation and maintenance of the [Project] *and* the right, privilege and easement to remove from or

place on earth or rock, with the right of ingress or egress for men, materials and equipment for the purposes of carrying out the provisions of that certain contract of September 24, 1951 . . . , in and upon the real estate described in the official maps of [MRGCD], together with all structures on said real estate necessary to the operation of the irrigation and drainage system.

Id. at 1721 (emphasis added). The BOR Regional Director opined that the effect of the 1953 Grant of Easement would be to “convey[] all of [MRGCD] works, including El Vado Dam and Reservoir.” *Id.* at 1836. In reliance on the 1953 Grant of Easement, very shortly after its execution, BOR officially initiated construction on the reimbursable aspects of the Project. In carrying out this work, BOR needed property interests of third parties, most significantly, rights-of-way, “including easements for ditches, canals, acequias, drains, laterals, [and] roads.” *Id.* at 1984. Pursuant to Article 27 of the 1951 Contract, MRGCD was obliged to obtain these interests and assign them to the United States. And it did so throughout the 1950s and thereafter. In 1956, MRGCD specifically agreed that “[a]ll conveyances of easements and interests in land hereafter made by [MRGCD] to the United States pursuant to Article 27 of the basic contract shall be by warranty conveyance.” *Id.* MRGCD also “agree[d] that it w[ould] warrant and defend the title to all such easements and interests in land . . . conveyed by it to the United States.” *Id.*

In 1955, MRGCD’s lawyer informed MRGCD’s Board that a BOR lawyer had questioned whether MRGCD should be issuing “any easements, rights-of-way, leases, etc., over and on what was formerly [MRGCD] property since the title has been

transferred to the United States of America.” *Id.* at 1807. The BOR’s lawyer suggested the proper course would be that the United States “grant such easements, rights-of-way, leases, etc. instead of [MRGCD].” *Id.* MRGCD’s lawyer opined that this suggestion “has merit for the reason that . . . the title to all the works, including the ditches and rights-of-way and El Vado Reservoir is now vested in the United States of America.” *Id.* At a subsequent meeting in 1955, MRGCD’s Board took up the subject of the BOR lawyer’s suggestion. The Board passed a resolution stating that it was “the consensus of the Board” that it should comply with and implement the BOR lawyer’s suggestion “in view of the fact that the title to all the works of [MRGCD] has now vested in the United States of America.” *Id.* at 1814. More specifically, they stated that “hereafter all easements, rights-of-way, leases and transfers of any interest in and to the properties which ha[d] been conveyed by [MRGCD] to the United States of America will be submitted, passed upon, and granted at the discretion of the United States of America and not by the Board of Directors of [MRGCD].” *Id.*

The parties never recorded the 1953 Grant of Easement. However, MRGCD urged the United States to do so out of its concern that, absent recordation, third parties would lack notice that “the title to all the works of [MRGCD] is now vested in the United States of America” and, therefore, might seek damages arising from operation of the works from MRGCD. *Id.* at 1815. In August 1955, however, a BOR Field Solicitor, named A.V. Roscoe, recommended in an internal file memorandum that the 1953 Grant of Easement not be recorded because: “[f]rom the language of the Grant of Easement and the [1951

Contract], it is evident that the parties thereto did not intend to consummate a present conveyance of specific properties”; and that the 1953 Grant of Easement did not adequately describe the subject properties and therefore could not be effective to apprise third parties of the properties MRGCD *intended* to convey. *Id.* at 1852. In addition, around the same time, in 1955, a BOR Regional Director appeared to question in an internal governmental communication to a federal manager on the Project whether the United States would take fee title or an easement in the Project works. Furthermore, in a 1958 BOR history of the Project, the author refers to court cases in which the United States had filed “motions seeking to have the cases dismissed on the grounds the United States in the maintenance of the works of [MRGCD] . . . is an agent of the State of New Mexico.” *Id.* at 2051.

However, in the 1950s and 1960s, without any indication of uncertainty, MRGCD represented to third parties that the United States owned the Project works. The United States did likewise. For example, in 1955, the Chief Engineer of MRGCD testified before Congress that “the United States . . . acquired and now holds title to all of the works of [MRGCD].” *Id.* at 1784. In 1956, to eliminate apparent confusion among local New Mexico officials concerning the extent of its title interest in certain Project properties, the United States sought a resolution from MRGCD’s Board that would state that the property at issue “was and is a part of [MRGCD’s] works and facilities and was conveyed to the United States.” *Id.* at 1973. MRGCD’s Board passed such a resolution.

Furthermore, in 1956, the United States publicly took the position in litigation

before the U.S. Supreme Court—*Texas v. New Mexico*, Original Action No. 9—that it was an indispensable party because “the United States has now taken over title to and operation of all the dams and other works of [MRGCD].” *Id.* at 2006. MRGCD also agreed in this litigation that “the United States is now the owner of all the works of the Defendant, [MRGCD], including El Vado Dam and Reservoir.” *Id.* at 1866–67.

Similarly, in 1967, in another Supreme Court original action—*Texas and New Mexico v. Colorado*, Original Action No. 29—the U.S. Solicitor General offered an assessment of the impact of the litigation on the interests of the United States: “Any ruling touching the [water] delivery obligations of New Mexico, here, as in *Texas v. New Mexico*, would both entail control of the operations of [MRGCD], all of whose dams and other works are *owned* and operated by the United States” *Id.* at 2366 (emphasis added). In the joint response brief that Texas and New Mexico filed with the Court, they acknowledged the United States’s litigation position in the earlier Supreme Court litigation (i.e., *Texas v. New Mexico*): “The United States argued in its final memorandum that at that time (1956), it had *taken title to all of the works of the [MRGCD]*, and that any manner of relief sought by Texas which included control over the gates of El Vado Dam would now be ineffective in the absence of the United States as owner of the works.” *Id.* at 2384. In that prior case, Texas and New Mexico noted, “Texas [had] admitted the United States was indispensable because of its *ownership* of the works sought to be controlled.” *Id.* (emphasis added).

In further conformity with the parties’ intent in executing the 1953 Grant of

Easement, around 1962, BOR received county-by-county grants “covering the assignment of all of [MRGCD’s] old rights of way,” *id.* at 2168, 2180; *see id.* at 2170–74, 2181–90, which were replaced by later-recorded instruments.

In 1960, the United States and MRGCD executed a Grant of Right of Way Easement for El Vado:

the Grantor does hereby grant, bargain, sell, transfer, assign and convey to the United States and its assigns, an exclusive right, privilege and easement to construct, reconstruct, replace, enlarge, operate and maintain ditches, canals, laterals, drains, aqueducts, water conduits, fences, bridges, roads, telephone and telegraph lines, and any other structures or facilities the United States may deem necessary or desirable for the construction, operation and maintenance of the [Project], and the exclusive right, privilege and easement to remove from or place on earth and rock, with the right of ingress and egress for the purposes of carrying out the easement hereby granted, in and upon lands of [MRGCD] covering the site for El Vado Dam and Reservoir

Id. at 2131–32. The parties intended the conveyance to both describe the real property on which the dam and reservoir was located, and to “return[] to [MRGCD] the mineral rights.” *Id.* at 2138. In contemporaneous transactions with third parties, the United States represented that it “owns and controls lands or interest in lands in the El Vado Reservoir Area.” *Id.* at 2193, 2202.

In the 1970s, MRGCD continued to recognize that it had conveyed interests in the Project properties to the United States. For instance, in 1972, MRGCD indicated that “[a]ll the ditches, canals, and drains to which [MRGCD] had acquired title have, in turn, been conveyed to the United States Government by virtue of a Rehabilitation Contract.”

Id. at 2414. Similarly, in 1976, MRGCD acknowledged that “the works” of MRGCD “at El Vado Dam” had been transferred to the United States. *Id.* at 2567. Moreover, in 1977, MRGCD’s counsel acknowledged in communications to MRGCD’s Board that the United States’s consent to fencing certain Project property was necessary because the United States held title to it. During this same period of time, the United States continued to assert that it held legal title to the Project properties, including in a 1970 letter to MRGCD’s legal advisor. *Id.* at 2404 (recognizing that MRGCD may deem it necessary to join the United States as a party in litigation with third parties, “in view of [the United States’s] legal title to the property”).

On the other hand, in some communications in the 1980s and 1990s, federal managers working on the project and governmental attorneys either expressed uncertainty concerning the property interest that the United States held in the Project properties, or indicated that the interests were in the form of easements. Some of these communications were to MRGCD or third parties. *See id.* at 2639 (noting, in a 1983 permit agreement entered into by a BOR Projects Superintendent on behalf of the United States with Los Alamos County, New Mexico, and signed in concurrence by MRGCD’s General Manager, that MRGCD “is the owner of El Vado Dam and the United States is the operator of El Vado Dam and Reservoir”); *id.* at 2794 (noting, in a 1983 letter from a BOR Regional Director to an engineering company, that “[b]y easement dated February 9, 1960, [MRGCD] conveyed all necessary rights-of-way easements to the United States for construction, operation, and maintenance of the [Project] including facilities at El

Vado Dam and Reservoir,” and thus MRGCD “continues as legal owner of the facility with an easement interest granted to the United States”); *id.* at 2900 (noting, in a 1990 letter from a federal Project Manager to MRGCD’s Chief Engineer, that “[a] field review” by federal employees indicated that MRGCD acquired certain Project property “by fee simple” and “granted the United States an easement interest in 1962”).

Other communications were internal governmental communications. *See id.* at 3025 (noting, in an internal 1994 “Determination of Surplus Easement,” signed by the BOR Regional Director, among others, that in connection with release of easement in certain Project property that “[a] perpetual easement was acquired by the United States . . . from [MRGCD], the underlying fee owner,” for construction and reconstruction work in connection with the Project); *id.* at 3030, 3032 (noting, in a 1994 letter response from a federal attorney to the BOR Regional Director, who had expressed confusion concerning whether the United States or MRGCD “own the actual [Project] facilities,” that “title to any facility or portion thereof which was constructed by the United States is vested in the United States” but “title to any facility or portion thereof which was constructed by [MRGCD] is vested in [MRGCD]”). Of particular note, in a 1999 internal communication, Department of the Interior (“DOI”) Solicitor John Leshy stated the following: “[BOR’s] review to-date indicates no controlling property interest in MRGCD facilities. However, the United States is still in the process of analyzing and assessing the extent to which the aforementioned easements might be exercised.” *Id.* at 3186.

Nevertheless, around the same time, MRGCD expressly recognized that the United

States claimed title to the Project works. In its 1993 Water Policies Plan, MRGCD acknowledged that although MRGCD “wants title to [MRGCD] property to return . . . automatically when the [MRGCD’s] debt . . . is paid off,” the United States insisted that “conveyance of . . . assets back to [MRGCD] requires either a determination by the Secretary of Interior that the property is no longer needed for the [Project], or an Act of Congress.” *Id.* at 3004. In 1994, in a contract between MRGCD and Public Service Company of New Mexico concerning the storage of water at El Vado, the parties expressly agreed that “the works of [MRGCD] have been transferred by [MRGCD] to the United States Government and are now operated and maintained by [BOR] under contract with [MRGCD].” *Id.* at 3010. Similarly, in 1999, MRGCD reported to the New Mexico Legislature that it had assigned or conveyed to BOR title to many works and that, when the contract was fully repaid, it would be required to “petition the U.S. Congress to consent to the reconveyance of the title to all Project works, including El Vado Dam and the three diversion dams on the Rio Grande (Angostura, Isleta, and San Acacia) to [MRGCD].” *Id.* at 3098. Furthermore, in 2000, in an internal governmental communication, Solicitor Leshy stated: “After carefully reviewing all of the relevant documents, I have concluded that [BOR] obtained title to MRGCD facilities through federal legislation authorizing the Project and subsequent agreements between [BOR] and [MRGCD].” *Id.* at 3186.

On November 15, 1999, several environmental groups filed a complaint in the United States District Court for the District of New Mexico on behalf of the Rio Grande

Silvery Minnow seeking declaratory and injunctive relief.² MRGCD moved to intervene and subsequently filed a cross-claim in 2002 against the federal appellees to quiet title to El Vado, San Acacia Dam, Angostura Dam, State Water Rights Permit No. 1690, and certain identified tracts of property. Following a bench trial, the district court held that MRGCD's claims were time-barred under the QTA's twelve-year statute of limitations. The court ruled in the alternative that, even if its claims were not time-barred, MRGCD was judicially estopped from claiming that it owned the Project properties, and, furthermore, the federal appellees were entitled to judgment on the merits. MRGCD filed a timely appeal.³

II. DISCUSSION

A. Standard of Review

We review de novo both the district court's determination of subject-matter jurisdiction and its ruling on the applicability of a statute of limitations. *Plaza Speedway Inc. v. United States*, 311 F.3d 1262, 1266 (10th Cir. 2002). "We review the [district] court's findings of jurisdictional facts for clear error" *Jones v. United Parcel Serv.*,

² This litigation has spawned several appeals, including this one: specifically, Case Nos. 05-2293, 05-2399, 06-2020 and 06-2021. For purposes of oral argument, we consolidated all of the appeals. The appeals were not all consolidated for briefing purposes, however. The appeals generated two distinct sets of briefs, one related to this appeal (Case No. 05-2293), and one related to all of the other appeals. This court is adjudicating the issues raised by the other appeals in a separate opinion.

³ The plaintiffs environmental groups aligned with the federal appellees on the QTA issues before the district court and have filed a response brief with this court, disputing the grounds of MRGCD's appeal. The principal focus of the environmental groups' brief, however, is not the QTA statute-of-limitations issue.

Inc., 502 F.3d 1176, 1183 (10th Cir. 2007). “A finding is clearly erroneous when although there is evidence to support it, the reviewing court *on the entire evidence* is left with the definite and firm conviction that a mistake has been committed.” *Vail Assocs., Inc.*, 516 F.3d at 858 (quoting *Estate of Trentadue ex rel. Aguilar v. United States*, 397 F.3d 840, 859–60 (10th Cir. 2005)). “We view the evidence in the light most favorable to the district court’s ruling” *Plaza Speedway Inc.*, 311 F.3d at 1266.

“Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985); *see Manning v. United States*, 146 F.3d 808, 813 (10th Cir. 1998) (quoting *Anderson* for this rule). “If the district court’s account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse” *Anderson*, 470 U.S. at 573–74. That proposition holds true, not only when the district court’s factual findings are predicated upon assessments of witness credibility, but also when they arise from consideration of documentary evidence. *Id.*; *see La Resolana Architects, PA v. Reno, Inc.*, 555 F.3d 1171, 1177 (10th Cir. 2009) (“This admonition applies equally regardless of whether the district court’s factual findings are based on credibility determinations or on documentary evidence.”).

B. The Quiet Title Act: Governing Law

The QTA is the “exclusive means by which adverse claimants [may] challenge the United States’ title to real property.” *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 286 (1983). The QTA provides a limited waiver of the United

States's sovereign immunity. *Knapp v. United States*, 636 F.2d 279, 281–82 (10th Cir.

1980). Under the QTA:

Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest *knew or should have known* of the claim of the United States.

28 U.S.C. § 2409a(g) (emphasis added). “Timeliness under subsection [(g)] is a jurisdictional prerequisite to suit under section 2409a.” *Knapp*, 636 F.2d at 282; *accord Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 738 (8th Cir. 2001) (“[T]he QTA statute of limitations acts as a jurisdictional bar unlike most statutes of limitations, which are affirmative defenses.”); *Bank One Tex., N.A. v. United States*, 157 F.3d 397, 403 (5th Cir. 1998) (“[B]ecause it circumscribes the scope of a waiver of sovereign immunity, the statute of limitations manifests a jurisdictional prerequisite, rather than an affirmative defense.”).

The twelve-year limitations period is strictly construed in favor of the United States. *Vincent Murphy Chevrolet Co. v. United States*, 766 F.2d 449, 452 (10th Cir. 1985); *see Knapp*, 636 F.2d at 282. The government need not “provide explicit notice of its claim.” *Spirit Lake Tribe*, 262 F.3d at 738. For purposes of the QTA’s limitations provision, the plaintiff’s action accrues when he or she “knew or should have known of the claim of the United States.” *Rosette, Inc. v. United States*, 141 F.3d 1394, 1397 (10th Cir. 1998) (quoting 28 U.S.C. § 2409a(g)). “Knowledge of the claim’s full contours is not required. All that is necessary is a reasonable awareness that the Government claims

some interest adverse to the plaintiff's.” *Knapp*, 636 F.2d at 283 (emphasis added); accord *Cheyenne Arapaho Tribes of Okla. v. United States*, 558 F.3d 592, 595 (D.C. Cir. 2009).

Thus, the starting of the limitations clock is not dependent on the plaintiff knowing the precise nature of the property interest upon which the United States predicates its claim of title. See *Spirit Lake Tribe*, 262 F.3d at 738 (“The government’s claim need not be clear and unambiguous.” (internal quotation marks omitted)); see *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 770 (4th Cir. 1991) (“Assuming *arguendo* that RF & P did not know the exact nature of the government’s claim in 1938, it still could not escape the limitations bar, for all that is necessary for accrual is ‘a reasonable awareness that the Government claims *some interest* adverse to the plaintiff’s.’” (quoting *Knapp*, 636 F.2d at 283) (emphasis added)). In that regard, the United States need not assert a full legal title in the disputed property for the limitations period to accrue; the claimed adverse interest in the title of the property merely must be substantial enough to create a cloud on title. See *Kinscherff v. United States*, 586 F.2d 159, 160 (10th Cir. 1978) (per curiam) (stating that, under New Mexico law, “[t]he interest . . . must be some interest in the title to the property” and that “[a]n attempt to remove a cloud from title presupposes that the plaintiff has some title to defend”); accord *Spirit Lake Tribe*, 262 F.3d at 738 (noting that the government’s interest simply must be a “cloud on title,” that is, “a reasonable claim with a substantial basis” (internal quotation marks omitted)); see also *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d

1189, 1198 (9th Cir. 2008) (“[T]he QTA limitations period accrues as soon as the United States makes a claim that creates even a cloud on a plaintiff’s ownership interest.”

(internal quotation marks omitted)).

In other words, the United States need not assert that it holds title in fee simple to the property. *See Vincent Murphy Chevrolet Co.*, 766 F.2d at 451 (noting that there was “no dispute” that “the [quitclaim deed] restrictions” asserted by the United States “are ‘claims’” under the QTA); *Kinscherff*, 586 F.2d at 161 (quoting portions of the QTA’s legislative history to indicate that the statute pertains to claims to title involving less than a fee-simple interest); *accord United States v. Bedford Assocs.*, 657 F.2d 1300, 1316 (2d Cir. 1981) (noting that the QTA “plainly contemplates litigation against the United States to adjudicate disputes about lesser interests” than fee-simple ownership interests).

Indeed, “[e]ven invalid government claims trigger the QTA limitations period.” *Spirit Lake Tribe*, 262 F.3d at 738; *see Knapp*, 636 F.2d at 279 (“Whether the interest claimed amounts to legal title in the United States is irrelevant if it constitutes a cloud on the plaintiffs’ title.”); *see also Kingman Reef Atoll Invs.*, 541 F.3d at 1197 (“[T]he crucial issue in the statute of limitations inquiry [under the QTA] is whether the plaintiff had notice of the federal claim, not whether the claim itself is valid.” (internal quotation marks omitted)). Thus, “[s]imply put, the limitations period is triggered when a landowner has reason to know that the government claims some type of adverse interest in that land.” *Spirit Lake Tribe*, 262 F.3d at 732.

“Because § 2409a limits the sovereign immunity of the United States, it must be

interpreted according to federal law.” *Amoco Prod. Co. v. United States*, 619 F.2d 1383, 1387 (10th Cir. 1980); *see Vincent Murphy Chevrolet Co.*, 766 F.2d at 451 (noting that “because it is a federal statute,” the QTA “must be interpreted in accordance with principles of federal law”); *accord Bank One Tex.*, 157 F.3d at 403 (quoting *Vincent Murphy Chevrolet Co.*, 766 F.2d at 451). “However, federal courts may properly look to state law as an aid in determining the application of statutory language to specific facts.” *Amoco Prod. Co.*, 619 F.2d at 1387. In particular, “questions involving ownership, transfer and title to real estate have traditionally been resolved according to the laws of the state where the realty is located.” *Id.* But “such state law should be compatible with the purpose of [the legislation so as] to find the rule that will best effectuate the federal policy.” *Vincent Murphy Chevrolet Co.*, 766 F.2d at 451 (alterations in original) (internal quotation marks omitted).

C. The District Court’s Ruling

The district court concluded that MRGCD’s quiet-title claim was time-barred under the QTA’s twelve-year statute of limitations.⁴ The court found that “MRGCD has

⁴ In addition to its quiet-title action, MRGCD sought declaratory relief, calling upon the district court to interpret key documents related to the property-interest dispute, including the 1951 Contract and the 1953 Grant of Easement. The district court likewise concluded that these claims were time-barred. The court reasoned that “[w]hen a party’s claim depends on quieting title against the United States, the QTA provides the exclusive source of the court’s jurisdiction, even if that claim is not couched as a claim under the QTA.” *Aplt. App.* at 1207. More specifically, the court noted that “[b]ecause these [declaratory judgment] claims are inextricably linked to the question of whether title to [Project] works and facilities and other properties rests with the United States or MRGCD, the statute of limitations bar against MRGCD’s direct quiet title claims under (continued...)

known of the United States’ interests, and has actively endorsed that interest, since the early 1950s.” *Aplt. App.* at 1205. As support for its conclusion, the court expressly adopted the forty-seven paragraphs of proposed factual findings that BOR asserted would establish the timing of MRGCD’s knowledge that the United States claimed an interest in the title of the Project properties, stating that BOR’s proposed findings were “fully supported by the record.” *Id.* at 1200.

We have carefully reviewed all of the district court’s factual findings that are germane to the statute-of-limitations issue for purposes of determining whether they evince a plausible reading of the record. Several of those findings are especially noteworthy here. The court determined that:

1. As far back as 1951, “MRGCD understood that it was required to convey

⁴(...continued)

the QTA also bars these derivative claims.” *Id.* at 1208. The federal appellees contend that MRGCD has not raised a challenge to this ruling on appeal and thus has waived it. *See Fed. Aplee. Br.* at 16 n.3. MRGCD’s response to this contention in its Reply Brief is non-responsive and opaque at best. *See Aplt. Reply Br.* at 8 n.1 (“Jurisdiction over the declaratory judgment claims falls under 43 U.S.C. § 390uu.”). Even assuming, *arguendo*, that MRGCD has preserved a challenge to the district court’s ruling concerning its declaratory judgment claims, we hold that it cannot prevail on this challenge. The determination regarding whether MRGCD’s quiet-title claim is time-barred controls the outcome of the related inquiry of whether MRGCD’s request for declaratory relief is time-barred. MRGCD’s “request for declaratory relief leads directly back to the question of title, and, as such, is inextricably linked to that question,” and “since the Quiet Title Act contains a limited waiver of sovereign immunity,” it is MRGCD’s “exclusive remedy.” *Rosette, Inc.*, 141 F.3d at 1396; *cf. Block*, 461 U.S. at 286 (noting that “if a suit is untimely under the QTA, the QTA expressly forbids the relief which would be sought under” the Administrative Procedure Act, 5 U.S.C. § 702 (internal quotation marks omitted)). We ultimately hold that the quiet-title claim is time-barred under the QTA; consequently, MRGCD’s declaratory judgment claims are as well.

title to property interests in [Project] properties to the United States as a necessary prerequisite to the initiation of BOR's construction and rehabilitation of the Project under federal reclamation law," *id.* at 1188;

2. Pursuant to Articles 26, 27, and 29 of the 1951 Contract, "MRGCD understood that title for Project properties would be conveyed to the United States in at least three ways: (1) by direct conveyance by MRGCD of its existing property interests; (2) by acquisition from third parties of title to additional property interests necessary for Project purposes and assignment of them to the United States; and (3) by operation of the 1951 Contract upon construction of Project works," *id.* at 1200;
3. "The terms of the 1953 Grant of Easement are not limited to conveying an easement. Rather, the document conveys title to *all* [MRGCD] works and real property needed to carry out the 1951 Contract. . . . Other than the diversion dams and the El Vado Dam and Reservoir, most of the Project 'works' consist of right-of-way easements for ditches, canals, drains, and channels," *id.* at 1186 (emphasis added);
4. "[I]n the late 1950s, MRGCD was made aware of and sometimes expressly acknowledged the United States' continued reliance on the 1953 Grant to Easement and the United States' claim of title to various properties formerly owned by MRGCD," *id.* at 1201;
5. "The United States continued to rely on the 1953 Grant of Easement and to

- claim title to Project properties even after execution of the 1962 [county-by-county] easements. Likewise, MRGCD never understood the United States to have abandoned its claim of title to Project properties by virtue of the execution of the 1962 grants of easement, as demonstrated by its own public, official statements thereafter,” *id.* at 1206–07 (citation omitted); and
6. “[I]nconsistencies in later years”—specifically, in the 1980s and 1990s—in the statements of the United States and MRGCD concerning ownership of one of the most significant Project properties, El Vado Dam and Reservoir, “do not negate federal acquisition of ownership of El Vado Dam and Reservoir that occurred in the 1950s,” *id.* at 1196.

In sum, the district court found that “[t]he record is replete with convincing proof that MRGCD had full knowledge [in the 1950s] that the United States claimed title to all [Project] properties.” *Id.* at 1200.

The district court rejected several arguments of MRGCD. Significantly, the court rejected MRGCD’s contention that “the statute of limitations did not begin to run until 2000 because before that the United States’s claim was too ambiguous.” *Id.* at 1204. The court noted that to buttress its contention MRGCD “point[ed] to conflicting evidence as to whether the United States was claiming fee title or an easement interest.” *Id.* Relying on our *Knapp* decision, the district court found MRGCD’s contention to be unavailing. The court noted that in *Knapp* we turned away the argument that “the limitations period began to run only when the government ‘definitively asserted an interest greater than a

right-of-way.” *Id.* at 1205 (quoting *Knapp*, 636 F.2d at 282).

The district court also rejected MRGCD’s alternative argument that “even if it had notice of the United States’s claim of title to [Project] properties, the United States abandoned that claim before the 12-year period expired by accepting and recording the 1962 county-by-county grants of easements as replacements for the 1953 Grant of Easement.” *Id.* at 1206. The court observed that the United States must clearly and unequivocally abandon its claim of title to stop the limitations clock from running, and held that MRGCD had made no showing of such abandonment on these facts.

Thus, the district court concluded that, based on the facts of record, MRGCD knew (and thus certainly should have known) that the United States claimed title to the Project properties as far back as the early 1950s, and, thus, MRGCD’s 2002 cross-claim was barred by the QTA’s twelve-year statute of limitations.

D. Statute-of-Limitations Analysis

After carefully considering the record, we hold that the district court did not err in determining that MRGCD’s 2002 cross-claim was time-barred under the QTA’s twelve-year statute of limitations. More specifically, we conclude that the district court did not clearly err in finding that MRGCD knew as far back as the early 1950s that the United States claimed title to the Project properties. In other words, the district court’s “account of the evidence is plausible in light of the record viewed in its entirety.” *Anderson*, 470 U.S. at 574. We need not (and do not) opine here on the precise nature of the property interests that formed the basis of the United States’s claim of title. MRGCD does not

dispute on appeal that during the early 1950s it conveyed title to easement interests to the United States. However, it is sufficient for purposes of our QTA limitations analysis to inquire whether the district court made plausible findings, viewing the record as a whole, determining in substance that in the early 1950s the United States asserted a claim of title to the Project properties; that this claim—at the very least—was supported by the United States’s asserted possession of *some* property interest that was substantial and adverse enough to cloud title of those properties; and that MRGCD was reasonably aware of that claim. *See Knapp*, 636 F.2d at 283 (“All that is necessary is a reasonable awareness that the Government claims *some* interest adverse to the plaintiff’s.” (emphasis added)). We answer in the affirmative: there was abundant record evidence that permitted the district court to plausibly make these findings.

Reviewing as we do for clear error, we need not explicate in great detail the evidence demonstrating the significant degree of congruity between our reading of the record—summarized in the Background section, *supra* Part I—and the district court’s ultimate and subsidiary findings of fact. It will suffice to underscore several salient points. The district court’s reading of key documents in this case—the 1951 Contract and the 1953 Grant of Easement—is certainly plausible and, even viewed alone, makes a compelling case that MRGCD possessed the requisite knowledge as far back as the 1950s. By its plain terms, the 1951 contract called upon MRGCD to convey title to Project properties to the United States. And the district court could plausibly find that the 1951 Contract provided for the United States to receive property interests pertaining to

the Project in three ways: (1) by direct conveyance by MRGCD of its existing property interests; (2) by MRGCD's acquisition from third parties of title to additional property interests necessary for Project purposes and assignment of them to the United States; and (3) by operation of the 1951 Contract, upon the United States's construction of Project works.

Furthermore, significantly, the district court's finding that the 1953 Grant of Easement involved a present conveyance of title by MRGCD of its property interests in Project properties to the United States and that this conveyance involved fee-simple interests, as well as easements, is entirely plausible. The district court supported this finding with a correct observation concerning New Mexico law: "The fact that the 1953 grant is entitled 'Grant of Easement' does not control the nature of the conveyance. The title of an instrument is not determinative of the property interest conveyed by that instrument." Aplt. App. at 1219 (citing *Atl. Ref. Co. v. Beach*, 436 P.2d 107, 110 (1968)). The 1963 Grant of Easement uses the present tense in discussing the assignment and conveyance of MRGCD's property interests to the United States, and, significantly, it explicitly recognizes that MRGCD is conveying real property itself, *in addition to* easements and privileges to use the land. In that regard, as we noted *supra*, the language reads:

[MRGCD] . . . assigns and conveys to the United States of America all [MRGCD] works *and* real property required for accomplishment of the purposes set forth in that contract between [MRGCD] and the United States dated September 24, 1951 . . . , *together with* the right, privilege and easement to construct, replace, operate and maintain

any structure the United States of America may deem necessary or desirable for the construction, operation and maintenance of the [Project] *and* the right, privilege and easement to remove from or place on earth or rock, with the right of ingress or egress for men, materials and equipment for the purposes of carrying out the provisions of that certain contract of September 24, 1951 . . . , in and upon the real estate described in the official maps of [MRGCD], together with all structures on said real estate necessary to the operation of the irrigation and drainage system.

Id. at 1721 (emphasis added). Although we perceive the district court's finding that the 1953 Grant of Easement conveyed in part fee-simple interests to the United States to be a plausible reading of the record, for purposes of our QTA statute-of-limitations analysis it is not necessary for us to definitively opine on that precise issue. Rather, it is sufficient for us in addressing the issues and arguments in this case to credit the district court's necessarily embedded factual determination that the 1953 Grant of Easement conveyed in part *some* substantial possessory property interests to the United States, and not just easements and privileges with respect to the land. It would follow ineluctably that such possessory property interests would be adverse to any claim of fee-simple title by MRGCD in the same Project properties. That MRGCD later supplied county-by-county easement grants to the United States does not weaken this determination. The district court did not clearly err in finding that the record reflects that the parties understood the grants as merely providing detailed legal descriptions of interests already conveyed by the 1953 Grant of Easement.

MRGCD does not deny it was aware of the plain terms of the key documents that we have discussed. Considering those terms, the district court's determination is not

clearly erroneous that those documents served to make MRGCD reasonably aware in the early 1950s that the United States made a claim of title to the Project properties based upon its asserted possession of *some* substantial and adverse property interests in those properties.

Furthermore, this is not a case where we are limited to the sometimes-stilted language of transactional documents in divining the extent of the quiet-title plaintiff's knowledge. The district court unquestionably could plausibly find based on this record that during the mid-1950s, MRGCD repeatedly *confirmed* the import of these transactional documents, which were executed a few years prior, through MRGCD's communications and actions—*viz.*, confirmed that it knew that the United States claimed *some* substantial and adverse property interests in the title to the Project properties.

Among the many examples, in 1955, the Chief Engineer of MRGCD testified before Congress that “the United States . . . acquired and now holds title to all of the works of [MRGCD].” *Id.* at 1784. In 1956, to eliminate apparent confusion among local New Mexico officials concerning the extent of its title interest in certain Project properties, the United States sought a resolution from MRGCD's Board that would state that the property at issue “was and is a part of [MRGCD's] works and facilities and was conveyed to the United States.” *Id.* at 1973. MRGCD's Board passed such a resolution. And very compelling proof is found in MRGCD's representations in the *Texas v. New Mexico* Supreme Court litigation. In representations to the highest Court, MRGCD agreed with the United States that “the United States is now the owner of all of the works of the

Defendant, [MRGCD], including El Vado Dam and Reservoir.” *Id.* at 1866–67. As examined further below, our review of the record also indicates that the district court could plausibly find that the “inconsistencies” during the 1980s and 1990s in the statements of the United States and MRGCD regarding ownership of El Vado Dam and Reservoir, “d[id] not negate federal acquisition of ownership” of the property “that occurred in the 1950s.” *Id.* at 1196.

In sum, we conclude that the district court did not clearly err in finding that MRGCD knew as far back as the early 1950s that the United States claimed some substantial and adverse title interest to the Project properties. Consequently, we hold that the district court did not err in determining that MRGCD’s 2002 cross-claim was time-barred under the QTA’s twelve-year statute of limitations.

MRGCD challenges the district court’s statute-of-limitations ruling on two principal grounds. First, MRGCD alleges that in light of the “fifty years of contradicting claims by the United States and . . . MRGCD as to title,” the record could not possibly “lead to the conclusion that either . . . MRGCD or the United States could have had a ‘reasonable awareness’ that the United States claimed a fee simple interest, not a title to an easement.” *Aplt. Opening Br.* at 65. MRGCD reasons that if the government is not claiming fee-simple title, then a potential plaintiff could hardly be expected to file a quiet-title action to settle that claim. *Id.* at 68–69 (“When the United States does not claim fee title one cannot file a quiet title suit to eliminate their claim.”); *see also Aplt. Reply Br.* at 14 (“[O]n what basis should MRGCD have been ‘reasonably aware’ that [BOR] viewed

the 1951, 1953, 1960 and 1962 documents as conveying fee simple title, and not easements.”).

MRGCD’s first argument is predicated upon the assumption that the only thing that triggers the statute of limitations is an unequivocal claim of fee-simple interest in title to the land. That assumption is misguided. The focus of QTA’s statute-of-limitations analysis is different. The precise contours of the claimed property interest in the title need not be clear. *E.g.*, *Knapp*, 636 F.2d at 283. It follows ineluctably that there is no requirement that the United States unequivocally claim a fee-simple property interest in the title to start the running of the limitations period. *E.g.*, *Vincent Murphy Chevrolet Co.*, 766 F.2d at 451; *Kinscherff*, 586 F.2d at 161. All that is required is that the potential plaintiff actually know (or be apprised of circumstances such that the plaintiff should know) that the United States asserts a property interest in the title to the disputed property of sufficient substance and adversity to cloud the title. *E.g.*, *Knapp*, 636 F.2d at 283. Our review of the district court’s factual findings leaves us with no doubt that the district court plausibly found that the United States asserted such a property interest.

Even if MRGCD only was reasonably aware that the United States based a claim of title to Project properties on easement interests, we question whether MRGCD could prevail on its first argument. Under New Mexico law, an easement is a property interest of sufficient substance to allow for a quiet-title action. *See Kinscherff*, 586 F.2d at 161 (noting that, under New Mexico law, “[e]asements are real property interests subject to quiet title actions”). An easement may cloud title to property of another. *See* 74 C.J.S.

Quieting Title § 17 (2009) (noting that “[a]n unfounded claim of an easement may cast a cloud on the title of the servient estate”); 65 Am. Jur. 2d *Quieting Title* § 11 (2010) (“An easement is a proper subject of a suit to quiet title, because an easement is real property.” (footnote omitted)); *see also* *AKG Real Estate, LLC v. Kosterman*, 717 N.W.2d 835, 838 (Wis. 2006) (“An easement (or servitude) is an interest that encumbers the land of another.”); *cf.* 65 Am. Jur. 2d *Quieting Title* § 13 (2010) (“A cloud upon title may also be defined . . . as an apparent defect in the title that has [the] tendency, even in a slight degree, to cast doubt upon the owner’s title, and to stand in the way of the full and free exercise of his or her ownership.”). And under New Mexico law extant during the 1950s, a title could be asserted with respect to an easement. *See Ritter-Walker Co. v. Bell*, 123 P.2d 381, 382 (N.M. 1942) (noting that “[t]itle to an easement passes like title to any other real estate”); *see also* *S. Union Gas Co. v. Cantrell*, 241 P.2d 1209, 1210, 1213 (N.M. 1952) (resolving a dispute concerning a gas company’s “owner[ship] of a right-of-way easement for a high pressure gas pipeline across a certain tract of land now owned by the defendants”).

Thus, even if MRGCD was only reasonably aware that the United States asserted a claim of title to the Project properties based upon easement interests, arguably the conditions for triggering the running of the limitations period would be met. Those interests would be substantial enough under New Mexico law to cloud MRGCD’s title to

the properties, inhibiting its full exercise of rights with respect to them.⁵ However, ultimately, we need not definitively opine upon this question, which envisions MRGCD's knowledge of only the conveyance of easement interests to the United States, because that is not the factual situation here. As noted above, subsumed in the district court's plausible factual findings was the determination that, pursuant to the 1953 Grant of Easement, MRGCD was reasonably aware that it was conveying some substantial

⁵ In its Reply Brief, MRGCD suggests that even if the United States's assertion of an easement interest generally could give a landowner the requisite knowledge to start the QTA limitations clock, it did not do so here because MRGCD would not have viewed easements held by the United States to operate and maintain the Project properties to be "adverse to MRGCD's interests." Aplt. Reply Br. at 10. As support for this suggestion, MRGCD cites to the Ninth Circuit's decision in *Michel v. United States*, 65 F.3d 130 (9th Cir. 1995) (per curiam). We are inclined to view this argument as waived. MRGCD did not cite to *Michel* in its opening brief and did not advance this argument there, and, consequently, BOR has been denied an opportunity to respond to it. See, e.g., *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief."). However, even if we were to consider this argument, it would not avail MRGCD. *Michel* is clearly distinguishable. In *Michel*, it was the private party *plaintiff* who claimed an easement interest in the disputed property, not the United States. 65 F.3d at 131. The Ninth Circuit reasoned that

when the plaintiff claims a non-possessory interest such as an easement, knowledge of a government claim of ownership may be entirely consistent with a plaintiff's claim. A plaintiff's cause of action for an easement across government land only accrues when the government, adversely to the interests of plaintiffs, denies or limits the use of the roadway for access to plaintiffs' property.

Id. at 132 (internal quotation marks omitted). Importantly, the Ninth Circuit did not question that "if a claimant asserts fee title to disputed property, notice of a government claim that creates even a cloud on that title may be sufficient to trigger the limitations period." *Id.* That is of course the scenario presented by these facts. Therefore, *Michel*'s holding is inapposite here.

possessory property interests to the United States, *in addition to* conveying easements, and that those possessory property interests were adverse to any claim of fee-simple title by MRGCD to the same Project properties and would thus cloud MRGCD's title. Under that view of the record, the requirements for the running of the QTA's limitations period were clearly met. Accordingly, MRGCD's first argument fails.

MRGCD's second argument fares no better. MRGCD argues that the government "acquiesce[d]" in MRGCD's claim of title to the Project properties until 2000, when the DOI's Solicitor John Leshy "reversed position" from his 1999 letter opinion, and then "asserted claim to a fee title interest in the United States."⁶ Aplt. Opening Br. at 68. In the 1999 opinion letter, Solicitor Leshy stated the following: "[BOR's] review to-date indicates no controlling property interest in MRGCD facilities. However, the United

⁶ Despite MRGCD's reference to New Mexico law concerning a party's "acquiesce[nce] in the title of another," Aplt. Opening Br. at 68, as it unfolds, MRGCD's argument is really one of affirmative governmental abandonment, not acquiescence. To the extent that MRGCD were relying on BOR's purported acquiescence, its argument would be wholly without merit. "It is well established that the United States does not abandon its claims to property by inaction." *Kingman Reef Atoll Invs.*, 541 F.3d at 1199; *see United States v. California*, 332 U.S. 19, 40 (1947) ("The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act."); *Double J. Land & Cattle Co. v. U.S. Dep't of the Interior*, 91 F.3d 1378, 1381 (10th Cir. 1996) (rejecting plaintiff's effort to equitably "estop the government from complaining of a trespass" because it, *inter alia*, "would effectively permit the trespasser to enjoy the use of those lands without color of title . . . and without any determination that such transfer would be in the national interest"). The district court correctly interpreted MRGCD's argument as raising a question of governmental abandonment, and rejected it. We ultimately reach the same conclusion.

States is still in the process of analyzing and assessing the extent to which the aforementioned easements might be exercised.” Aplt. App. at 3186. MRGCD appears to reason that if the United States’s position concerning its possession of a claim to fee-title interest in the Project properties had been so inconsistent that the Solicitor had not come to a definitive position on the subject by 1999, then it would be inappropriate and unfair to rule that MRGCD should have been reasonably aware in the 1950s of the United States’s assertion of such a fee-title claim. Consequently, until Solicitor Leshy issued his definitive opinion in 2000, reasons MRGCD, the running of the statute of limitations was “interrupted.” Aplt. Opening Br. at 68. More specifically, MRGCD asserts that BOR “repeatedly disclaimed any interest other than an easement from the late 1950s until 2000” and each time it did so BOR “thereby abandoned any claim to fee simple title,” and the QTA’s statute of limitations “commenced anew.” Aplt. Reply Br. at 9.

MRGCD places principal reliance on three pieces of evidence:

- (1) affidavit testimony in this case of Garry Rowe, a BOR Albuquerque Area Manager during the 1990s, who stated that during that period “it was [his] understanding that the United States/[BOR] held only an easement interest in the [MRGCD’s] works with the exception of the new outlet works for El Vado Dam, and [he] acted accordingly in carrying out [his] duties,” Aplt. App. at 3286–87;
- (2) the 1955 memo to the file of A.V. Roscoe, an attorney in the DOI Field Solicitor’s Office, which advised against recording the Grant of Easement

because, *inter alia*, “there [wa]s no agreement between the parties as to what [wa]s *intended* to be conveyed,” *id.* at 1853 (emphasis added); and (3) the 1958 BOR history of the Project in which the governmental author refers to litigation in which the United States had filed “motions seeking to have the cases dismissed on the grounds the United States in the maintenance of the works of [MRGCD] . . . is an agent of the State of New Mexico,” *id.* at 2051.

MRGCD also cites to various communications from the late 1980s through the 1990s—a significant number of them intra-governmental—from federal managers handling transactions involving Project properties to support the proposition that “[w]ith a few minor exceptions, in the 1980’s and 1990’s, [BOR] gave consistent indications to the effect that it did not own MRGCD property but held only an easement.” *Aplt. Opening Br.* at 67.

MRGCD’s second argument is problematic and flawed in several ways. Initially, it operates from the same assumption as the first argument: that is, the assumption that, for QTA limitations purposes, the only property-interest claim against title that starts the limitations clock is a claim involving an unequivocal assertion of a fee-simple interest. Under that assumption, MRGCD views the year 2000 as the critical turning point because that is when the United States—in MRGCD’s view—first unequivocally asserted a claim to a fee-simple interest. However, as noted above, this assumption is misguided. To start the limitations clock, the United States did not have to assert an unambiguous claim

amounting to a fee-simple interest.

Further, the federal appellees appear to accurately identify two evidentiary failings of this argument. First, as to the three principal governmental statements upon which MRGCD relies, the federal appellees note that “there is no evidence that MRGCD knew of any of these statements during the relevant time period [of the 1950s], or that if MRGCD knew of them, that it believed that they indicated that the United States was not claiming title to the project works.” Fed. Applee. Br. at 19. MRGCD does not dispute this assertion in its Reply Brief. If MRGCD was not aware of any of the statements, they certainly could not have led MRGCD to believe that the United States had abandoned its claim against the title to the Project properties.

The federal appellees’ second contention focuses on the evidence of the statements of federal governmental employees from the 1980s and 1990s that appear to question the extent of the property interest possessed by the United States in the Project properties. The federal appellees suggest that if the district court’s finding of the requisite knowledge by MRGCD in the 1950s is not clearly erroneous—as we have determined here—then “the QTA’s twelve-year statute of limitations had long since run by the time of these statements.” *Id.* Consequently, reason the federal appellees, the statements “are irrelevant to the question of when MRGCD became reasonably aware of the United States’s claim to title.” *Id.* In its Reply Brief, MRGCD does not directly confront this assertion, but MRGCD does seek to fatally undermine the implicit premise of a continuously running limitations period. As noted, MRGCD contends that each time

BOR “disclaimed any interest other than an easement from the late 1950s until 2000,” the United States abandoned its claim and the QTA’s limitations period “commenced anew.” Aplt. Reply Br. at 9. However, as we next discuss, MRGCD’s reliance on these statements—as well as the statements from the 1950s—to support its abandonment argument is legally misguided. Consequently, the United States’s contention that the statements from the 1980s and 1990s are essentially irrelevant because the QTA’s statute-of-limitations period had already run is persuasive.

We conclude that, to the extent that MRGCD’s abandonment argument rests on statements from federal governmental officials (allegedly disclaiming a fee-simple interest), it is legally flawed. “In the first place, the Government cannot abandon property without congressional authorization.” *Warren v. United States*, 234 F.3d 1331, 1338 (D.C. Cir. 2000); see *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917) (“[R]epeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can right in lands belonging to the United States be acquired.”). “Power to release or otherwise dispose of the rights and property of the United States is lodged in the Congress by the Constitution.” *Royal Indem. Co. v. United States*, 313 U.S. 289, 294 (1941) (citing U.S. Const. art. IV, § 3, cl. 2); see *Spirit Lake Tribe*, 262 F.3d at 740 (“The Property Clause of the Constitution invests Congress with plenary power to dispose of real property belonging to the United States.”).

Indeed, in the QTA, Congress has provided a formal mechanism whereby the

United States during the course of QTA litigation, but “prior to the actual commencement of the trial,” may “disclaim[] all interest in the real property or interest therein adverse to the plaintiff” and secure an order from the court confirming the disclaimer. 28 U.S.C. § 2409a(e); *see Kingman Reef Atoll Invs.*, 541 F.3d at 1200 (noting that Congress “established a formal method for the United States [during QTA litigation] to disclaim any interest in property, specifically by filing such a disclaimer with the court”). If the United States follows this path, “the jurisdiction of the district court shall cease” under the QTA. 28 U.S.C. § 2409a(e). We may assume—*without* definitively deciding—that

the principle espoused in § 2409a(e) applies, by analogy, to situations in which a plaintiff has not yet filed a QTA suit (though the limitations period has been triggered by adverse government conduct). In those situations, the government’s outright abandonment effectively removes the cloud on a plaintiff’s title and extinguishes his obligation to file a quiet title action within 12 years. If the government later reasserts an adverse claim, the reasserted claim is properly regarded as a new claim and a new 12-year period begins in which a plaintiff may file his QTA action against the government.

Spirit Lake Tribe, 262 F.3d at 739; *see Kingman Reef Atoll Invs.*, 541 F.3d at 1201

(endorsing a similar approach).

However, “[s]ubordinate officers of the United States are without th[e] power” to “release or otherwise dispose of the rights and property of the United States,” except “as it has been conferred upon them by Act of Congress or is to be implied from other powers so granted.” *Royal Indem. Co.*, 313 U.S. at 294. Furthermore, ordinarily, federal agencies “bind the government” through formal rulemaking or adjudicatory proceedings.

Spirit Lake Tribe, 262 F.3d at 741. “Unlike rules and adjudications, . . . informal agency pronouncements,” including opinion letters, “lack the force of law.” *Id.* (internal quotation marks omitted) (quoting *Christensen v. Harris County*, 529 U.S. 576, 587 (2000)); *see also Kingman Reef Atoll Invs.*, 541 F.3d at 1201 (“Congress did not deem unofficial statements by government officials to be sufficient to eliminate the United States’s claim of interest in property and to thus deprive the district court of jurisdiction under the QTA.”).

In the QTA context, some of our sister circuits have held that a clear-and-unequivocal standard should be controlling in the assessment of whether the government has abandoned through its statements or actions a previously asserted claim of title to disputed property; they appear to reason that a rigorous test of this sort is necessary and appropriate because the effect of such an abandonment would be to expand the time-window for bringing suits against the government—*viz.*, the effect would be to relinquish some measure of the sovereign’s immunity from suit. *See Kingman Reef Atoll Invs.*, 541 F.3d at 1201 (“[T]he United States cannot be deemed to have abandoned a claim of ownership for purposes of § 2409a(g) unless it *clearly and unequivocally* abandons its interest, as evidenced by documentation from a government official with authority to make such decisions on behalf of the United States.” (emphasis added) (citation and internal quotation marks omitted)); *Spirit Lake Tribe*, 262 F.3d at 739 (“Like any private citizen or corporate entity, the government may abandon its interest in land. If the government *clearly and unequivocally* abandons its interest, a district court loses

jurisdiction over a pending QTA action.” (emphasis added)).

We believe that the reasoning of these cases is cogent. It squares with the legion of controlling cases holding that waivers of sovereign immunity exposing the United States to suit must be clear and unequivocal. *See, e.g., Lane v. Pena*, 518 U.S. 187, 192 (1996) (noting as “firmly grounded in our precedents” the proposition that “[a] waiver of the Federal Government’s sovereign immunity must be unequivocally expressed in statutory text”); *United States v. Murdock Mach. & Eng’g Co. of Utah*, 81 F.3d 922, 930 (10th Cir. 1996) (“The government consents to be sued only when Congress unequivocally expresses its intention to waive the government’s sovereign immunity in the statutory text. If waiver is not unequivocal from the text, the government retains its sovereign immunity.” (citation and internal quotation marks omitted)); *see also* Erwin Chemerinsky, *Federal Jurisdiction* § 9.2.1, at 629 (5th ed. 2007) (“The waiver of sovereign immunity by Congress must be explicit.”).

Applying these principles here, our close review of the record reveals no statement by any congressionally authorized governmental officer providing that the United States intended to abandon its claim of title to the Project properties. In particular, MRGCD does not contend that Congress authorized Solicitor Leshy to abandon the United States’s claim of title to the Project properties. Given that the governmental actors doing the communications were “[s]ubordinate officers of the United States,” such congressional authorization would have been an essential requirement for them to effectuate an abandonment. *Royal Indem. Co.*, 313 U.S. at 294. Similarly absent from the record is a

formal agency ruling or adjudication stating that the United States abandoned its claim.

A significant number of the communications that MRGCD relies upon are internal governmental communications. They include most notably the 1999 letter opinion of Solicitor Leshy, upon which MRGCD places great weight. *See* Apl't. Opening Br. at 65–66 (“The clearest argument against . . . MRGCD’s obligation to have been ‘reasonably aware’ the [BOR] claimed fee simple title, was made by Solicitor Leshy himself.”). However, “intra-office memoranda,” and similar intra-governmental communications “do not bind the government,” such that they can effect an abandonment of property and stop the QTA’s limitations clock. *Spirit Lake Tribe*, 262 F.3d at 742; *see Kingman Reef Atoll Invs.*, 541 F.3d at 1201; *cf. Aulston v. United States*, 915 F.2d 584, 595 n.16 (10th Cir. 1990) (observing that “[t]he rationale for disregarding internal memoranda in determining agency positions for purposes of deference” is centered in part on the fact that the views expressed in such memoranda have not “long been a matter of public record and discussion” (internal quotation marks omitted)). “[W]here the United States’s claim of interest in property stems from formal actions of the legislative or executive branch, [as here,] a person could not reasonably conclude that informal remarks of agency personnel or internal agency memoranda could eliminate the cloud upon the property’s title.” *Kingman Reef Atoll Invs.*, 541 F.3d at 1200; *see Sprit Lake Tribe*, 262 F.3d at 741–42 (noting that “informal agency pronouncements,” like opinion letters, do not have the force of law and that “intra-office memoranda do not bind the government”). Accordingly, MRGCD’s reliance on the statements of federal governmental officials to

support its abandonment claim is misplaced.

Furthermore, by its plain terms, the 1951 Contract conditions the United States's release of its interests in the Project properties "on consent of Congress." Aplt. App. at 1667. The record establishes that MRGCD's Board was well aware of this condition; indeed, it was incorporated into the contract instead of MRGCD's suggested language, which would have allowed the properties to revert back to MRGCD merely based upon MRGCD's payment of its loan to the government. *See supra* note 1. Given this explicit contractual condition, "whatever the intent or opinions of individual government officials," *Knapp*, 636 F.2d at 283 n.2, it would not have been reasonable under the circumstances here for MRGCD to believe based upon informal communications of individual governmental officials that the United States had relinquished its claim of title to the Project properties, such that the limitations clock would cease to run.

Lastly, even if the federal officials identified by MRGCD were authorized to abandon the United States's claim of title to the Project properties, and their communications were of sufficient formality to have that effect, MRGCD could not establish that any of the communications—viewed individually or in the aggregate—clearly and unequivocally abandoned the properties. The most that the record would ever support is the contention that the United States's actions and communications expressed mixed messages concerning the nature of the title interest that it claimed in the Project properties. Indeed, MRGCD tacitly concedes as much by arguing that there were "fifty years of *contradicting claims* by the United States and . . . MRGCD as to [fee-

simple] title” to the Project properties. Aplt. Opening Br. at 65 (emphasis added). Given their conflicting nature, such governmental communications hardly could qualify as a clear and unequivocal statement of abandonment by the United States of its claim of title to the Project properties. *See Kingman Reef Atoll Invs.*, 541 F.3d at 1201 (“[T]here is no evidence in the record that an appropriate government official clearly and unequivocally abandoned the United States’s interest in Kingman Reef. The district court found that [the plaintiff] presented evidence only of confusion and mistake on the part of some government employees, as to whether the United States ultimately possessed an ownership interest in Kingman Reef, and this conclusion is not clearly erroneous.” (citation and internal quotation marks omitted)).

Furthermore, contrary to MRGCD’s argument, the effect of any such conflicting communications would not have been to create the basis for MRGCD to delay acting in asserting its claim of title. As the federal appellees have suggested, our precedent does not allow plaintiffs to wait until the adverse claims of title asserted by them and the United States crystallize into well-defined and open disagreements before commencing a quiet-title action. *See Rosette, Inc.*, 141 F.3d at 1398 (“The Quiet Title Act is clear that a claim accrues when the plaintiff knew or should have known of the United States’ interest. Rosette knew of the United States’ interest in 1978, and it does not dispute this. The fact that it decided not to contest that interest until a disagreement arose cannot defeat the workings of the statute of limitations.”). Indeed, the effect of the conflicting communications in this case should have been to make it even more imperative for

MRGCD to file a lawsuit to quiet title. That is because the communications would have had the effect of “compound[ing] a pre-existing cloud on title” created by the 1951 Contract and 1953 Grant of Easement. *Spirit Lake Tribe*, 262 F.3d at 744 (“[T]he QTA limitations period begins to accrue when a plaintiff has reason to know of a cloud on his title. The inescapable corollary to this principle is that the QTA limitations period does not stop when government action simply compounds a pre-existing cloud on title.” (citation omitted)). In sum, MRGCD’s lines of argument in support of its second challenge are without merit and that challenge fails.

In sum, we conclude that the district court did not clearly err in finding that MRGCD knew as far back as the early 1950s that the United States asserted a substantial and adverse claim of title to the Project properties. We conclude that the district court’s consequent conclusion that MRGCD’s 2002 quiet-title action is time-barred by the QTA’s twelve-year statute of limitations is well founded.

E. Vacatur

Because timely filing of a quiet-title suit against the United States is jurisdictional, “the district court lacked subject matter jurisdiction and properly dismissed the action.” *Vincent Murphy Chevrolet Co.*, 766 F.2d at 452. Nonetheless, the district court here also dismissed the case on judicial estoppel grounds and granted judgment to the federal appellees on the merits. Thus, simply affirming the district court’s dismissal for lack of subject-matter jurisdiction is an inadequate resolution. Because the district court could not entertain the quiet-title action, we also must conclude that the district court was

without jurisdiction to address the merits, as well as the defense of judicial estoppel.⁷ *See Spirit Lake Tribe*, 262 F.3d at 745. Whether the case is resolved by a jurisdictional dismissal or a judgment on the merits is a matter with important implications:

A dismissal pursuant to § 2409a[(g)] does not quiet title to the property in the United States. The title dispute remains unresolved. Nothing prevents the claimant from continuing to assert his title, in hope of inducing the United States to file its own quiet title suit, in which the matter would finally be put to rest on the merits.

Block, 461 U.S. at 291–92 (internal footnotes omitted); *see Knapp*, 636 F.2d at 283 (“Our holding today does not settle plaintiffs’ title dispute with the Government. We hold only that under the time-bar of 28 U.S.C. § 2409a[(g)], the trial court should have dismissed this quiet title action for lack of subject matter jurisdiction.”); *see also Spirit Lake Tribe*, 262 F.3d at 745 (noting that “[t]here is no small difference between a [jurisdictional] dismissal and summary judgment in this [QTA] context.”). Accordingly, the status of the title to the Project properties must await possible future judicial resolution. And the district court thus erred by entering judgment on the merits in favor of the United States. That merits portion of its judgment must be vacated.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court’s dismissal of Middle Rio Grande Conservancy District’s quiet-title action as time-barred by 28 U.S.C. §2409a(g). We remand to the district court with instructions to **VACATE** that portion of

⁷ Because we find the limitations issue dispositive, we need not address the correctness of the district court’s rulings on the remaining grounds.

its judgment quieting title in the United States.⁸

⁸ Our clerk's office provisionally denied as inconsistent with our court's panel-assignment practices federal appellees' motion to reassign this appeal to a prior merits panel involved in an earlier phase of the parties' litigation relating to the Project. We decline to reconsider that decision and, in any event, would deny the motion as moot.



RIO GRANDE SILVERY MINNOW — FIVE YEAR REVIEW —





What is a Five Year Review

- ◉ A periodic analysis of a species' status
- ◉ Considers the best available scientific and commercial data
- ◉ Non-regulatory
- ◉ Results only in a recommendation
- ◉ Any subsequent change in status must undergo a full rulemaking process

Why Service Conducts Reviews

- to ensure that the classification of each listed species is accurate



What Information

- Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;
- Habitat conditions, including but not limited to amount, distribution, and suitability;
- Conservation measures that have been implemented to benefit the species and their effectiveness;
- Threat status and trends; and
- Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Also More Specifically

- Have recovery criteria been met?
- Are recovery criteria up-to-date?
- Do recovery criteria adequately address control of threats/the listing factors?
-

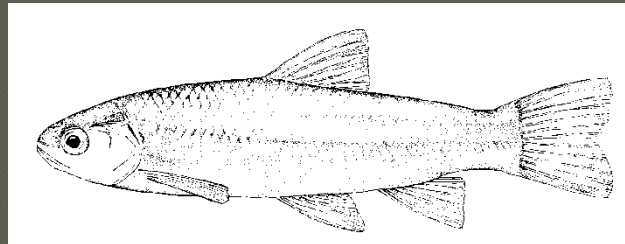
Other New Information or Analyses



- Climate change influence on existing or new threats
- PVAs when available

Schedule

- Send written information by June 28
- Service will continue to accept new information about any listed species at any time
- Service may complete the review by September 2011



Charter for Species Water Management of the Middle Rio Grande Endangered Species Collaborative Program

Overview

The Middle Rio Grande Endangered Species Act Collaborative Program (Program) By-Laws, adopted by the Executive Committee (EC) on October 2, 2006, define the Program's organizational structure and discuss the various organizational units including the EC, Coordination Committee (CC), Program Manager (PM), Program Management Team (PMT), and work groups. The EC may establish work groups and designate members of work groups on its own initiative or on the recommendation of the CC when additional assistance or expertise is needed to accomplish the goals of the Program. Upon approval of this charter, the Species Water Management work group (SWM) is established by the EC, and will serve at the pleasure of the governing body.

SWM will operate with specific schedules, objectives, and scopes of work established by the EC. Methods for accomplishing the established activities will be identified by SWM. The PM will assign a PMT liaison to support SWM and ensure that objectives and work products are clearly identified, assigned work group tasks are completed, and schedules are met.

The Program seeks to develop and implement creative water use and development alternatives that will satisfy water needs for threatened and endangered species while protecting existing uses. Program authorizing language (Included in 2009 Omnibus Appropriations Act signed into law March 11, 2009 as Public Law 111-8.) assigns responsibility for water acquisition, administration, and management to the U.S. Bureau of Reclamation (Reclamation), to be conducted at full federal expense.

SWM Objectives

The purpose of SWM is to provide assistance and expertise to address specific Program tasks, primarily implementation of the Long Term Plan, that are needed to accomplish the goals of the Program. The Program and SWM will work together with Reclamation to secure potential supplies of water and storage space and implement management strategies to meet Program goals. SWM will seek to identify and analyze the relative merits of potential water management alternatives to meet water supply and acquisition goals and assist with implementation of selected alternatives, including facilitating stakeholder interaction and supporting regulatory compliance activities.

SWM Membership

Each EC member may appoint one voting member to SWM. Each EC member may also appoint one or more alternate SWM members. As in the EC and the CC, the total membership of SWM shall not exceed twenty (20).

Additional SWM Participants

Participation in SWM may vary depending on the subject matter and may include:

1. Additional personnel from agencies/entities that are signatories to the Program;
2. Professionals with expertise in the subject matter who do not represent Program signatories;
3. Contractors or other parties, including members of the public, with experience in the subject matter addressed by SWM.

Ad Hoc Work Groups

If necessary to implement tasks in the long-term plan, and after providing notice to the EC, SWM may form and disband temporary ad-hoc groups of individuals with expertise and/or interest in the specialized subject. SWM will oversee ad-hoc work groups and be responsible for ensuring ad hoc work groups meet objectives and schedules, and will disband the work groups upon completion of the pre-determined objectives. The EC may appoint additional members to the ad-hoc work groups, including:

1. Professionals with expertise in the subject matter who may or may not be involved in the Program, and
2. Contractors or other parties, including members of the public, with experience in the subject matter addressed by SWM.

SWM Co-chairs

SWM will elect two work group co-chairs, each serving for a term of one year with no more than two consecutive one-year terms. Any appointed member of SWM may serve as a work group co-chairs. To the extent practical, one co-chair should represent a federal agency and one co-chair a non-federal agency to ensure broadest representation. At least one SWM co-chair will participate at CC and EC meetings upon request.

SWM Meetings

SWM will meet monthly at a regularly scheduled time and place, as determined by the co-chairs in consultation with the members. SWM may meet more or less frequently if determined appropriate by the SWM co-chairs, according to work assignments. The co-chairs may call additional special meetings if needed to accomplish specific tasks. The PMT will post SWM meeting schedules, locations, and agendas on the Program website at least one week in advance of the meeting date. All meetings will be open to the public. The work group co-chairs will ensure meeting summaries are kept which accurately reflect actions of SWM. The PMT will ensure that meeting summaries are posted on the website within one week after they are final.

If a member cannot attend a meeting, the alternate should attend, or the member may send a written request or statement regarding agenda items of interest.

SWM Responsibilities and Scope of Work

SWM is responsible for carrying out specific scopes of work established by the EC. The PMT liaison will assist the co-chairs to develop an Annual Work Plan for submittal to, and approval by, the EC each year. The SWM Annual Work Plan will contain objectives, tasks, schedules, and deliverables to be completed for that year. To the extent possible, the Annual Work Plan will also identify ad hoc group(s), if any, and ad hoc group members. SWM will follow Process for Work Groups that contains tasks, deliverable, due date and lead. Any additional activities that may arise during the course of the year will be submitted to the EC. The continuing responsibilities and scope of work of SWM are as follows:

Implementation of Long Term Plan (LTP) Activities via the Request For Proposal (RFP) Process:

- Review Long Term Plan budget estimates and activities and recommend changes if needed.
- Recommend priorities for research and monitoring activities
- Coordinate with other workgroups and PMT to develop scopes of work (SOWs) that effectively integrate objectives
- Participate in evaluating proposals (Technical Proposal Evaluation Committee [TPEC] process) and recommend TPEC membership (i.e. outside experts)

- Provide prior year project updates to PMT (i.e. assist with Annual Report)
- Provide annual report of accomplishments and progressions

Technical Review and Coordination:

- Provide technical input and assistance for other work groups, projects, and Program assessment process
- Review contract and SWM deliverables and provide feedback
- Participate in joint meetings with other work groups
- Oversee ad-hoc SWM workgroups
- Conduct site visits
- Review and update documents
- Coordinate with other efforts (Program and non-Program) in the Middle Rio Grande

Monitoring and Assessment:

- Provide technical input and assistance in implementing/updating the Program Monitoring Plan
- Develop and assist in implementing the Adaptive Management Plan
- Provide prior year project updates to PMT (i.e. assist with Annual Report)
- Participate in and recommend topics for annual forums
- Review Long Term Plan budget estimates and activities and recommend changes if needed
- Recommend experts to obtain input on technical issues
- Recommend research and monitoring needs

Water Storage and Management

- Work towards achieving water supplies, storage and management necessary to support the needs of the Program
- Evaluate the relative merits of water supply, storage, and management alternatives
- Assist Program in evaluating methods and tools to understand depletions
- Coordinate and assist with technical studies to support Reclamation's supplemental water program

Other Technical Contributions:

- Carry out other work established or approved by the Executive Committee

Relationship of SWM to Other Organizational Units of the Collaborative Program

The EC makes Program decisions. The EC establishes work groups. SWM products and recommendations are provided to the EC through the PMT, after discussion and review by the CC and the PMT. The CC will discuss all work products with their respective EC member.

The PM is the leader of the PMT. The PMT will provide a liaison to support SWM and to ensure that assigned work group tasks are completed. The PMT reports to the EC. The EC may delegate certain decisions to the PMT, CC or work groups.

Coordination between work groups occurs through the PMT and at joint work group meetings and at

the CC. Joint work group meetings will be held when needed, such as when preparing for fiscal year activities and working collaboratively on specific projects.

Support to SWM

The PM will assign Program staff to support SWM so that the objectives and work products are clearly identified, assigned tasks are completed, schedules are met, and necessary support is provided as further identified in the PMT Charter. SWM co-chairs(s) will be designated to work with the assigned staff to establish the Annual Scope of Work and Schedule.

The PMT will provide support for meetings of SWM, including distribution of agendas and meeting materials, and distribution of meeting summaries. Final meeting summaries will be made available to the public via an established Program distribution network. The PM will provide SWM products subject to EC approval to the CC for review and discussion, and will assist the CC in developing recommendations to the EC.

SWM Recommendations

SWM will make technically sound recommendations based on the professional judgment of the members and best available science. If a consensus recommendation is not reached, the voting procedure described below may be used.

SWM Voting Procedures and Minority Reporting

When voting is required to provide recommendations, each voting member (member appointed by an EC member) is allowed one vote. Participants that are not voting members do not have a vote. Recommendations will be of the simple majority present. The minority, if they choose, may submit a minority report with the majority recommendation to the PM and the EC. The majority recommendation will note that a minority report has been filed.

Reporting Results and Communicating Recommendations

SWM co-chairs will provide work products and recommendations to the EC through the PMT, after discussion and review by the CC. SWM co-chairs will report on SWM activities at CC and EC meetings upon request.

SWM Work Products

All final SWM products are subject to approval by the EC and, upon approval, the PMT will make them available to the public.

Annual Review of SWM

The PM, with input from the PMT, will review the accomplishments of SWM annually with respect to its objectives, schedule, and participation by members, and make recommendations to the EC regarding continuation or termination of SWM, changes in objectives, schedule, or membership.

Amendment of SWM Charter

This charter may be amended as deemed appropriate within the bounds of the By-Laws, with input from SWM, and approval by the EC. At a minimum, the charter will be reviewed annually.

EC approved the foregoing Amended Species Water Management Work Group Charter on April 15, 2010.



ANNUAL WORK PLAN

NOV 2009 thru DEC 2010

Habitat Restoration Workgroup

Date: 2 Feb 2010

Work Group Members (*primary (P) or alternate (A)*):

Monika Mann (PMT Liaison, USACE), Rick Billings (Co-Chair, ABCWUA, P), Peter Wilkinson (NMISC, P), Ondrea Hummel (USACE, P), Sarah Beck (USACE, A), Gina Dello Russo (FWS, P), Brian Wimberly (Pueblo of Santa Ana, P), Ann Watson (Pueblo of Santo Domingo, P), Brooke Wyman (MRGCD, P), Yasmeen Najmi (MRGCD, A), Cody Walker (Pueblo of Isleta, P), Deb Goss (Pueblo of Santa Ana, A), Anders Lundahl (NMISC, A), Martin Martinez (CABQ, P); Matt Schmader (CABQ, A), Nancy Baczek (FWS, A), Shannon Mann (Pueblo of Sandia, P)

TASK	DELIVERABLE	DUE DATE	LEAD
Review Deliverables	Comments to COTR	30 days after receipt	HR Work group
Review Charter	Updated Charter	January 2010	Workgroup
Finalize Matrix of Potential Construction Projects	Excel Spreadsheet (living document to be updated as needed)	February 2010	Peter Wilkinson
Monitoring Plan	2 Year Monitoring Plan, SOW	SOW due 12/15/09 Complete	Ondrea Hummel/Anders Lundahl (Co-chairs)
Discuss Future Activities that will help the Program meet RGSM and/or SWFL Recovery Plan (RP) goals, especially to meet RP objectives that we don't currently have activities for. Agree on which current WG activities should continue in the future to meet RP objectives.	1. A list of current WG-sponsored activities that help meet RP objectives and that should continue into the future. 2. A list of future Program activities that could help meet RP objectives.	Will be needed for working CC/WG/PMT meetings on February 17 and March 4 and others as needed	Rick Billings
Attend joint CC/WG meetings to develop future activities for the Program's Long Term Plan (LTP)	Present description of WG-proposed future activities and share list of current activities that should continue.	10:00 a.m. to 4:00 p.m. February 17, March 4, April 7 and April 14, and others as needed	Work Group co-chairs

TASK	DELIVERABLE	DUE DATE	LEAD
Review and comment on draft 1-page descriptions of proposed future activities	Marked-up versions of draft 1-page future activity descriptions	February 18 through April 30	Work Group
FY 10 Budget Activity Sheets		Complete	Charles Fischer
FY 10 SOW's for RFP's		12/15/09 Complete	Work Group co-chairs & PMT Liaison
Develop 2011 Work Plan	2011 Work Plan	December 4, 2010	HR Work Group
FY 11 HR SOW's		August 2010	Work Group co-chairs & PMT Liaison
Field Trip to Sandia Pueblo HR sites		1/19/2010	PMT Liaison/ Sandia Pueblo
River Maintenance Workshop		September 21, 2010	Work Group

Draft Scientific Code of Conduct for the Middle Rio Grande Endangered Species Collaborative Program*

Purpose

To establish a standard code of professional conduct among the Middle Rio Grande Endangered Species Collaborative Program (Program) signatories and participants with respect to all scientific activities.

Scope

- The professional conduct and management of scientific activities by and on behalf of the Program signatories and
- All Program participants including, but not limited to: committee members, work group members, ad hoc work group members and contractors and their representatives, when they conduct Program-related studies, review reports, engage in discussions, and present, manage or apply information resulting from scientific activities.

Objectives

- To ensure that the information generated through scientific activities is as reliable, objective, repeatable, and as available to Program participants and the public as possible.
- To convey the importance of scientific information
 - by recognizing the importance of science in furtherance of accomplishing Program goals.
 - by using scientific information in establishing credibility and value of the Program with the public.
- To assist Program participants in performing their duties with the utmost professionalism and quality.

Code of Conduct

To the best of their ability, all Program participants performing or managing scientific activities, or applying resulting information, shall:

- Be guided by the scientific method.
- Strive to advance science and produce scientific information that is of the highest quality and most reliable.

- Understand and adhere to the standards of reporting the results of scientific activities (e.g., employment of the scientific method), distinguishing when conclusions are based on documented, reproducible analysis of data.
- Be accountable for the quality of any data collected, the interpretations of that data, the integrity of conclusions drawn from scientific activities and provide access to data (and metadata) where appropriate, including documentation of analyses based on those data.
- Be conscientious in the collection, use, documentation and maintenance of data.
- Review, report and apply the results of scientific activities with honesty, thoroughness, objectivity and without conflict of interest.
- Communicate information to the scientific community and the public in order to promote understanding of the work of the Program, including activities related to water management, water use, fish and wildlife, and their habitat needs.
- Acknowledge that uncertainty is inherent in science and in using scientific information to manage listed species, their habitats and water use in the Program area.
- Recognize that decision making will need to be accomplished despite this uncertainty, but that decision making will be performed using the best available scientific information at the time and adapted as better information is made available.
- Place reliability and objectivity of scientific activities and results ahead of personal gain and/or allegiance to individuals and organizations.
- Be respectful in the treatment of colleagues, other scientists, professional contacts and the public.
- Recognize the ideas and work of others and be mindful in acknowledging those contributions.
- Avoid hindering the scientific activities of others and engaging in dishonesty, fraud, deceit, misrepresentation, coercive manipulation or other misconduct.
- Present professional opinions and advice only in Program areas for which you are qualified (professional education, training or experience) and for which you are informed.
- Accept constructive criticism of scientific activities and critique others' work in a respectful and objective manner.

*Adapted from the U.S. Fish & Wildlife Service's "Scientific Code of Professional Conduct for the Service" (212 FW 7)

RECLAMATION

Managing Water in the West

Adaptive Management 101

EC Presentation

Albuquerque Area Office

Jeanne Dye

April 15, 2010



U.S. Department of the Interior
Bureau of Reclamation

Four Key Questions

- What Is Adaptive Management?
- When Should It Be Used?
- How Is It Implemented?
- How Can Success Be Measured?

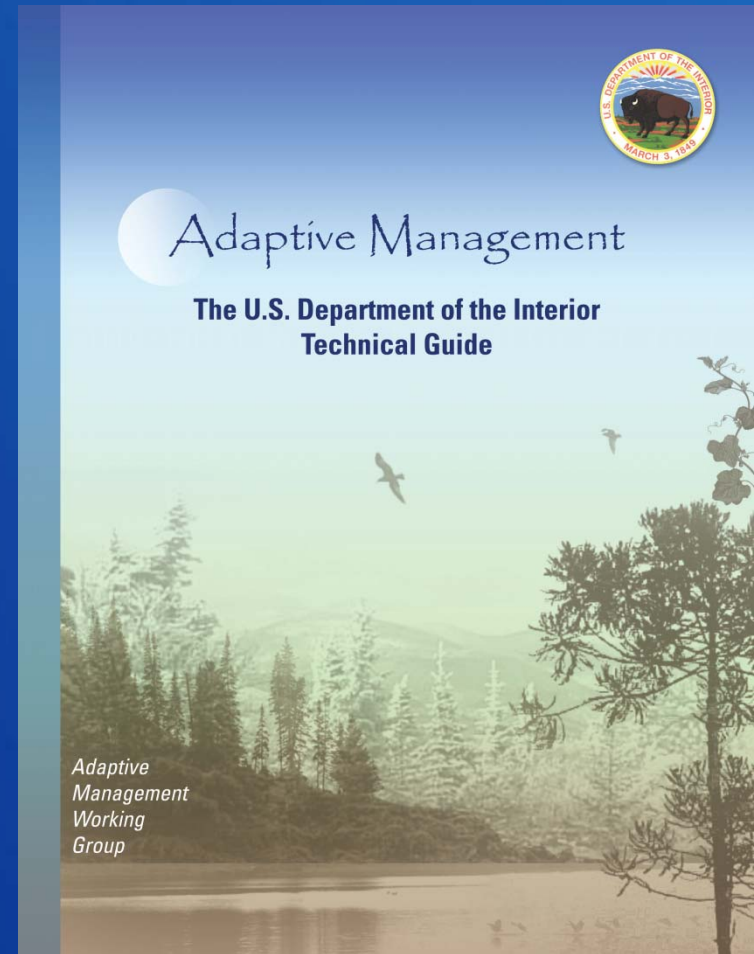
RECLAMATION

Adaptive Management Is Not:

- Managing by trial and error
- Conflict resolution—focusing on negotiating tradeoffs among competing interests
- Management approaches that rely upon expert opinion and advice for decision making
- Simply monitoring activities and occasionally changing management direction or activities in the face of failed policies

What Is Adaptive Management?

- Has been used in resource management in some form since at least the 1950s
- Given formal definition by Hollings (1978) Walters (1986), and Lee (1993)
- Is described in detail in the DOI Adaptive Management Technical Guide (2007)



RECLAMATION

Definition

“Adaptive management [is a decision process that] promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a ‘trial and error’ process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders.”

RECLAMATION

Resource Management

- Resource management usually requires decision making in a complex environment, with:
 - multiple management objectives,
 - specific management authority, capabilities and constraints,
 - dynamic systems, and
 - uncertain responses to management actions.

Adaptive Management

- Provides a systematic, structured approach to decision-making for improving resource management by requiring:
 - clearly articulated objectives and management options and using analytical techniques to identify optimal management strategies;
 - confronting unresolved uncertainties and providing a formal process for reducing those uncertainties;
 - learning from management outcomes, with an emphasis on accountability and explicitness

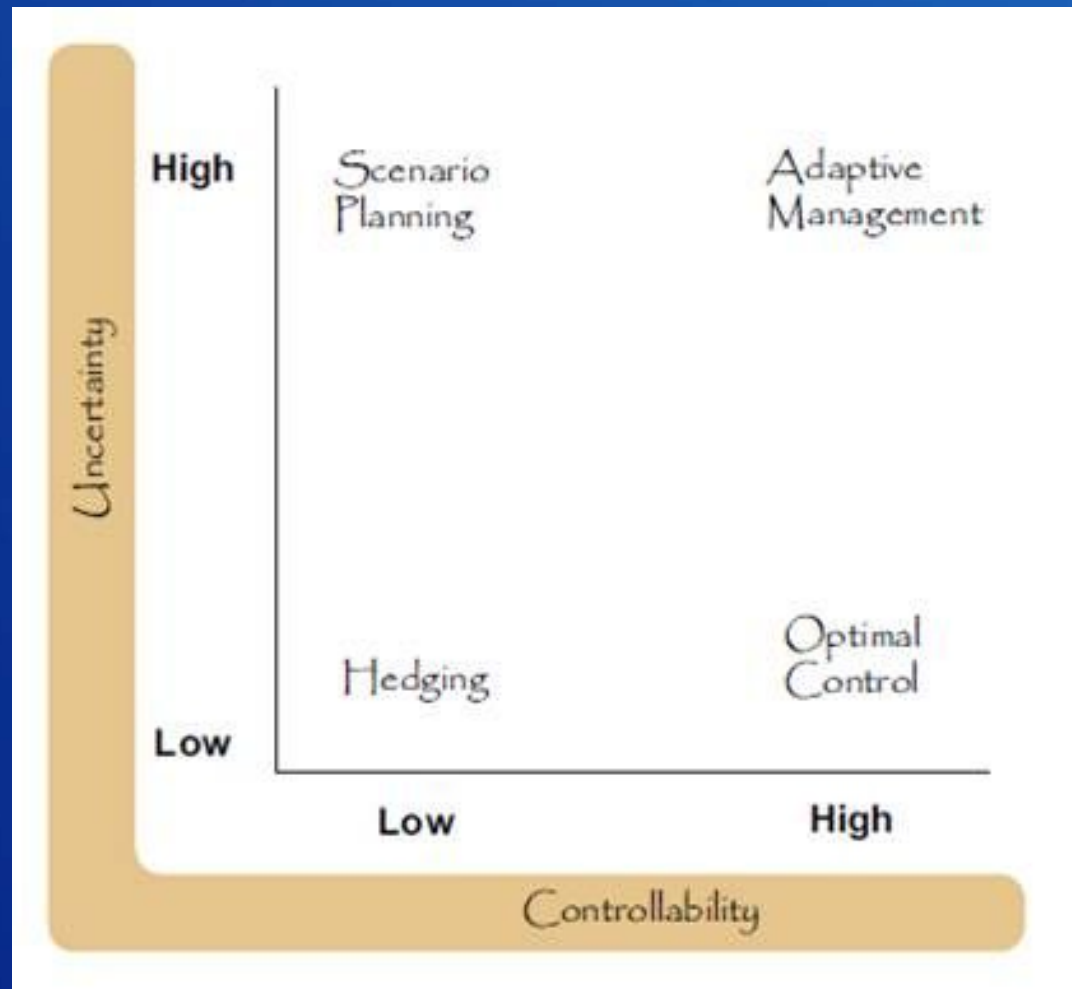
When Should Adaptive Management Be Used?

- Two Key Conditions:
 - There must be decision(s) to be made in the face of uncertainty
 - There must be the institutional capacity and commitment to undertake and sustain an adaptive program

When Should Adaptive Management Be Used?

- Six Additional Conditions:
 - A real management choice is to be made
 - There is an opportunity to apply learning
 - Clear and measurable management objectives can be identified
 - The value of information for decision making is high
 - Uncertainty can be expressed as a set of testable models
 - A monitoring system can be established to reduce uncertainty

When to Use Adaptive Management



RECLAMATION

Limitations

- Decision making occurs only once
- Monitoring cannot provide useful information for decision making
- There are unresolvable conflicts in defining explicit and measurable management objectives and/or alternatives
- Decisions that affect resource systems and outcomes cannot be made
- Risks associated with learning-based decision making are too high

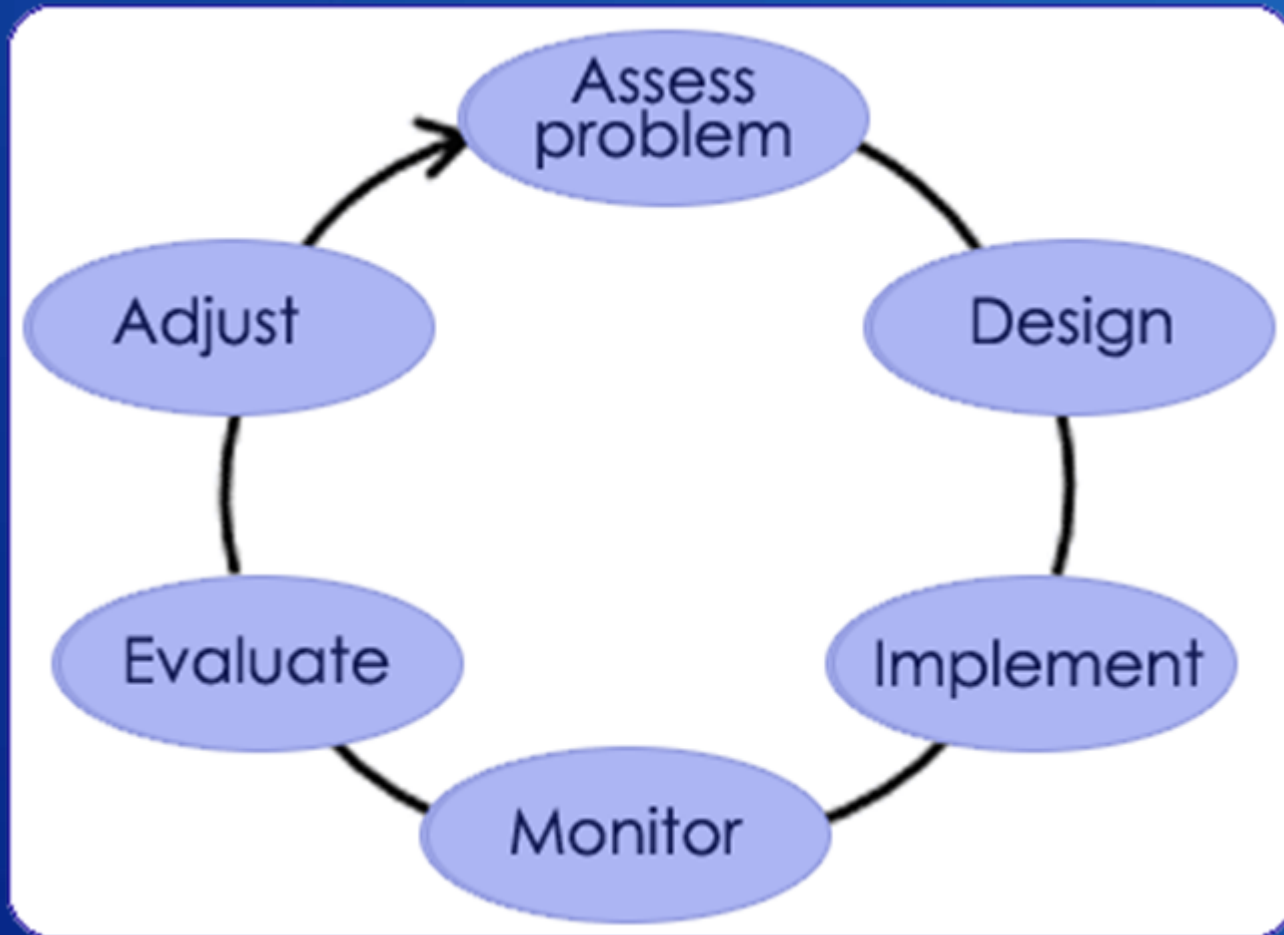
How Is Adaptive Management Implemented?

- Phase I – Set Up Phase
 - Step 1) Ensure Stakeholder Involvement
 - Step 2) Establish Objectives
 - Step 3) Identify Management Actions
 - Step 4) Model Expectations
 - Step 5) Design and Implement Monitoring Plans

How Is Adaptive Management Implemented?

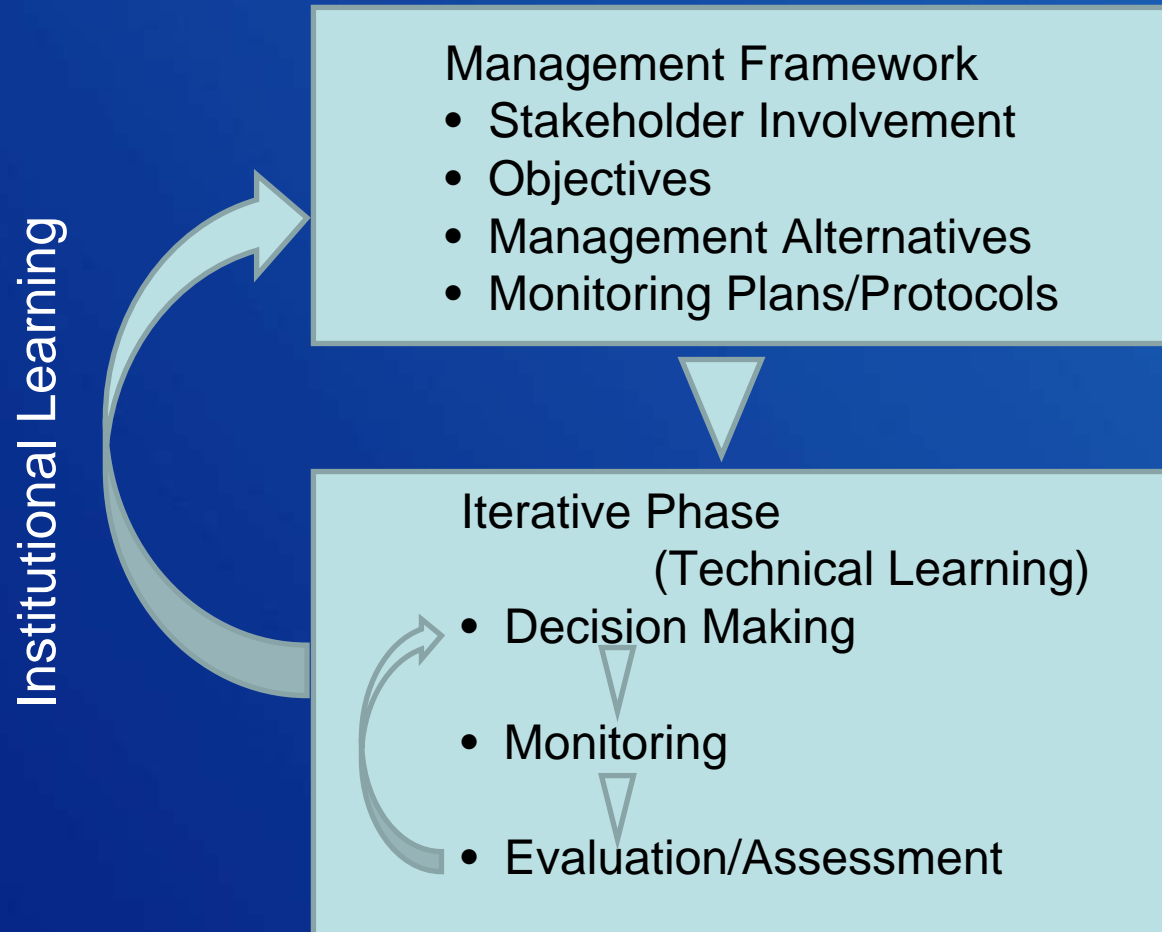
- Phase II – Iterative Phase
 - Step 6) Decision Making
 - Step 7) Follow-up Monitoring
 - Step 8) Assessment/Evaluation
 - Step 9) Iteration – Cycle back to Step 6, and occasionally as needed, back to Step 1

Adaptive Management Diagram



RECLAMATION

Another View of Adaptive Management



RECLAMATION

Requirements for Success

- Executive leadership must support changes to institutional culture and structures
- Stakeholders must work collaboratively to plan specific courses of action
- Stakeholders must support strategy goals and objectives

RECLAMATION

Using Adaptive Management Successfully

- Proposed actions and adaptive management must have an acceptable level of certainty
- Adaptive management needs a guarantee of implementation
- Adaptive management needs specific concrete parameters

How To Measure Success?

- Progress is made toward achieving management objectives
- Stakeholders are actively involved and committed to the process
- Results from monitoring and assessment are used to adjust and improve management decisions
- Implementation is consistent with applicable laws

Take Home

- It is important to note that Adaptive Management:
 - Will require refinement of operational models to:
 - Reflect system flexibility and sustainability
 - Explicitly account for uncertainty
 - Fully incorporate planning
 - Utilize decision-based monitoring
 - Evaluate responses

Take Home

- It is important to remember that Adaptive Management:
 - Is neither short-term nor inexpensive
 - Requires commitment to a considerable amount of up-front planning and resources (time and effort)
 - Can assist in reducing uncertainties that limit the effective management of natural resource systems

Habitat Restoration Work Group Accomplishments November 2008 through December 2009

Submitted to the Coordination Committee on: _____

Submitted to the Executive Committee on: _____

Task	Deliverable	Due Date	Lead	Status
Review Deliverables	Comments to COTR	30 days after receipt	HRW	Completed
Kick off meetings with FY08 funded projects	Presentations	December 2008-April 2009	Ondrea Hummel	Completed
Review Charter	Updated Charter	Jan-09	Workgroup	Completed
Finalize Matrix of Potential Construction Projects	Excel Spreadsheet (living document to be updated as needed)	Feb-09	Ondrea Hummel/Peter Wilkinson	Completed, reviewed Nov. 2009, ongoing work
Monitoring Plan and Workshop	2 Year Monitoring Plan	2009	Ondrea Hummel/Peter Wilkinson w/ScW	1. Workshop held Oct 2009 2. Monitoring Plan in progress, ongoing work
2009 Symposium: Participate in Planning Committee and Symposium	Tentative: Presentation for the EC and poster(s) for the public describing projects funded by the WG	Ongoing Date of symposium TBD	Susan Bittick	Completed
Review needs and recommended activities to be funded in 2010 with estimated costs included	Recommended activities and justification with estimated costs	19-Jun-09	Work group co-chairs & PMT Liaison	Completed
2010 SOW Development for EC approved activities	SOWs	30-Sep-09	Work group co-chairs & PMT Liaison	Completed
Develop 2010 Work Plan	2010 Work Plan	4-Dec-09	HRW	Completed

Workgroup Update Summary
Middle Rio Grande Endangered Species Collaborative Program
Executive Committee Meeting
April 15, 2010

Project Management Team

The PMT continues to meet weekly to follow up on action items from the Coordinating Committee (CC) and the Executive Committee (EC), and to discuss and implement improvements to the Program.

Revised LTP Development

In keeping with the revised Long Term Plan (LTP) schedule, the third working CC meeting to further the development of the LTP with a focus on future Program activities was held on April 14. A long list of future Program activities (Table 7.0) to meet recovery plan priorities, elements, and Biological Opinion (BiOp) requirements has been developed, reviewed, revised, and prioritized by the workgroups. Most of the workgroup priority 1 activities have been identified and assigned to workgroup members to prepare an activity summary. Examples of past and future activities summaries were presented at the working CC meeting. Participants assisted in identifying those activities that appeared redundant or could be combined and/or sequenced with another activity. The Program has contracted additional administrative and technical support through GenQuest and TetraTech. Jean Burt and Barbara Portzline, GenQuest, continue to work on past Program activities, Table 7.0, and the revised LTP text. The revised LTP development will be a priority for the CC, the PMT, the workgroups, Water Consult and GenQuest for the next few months.

Adaptive Management

The CC reviewed and commented on a draft statement of work (SOW) for Adaptive Management Plan Development to include scientific facilitation and technical writing, which was provided to the Reclamation Contracting Officer (CO) on April 8.

On March 31, the CC was provided with the Habitat Restoration (HR) workgroup's 2010 annual work plan and 2009 workgroup accomplishments, and a draft Scientific Code of Conduct. The CC also reviewed a revised charter for the Species Water Management (SWM) workgroup. Jericho Lewis has been coordinating contractual activities related to the Effectiveness Monitoring Plan, the Gear Evaluation Study, the Adaptive Management Plan, and the revised LTP development. Diana Herrera has provided an updated quarterly financial report for the quarter ending March 31, 2010. Monika Mann is assisting the HR workgroup with LTP future activities by assigning the development of priority 1 activity summaries to workgroup members, working closely with the co-chair, and continuously reviewing and updating LTP Table 7.0. Amy Louise has agreed to also serve as the PMT liaison to, and technical member of, the PHVA ad hoc workgroup, continues to work with the Species Water Management (SWM) workgroup and the San Acacia Reach (SAR) ad hoc workgroup, provides regular updates on snowpack measurements to the PMT, and helped prepare for the non-federal appropriations request trip to Washington, D.C.. Stacey Kopitsch serves as the PMT liaison for the Science, Population Viability Analysis (PVA) and Monitoring Plan Team (MPT) workgroups, and has provided much needed assistance to the ScW in the prioritization and development of future activities summaries, especially with respect to Southwestern willow flycatcher activities. Stacey has also been the lead in compiling CC and workgroup comments on the draft Scientific Code of Conduct. Susan Bittick has been leading the U.S. Army Corps of Engineers (USACE) efforts to: award Task

Order #2 for the Database Management System (DBMS); review the table of future Program activities for the revised LTP; and coordinate a LIDAR presentation for the CC. The Program continues to receive much needed contracted support for Program administration from Jenae Maestas, GenQuest, and Cassie Brown, Marta Wood and Rachelle Schluep, TetraTech. Marta had a baby boy named Matthew on April 2. Jenae has really stepped up to provide assistance on edits to Table 7.0 of the LTP. Reclamation will be advertising soon for a PMT replacement for Kathy Dickinson. Kathy is still involved in the reviews of the draft LTP and activities summaries.

Habitat Restoration Workgroup

The HRW met on March 16 to discuss several items including RM 83 report issues, the way forward, and changes in the schedule to meet report deadlines. Also discussed was HR's report deliverable process as well as status updates on the Los Lunas Fisheries Report. The workgroup continues to discuss and give input into the LTP Future Activities Table 7.0 including assigning activity priorities and developing summaries.

The River Maintenance Workshop has been scheduled for September 21, replacing the regular HR monthly meeting. The next meeting is April 20 from 12:00-3:00 pm, at USACE. Potential discussion items include RM83 workshop costs and peer review scope of work, the Environmental flow (E flow) workshop report, and volunteers for co-chair.

Monitoring Plan Team ad hoc Workgroup

Proposals for the effectiveness monitoring plan (EMP) Indefinite Delivery Indefinite Quantity (IDIQ) contract were received on March 22 and a Technical Proposal Evaluation Committee (TPEC) review followed on March 24 and 25. Additional information has been requested from the proposers, thus no contract award has been made yet. The MPT is therefore working on a "Plan B" in order to accomplish the low intensity monitoring for this spring. This will consist of a collaboration of efforts from several sources, including Reclamation, USACE and the U.S. Fish & Wildlife Service (USFWS). On April 5, reconnaissance visits were made to various habitat restoration sites along the Albuquerque Reach in support of this plan. A follow-up meeting was held on April 7 to further discuss scheduling of the low intensity monitoring.

Science Workgroup

The ScW held a regular meeting on March 16. The focus of the meeting was to assign priorities to the LTP future activities table. The workgroup is currently tasked with writing activity summaries for roughly 50 high priority projects. A special ScW meeting was held on April 6, where the contractor, SWCA, presented a Fish Community Monitoring and Fish Sampling Methodology (Gear) Evaluation presentation. A preliminary study design for field sampling was also presented, and input from the workgroup is requested to be incorporated into the design. The next regularly scheduled Science meeting is April 20.

Species Water Management Workgroup

The SWM workgroup met on April 7 to discuss the LTP. SWM continues to provide information for the LTP future activities and is currently producing future activity summaries. The next meeting is scheduled for May 5 at BIA from 10:00 am – 12:00 pm.

San Acacia Reach ad hoc Workgroup

The SAR workgroup will meet on April 22 to review and clarify “Agency Response to Themes” in Socorro. SAR completed the LTP future activities consisting of:

- Develop White Papers on each agency’s/entity’s current authorizations and strategies to address resource management issues in the SAR;
- Analysis of floodplain encroachment problem areas in the SAR;
- Implement required studies/analyses of proposed improved strategies in the SAR; and
- Develop and perform external peer reviews on Recommendation Reports for new and/or improved strategies to address resource management issues in the SAR of the Rio Grande.

Population Viability Analysis (PVA)/Biology Workgroup

The PVA workgroup is continuing development of the PVA models. The workgroup is due to meet again for a full day May 4 and half a day on May 5. The assignment of a new co-chair is still pending, with volunteers and suggestions to take place via email. The draft PVA annual work plan and charter are also being reviewed by the workgroup via email and will be submitted for approval following the assignment of a new co-chair.

PHVA/Hydrology ad hoc Workgroup

Amy Louise is the new PMT liaison for this workgroup and will be present at the next meeting on May 18. Members are drafting SOWs for the FY10 funding allocated to PHVA modeling. Future activity summaries for 3 PHVA activities are being reviewed by the workgroup. The PHVA Decision Log has been updated and is ready for review by the PHVA workgroup members.

Public Information and Outreach Workgroup

The PIO met on April 8 and discussed the LTP future activities, changes to the PIO charter, the Program video link for the website and distribution. The PIO is drafting a press release, compiling the distribution list, and planning visits to show the video to workgroups and other groups. Members are also developing a Program “business card” and compiling significant documents related to each Program signatory. PIO may assist in the Route 66 ribbon cutting and will share the packets used for the Congressional visits with the group. The next meeting is May 12 from 10:30 am to 12:30 pm at Reclamation.

Database Management System ad hoc Workgroup

Task Order 2 has been awarded. The SOW includes hardware, software and backup; and development of the database as described in the Business Analysis and Needs Assessment Report. The workgroup will meet the week of April 26 to kickoff Task Order 2 and elect a chair and co-chair. The charter and work plan will be submitted to the CC subsequent to this meeting.

MRG ESA Collaborative Program						4/6/2010
Unexpended Funds by Organization as of 3/31/11 ¹						
Agency/Pueblo/ Organization	Contractual Nos.	Project Titles	Agreement/ Contract Amount	Total Expended to Date	Total Unexpended	COTR
Fish & Wildlife Service						
FY 2007	06-AA-40-2548	RGSM Health Assessment	339,224	290,690	48,534	G. Dean
FY 2008	08-AA-40-2737	Program Management and Support	328,303	298,011	30,292	D. Herrera
	08-AA-40-2770	Experimental Augmentation and Monitoring	133,090	63,182	69,908	J. Dye
	07-AA-40-2673	Additional PVA Modeling	93,940	91,195	2,745	J. Dye
	08-AA-40-2777	Reintro. of Experimental RGSM Pops (Big Bend)	133,285	91,546	41,739	J. Dye
	08-AA-40-2812	Minnow Sanctuary O&M	252,747	174,520	78,227	Y. Paroz
	07-AA-40-2711	Longitudinal Movement Study	71,978	62,852	9,126	J. Dye
FY 2009	07-AA-40-2634	Rearing/Breeding O&M Dexter	300,000	168,222	131,778	Y. Paroz
	08-AA-40-2770	Experimental Augmentation and Monitoring	84,208	0	84,208	J. Dye
	08-AA-40-2737	ESA Compliance FY 2010 & 2011	370,000	0	370,000	D. Herrera
	08-AA-40-2777	Reintro. of Experimental RGSM Pops (Big Bend)	139,690	17,691	121,999	J. Dye
	06-AA-40-2556	RGSM Egg Monitoring in Canals	20,345	137	20,208	G. Dean
	07-AA-40-2711	Longitudinal Movement Study	64,032	0	64,032	J. Dye
	08-AA-40-2812	Minnow Sanctuary O&M	189,928	0	189,928	Y. Paroz
	07-AA-40-2634	Rearing/Breeding O&M Dexter - FY 2010	300,000	30,560	269,440	Y. Paroz
	R09-PG-40-006	Reintroduction Biologist	370,000	0	370,000	D. Herrera
	05-AA-40-2382	Fish Passage at San Acacia	5,444	3,412	2,032	K. Dickinson
Total FWS			3,196,214	1,292,018	1,904,196	
Corps of Engineers						
FY 2007	07-AA-40-2691	GIS Database Development	856,680	491,367	365,313	K. Dickinson
FY 2008	04-AA-40-2251	RGSM Post Construction Monitoring	51,128	46,946	4,182	K. Dickinson
	07-AA-40-2691	GIS Database Development	376,800	0	376,800	K. Dickinson
	06-AA-40-2545	Additional Hydro Modeling	100,000	537	99,463	V. Terauds
	07-AA-40-2672	Program Coordination and Management	197,993	126,047	71,946	D. Herrera
	06-AA-40-2553	Alleviating RGSM Entrapment	61,320	29,572	31,748	J. Aubuchon
	07-AA-40-2703	Complete Albuquerque Reach HR Analysis	145,073	131,007	14,066	K. Dickinson
FY 2009	07-AA-40-2691	GIS Database Development - Task Order 2	232,019	0	232,019	K. Dickinson
	06-AA-40-2553	Alleviating RGSM Entrapment	173,824	0	173,824	J. Aubuchon
	07-AA-40-2672	Program Coordination and Management - FY 2010	200,000	0	200,000	D. Herrera
	R09-PG-40-011	Rio Grande Nature Center Monitoring	59,960	0	59,960	K. Dickinson
Total COE			2,454,797	825,476	1,629,321	
Interstate Stream Commission						
FY 2006	06-FG-40-2549	Albuquerque Reach	2,176,500	1,439,117	737,383	K. Dickinson
FY 2007	07-FG-40-2708	Isleta Reach Riverine HR Improvements	548,550	526,106	22,444	K. Dickinson
	07-FG-40-2704	Monitoring of Albuquerque Reach	171,288	163,918	7,370	K. Dickinson
	07-CS-40-8209	Groundwater Models (GS/SW Interaction)	339,529	312,475	27,054	V. Terauds
FY 2008	07-CS-40-8208	Decision Support System	159,639	79,083	80,556	E. Kandl
	08-FG-40-2832	Habitat Restoration	36,000	32,925	3,075	K. Dickinson
FY 2009	07-CS-40-8208	Decision Support System	166,963	0	166,963	E. Kandl
	08-FG-40-2803	ISC Naturalized Refugia O&M	261,170	0	261,170	Y. Paroz
	08-FG-40-2832	Isleta Ph 2 Habitat Restoration	125,000	75,000	50,000	K. Dickinson
	R09-PC-40-009	Test Hypotheses Re: RGSM Spawning	199,000	0	199,000	J. Dye
Total ISC			4,183,639	2,628,624	1,555,015	
Pueblo of Sandia						
FY 2002	02-FG-40-8480	Pueblo of Sandia Habitat Restoration	500,000	481,478	18,522	N. Holste
FY 2007	07-NA-40-2707	Sandia Pueblo HR Project - Construction	961,481	42,280	919,201	N. Holste
FY 2008	08-FG-40-2818	Habitat Restoration - Monitoring	615,965	3,341	612,624	S. Devergie
Total Pueblo of Sandia			2,077,446	527,099	1,550,347	
Bureau of Reclamation						
FY 2009	05-PE-81-1079	SWFL Surveys	245,965	227,571	18,394	H. Garcia
	Denver TSC	SWFL Surveys FY 2010	260,000	24,805	235,195	H. Garcia
	09AFUC-09-004	MRG River Restoration/Channel Maint. Workshop	34,908	0	34,908	R. Padilla
	09AFUC-09-010	Fish Passage at San Acacia	282,674	31,063	251,611	K. Dickinson
Total Reclamation			823,547	283,439	540,108	
US Geological Survey						
FY 2008	08-AA-40-2823	Eval. Estrogenic BioMarker/Water Toxicity	143,903	56,334	87,569	R. Maxwell
FY 2009	08-AA-40-2823	Eval. Estrogenic BioMarker/Water Toxicity	178,052	0	178,052	R. Maxwell
	R09-PG-40-005	USGS Groundwater/Surface Water Interaction	219,959	22,736	197,223	V. Terauds
Total USGS			541,914	79,070	462,844	
Ohkay Owingeh						
FY 2008	08-FG-40-2817	Habitat Restoration - SWFL Monitoring	141,618	72,400	69,218	M. Nemeth
	08-FG-40-2829	Habitat Restoration - Maintenance	159,641	82,075	77,566	M. Nemeth
	08-FG-40-2830	Habitat Restoration - Two Rivers Construction	253,395	168,400	84,995	M. Nemeth
	08-FG-40-2831	Habitat Restoration - Three Falls Construction	203,360	99,974	103,386	M. Nemeth
FY 2009	09-FG-40-2916	Two Rivers Flycatcher Habitat Expansion	79,496	0	79,496	M. Nemeth
	09-FG-40-2915	Three Falls Habitat Restoration	47,135	0	47,135	M. Nemeth
Total Ohkay Owingeh			884,645	422,849	461,796	

MRG ESA Collaborative Program							4/6/2010
Unexpended Funds by Organization as of 3/31/11 ¹							
Agency/Pueblo/ Organization	Contractual Nos.	Project Titles	Agreement/ Contract Amount	Total Expended to Date	Total Unexpended	COTR	
American Southwest Ichthyological Researchers							
FY 2008	05-CR-40-8119	RGSM Population Estimation	168,288	113,830	54,458	G. Dean	
	03-CR-40-8031	RGSM Reproductive Monitoring	153,144	151,234	1,910	G. Dean	
	03-CR-40-8029	Population Monitoring of RGSM	259,620	145,099	114,521	G. Dean	
FY 2009	09-PG-40-8295	Reproductive Monitoring of RGSM	92,160	90,210	1,950	J. Dye	
	R09-PC-40-005	RGSM Population Monitoring	228,210	76,185	152,025	J. Dye	
	R09-PC-40-006	RGSM Population Estimation	134,206	87,106	47,100	J. Dye	
	R09-PX-40-0012	Age & Growth Sample Analysis	88,819	9,938	78,881	J. Dye	
Total ASIR			1,124,447	673,602	450,845		
City of Albuquerque							
FY 2003	03-FG-40-2091	City of Albuquerque HR Project	417,000	229,396	187,604	K. Dickinson	
FY 2004	04-FG-40-2255	Low Impact High Yield HR - Rio Bravo So.	236,500	91,687	144,813	K. Dickinson	
FY 2008	08-FG-40-2745	Fish Passage Studies	37,107	14,487	22,620	K. Dickinson	
	08-FG-40-2743	COA Rearing & Breeding Facility O&M	154,210	148,582	5,628	Y. Paroz	
FY 2009	08-FG-40-2743	COA Rearing & Breeding Facility O&M	74,460	38,000	36,460	Y. Paroz	
Total COA			919,277	522,152	397,125		
University of NM							
FY 2008	07-CR-40-8204	Nutrient Availability on Periphyton	135,414	59,007	76,407	J. Dye	
FY 2009	07-CR-40-8204	Nutrient Availability on Periphyton	126,921	0	126,921	J. Dye	
	07-FG-40-2662	RGSM Genetics Study	167,251	32,352	134,899	J. Dye	
Total UNM			429,586	91,359	338,227		
Pueblo of Santa Ana							
FY 2008	08-FG-40-2819	Habitat Restoration - Monitoring	350,285	114,870	235,415	S. Devergie	
Total Santa Ana			350,285	114,870	235,415		
Santo Domingo							
FY 2008	08-FG-40-2838	Habitat Restoration - Construction	489,496	282,176	207,320	N. Holste	
Total Santo Domingo			489,496	282,176	207,320		
SWCA							
FY 2007	03-PE-40-0167	NEPA-ES Compliance	52,073	18,627	33,446	H. Garcia	
FY 2009	R09-PC-40-007	RGSM Sampling Methods Calibration and Evaluation	253,366	101,808	151,558	J. Dye	
Total SWCA			305,439	120,435	185,004		
GenQuest, Inc.							
FY 2009	08-CS-40-8228	Various Admin. Support and Services	295,998	160,061	135,937	D. Herrera	
	08-CS-40-8228	Various Admin. Support and Services	72,253	55,034	17,219	D. Herrera	
Total GenQuest			368,251	215,095	153,156		
Pueblo of Santa Clara							
FY 2008	08-NA-40-2801	Habitat Restoration - Planning	172,902	25,503	147,399	L. Spittler	
Total Santa Clara			172,902	25,503	147,399		
Tetra Tech							
FY 2006	06-PE-40-0211	San Acacia fish passage NEPA	284,596	199,218	85,378	H. Garcia	
FY 2007	07-PE-43-0108	Fish Passage at San Acacia ESA	46,314	30,484	15,830	H. Garcia	
FY 2008	8A0-40-8177A	Study Channel Realignment San Acacia	320,152	293,551	26,601	C. Rolland	
Total Tetra Tech			651,062	523,253	127,809		
Pueblo of Isleta							
FY 2008	08-FG-40-2744	Habitat Restoration - Planning	190,402	86,821	103,581	V. Benoit	
Total Isleta			190,402	86,821	103,581		
BH & H Engineering, Inc.							
FY 2009	R09-PX-40-005	Sustainable Ops BA - URGWOM Modeling	99,998	49,999	49,999	V. Terauds	
Total BH&H			99,998	49,999	49,999		
Icetek Inc.							
FY 2008	07-PE-43-0093	Web Page Development and Maintenance	25,949	19,783	6,166	K. Dickinson	
FY 2009	07-PE-43-0093	Web Page Development and Maintenance	26,590	0	26,590	K. Dickinson	
Total Icetek			52,539	19,783	32,756		
Mussetter Engineering, Inc.							
FY 2008	8A4-40-8177B	Study Channel Realignment San Acacia	325,477	294,002	31,475	C. Rolland	
Total Mussetter Eng.			325,477	294,002	31,475		
Parametrix							
FY 2007	07-CS-40-8188	Velarde Reach HR - Planning	390,024	368,093	21,931	H. Garcia	
Total Parametrix			390,024	368,093	21,931		
Respec							
FY 2008	08-PE-43-0054	Map Existing Data	180,000	162,000	18,000	K. Dickinson	
Total Respec			180,000	162,000	18,000		
Middle Rio Grande Conservancy District							
FY 2007	05-FG-40-2436	Perennial Refugia at Drain Outfall	41,622	27,704	13,918	K. Dickinson	
Total MRGCD			41,622	27,704	13,918		
Sustainable Ecosystem Institute							
FY 2009	R09-PD-40-007	Independent Peer Review	29,360	22,080	7,280	J. Lewis	
Total SEI			29,360	22,080	7,280		
Intermountain Aquatics Inc.							
FY 2009	09-PG-40-8286	Comprehensive Monitoring Plan for CompletedHR Project	42,304	35,428	6,876	J. Lewis	
Total IA Inc.			42,304	35,428	6,876		

¹This table was created using information from the latest Federal Financial System reporting and may not include recent transactions. This table includes unexpended amounts of all write-in funds and other Reclamation funds that have been obligated under these contracts/agreements.

**Status of Collaborative Program Funds
as of March 31, 2010**

4/6/2010

FY 2001

\$4,758,000 Appropriated	Main Funding Categories	Expended	Not Expended
1,000,000	Agreed Order Activities	1,000,000	0
500,000	Evapotranspiration (ET) Workgroup	500,000	0
1,758,000	Middle Rio Grande Collaborative Program	1,758,000	0
1,500,000	Middle Rio Grande Restoration Initiative	1,500,000	0
	TOTAL	4,758,000	0

FY2002

\$11,200,000 Appropriated	Main Funding Categories	Expended	Not Expended
4,300,000	Modifications to River Habitat	4,054,978	18,522
2,180,000	Silvery Minnow Population Management	1,784,771	0
1,110,000	Monitoring Stream Effects on Silvery Minnow	1,110,000	0
120,000	Combat Non-Native Species	120,000	0
950,000	Water Quality Studies and Improvements	1,176,500	0
1,900,000	Bureau of Reclamation's Purchase of Water	1,900,000	0
640,000	Bureau of Reclamation's Repayment Obligation	640,000	0
	TOTAL	10,786,249	18,522

FY2003

\$8,848,000¹ Allocated	Main Funding Categories	Expended	Not Expended
2,654,281	Habitat Restoration	2,459,284	187,604
1,196,566	Listed Species Population Management	1,196,566	0
56,000	Fish Passage	56,000	0
231,269	Non-Native Species Management	231,269	0
3,231,977	Water Management	3,377,345	0
541,327	Water Quality Improvements	541,272	0
936,580	Other: Environmental Compliance	1,079,080	0
	TOTAL	8,940,816	187,604

¹Total FY03 allocation: \$8,848,000. Difference of \$23,040 resulted after distribution of funds.

FY2004

\$6,291,361¹ Allocated	Main Funding Categories	Expended	Not Expended
1,105,371	Habitat Restoration	960,558	144,813
1,714,907	Listed Species Population Management	1,692,024	0
319,240	Non-Native Species Management	319,240	0
1,947,285	Water Management	1,947,285	0
379,614	Water Quality Improvements	379,614	0
824,944	Other: Program Support	801,997	0
	TOTAL	6,100,718	144,813

¹Total FY04 allocation: \$6,291,361. Difference of \$22,947 resulted after distribution of funds.

**Status of Collaborative Program Funds
as of March 31, 2010**

4/6/2010

FY2005

\$5,374,020¹ Allocated	Main Funding Categories	Expended	Not Expended
1,236,689	Water Acquisition	1,236,689	0
1,266,086	Habitat Restoration	1,253,785	0
558,611	Biological Opinion Monitoring	557,081	0
1,520,569	Water & Minnow Management Improvement	1,520,569	0
402,065	Science & Monitoring	402,065	0
390,000	Program Management	390,000	0
	TOTAL	5,360,189	0

¹Total FY05 allocation: \$5,374,020. Difference of \$1,530 resulted after distribution of funds.

FY2006

\$12,619,000 Allocated	Main Funding Categories	Expended	Not Expended
6,311,394	Off-the-Top Projects	6,311,394	0
3,937,077	Habitat Restoration	3,114,316	822,761
961,073	Science	933,153	0
111,967	Water Management	108,731	0
1,297,489	Remaining Funds	946,944	0
	TOTAL	11,414,538	822,761

FY2007

\$14,189,580¹ Allocated	Main Funding Categories	Expended	Not Expended
4,748,815	Water Operations and Management	4,721,761	27,054
1,064,619	Captive Propagation	1,026,839	0
3,347,518	Habitat Improvement	2,229,798	1,000,694
379,936	RGSM Salvage	379,936	0
213,773	Water Quality	156,025	0
1,688,970	Other Monitoring and Research	1,640,436	48,534
2,707,741	Program Management, Assessment & Outreach	2,308,982	398,759
	TOTAL	12,463,777	1,475,041

¹Total FY07 allocation: \$14,189,580. Difference of \$38,208 resulted after distribution of funds.

FY2008

\$16,010,000 Allocated	Main Funding Categories	Expended	Not Expended
5,972,662	Water Operations and Management	5,789,898	182,764
1,300,927	Captive Propagation	1,147,164	153,763
3,610,215	Habitat Improvement (Const. Planning & Fish Pass.)	1,893,020	1,717,195
376,604	RGSM Salvage	376,604	0
143,903	Water Quality	56,334	87,569
2,070,595	Other Monitoring and Research	1,696,358	374,237
2,535,094	Program Management, Assessment & Outreach	2,049,890	485,204
	TOTAL	13,009,268	3,000,732

**Status of Collaborative Program Funds
as of March 31, 2010**

4/6/2010

FY2009

\$12,769,000¹ Allocated	Main Funding Categories	Expended	Not Expended
4,418,964	Water Operations and Management	4,054,778	364,186
1,975,894	Captive Propagation	376,012	1,599,882
1,428,891	Habitat Improvement (Const/Plan/Monitor. & Fish Pass.)	725,081	703,810
267,238	Water Quality	89,186	178,052
1,555,719	Other Monitoring and Research	738,336	817,383
1,357,817	Activities Supporting Development of New BA/BO	659,937	697,880
1,695,669	Program Management, Assessment & Outreach	1,076,624	619,045
	TOTAL	7,719,954	4,980,238

¹Total FY09 allocation: \$12,769,000. Difference of \$68,808 resulted after distribution of funds.

FINANCIAL REPORT FY 2002 as of March 31, 2010

Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Modifications to River Habitat	4,300,000	4,054,978	18,522
02-AA-6500	BO Los Lunas - BOR/COE	1,250,000	1,250,000	0
NA	BO San Acacia Restoration - BOR	270,000	270,000	0
NA	BO Fish Passage/River Reconnectivity - BOR	480,000	480,000	0
02-FG-8480	BO Pueblo of Sandia Habitat Restoration	500,000	481,478	18,522
02-NA-8500	BO Pueblo of Cochiti Habitat Restoration	448,500	448,500	0
01-FG-5900 M-1	Santa Ana Flycatcher	105,000	105,000	0
	Pueblo of San Felipe Habitat Restoration	226,500 ¹	0	0
NA	San Marcial Flow Improvement - BOR	300,000	300,000	0
02-FG-8440	Santa Ana Planning (Natural Resources & Habitat Restor)	300,000	300,000	0
	Program Coordination/Management	420,000	420,000	0
	Silvery Minnow Population Management	2,180,000	1,784,771	0
02-AA-8220	BO Reintroduction of RGSM - FWS	200,000	200,000	0
NA	BO Survey/Rescue at Low Flows - BOR	24,700	24,700	0
02-AA-8190	BO Salvage/Rescue/Monitor - FWS	175,000	175,000	0
02-AA-8350				
02-FG-8120	BO Propagation/Genetics - FWS/UNM	400,000	400,000	0
01-FG-5660	BO Egg Collecting - ASWIRF	175,000	175,000	0
NA	BO LFCC Pumping - BOR	207,000	207,000	0
NA	Floodplain Vegetation Management - BOR	108,000	108,000	0
02-AA-8050	Naturalized Refugia Outdoor - ISC	340,000 ²	244,771	0
02-AA-8050	Naturalized Refugia Indoor - ISC	300,000 ²	0	0
	Program Coordination/Management	250,300	250,300	0
	Monitoring Stream Effects on Silvery Minnow	1,110,000	1,110,000	0
02-AA-8170	BO Overbank Flooding RGSM and SWWF - COE	125,000	125,000	0
01-FG-5660	BO Monitoring of RGSM - ASWIRF	215,000	215,000	0
NA	Monitoring of SWWF - BOR	250,000	250,000	0
02-AA-8210				
02-AA-8780	Population Assessment (68 & 69) - FWS	200,000	200,000	0
02-FC-8410	ET Toolbox - UNM	295,300	295,300	0
	Program Coordination/Management	24,700	24,700	0
				0
	Combat Non-Native Species	120,000	120,000	0
02-AA-8230	Wetland and Riparian Saltcedar Control - FWS	30,000	30,000	0
02-AA-8240	Riparian Restoration Saltcedar Control - FWS	38,500	38,500	0
02-NA-8500	Cochiti Habitat Restoration	51,500	51,500	0
	Water Quality Studies and Improvements	950,000	1,176,500	0
01-AA-5950	Water Quality - FWS	362,000	362,000	0
02-FG-8510	Pueblo of Isleta Water Quality	90,000	90,000	0
02-FG-8490	Pueblo of Sandia Water Quality	55,000	55,000	0
NA	Sediment Model - BOR	275,000	275,000	0
NA	Pumping - BOR	93,000	319,500	0
	Program Coordination/Management	75,000	75,000	0
	BOR Purchase of Water	1,900,000	1,900,000	0
NA	BO Water Leasing - BOR	1,600,000	1,600,000	0
NA	Pumping - BOR	300,000	300,000	0
	BOR Repayment Obligation	640,000	640,000	0
02-AA-8050	NMISC Repayment fo Refugia -ISC	640,000	640,000	0
TOTALS		11,200,000	10,786,249	18,522

¹Program decided not to fund this project, money was moved to pumping.²This agreement was closed out on 2/12/07 and remaining funds totaling \$395,229 were deobligated.

FINANCIAL REPORT FY 2003 as of March 31, 2010

Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Habitat Restoration	2,649,956	2,459,284	187,604
03-AA-2088	BO Los Lunas HR Construction Completion - BOR	293,464	293,464	0
03-AA-2074	BO Revegetation & Monitoring Plan for Los Lunas - COE/BOR	285,138	285,138	0
03-NA-2113	BO Willow Flycatcher Habitat at San Juan Pueblo	348,994	348,994	0
03-AA-2110	BO Evapotran. Tower Transition Project at BDANWR - FWS	170,200 ²	167,132	0
03-AA-2089	BO Bernalillo to Alameda Bridge River Restoration - BOR	87,361	87,361	0
03-FG-2091	BO City of Albuquerque HR Project	517,000	229,396	187,604
03-FG-2123	Refugia O&M - COA		100,000	0
03-AA-2086	BO San Acacia to Escondida Subreach 3 HR - BOR	83,528	83,528	0
03-AA-2084	BO Rio Salado Confluence HR Project Planning & Design -BOR	46,400	46,400	0
03-FG-2109	Perennial Pools for RGSM in San Acacia Reach - MRGCD	71,465	71,465	0
03-FG-2111	Preliminary Assessment of SWWF Habitat on Isleta Pueblo	5,600	5,600	0
03-NA-2114	Rio Grande Corridor Restoration Planning on San Juan Pueblo	172,731	172,731	0
03-FG-2108	Conceptual Restoration Plan-San Acacia to San Marcial - SOB	30,000	30,000	0
03-NA-2128	Pueblo of Santa Ana HR Project	300,000	300,000	0
03-FG-2112	Bosque Restoration & Habitat Improv. Plan Santo Domingo	238,075	238,075	0
	Listed Species Population Management	1,196,566	1,196,566	0
02-AA-8190	BO Salvage/Rescue/Monitor - FWS	168,943	168,943	0
03-CR-8029	BO Population Monitoring of RGSM - ASWIRF	145,050	145,050	0
03-CR-8031	BO Monitoring the Reproductive Effort of RGSM - ASWIRF	84,000	84,000	0
02-AA-8350 M-2	BO Propagation of the RGSM - FWS	350,000	350,000	0
02-AA-8780 M-1	BO Experimental Augmentation & Monitoring Plan - FWS	102,464	102,464	0
03-AA-2085	BO Vegetation Mapping of the Rio Grande Floodplain - BOR	18,600	18,600	0
03-FG-2075	BO SWWF Nesting Success, Cowbird Parasitism - Isleta	33,000	33,000	0
03-AA-2079	BO Monitoring SWWF at Sevilleta NWF & LaJoya - BOR	42,950	42,950	0
02-FG-8120 M-1	Conservation Genetics - UNM	119,449	119,449	0
03-FC-2093	Bosque Soil Evaporation Monitoring & Modeling - UNM	132,110	132,110	0
	Fish Passage	56,000	56,000	0
03-AA-2087	BO Conceptual Design for San Acacia Fish Passage - BOR	56,000	56,000	0
	Non-Native Species Management	231,269	231,269	0
02-FC-8410 M-1	Scaling Evapotranspiration Measurements - UNM	40,859	40,859	0
03-FC-2115	Riparian Evapotranspiration - UNM	190,410	190,410	0
	Water Management	3,213,311	3,377,345	0
03-WC-8860	BO Water Acquisition - BOR	2,453,000	2,453,000	0
03-AA-2090	BO Permanent Pumping Plants - BOR	275,000	275,000	0
03-CR-8039	BO Instrumentation & Data Collect. for Quantification Flows-ISC	92,178	92,178	0
03-CR-8038	BO Evaluating Water Acquisition Actions - ISC	55,998	55,998	0
03-FG-2120	BO Oper Improvements & Water Mgmt Decision Support - ISC	78,000	78,000	0
03-FG-2121	BO Oper Improvements & Water Mgmt Decision Support - ISC		164,034	0
03-FG-2092	Evaluation of Conveyance Losses & On-Farm Efficiency - URS	160,047	160,047	0
03-CR-8035	Evaluating MRG Flow Alteration - MRGCD	99,088	99,088	0
	Water Quality Studies and Improvements	541,272	541,272	0
03-CR-8036	BO Evaluation of Bar Morphology - ISC	103,450	103,450	0
03-CR-8037	Study of Transient Groundwater Riparian Conditions ISC	203,724	203,724	0
02-AA-8210 M-001	Habitat Preference of RGSM - FWS	234,098	234,098	0
	Other: Environmental Compliance	936,580	1,079,080	0
03-AA-2083	BO Program Coordination & Management - BOR	225,000	225,000	0
03-PE-40-0167	NEPA Compliance - BOR	400,000	325,000	0
02-AA-40-8110	Program Manager - FWS		217,500	0
	Subcommittee Support - CP	311,580	311,580	0
TOTALS		8,824,954 ¹	8,940,816	187,604

¹Total appropriated amount \$8,848,000. Difference of \$23,046 resulted after distribution of funds.

Agmt. 03-CR-8038 total cost is \$74,664, but CP portion is only \$55,998. Agmt. 03-FG-2109 total cost is \$71,465 not \$75,839.

²This agreement was closed out and remaining funds totaling \$3,068 were deobligated.

FINANCIAL REPORT FY 2004 as of March 31, 2010

Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Habitat Restoration	1,105,371	960,558	144,813
03-FG-2109 M-1	BO Perennial Pools for RGSM in San Acacia Reach - MRGCD	15,567	15,567	0
04-FG-2255	BO Low Impact High Yield HR - Rio Bravo So. -COA	236,500	91,687	144,813
04-FG-2253	BO HR Mesohabitats - ISC/SWCA	174,426	174,426	0
03-AA-2074 M-2	BO Los Lunas Revegetation - COE/BOR	92,787	92,787	0
04-AA-2251	Rio Grande Nature Center HR - COE	135,075	135,075	0
03-NA-2113 M-1	BO San Juan Pueblo WIFL - San Juan	294,390	294,390	0
03-FG-2112 M-3	Habitat Restoration Reach Plans - Santo Domingo	83,514	83,514	0
02-FG-8510 M-1	Habitat Restoration Reach Plans - Isleta	73,112	73,112	0
	Listed Species Population Management	1,714,907	1,692,024	0
02-AA-8190 M-3	BO Salvage/Rescue/Monitor - FWS	292,410 ²	269,527	0
03-CR-8029 Opt 1	BO Population Monitoring of RGSM - ASWIRF	152,292	152,292	0
03-CR-8031 Opt 1	BO Monitoring the Reproductive Effort of RGSM - ASWIRF	85,050	85,050	0
02-AA-8350 M-4	BO Propagation of the RGSM - FWS	400,000	400,000	0
02-AA-8780 M-3	BO Experimental Augmentation & Monitoring Plan - FWS	171,371	171,371	0
03-FG-2123 M-3	BO O&M RGSM Refugia - COA	109,010	109,010	0
02-FG-8120 M-2	Conservation Genetics - UNM	124,440	124,440	0
03-AA-2079 M-1	BO Monitor WIFL Sevilleta/La Joya - BOR	64,535	64,535	0
03-FC-2093 M-1	Bosque Soil Evaporation Monitoring - UNM	115,287	115,287	0
04-CR-8084	WIFL Surveys - SWCA	76,350	76,350	0
04-FG-2265	RGSM Food Habits - ISC/SWCA	124,162	124,162	0
	Non-Native Species Management	319,240	319,240	0
03-FC-2115 M-1	Riparian Evapotranspiration - UNM	319,240	319,240	0
	Water Management	1,947,285	1,947,285	0
03-WC-8860	BO Water Acquisition - BOR	1,501,433	1,501,433	0
03-FG-2121 M-1	BO Oper Improvements & Water Mgmt Decision Support - ISC	228,405	228,405	0
03-CR-8039 M-1	BO Instrument Data Collection Quantification Flows - ISC	15,113	15,113	0
03-FG-2092 M-1	Evaluation of Conveyance Losses & On-Farm Efficiency - URS	129,238	129,238	0
04-AA-2246	Data Collection Surface/Ground Water - USGS	73,096	73,096	0
	Water Quality Studies and Improvements	379,614	379,614	0
03-CR-8036 Opt 1	BO Evaluation of Bar Morphology - ISC	37,558	37,558	0
04-FG-2264	Water Quality - ISC	75,032	75,032	0
03-CR-8037 Opt 1	Study of Transient Groundwater Riparian Conditions - ISC	179,024	179,024	0
04-AA-2247	Determine Lethal Levels of Temp (Toxicity/Wtr Quality - USGS)	88,000	88,000	0
	Other: Program Support	801,997	801,997	0
03-AA-2083	BO Program Coordination & Management - BOR	225,000	225,000	0
02-AA-40-8110	Program Manager - FWS	126,997	126,997	0
	Subcommittee Support - CP	350,000	350,000	0
02-AA-40-8110	Program Manager - FWS	100,000	100,000	0
	TOTALS	6,268,414 ¹	6,100,718	144,813

¹Total appropriated amount \$6,291,361. Difference of \$22,947 resulted after distribution of funds.²This agreement was closed out on 11/20/07 and remaining funds totaling \$22,883 were deobligated.

FINANCIAL REPORT FY 2005 as of March 31, 2010

Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Water Acquisition	1,236,689	1,236,689	0
	Habitat Restoration	1,266,086	1,253,785	0
05-AA-2384	Overbank Flooding - COE	148,938	148,938	0
05-FG-2436	Perennial Refugia at Drain Outfall - MRGCD	86,685	86,685	0
03-NA-2113	San Juan Pueblo North Chavez Arroyo - San Juan Pueblo	199,464	199,464	0
03-AA-2074	Cont. Monitoring Activities at the Los Lunas Habitat Restoration Project - COE	77,565	77,565	0
05-CR-8121	Development & Design of San Acacia Fish Passage - FishPro	115,000	115,000	0
05-AA-2437	RGSM Fish Passage Feasibility Study at Isleta Div. Dam - COE	171,574	171,574	0
04-FG-2253	Preliminary Evaluation of Island Destabilization - ISC	67,691 ²	55,390	0
05-NA-2443	Santo Domingo Tribe Endangered Species Habitat Improvement Project - Santo Domingo	399,169	399,169	0
	Biological Opinion Monitoring	557,081	557,081	0
03-CR-8029	Population Monitoring of RGSM - ASWIRF	252,034	252,034	0
05-CR-8119	Population Estimation Study of the RGSM - ASWIRF	100,040	100,040	0
03-AA-2079	SW Willow Flycatcher Surveys & Nest Monitoring - BOR	197,360	197,360	0
02-AA-8780	Experimental Aug & Monitor Plan for RGSM - FWS	7,647	7,647	0
	Water and Minnow Management Improvement	1,520,569	1,520,569	0
04-AA-2246	Data Collection to Better Define the Interaction of Surface Water & Groundwater in the MRG Valley, NM - USGS	282,000	282,000	0
03-FG-2092	Analysis of Conveyance Optimization & On-Farm Efficiencies of	138,515	138,515	0
03-FG-2123	O&M RGSM Breeding & Rearing Facility - COA	112,450	112,450	0
02-AA-6360	O&M of Gages - USGS	54,600	54,600	0
03-FC-2093	ET Monitoring & Modeling - UNM	115,407	115,407	0
	Minnow Sanctuary - BOR	648,700	648,700	0
02-AA-8350	Propagation for 2006 - FWS	168,897	168,897	0
	Science and Monitoring	402,065	402,065	0
02-FG-8120	Monitoring Genetic Changes in the Endangered RGSM & Genetic Analysis of Alternative Captive-breeding Designs - UNM	122,569	122,569	0
02-AA-8210	Habitat Preference of RGSM in Relation to Fluvial Geomorphology & Flow Regime, MRG Valley, NM - FWS	63,413	63,413	0
03-CR-8031	Monitoring the Spatial Reproductive Periodicity of RGSM-ASWIRF	189,088	189,088	0
06-FG-2450	RGSM Survival & Recovery Activities - NMSU	26,995	26,995	0
	Program Management	390,000	390,000	0
	BOR Contracting	250,000	250,000	0
05-PE-43-0151	Collaborative Program Technical Support - Tetra Tech	140,000	140,000	0
TOTALS		5,372,490 ¹	5,360,189	0

¹Total appropriated amount \$5,374,020. Difference of \$1,530 resulted after distribution of funds.²This agreement was closed out and remaining funds totaling \$12,301 were deobligated.

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Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Off-the-Top	6,311,394	6,311,394	0
	WATER ACQUISITION - BOR	3,600,000	3,600,000	0
	PROGRAM MANAGEMENT - BOR	800,000	800,000	0
06-AA-40-2554	PROGRAM MANAGEMENT - COE	200,000	200,000	0
03-FG-40-2123	RGSM Rearing & Breeding O&M - COA	82,755	82,755	0
06-AA-40-2508A	RGSM Propagation and Facility Expansions - FWS	200,000	200,000	0
02-AA-8350	Propagation of the RGSM - FWS	231,103	231,103	0
02-AA-40-8780	Experimental Augmentation & Monitoring - FWS	202,907	202,907	0
06-AA-40-2491	Minnow Rescue - FWS	590,509	590,509	0
05-PE-811079	SWFL Monitoring - BOR	187,711	187,711	0
02-AA-40-6360	MRG River Gages O&M - BOR/USGS	20,000	20,000	0
05-AA-40-2384	Overbank - Scanned Imagery - COE	19,894	19,894	0
03-PE-40-0167	NEPA-ESA compliance	176,515	176,515	0
	Habitat Restoration	3,937,077	3,114,316	822,761
06-FG-40-2549	Albuquerque Reach - ISC	2,176,500	1,439,117	737,383
04-AA-40-2251	Nature Center - COE	99,736	99,736	0
06-AA-40-2553	Alleviating RGSM Entrapment - COE	91,018	91,018	0
05-FG-40-2436	Perennial Refugia at Drain Outfall - MRGCD	91,502	91,502	0
06-NA-40-2552	Cochiti Reach - Santo Domingo	358,776	358,776	0
06-CR-40-8145	Albuquerque Reach Plan - SWCA	239,152	239,152	0
06-CR-40-8127	Update San Acacia Reach Plan	208,594	208,594	0
06-PE-40-0211	San Acacia Fish Passage NEPA - Tetra Tech	284,596	199,218	85,378
06-CR-40-8146	Isleta Reach Plan - Parametrix	387,203	387,203	0
	Science	961,073	933,153	0
03-CR-40-8029	RGSM population monitoring - ASIR	168,647	168,647	0
05-CR-40-8119	RGSM population estimation - ASIR	89,458	89,458	0
06-AA-40-2572				
06-CR-40-8144	Monitoring wetted in-stream habitat - Habitech	120,996 ¹	93,076	0
06-AA-40-2556	Canal entrainment impacts	24,766	24,766	0
06-FG-40-2551	Annual monitoring program - NMED	170,951	170,951	0
06-AA-40-2548	RGSM health assessment - FWS	386,255	386,255	0
	Water Management	111,967	108,731	0
06-CR-40-8147	Monitor flows in SWWF territories	38,039	38,039	0
06-AA-40-2545	Assess storage and operations with URGWOM - COE	63,770	63,770	0
06-CR-40-8128	Assessment of irrigation efficiencies - URS	10,158 ²	6,922	0
	Remaining Funds	1,297,489	946,944	0
02-FG-40-8120	Genetic Methods - UNM	74,990	74,990	0
	2007 Water Acquisition	700,128	700,128	0
04-AA-40-2247	RGSM Toxicity Study via contract mod - USGS	38,410	38,410	0
06-AA-40-2554	MRG Irrigation Improvements via GSA (COE)	1,000 ³	0	0
04-AA-40-2246	GW/SW Interaction via contract mod	55,725	55,725	0
06-AA-40-2554	COE PM support for part of FY2007 via IA	3,236 ³	2,691	0
06-AA-40-2554	Spatial Analysis Forbearance via GSA (COE)	250,000 ³	0	0
05-PE-43-0151	Program Technical Support via contract mod	75,000	75,000	0
TOTALS		12,619,000	11,414,538	822,761

¹This agreement was closed out and remaining funds totaling \$27,920 were deobligated.²This agreement was closed out and remaining funds totaling \$3,236 were deobligated.³This agreement was closed out and remaining funds totaling \$350,545 were deobligated.

FINANCIAL REPORT FY 2007 as of March 31, 2010

Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Water Operations and Management	4,748,815	4,721,761	27,054
various	Water Acquisition - BOR	3,908,425	3,908,425	0
07-AA-40-2622	MRG River Gage O&M - USGS	57,320	57,320	0
06-AA-40-2545	URG WOM water ops/storage - COE	100,000	100,000	0
04-AA-40-2246	Groundwater/Surface water interaction - USGS	190,067	190,067	0
07-CS-40-8208	Decision support system - (Alb. Reach) -ISC	153,474	153,474	0
07-CS-40-8209	Groundwater Models (GW/SW interaction) - ISC	339,529	312,475	27,054
	Captive Propagation	1,064,619	1,026,839	0
02-AA-40-8780	Experimental augmentation and monitoring - FWS	174,016	174,016	0
03-FG-40-2123	Rearing/Breeding O&M Refugia - COA	156,800	156,800	0
07-AA-40-2634	Rearing/Breeding O&M Dexter - FWS	349,012	349,012	0
06-AA-40-2508A	RGSM facility expansions - Dexter - FWS	200,000	200,000	0
07-PG-43-0099	Rearing/Breeding O&M ISC naturalized refuge	37,780 ²	0	0
07-FG-40-2662	RGSM genetics - UNM	147,011	147,011	0
	Habitat Improvement (Construction, Planning & Fish Passage)	3,347,518	2,229,798	1,000,694
04-AA-40-2251	Rio Grande Nature Center HR Project - COE	237,570	237,570	0
05-FG-40-2436	HR Construction Perennial RGSM Refugia at Drain Outfalls MRGCD	41,622	27,704	13,918
various	Fish Passage at San Acacia	146,200	130,370	15,830
07-AA-40-2703	Albq Reach Habitat restoration planning - COE	73,886	73,886	0
07-CS-40-8188	Velarde Reach Habitat restoration planning - Parametrix	390,024	368,093	21,931
07-NA-40-2705	SWFL Habitat at Ohkay Owingeh	115,525	115,525	0
07-FG-40-2704	Monitoring of Albuquerque Reach - ISC	171,288	163,918	7,370
07-NA-40-2707	Sandia Pueblo HR Project - Construction	961,481	42,280	919,201
07-FG-40-2708	Isleta Reach Riverine Restoration & Habitat Improvements - ISC	548,550	526,106	22,444
07-NA-40-2702	Santo Domingo HR Project - Construction	354,148	354,148	0
07-CS-40-8189	HR Planning San Marcial to EB reach specific - Tetra Tech	202,321 ³	85,295	0
07-FG-40-2671	Los Lunas HR Monitoring - SWCA	55,674 [#]	55,674	0
06-CR-40-8127	San Acacia HR Analysis and Plan	49,229	49,229	0
	RGSM Salvage	379,936	379,936	0
06-AA-40-2491	RGSM Rescue efforts FWS	352,901	352,901	0
06-AA-40-2556	RGSM egg monitoring in canals - FWS	27,035	27,035	0
	Water Quality	213,773	156,025	0
06-FG-40-2551	Water quality monitoring - NMED	213,773 ⁴	156,025	0
	Other Monitoring and Research	1,688,970	1,640,436	48,534
03-CR-40-8029	RGSM population monitoring - ASWIRF	248,802	248,802	0
05-PE-811079	SWFL Surveys - BOR	235,174	235,174	0
05-CR-40-8119	RGSM population estimation - ASWIRF	144,774	144,774	0
06-AA-40-2548	Fish health assessment - FWS	339,224	290,690	48,534
03-CR-40-8031	Monitor Reproductive Periodicity of RGSM - ASWIRF	149,784	149,784	0
06-FG-40-2450	Survival & Recovery Activities - NMSU	36,101	36,101	0
06-CR-40-8147	SWFL Monitoring at Isleta Pueblo - UNM	38,001	38,001	0
various	MRG ops BA and analysis - BOR	331,497	331,497	0
07-AA-40-2711	Longitudinal movement study - FWS	25,851	25,851	0
07-CR-40-8204	Nutrient availability in HR construction - UNM	120,168	120,168	0
06-AA-40-2572	Enhance Instream Monitoring - USGS	19,594	19,594	0
	Program Management, Assessment and Outreach	2,707,741	2,308,982	398,759
07-AA-40-2672	Program management and support - COE	176,208	176,208	0
02-AA-40-8110	Program management and support (incl. 2007 forum) - FWS	60,681	60,681	0
	Program management and support - BOR	1,196,868	1,196,868	0
05-PE-43-0151	Program technical support - contracted	285,000	285,000	0
03-PE-40-0167	CP NEPA-ESA programmatic compliance - SWCA	52,073	18,627	33,446
07-PE-43-0093	CP Webpage development & maintenance	65,231	65,231	0
	CP Public outreach	15,000	15,000	0
07-AA-40-2691	GIS Database Development - COE	856,680	491,367	365,313
TOTALS		14,151,372 ¹	12,463,777	1,475,041

¹Total FY07 Allocation: \$14,189,580. Difference of \$38,208 resulted after distribution of funds.²ISC determined that funds were not needed; therefore, \$37,780 was deobligated.³This contract was closed out and remaining funds of \$117,026 were deobligated.⁴This contract was closed out and remaining funds of \$57,748 were deobligated.

FINANCIAL REPORT FY 2008 as of March 31, 2010			4/6/2010	
Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Water Operations and Management	5,972,662	5,789,898	182,764
various	Supplemental Water - BOR	3,048,206	3,048,206	0
various	Lease Additional Supplemental Water - BOR	2,064,587	2,064,587	0
04-AA-40-2246	Groundwater/Surface water interaction - USGS	319,850	319,850	0
06-AA-40-2545	URGWOM Modeling - COE	100,000	100,000	0
06-AA-40-2545	Additional Hydro Modeling - COE	100,000	537	99,463
07-AA-40-2622	USGS MRG River Gage O&M	86,440	86,440	0
07-CS-40-8208	Decision Support System -ISC	159,639	79,083	80,556
07-AA-40-2673	Additional PVA Modeling - FWS	93,940	91,195	2,745
	Captive Propagation	1,300,927	1,147,164	153,763
07-AA-40-2634	Rearing/Breeding O&M Dexter - FWS	349,012	349,012	0
07-FG40-2662	RGSM Genetics Study - UNM	158,956	158,956	0
08-FG-40-2743	COA Rearing/Breeding O&M	154,210	148,582	5,628
08-AA-40-2770	Experimental Augmentation and Monitoring - FWS	133,090	63,182	69,908
08-FG-40-2803	ISC Naturalized Refugia O&M	252,912	252,912	0
08-AA-40-2812	Fund Minnow Sanctuary O&M - FWS	252,747	174,520	78,227
	Habitat Improvement (Const., Planning & Fish Passage)	3,610,215	1,893,020	1,717,195
03-C6-40-8026	Aerial Photography - AERO-Metric, Inc.	360,367	360,367	0
04-AA-40-2251	RGSM Post-Construction Monitoring - COE	51,128	46,946	4,182
06-AA-40-2553	Alleviating RGSM Entrapment - COE	61,320	29,572	31,748
07-AA-40-2703	Complete Albq Reach HR Analysis - COE	145,073	131,007	14,066
08-FG-40-2745	Fish passage Studies at San Acacia and Isleta - COA	37,107	14,487	22,620
08-FG-40-2832	Habitat Restoration - ISC	36,000	32,925	3,075
08-FG-40-2818	Habitat Restoration - Monitoring - Sandia Pueblo	615,965	3,341	612,624
08-FG-40-2817	Habitat Restoration - SWFL Monitoring - Ohkay Owingeh	141,618	72,400	69,218
08-FG-40-2839	Habitat Restoration - Maintenance - Ohkay Owingeh	159,641	82,075	77,566
08-FG-40-2830	Habitat Restoration - Two Rivers Construction - Ohkay Owingeh	253,395	168,400	84,995
08-FG-40-2831	Habitat Restoration - Three Falls Construction - Ohkay Owingeh	203,360	99,974	103,386
08-FG-40-2838	Habitat Restoration - Construction - Santo Domingo	489,496	282,176	207,320
08-FG-40-2819	Habitat Restoration - Monitoring - Pueblo of Santa Ana	350,285	114,870	235,415
08-FG-40-2744	Habitat Restoration - Planning - Pueblo of Isleta	190,402	86,821	103,581
08-NA-40-2801	Habitat Restoration - Planning - Pueblo of Santa Clara	172,902	25,503	147,399
Various	Fish Passage at San Acacia	342,156	342,156	0
	RGSM Salvage	376,604	376,604	0
06-AA-40-2491	RGSM Rescue efforts - FWS	350,705	350,705	0
06-AA-40-2556	RGSM Egg Monitoring in Canals - FWS	25,899	25,899	0
	Water Quality	143,903	56,334	87,569
08-AA-40-2823	Evaluate Estrogenic BioMarker/Water Toxicity - USGS	143,903	56,334	87,569
	Other Monitoring and Research	2,070,595	1,696,358	374,237
03-CR-40-8029	RGSM Population Monitoring - ASIR	259,620	145,099	114,521
03-CR-40-8031	RGSM Reproductive Monitoring - ASIR	153,144	151,234	1,910
05-PE-81-1079	SWFL Surveys - BOR	245,965	245,965	0
05-CR-40-8119	RGSM Population Estimation - ASIR	168,288	113,830	54,458
06-CR-40-8147	Water Needs for SWFL at Isleta Pueblo - UNM	44,396	44,396	0
07-AA-40-2711	Longitudinal Movement (PIT tag studies) - FWS	71,978	62,852	9,126
07-CR-40-8204	Nutrient Availability on Periphyton - UNM	135,414	59,007	76,407
08-PE-43-0047	SWFL Literature Search - ERO Resources Corp.	32,876	32,876	0
08-AA-40-2777	Reintro. of Experimental RGSM Pops. (Big Bend) - FWS	133,285	91,546	41,739
8A0-40-8177A	Study Channel Realignment San Acacia - Tetra Tech	320,152	293,551	26,601
8A4-40-8177B	Study Channel Realignment San Acacia - Mussetter Eng.	325,477	294,002	31,475
08-PE-43-0054	Map Existing Data - Respec	180,000	162,000	18,000
	Program Management, Assessment and Outreach	2,535,094	2,049,890	485,204
	BOR Program Management and Support	1,276,031	1,276,031	0
	CP Public Outreach	19,937	19,937	0
05-PE-43-0151	Program Technical Support - Tetra Tech	100,000	100,000	0
07-AA-40-2672	Program Coordination and Management - COE	197,993	126,047	71,946
08-CS-40-8228	Various Administration Support & Services - GenQuest	210,081	210,081	0
08-AA-40-2737	Program Management and Support - FWS	328,303	298,011	30,292
07-PE-43-0093	CP Webpage Development & Maintenance - Icetech Inc.	25,949	19,783	6,166
07-AA-40-2691	GIS Database Development - COE	376,800	0	376,800
TOTALS		16,010,000	13,009,268	3,000,732

FINANCIAL REPORT FY 2009 as of March 31, 2010			4/6/2010	
Contractual Nos.	Main Funding Categories	Amount Appropriated	Total Expended to Date	Not Expended
	Water Operations and Management	4,418,964	4,054,778	364,186
various	Supplemental Water - BOR	3,853,708	3,853,708	0
R09-PG-40-005	Groundwater/Surface Water Interaction - USGS	219,959	22,736	197,223
07-AA-40-2622	USGS MRG River Gage O&M	89,148	89,148	0
07-CS-40-8208	Decision Support System -ISC	166,963	0	166,963
Activity 16a	BOR Technical Support	89,186	89,186	0
	Captive Propagation	1,975,894	376,012	1,599,882
07-AA-40-2634	Rearing/Breeding O&M Dexter - FWS	300,000	168,222	131,778
07-AA-40-2634	Rearing/Breeding O&M Dexter FY 2010 - FWS	300,000	30,560	269,440
07-FG40-2662	RGSM Genetics Study - UNM	167,251	32,352	134,899
08-FG-40-2743	COA Rearing/Breeding O&M	74,460	38,000	36,460
08-AA-40-2770	Experimental Augmentation and Monitoring - FWS	84,208	0	84,208
08-FG-40-2803	ISC Naturalized Refugia O&M	261,170	0	261,170
08-AA-40-2812	Minnow Sanctuary O&M - FWS	189,928	0	189,928
R09-PC-40-006	Reintroduction Biologist - FWS	370,000	0	370,000
08-AA-40-2777	Reintro. of Experimental RGSM Pops. (Big Bend) - FWS	139,690	17,691	121,999
Activity 16b	BOR Technical Support	89,187	89,187	0
	Habitat Improvement (Const., Planning, Monitoring & Fish Passage)	1,428,891	725,081	703,810
06-AA-40-2553	Alleviating RGSM Entrapment - COE	173,824	0	173,824
R09-PG-40-011	Rio Grande Nature Center Monitoring - COE	59,960	0	59,960
07-FG-40-2671	Los Lunas HR Monitoring - SWCA	52,500	52,500	0
08-FG-40-2832	Isleta Phase 2 Habitat Restoration - ISC	125,000	75,000	50,000
09-FG-40-2916	Two Rivers Flycatcher Habitat Expansion - Ohkay Owingeh	79,496	0	79,496
09-FG-40-2915	Three Falls Habitat Restoration - Ohkay Owingeh	47,135	0	47,135
Various	Fish Passage at San Acacia - BOR	672,899	421,288	251,611
Various	DEC Review Fish Passage at San Acacia - BOR	51,679	51,679	0
09AFUC-09-004	MRG River Restoration/Channel Maintenance Workshop - BOR	34,908	0	34,908
09-PG-40-8286	Comprehensive Monitoring Plan for Completed HR Projects-IA Inc.	42,304	35,428	6,876
Activity 16c	BOR Technical Support	89,186	89,186	0
	Water Quality	267,238	89,186	178,052
08-AA-40-2823	Evaluate Estrogenic BioMarker/Water Toxicity - USGS	178,052	0	178,052
Activity 16d	BOR Technical Support	89,186	89,186	0
	Other Monitoring and Research	1,555,719	738,336	817,383
R09-PC-40-005	RGSM Population Monitoring - ASIR	228,210	76,185	152,025
09-PG-40-8295	RGSM Reproductive Monitoring - ASIR	92,160	90,210	1,950
05-PE-81-1079	SWFL Surveys - BOR	245,965	227,571	18,394
Denver TSC	SWFL Surveys FY 2010 - BOR	260,000	24,805	235,195
R09-PC-40-005	RGSM Population Estimation - ASIR	134,206	87,106	47,100
07-AA-40-2711	Longitudinal Movement Study - FWS	64,032	0	64,032
07-CR-40-8204	Nutrient Availability on Periphyton - UNM	126,921	0	126,921
06-AA-40-2556	RGSM Egg Monitoring in Canals - FWS	20,345	137	20,208
R09-PC-40-007	RGSM Sampling Methods Calibration and Evaluation - SWCA	253,366	101,808	151,558
08-C4-40-8228	State of the Science Workshop	11,730	11,730	0
08-C3-40-8228	San Acacia Reach Workshop	29,598	29,598	0
Activity 16e	BOR Technical Support	89,186	89,186	0
	Activities Supporting Development of New BA/BC	1,357,817	659,937	697,880
Activity 39	BOR Personnel Costs to Develop New BA	580,000	580,000	0
09-PG-40-8294	PVA Data Needs - ASIR	20,000	20,000	0
R09-PX-40-005	URGWOM Modeling - BH&H Eng.	99,998	49,999	49,999
R09-PX-40-0012	Age and Growth Sample Analysis - ASIR	88,819	9,938	78,881
R09-PC-40-009	Test Hypotheseses Re: RGSM Spawning - ISC	199,000	0	199,000
08-AA-40-2737	FWS ESA Compliance FY 2010 & 2011	370,000	0	370,000
	Program Management, Assessment and Outreach	1,695,669	1,076,624	619,045
Activity 15	BOR Program Management and Support	824,449	824,449	0
Activity 17	CP Public Outreach	15,000	15,000	0
07-AA-40-2672	Program Coordination and Management FY 2010 - COE	200,000	0	200,000
08-CS-40-8228	Various Administration Support & Services - GenQuest	368,251	215,095	153,156
07-PE-43-0093	CP Webpage Development & Maintenance - Ictech Inc.	26,590	0	26,590
07-AA-40-2691	GIS Database Development - COE	232,019	0	232,019
R09-PD-40-007	Independent Peer Review - SEI	29,360	22,080	7,280
TOTALS		12,700,192¹	7,719,954	4,980,238

¹Total FY09 Allocation: \$12,769,000. Difference of \$68,808 resulted after distribution of funds.