

CONCHAS LAKE
SHORELINE MANAGEMENT PLAN
U. S. ARMY ENGINEER DISTRICT
ALBUQUERQUE
CORPS OF ENGINEERS
ALBUQUERQUE, NEW MEXICO 87103

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**SHORELINE MANAGEMENT PLAN
CONCHAS LAKE
CANADIAN RIVER, NEW MEXICO**

I. INTRODUCTION

- 1-01. **Purpose.** The purpose of this plan is to provide policy and guidance on management of the Conchas Lake shoreline. It provides for maximum public use of the federally-owned project and for protection of the project's environmental characteristics. This plan establishes a framework for the accomplishment of this purpose, by allocating the shoreline into categories and then clearly defining the permitted use of those shoreline allocations.
- 1-02. **Authority.** This plan is established under the authority of 36 CFR 327.30 and Engineer Regulation (ER) 1130-2-406.
- 1-03. **Scope.** The criteria, conditions, procedures and regulations contained herein apply to all users of water areas administered by the Corps of Engineers and to users of lands owned in fee by the Federal Government at Conchas Lake.
- 1-04. **Applicability.** This plan and all regulations referenced herein will be applied by all elements of the Corps of Engineers with Civil Works responsibilities at Conchas Lake
- 1-05. **References.**
- a. Title 16 U.S.C., Section 460d (Section 4, Flood Control Act of 1944, as amended).
 - b. Title 31 U.S.C., Section 483a (Fees).
 - c. Title 42 U.S. C., Section 4321 Et Seq. (National Environmental Policy Act of 1969); PF 91-190.
 - d. Title 33 U.S.C., Section 1251 et seq. (Clean Air Act); PL 95-217.
 - e. Title 36, Chapter III, Part 327, Code of Federal Regulations (Regulatory Program of the Corps of Engineers).
 - f. Title 33, Chapter II, Part 320 through Part 329, Code of Federal Regulations (Regulatory Program of the Corps of Engineers).
 - g. Title 33, Chapter II, Part 305, Code of Federal Regulations (Identification and Administration of Cultural Resources).

- h. ER 1130-2-400, Recreation-Resource Management of Civil Works Water Resource Projects.
 - i. ER 1130-2-406, Shoreline Management at Civil Works Projects.
 - j. New Mexico State Boating Act (Chapter 66, Article 12)
- 1-06. **Definitions**. Definitions of terms applicable to this plan are:
- a. **Boat Dock** – A floating or fixed pier, moored to land and used for the landing and storage of vessels or as a swimming or fishing platform.
 - b. **Deck** – The platform of a floating facility forming the floor for any superstructure or compartments (not a walkway).
 - c. **Floating Cabin** – A floating permanent structure utilized for intermittent or extended human occupancy at a fixed mooring point. Floating cabins are usually not self-powered, and in many cases, have evolved from boathouses and do not possess the usual performance characteristics of a boat.
 - d. **Floating Facility** – A watercraft, barge, dock or mooring buoy to which a boat can be tied, or any vessel used as a pleasure craft. This includes, but is not limited to, the above definitions.
 - e. **Houseboat** – A self-powered vessel capable of supporting overnight occupancy. Houseboats have performance capabilities usually associated with boats and are not used for long term occupancy at a fixed mooring point.
 - f. **Limited Development Area** – Those areas in which private facilities and /or activities may be allowed consistent with the requirements and conditions identified in this plan.
 - g. **Marina** – A commercial facility providing secure moorage or dockage, supplies and services for pleasure craft.
 - h. **Private Exclusive Use** – Use of public lands or waters which excludes ready access and use by the general public. Also, the use or occupancy of individually owned permanent structures for human habitation located on public land and water areas at Corps Civil Works projects.
 - i. **Prohibited Access Area** – Those areas in which public access is not allowed or is restricted for health, safety or security reasons. These include hazardous areas near the dam, spillway, irrigation intake

structure, work areas, and water intake structures. No shoreline use permits will be issued in Prohibited Access Areas.

- j. **Project or Water Resource Development Project** – Refers to the water areas of any water resource development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and all facilities therein or thereon of any such water resource development project.
 - k. **Protected Shoreline Area** – Those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to prevent development in areas that are subject to excessive siltation, erosion, rapid dewatering, or exposure to high wind, wave, or current action and/or areas in which development would interfere with navigation. No Shoreline Use Permits for floating or fixed recreation facilities will be allowed in protected areas, with the exception of those private exclusive use facilities that have been grandfathered by previous legislation.
 - l. **Public Recreation Area** – Those areas designated for commercial concessionaire facilities, Federal, State, or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or public recreation areas.
 - m. **Operations Manager** – The Corps of Engineers employee responsible for all operation, maintenance, recreation, resources and administrative functions at a Corps project. The person holding this position is a legal representative of the District Engineer.
 - n. **Shoreline** – That line where the surface of the lake and the land meet. At Conchas Lake, lands adjacent to the lake waters are either Federally owned or privately owned. All waters are under Federal jurisdiction.
 - o. **Walkway** – A passage for walking that provides access to a marina, slip, dock or other floating facility.
- 1-07. **History:** Conchas Lake was originally authorized for flood control, irrigation, and water supply under The Relief Act of 1935 as part of the Works Relief Program. Thereafter, the project was authorized by Congress and fully funded as a flood control project by the Flood Control Act of 1936 as amended by The Flood Control Act of 1938. Impoundment of water began in December 1938.

Prior to 1970, private floating facilities moored to lands other than Federally fee-owned were virtually uncontrolled by any governmental body as to numbers of

facilities and effluent discharges. The State of New Mexico had inspected and issued safety inspection decals annually for houseboats and floating cabins moored to private and Federally owned lands. Beginning in 1970, Shoreline Use Permits were issued by the Corps to the owners of existing private floating facilities. Since 1974, under the guidance of 30 CFR 327.30 and ER 1130-2-406, the Corps has issued no permits for new private exclusive use floating facilities on Conchas Lake.

In 1986, all private exclusive use structures on Conchas Lake were issued Shoreline Use Permits to comply with the provisions of Title 36, Chapter III, Part 327, of the Code of Federal Regulations. These facilities were inspected on an annual basis by Corps Rangers. **No additional floating cabins have been authorized on the lake by a Shoreline Use permit.** Although some private boat docks have been placed on the lake since that time, action to remove those structures was held in abeyance, pending updating of the Shoreline Management Plan in accordance with ER 1130-2-406.

The Water Resource Development Act of 1986 (P.L. 99-662), required revision of the Corps policy with regard to the private use of shorelines on Corps projects, and precipitated the revision of Engineering Regulation 1130-2-406, Shoreline Management at Civil Works Projects. This regulation permits the placement of shoreline uses that do not interfere with authorized project purposes, public safety, violate local norms, or result in significant environmental affects unless the public participation process identifies problems in these areas.

2. OBJECTIVES

- 2-01. **General:** It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works Water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public, while maintaining environmental safeguards to ensure a quality resource for use by the public. The objective of this plan is to achieve a balance between permitted private uses and resource protection for the general public. Historically, there has been no development on most of the shoreline. This is one of the factors that gives Conchas Lake its unique character and highlights the mesa country of Eastern New Mexico. However, the Corps of Engineers recognizes that private exclusive use has evolved in a limited area on Conchas Lake in the Hooverville and Big Mesa areas. This plan provides for the continued development of private facilities in these areas which have already been impacted by previously permitted facilities. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.
- 2-02. **Private Exclusive Use:** Private exclusive use privileges have been allowed in the past for floating facilities and other shoreline uses. Because of the intense recreational use of Conchas Lake, the need to protect water quality and

environmental values, coupled with the mandate of Title 36, Chapter III, Part 327, Code of Federal Regulations; private exclusive use privileges on the lake will be managed by the Corps of Engineers. This management will include:

- (a) the issuance of Shoreline Use Permits to owners of all private floating facilities, consistent with the shoreline allocations made under the authority of this plan.
- (b) the implementation of the Guidelines for Granting Shoreline Use Permits as set forth in Appendix A,
- (c) the enforcement of Shoreline Use Permit Conditions as set forth in Appendix B
- (d) the administration of other management programs described in this plan.

2-03. **Commercial Concessions:** Concessionaires will be encouraged to increase their storage capacity based on public demand and available space. Watercraft owners will be encouraged to moor or dock their vessels at commercial marinas, utilize dry storage facilities on or off project lands, or trailer their boats to and from public launching ramps.

3. DESCRIPTION OF SHORELINE

3-01. **General:** The Conchas Lake basin consists of the Upper Canadian River and the Conchas River which form a “V” with the reservoir embankment and outlet works at the apex. The northern (Canadian) arm of the “V” has primarily vertical canyon walls with all remaining terrain also fairly steep. The southern (Conchas) arm generally slopes gently to the shore with some low rocky cliffs.

3-02. **Shoreline:** The length of the shoreline varies with the elevation of the pool. Some approximate figures are given in Table 1.

TABLE 1

<u>Elev. (msl)</u>	<u>Approx. Shoreline Miles</u>
4220	313
4201	88
4185	52
4165	32
4155	25

The potential for variation in pool elevation is from 4155 to 4220 msl. The Corps considers 4185 msl as the normal recreation pool, as established by Design Memorandum

No. 2, Master Plan for Public Use and Recreational Development and dated September 1976. However, over the period of 1975 to 1979, the pool elevation has averaged 4165 msl or less due to lack of water from the watershed and requirements to provide irrigation water to the Arch Hurley Conservancy District. During recent years (1985 – present), lake levels have been unusually high with the pool elevation exceeding 4201 (spillway crest elevation) several times. Shoreline vegetation is very sparse – the dominant species are mesquite and **Juniperus spp.** in areas not frequently flooded. Areas that are periodically inundated are mud flats that support salt cedar (**Tamarisk spp.**), annual forbes and grasses. Other vegetation native to the area include such grasses as grammas, sacaton, galleta, Indian rice grass, western wheatgrass, rabbit brush, four-wing saltbush, and skunk sumac. Wetland habitats exist along shallow coves. Hydrophytic vegetation such as cattails, bulrushes, and sedges characterize the vegetation in these areas.

Prevailing winds are out of the southwest. The impact of shorelines exposed to the southwest can be substantial in terms of soil erosion due to wave action.

- 3-03. **Present Use:** Of the approximately 52 shoreline miles at elevation 4185 msl, the Corps of Engineers owns in fee approximately 14% of the shoreline. The remaining shoreline is owned by four large ranches, other individuals, and subdivisions. All lake waters adjoining these privately owned lands are managed by the Corps of Engineers (reference 36 CFR 327.1 (c)).
- a. **Corps of Engineers:** Corps fee-owned shoreline is located on the eastern portion of the lake (see Plate 2). The shoreline for this area has been allocated as 1) Public Recreation, 2) Prohibited Access and, 3) Protected Shoreline.
 - b. **Ranches:** Over 95% of the Canadian arm shoreline is under the direct control of three ranches: Bell Ranch, Clabberhill Ranch and 4V Ranch. The Conchas arm shoreline for the most part is owned by 4V Ranch and T4 Ranch. Lands to elevation 4220 msl are subject to flowage easement rights owned by the Corps.
 - c. **Others:** Between T4 and Government property on the south Conchas shoreline are the communities of Hooverville and Big Mesa, with shoreline owned by individuals and subdivision developers. Lands to elevation 4220 msl are subject to flowage easement rights owned by the Corps. A legal writ has been filed in the San Miguel County Courthouse to that effect.

3-04. Existing Private Development

- a. **Floating Facilities:** At present there are two main types of private exclusive use floating facilities on the lake; floating cabins, boat docks.
- b. **Commercial Concessions:** At present there is one commercial concession on the lake with the capacity for floating boat storage and dry storage. The North Dock Marina concession provides marina services such as storage, fuel, sales

and repair. Dry storage provides the service of placing the boat on the reservoir and removing it as the customer desires.

- c. **Subdivisions:** There are 2 active subdivisions adjoining Corps property, Hooverville, and Big Mesa. In general, property owners adjoining the lake have no special rights or privileges on or to waters of the lake beyond those of any visitors. However, property owners having lots adjoining the lake along those shorelines allocated as “limited development” are able to apply for Shoreline Use Permits under the provisions of this plan. Facilities granted under this permit will not be leased, rented, sublet or provided to others by any means of engaging in commercial activity (s) by the permittee or his/her agent for monetary gain. Additionally, all property owners having lots adjoining the lake have the free right to ingress and egress from the lake. Public access over these lots to the lake is subject to the approval of the individual lot owners as would be crossing any other private property. **Any member of the public in crossing privately owned property to access the lake without the permission of the landowner is trespassing.**

- 3-05. **Existing Access:** Existing access roads to designated park areas are fair to good. Access to private lands is restricted by the landowners.

- 3-06. **Native American Lands:** There are no Native American lands within the boundaries of or adjacent to the Conchas Lake Project.

- 3-07. **Joint Management:** No other Federal agencies have management over administration of the shoreline covered by this plan. However, within the boundaries of Conchas Lake State Park, management is shared between the Corps and the New Mexico State Park and Recreation Division. This plan has been cooperatively prepared with the Corps as coordinator.

4. SHORELINE DESIGNATION

- 4-01. **General:** Conchas Lake Shoreline is designated into specific categories as shown by the attached Shoreline Management Plan Map (Plate 1). Much of the shoreline of Conchas Lake has been allocated as “protected” under this plan. The Corps of Engineers, while recognizing local demand for development, must discharge its responsibility to manage shoreline development for the general public. There is no development on much of the shoreline which is certainly one of the factors which makes Conchas Lake unique. Factors taken into consideration during the shoreline classification were as follows:
 - a. Site, size, and location
 - b. Land profile
 - c. Exposure to wind and current
 - d. Accessibility to the public
 - e. Water depth

- f. Site environment
- g. Aesthetics
- h. Ownership of underlying property
- i. Shoreline ownership
- j. Siltation
- k. Erosion
- l. Rapid dewatering
- m. Exposure to wind and waves
- n. Historic use

Areas along the shoreline are presently being used according to the designations set forth in Section 4-02 below.

4-02. **Allocations:** The following Shoreline Allocations are made in accordance with ER 1130-2-406 (See Plates 1 and 2):

- a. **Public Recreation Areas:** Areas which have been designated as Public Recreation Areas include the shorelines of the North Recreation Area (which include the North Dock, Bell Point and other campgrounds); the Central Recreation Area, are operated by the New Mexico State Park and Recreation Division), the South Recreation Area (which includes, campground areas, the old Cannon Recreation Area), and Cannon Point, a privately owned site which has historically been used as a public recreation area.
- b. **Protected Shoreline Areas:** Under this plan, a significant portion of the shoreline has been allocated as “protected”, which is consistent with the historic use of the shorelines and also in recognition of the limited real estate interest the Corps retains in these areas. The shoreline of Boot Canyon is designated as protected under this plan. In accordance with Public Law 99-662, the floating cabins located along the shoreline and the few located to the north of Boot Canyon, will be grandfathered in and issued a Shoreline Use Permit. They may continue to occupy their present location pending any agreement or legal arrangements between the Houseboat Owners Association and the 4V Ranch, and continued compliance with the conditions in Public Law 99-662 (see Para. 5-09b). However, the Shoreline Use Permit does not imply any rights to anchor to adjacent or underlying privately owned land.
- c. **Prohibited Access Areas:** The irrigation headworks, main dam and emergency spillway have been identified and allocated as “prohibited” access areas under this plan.
- d. **Limited Development Areas:** The shoreline allocated as “limited development” is located along the subdivisions of Hooverville and Big Mesa (see Plate 2). Shoreline Use Permits for private boat docks will be issued in this area pending adherence to the guidelines and conditions specified in this plan.

- 1) **Density of Development** – The density of private floating recreation facilities (boat docks), for all portions of “limited development areas” will be consistent with ecological and aesthetic characteristics and prior written commitments. The density of facilities will not be more than 50 percent of the limited development area in which they are located. Density will be measured by determining the linear feet of shoreline at elevation 4185 as compared to the width of facilities, plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. As an example, assume the linear distance of the shoreline of a cove is 1,000 feet. If the width of the private exclusive facilities to include moorage arrangements located within that cove were 500 feet, no more private exclusive use facilities would be permitted because maximum density has been achieved. When a limited development area or portion of a limited development area reaches maximum density, notice will be given to the public and facility owners in that area that no additional facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft by assuring that a minimum clearance of 30 ft., be maintained between private floating recreational facilities. A maximum of one dock or mooring buoy will be permitted per lot that is platted and on file with San Miguel County as of the effective date of this plan, and is located within shoreline allocated as “Limited Development” under this plan.

- 2) **Distance from Shore** – Docks shall not extend out from the shore more than one-third of the width of a cove at any time. Walkways will be evaluated on a case by case basis to determine that the facility does not pose a navigation hazard to recreational boaters. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft by assuring that a minimum clearance of 30 ft., be maintained between private floating recreational facilities.

5. PERMITS AND INSPECTIONS

- 5-01. **Shoreline Use Permits:** Shoreline Use Permits are issued from the Corps’ Project Office at Conchas Lake and enforced in accordance with the provisions of 36 CFR Part 327.19. They are required for private structures/activities of any kind (except boats).
 - a. Shoreline Use Permits will be issued for a term of five years to reduce administration costs. **One year** permits will only be issued when the location or nature of the activity requires annual reissuance, such as a water-skiing course.

- b. Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse. Additionally, **discharges of dredged or fill material (including discharges associated with excavation activities) below the ordinary high water mark of Conchas Reservoir (4201.0 msl) require authorization under Section 404 of the Clean Water Act. The public should contact the Operations Manager (phone: (505) 868 – 2221 before performing any land modification work below the ordinary high water mark. The Albuquerque District Regulatory Branch has final approval over whether a permit is or is not required for any specific activity.**
 - c. Shoreline Use Permits are non-transferable, they become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.
 - d. Should a permit have to be cancelled for a violation of the permit conditions, the permittee is prohibited from seeking the issuance of another permit for a period of three years at which time a permit application will receive consideration upon approval of the Operations Manager.
 - e. The issuance of a Shoreline Use Permit does not convey any property rights either in real estate or material, nor shall it be construed in any manner as authorizing the trespass on private property.
- 5-02. **Real Estate Instruments:** Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the Albuquerque Real Estate Division after coordination with the Conchas lake Operations Manager, who will forward written requests to the District Office for execution. Shoreline Use Permits are not required for facilities or activities covered by a real estate instrument. Restrictions on activities imposed by flowage easement remain in effect.
- 5-03. **Real Estate Instruments:** Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the Albuquerque Real Estate Division after coordination with the Conchas Lake Operations Manager, who will forward written requests to the District Office for execution. Shoreline Use Permits are not required for facilities or activities covered by a real estate instrument. Restrictions on activities imposed by flowage easement remain in effect.
- 5-04. **Conditions of Shoreline Use Permit:** Conditions of permit for shoreline uses are listed in Appendix B to this plan. Any individual or group wishing to change the

landscape, build upon, or place upon Government fee lands or administered waters any facility must first obtain written permission from the Operations Manager, in the form of a Shoreline Use Permit. These conditions must be met by all permittees.

- a. **Applications for Shoreline Use Permits:** Applications for private Shoreline Use Permits will be reviewed with full consideration of the policies set forth in ER 1130-2-406, other referenced regulations, and this Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be submitted with the application to the Operations Manager, prior to the permit being issued. If the permit application is denied, all fees shall be returned to the applicant. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type and size all certified by a licensed engineer; location and ownership of the facility and affected shoreline; expected duration of use; and an indication of willingness to abide by the applicable regulations, and terms and conditions of the permit. **Before a permit will be issued for a private exclusive use facility not under a current permit, the permittee must furnish verification of a real estate interest such as an easement authorizing placement of the facility, or a deed indicating clear ownership at the time the application is submitted to the Operations Manager.** Permit applications also shall identify and locate any land-based support facilities and any specific safety considerations. Once a permit is issued the applicant will have **ninety days (90)** to complete construction of the facility.
- b. **Floating structures:** A responsible party, owner or caretaker must be available to care for the structure and provide entrance to the structure and/or information to the Corps in case of emergency. All private exclusive-use recreation facilities will be placed so as not to interfere with navigation. A maximum of one dock or mooring buoy will be permitted per lot that is platted and on file with San Miguel County as of the effective date of this plan and is located within shoreline allocated as “Limited Development” under this plan. In addition, the number of dock will be limited in accordance with the density of development provisions in paragraph 4-02.d. (1).

5-05. **Permit Expiration:** All Shoreline Use Permits will expire the last day of the month listed for expiration. Should the permittee wish to apply for renewal of the permit, he or she must write or call the project office and arrange for a joint inspection of the facility during the **forty-five (45) day** period prior to permit expiration. Inspections will be made Monday through Friday between the hours of 8 a.m. and 4 p.m. Arrangements for other times may be made by mutual

consent of the Operations Manager and permittee. Failure of the permittee to contact the project office and arrange for the joint inspection during this forty-five (45) day period will result in the permit expiring of its own terms. If the permit expires because of no action in the **45-day period**, the permit will not be renewed and the facility must then be removed from the lake within **thirty (30) days**.

- 5-06. **Fees:** Permits will be issued for a period of **5 years** to minimize administrative costs. Permit and annual inspection fees will be paid when the permit is issued (see Appendix C for fee schedule). Fees for Shoreline Use permits have been established by a separate regulation and are nonrefundable. The prepaid inspection fees will not be transferable upon sale of the dock and issuance of a new permit. In the event of permit termination, the fee charged for future inspections will not be refunded is not refundable.
- 5-07. **Inspections:** Inspections will be conducted annually, or more frequently as necessary because of storms or flooding. The date of the inspection will be set by the Operations Manager in conjunction with the permit holder. Repeated difficulties in scheduling an inspection will result in cancellation of the permit. Failure to comply with the standards given in Section 7 of this plan within **thirty (30) days** after receipt of written notice of inspection findings will result in the revocation of the permit and the owner will be given an additional **thirty (30) days** to remove the facility. An extension of time for complying with inspection findings may be granted in writing by the Operations Manager in the event of inclement weather conditions or for repairs that are impossible to complete within a **thirty (30) day** period.
- 5-08. **Transfer of Permits:** Shoreline Use Permits are non-transferable. They become null and void upon the sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.
- 5-09. **Existing Facilities Now Under Permit:** Implementation of this Shoreline Management Plan shall consider existing permitted facilities and prior written Corps commitments implicit in their issuance. Facilities or activities permitted under special provisions should be identified in a way that will set them apart from other facilities or activities. (The Conchas Lake Project Office will issue silver-colored permits to be posted on the facility.)
- a. Section 6 of Public Law 97-140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on December 29, 1989, if such property is maintained in usable condition, and does not occasion a threat to life or property.

- b. In accordance with Section 1134 (d) of Public Law 99-662, any houseboat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of November 17, 1986, cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after December 31, 1989, if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project:
 - (1) Such property is maintained in a usable and safe condition;
 - (2) Such property does not occasion a threat to life or property;
 - (3) And, the holder of the permit is in substantial compliance with the existing permit.
- c. All such floating facilities and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. New permits for these permitted facilities will be issued to new owners. If the holder of the permit fails to comply with the terms of the permit, it may be revoked and the holder required to remove the structure, in accordance with the terms of the permit as to notice, time, and appeal.
- d. There are a number of private floating facilities on Conchas Lake which were legally installed, but which are now located on shoreline designated as protected under this plan. These facilities will continue to be permitted in their present location (The issuance of a Shoreline Use Permit does not convey any property rights either in real estate or material, nor shall it be construed in any manner as authorizing the trespass on private property) in accordance with the above-mentioned laws, with the exception of the two floating cabins located along the shoreline allocated for Public Recreation. These two facilities will be required to relocate to a commercial marina.

6. IMPLEMENTATION OF THE PLAN

- 6-01. **Existing Facilities Now Under Permit:** All lawfully installed private floating facilities under a Shoreline Use Permit as of the date of this plan, will continue to be authorized. The retention of these facilities is authorized by the Water Resources Development Act of 1986 and can only be removed if the conditions of the permit are substantially violated or the area is needed for a higher public purpose. These facilities include 20 private boat docks, 16 mooring buoys and 19 floating cabins. Of the 19 floating cabins on Conchas Lake, 15 are located in Boot Canyon, 4 are presently located at Bell Point.
- 6-02. **Location of Private Floating Facilities:** The shoreline of Conchas Lake has been zoned as is required by ER 1130-2-406 (See Plates 1 and 2). To that extent, private-floating facilities may only be permitted along the shoreline, which is

designated as limited development areas, with the exception of those structures grandfathered under the previously mentioned public laws. The floating cabins located in Boot Canyon are within a section of shoreline designated as a protected area. The location of these private floating facilities will not be changed under this plan. However, it should be clearly understood that **the issuance of a Shoreline Use Permit does not convey any property rights either in real estate or material, and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility.** The use of Boot Canyon and an area to the north for floating cabins does not and shall not be construed as granting any real estate interest to any party.

- a. **Marinas:** Marinas will not be required to obtain a Corps of Engineers' Shoreline Use Permit in that their placement upon the lake is covered by a real estate instrument. Concessionaire floating facilities may be permitted in the current marina areas near the North and South Recreation Area when such facilities are incidental to the marina services provided.
- b. **Commercial Facilities:** One existing floating facility used in the operation and maintenance of a commercial potable water system by Big Mesa Water Co-op is located in the cove at the east end of Hooverville.
- c. **Stairs and Trolleys:** Stairs and trolleys located below elevation 4201 require a Shoreline Use Permit. This includes stairs which are not now under an active permit.
 - (1) Minimum criteria for permitting trolleys and stairs is that their design, materials used and construction be approved by a registered engineer.
 - (2) Private stairway construction will not be permitted on Corps fee lands.
 - (3) Moveable access to floating facilities such as gangways, short ladders, etc., designed to allow for access to the facility at various lake stages will not be considered as stairways and will be considered a part of the floating facility.
 - (4) All fixed structures will be considered as separate structures and require separate approval.

d. General: None of the statements in this section imply consent to trespass upon privately owned shoreline property.

6-03. Policy and Standards

a. **Policy:** Specific policies relating to Shoreline Management are stated below:

(1) Commercial Concessions: Operations and activities of any commercial concession shall be in accordance with the real estate instrument permitting the operation of the facility. These terms will meet or exceed the safety standards required for private floating facilities. Project and District officials are responsible for inspection of the facilities for compliance with the instrument.

(2) Private Facilities: Permits for new individually owned private floating facilities will be issued on Conchas Lake consistent with the shoreline allocations established by this plan. Permits for other shoreline uses will be issued to individuals if consistent with Section 6 of this plan and shoreline allocation.

b. **Minimum Design Standards:** Section 7 of this plan, “Standards for Floating Facilities,” contains the requirements which all structures (floating cabins, boat docks and/or mooring buoys) must meet within six months after this plan goes into effective in order to be considered authorized and placed under a Shoreline Use Permit. Structures to be constructed, such as marinas, must also meet these requirements. Flotation for existing structures may continue to be used until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it should be replaced with approved floatation.

7. STANDARDS FOR FLOATING FACILITIES

General: All floating facilities on Conchas Lake must comply with the standards contained in this document within six months after implementation of this plan or the Shoreline Use Permit will be revoked. Appendices A and B of this document contain the guidelines and conditions of a Shoreline Use Permit.

8. OTHER LAND AND WATER USES

8-01. Sanitation Provisions

a. **Adjoining Lands:** Lands adjoining U.S. Government lands are subject to laws of the State of New Mexico regarding sanitation. Garbage is removed by private property owners. Inspections of the Government boundary will be made by project personnel to insure that raw sewage is not allowed to flow onto Government land or into the lake waters. New Mexico Environment

Department regulatory requirements with regard to septic tank and leech line setback from the ordinary high water mark shall be adhered to.

- b. **Marine Sanitary Facilities:** New Mexico State Parks personnel or commercial marinas will handle marine sanitary facilities. Permanently moored floating cabins are to have holding tanks with easily accessible pump-out ports for sewage. Sewage shall be pumped out and disposed of into septic tanks or other authorized treatment facilities. In order to comply with the New Mexico Boating Act, sanitation devices must be self-contained and incapable of discharging into the waters of New Mexico.

- 8-02. **Hunting:** Hunting on Federal fee lands at Conchas Lake is not permitted. Hunting of waterfowl upon the waters of the reservoir are subject to the general hunting regulations established by the Federal Government and State of New Mexico, and are enforced by the Department of Game and Fish under State law. Duck blinds may be placed on the waters of the reservoir consistent with state and federal laws, but do require a Special Use Permit issued by the Operations Manager. Duck blinds placed on any landform will also require the written permission of the landowner before a special use permit will be issued. Hunting is beyond the scope of this Shoreline Management Plan; however, during public meetings used to develop this plan, concern was expressed over hunting. The Corps remains sensitive to hunting issues at Conchas Lake and will work with the above mentioned agencies at the project level to resolve areas of concern.

- 8-03. **Other:** Special Use Permits will be granted for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating or fixed recreation facilities, where such facilities will not create a safety hazard or inhibit the public use or enjoyment of the project waters or shoreline. The facilities will be maintained in a state of good repair. These special permits will be issued under authority of Section 327.21, Chapter III, Title 36, Code of Federal Regulations. Upon approval, special use permits will be issued from the Project Office and shall remain in effect for a period of not more than one year. The facilities which were authorized by special use permit shall be removed prior to the expiration date.

- 8-04. **No Wake Areas:** During the public meetings conducted for the development of this plan, numerous comments were received requesting designation of “No Wake” areas. The designation of such areas is beyond scope of this plan. The Conchas Lake Operations Manager, in conjunction with the Conchas Lake State Park Superintendent, will designate areas as “No Wake”, in accordance with the need for such designations and the capability to enforce such designations.

9. REVIEW

The Shoreline Management Plan will be reviewed periodically, but not less often than every five years, by the District Engineer to determine the need for update. If sufficient controversy or demand exists, consideration should be given, consistent with other

factors, to a process of re-evaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered. The District Engineer may make minor revisions to the Shoreline Management Plan when the revisions are consistent with policy and funds for a complete plan update are not available. The amount and type of public involvement needed for such revision is at the discretion of the District Engineer.

APPENDIX A

SHORELINE USE PERMIT GUIDELINES

1. General:

a. Decisions regarding permits for private shoreline uses will consider the objectives of the Shoreline Management Plan for the project and the physical characteristics of the project. The requested use must not result in any significant environmental damage to the shoreline. The requested facilities or related shoreline uses must not create a safety hazard or inhibit public use and enjoyment of project waters or shoreline. The effects of added private mooring facilities on the commercial marina concessions providing similar services will also be considered.

b. Shoreline use permits will be issued only to applicants with adjacent land ownership to the lake. Before a shoreline permit is issued for any structure that has not been grandfathered, proof of real estate interest must be attached to the permit application. The shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder merely because he/she is an adjacent property owner. The public's right of access and use of the water area must be maintained and preserved.

c. The permitted use must not preclude the public right of pedestrian or vessel access to the water surface or public land involved. Permittees may take reasonable precautions to protect their property from theft, vandalism, and trespass.

2. Processing Shoreline Use Permits:

a. Applications for shoreline use permits may be obtained from the Operations Manager at the Conchas Lake Project Office. Completed applications will be returned to the Operations Manager, who will have the responsibility to review, approve, and issue the permit.

b. Two copies of the plans and specifications for the proposed facility and a site plan identifying any land based support facilities will be submitted to the Operations Manager for review. The plans must be accompanied by a written certification from a licensed engineer stating that the facility is structurally safe for its intended use. The shoreline use permit must be issued prior to beginning construction.

c. The following guidelines will also be considered when reviewing and approving shoreline use permits:

- (1) The request will comply with all applicable conditions of the shoreline use permit as outlined in Appendix B. Additional permit conditions may be added upon approval by the Chief, Operations Division.

- (2) Floating facilities will not exceed the minimum size to moor the owner's boat(s) plus the minimum size enclosed storage locker for items essential to watercraft operation. The deck of the boat dock is limited to 200 sq. ft., excluding the walkway. No sides or roofs will be permitted. Walkways shall be 3 feet in width at a minimum, but not to exceed 4 ft. in width.
 - (3) Decks may be used for swimming and fishing. Diving boards or water slides will not be approved for use on private floating facilities. Adequate water depth for dock moorage does not assure adequate water depth for safe diving. Ladders may be provided on docks to facilitate loading and unloading boats.
 - (4) Current boat registrations will be required with the permit application to support boat ownership and the need for mooring space. This requirement is necessary to preclude commercial activity on the floating facility.
 - (5) Installation of electrical power is prohibited.
 - (6) Before a permit will be issued for a private exclusive use facility not under current permit, verification of a real estate interest, such as an easement authorizing placement of the facility or deed must accompany the application.
 - (7) Floating facilities will not be used for human habitation. Overnight occupation of floating cabins is authorized for periods incidental to recreational use but shall not exceed **14 days** during any **30 - consecutive-day period**. Requests for extensions may be made to the Operations Manager.
 - (8) All Boat Docks are required to be removed from the water when the water level is 4175 feet above sea level or below.
- c. The original copy of the approved Shoreline Use Permit, will be returned to the permittee. Computer generated forms may be used in conjunction with automated Shoreline Management Programs. Copies of approved permits will be retained by the Operations Manager.
3. **Posting of Permit Numbers:** A silver permit tag, approximately 2 ½ x 10 inches in size, bearing the permit number and expiration date will be furnished with each permit issued. These tags will be posted on the floating facility and/or the land area covered by the permit in accordance with instructions provided by the Operations Manager and in such a manner as to be readily visible from the lake. Facilities and/or

activities permitted under special conditions, such as grandfathering, will be identified by using green permit tags to make them readily identifiable.

4. **Permit Revocation:** Authority to revoke Shoreline Use Permits rests with the District Engineer. Permits may be revoked when the action is in the public interest or when the permittee fails to comply with the terms and conditions of the permit, the Shoreline Management Plan, or ER 1130-2-406. Conditions must be carefully and completely documented with copies of certified correspondence to the permittee, dated photographs and detailed inspection reports when recommending permit revocation to the District Engineer.
5. **Removal of the Facilities:** It is the responsibility of the permittee to remove facilities upon termination of the Shoreline Use Permit. If the permittee fails to do so, the District Engineer may, under authority of permit condition 10, remove the facility by contract or otherwise, and require reimbursement of the cost incurred from the permittee. The provisions of Section 6 of Public Law 97-140 and Section 1134(d) of Public Law 99-662 must be given careful consideration before requiring removal of facilities under permit as of November 17, 1986 or December 29, 1981. Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to 36 CFR 327.20.

APPENDIX B
SHORELINE USE PERMIT CONDITIONS

1. This permit is granted solely to the applicant for the purposes described on the attached permit.
2. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.
3. If the ownership of a permitted facility is sold or transferred, the permittee or new owner will notify the Operations Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within **30 days** from the date of ownership transfer.
4. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits-at-law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities and/or activities.
5. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation, flood control, or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.
6. No attempt shall be made by the permittee to forbid the full and free use by the public of all public waters and/or Government fee-owned lands at or adjacent to the permitted facility or to unreasonably interfere with any authorized project purposes, including navigation in connection with the ownership, construction, operation or maintenance of a permitted facility and/or activity.
7. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility and/or activity or if in the opinion of the District Engineer a permitted facility and/or activity shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the District Engineer, to remove, alter, or relocate the permitted facility without expense to the government.
8. Ownership, construction, operation, use and maintenance of a permitted facility and/or activity are subject to all applicable Federal, state, and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

9. This permit does not convey any property rights either in real estate or material, and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state, or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility and/or activity.
10. The permittee shall remove a formerly permitted facility within **30 days**, at his/her expense, and restore the waterway to a condition accepted by the Operations Manager upon termination or revocation of this permit or if the permittee ceases to use, operate or maintain a permitted facility and/or activity. If the permittee fails to comply to the satisfaction of the Operations Manager, the District Engineer may remove the facility by contract or otherwise, and the permittee agrees to pay all costs incurred thereof.
11. Facilities granted under this permit will not be leased, rented sublet or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility. Upon sale of the permitted facility, the Shoreline Use Permit is null and void in accordance with paragraph 5.08. of this plan.
12. Permitted facilities and activities are subject to periodic inspection by authorized Corps representatives. The Operations Manager will notify the permittee of any deficiencies and together establish a schedule for their correction within thirty (30) days. No deviation or changes from approved plans will be allowed without prior written approval of the Operations Manager.
13. The Operations Manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary to inspect facilities and/or activities under permit.
14. The permit display tag shall be posted on the permitted facility covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the Operations Manager.
15. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility and/or activity in a manner so as to provide safety, minimize an adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources and in a manner so as to minimize the degradation of water quality.
16. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft. The deck of boat docks is limited to 200 sq. ft., excluding the walkway. Walkways will be constructed to a width of 3 ft. minimum up to a maximum of 4 ft.

17. No houseboat, floating cabin, cabin cruiser, or other vessel moored thereto shall be used as a place of habitation or as a full or part-time residence or in any manner which gives the appearance to private use. (Except as permitted by Public Law 99-662.) Overnight occupation of floating cabins is authorized for periods of time incidental to recreational use but **not longer than 14 days** during any **30 day** period. Requests for extensions may be made to the Operations Manager.
18. On all new docks and mooring buoys, flotation shall be of materials, which will not become waterlogged (not over 1-1/2 percent by volume ASTM), are resistant to damage by animals, and will not sink or contaminate the water if punctured. No metal covered or injected drum flotation will be allowed. Foam bead flotation that is not subject to deterioration through loss of beads, meets the above criteria, and has a minimum density of 1.2. lb/cu ft. is authorized. Foam bead flotation with a density of 1.0 lb/cu ft., but does not otherwise meet the above criteria is authorized provided it is encased in an approved protective coating which enables it to meet the specification above. An approved coating is defined as warranted by the manufacturer for a period of at least eight years against cracking, peeling, sloughing, and deterioration from ultra violet rays, while retaining its resiliency against ice and bumps by watercraft. Existing flotation will be authorized until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it should be replaced with approved flotation.
19. If permitted facilities are removed for storage or extensive maintenance, the Operations Manager may require all portions of the facility be removed from public property.
20. By **30 days** written notice, mailed to the permittee by certified letter, the District Engineer may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee requests a hearing in writing to the District Engineer through the Operations Manager within the **30-day** period, the District Engineer shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than **60 days** from the date of the hearing request. Following the hearing, a written decision will be rendered and a copy mailed to the permittee by certified letter.
21. If in the opinion of the District Engineer, emergency circumstances dictate ~~otherwise~~, the District Engineer may summarily revoke the permit.
22. Docks shall not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. (4185 msl).
23. Insurance for private exclusive use facilities (to include floating cabins) is not required by this plan; however, owners of such facilities are encouraged to purchase insurance at their discretion.

APPENDIX C

**SHORELINE USE PERMIT
FEE SCHEDULE**

<u>TYPE OF SHORELINE USE PERMIT</u>	<u>APPLICABLE FEES</u>
Private floating facility	\$10.00 administrative charge \$5.00 annual inspection fee
Mooring buoy	\$10.00 administration charge \$5.00 annual inspection fee
Steps and trolleys	\$10.00 administration charge \$5.00 annual inspection fee
Ski Course*	\$10.00 administration charge \$5.00 annual inspection fee

*Term of permit will be a maximum of 1 year.