

MEMORANDUM OF AGREEMENT
Between the
U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT,
LA PAZ COUNTY,
&
The U.S. FISH AND WILDLIFE SERVICE
Regarding the Establishment and Operation of the
LA PAZ COUNTY ENDANGERED SPECIES FUND 290

This agreement regarding establishment and operation of an in-lieu-fee program, the La Paz County Endangered Species Fund 290 (Fund), is made and entered among the U.S. Army Corps of Engineers (Corps), La Paz County (County), and the U.S. Fish and Wildlife Service (FWS) effective on the last date set forth on the signatory page hereto.

I. PREAMBLE

- A. WHEREAS, the Corps, the County, and the FWS recognize the importance of the creation, enhancement, or restoration of habitat for and reintroduction of the Lower Colorado River native endangered fish species, the razorback sucker (*Xyrauchen texanus*) and the bonytail chub (*Gila elegans*), and the desert pupfish (*Cyprinodon macularius*),**

- B WHEREAS, the discharge of dredged and/or fill material into waters of the U.S., including wetlands and work or structures in or affecting a navigable water of the U.S. (the Colorado River) is regulated under provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), respectively, and administered through a permit program under the auspices of the Corps,**

- C. WHEREAS, the Corps recognizes the potential for direct, indirect, and cumulative impacts which may occur to waters of the U.S. as a result of unauthorized and minor authorized activities under Section 404 and Section 10, in accordance with the Section 404(b)(1) Guidelines (40 CFR 230), the Corps requires compensatory mitigation to offset adverse impacts to aquatic resources,**

- D. WHEREAS, the Corps, the County, and the FWS propose to establish the La Paz County Endangered Species Fund 290 whereby project proponents, upon approval by the Corps, will be allowed to pay monies into the Fund to satisfy compensatory mitigation requirements,**

- E. WHEREAS, the County, as the Fund sponsor, has the ability to continue operation of the previously established Fund and the FWS has the authorization to implement projects which benefit the Lower Colorado River endangered fish species, as defined above,
- F. WHEREAS, the Fund will be solely used to create, enhance, or restore aquatic resources used by the razorback sucker, bonytail chub, and desert pupfish as well as for other activities directly related to preservation and reintroduction of these species into the Lower Colorado River,
- G. WHEREAS, the Corps retains full authority to approve or deny use of the Fund monies for specific activities undertaken by the FWS for the benefit of the razorback sucker, bonytail chub, and desert pupfish,
- H. WHEREAS, this agreement does not in any manner affect statutory authorities and responsibilities of the signatory parties.

II. THE CORPS AGREES TO:

- A. Review each proposal requiring a Section 404/10 permit or each unauthorized activity and determine the suitability to use the Fund to fulfill compensatory mitigation requirements; the Fund shall only be used to offset impacts from unauthorized activities or projects with minimal impacts qualifying for a general permit or letter of permission; the Fund shall not be used to mitigate for impacts to wetlands,
- B. Determine the mitigation ratio for projects requiring a Section 404/10 permit on a case-by-case basis using the standard of a minimum of 3:1 where mitigation is required to offset permanent losses and 1:1 where mitigation is required to offset functional losses,
- C. Collect in-lieu-fee-mitigation funds from the project proponent and immediately forward to the County for deposit into the Fund and provide the FWS with a copy of the fund transmittal letter to the County,
- D. Approve all disbursements from the Fund,
- E. Maintain a separate balance ledger for the Fund and annually audit the Fund balance, deposits, and disbursements with the County to ensure all records agree.

III. THE COUNTY AGREES TO:

- A. Establish a dedicated interest bearing account at an FDIC approved banking institution for the sole purpose of receiving funds to be used by the FWS for endangered fish species benefit; all interest accrued from this account shall be maintained in the account and used for Corps approved expenditures for the Lower Colorado River endangered species fish program,
- B Disburse funds for approved expenditures upon receipt of FWS request for payment of expenditures and provision of invoice for services
- C. Accept disbursement requests only from the FWS representative designated in this agreement with Corps authorization for approved expenditures,
- D. Maintain a balance ledger for the Fund and annually review the balance, deposits, and disbursements with the Corps to ensure all records agree.

IV. THE FWS AGREES TO:

- A. Use funds generated to support the following tasks: creation, enhancement, or restoration of habitat for Lower Colorado River endangered fish species or any activity directly related to the spawning, grow-out, reintroduction, or general benefit of the same species within the geographic area of the Los Angeles District on the Colorado River (Hoover Dam to the Southern International Border with Mexico),
- B. Acquire all appropriate permits, including Section 404/10 permits from the Corps, where applicable, prior to initiating any activity,
- C. Provide written requests including invoice of services to the County, with a copy provided to the Corps, for disbursement of funds,
- D. Provide to the Corps annually by the end of December, a brief summary of activities undertaken during the year where funds from the Fund have been used to benefit the Lower Colorado River endangered fish species.

V. ALL PARTIES MUTUALLY AGREE:

- A This fund will be used to mitigate for activities authorized under individual permits, general permits (nationwide and regional), and for unauthorized activities which result in unavoidable, permanent or functional impacts to aquatic resources on the Lower Colorado River and use of this mitigation program is subject to approval of the Corps on a case-by-case basis,

- B. This agreement shall become effective on the date of signature of the Corps and shall remain in effect unless amended or terminated by one of the parties herein in accordance with the following procedures. This agreement may be amended with 30 days written notification to all parties for request and reason of amendment; all amendments shall require a re-execution of this document to incorporate any changes. Any of the three parties may terminate the agreement with 30 days prior written notification to the other parties. The County may discontinue receiving funds on behalf of the FWS upon 30 days prior written notification to the other parties; however, the County shall not be relieved of its obligations under this agreement to disburse funds for invoices of service up to the date of termination of the agreement (30 days after written notification).
- C. Should this agreement be terminated by any of the three signatory parties in accordance with Section V(B), the County shall continue to disburse funds for all approved expenditures with invoices of services up to the date of termination of the agreement (30 days after written notification); after such time, the County shall continue to hold funds in the FDIC interest bearing account until the Corps has arranged for another Fund administrator within a reasonable time. At that time, the County shall transfer all funds, including interest, to the Corps by cashier's check or money order made payable to the newly designated Fund administrator. At that time, a new agreement shall be executed to include any new participants to the agreement.

VI. NOTICES AND PROJECT OFFICERS:

The individuals listed below shall be the current Project Officers and local points of contact for this Agreement. Notices to be given herein shall be made in writing and may be given by delivering the same in person or to their successor by mail or by fax. Notices shall be effective only if and when received at the address of the party to be notified (or their appointees).

For the Corps: Ms. Marjorie Blaine
 Senior Project Manager
 U.S. Army Corps of Engineers
 Tucson Project Office, Regulatory Branch
 5205 E. Comanche Street
 Tucson, AZ 85707

For the County: Mr. Gene Fisher
 Chairman of the Board
 La Paz County Board of Supervisors
 1108 Joshua
 Parker, AZ 85344

For the FWS: Dr. Chuck Minckley
U.S. Fish and Wildlife Service
Arizona Fishery Resources Office
60911 Hwy. 95
Parker, AZ 85344

Acceptance of the terms of this Agreement as outlined herein is indicated by signing three originals of this letter. This Agreement shall not be in effect until signed by all parties and is effective upon the date of signing by the Corps (the last signatory date).

La Paz County

By: Gene Fisher
Gene Fisher

Chairman, La Paz County Board of Supervisors

11/21/05

U.S. Fish and Wildlife Service

By: Chuck Minckley
Chuck Minckley, Ph.D.

Title: Manager, Parker Fishery Resource Office

Date 11-28-05

U.S. Army Corps of Engineers, Los Angeles District

David J. Castanon
David J. Castanon

Chief, Regulatory Branch

Date: 12-5-05