

**CONSERVATION AGREEMENT
FOR
RIO GRANDE CUTTHROAT TROUT**

(Oncorhynchus clarkii virginalis)

**IN THE STATES OF
COLORADO AND NEW MEXICO**



August 2023

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Acknowledgments

Preparation of the original June 2003 Conservation Agreement (RGCT Conservation Team, 2003) was coordinated by Tom Nesler, Colorado Division of Wildlife, with assistance from Peter Wilkinson, New Mexico Department of Game and Fish (NMDGF). In 2009 the Agreement was revised by Mike Japhet and John Alves Colorado Division of Wildlife, with assistance from writing team members Tom Nesler, Bruce Rosenlund, U.S. Fish and Wildlife Service (FWS) and Kirk Patten, NMDGF (RGCT Conservation Team, 2009). The 2013 Agreement was revised by John Alves and Harry Crockett (Colorado Division of Parks and Wildlife [CPW]; RGCT Conservation Team, 2013). This 2023 Agreement was revised by Bryan Ferguson and Bryan Bakevich (NMDGF). Biologists, researchers, and administrators from all signatory agencies provided significant input to this document.

Citation

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CONSERVATION AGREEMENT

RIO GRANDE CUTTHROAT TROUT (*Oncorhynchus clarkii virginalis*)

This Conservation Agreement (Agreement) and associated Conservation Strategy (Strategy) have been developed to expedite implementation of conservation measures for Rio Grande Cutthroat Trout (RGCT) in Colorado and New Mexico as a collaborative and cooperative effort among resource agencies. Threats that warrant RGCT listing as a special status species by state and federal agencies and might lead to listing under the Endangered Species Act (ESA) will be eliminated or reduced through implementation of this Agreement and Strategy along with state plans for Rio Grande Cutthroat Trout in Colorado and New Mexico. This Agreement is a collaborative effort among state, federal, and tribal resource agencies designed to provide a framework for the long-term conservation of RGCT.

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*Includes the counties of Hinsdale, Mineral, Rio Grande, Alamosa, Saguache, and Conejos

Supporting organizations - These groups support the work of the Conservation Team, attend meetings, and contribute time and resources to Rio Grande cutthroat trout conservation but are not signatories to the Agreement.

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Separate cooperative agreements may be developed with federal land management agencies such as the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service (NPS), and other additional, supporting entities as necessary to ensure implementation of specific conservation measures. In addition, interested government agencies and conservation groups will be given an opportunity to review and provide input on specific actions.

The National Memorandum of Agreement regarding ESA consultation and coordination (MOU #94-SMU-058) among the participating Federal agencies is in furtherance of conservation of species tending toward Federal listing as threatened or endangered under the ESA (Section 2; Section 4(a)(1)). Implementation of the Agreement and Strategy will be through existing Federal and state authorities such as the Clean Water Act, National Forest Management Act (NFMA), Federal Land Policy and Management Act (FLPMA), NEPA, Sikes Act of 1974, as amended, Wilderness Act of 1964, as amended, Public Rangelands Improvement Act of 1978, and the Council on Environmental Quality regulations (40 CFR Part 1501).

II. DISTRIBUTION AND STATUS OF RIO GRANDE CUTTHROAT TROUT

The historic range of RGCT cannot be known with certainty, but it is probable the subspecies occupied the colder reaches of streams in the mountainous portions of the Rio Grande, Canadian, and Pecos River drainages in Colorado and New Mexico (Behnke, 1992 and 2002). The RGCT was first described from Utah (Ute) Creek, a tributary of the Rio Grande near Fort Garland, Colorado (Girard, 1857). Widespread introductions of nonnative salmonids over the last century, however, have served to limit current distributions of RGCT primarily to isolated headwater streams and lakes. Declines in RGCT distribution have been documented in a number of reports (Behnke, 1979, Pritchard and Cowley, 2006). To quantify the current distribution in a more rigorous fashion, the RGCT Conservation Team worked with agency experts to develop the spatially referenced RGCT database that contains all available information on the abundance, genetic integrity, and distribution of the subspecies relative to its historic

range. Since 2006 occupied stream miles have increased from 698 to 772 and percent of historically occupied habitat has increased from 10.5% to 11.6% (2022 RGCT database).

Rio Grande cutthroat trout have hybridized with nonnative salmonids in many areas, reducing the genetic integrity of this subspecies. As such, hybridization is clearly recognized as having a strong influence upon RGCT status. Although there is still some disagreement about the role that hybridized populations should play in status determinations and conservation strategies, the RGCT Conservation Team has adopted a position paper on genetic considerations associated with cutthroat trout management (UDWR, 2000) to guide establishing genetic purity definitions for RGCT. It suggests that populations with less than 10% introgression provide a practical and meaningful framework for assessing the status of the species. Populations meeting this genetic criterion are defined as conservation populations for this Agreement and in the RGCT database. One hundred twenty-five conservation populations were identified in the RGCT database in 2022, including 92 core conservation populations with greater than 99% genetic purity.

The RGCT is designated a Tier 1 Species of Greatest Conservation Need in Colorado. Regions 2 and 3 of the USFS and the BLM in Colorado and New Mexico all classify the RGCT as a sensitive species or a species of conservation concern. The RGCT had no status as a Federal Category 1 or 2 species prior to February 1986. The RGCT was petitioned for federal listing under the ESA in 1998. The FWS made a 90-day finding that the petition did not present substantial information indicating that listing the RGCT may be warranted. This decision was contested and a subsequent settlement stipulated that FWS initiate a status review and determine whether listing the species was warranted. On June 11, 2002, the FWS published the "Candidate status review for Rio Grande cutthroat trout" (67 FR 39936). After reviewing the best scientific and commercial information available, FWS determined that the RGCT was not endangered and was not likely to become endangered in the foreseeable future throughout all or a significant portion of its range and that listing as threatened or endangered was not warranted. In 2007, FWS announced a candidate status review for RGCT to be consistent with the new framework for analyzing "significant portion of its range" and to incorporate new information. On May 14, 2008, the FWS found that listing RGCT was warranted but precluded by higher priority actions. In 2014, FWS determined that listing RGCT under the ESA was not warranted. This decision was based primarily on the FWS's Species Status Assessment (U.S. Fish and Wildlife Service, 2014) and the evaluation of conservation efforts being implemented by the RGCT Conservation Team. The 2014 decision was challenged in court (CBD, et al. v. Bernhardt, et al., No. 1:16-cv-01932-MSK-STV (D. Colo.) and vacated by the judge on October 31, 2020, making RGCT a candidate for listing under the ESA once again. In response to that decision, it is now being reviewed for listing as a threatened or endangered species under the ESA.

III. GOAL

The overall goal of this Agreement is to assure the long-term viability of RGCT throughout their historic range. Areas that currently support RGCT will be maintained, while other areas will be managed for increased abundance. New populations will be established where ecologically and economically feasible, while the genetic diversity of the species is maintained. The cooperators envision a future where threats to wild RGCT

are either eliminated or reduced to the greatest extent possible.

IV. OBJECTIVES

Objective 1: Identify and characterize all RGCT core and conservation populations and occupied habitat- Identify all waters with RGCT populations. Monitor known populations and their habitat to detect changes. Complete genetic analyses on known or potential RGCT populations.

Objective 2: Secure and enhance conservation populations- Secure and, if necessary, enhance all known and suspected genetically pure RGCT populations.

Objective 3: Restore populations- Increase the number of stream populations by restoring RGCT within their native range. Local restoration goals and approaches will be developed to meet this objective.

Objective 4: Secure and enhance watershed conditions- Maintain and, if necessary, improve watershed conditions for RGCT, including development of protocols for monitoring.

Objective 5: Public outreach- Develop and implement a public outreach effort specifically addressing RGCT conservation.

Objective 6: Data sharing- Continue to build and maintain the RGCT database so that information can readily be shared between and among agencies and jurisdictions.

Objective 7: Coordination- Maximize effectiveness of RGCT conservation efforts by coordinating signatory agency efforts toward achieving a common goal.

These goals and objectives will be reached by implementing conservation measures detailed in the Strategy. The Parties agree to implement the conservation measures detailed in the Strategy subject to the terms of this agreement. A range-wide status assessment will be conducted every ten years, and results from that assessment will be used to update the Agreement, which will be revised at ten-year intervals until it is no longer deemed necessary.

V. OTHER SPECIES INVOLVED

The primary focus of this Agreement is the conservation and enhancement of RGCT and the watersheds in Colorado and New Mexico upon which they depend; however, other species occurring within or adjacent to RGCT habitat should also benefit. Some of these species include Rio Grande sucker (*Catostomus plebeius*), Rio Grande chub (*Gila pandora*), and boreal toad (*Anaxyrus boreas boreas*). Since the strategy focuses on ecosystem health, the Agreement will potentially ameliorate threats facing several of these species.

VI. AUTHORITY

The authorities for the Parties to enter into this voluntary Agreement and Strategy derive from the ESA and a National Memorandum of Agreement which exists between the USFS, FWS, BLM, NPS, and the United States Department of Commerce National Marine Fisheries Service (NMFS). The authority of Colorado Division of Parks and Wildlife to manage wildlife in Colorado is declared in title 33, C.R.S. The authority of New Mexico Department of Game and Fish to manage wildlife in New Mexico is declared in Chapter 17 of New Mexico Statutes Annotated (NMSA).

- This Agreement is subject to and is intended to be consistent with all applicable federal, tribal, and state laws and interstate compacts. The Parties hereto enter into this Agreement under federal, state, and tribal laws as applicable.
- All Parties to this Agreement recognize they each have specific statutory responsibilities that cannot be delegated, particularly with respect to the management and conservation of wildlife, its habitat, and the management, development and allocation of water resources. Nothing in this Agreement is intended to abrogate any of the Parties' respective responsibilities.
- This instrument in no way restricts the Parties involved from participating in similar activities with other public or private agencies, organizations or individuals.
- All Parties to this Agreement do not waive any immunity provided by federal, state, local or tribal laws by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- The Jicarilla Apache Nation, Mescalero Apache Nations and Taos Pueblo maintain jurisdictional authority relative to species, habitat and land use management on tribal lands.
- Modifications to this Agreement must be mutually agreed upon by all Parties. Such changes shall be executed as an addendum to the original Agreement.

VII. GOVERNING DOCUMENTS AND EXISTING POLICIES

A. Federal Management Practices and Policies

U.S. Forest Service - The Santa Fe, Carson, Gila, Lincoln, and Rio Grande National Forest Land and Resource Management Plans provide guidance for all resource management activities on the forests and establish management standards and guidelines that ensure habitat is managed to provide for viable populations of existing native species. Rio Grande cutthroat trout has been identified as a species of conservation concern within these forest plans to help document the effects of management activities on aquatic communities. The respective plans also outline monitoring requirements for RGCT populations and their habitat. Rio Grande cutthroat trout are currently managed as sensitive

species on the Lincoln and Gila National Forests until their plans are finalized to the 2012 planning rule.

The Forest Service is obligated under National Forest Management Act to maintain the viability of all species in the planning area. Forest plans shall provide for desired conditions necessary for the persistence of species on the forest. Forest plan components should provide for the habitat of the RGCT. This framework will be used to implement actions at the project level and consistent with the intent of this Agreement.

In the spirit of, and as provided in the National Memorandum of Agreement entered into by the FS, BLM, NPS, FWS, and NMFS, the Forest Service will engage in ESA §7(a)(2) consultation with the FWS to ensure that the forest plans do not jeopardize the continued existence of the species identified as a candidate for listing under the Endangered Species Act. If a species is proposed for listing, or is listed as threatened or endangered, the framework in the forest plans and forest actions will be evaluated to determine if the actions adversely affect the species or any designated critical habitat and, through consultation with the FWS, will determine whether the framework or these actions will jeopardize the continued existence of the species or whether they will adversely modify or destroy critical habitat.

Conservation and recovery activities will be pursued where applicable and areas where RGCT and associated species occur and will be managed to maintain and/or enhance habitat.

National Park Service – The NPS Organic Act of 1916 and the NPS General Authorities Act of 1970, including amendments (1978) direct the NPS to promote and regulate the use of lands under its jurisdiction to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations”.

To achieve the NPS Mission, NPS Management Policies (NPS MP 2006) provide guidance on the appropriate standards for the protection, management, and use of park resources, including native fish management and recreational fishing. Natural resource management policies mandate that the NPS work with cooperating agencies and other partners and stakeholders to conserve and protect native fish by; “preserving and restoring the natural abundances, diversities, dynamics, distributions, habitats and behaviors of native [fish] populations and the communities and ecosystems where they occur; restoring native [fish] populations in parks when they have been extirpated by past human-caused actions, and; minimizing human impacts on native [fish] populations, communities and ecosystems, and the processes that sustain them”. (NPS MP 4.4, 2006).

Bureau of Land Management - It is BLM policy to manage or conserve all known special plant and animal species not yet listed as threatened or endangered

to minimize the need for listing those species by either Federal or state governments in the future. The San Luis Resource Area Management Plan identifies resource and land use objectives and management actions for activities and lands administered by the BLM. Resource objectives include managing streams to maintain fisheries and to enhance, recover, or re-establish special status plants and animals.

U.S. Fish and Wildlife Service - The Rio Grande cutthroat trout is currently a candidate species for Federal listing under the ESA. Sections 2 and 7 of the ESA allow the FWS to enter into this Agreement and Strategy. Section 2 of the ESA states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs that it administers and to utilize such programs in furtherance of the purposes of the ESA. By entering into this conservation agreement, the FWS is utilizing its candidate conservation programs to further the conservation of the RGCT.

B. State Policies and Regulations that Protect Fish and Fish Habitat

Colorado

In Colorado, it is the policy of the State that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of the State and its visitors. § 33-1-101(1), C.R.S. Colorado law prohibits taking wildlife except as permitted by statute or regulation. § 33-6-109(1), C.R.S.

Colorado has designated waters with RGCT populations as Cutthroat Conservation and Recreation Waters. 2 CCR 406-1:108. This designation protects RGCT populations in 25 streams (221 stream miles) and three lakes (36 acres) by allowing fishing with artificial lures and flies only, and by requiring all cutthroat trout to be returned to the water immediately. 2 CCR 406-1:108.A.1.

Colorado regulates scientific collection of wildlife through a permit system requiring a formal application stating project objectives, sampling methodologies, sampling sites, and need for collecting. 2 CCR 406-13.

To protect RGCT and other species from disease, Colorado has adopted strict inspection and certification requirements for facilities that produce, sell, stock, or import live fish. 2 CCR 406-0:014.

Finally, to reduce threats from nonnative species, Colorado has designated waters with RGCT populations as Stocking Restricted Cutthroat Trout Waters, 2 CCR 406-0: App. C, and closed them to stocking without specific authorization from CPW, 2 CCR 406-0:013.D.4.

New Mexico

In New Mexico, Rio Grande cutthroat trout is managed as a protected species under Chapter 17 NMSA. All trout with the characteristic red slash on its throat are subject to a reduced bag limit of two fish per day for recreational angling. Several populations are subject to special trout water regulations, which include catch-and-release, artificial fly or lure only, single barbless hook, and reduced bag limits. Waters in or near Rio Grande cutthroat trout conservation populations are not stocked with nonnative trout species. If a conservation population is secured with a functional migration barrier, sterile, triploid rainbow trout (*Oncorhynchus mykiss*) may be stocked in appropriate downstream areas. New Mexico Department of Game and Fish does not allow private stocking of nonnative trout within areas that could jeopardize existing conservation populations. NMAC 19.35.7.15 requires disease free certification for all private and public hatcheries who wish to import fish for release into waters of the State. In addition, NMDGF does not stock any salmonid that is positive for a pathogen described in NMAC 19.35.7.15.

In addition, two conservation populations of Rio Grande cutthroat trout inhabit waters within Wildlife Management Areas owned by the New Mexico Game Commission. The purpose of these Wildlife Management Areas is to promote hunting and fishing opportunities in New Mexico.

C. *Native American Tribal Management*

It is well-established that Indian tribes in the United States are sovereign entities, and the Federal government is legally required to protect Indian trust resources for the benefit of the respective Indian pueblos, nations, and tribes. Indian trust resources generally include land, water, air, minerals, and wildlife, reserved or otherwise owned or held in benefit for Indian pueblos, nations, and tribes. In managing trust lands or assisting tribes in doing so, the Federal government must act for the exclusive benefit of the tribes and ensure that Indian lands and resources are protected and maintained for the physical, economic, social, and spiritual well-being of tribes.

Tribal lands are first and foremost homelands to Indian people, established to provide for their traditional, cultural, social, and economic benefit. As sovereign nations, tribes, and tribal lands are not subject to the same public laws that govern other lands within the United States, either public or private. As a result, several Executive Branch administrative directives and orders focus directly on the relationships of the FWS and other Interior Department agencies to tribes. The following are examples of such directives: Presidential Memorandum of April 29, 1994, Secretarial Order 3206, and Executive Order No. 13175.

The Presidential Memorandum of April 29, 1994, requires Federal departments to consult with tribal governments to the greatest extent practicable prior to taking actions that affect tribal governments. Federal departments must assess the impacts of Federal activities on tribal trust resources, and to ensure that

tribal rights and concerns are taken into account during plan development and program implementation.

Secretarial Order 3206, reminds Interior agencies, bureaus and offices that Indian lands are not subject to the same controls as Federal lands. It instructs Interior agencies, bureaus, and offices to recognize that tribes are appropriate governmental entities to manage their lands and tribal trust resources and instructs them to support tribal measures that preclude the need for conservation restrictions. At the same time, the Order strives to harmonize tribal concerns and interest about the ESA with Federal mandates to enforce it; and allows the tribes to develop their own conservation plans for the listed species that are more responsive to tribal needs. The order also states tribes have considerable authority to manage endangered species on Indian lands.

Executive Order No. 13175 instructs agencies, to the extent practicable and permitted by law, to consider any application by a tribal government for a waiver of statutory or regulatory requirements with a general view toward increasing opportunities for flexible approaches to governmental policies.

Nevertheless, the FWS and many tribes have expressed a willingness to work together on the conservation and recovery of RGCT. Tribes have gained considerable natural resource management expertise and FWS, along with other Federal agencies, recognize and acknowledge this expertise. Tribes have moved forward in an effort to establish new ways for Indian nations and FWS to interact regarding the recovery and conservation of RGCT.

Developing cooperative or conservation agreements between tribal governments and FWS that specifically address RGCT conservation on tribal lands could serve as a mechanism to establish partnerships that would enhance the survival of this species, while still providing tribes the flexibility to determine the extent of their involvement in ESA conservation. These documents establish a framework by which FWS and the tribes will recognize differences of opinion and interpretation, and work through problems toward a common goal of protecting and restoring Rio Grande cutthroat trout. These agreements and/or management plans could describe commitments tribes are willing to make to protect and manage Rio Grande cutthroat trout and could also describe commitments FWS would make to assist tribes in addressing RGCT on tribal lands. Formal agreements may not be necessary when tribal actions already meet mutually beneficial goals, and conservation management is already underway by tribes.

VIII. CONSERVATION ACTIONS

The Strategy clearly outlines the actions to be implemented for the conservation of RGCT over the next ten years. In addition, four general administrative actions outlined below will be implemented.

A. Coordinating Conservation Activities

- The Conservation Team will implement the attached Strategy that encompasses the goals, objectives and strategies outlined therein.
- Administration of the Agreement will be conducted by the RGCT Conservation Team. The team shall consist of one designated representative from each state and tribal wildlife agency, one from FWS, one each from the BLM, USFS, and NPS. The team may also include technical and legal advisors and other members as deemed necessary by the Parties.
- The designated team leader may rotate annually among the representatives from the two state wildlife agencies involved.
- Responsibilities of the Conservation Team shall include coordinating RGCT conservation activities among the agencies and making recommendations for the conservation of RGCT to the administrators of the signatory agencies.
- The Conservation Team will meet at least annually to document progress toward Strategy goals and objectives, develop range-wide priorities, review the annual conservation work plans developed for each state, and coordinate tasks and agency resources to most effectively implement the work plan. Updates to the RGCT database will also occur on an annual basis.
- Conservation Team meetings will be open to the public. Meeting summaries and progress reports will be available to the Conservation Team and to other interested parties. The meetings may also include technical and legal advisors and other members as deemed necessary by the signatories.

B. Implementing the Conservation Strategy

- Each Party to the Agreement will coordinate, implement and monitor the conservation measures in the Strategy for which it is responsible. Accomplishments will be reviewed in an annual summary report at Conservation Team meetings to establish progress toward the Conservation Strategy. Accomplishments will be summarized in the subsequent ten-year status assessment.

C. Funding Conservation Actions

- It is understood that all funds required for and expended in accordance with this Agreement are subject to approval by the appropriate local, state or federal appropriations. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between Parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the

Parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive awards to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

D. Conservation Progress Assessment

- The Conservation Team will update the Range-Wide Status Assessment (Bakevich et al., 2019) at ten-year intervals. The assessment will include information on the current distribution, genetic status, and presence of competing and hybridizing species, disease and other threats to RGCT. This information will be used to evaluate the foreseeable risks and general population health of existing conservation populations. The status assessment will also discuss progress towards meeting the goals and objectives outlined in the Strategy.
- Copies will be made available to cooperators and interested parties upon request.
- The need to extend the Agreement for another cycle will be driven by results summarized in that document.

IX. DURATION OF AGREEMENT

The term of this Agreement shall be ten years after the last Party has signed. If the ten-year status assessment indicates changes to the agreement are necessary, modifications could be made at that time. If all signatories agree that continued progress would benefit conservation of RGCT, this Agreement may be extended for an additional ten years. Any Party may withdraw from this Agreement with sixty days written notice to the other Parties.

X. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

Signing this Agreement is covered under authorities outlined in section VII listed above. Each federal agency is responsible for ensuring its activities comply with NEPA.

XI. FEDERAL COMPLIANCE

- During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin.

- No member or delegate to Congress or resident Commissioner shall be admitted to any share or part of this Agreement, or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

XII. SIGNATORIES

This Agreement takes effect upon the last signature of the authorized representative of the following:

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Jacob Williams, Aquatics Program Coordinator

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XIII. SUPPORTING ORGANIZATIONS

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Greg Hardy, President

Date

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Harris Klein, State Council Chairperson

Date

XIV. LITERATURE CITED

- Bakevich, B.D., R.J. Pagen, and B.W. Felt. 2019. Range-wide status of Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*): 2016. Rio Grande Cutthroat Trout Conservation Team Report. New Mexico Department of Game and Fish, Santa Fe, New Mexico.
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