NPDES PERMIT NO. NM0027782
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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DATE PREPARED

September 5, 2013

PERMIT ACTION

Proposed reissuance of the current NPDES permit issued September 28, 2007, with an effective date of November 1, 2007, and an expiration date of October 31, 2012.

RECEIVING WATER – BASIN

Lower Peralta Riverside Drain – Rio Grande Basin

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
ELG	Effluent limitations guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FCB	Fecal coliform bacteria
F&WS	United States Fish and Wildlife Service
mg/L	Milligrams per liter
µg/L	Micrograms per liter
MGD	million gallons per day
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
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
PCB	Polychlorinated Biphenyl
POTW	Publically owned treatment works
RP	Reasonable potential
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	Wasteload allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan
WWTP	Wastewater treatment plant

In this document, references to State WQS and/or rules shall collectively mean the State of New Mexico.

I. CHANGES FROM THE PREVIOUS PERMIT

Changes from the permit previously issued September 28, 2007, with an effective date of November 1, 2007, and an expiration date of October 31, 2012, are:

1. E. coli reporting requirements have been removed.
2. A minimum dissolved oxygen (DO) limit has been added.
3. BOD_5 limits have been modified.
4. BOD_5 and TSS influent monitoring has been added.
5. BOD_5 and TSS percent removal limits have been added.

II. APPLICATION LOCATION and ACTIVITY

As described in the application, the plant is located at 42 Chisum Trail, Rio Communities, Valencia County, New Mexico. The effluent from the treatment plant is discharged to the Lower Peralta Riverside Drain, thence to the Rio Grande in Segment No. 20.6.4.105 of the Rio Grande Basin. The discharge is located on that water at latitude 34° 37' 58" N and longitude 106° 44' 29" W, in Valencia County, New Mexico.

Under the SIC Code 4952, the applicant's activities are domestic wastewater treatment operations which serves a population of approximately 2000. The facility receives pretreated process wastewater from Aristech Acrylic.

As described in the application and Compliance Evaluation Inspection (CEI) report dated February 21, 2012, the treatment processes for the facility are as follows:

The New Mexico Water Service Company Rio Communities Wastewater Treatment Facility is a 0.3 MGD extended aeration activated sludge plant with ultraviolet disinfection. The plant

consists of a mechanical bar screen, a scum/grease and grit removal chamber, an aeration basin, a secondary clarifier, and a UV chamber.

Sludge is wasted daily to a 9,000 gallon sludge holding basin, centrifuged, and disposed of by a private sludge hauler for offsite disposal at the Valencia Regional Landfill and Recycling Facility.

III. RECEIVING STREAM STANDARDS

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC, amended through June 5, 2013). The facility discharges to the Lower Peralta Riverside Drain, thence to the Rio Grande in Segment No. 20.6.4.105 of the Rio Grande Basin. Segment No. 20.6.4.105 has designated uses of irrigation, livestock watering, wildlife habitat, marginal warmwater aquatic life, public water supply and primary contact.

IV. EFFLUENT CHARACTERISTICS

A quantitative description of the discharge(s) described in the EPA Permit Application Form 2E received August 20, 2012 are presented below in Table 1:

POLLUTANT TABLE – 1

Parameter	Max Daily Value	Max 30 Day Value	Long Term Avg Value
	(mg/l unless noted)		
Flow, million gallons/day (MGD)	0.2669	0.1750	NDR
pH, minimum, standard units (SU)		6.75	
pH, maximum, standard units (SU)	7.97		
Biochemical Oxygen Demand, 5-day (BOD_5)	9.90	3.61	NDR
Ammonia (as N)	NDR	32.0	NDR
Oil and Grease	NDR	12.0	NDR
Fecal Coliform (FCB) (colonies/100ml)	259.10	7.16	NDR
Total Suspended Solids (TSS)	32.0	6.75	NDR
Total Residual Chlorine (TRC)	NA	NA	NA
Temperature, winter	19.80°C	15.60°C	NDR
Temperature, summer	28.70°C	24.60°C	NDR

NDR – no data received
ND – Not detected

A summary of the last 24 months of available pollutant data from January 2010 through December 2012, taken from DMRs, shows no exceedances of permit limits for *E.coli*. One excursion of the 6.6 s.u. minimum pH permit limit was reported. However, DMR data demonstrating compliance with BOD_5, TSS, and TRC permit limits were not reported.

V. 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 EPA administered 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.

The applicant submitted a complete permit application on August 20, 2012. It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a). The existing NPDES permit initially issued September 28, 2007, with an effective date of November 1, 2007, and an expiration date of October 31, 2012.

VI. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS

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

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

Technology-based effluent limitations are established in the draft permit for TSS. Water quality-based effluent limitations are established in the proposed draft permit for BOD_5, TRC, DO, pH, and *E. coli*.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

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_5, TSS, fecal coliform, 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.

The New Mexico Water Service Company's Rio Communities Wastewater Treatment Facility is a privately owned facility which treats sanitary wastewater. Secondary treatment technology-based ELGs, influent monitoring, and percent removal for both BOD_5 and TSS, and pH are established at 40 CFR §133.102(a), 40 CFR §133.102(b) and 40 CFR §133.102(c), respectively. BOD_5 and TSS ELGs are 30 mg/l for the 30-day average, 45 mg/l for the 7-day average and 85 percent removal (minimum). ELGs for pH are between 6-9 s.u. Additionally, regulations at 40 CFR §122.45 (f)(1) require all pollutants limited in permits to have limitations expressed in terms of mass, such as pounds per day. When determining mass limits for POTWs, the plant's design flow is used to establish the mass load. Mass limits are determined by the following mathematical relationship:

Loading in lbs/day = pollutant concentration in mg/l * 8.345 lbs/gal * design flow in MGD
30-day average BOD_5/TSS loading = 30 mg/l * 8.345 lbs/gal * 0.3 MGD = 75.1 lbs/day
7-day average BOD_5/TSS loading = 45 mg/l * 8.345 lbs/gal * 0.3 MGD = 112.6 lbs/day

A summary of the technology-based limits for the Rio Communities Wastewater Treatment Facility is:

Technology-Based Effluent Limits – 0.3 MGD Design flow.

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			
	lbs/Day		mg/l (unless noted)	
Parameter	30-Day Avg.	7-Day Avg.	30-Day Avg.	7-Day Avg.
Flow	NA	NA	Measure MGD	Measure MGD
BOD_5, Influent	Report	---	---	---
BOD_5	75	112.6	30	45
BOD_5, % removal, minimum	≥ 85% (*2)	---	---	---
TSS, Influent	Report	---	---	---
TSS	75	112.6	30	45
TSS, % removal, minimum	≥ 85% (*2)	---	---	---
pH	NA	NA	6.0 - 9.0 s.u.	

FOOTNOTE:
*1 Influent samples are to be collected from the facility headworks.
*2 Percent removal is calculated using the following equation: [(influent concentration – effluent concentration) ÷ influent concentration] x 100.

The facility will be required to maintain a log kept at the facility showing the influent of BOD_5 and TSS on a once per month frequency to be used to determine the removal percentage. The influent data is not required to be submitted but must be made available to EPA or its agents upon request.

C. WATER QUALITY BASED LIMITATIONS

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 WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with the State WQS and applicable State water quality management plans to assure that surface WQS of the receiving waters are protected and maintained, or attained. Permit limits will ensure downstream WQS will be met in accordance with 40 CFR §122.4(d).

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 narrative and numerical water quality standards are used in conjunction with EPA criteria 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, amended through June 5, 2013). The facility discharges into the Lower Peralta Riverside Drain, thence to the Rio Grande in Segment No. 20.6.4.105 of the Rio Grande Basin. Segment No. 20.6.4.105 designated uses are irrigation, livestock watering, wildlife habitat, marginal warmwater aquatic life, public water supply and primary contact.

4. Permit Action – Water Quality-Based Limits

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

a. Dissolved oxygen (DO) – Biochemical Oxygen Demand (BOD_5)

The State of New Mexico WQS criterion applicable to the marginal warmwater aquatic life designated use requires dissolved oxygen to be no less than 5 mg/l.

An evaluation of the permittee's impact on the receiving water dissolved oxygen was completed as part of the permitting process. A steady state model (LA-QUAL) was used to evaluate the biochemical oxygen demand of the discharge and associated constituents including ammonia. A complete characterization of the receiving water was not available. Certain parameters, including flow, were available and were utilized. However, the receiving water model also used default values to estimate the various unavailable hydrodynamic and water quality parameters. The discharge was modeled using data obtained from the application, permits limits and defaults were used for unavailable discharge characterization data.

The evaluation demonstrated that the discharge will, at the secondary treatment technology standard, be insufficient to protect the receiving water dissolved oxygen in-stream standard of 5 mg/L. Therefore, the permit includes more stringent BOD_5 limitations of 20 mg/l for the 30-day average and 30 mg/l for the 7-day average in conjunction with a minimum DO concentration of 5 mg/l. The output file demonstrating the protection of the dissolved oxygen standard utilizing the new effluent limit is attached as an addendum to this fact sheet.

The permittee's DMR data demonstrating compliance with BOD_5 permit limits was not available for review; however, based upon the permittee's effluent characteristics included in its EPA Application Form 2E received on August 20, 2012, a compliance schedule is not necessary to meet the new limitations.

EPA welcomes comment on the modeling parameters to refine the defaults assumed in the model. In the event that commenter can substantiate more refined values for the model, the evaluation will be revised to reflect the more appropriate data.

b. pH

The WQS criterion applicable to the marginal warmwater aquatic life designated use requires pH to be between 6.6 and 9.0 s.u. This is more limiting than the technology-based limit presented above. Therefore, the draft permit will maintain a limit of 6.6 to 9.0 s.u.

c. Bacteria

The NMWQS criteria require an *E. coli* bacteria of 126 cfu/100 ml (or MPN) monthly geometric mean and single sample of 410 cfu/100 ml end-of-pipe to protect the primary contact designated use. The draft permit will maintain these *E. coli* limits.

d. Total Residual Chlorine

The facility uses UV to treat bacteria. However, when chlorine is used to either disinfect process equipment and/or treat for filamentaceous algae, the facility will be required to monitor for TRC. The WQS for TRC is 11 µg/l for both chronic aquatic life and wildlife habitat, and 19 µg/l for acute aquatic life. State implementation procedures allow for a mixing zone to be used for chronic standards, while acute standards must be met at end-of-pipe. The NM Implementation Plan strategy for TRC requires the most limiting of the critical dilution/chronic criteria

concentration of 11 µg/l or end-of-use/acute criteria concentration of 19 µg/l be used in determining the limit. The Lower Peralta Riverside Drain has a 4Q3 of 0 MGD; therefore, the critical dilution is 100%. The 11 µg/l would be the most limiting and will be the TRC limit proposed in the draft permit when chlorine is used in accordance with the above.

e. Toxics

i. General Comments

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 reasonable potential 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 Publicly Owned Treatment Works (POTWs), but also to facilities that are similar to POTWS, but which do not meet the regulatory definition of "publicly owned treatment works" (i.e., 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. These forms became effective December 1, 1999, after publication of the final rule on August 4, 1999, Volume 64, Number 149, pages 42433 through 42527 of the FRL.

The facility is designated as a minor, and does not need to fill out the expanded pollutant testing section Part D of Form 2A.

ii. Critical Conditions

Critical conditions are used to establish certain permit limitations and conditions. The State of New Mexico WQS allows a mixing zone for establishing pollutant limits in discharges. Both the NMWQS and NMIP establish a critical low flow designated as 4Q3, as the minimum average four consecutive day flow which occurs with a frequency of once in three years. The draft permit establishes a critical dilution based on the 4Q3 utilized in the current permit.

For permitting purposes of certain parameters such as WET, the critical dilution of the effluent to the receiving stream is determined. The critical dilution, CD, is calculated as:

$CD = Qe/(F \cdot Qa + Qe)$, where:

Qe = facility flow (0.3 MGD/0.465 cfs)
Qa = critical low flow of the receiving waters (0 MGD/0 cfs)

Since the 4Q3 is zero, the critical dilution is 100% and this value will be used to establish certain permit limits.

5. 303(d) List Impacts

According to the "2012-2014 State of New Mexico Integrated Clean Water Act Section 303(d) / 305(b) Report," the Rio Grande from the Rio Puerco to the Isleta Pueblo Boundary (Assessment Unit NM-2105_40) in Segment No. 20.6.4.105 has been identified as impaired for *E. coli* and temperature. End-of-pipe effluent limitations for *E. coli* bacteria and temperature have been established in this proposed permit. EPA has determined the established limitations do not cause or contribute to further impairment. The Rio Grande is classified as Category 5/5A with irrigation, livestock watering, and wildlife habitat as fully supporting; marginal warmwater aquatic life and primary contact as not supporting; and, public water supply as not assessed. The monitoring schedule is set for 2014. The standard reopener language in the permit allows additional permit conditions if a future TMDL is established.

D. 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). Technology based pollutants, influent and effluent BOD_5 and TSS, are proposed to be monitored two (2) times per month. BOD_5 and TSS percent removal, are proposed to be monitored one (1) time per month. Flow is proposed to be monitored daily by totalized flow measurement. These frequencies are consistent with the current permit and the current NM Implementation Procedures. The sample type for BOD_5 and TSS shall be by 24-hour composite, also consistent with the current permit.

Water quality-based pollutant monitoring frequency for *E. coli* shall be monitored two (2) times per month by grab sample. The pollutant pH shall be monitored five (5) times per week by instantaneous grab sample. Only when chlorine is used as established previously in this document, TRC shall be monitored daily by instantaneous grab sample. These frequencies are consistent with the current permit and the current NM Implementation Procedures. DO shall be monitored five (5) times per week by instantaneous grab sample.

E. WHOLE EFFLUENT TOXICITY REQUIREMENTS

In Section V.C.4.e.ii. above; "Critical Conditions", it was shown that the critical dilution, CD, for the facility is 100%. Based on the nature of the discharge, domestic wastewater treatment plant, the production flow; 0.3 MGD (0.465 cfs), the nature of the receiving water; intermittent, and the critical dilution; 100%, the Table 11 of the NMIP directs the WET test to be a 7 day chronic test using *Ceriodaphnia dubia* and *Pimephales promelas* at a once per permit term frequency for the permit term. According to the NMIP, when a test frequency is 1 time a year or less, the test should occur in winter or springtime when most sensitive juvenile life forms are likely to be present in receiving water and colder ambient temperatures might adversely affect treatment processes. This will generally be defined as between November 1 and April 30.

The draft 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 shall be 32%, 42%, 56%, 75%, and 100%. The low-flow effluent concentration (critical low-flow dilution) is defined as 100% effluent.

During the period beginning the effective date of the permit and lasting through the expiration date of the permit, the permittee is authorized to discharge from Outfall 001 - the discharge to the Lower Peralta Riverside Drain thence to the Rio Grande in Segment No. 20.6.4.105 of the Rio Grande Basin. Discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTIC	DISCHARGE MONITORING	
	30-DAY AVG MINIMUM	7-DAY MINIMUM
Whole Effluent Toxicity Testing (7 Day Static Renewal) 1/		
Ceriodaphnia dubia	REPORT	REPORT
Pimephales promelas	REPORT	REPORT

EFFLUENT CHARACTERISTIC	MONITORING REQUIREMENTS	
	FREQUENCY	TYPE
Whole Effluent Toxicity Testing (7 Day Static Renewal) 1/		
Ceriodaphnia dubia	1/ year	24-hr Composite
Pimephales promelas	1/ year	24-hr Composite

FOOTNOTES

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

VII. ANTIDEGRADATION

The State of New Mexico has antidegradation requirements to protect existing uses through implementation of their WQS. The limitations and monitoring requirements set forth in the draft permit are developed from the appropriate State WQS and are protective of those designated uses. Furthermore, the policy's set 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 assimilative capacity of the receiving waters, which is protective of the designated uses of that water.

IX. ANTIBACKSLIDING

The draft permit is consistent with the requirements to meet antibacksliding provisions of the Clean Water Act, Section 402(o) and 40 CFR 122.44(l)(1), 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. The draft permit maintains the effluent limitations of the previous permit for TSS, *E. coli*, and pH.

The draft permit amends the effluent limitations of the previous permit for BOD_5 to 20 mg/l for the 30-day average and 30 mg/l for the 7-day average, and TRC to 11µg/l. See Part VI.C.4.d above. The permit writer has determined that this change meets the exception to the antibacksliding provisions established at 40 CFR 122.44(l)(i)(B)(1).

X. ENDANGERED SPECIES CONSIDERATIONS

According to the most recent county listing available at US Fish and Wildlife Service (USFWS), Southwest Region 2 website, http://www.fws.gov/southwest/es/NewMexico/SBC.cfm, four species in Valencia County are listed as endangered (E) or threatened (T). Two species are avian and include the Southwestern willow flycatcher (*Empidonax traillii extimus*) (E) and the Mexican spotted owl (*Strix occidentalis lucida*) (T). The lone mammalian species is the Black-footed ferret (*Mustela nigripes*) (E). The lone fish species is the Rio Grande silvery minnow (*Hybognathus amarus*) (E). The American bald eagle (*Haliaeetus leucocephalus*) was previously listed in Valencia County; however, the USFWS, removed the American bald eagle in the lower 48 states from the Federal List of Endangered and Threatened Wildlife Federal Register, July 9, 2007, (Volume 72, Number 130).

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. After review, the EPA has determined that the reissuance of this permit will have "*no effect*" on the Mexican spotted owl (*Strix occidentalis lucida*) (T) or the Black-footed ferret (*Mustela nigripes*) (E) nor will adversely modify designated critical habitat. EPA also determined that the permit reissuance action "may affect, but is not likely to adversely affect" the Rio Grande silvery minnow and the Southwestern willow flycatcher and their critical habitat. EPA had requested that FWS concur with these "no effect" determinations.

FWS concurred with EPA's determination in a letter dated August 7, 2001 (Cons. #2-22-01-I-197c), that the reissuance of the Rio Communities WWTF permit "may affect, but is not likely to adversely affect" the Rio Grande silvery minnow and its critical habitat, and would have "no effect" on the Southwestern willow flycatcher. Additionally, in a letter dated July 18, 2007 (Cons. #22420-2007-F-0021), the FWS transmitted a biological opinion (BO) concurring that the proposed Perennial Rio Grande Silvery Minnow Refugia at Drain Outfalls Project "may affect,

but is not likely to adversely affect" the Southwestern willow flycatcher, its designated critical habitat, and the bald eagle. In this 2007 BO, the FWS also concluded that "The implementation of the proposed action is not expected to impede the survival or recovery of the silvery minnow within Middle Rio Grande or range-wide."

The EPA makes the Mexican spotted owl and Black-footed ferret determinations based on the following:

1. The EPA determined that the previous permit, issued on September 28, 2007, would have "*no effect*" on listed threatened and endangered species nor will adversely modify designated critical habitat.
2. Except for the removal of the bald eagle in 2007, no changes 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.
3. The EPA has received no additional information since September 28, 2007, which would lead to the revision of its determination.
4. EPA determines that Items 1, 2, and 3 result in no change to the environmental baseline established by the previous permit. Therefore, the EPA concludes that the reissuance of this permit will have "*no effect*" on listed threatened and endangered species nor will adversely modify designated critical habitat.

XI. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The reissuance of this permit should have no impacts on historical properties since no construction activities are proposed during its reissuance.

XII. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if relevant portions of the State WQS are revised or remanded. In addition, the permit may be reopened and modified during the life of the permit if relevant procedures implementing the State Water Quality Standards are either revised or promulgated. Should the State adopt a new WQS, and/or develop or amend a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that approved State standard and/or water quality management plan, in accordance with 40 CFR 122.44(d). Modification of the permit is subject to the provisions of 40 CFR 124.5.

XIII. VARIANCE REQUESTS

No variance requests have been received.

XIV. CERTIFICATION

The permit is in the process of certification by the State of New Mexico following regulations promulgated at 40 CFR §124.53. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers; to the Regional Director of the U.S. Fish and Wildlife Service and to the National Marine Fisheries Service prior to the publication of that notice.

XV. FINAL DETERMINATION

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

XVI. ADMINISTRATIVE RECORD

The following information was used to develop the draft permit:

A. APPLICATION(s)

EPA Application Form 2E received August 20, 2012.

B. 40 CFR CITATIONS

Citations to 40 CFR as of September 3, 2013.

Sections 122, 124, 125, 133, 136

C. STATE WATER QUALITY REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, as amended through June 5, 2013.

Procedures for Implementing NPDES Permits in New Mexico, March 15, 2012.

Statewide Water Quality Management Plan, December 17, 2002.

State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2012-2014.

D. OTHER

Compliance Evaluation Inspection of the New Mexico Water Service Company Rio Communities Wastewater Treatment Facility NPDES Permit No. NM0027782, February 21, 2012.

U.S. Fish and Wildlife Services' Biological Opinion on the Effects of Actions Associated with the Biological Assessment for the Perennial Rio Grande Silvery Minnow Refugia at Drain Outfalls Project (Cons. #2240-2007-F-0021), July 18, 2007.