

# **NPDES PERMIT NO. NM0028614 FACT SHEET**

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

## **APPLICANT**

Santa Fe County/Valle Vista Subdivision  
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## **ISSUING OFFICE**

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## **PREPARED BY**

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## **DATE PREPARED**

March 25, 2010

## **PERMIT ACTION**

Proposed reissuance of the current NPDES permit issued June 26, 2006, with an effective date of August 1, 2006, and an expiration date of August 31, 2009.

## **RECEIVING WATER – BASIN**

Cienega Creek – 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 limitation 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 (one part per million)
ug/l	Micrograms per liter (one part per billion)
MGD	Million gallons per day
ng/l	Nanograms per liter (one part per trillion)
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
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
USFWS	United States Fish & Wildlife Service
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

**I. CHANGES FROM THE PREVIOUS PERMIT**

Changes from the permit previously issued June 26, 2006, with an effective date of August 1, 2006, and an expiration date of August 31, 2009, are:

- A. E. coli bacteria limits have been made more stringent.

**II. APPLICANT LOCATION and ACTIVITY**

As described in the application, the facility is located approximately 0.7 miles southwest of the intersection of State Route 14 and State Route 599 in Santa Fe County, New Mexico. Under the SIC code 4952, the applicant operates a POTW with a design flow capacity of 0.088 MGD serving a population of approximately 960.

Wastewater enters the treatment facility via gravity flow thru the headworks. The headworks consists of a 3-foot deep rectangular basin with an influent pipe at the upper end of the basin and a metal bar screen with 1.5 inch gaps at the lower end. Debris collected on the screen is manually removed into a trash container with bottom drain holes for dewatering. The liquids return to the headworks and the solids are taken to the Santa Fe County Landfill for disposal.

Following the headworks, wastewater flows via gravity into the outer ring of a concentric three-ring concrete basin. The outer and middle rings function as aeration basins with eight disk aerators in the outer ring and six aerators in the middle ring. The middle ring performs nitrogen removal through the denitrification process. The innermost ring is a conical final clarifier. Return activated sludge from the clarifier is raised by a submersible pump and delivered simultaneously to the outer and middle rings through suspended poly vinyl chloride (PVC) pipes suspended above each ring.

The chlorination system consists of sump pump with a lift station that delivers the wastewater to the chlorine contact chamber; a four-cell serpentine structure. Chlorine tablets are added manually thru a PVC pipe which acts as a dispenser. The effluent exits the chlorine contact chamber through a 6-inch PVC pipe where the flow rate is measured by an ultrasonic flow meter. The wastewater exits the plant from a discharge pipe into a wetland that flows into Cienega Creek thence to the Santa Fe River in Waterbody Segment Code No. 20.6.4.113 of the Rio Grande Basin.

Sludge is removed as needed from the clarifier and chlorine contact chamber, pumped into an 800 gallon tanker truck owned by Santa Fe County and transported to the City of Santa Fe Septage dump station for final disposal.

The discharge from the POTW is through Outfall 001 at Latitude 35° 34' 50" North and Longitude 106° 03' 37" West. A map of the facility is provided in **Figure 1** below.

### III. EFFLUENT CHARACTERISTICS

A quantitative description of the discharge(s) described in the EPA Permit Application Form 2A received August 31, 2009, are presented below:

**POLLUTANT TABLE - 1**

Parameter	Avg	Max
	(mg/l unless noted)	
Flow, million gallons/day (MGD)	0.05	0.07
Temperature, winter	12.2 °C	8.7 °C
Temperature, summer	23.3 °C	27.1 °C
pH, minimum, standard units (SU)	N/A	7.12 su
pH, maximum, standard units (SU)	N/A	7.90 su
Biochemical Oxygen Demand, (BOD)	15.0	17.8
Fecal Coliform (FCB) (bacteria/100 ml)	45	117
Total Suspended Solids (TSS)	18.0	28.0

A summary of the last 3-years of pollutant data taken from DMRs are as follows:

**POLLUTANT TABLE - 2**

Date	BOD	TRC	TSS	E. coli
	30 DAY AVG	30 DAY AVG	30 DAY AVG	30 DAY AVG
	mg/l	mg/l	mg/l	CFU/100 ml
<b>Limit</b>	<b>30</b>	<b>0.1</b>	<b>30</b>	<b>548</b>
1/2007	5	2.2 – V	13	500
2/2007	17.4	1.44 – V	24	2800 – V
3/2007	8	2.2 – V	25	130
4/2007	18	2.2 – V	9	16000 – V
5/2007	64 - V	0.96 – V	9	300
6/2007	4.5	0.97 – V	8	2
7/2007	41.1 – V	1.14 – V	14	0
8/2007	24.4	2.2 – V	24	6000 – V
9/2007	11.5	1.71 – V	13	0
10/2007	44.1 – V	2.2 – V	16	6000 – V
11/2007	43.5 – V	2.2 – V	47 – V	6000 – V
12/2007	4.1	2.2 – V	5	0
1/2008	4	2.2 – V	9	1.64
2/2008	3.3	1.52 – V	9	0
3/2008	4	1.61 – V	20	3.28
4/2008	4	2.2 – V	11	3.28
5/2008	11.3	1.31 – V	38 – V	26.6
6/2008	5.9	2.2 – V	11	1.64
7/2008	8.6	2 – V	4	0
8/2008	8.7	1.12 – V	8	0
9/2008	7.1	520 – V	5	0

“V” denotes exceedance of permit limit

“ND” denotes no data available

The one 48-hour acute testing event (WET) required during the last permit term passed at the critical dilution of 100%. No toxicity to aquatic life was found therefore RP to exceed NMWQS does not exist.

Operational problems have been identified at the facility in two recent compliance evaluation inspections (CEI); May 14, 2008, and November 5, 2009. Problems identified in the 2008 CEI were improper operation resulting in 13 feet of sludge in the 14 foot deep clarifier. The excessive sludge continued into the chlorine contact chamber and the dechlorination chamber. This caused TRC levels in excess of the permit limit and also excessive levels of TSS and BOD. Other operational problems identified described in the report were a lack of flow calibration, failure to submit DMR's, failure to report within 24-hours permit noncompliance and failure to report pH for 18 months. The 2009 CEI noted continuation of the same type of problems. The sludge was at 12 feet of the 14 foot deep clarifier, sludge was visible in the chlorine contact chamber and also noted in the dechlorination chamber. The effluent is short circuiting through the dechlorination chamber reducing its effectiveness. Between January 2008 and September 2008, the TRC exceeded limits 274 times. The ultrasonic flow meter was not calibrated and the Parshall flume did not have calibration checks performed. Various other sample problems were noted; improper preservation of BOD and TSS samples, holding time exceedances for bacteria and reagents used for the TRC colorimeter were four years past the expiration date.

#### **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 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.

It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a). The previous permit expired August 31, 2009. The application was received on August 31, 2009, the last regulatory day allowed according to 40 CFR §122.21(d) (2) (i). The permit application has been accepted as allowed under this provision and the existing permit is administratively continued until this permit is issued.

**V. 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 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<sub>5</sub>. Water quality-based effluent limitations are established in the proposed draft permit for E. coli bacteria, TRC and pH.

**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, 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 facility is a POTW treating sanitary wastewater. POTW's have technology-based ELG's established at 40 CFR Part 133, Secondary Treatment Regulation. Pollutants with ELG's 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 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, are found at 40 CFR §133.102(b). ELG's for pH are between 6-9 s.u. and are found at 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 POTW's, 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/TSS loading = 30 mg/l \* 8.345 lbs/gal \* 0.088 MGD

30-day average BOD/TSS loading = 22 lbs

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

Final Effluent Limits - 0.088 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	N/A	N/A	Measure MGD	Measure MGD
BOD <sub>5</sub>	22	33	30	45
TSS	22	33	30	45
pH	N/A	N/A	6.0 – 9.0 standard units	

### 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 applicable State WQS and applicable State 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 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 August 1, 2007). The facility discharges into Cienega Creek, an unclassified tributary of the Santa Fe River, thence to the Santa Fe River, thence to the Rio Grande of the Rio Grande Basin. The segment closest to the discharge point is the Santa Fe River in Segment 20.6.4.113, approximately 5.7 stream miles downstream from Outfall 001. The description of this segment is “[T]he Santa Fe River and perennial reaches of its tributaries from Cochiti Reservoir upstream to the outfall of the Santa Fe wastewater treatment facility.” Cienega Creek is an unclassified water and designated standards must be applied consistent with the CWA.

The CWA sections 101(a)(2) and 303(c) require water quality standards to provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, wildlife, and recreation in and on the water, functions commonly referred to as “fishable/swimmable” uses.

EPA's current water quality regulation effectively establishes a rebuttable presumption that “fishable/swimmable” uses are attainable and therefore should apply to a water body unless it can be demonstrated that such uses are not attainable. EPA does not expect the State to adopt uses for ephemeral waters that cannot be attained, but in those instances, the State must submit a UAA to support an aquatic life designation that does not meet the CWA §101(a)(2) objective as required by 40 CFR 131.10(j)(1).

The New Mexico State Standards for Interstate and Intrastate Surface Waters are found at 20.6.4 NMAC, amended through August 1, 2007 and are found on the NMED's website at <http://www.nmcpr.state.nm.us/nmac/parts/title20/20.006.0004.pdf>. The known uses of Cienega Creek are not those contained for Segment No.20.6.4.113, but based on the above, are for aquatic life, livestock watering, wildlife habitat and primary contact. The determination of coldwater or warmwater aquatic uses is based on the first downstream designation from the receiving stream. The Santa Fe River is the first designated stream, and it is designated as both warmwater aquatic use and marginal coldwater aquatic life and based on this rationale Cienega Creek will be evaluated for both.

#### 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

State WQS are more limiting than the technology-based limits presented earlier. The draft permit shall establish 6.6 to 9.0 su's for pH based on State WQS for both warmwater and marginal coldwater aquatic life uses and are identical to the existing permit.

##### b. BACTERIA

For primary body contact uses, WQS require limits for E. coli of 126 cfu/100 ml monthly geometric mean and 410 cfu/100 ml single sample maximum. These limits are proposed in the draft permit and are more restrictive than the previous permit.

##### c. TRC

The facility uses chlorine to treat bacteria. Prior to final disposal, the effluent shall contain *no measurable* TRC at any time. If during the term of this permit the MQL for TRC becomes less than 11 µg/l, then 11 µg/l shall become the effluent limitation. The effluent limitation for TRC is the instantaneous maximum and cannot be averaged for reporting purposes. These limits are identical to the previous permit.

#### d. 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” (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. 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. No additional permit requirements are required beyond TRC previously proposed.

#### 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). Sample frequency is based on the NMIP and is consistent with other facilities of similar size. Technology based pollutants; BOD and TSS are proposed to be monitored once per month. Flow is proposed to be monitored continuously by totalizing meter.

Water quality-based pollutant monitoring frequency for E. coli shall be twice per month by grab sample. This is greater than the previous permit and is also greater than the level of frequency according to the NMIP. The increase in monitoring frequency for E. coli is based on the number of pollutant exceedances. TRC and pH shall be monitored five times per week using grab samples, which is greater than the previous permit but is consistent with similar sized facilities, using instantaneous grab samples. TRC shall be sampled using instantaneous grab samples. Regulations at 40 CFR §136 define instantaneous grab as being analyzed within 15-minutes of collection.

#### E. WHOLE EFFLUENT TOXICITY LIMITATIONS

Procedures for implementing WET terms and conditions in NPDES permits are contained in the NMIP, July 2009. Table 11 of Section V of the NMIP outlines the type of WET testing for

different types of discharges. The receiving water is described as being an ephemeral waterbody; flowing only under periods of snowmelt or when rainfall of long enough duration and/or intensity occur. Discharges into ephemeral streams for a minor WWTP require a one-time acute test at a 100% CD. The test species shall be *Daphnia pulex*. Testing shall be performed during the first year after the permit effective date and samples shall be taken during the period November 1 and April 30.

<u>EFFLUENT CHARACTERISTIC</u>	<u>DISCHARGE MONITORING</u>	
	<u>30-DAY AVG MINIMUM</u>	<u>48-HOUR MINIMUM</u>
Whole Effluent Toxicity Testing (48-Hour Static Renewal)		
<i>Daphnia pulex</i>	REPORT	REPORT

<u>EFFLUENT CHARACTERISTIC</u>	<u>MONITORING REQUIREMENTS</u>	
	<u>FREQUENCY</u>	<u>TYPE</u>
Whole Effluent Toxicity Testing (48-Hour Static Renewal)		
<i>Daphnia pulex</i>	1/Permit Term	24-Hr. Composite

**VI. FACILITY OPERATIONAL PRACTICES**

**A. SEWAGE SLUDGE**

Based on information provided in the application, waste activated sludge is removed and transported to the City of Santa Fe Wastewater Treatment Plant for final disposal. The permittee shall use only those sewage sludge disposal or reuse practices that comply with the federal regulations established in 40 CFR Part 503 "Standards for the Use or Disposal of Sewage Sludge". EPA may at a later date issue a sludge-only permit. Until such future issuance of a sludge-only permit, sludge management and disposal at the facility will be subject to Part 503 sewage sludge requirements. Part 503 regulations are self-implementing, which means that facilities must comply with them whether or not a sludge-only permit has been issued. Part IV of the draft permit contains sewage sludge permit requirements.

**B. WASTE WATER POLLUTION PREVENTION REQUIREMENTS**

The permittee shall institute programs directed towards pollution prevention. The permittee will institute programs to improve the operating efficiency and extend the useful life of the treatment system.

**C. INDUSTRIAL WASTEWATER CONTRIBUTIONS**

The treatment plant has no non-categorical Significant Industrial User's (SIU) and no Categorical Industrial User's (CIU). The EPA has tentatively determined that the permittee will not be required to develop a full pretreatment program. However, general pretreatment provisions have been required. The facility is required to report to EPA, in terms of character

and volume of pollutants any significant indirect dischargers into the POTW subject to pretreatment standards under Section 307(b) of the CWA and 40 CFR Part 403.

#### D. OPERATION AND REPORTING

The applicant is required to operate the treatment facility at maximum efficiency at all times; to monitor the facility's discharge on a regular basis; and report the results quarterly. The monitoring results will be available to the public.

#### VII. 303(d) LIST

Cienega Creek from the Santa Fe River to its headwaters is listed on the "2008-2010 State of New Mexico CWA §303(d)/§305(b) Integrated Report." The waterbody is assessed as Integrated Report Category 1, descriptive of a waterbody attaining WQS for all designated and existing uses. Last assessed in 2008, the stream is scheduled for monitoring during 2013. The standard reopener language in the permit allows additional permit conditions if warranted by any future studies, assessments and/or the development of a future TMDL.

#### VIII. 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 WQS. The limitations and monitoring requirements set forth in the proposed permit are developed from the State WQS 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 are protective of the assimilative capacity of the receiving waters, which is protective of the designated uses of that water.

#### IX. 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)(i)(A), which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation. The proposed permit maintains the mass loading requirements of the previous permit for BOD<sub>5</sub> and TSS. The limits for pH are the same as the previous permit. The pollutant E. coli bacteria have been made more stringent and this action is not subject to antibacksliding provisions. All of the changes represent permit requirements that are consistent with the States WQS and WQMP.

#### 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/EndangeredSpecies/lists/>, four species in Santa Fe County are listed as endangered (E) or threatened (T). The lone aquatic species is the Rio Grande silvery minnow (*Hybognathus amarus*) (E). Two species are birds and

include the southwestern willow flycatcher (*Empidonax traillii extimus*) (E) and the Mexican spotted owl (*Strix occidentalis lucida*) (T). The only mammal is the black-footed ferret *Mustela nigripes* (E). The American bald eagle (*Haliaeetus leucocephalus*) was previously listed in Santa Fe 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, 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. Factors that threaten the survival of Rio Grande silvery minnow include habitat degradation and flow modifications, introduction of non-native fishes, and lack of adequate refugia during periods of low or no flow. Issuance of this permit is found to have no impact on the habitats of these species.
2. No pollutants are identified by the permittee-submitted application at levels which might affect species habitat or prey species. Catastrophic fires and elimination of riparian habitat also were identified as threats to species habitat particularly that of the Mexican spotted owl and the Southwestern willow flycatcher. The NPDES program regulates discharge of pollutants and does not regulate forest management practices and agricultural practices, which contribute to catastrophic fires and elimination of riparian habitat, and thus, species habitat. Issuance of this permit is found to have no impact on the habitats of these species.
3. No additions have been made to the US Fish and Wildlife list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.
4. EPA has received no additional information since the previous permit was issued June 26, 2006, which would lead to revision of its determinations.
5. The draft permit is more restrictive than the previous permit.
6. EPA determines that Items 1, 2, 3, 4, and 5 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.

## **XI. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS**

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

**XII. PERMIT REOPENER**

The permit may be reopened and modified during the life of the permit if relevant portions of the New Mexico 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 WQS are either revised or promulgated. Should the State adopt a new WQS, and/or develop 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 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 proposed permit:

**A. APPLICATION(s)**

EPA Application Form 2A received August 31, 2009.

**B. 40 CFR CITATIONS**

Citations to 40 CFR are as of March 12, 2010.  
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 August 1, 2007.

Procedures for Implementing NPDES Permits in New Mexico, November, 2009.

Statewide Water Quality Management Plan, December 17, 2002.

State of New Mexico 305(b)/303(d) List for Assessed Stream and River Reaches, 2008 -2010.

D. MISCELLANEOUS

E-mail from Doug Sayre, Santa Fe County, March 23, 2010, to Larry Giglio, EPA, transmitting additional pollutant data.