

## Appendix J

### Public Scoping



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

August 18, 2023

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

Chairman Bobby Komardley  
Apache Tribe of Oklahoma  
PO Box 1220  
Anadarko, OK 73005

Dear Chairman Komardley:

In cooperation with the Sponsor, the City of Colorado Springs, Colorado (CO), the U.S. Army Corps of Engineers (Corps), Albuquerque District, is planning a wetlands and habitat restoration project. The project site is located along Spring Creek in Colorado Springs, CO (Enclosure 1). The project area is land owned by the City of Colorado Springs and private property. This restoration project is part of the Continuing Authorities Program (CAP), authorized in the Water Resources Development Act of 1996, Section 206.

Volunteers collect litter and debris along creeks, in parks, and open spaces. A team from the Corps, in partnership with the City of Colorado Springs, is planning to participate during Creek Week. Creek Week is a multi-day volunteer clean-up event at the end of September and the beginning of October. The Corps will engage with volunteers, answer any questions, and present features and alternative plans that are in the evaluation process for the ecosystem restoration study. The reference map below highlights the site, located near the intersection of S Academy Blvd and Pikes Peak Ave in Colorado Springs, Colorado:





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**4101 JEFFERSON PLAZA NE**  
**ALBUQUERQUE, NM 87109-3435**

There are no known historic properties or archaeological sites within the project area. A pedestrian survey of the project area to identify the presence of cultural resources was completed in December 2022, and none were identified.

The Corps is providing notice to tribes of the outreach regarding the Spring Creek restoration project. Further, we are interested in any concerns you may have regarding the environment such as natural, biological, or cultural resources; wildlife, vegetation, and special status species; air, water, or sound quality; aesthetics; health and safety; Traditional Cultural Properties; or Indian Trust Assets that may occur within or adjacent to the project area.

If you have any questions or require additional information, please contact Corps Albuquerque District archaeologist Kaitlyn Fuqua at [Kaitlyn.N.Fuqua@usace.army.mil](mailto:Kaitlyn.N.Fuqua@usace.army.mil), or myself at [Danielle.A.Galloway@usace.army.mil](mailto:Danielle.A.Galloway@usace.army.mil) or at (505) 342-3661. If you would prefer not to be contacted regarding certain types of projects, or would prefer not to receive consultation letters, please let us know.

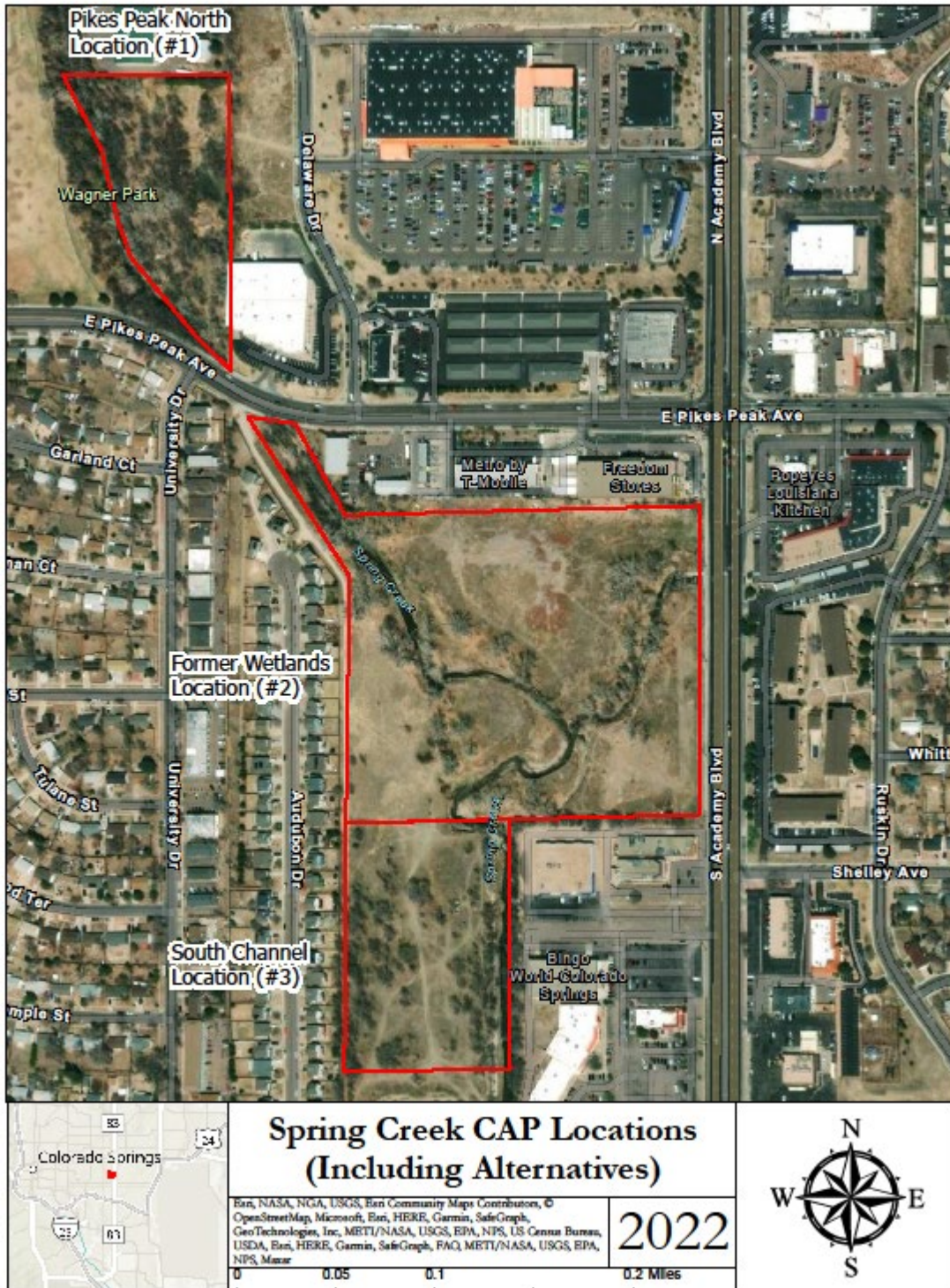
Sincerely:

(Acting for) Danielle A. Galloway  
Chief, Environmental Resources Section



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

Enclosures



Enclosure 1: Spring Creek CAP Project Area Locations



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Colorado Ecological Services Field Office  
Denver Federal Center  
P.O. Box 25486  
Denver, CO 80225-0486  
Phone: (303) 236-4773 Fax: (303) 236-4005

In Reply Refer To:

02/26/2025 16:26:52 UTC

Project Code: 2025-0061286

Project Name: Section 206 - Spring Creek Ecosystem Restoration

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2))

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

## **OFFICIAL SPECIES LIST**

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Colorado Ecological Services Field Office**

Denver Federal Center  
P.O. Box 25486  
Denver, CO 80225-0486  
(303) 236-4773

## PROJECT SUMMARY

Project Code: 2025-0061286

Project Name: Section 206 - Spring Creek Ecosystem Restoration

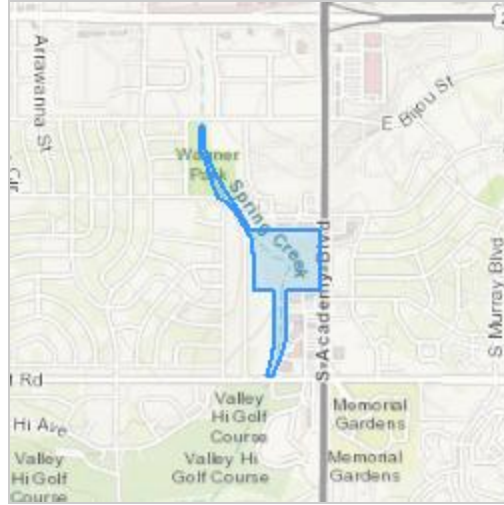
Project Type: Land Preservation

Project Description: As part of the planning process for all Continuing Authorities Program (CAP) projects, a feasibility study must be completed. This feasibility study was conducted in accordance USACE's CAP engineering pamphlet (EP 1105-2-58), Planning Guidance Notebook (ER 1105-2-100), and Civil Works Ecosystem Restoration Policy (ER 1165-2-501), and with consideration given to the scope and scale of the recommended solution. The purpose of the Spring Creek Ecosystem Restoration feasibility study is to evaluate significant aquatic ecosystem degradation within the study area along Spring Creek; to formulate, evaluate, and screen potential solutions to these problems; and to recommend a series of actions and solutions that have a Federal interest and are supported by a non-Federal sponsor willing to provide the necessary items of local cooperation. Environmental degradation within the study area along Spring Creek includes a loss of natural ecosystem structures, functions, and processes necessary to support native fish and wildlife habitat.

The project is divided into three distinct reaches, each with its own unique set of restoration measures. In Reach 1, the northern most reach, focuses on bank stabilization, using boulders and plantings to prevent erosion, as well as removing invasive species of plants and creating a scenic sitting area with a picnic table. Moving downstream, Reach 2 (the former wetland) involves the construction of two rock riffles to counter incision, as well as the creation of wetland areas through bank modifications and replanting of riparian zones. Additionally, an incised former channel will be filled, and access paths will be created to facilitate maintenance and visitor access. In Reach 3, the southern most part of the study site, will undergo significant modifications to the west bank, including the removal of a concrete slab, slope modification, and the addition of riprap and plantings to stabilize the stream and enhance habitat. The project also includes the installation of a constructed rock riffle and instream habitat boulders to further support ecosystem function. Ultimately, these restoration measures aim to improve stream and riparian zone function as part of the Fountain watershed corridor system but also provide numerous benefits to the surrounding communities, highlighting the importance of collaborative conservation efforts.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.82991495,-104.75935277357028,14z>



Counties: El Paso County, Colorado

## ENDANGERED SPECIES ACT SPECIES

There is a total of 5 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

**BIRDS**

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10477">https://ecos.fws.gov/ecp/species/10477</a>	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/6039">https://ecos.fws.gov/ecp/species/6039</a>	Threatened

**INSECTS**

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> There is <b>proposed</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Proposed Threatened
Suckley's Cuckoo Bumble Bee <i>Bombus suckleyi</i> Population: No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10885">https://ecos.fws.gov/ecp/species/10885</a>	Proposed Endangered

**FLOWERING PLANTS**

NAME	STATUS
Ute Ladies'-tresses <i>Spiranthes diluvialis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2159">https://ecos.fws.gov/ecp/species/2159</a>	Threatened

**CRITICAL HABITATS**

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

## **IPAC USER CONTACT INFORMATION**

Agency: Army Corps of Engineers  
Name: Rodrigo Seden  
Address: 4101 Jefferson Plaza NE  
City: Albuquerque  
State: NM  
Zip: 87109  
Email: [jorge.r.seden@usace.army.mil](mailto:jorge.r.seden@usace.army.mil)  
Phone: 5053423168

**From:** [Price, Dana M CIV USARMY CESPA \(USA\)](#)  
**To:** [Sedeno, J Rodrigo CIV USARMY CESPA \(USA\)](#)  
**Cc:** [Moore, Sarah A CIV USARMY CESPA \(USA\)](#); [Grimes, Robert CIV USARMY CESPA \(USA\)](#)  
**Subject:** FW: Spring Creek meeting with USFWS  
**Date:** Monday, June 3, 2024 2:00:18 PM

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Hi Rodrigo, this may be all I have on Logan's conversations with USFWS. I don't think I got the name of the biologist he spoke with.

Dana

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**From:** Huse, Logan T CIV (USA) <Logan.Huse@usace.army.mil>  
**Sent:** Friday, October 14, 2022 11:16 AM  
**To:** Price, Dana M CIV USARMY CESPA (USA) <dana.m.price@usace.army.mil>  
**Subject:** Spring Creek meeting with USFWS

Hey Dana,

Just spoke with the USFWS wetland specialist in Colorado. She mentioned that the waterfowl management handbook will be a good resource on the burms and structures for the project. Apparently it guides you though how to place them and where and also beaver dam structures in order to increase sediment. She also mentioned that having a beaver deceiver plan in place would be a good idea since we will be creating habitat for beavers that we will most likely need those to prevent flooding when beavers move in.

We are good on scoping although we are both unsure about attracting vector species (mosquitoes) to an urban area. I know we have that wetland further down stream that we could possibly ask the local biologist about if they have a mosquito problem or not. That would be a good place to start. I cant seem to remember her name though?

Here is the link to the waterfowl management handbook.

[Waterfowl Management Handbook | US Fish & Wildlife Service | University of Nebraska - Lincoln \(unl.edu\)](#)

## **Logan T. Huse**

Biologist

U.S. Army Corps of Engineers

Albuquerque District

4101 Jefferson Plaza NE

Albuquerque, NM 87109

Office: 505-342-3168

Cell (telework): 715-498-2580

[Logan.Huse@usace.army.mil](mailto:Logan.Huse@usace.army.mil)

**From:** [Wenli Dickinson](#)  
**To:** [Sedeno, J Rodrigo CIV USARMY CESPA \(USA\)](#)  
**Cc:** [Bethany Arnold - DNR](#); [Rachel Zancanella - DNR](#); [Price, Dana M CIV USARMY CESPA \(USA\)](#); [Kim, Seonjun CIV USARMY CESPK \(USA\)](#); [Moore, Sarah A CIV USARMY CESPA \(USA\)](#); [Sarah Brucker - DNR She Her](#); [Lonnie Spady - DNR](#); [Don West - DNR Contractor](#); [Elizabeth Nosker - DNR](#); [Long - DNR, Monica](#); [Melissa Van Der Poel - DNR](#)  
**Subject:** Re: FW: [Non-DoD Source] Re: Spring Creek CAP project  
**Date:** Monday, January 20, 2025 6:26:23 AM  
**Attachments:** [image002.png](#)  
[Spring Creek CAP Project - CDWR Comments.pdf](#)

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Good morning,

Attached are DWR's comments on the Spring Creek CAP project (please note in particular the comments in bold in the letter). Please let me know if you have any questions.

Regards,

**Wenli Dickinson, P.E.**  
**Water Resource Engineer**



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Fri, Dec 27, 2024 at 1:55 PM Wenli Dickinson <[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)> wrote:  
Thanks Rodrigo. We will review the slides and provide any comments in the next several weeks.

**Wenli Dickinson, P.E.**  
**Water Resource Engineer**  
**Team 1A: Division 1, Denver Basin**



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Thu, Dec 26, 2024 at 2:29 PM Sedeno, J Rodrigo CIV USARMY CESPA (USA) <[Jorge.R.Sedeno@usace.army.mil](mailto:Jorge.R.Sedeno@usace.army.mil)> wrote:

Hello Wenli,

Very nice to connect with you and the DWR team!

Below is a brief description of the Spring Creek-Ecosystem Restoration Project and attached are some key slides that are part of a presentation our project team collaborated on to describe how our Tentatively Selected Plan (“TSP” in Corps lingo) was developed.

The first few slides show the conditions in our project area. The “POOCs” slides describe the Problems, Opportunities, Objectives, and Constraints which guide our development of alternatives. You’ll see measures we considered and reasons some were screened out. Then near the end, a graphic showing our proposed plan.

I’ve copied our Hydrologist Seongjun in case you have questions about whether the project would affect flood elevations (it wouldn’t, and he can explain that conclusion).

### **Project Description:**

Through the Section 206 Continuing Authorities Program, the U.S. Army Corps of Engineers is currently in the planning phase of an ecosystem restoration project in the Spring Creek corridor. The project is divided into three distinct reaches, each with its own unique set of restoration measures. In Reach 1, the focus is on bank stabilization, using boulders and plantings to prevent erosion, as well as removing invasive species and creating a scenic sitting area with a picnic table. Moving downstream, Reach 2 (the former wetland) involves the construction of two rock riffles to counter incision, as well as the creation of wetland areas through bank modifications and replanting of riparian zones. Additionally, an incised former channel will be filled, and access paths will be created to facilitate maintenance and visitor access. In Reach 3, the west bank will undergo significant modifications, including the removal of a concrete slab, slope modification, and the addition of riprap and plantings to stabilize the stream and enhance habitat. The project also includes the installation of a constructed rock riffle and instream habitat boulders to further support ecosystem function. Ultimately, these restoration measures aim to improve stream and riparian zone function as part of the Fountain watershed corridor system but also provide numerous benefits to the surrounding communities, highlighting the importance of collaborative conservation efforts.

Our draft Report of the Project (Integrated Feasibility Report and Environmental Assessment) is being developed and is available (but incomplete), should you need more details.

Please reach out if any questions or concerns arise, also happy to set some time apart to meet and discuss the project in more depth.

Sincerely,

-Rodrigo

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**Rodrigo Sedeno**

Biologist

**Environmental Resources Section**

**Planning & Program Management Division**

505-342-3168 (w)

**US Army Corps of Engineers**

4101 Jefferson Plaza N. E.  
Albuquerque, NM. 87109



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**From:** Wenli Dickinson <[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)>  
**Sent:** Monday, December 23, 2024 12:15 PM  
**To:** Sedeno, J Rodrigo CIV USARMY CESPA (USA)  
<[Jorge.R.Sedeno@usace.army.mil](mailto:Jorge.R.Sedeno@usace.army.mil)>; Price, Dana M CIV USARMY CESPA (USA)  
<[dana.m.price@usace.army.mil](mailto:dana.m.price@usace.army.mil)>  
**Cc:** Bethany Arnold - DNR <[bethany.arnold@state.co.us](mailto:bethany.arnold@state.co.us)>; Rachel Zancanella - DNR  
<[rachel.zancanella@state.co.us](mailto:rachel.zancanella@state.co.us)>  
**Subject:** Re: FW: [Non-DoD Source] Re: Spring Creek CAP project

Hi Rodrigo and Dana,

I hope you had a good weekend! Typically DWR likes to review these types of projects before they are underway to identify water rights or compact issues in advance. We would like the opportunity to review the project narrative/summary if possible. Would you be able to send me the project materials that you have?

Thank you,

**Wenli Dickinson, P.E.**  
**Water Resource Engineer**  
**Team 1A: Division 1, Denver Basin**



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Mon, Dec 23, 2024 at 12:11 PM Wenli Dickinson <[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)> wrote:

Thanks Sarah!

**Wenli Dickinson, P.E.**  
**Water Resource Engineer**  
**Team 1A: Division 1, Denver Basin**



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Fri, Dec 20, 2024 at 1:28 PM Moore, Sarah A CIV USARMY CESPA (USA) <[Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)> wrote:

Rodrigo and Dana,

This email is meant to be an introduction between the CO DNR team and the Biologists working on the Spring Creek Aquatic Ecosystem Restoration CAP 206 Study. Please see the email thread below. The CO DNR team is cc'ed.

Thanks and let me know if you need anything else 😊

Sarah

Sarah Moore

Plan Formulation Section Chief (Detail)

District Environmental Justice Coordinator

U.S. Army Corps of Engineers | Albuquerque District

Office: 505-342-3209

Email: [Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)

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**From:**

**Sent:** Friday, 20 December, 2024 12:31

**To:** Moore, Sarah A CIV USARMY CESPA (USA)

<[Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)>

**Cc:** Campbell, Kelley A CIV USARMY CESP (USA)

<[Kelley.A.Campbell@usace.army.mil](mailto:Kelley.A.Campbell@usace.army.mil)>; Bethany Arnold - DNR

<[bethany.arnold@state.co.us](mailto:bethany.arnold@state.co.us)>; Rachel Zancanella - DNR

<[rachel.zancanella@state.co.us](mailto:rachel.zancanella@state.co.us)>; Delgado, Daniel I CIV USARMY CESPA (USA)

<[Daniel.I.Delgado@usace.army.mil](mailto:Daniel.I.Delgado@usace.army.mil)>; Hellige, Kara A CIV USARMY CESPA

(USA) <[Kara.A.Hellige@usace.army.mil](mailto:Kara.A.Hellige@usace.army.mil)>

**Subject:** Re: [Non-DoD Source] Re: Spring Creek CAP project

Hi Sarah,

Yes, please connect us with the biologists.

Thanks and happy holidays to you as well!

Regards,

**Wenli Dickinson, P.E.**

**Water Resource Engineer**

**Team 1A: Division 1, Denver Basin**

(303) 866-3581 x8206

1313 Sherman St, Suite 821, Denver, CO 80203

[wenti.dickinson@state.co.us](mailto:wenti.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Fri, Dec 20, 2024 at 7:46 AM Moore, Sarah A CIV USARMY CESPA (USA) <[Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)> wrote:

Hello All,

Our Spring Creek Sec 206 Aquatic Ecosystem Restoration Study is currently working through the environmental compliance process including complying with NEPA, Fish and Wildlife Coordination Act, Clean Water Act Section 404(b)(1), Clean Water Act Section 401, ESA, the National Historic Preservation Act (Section 106), etc.

Specific to the Clean Water Act –

- The team is pursuing a Nationwide Permit 27
- Nationwide permits under Section 404 of the CWA are certified for use in Colorado by statute without the imposition of any additional conditions.

The study will go out for a 30 day public and agency comment period in the late summer of 2025. I am happy to connect CO DNR with our Biologists on the project to answer any other questions.

Happy Holidays and Cheers to the New Year!

Sarah

*Sarah Moore*

Plan Formulation Section Chief (Detail)

District Environmental Justice Coordinator

U.S. Army Corps of Engineers | Albuquerque District

Office: 505-342-3209

Email: [Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)

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**From:** Campbell, Kelley A CIV USARMY CESPDP (USA)  
<[Kelley.A.Campbell@usace.army.mil](mailto:Kelley.A.Campbell@usace.army.mil)>  
**Sent:** Wednesday, 18 December, 2024 17:13  
**To:** Moore, Sarah A CIV USARMY CESPA (USA)  
<[Sarah.A.Moore@usace.army.mil](mailto:Sarah.A.Moore@usace.army.mil)>  
**Cc:** Rachel Zancanella - DNR <[rachel.zancanella@state.co.us](mailto:rachel.zancanella@state.co.us)>; Bethany Arnold -  
DNR <[bethany.arnold@state.co.us](mailto:bethany.arnold@state.co.us)>; Delgado, Daniel I CIV USARMY CESPA  
(USA) <[Daniel.I.Delgado@usace.army.mil](mailto:Daniel.I.Delgado@usace.army.mil)>; Hellige, Kara A CIV USARMY  
CESPA (USA) <[Kara.A.Hellige@usace.army.mil](mailto:Kara.A.Hellige@usace.army.mil)>; [wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)  
**Subject:** RE: [Non-DoD Source] Re: Spring Creek CAP project

Sarah,

Can you help answer Wenli's question about providing comments on the Spring  
Creek project?

Thanks!

Kelley Campbell

(she, her, hers)

SPA Deputy DPM (Acting)

Mobile: 415-794-6794

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**From:** Hellige, Kara A CIV USARMY CESPA (USA)  
<[Kara.A.Hellige@usace.army.mil](mailto:Kara.A.Hellige@usace.army.mil)>  
**Sent:** Wednesday, December 18, 2024 5:01 PM  
**To:** [wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)  
**Cc:** Rachel Zancanella - DNR <[rachel.zancanella@state.co.us](mailto:rachel.zancanella@state.co.us)>; Bethany Arnold -  
DNR <[bethany.arnold@state.co.us](mailto:bethany.arnold@state.co.us)>; Delgado, Daniel I CIV USARMY CESPA  
(USA) <[Daniel.I.Delgado@usace.army.mil](mailto:Daniel.I.Delgado@usace.army.mil)>; Campbell, Kelley A CIV USARMY  
CESPD (USA) <[Kelley.A.Campbell@usace.army.mil](mailto:Kelley.A.Campbell@usace.army.mil)>  
**Subject:** RE: [Non-DoD Source] Re: Spring Creek CAP project

Hi Wenli,

If the Corps partners with CSU on a CAP project, then a Section 404 permit is not required as we cannot issue a permit to ourselves. We will ensure that the activity complies with the Clean Water Act. I honestly do not know how coordination is completed with other state, federal, and local agencies.

Kelly, can you please help answer Wenli's question or direct us to the correct person for this?

Thanks

Kara Hellige

Chief, Southern Colorado Branch

Regulatory Division

US Army Corps of Engineers, Albuquerque District

970-259-1604 ext 3 (office)

970-218-7466 (cell)

We encourage you to submit all future regulatory requests through our new Regulatory Request System (RRS) at [rrs.usace.army.mil](https://www.usace.army.mil).

Please visit our website at: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>

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**From:** Wenli Dickinson <[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)>

**Sent:** Wednesday, December 18, 2024 4:56 PM

**To:** Hellige, Kara A CIV USARMY CESP (USA)

<[Kara.A.Hellige@usace.army.mil](mailto:Kara.A.Hellige@usace.army.mil)>

**Cc:** Rachel Zancanella - DNR <[rachel.zancanella@state.co.us](mailto:rachel.zancanella@state.co.us)>; Bethany Arnold - DNR <[bethany.arnold@state.co.us](mailto:bethany.arnold@state.co.us)>


**Subject:** [Non-DoD Source] Re: Spring Creek CAP project

Hi Kara,

We were recently made aware of a CAP project by USACE and CSU on Spring Creek in Colorado Springs at ARCA. We are curious whether this will go through the same permitting process as other projects even though it is a USACE project, and whether we will receive notice for the opportunity to provide comments? We would definitely like the opportunity to review this project.

Thank you,

**Wenli Dickinson, P.E.**  
**Water Resource Engineer**  
**Team 1A: Division 1, Denver Basin**

  
(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
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January 20, 2025

Rodrigo Sedeno, Biologist  
Environmental Resources Section  
Planning & Program Management Division  
U.S. Army Corps of Engineers  
Transmitted via email: [Jorge.R.Sedeno@usace.army.mil](mailto:Jorge.R.Sedeno@usace.army.mil)

**Re: Spring Creek Aquatic Ecosystem Restoration (WDID 1009604)**  
E ½ of Section 15, Township 14 South, Range 66 West, 6<sup>th</sup> P.M.  
Water Division 2, District 10  
CDWR Assigned Referral No. 32614

Dear Rodrigo Sedeno:

We have reviewed the Spring Creek Aquatic Ecosystem Restoration Project (a.k.a. Spring Creek Continuing Authority Program “CAP” Project) proposed by the U.S. Army Corps of Engineers (USACE). The study area is located along Spring Creek above the confluence with Fountain Creek in Colorado Springs in the E ½ of Section 15, Township 14 South, Range 66 West, 6<sup>th</sup> P.M. Spring Creek in this area has been incised, experienced bank erosion, wetland loss, and riparian habitat degradation. The purpose of the project is to improve riparian habitat, reconnect and restore native wetland habitat, address urbanization impacts within the study area, and contribute to the overall function of Spring Creek.

## Background

The project is divided into three (3) reaches with the following objectives and measures, which include the installation of rock riffle and instream habitat boulders to support ecosystem function.

1. Reach 1: Bank stabilization by installing boulders and removing invasive species.



2. Reach 2: The construction of two (2) rock riffles to counter incision, the creation of wetland areas through bank modifications and replanting of riparian zones, and filling an incised former channel.
3. Reach 3: The removal of a concrete slab, slope modification, and the addition of riprap and plantings to stabilize the stream and habitat.

According to the Colorado Division of Water Resources (CDWR or DWR)'s correspondence with USACE, the project will not affect flood elevations.

### Comments

There is no statutory requirement for USACE to obtain input from DWR prior to commencing such a project. Nevertheless, USACE should consider if the project could result in an order from the State Engineer or Division Engineers due to injury to vested water rights.

The types of orders from DWR that may be relevant to wetland mitigation or stream restoration projects include:

- (1) discontinue a diversion that is causing material injury;
- (2) release any water that has been illegally or improperly stored;
- (3) clear streams of unnecessary dams and obstructions that restrict or impede the flow of water [refer to sections 37-92-501 and 502, Colorado Revised Statutes (C.R.S.), for information about DWR's authority to administer water and issue orders].

The Arkansas River and all tributaries (including Spring Creek) are overappropriated; therefore, any activities in this region that have the effect of storing water, diverting streamflow, restricting the flow of water, or exposing groundwater, as discussed below, have the potential to impact vested water rights, and could be subject to orders if not included in a water court approved plan for augmentation or a temporary administrative approval, such

as a State Engineer approved substitute water supply plan (SWSP) or a Division Engineer approved administrative exchange.

- Generally, grading or re-contouring activities on lands adjacent to a stream are not a concern if the grading activities do not result in the diversion, collection, or storage of stormwater or streamflow; will not expose groundwater; and will not impede or reduce the flow of water to vested water rights.
- If changes to bank heights or other grading activities will reduce the height of the streambank relative to adjacent streambanks, this may result in a diversion of streamflow into the adjacent floodplain. Any in-stream structures using rock, wood, or other materials could potentially be obstructions that restrict or impede the flow of water to vested water rights.
- Re-vegetation work is generally only a concern if water will be diverted from the stream and used for irrigation of the vegetation, even for short-term efforts to establish native species. Water obtained from a legal source (such as hauled water from a municipal tap or a non-exempt well authorized for irrigation at this location) may be used for irrigation. Grading the ground surface to an elevation that allows the rooting depth of vegetation to access the groundwater table is not an activity subject to orders from DWR, provided groundwater is not exposed. Depth to groundwater should be investigated under various seasonal conditions to ensure grading does not result in the exposure of groundwater.
- If a stream restoration project is limited to one or more minor stream restoration activities in accordance with [Senate Bill 23-270](#) codified in section 37-92-602(9), C.R.S., then the stream restoration project may have a statutory determination that it does not cause material injury to any vested water right. SB23-270 exempted minor stream restoration activities effective August 2023. Activities associated with the stream restoration project that are allowed under section 37-92-602(9), C.R.S. are summarized as follows: stabilization of banks or natural stream substrate that does not cause the water level to exceed the ordinary high water mark; grading of the

ground surface that does not result in groundwater exposure, diversion of surface water, or the collection of stormwater; installation of deformable and porous structures for the purpose of stabilizing an ephemeral or intermittent stream which may incidentally and temporarily increase surface area or infiltration; daylighting a natural stream that has been piped or buried; reducing the surface area of a natural stream to address reductions in historical flow amounts; and the installation of structures or reconstructing a channel for the sole purpose of recovery from the impacts of a wildfire or flood. For the complete definition of minor stream restoration activities, refer to section 37-92-602(9)(b)(I), C.R.S.

- Establishment of wetlands or re-establishment of wetlands, depending on the operation, may constitute a new diversion. **New diversions must be covered by a court-approved augmentation plan or substitute water supply plan (SWSP) to prevent injury to downstream water rights.** Additionally, wetland mitigation activities which change the timing of surface flows, increase ponding and evaporation of surface water, or increase exposure of groundwater could result in injury to downstream water rights in time, place, or amount of water and must also be replaced under an augmentation plan or SWSP.

There is an expired SWSP associated with dewatering of Sand Creek and groundwater for a construction project in the vicinity of the project (WDID [1007444](#)). Water is replaced by a water hydrant at the dewatering site located at Pikes Peak and Academy, a similar site to the proposed wetland area. Should a subsequent SWSP be obtained and the dewatering operation recommence, the proposed project should not impound or delay the return of dewatering water or replacement water associated with the construction project.

If the proposed project activities will not result in the diversion, collection, or storage of stormwater or streamflow; will not expose groundwater; and will not impede or reduce the flow of water to vested water rights, then the proposed actions to be undertaken for this project would appear to be outside the administrative authority of DWR. Additionally, if the project is limited to one or more minor stream restoration activities pursuant to SB23-270,

as defined under section 37-92-602(9), C.R.S., then it would appear the project is exempted from administration by our office.

Lastly, USACE should also be aware that water administration in the Arkansas River Basin includes additional considerations that are not present in other parts of the state due to Colorado's compact with the State of Kansas. The Arkansas River Compact in Article IV-D states:

#### **Article IV**

D. This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas river, as defined in article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future development or construction.

Proposed activities in a stream could have Compact implications if not implemented properly; therefore, USACE should be aware of that potential in considering the components of this project.

As described above, these comments are provided for informational purposes only. The comments should not be considered official approval or denial of this project because DWR does not have permitting authority over such projects. Compliance with the concepts described in this email does not protect this project from a claim of injury by the owner of a senior vested water right.

**USACE should communicate proposed activities and project progress with the District 10 Water Commissioner, Elizabeth Nosker ([Elizabeth.Nosker@state.co.us](mailto:Elizabeth.Nosker@state.co.us)), to ensure ongoing compliance with Colorado water law and the Arkansas River Compact.**

If USACE would like this office to review an updated project proposal or if you have any questions, please contact me at [Wenli.Dickinson@state.co.us](mailto:Wenli.Dickinson@state.co.us) or (303) 866-3581 x8206.

Sincerely,



Wenli Dickinson, P.E.

Water Resource Engineer

Ec: Sarah Brucker, Deputy State Engineer ([Sarah.Brucker@state.co.us](mailto:Sarah.Brucker@state.co.us))  
Rachel Zancanella, Division Engineer ([Rachel.Zancanella@state.co.us](mailto:Rachel.Zancanella@state.co.us))  
Lonnie Spady, River Operations Coordinator ([Lonnie.Spady@state.co.us](mailto:Lonnie.Spady@state.co.us))  
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