

## **Appendix D**

# **PUBLIC INVOLVEMENT**



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, USACE OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

November 15, 2018

Planning, Project and Program Management Division  
Planning Branch  
Environmental Resources Section

Mr. Rolf Schmidt-Peterson  
New Mexico Interstate Stream Commission  
PO Box 25102  
Santa Fe, NM 87504-5102

Dear Mr. Schmidt-Peterson,

The U.S. Army Corps of Engineers (Corps), Albuquerque District is seeking comments on a proposal to improve aquatic habitat in the Rio Chama. The proposed project would begin immediately downstream of Abiquiu Dam, and extend downstream approximately 2.7 miles through lands managed by the Corps, U.S. Bureau of Land Management, and USDA Forest Service.

#### Background

The USDA Forest Service (Forest Service), U.S. Bureau of Land Management (Land Management), and Corps manage federal lands on both sides of Rio Chama for about 2.7 miles downstream of Abiquiu Dam. The New Mexico Department of Game and Fish (Game and Fish) with Trout Unlimited, the National Fish Habitat Partnership (Partnership), and the federal agencies are interested in riparian and riverine fish habitat improvement in this section of the Rio Chama.

#### What is Being Proposed?

The Corps in cooperation with the Forest Service, Land Management, U.S. Fish and Wildlife Service, Game and Fish, and Trout Unlimited are proposing to construct fish habitat in the Rio Chama in the 2.7 mile reach downstream of Abiquiu Dam. The Partnership may provide funding for habitat construction. Fish habitat would be created by placing rock clusters, excavating small pools and constructing cobble bars. The attached map and conceptual design provide preliminary information on the location of the project.

### Why Have I Received this Letter?

The purpose of this scoping letter is to inform you about this proposed project, and to give you the opportunity to communicate any issues, concerns, problems and opportunities you may have regarding this project. We request any information you may have within the proposed project area or surrounding area, such as existing conditions, studies, Environmental Assessments, and Environmental Impact Statements. This information will assist the Corps with determining the scope of issues to be discussed in the Environmental Assessment (EA) for this proposed project. Comments received, including contact information such as names and addresses, will be part of the public record and available for public inspection.

### Comment Submittal

Send written comments and questions to Dr. Michael Porter, U.S. Army Corps of Engineers.

Dr. Michael Porter  
U.S. Army Corps of Engineers  
Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109  
[Michael.D.Porter@usace.army.mil](mailto:Michael.D.Porter@usace.army.mil)

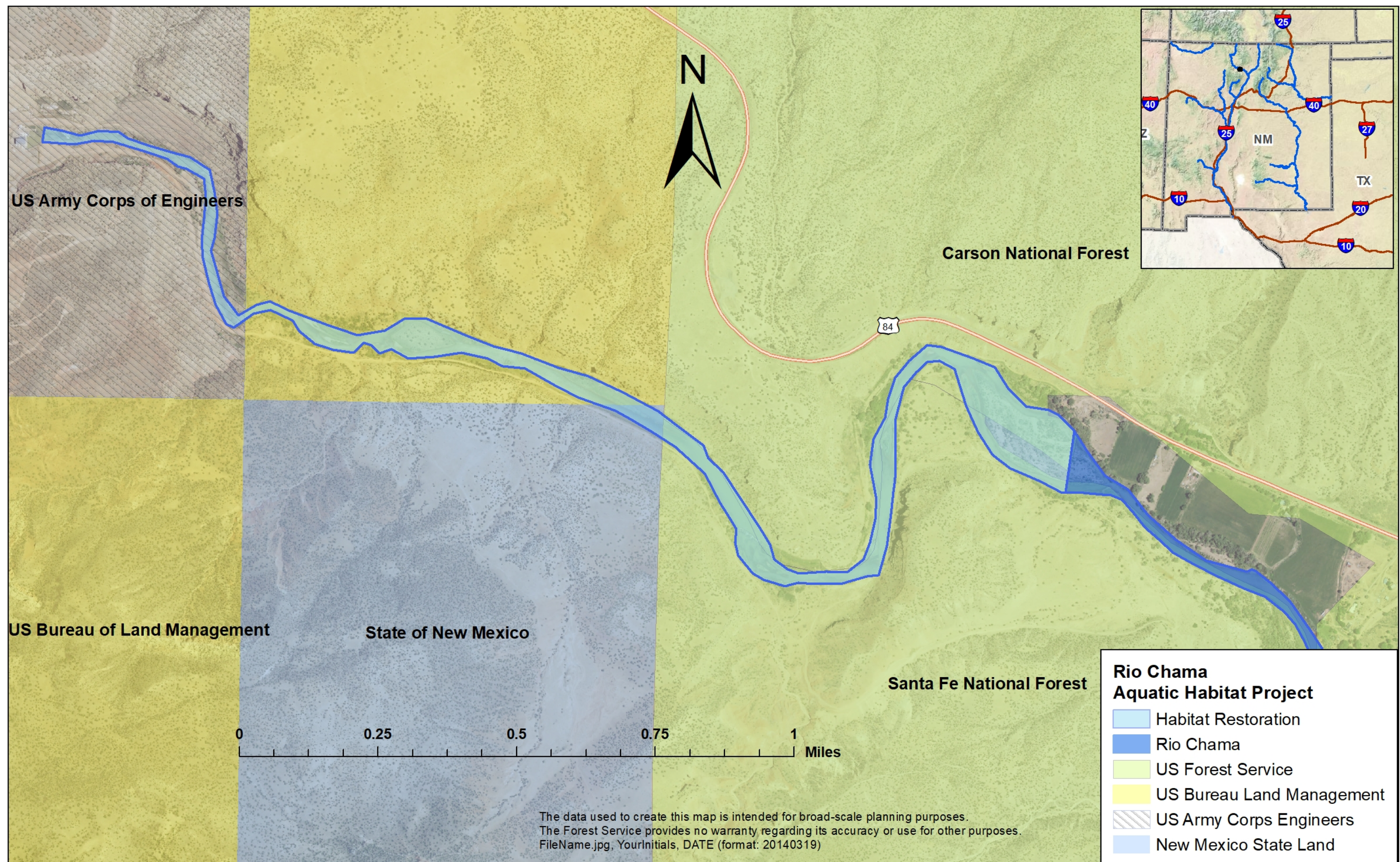
Phone: 505-343-3264

Please include Rio Chama Aquatic Habitat Project in the subject line of the email or letter. Indicate whether or not you would like to receive further correspondence from the Corps electronically. We would appreciate receiving initial comments for this proposed project by December 15, 2018.

Sincerely,

George MacDonell, Chief  
Environmental Resources Section







GOVERNOR  
Susana Martinez



DIRECTOR AND SECRETARY  
TO THE COMMISSION  
Michael B. Sloane

DEPUTY DIRECTOR  
Vacant

STATE OF NEW MEXICO  
DEPARTMENT OF GAME & FISH

One Wildlife Way, Santa Fe, NM 87507  
Post Office Box 25112, Santa Fe, NM 87504  
Tel: (505) 476-8000 | Fax: (505) 476-8123  
For information call: (888) 248-6866

[www.wildlife.state.nm.us](http://www.wildlife.state.nm.us)

STATE GAME COMMISSION

PAUL M. KIENZLE III  
Chairman  
Albuquerque  
BILL MONTOYA  
Vice-Chairman  
Alto  
CHANCE CHASE  
Artesia  
CRAIG PETERSON  
Farmington  
RALPH RAMOS  
Las Cruces  
BOB RICKLEFS  
Cimarron  
THOMAS "DICK" SALOPEK  
Las Cruces

November 27, 2018

Dr. Michael Porter  
U.S. Army Corps of Engineers  
Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

RE: Rio Chama Aquatic Habitat Project, NMDGF Project #18812

Dear Dr. Porter:

I have received your letter requesting comments on the proposed project to improve riparian and riverine fish habitat on the Rio Chama downstream of Abiquiu Dam. This stretch of the Rio Chama is a very popular recreational fishery, especially during winter months, and has limited habitat quality and quantity due to fluctuating flow regimes. The conceptual project design will address habitat limitations and should help improve this popular fishery. The proposed improvements will provide critical overwintering habitat for resident fish species such as brown trout and Rio Grande chub, create holding areas for stocked rainbow trout, improve water quality by increasing sediment transportation and reducing water temperatures, improve riparian health by stabilizing stream banks and encouraging native riparian plant development, and increase overall habitat complexity.

The Department fully supports the conceptual project and the effort to improve fish habitat within the Rio Chama. The Department has been identified as a partner in the project and we look forward to working with the Corps to successfully complete this project.

Please feel free to contact Eric Frey, Sportfish Program Manager, by telephone at 505-476-8102 or by email at [eric.frey@state.nm.us](mailto:eric.frey@state.nm.us) if you have any questions.

Sincerely,

Kirk Patten  
Chief, Fisheries Management Division



NOAH PARKER

LAND OF ENCHANTMENT GUIDES

EMAIL: trout@loeflyfishing.com ~ WEBSITE: www.loeflyfishing.com

Saturday, December 1, 2018

Dr. Michael Porter  
US Army Corps of Engineers ~ ABQ District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109

re. Rio Chama Aquatic Habitat Project

Dear Dr. Porter,

Thank you for reaching out to me. I would like to let you and the "powers that be" know how much in favor I am of the Rio Chama Aquatic Habitat Project. I think that for both individual recreation and local businesses, this project will be incredibly beneficial. The Abiquiu stretch of the Chama River, where the project is slated to be done, has become increasingly popular with anglers over the years and any improvement to this section of the river would be an amazing help to all concerned.

From an environmental perspective, more holding water (i.e. deeper pools and runs) and possible spawning gravels will be a terrific help to the existing fishery. As things stand now in this area, there are not that many spots that hold fish, especially when the releases from Abiquiu Dam are at lower levels. As I am sure you know, this stretch of water also has a fair population of wild brown trout - the proposed stream improvements will be a big benefit towards sustaining (and hopefully increasing) this biomass of wild trout.

From an economic perspective, this project's improvement of the river can only help. Our business employs 7 year-round fishing guides and making the Abiquiu stretch of the Chama River a better fishery will directly benefit our business. I am also sure that once the project is finished it will indirectly help many of the local stores and business as well.

Please don't hesitate to contact me if you have any questions or if we can be of any assistance in making this project happen. Thank you for your work and efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Noah Parker", written over a light blue horizontal line.

Noah Parker

Received December 5, 2018.

Dear Dr. Porter,

I'm a board member of Trout Unlimited Truchas Chapter and have been following this project for a long time. I'm glad to see that things are rolling along. I've been fishing for 70 years all over the western states and have seen a great many rivers. I see that this has the making of a good one with some work to improve it. I've also been a little involved with River Bend and the Dept. Of Game and Fish with there work on the Pecos River. That work has improved the river 100% and I've seen a lot more people fishing it now. The town of Pecos is real happy with the extra revenue it has brought in. I fish the Rio Chama and would be a happy camper if it got a make over from the dam clear to the 2.7 miles proposed.

I know that the fly shops and businesses would appreciate it also.

If there is anything that I can do please drop me an email or call.

Thank you for your work and reading my email.

William (Bill ) Zenger

Trout Unlimited

---

Received December 14, 2018

Dear Mr. Porter,

Please include the Abeyta-Trujillo Acequia in any future communications regarding this project.

Our concerns are twofold:

1. Our diversion dam spans the river in the middle of the proposed project. The dam is primitive, consisting of large basalt boulders and rock, with a settling pond and several headgates on the north bank of the river (river-left). Any construction activity near our diversion must be evaluated and approved by the Commissioners of the Acequia before action is taken. We would welcome the addition of local basalt rock to our diversion if it is compatible with habitat improvements, but we need to be intimately involved in all construction planning in this area.

2. The Acequia maintains access roads along the river-left bank and mesa. Use of any of these access roads must also be approved by the Acequia Commission. The main access road from US 84 is included in our USFS easement and overlies a buried water pipeline that may be damaged by large equipment. We would expect some maintenance of this road during the project if it is used.

There are a considerable number of relevant environmental studies that have been performed by the USACE and Carson National Forest in relation to our Acequia, including archaeological surveys and assessments. We would be happy to provide references to these publications. Please note that our Acequia was established in 1735 and is eligible for listing on the National Register of Historic Places. While this can add some complexity working with Federal funding, we are only interested in keeping the acequia operating efficiently. It seems to us that this project can actually enhance the performance of our irrigation system if we communicate effectively.

Respectfully,

Timothy J. Seaman  
Commission Treasurer  
Abeyta-Trujillo Acequia  
PO Box 149  
Abiquiu, NM 87510

---

Received January 8, 2019.  
Good Afternoon,

We just received your letter date November 15, 2018 regarding the scoping of the Corps Rio Chama Aquatic Habitat Project below Abiquiu Reservoir. It looks like we missed the December 15th, 2018 deadline for initial comments and hope that we are not too late to be included in the scoping of the project and specifically how the project might affect State water rules and regulations as well as important water resource infrastructure.

As you know the NMISC is charged with maintaining New Mexico's compliance under the Rio Grande Compact and protecting the water resources of the State of New Mexico with our sister agency the OSE under the rules of state water law. We are also concerned about channel capacity and flood control issues in the Rio Chama through this stretch as drought and wildfires amongst other factors have begun to alter the hydrology and geomorphology of this important river system.

It is under these two major categories of concern that the Rio Grande Bureau of the NMISC would like to be included in the scoping process of this project moving forward. Please use myself as a primary point of contact for this effort and please update your mailing list as Page Pegram is now the Rio Grande Bureau Chief should any higher level communications be necessary.

Thanks for your time and I look forward to providing whatever assistance might be necessary from our office for this project.

Anders Lundahl  
NM Interstate Stream Commission

---



Rio Chama meeting log

Date	Location	Participants	Purpose
4/11/18	Abiquiu Dam	TU, USACE, NMDGF, USFS, BLM, NFWF, Riverbend Eng., Ed Lucero (wave surfer)	Initial project “kick off” meeting to identify interest and partners
6/25/18	Abiquiu Dam	USACE, NMDGF, BLM, USFS (SF and Carson), TU, and Riverbend Eng.	Define project needs/scope and partner roles
3/27/19	Abiquiu Dam	USACE, NMDGF, BLM, Riverbend Eng., Daniel Manzanares (Abeyta Trujillo Acequia), Steve Harris (Rio Grande Restoration), and Ed Lucero (wave surfer)	Present preliminary designs
4/18/19	Canjilon Ranger District Office	NMDGF and Michael Gatlin (Carson NF)	Present preliminary designs and discuss comments
4/29/19	Santa Fe NF Supervisor Office	NMDGF and Cecil Rich (SFNF)	Present preliminary designs and discuss comments
5/6/19	Rio Arriba Co. Rural Event Center	NMDGF, Riverbend Engineering, and Abeyta-Trujillo Acequia members	Discuss habitat project and potential to improve/replace diversion
5/16/19	Conference call	USACE and NMDGF	Discussion on hazardous materials and water quality
7/1/19	Abiquiu Dam	USACE, NMDGF, and NMED	404/401 permit discussion

**Notice of Availability  
Draft Environmental Assessment (DEA)  
and  
Finding of No Significant Impact (FONSI)  
Rio Chama Aquatic Habitat Project,  
Rio Arriba County, New Mexico Project**

The New Mexico Department of Game and Fish, in cooperation with the U.S. Army Corps of Engineers (Corps), Albuquerque District, U.S. Forest Service, the Bureau of Land Management, and the New Mexico State Land Office has released the **“Rio Chama Aquatic Habitat Project, Draft Environmental Assessment”**. The Draft Environmental Assessment describes the proposed aquatic habitat measures on the Rio Chama downstream of Abiquiu Dam on state and federal lands.

Public review of the DEA will begin on August 16, 2019 and will run for 20 days until September 6. The document will also be available on the Corps web site at <http://www.spa.usace.army.mil/Missions/Environmental/EnvironmentalComplianceDocuments/EnvironmentalAssessmentsFONSI.aspx> . A hard copy will be sent upon written request.

Comments on the DEA / FONSI should be sent to:

*U.S. Army Corps of Engineers  
Albuquerque District  
Environmental Resources Section  
Attn: CESP-PM-LE (Michael Porter)  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435*

For more information contact Michael Porter at [Michael.D.Porter@usace.army.mil](mailto:Michael.D.Porter@usace.army.mil) or (505) 342-3264.

#####

Notice of Availability  
Draft Environmental  
Assessment (DEA)  
and  
Finding of No Significant  
Impact (FONSI)  
Rio Chama Aquatic  
Habitat Project,  
Rio Arriba County,  
New Mexico Project

The New Mexico Department of Game and Fish, in cooperation with the U.S. Army Corps of Engineers (Corps), Albuquerque District, U.S. Forest Service, the U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, and the New Mexico State Land Office has released the "Rio Chama Aquatic Habitat Project, Draft Environmental Assessment". The Draft Environmental Assessment describes the proposed aquatic habitat measures on the Rio Chama downstream of Abiquiu Dam on state and federal lands.

Public review of the DEA will begin on September 3, 2019 and will run until September 19. The document is available on the Corps web site at <http://www.spa.usace.army.mil/Missions/Environmental/EnvironmentalComplianceDocuments/EnvironmentalAssessments/FONSI.aspx>. A hard copy will be sent upon written request.

Comments on the DEA / FONSI should be sent to: U.S. Army Corps of Engineers Albuquerque District Environmental Resources Section Attn: CESP-PM-LE (Michael Porter) 4101 Jefferson Plaza NE Albuquerque, New Mexico 87109-3435

For more information contact Michael Porter at Michael.D.Porter@usace.army.mil or (505) 342-3264.

Journal: September 5, 8, 2019

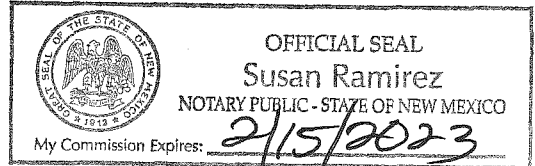
# AFFIDAVIT OF PUBLICATION

## STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 2 time(s) on the following date(s):

09/05/2019, 09/08/2019



[Signature]

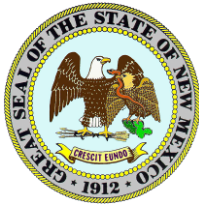
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this  
9 day of September of 2019

PRICE \$125.29

Statement to come at the end of month.

ACCOUNT NUMBER 1009517





**Michelle Lujan Grisham**  
Governor

**Howie C. Morales**  
Lt. Governor

## NEW MEXICO ENVIRONMENT DEPARTMENT

Harold Runnels Building  
1190 Saint Francis Drive, PO Box 5469  
Santa Fe, NM 87502-5469  
Telephone (505) 827-2855  
[www.env.nm.gov](http://www.env.nm.gov)



**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary

August 30, 2019

Michael Porter Ph.D.  
U.S. Army Corps of Engineers  
Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109  
Via email: [Michael.D.Porter@usace.army.mil](mailto:Michael.D.Porter@usace.army.mil)

Dear Dr. Porter,

The New Mexico Environment Department (NMED) has reviewed the scoping letter for the Rio Chama Aquatic Habitat Project and offers the following comments:

### **NMED Air Quality Bureau Comments**

Potential exists for temporary increases in dust and emissions from any activities that involve earthmoving, construction equipment and other vehicles; however, the increases should not result in non-attainment of air quality standards. Dust control measures should be taken to minimize the release of particulates due to vehicular traffic and any construction or harvesting type of activities. Areas disturbed by these activities, within and adjacent to the project area should be reclaimed to avoid long-term problems with erosion and fugitive dust.

To further ensure air quality standards are met, applicable local or county regulations requiring smoke, noise and/or dust control must be followed.

Any asphalt, concrete, quarrying, crushing, and screening facilities that may be contracted in conjunction with any proposed projects in the plan must have current and proper air quality permits. For more information on air quality permitting and modeling requirements, please refer to 20.2.72 NMAC.

With the appropriate dust control measures in place, the project is not anticipated to result in nonattainment of the New Mexico or National Ambient Air Quality Standards or contribute negatively to air quality on a long-term basis.

### **NMED Ground Water Quality Bureau Comments**

The purpose of the proposed action is to improve fish and wildlife habitat conditions on the Rio Chama, and support increasing sport fish and wildlife recreation by the public. Trout fishing is popular on the Rio Chama downstream of Abiquiu Dam (NMDGF 2016). Currently, the tailwater river channel immediately below Abiquiu Dam has limited aquatic habitat and structure for fish, and riparian vegetation providing leaf litter for aquatic insects.

Implementation of the project may involve the use of heavy equipment leading to a possibility of contaminant releases associated with equipment malfunctions (e.g., fuel, hydraulic fluid, etc.). The GWQB advises all parties

involved in the project to be aware of notification requirements for accidental discharges as specified at 20.6.2.1203 NMAC.

A copy of the Ground and Surface Water Protection Regulations, 20.6.2 NMAC, is available at <http://164.64.110.239/nmac/parts/title20/20.006.0002.pdf>.

#### **NMED Solid Waste Bureau Comments**

The NMED's Solid Waste Bureau (SWB) advises that some of the work detailed in this project may result in the knowing or inadvertent generation of regulated asbestos waste, as the project includes excavation activity, road maintenance and construction (e.g., boat ramps, etc.). Accordingly, there is the potential to impact asbestos-containing materials, such as asbestos-cement pipes (sewer, water or conduit). Suspect pipes, fragments or soils contaminated with related fragments or fines need to be sampled and analyzed by Polarized Light Microscopy to determine if the materials contain greater than one percent (1%) asbestos. If so, the pipes, fragments and/or contaminated soils require management as regulated asbestos waste per the New Mexico Solid Waste Rules (SWR), 20.9.2 – 20.9.10 NMAC, to include proper containerization, labeling, manifesting, transport by an approved commercial hauler and disposal at a permitted solid waste facility specifically permitted to accept regulated asbestos waste. Additionally, trenching, excavation and related construction activity has the potential to impact known or unknown areas buried solid waste. If more than 120 cubic yards of solid waste from any one contiguous area requires excavation, the SWB may require submission of a Waste Excavation Plan pursuant to the SWR, 20.9.2.10.A(15) NMAC.

#### **NMED Surface Water Quality Bureau Comments**

The New Mexico Department of Game and Fish (NMDGF) in cooperation with the U.S. Army Corps of Engineers (USACE), U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S.. Fish and Wildlife Service (FWS), and the State of New Mexico Land Office (NMLO), has prepared this environmental assessment (EA) to analyze potential effects that may result from the proposed Rio Chama Aquatic Habitat Restoration Project. The project would be located on the Rio Chama River, immediately downstream of Abiquiu Dam. The Abiquiu Dam and Reservoir is situated on the Rio Chama about 32 river miles upstream from its confluence with the Rio Grande. Lands on both sides of the Rio Chama in the project area are managed by USACE, BLM, USFS, and NMLO.

This project could have impacts to surface water quality. As stated in the draft EA:

State of New Mexico Section 401 Water Quality Certification is also required. NMED has provided conditional certification for Corps' 2017 Nationwide Permits (<https://www.env.nm.gov/swqb/404/2017NWPcert.pdf>). All applicable Best Management Practices (BMPs) provided by NMED will be included in project construction plans and specifications. USACE and non-federal sponsors will ensure the terms and conditions of the Section 401 permit are followed for the duration of construction.

NMED SWQB staff will review the project separately under Section 401 of the Clean Water Act to confirm consistency with the State's Section 401 certification of Nationwide Permit 27 for Aquatic Habitat Restoration. The consistency determination will be provided to the applicant for Section 404 permit coverage via email.

Thank you for providing NMED with the opportunity to review and comment on this proposed project.

Sincerely,  
Michaelene Kyrala  
Director of Policy  
New Mexico Environment Department  
Office: 505.827.2892  
E-mail: michaelene.kyrala@state.nm.us

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

MARK SANCHEZ, Chairman, Albuquerque  
JOHN R. D'ANTONIO JR., P.E., Secretary  
ARON BALOK, Commissioner  
BIDTAH BECKER, Commissioner  
GREGORY CARRASCO, Commissioner  
PAULA GARCIA, Commissioner  
MIKE HAMMAN, Commissioner  
STACY TIMMONS, Commissioner  
TANYA TRUJILLO, Commissioner



BATAAN MEMORIAL BUILDING, ROOM 101  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6160  
FAX: (505) 827-6188

September 6, 2019

U.S. Army Corps of Engineers  
Albuquerque District  
Environmental Resources Section  
Attn: CESP-PM-LE Michael D. Porter  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435

Via [https://Michael.D.Porter@usace.army.mil](mailto:Michael.D.Porter@usace.army.mil)

**RE: Draft Environmental Assessment and Finding of No Significant Impact for the Rio Chama Aquatic Habitat Project, Rio Arriba County New Mexico**

### Introduction and Interest of Party

The New Mexico Interstate Stream Commission ("NMISC") hereby submit these formal comments (hereinafter "Comments") pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h ("NEPA"). These Comments address the legal sufficiency of the U.S. Army Corps of Engineers ("USACE") Draft Environmental Assessment ("DEA") and Finding of No Significant Impact ("FONSI") for the Rio Chama Aquatic Habitat Project ("Project"), Rio Arriba County, New Mexico (August, 2019).

The NMISC is charged with administration of all interstate water compacts for New Mexico, as well as protecting, conserving and developing the waters and stream systems of the State. NMSA 1978, § 72-14-3 (1943). In the Rio Grande basin, the NMISC performs numerous activities, some of which will be affected by the Project. Those activities include monitoring water operations of the USACE and the U.S. Bureau of Reclamation ("Reclamation"), conducting annual accounting of native Rio Grande and San Juan Chama Project (SJC) water, coordinating with the Office of the State Engineer and water users on Rio Chama water administration and active water resource management (shortage sharing), assessing and determining Rio Grande Compact ("Compact") compliance, and addressing federal natural resource policy issues that may impact the river system.

The NMISC reviewed the Project DEA and FONSI to determine whether the USACE has met the requirements of the NEPA. As a general statement, the NMISC is supportive of habitat restoration projects, including this Project. However, based on our review, the NMISC is



concerned that neither the DEA nor the FONSI adequately address the Compact administration, water management and water operations consequences of the proposed action required to make a fully informed and well-considered decision. The NMISC submitted comments, dated June 15, 2015 in response to the April 24, 2015 scoping letter. In those comments, the NMISC raised the following interrelated issues:

- The Rio Grande basin is fully appropriated and any new use of water must be offset by a decrease in water use somewhere else in the basin;
- Without offsets, Project depletions will impact the administration of the Rio Grande Compact;
- Securing water rights to offset increased Project depletions is needed but will be complicated by existing water management agreements.

#### Issues Of Concern

The NMISC's current comments are based upon the same issues we raised in our June 15, 2015 scoping process comments. The DEA and FONSI fail to fully examine or address those comments on the water resource and hydrological effects on Rio Grande Compact administration, and fail to fully address the effects on water management and operations. In particular, it does not acknowledge the requirement to apply for a water right transfer and receive a water right permit under state law. We incorporate by reference our June 15, 2015 scoping process comment letter.

#### Statement explaining how the USACE acted in error

An Environmental Assessment is required to rigorously explore and objectively evaluate all reasonable alternatives in the analysis. NEPA §§ 1502.16 (a),(b),(d) and (h). In this instance the USACE did not adequately address NMISC comments related to the effects on Rio Grande Compact administration and the Project's effect on water management and operations.

For example, the USACE reliance upon water quality regulations to analyze Project water resource effects does not address the NMISC's Compact administration and water management and operation concerns that the proposed action will increase depletions of the surface water.

More specifically, under the terms of the Rio Grande Compact ("Compact"):

1. Article IV requires, in part, that appropriate adjustment of New Mexico's delivery schedule be made to account for post 1929 depletions of water above Otowi gage. Creating new wetlands and open water ponding on the Rio Chama will increase depletions and those must be offset through the application and transfer process for water rights required under state law.
2. Water management in the Rio Chama will be affected. Flows in the Chama are a combination of native Rio Grande and trans-mountain San Juan-Chama (SJC) water. SJC water is already contracted to entities downstream of the Project area and the

USACE does not hold an SJC contract. Unless the Project obtains a sublease of SJC water to offset increased depletions at the project, only native water would be available for offsets. Any natural flow on the Chama of 100 cfs or less, which commonly occurs during irrigation season, belongs to senior water rights irrigators on the lower Chama and must not be depleted. The USACE failed to analyze this issue. There are also formal and informal shortage-sharing agreements in place between senior priority native water rights holders and others on the Rio Chama system that the DEA failed to address. Securing the necessary water rights to offset this Project will be complicated by those existing agreements.

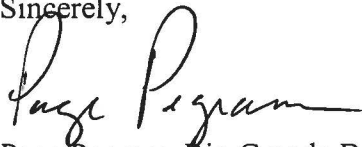
Given that the DEA and FONSI do not address the above items, they are based upon incomplete hydrologic information and do not comply with applicable laws, regulations, policies, and planning procedures. The USACE failed to take a hard look at the NMISC's water resource, water management and Compact administration comments in the scoping.

### Conclusion

In sum, we believe that the Project DEA and FONSI analysis of effects on water resources is legally deficient. As such we file these formal comments and request that those deficient portions of the DEA related to water management and water operations be remedied, and that an analysis of effects on Compact administration be included as well as an acknowledgment that permits to transfer water rights from the Office of the State Engineer will be required prior to construction of the Project. Specifically, we request that a Record of Decision not be issued until those impacts are adequately addressed. We request that the USACE circulate a revised Environmental Assessment that specifically addresses Project impacts to water management and operations and Project impacts to the administration of the Rio Grande Compact.

We thank you again for this opportunity to provide comments on the Rio Chama Habitat Project DEA and FONSI, and look forward to a positive response from you on our comments. Please do not hesitate to call me at 505-383-4051 if you have questions about this letter and our request, and please keep me informed of any decisions and actions related to the Rio Chama Aquatic Habitat Project.

Sincerely,



Page Pegram, Rio Grande Basin Manager  
New Mexico Interstate Stream Commission

cc: Rolf Schmidt-Petersen, Director, NMISC  
Arianne Singer, General Counsel, NMISC  
Chris Stageman, NMISC  
John Romero, NMOSE Water Rights Administration Acting Director  
Brian Gallegos, NMOSE District 6 Manager

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington  
TOM BLAINE, P.E. Secretary  
BUFORD HARRIS, Mesilla  
BLANE SANCHEZ, Isleta  
PHELPS ANDERSON, Roswell  
MARK SANCHEZ, Albuquerque  
JAMES WILCOX, Carlsbad  
TOPPER THORPE, Cliff  
CALEB CHANDLER, Clovis



BATAAN MEMORIAL BUILDING, ROOM 101  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6160  
FAX: (505) 827-6188

June 15, 2015

## Submitted Electronically and via United States First Class Mail

U. S. Department of the Army  
Albuquerque District, Corps of Engineers  
Planning, Project, and Program Management Division  
Environmental Resources Section  
Attn: Dr Michael D. Porter  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

**Re: New Mexico Interstate Stream Commission scoping input on the Rio Chama Wetland Project**

Dear Dr. Porter:

The New Mexico Interstate Stream Commission (ISC or "Commission") submits the following comments on the proposed Rio Chama Wetlands Project (the "Proposed Project") downstream of Abiquiu Dam, Rio Arriba County, New Mexico. The ISC appreciates the opportunity to comment on the Proposed Project.

The ISC is interested in the Proposed Project because it is statutorily mandated to ensure compliance with the interstate river compacts to which New Mexico is a party, and to develop, conserve, and protect New Mexico's water and stream systems. NMSA 1978, § 72-14-3 (1953).

In the Rio Grande basin, the ISC performs numerous activities, some of which may be affected by the proposed project. Those activities include, but are not limited to, monitoring water operations of the U.S. Army Corps of Engineers (Corps) and Reclamation, conducting annual accounting of native Rio Grande and San Juan Chama Project (SJC) water, assessing and determining Rio Grande Compact compliance, and addressing federal natural resource policy issues that may impact the river system. With these activities in mind, we reviewed the conceptual plan of the Proposed Project. Based on that review the ISC provides the following written comments.

## OFFICE OF THE STATE ENGINEER PERMIT

The Upper Rio Grande basin is fully appropriated and the Rio Grande Compact limits the amount of water that can be depleted in the Upper Rio Grande. Creating a new wetland and open water pond will create a new diversion and increase depletions from the Rio Chama system. Therefore, any new use of water must be permitted and offset by acquisition of an existing water right and decrease in water use somewhere else. The Office of the State Engineer (OSE) will likely require a water rights permit to do so. A permit application should be submitted to the District 6 Office of the OSE for the proposed project.



## **RIO CHAMA WATER MANAGEMENT AND MEASUREMENT**

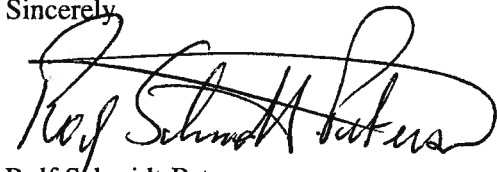
Water management in the Rio Chama is complicated by the fact that there is a combination of native Rio Grande and transmountain diversion (SJC) water in the river. The SJC water is contracted to entities downstream of the Project area. There are times when the vast majority of water in the Rio Chama is SJC water and that water couldn't be used for the wetland project. In addition, for native Rio Grande water, there are formal and informal shortage-sharing agreements in place between high priority native water rights holders and others on the Rio Chama system. Securing water rights to offset this Project will be complicated by those existing agreements.

Finally, the accurate measurement of water is critical to efficient and effective water management and the ISC is concerned about the impact that the wetlands project may have on the Rio Chama Below Abiquiu gaging station (#08287000) operated by the U.S. Geological Survey (USGS). Diverting water for the proposed pond upstream of the gaging station and routing it to a pond downstream would result in water bypassing the gage without being measured. Additionally the two "large rock habitat structures" immediately upstream of the existing concrete weir are in the general vicinity of where the USGS and others conduct discharge measurements and could possibly reduce the quality of measurements, further impacting the gage's rating.

The ISC reserves the right to supplement these comments to provide new information which is obtained or developed prior to the completion of this proposed project.

Please do not hesitate to contact me at (505) 827-6125 or Anders Lundahl at (505) 383-4047 should you have any questions. Thank you for the opportunity to comment on this project.

Sincerely

A handwritten signature in black ink, appearing to read "Rolf Schmidt-Petersen", written over a horizontal line.

Rolf Schmidt-Petersen  
Rio Grande Basin Manager  
New Mexico Interstate Stream Commission

cc: Deborah K. Dixon, P.E., Director, NMISC  
Brian Gallegos, NMOSE  
Frank Scott, NMOSE  
Anders Lundahl, NMISC  
Page Pegram, NMISC  
Ryan Gronewald, Corps of Engineers  
Fred Vigil, RCAA  
Tim Seaman, RCAA  
RGB file



**STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER  
District VI Office, Santa Fe, NM**

JOHN R. D'ANTONIO JR., P.E.  
STATE ENGINEER

PO Box 25102  
Santa Fe, New Mexico 87501-5102  
PHONE: (505) 827-6120  
FAX: (505) 827-6682

*September 6, 2019*

U. S. Army Corps of Engineers  
Attn: Michael D. Porter  
Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109

Via [https://Michael.D.Porter@usace.army.mil](mailto:Michael.D.Porter@usace.army.mil)

**Re: Draft Environmental Assessment and Finding of No Significant Impact, for the Rio Chama Aquatic Habitat Project, Rio Arriba County, New Mexico**

Dear Mr. Porter:

The New Mexico Office of the State Engineer ("OSE") hereby submits these formal comments (hereinafter "Comments") pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h ("NEPA"). These Comments address the legal sufficiency of the U. S. Army Corps of Engineers ("USACE") Draft Environmental Assessment ("DEA") and Finding of No Significant Impact ("FONSI") for the Rio Chama Aquatic Habitat Project ("Project"), Rio Arriba County, New Mexico (August, 2019).

The OSE is charged with administration of all water in the State of New Mexico pursuant to NMSA 1978, § 72-2-1 (1978). In the Rio Grande basin, the OSE performs numerous activities, some of which will be affected by the Project. Those activities include, but are not limited to basic water rights administration under state law and OSE Rules and Regulations, Active Water Resource Management (AWRM), conducting annual accounting of native Rio Grande and San Juan Chama Project (SJC) water, and addressing state water resource policy issues that may impact the river system.

The DEA description of the proposed action, states in relevant part: The New Mexico Department of Game and Fish (NMDGF) in cooperation with USACE, U.S. Bureau of Land Management (BLM), U.S. Forrest Service (USFS), U.S. Fish and Wildlife Service (FWS), and the State of New Mexico Land Office (NMLO) propose to construct instream aquatic habitat features on the Rio Chama below Abiquiu Dam. The proposed action includes installation of instream fish habitat structures, two new boater access areas, wetland improvements, and riparian vegetation improvements for wildlife. The proposed project area is about 58.7 acres

through 2.7 miles of lands managed by NMDGF in cooperation with USACE, BLM, USFS, FWS, and the NMLO. The proposed project would construct instream aquatic habitat features for trout and other fish species. The proposed wetland improvements include but are not limited to constructing 2.1 acres of groundwater wetlands and plant native vegetation through the riparian zone.

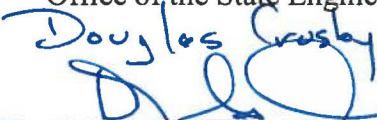

The Rio Grande basin is fully appropriated and any new use of water must be offset pursuant to the Mesilla Valley Guidelines. New appropriations must be offset by water rights transfers from other sources through permanent or temporary retirement or surface or groundwater rights or permitted import of interbasin transfer water. The Project will construct 2.1 acres of wetlands which will increase depletions from the river system. In this role, the OSE reviewed the Project DEA and FONSI to determine whether the project will meet the OSE surface and groundwater water rules and regulations including, but not limited to, Section 19.26.2.15 (B) of the State Engineer's Regulations Governing the Appropriation and Use of the Surface Waters of New Mexico.

Based on our review of the Project description in the DEA, impounding water in a constructed wetland will create a depletion that must be offset pursuant to OSE rules and regulations.

We thank you for this opportunity to provide comments on the Project DEA and FONSI, and look forward to a positive response from you on our comments. Please keep us informed of any decisions and actions related to the Project. Please don't hesitate to contact me at (505) 827-6120 if you have any questions.

Sincerely,

Office of the State Engineer

  
  
for Brian Gallegos  
District VI Manager

cc: John Romero, OSE, Water Rights Director  
Doug Crosby, OSE, AWRM Supervisor  
Page Pegram, NMISC, Rio Grande Basin Manager



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, USACE OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

September 20, 2019

Planning, Project and Program Management Division  
Planning Branch  
Environmental Resources Section

Attn:

Brian Gallegos  
New Mexico Office of State Engineer  
PO Box 25102  
Santa Fe, NM 87504-5102

Page Pegram  
New Mexico Interstate Stream Commission  
PO Box 25102  
Santa Fe, NM 87504-5102

**RE: Agency Comments on the Draft Environmental Assessment and Finding of No Significant Impact for the Rio Chama Aquatic Habitat Project, Rio Arriba County, New Mexico**

Thank you for your comments. The U.S. Army Corps of Engineers (USACE), Albuquerque District sent Scoping Letters to interested agencies and stakeholders on November 14, 2018, and a Notice of Availability for the Draft Environmental Assessment (DEA) on August 16, 2019. The New Mexico Office of the State Engineer (OSE) and New Mexico Interstate Stream Commission (NMISC) provided comments on the DEA.

In cooperation with the New Mexico Department of Game and Fish (NMDGF), USACE provides the following responses:

1. Two paragraphs describing OSE and NMISC responsibilities were added to Section 1.3 Regulatory Compliance.
2. A paragraph was added under Section 2.1 Proposed Action to clarify how limiting habitat features to the active channel would not result in increasing depletions. The discussion describes how reducing the wetted surface and water surface areas relative to volume provide more efficient water transport at flow less than 100 cfs compared to a wide, shallow wetted channel.
3. Following discussion with NMDGF, the proposed construction of depressional wetlands has been relocated from the area described in the Section 2.1 Proposed Action to the area described in Section 2.3 Alternative Actions Evaluated. This move was based on the concerns raised by OSE/NMISC.
4. A paragraph describing the limits of the Rio Grande Compact was added to the hydrology section under Section 3.3 Water Resources.

These changes should address the issues that were raised through your review. Again, thank you for your comments.

Sincerely,

George MacDonell, Chief  
Environmental Resources Section