NPDES PERMIT NO. NM0020711
FACT SHEET

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

APPLICANT

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ISSUING OFFICE

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DATE PREPARED

September 1, 2020

PERMIT ACTION

Proposed re-issuance of the current permit issued on August 18, 2015, with an effective date of October 1, 2015, and an expiration date of September 30, 2020.

RECEIVING WATER – BASIN

Pajarito Creek – Canadian River Basin (Segment 20.6.4.303 NMAC)

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
DO	Dissolved oxygen
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FWS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
lbs	Pounds
MG	Million gallons
MGD	Million gallons per day
ML	Method minimum level
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NOEC	No observable effect concentration
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publicly owned treatment works
RP	Reasonable potential
SS	Settleable solids
SSM	Sufficiently Sensitive Method
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USGS	United States Geological Service
WLA	Waste Load allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan
WWTP	Wastewater treatment plant

I. CHANGES FROM THE PREVIOUS PERMIT

The changes from the current permit issued on August 18, 2015, with an effective date of October 1, 2015, and an expiration date of September 30, 2020, include:

- New limits for DO and methylmercury have been added.
- Compliance schedule has been revised.
- Monitoring of toxic pollutants and O&G have been added.
- WET limitation has been removed.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the facility (Latitude 35° 11' 48.94" N and Longitude 103° 43' 05.02" W) is located at 1700 North Rock Island Street, Tucumcari in Quay County, New Mexico.

Under the SIC code 4952, the applicant operates Tucumcari Wastewater Treatment Facility (WWTF), which has a design flow of 1.2 MGD providing sanitary services for approximately 5001 residents and 508 commercial wastewater connections, including one significant industrial user. The facility has upgraded its treatment process and the capacity has been increased from 0.92 MGD since the previous permit term. The facility provides advanced level of treatment; it has two process trains with 0.6 MGD capacity for each one, and effluent is disinfected by ultraviolet (UV). Part of effluent is stored in a lined pond for reclaimed water. The effluent is conveyed by underground pipe for about 2.0 miles to Breen's pond on private property, overflow from the pond is discharged to No Name Creek. The pond is a natural pond fed by underground spring and an ephemeral stream. The creek, a perennial stream, travels about one mile to reach Pajarito Creek, a perennial tributary to the Canadian River. Effluent is also reused via groundwater permit PD-1700, which includes the reclaimed wastewater of 1.05 MGD in total. This Canadian River Basin is in segment 20.6.4.303 NMAC. Sewage sludge is processed onsite and given away in bulk as Class A biosolids for land application. A map of the facility is attached.

Location summary:

Location	Latitude; Longitude	Latitude; Longitude
Sampling manhole	N 35.1971º; W 103.7180º	N 35° 11' 49.77"; W 103° 43' 5.08"
Entry to Breen's Pond	N 35.2182º; W 103.7057º	N 35° 13' 05.52"; W 103° 42' 20.52"
Overflow exit from Breen's Pond	N 35.2202º; W 103.7055º	N 35° 13' 12.72"; W 103° 42' 19.80"

The permittee has been planning to reuse all of the effluent to comply with permit limits/conditions. Improvements, stated in the compliance schedule previously, were expected to be complete and operational in 2020; however, the permittee failed to complete this schedule. At this time, a plan for total reuse has not been designed. After the effluent will be gone to total reuse, the permittee plans to keep this permit in case of emergency.

III. EFFLUENT CHARACTERISTICS

Data submitted in Form 2A is as follows:

Parameter	Max	Avg
	(mg/l unless noted)	
Flow (MGD)	0.73	0.50
pH, minimum, standard units (su)	6.81	N/A

pH, maximum, standard units (su)	7.64	N/A
Temperature (winter), °F	74	42
Temperature (summer), °F	113	78
Biochemical Oxygen Demand, 5-day (BOD_5)	68.7	6.9
Total Suspended Solids (TSS)	32.3	3.87
E. coli (MPN/100 ml)	7000	143
Ammonia (as N)	10	3.82
TRC	NA	NA
DO	3.57	2.99
Total Kjeldahl Nitrogen (TKN)	10.9	3.87
Nitrate + Nitrite Nitrogen	5.37	4.21
Oil & Grease	26.7	12.15
Phosphorus (Total)	7.37	5.54
TDS	729	687

Since July 1, 2017 there have been two exceedances for BOD_5 and E. coli each along with many exceedances for TRC. There was an was an Administrative Order (AO) issued on June 11, 2018 for TRC. This AO is in "resolved pending" status due to permittee's continued TRC violations up to July 2019. Another AO was issued on March 1, 2019 for failing to maintain proper laboratory controls, quality procedures, to calibrate monitoring & analytical instruments, and to test TSS using an approved method at 40 CFR 136. DMR and AO are available upon request.

IV. REGULATORY AUTHORITY/PERMIT ACTION

In November 1972, Congress passed the Federal Water Pollution Control Act establishing the NPDES permit program to control water pollution. These amendments established technology-based or end-of-pipe control mechanisms and an interim goal to achieve "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water"; more commonly known as the "swimmable, fishable" goal. Further amendments in 1977 of the CWA gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry and established the basic structure for regulating pollutants discharges into the waters of the United States. In addition, it made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions. Regulations governing the NPDES permit program are generally found at 40 CFR §122 (program requirements & permit conditions), §124 (procedures for decision making), §125 (technology-based standards) and §136 (analytical procedures). Other parts of 40 CFR provide guidance for specific activities and may be used in this document as required.

It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a).

V. DRAFT PERMIT RATIONALE AND CONDITIONS

A. OVERVIEW of TECHNOLOGY-BASED VERSUS WATER QUALITY STANDARDS-BASED EFFLUENT LIMITATIONS AND CONDITIONS

Regulations contained in 40 CFR §122.44 NPDES permit limits are developed that meet the more stringent of either technology-based effluent limitation guidelines, numerical and/or narrative water quality standard-based effluent limits, or the previous permit.

Technology-based effluent limitations are established in the proposed draft permit for TSS and BOD, O&G and percent removal for each. Water quality-based effluent limitations are established in the proposed draft permit for E. coli bacteria, pH, TRC, DO, boron, methylmercury, nitrogen and phosphorus.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. General Comments

Regulations promulgated at 40 CFR §122.44 (a) require technology-based effluent limitations to be placed in NPDES permits based on ELGs where applicable, on BPJ in the absence of guidelines, or on a combination of the two. In the absence of promulgated guidelines for the discharge, permit conditions may be established using BPJ procedures. EPA establishes limitations based on the following technology-based controls: BPT, BCT, and BAT. These levels of treatment are:

BPT - The first level of technology-based standards generally based on the average of the best existing performance facilities within an industrial category or subcategory.

BCT - Technology-based standard for the discharge from existing industrial point sources of conventional pollutants, including BOD, TSS, *E. coli* bacteria, pH, and O&G.

BAT - The most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. BAT effluent limits represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

2. Effluent Limitation Guidelines

The facility is a POTW/POTW-like that has technology-based limits established at 40 CFR Part 133.102, Secondary Treatment Regulation. Pollutants with limits established in this Chapter are BOD, TSS and pH. BOD limits of 30 mg/l for the 30-day average and 45 mg/l for the 7-day average and 85% percent (minimum) removal are found at 40 CFR §133.102(a). TSS limits; also 30 mg/l for the 30-day average and 45 mg/l for the 7-day average, average and 85% percent (minimum) removal are found at 40 CFR §133.102(b).). The limit for pH is 6-9 s.u. based on 40 CFR §133.102(c).

Regulations at 40 CFR §122.45(f)(1) require all pollutants limited in permits to have limits expressed in terms of mass such as pounds per day. When determining mass limits for POTWs or similar, the plant's design flow is used to establish the mass load. The effluent is discharged as needed based on consumption of reclaimed wastewater. Existing TMDL used effluent flow of 0.92 MGD to established limits; therefore, mass loading limits for BOD and TSS are retained in the draft permit.

A summary of the technology-based limits for the facility is:

Parameter	**30-day Avg, lbs/day, unless noted**	**7-day Max, lbs/day, unless noted**	**30-day Avg, mg/l, unless noted**	**7-day Max, mg/l, unless noted**
BOD	230	345	30	45
BOD, % removal[1]	≥ 85	---	---	---
TSS	230	345	30	45

Parameter	30-day Avg, lbs/day, unless noted	7-day Max, lbs/day, unless noted	30-day Avg, mg/l, unless noted	7-day Max, mg/l, unless noted
TSS, % removal[1]	≥ 85	---	---	---
pH	N/A	N/A	6.0 to 9.0 s.u.	6.0 to 9.0 s.u.

[1] % removal is calculated using the following equation: [(average monthly influent concentration – average monthly effluent concentration) ÷ average monthly influent concentration] * 100.

Due to reported level of O&G in the effluent, 26.7 mg/L daily max (compared the appropriate limit of 15 mg/L), EPA proposes monitoring of O&G quarterly. This monitoring would provide EPA more data for the next possible permit renewal.

3. Pretreatment Regulation

The facility has one significant industrial user (SIU), which is subject to the local limits. Based on the submitted information, EPA has determined the permittee will not be required to develop a full pretreatment program. However, general pretreatment provisions have been included in the permit.

C. WATER QUALITY BASED LIMITATIONS

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1. General Comments

Water quality based requirements are necessary where effluent limits more stringent than technology-based limits are necessary to maintain or achieve federal or state water quality limits. Under Section 301(b)(1)(C) of the CWA, discharges are subject to effluent limitations based on Federal or State/Tribe WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State/Tribe WQS and applicable State/Tribe water quality management plans to assure that surface WQS of the receiving waters are protected and maintained or attained.

2. Implementation

The NPDES permits contain technology-based effluent limitations reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included in the NPDES permits. State/Tribe narrative and numerical water quality standards are used in conjunction with EPA criterion and other available toxicity information to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

3. State Water Quality Standards

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC approved on September 12, 2018). The discharge is to Canadian River Basin (20.6.4.303 NMAC). The designated uses of the receiving water are irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact. Since the effluent is discharged to Breen's pond, all applicable WQS must be met at the end of pipe (i.e., 4Q3 = 0) pursuant to 20.6.4.11.E.

4. Permit Action - Water Quality-Based Limits

Regulations promulgated at 40 CFR §122.44(d) require limits in addition to, or more stringent than effluent limitation guidelines (technology based). State WQS that are more stringent than effluent limitation guidelines are as follows:

a. pH

For marginal warmwater aquatic life and primary contact, criteria for pH is between 6.6 and 9.0 s.u. pursuant to 20.6.4.900.D and H(5) NMAC. The previous limit is retained in this permit draft since it's more stringent than the technology-based limit.

b. Bacteria

For primary contact, criteria for E. coli bacteria is at 126 cfu (or MPN)/100 ml monthly geometric mean and 410 cfu (or MPN)/100 ml daily maximum pursuant to 20.6.4.900.D NMAC.

c. TRC

The facility disinfects effluent using UV system. In case chlorine is used in the treatment process, criteria for TRC is 11 ug/l pursuant to 20.6.4.900.G NMAC.

d. Toxics

The CWA in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at 40 CFR §122.44 (d) state that if a discharge poses the RP to cause an in-stream excursion above a water quality criteria, the permit must contain an effluent limit for that pollutant.

All applicable facilities are required to fill out appropriate sections of the Form 2A and 2S, to apply for an NPDES permit or reissuance of an NPDES permit. The new form is applicable not only to POTWs, but also to facilities that are similar to POTWs, but which do not meet the regulatory definition of "publicly owned treatment works" (like private domestics, or similar facilities on Federal property). The forms were designed and promulgated to "make it easier for permit applicants to provide the necessary information with their applications and minimize the need for additional follow-up requests from permitting authorities," per the summary statement in the preamble to the Rule.

Effluent data submitted in Form 2A by the permittee are used to analyze the RP. The pollutants (in Tables C & D) having test results above the MQLs/WQS are analyzed. Previous limits for boron are retained in the permit with no compliance schedule because submitted effluent data show the limits have been met. PCBs were tested using EPA Method 608; test result (not detected at 0.2 ug/L) was not adequate in term of the applicable WQS (0.00064 ug/L). EPA, in consultation with NMED, requires PCBs to be tested using the specific Method 1668A or as revised. Test result for PCB using the required method in the previous renewal application (if available) can be resubmitted. Reported value of zero or ND is interpreted with the ML for RP analysis. Averaged value of data set is utilized in the RP. Attached Appendix A shows RPs still exist for boron, which was limited in the previous permit. EPA retains the boron limitation and proposes methylmercury to be limited at the WQS level, with a compliance schedule, due to effluent data exceeding the limit.

All the reasonable potentiated parameters below were reported with data of ND (unless noted) at different ML. Summary of the tested methods are compared to the SSM requirement as follow:

Pollutants	Test Result (Method), ug/L	Applicable WQS, ug/L	Suggested Method with SSM Complied MDL, ug/L
Methylmercury	22.3 (EPA 245.1); exact value, RP exists	1.11×10^{-4} (or 0.3 mg/kg in fish tissue)	NA
Acrolein	10 (EPA 624)	9	0.5 (EPA 603)
Acrylonitrile	10 (EPA 624)	2.5	0.5 (EPA 603)
Benzidine	0.5 (EPA 625)	0.002	0.08 (EPA Method 605)
Benzo(a)anthracene	0.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Benzo(a)pyrene	0.5 (EPA 625)	0.18	0.023 (EPA Method 610)
3,4-benzofluoranthene	0.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Benzo(k)fluoranthene	0.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Chrysene	0.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Diazinon	0.5 (EPA 82.70, invalid method used)	0.17	See 40 CFR 136.3 for approved methods
Dibenzo(a,h)anthracene	0.5 (EPA 625)	0.18	0.03 (EPA Method 610)
Heptachlor	0.01 (EPA 608)	0.00079	0.0015 (EPA Method 508)
Hexachlorobenzene	0.5 (EPA 625)	0.0029	0.05 (EPA Method 612)

Because the permittee has not demonstrated compliance with the SSM requirement per 40 CFR 122.21(e)(3) for all the parameters in the table above, except for methylmercury, EPA proposes monitoring for these parameters at once/year (suggested by NMED) in this permit draft. All the analytical tests must meet the SSM requirement. During the public comment period, the permittee may submit additional tests meeting the SSM requirement for these monitored parameters; EPA would reconsider this monitoring requirement depend on the analyses results. Pollutants applicable to the State WQS that are not listed in Table C of Form 2A will be tested, if the permit will be reapplied, during the permit term pursuant to 40 CFR 122.21(j)(4)(iv).

e. DO

For marginal warmwater aquatic life, criteria for DO is 5 mg/L. pursuant to 20.6.4.900.H(6) NMAC. The effluent, 2.99 mg/L for averaged DO, is discharged to Breen's Pond, where no dilution is allowed and the DO criterion must be met at the point of discharge pursuant to 20.6.4.11.E(1) NMAC. EPA proposes DO limit, 5 mg/L minimum, in this draft permit with a compliance schedule stated in the permit. DO can be measured at an existing effluent sampling point or at the pond entrance.

5. Monitoring Frequency for Limited Parameters

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). EPA established the monitoring frequency based on Table 9 (page 34 of the NMIP) for design flow between 1.0 and 5.0 MGD and history compliance.

Parameter	Frequency	Sample Type
Flow	Daily	Totalized Meter
pH	Daily	Instantaneous Grab
BOD_5	1/week	6-hr Composite
TSS	1/week	6-hr Composite
% Removal	1/month	Calculation
O&G	1/quarter	6-hr Composite

TRC*	Daily	Instantaneous Grab
E. coli Bacteria	1/week	Grab
DO	1/week	Grab
Boron	Once/two weeks	Grab
Total Phosphorus	Once/two weeks	6-hr Composite
Total Nitrogen	Once/two weeks	6-hr Composite
Methylmercury	Once/two weeks	Grab
Toxics	1/year	Grab

* When chlorine is used in the treatment process, including cleaning treatment units.

D. WHOLE EFFLUENT TOXICITY

Procedures for implementing WET terms and conditions in NPDES permits are contained in the NMIP. Table 11 (page 42) of the NMIP outlines the type of WET testing for different types of discharges. The discharge, a major discharger, is to a pond in a private property. The pond is a natural pond fed by underground spring and an ephemeral stream. Because the pond has perennial overflow to an unnamed creek and the creek is also a perennial tributary to Pajarito Creek which is also a perennial stream, NMED requires the pond to be protected as a public lake. Therefore, no dilution is given for the WET testing. The NMIP directs the WET testing to be 7-day chronic tests using *Ceriodaphnia dubia* and *Pimephales promelas* once per quarter with a 100% critical dilution.

The permittee submitted all WET test results required in the previous permit so far. All the test passed the limit at 100%. Therefore, no RP exists in this permit draft. EPA proposes removing the previous limit for WET in the draft permit. However, WET testing is still required.

The proposed permit requires five (5) dilutions in addition to the control (0% effluent) to be used in the toxicity tests based on a 0.75 dilution series. These additional effluent concentrations must be 32%, 42%, 56%, 75%, and 100%. The low-flow effluent concentration (critical low-flow dilution) is defined as 100% effluent. The permittee shall limit and monitor discharge(s) as specified below:

WET Testing (7-day Static Renewal)[1]	**NOEC**	**Frequency**	**Type**
Ceriodaphnia dubia	Report	Once/Quarter	6-hr Composite
Pimephales promelas	Report	Once/Quarter	6-hr Composite

[1] Monitoring and reporting requirements begin on the effective date of this permit. See Part II of the permit, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions.

VI. TMDL REQUIREMENTS

The receiving water, Pajarito Creek (Perennial prt Canadian River to Vigil Canyon), was listed in the 303(d) List. Marginal warmwater aquatic life is not supported; TMDLs for E. coli bacteria and nutrients were approved in 2011 for this water segment. According to the TMDLs, the following WLAs are set for the facility in the following table. The same TMDLs for nutrients and E. coli were implemented in the previous permit. EPA retains all the previous limits for nutrients and E. coli in this permit draft.

Parameter	**Design Flow (MGD)**	**Effluent Limit, 30-day avg. (cfu/100 ml)**	**Conversion Factor**	**WLA (cfu/day)[d]**
E. coli bacteria	0.92	126	3.79×10^7	4.39×10^9

Parameter	**Design Flow (MGD)**	**Effluent Limit, 30-day avg. (mg/l)**	**Conversion Factor**	**WLA (lbs/day)[d]**
Total Phosphorus	0.92	1.0[a]	8.34	7.67

Total Nitrogen	0.92	8.0[a]	8.34	61.4
Total Phosphorus	0.92	0.1[b]	8.34	0.77
Total Nitrogen	0.92	3.0[b]	8.34	23.0
Total Phosphorus	0.92	0.03[c]	8.34	0.23
Total Nitrogen	0.92	0.45[c]	8.34	3.45

[a] Phase 1: effluent limits are technology based (i.e., achievable) annual averages that are designed to help communities begin the process of converting their WWTPs for nutrient removal. These limits are similar to the effluent limits adopted by the state of Virginia for existing facilities to implement their permitting program.
[b] Phase 2: effluent limits are based on annual averages for the limits of technology
[c] Phase "n": effluent limits based on in-stream nutrient target concentrations from Table 5.2. As of 2011, these values are technologically unachievable.
[d] WLA = Design flow x Effluent limit x Conversion factor

Per the permittee's letter dated August 10, 2020, the City has acquired a property for the total reuse project, which was not be completed by September 30, 2020. The project would enable the City to dispose all the effluent by groundwater/reuse water permit(s) issued by NMED. Once completing the project, the City will have zero discharge via the NPDES permit. The permittee intends to eliminate the discharge rather than treating the nutrients to meet the TMDL requirements. The effluent is partially being reused by New Mexico State University Agricultural Center and the pond landowner for irrigation. This cessation of the discharge is not a federal requirement; it's rather the permittee's decision.

Since the project has not been completed, EPA provides a new compliance schedule for the permittee to complete the project and then go for zero discharge. The proposed compliance schedule is authorized under 40 CFR 122.47. The permit has a standard reopener clause that would allow the permit to be changed if at a later date additional requirements on new or revised TMDLs are completed.

VII. ANTIDEGRADATION

The NMAC, Section 20.6.4.8 "Antidegradation Policy and Implementation Plan" sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the draft permit are developed from the Tribe/State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The permit requirements and the limits are protective of the receiving water, which is protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

VIII. ANTIBACKSLIDING

The proposed permit is consistent with the requirements to meet Antibacksliding provisions of the Clean Water Act, Section 402(o) and 40 CFR 122.44(l)(2)(i)(B), which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless information is available which was not available at the time of permit issuance. No draft permit condition is less stringent than the previous one.

IX. ENDANGERED SPECIES CONSIDERATIONS

According to the list updated on May 13, 2020 for Quay County, NM obtained from http://ecos.fws.gov, there are two endangered (E) and threatened (T) species: Least tern (E) and Arkansas River shiner (T). Both species were listed in the previous permit with determination of "no effect".

In accordance with requirements under section 7(a)(2) of the Endangered Species Act, EPA has reviewed this permit for its effect on listed threatened and endangered species and designated critical habitat. The scope of the Federal Action is limited to the effects of authorizing the discharge and does not include the permittee's decision to cease discharging. After review, EPA has determined that the reissuance of this permit will have "no effect" on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. No additions have been made to the USFWS list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.

2. EPA has received no additional information since the previous permit issuance which would lead to revision of its determinations.

3. The draft permit is consistent with the States WQS and does not increase pollutant loadings.

4. EPA determines that Items 1, thru 3 result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have "no effect" on listed species and designated critical habitat.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The reissuance of the permit should have no impact on historical and/or archeological sites since no new construction activities are planned in the reissuance.

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if NMWQS are promulgated or revised. In addition, if the State develops a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that TMDL. Modification of the permit is subject to the provisions of 40 CFR §124.5.

XII. VARIANCE REQUESTS

None

XIII. CERTIFICATION

The permit is in the process of certification by the State Agency following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer of COE, to the Regional Director of FWS and to the National Marine Fisheries Service prior to the publication of that notice.

XIV. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XV. ADMINISTRATIVE RECORD

The following information was used to develop the draft permit:

A. APPLICATION(s)

EPA Application Forms 2A and 2S dated April 27, 2020 and April 16, 2020, respectively. Additional information was received on July 16, 2020, August 20 & 21, 2020

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, 136, 434

C. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, effective September 12, 2018.

State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2018-2020.

TMDL For The Mainstem of The Canadian River and Select Tributary Streams, November 21, 2011.

D. MISCELLANEOUS

Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico – NMIP, March 15, 2012.

NMED emails dated August 25, 2020, September 11, 2020

Permittee letter dated August 10, 2020