

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RIO GRANDE SILVERY MINNOW, et al.,

Plaintiffs,

vs.

CIV No. 99-1320 JP/RLP-ACE

JOHN W. KEYS III, et al., ,

Federal Defendants,

MIDDLE RIO GRANDE CONSERVANCY
DISTRICT, et al.,

Defendant-Intervenors.

**ORDER
AND
PARTIAL FINAL JUDGMENT**

Having entered the Court's Memorandum Opinion and Findings of Fact and Conclusions
of Law,

IT IS THEREFORE ORDERED that:

1. The State of New Mexico's Motion to Vacate Hearing and to Stay Proceedings Pending Appeals (Doc. No. 428) is denied.
2. Plaintiffs' Motion for Emergency Injunctive Relief (Doc. No. 414) is granted, in part.
3. The September 12, 2002 Biological Opinion is reversed.
4. The State of New Mexico's oral motion to stay the provisions of this Order pending appeal is denied.

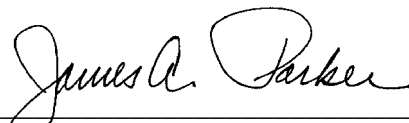
5. Even though this Order does not adjudicate all the claims in this case, the Court determines, in accordance with Fed. R. Civ. P. 54(b), that there is no just reason for delay and directs the Clerk to enter partial final judgment for Plaintiffs and against the Federal Defendants on Plaintiffs' Eighth Claim for Relief in the Third Amended Complaint in order to assure the finality of this ruling so that those parties entitled to appeal this ruling may do so.

IT IS FURTHER ORDERED that:

6. The Bureau of Reclamation is immediately relieved from further compliance with the flow requirements of the June 29, 2001 Biological Opinion for the remainder of 2002.
7. The Bureau of Reclamation must provide sufficient flows of water for the remainder of 2002 to maintain a flow of 50 cfs at San Acacia Diversion Dam, and to maintain a flow in the Albuquerque Reach from Angostura Diversion Dam to Isleta Diversion Dam, but it is not required to pass flows through the Isleta Reach.
8. If necessary to meet these flow requirements for the remainder of 2002, the Bureau of Reclamation must release water from Heron Reservoir in 2002.
9. The Federal Government must compensate those, if any, whose contractual rights to water are reduced in order to meet the aforementioned flow requirements.
10. The Bureau of Reclamation and Fish and Wildlife Service must keep in place all other (non-flow) elements of the Reasonable and Prudent Alternative stated in the Fish and Wildlife Service June 29, 2001 Biological Opinion.
11. In order to help protect the survival and recovery of the silvery minnow, the Bureau

of Reclamation and the Fish and Wildlife Service must, to the extent reasonably possible, comply with the actions that are identified in the June 29, 2001 Biological Opinion and in the September 12, 2002 Biological Opinion under the headings of “Reasonable and Prudent Measures” and “Conservation Recommendations.”

12. The Bureau of Reclamation and Fish and Wildlife Service must reinstitute consultation immediately to plan for the various contingencies that may arise during the rest of 2002 and during 2003 based on the different amounts of water that may be available in the Rio Grande basin.
13. Beginning January 1, 2003, the Bureau of Reclamation must comply with the flow requirements of the June 29, 2001 Biological Opinion until a new Biological Opinion is issued that contains a Reasonable and Prudent Alternative that avoids jeopardy, if possible.
14. If necessary to meet flow requirements in 2003, either under the June 29, 2001 Biological Opinion or under a new Biological Opinion resulting from reinstitution of consultation, the Bureau of Reclamation must reduce contract deliveries under the San Juan-Chama Project and/or the Middle Rio Grande Project, and/or must restrict diversions by Middle Rio Grande Conservancy District under the Middle Rio Grande Project, consistent with the Bureau of Reclamation’s legal authority as determined in the Court’s April 19, 2002 Memorandum Opinion and Order.



CHIEF UNITED STATES DISTRICT JUDGE