



DIRECTOR AND SECRETARY  
TO THE COMMISSION  
Michael B. Sloane

STATE OF NEW MEXICO  
DEPARTMENT OF GAME & FISH

One Wildlife Way, Santa Fe, NM 87507  
Tel: (505) 476-8000 | Fax: (505) 476-8180  
For information call: (888) 248-6866

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

STATE GAME COMMISSION

TIRZIO J. LOPEZ  
Vice Chair  
Cebolla

FERNANDO CLEMENTE, JR.  
Sunland Park

GREGG FULFER  
Jal

EDWARD T. GARCIA  
Los Ranchos

SHARON SALAZAR HICKEY  
Santa Fe

13 September 2023

Ms. Elizabeth Verdecchia  
Natural Resources Specialist  
International Boundary and Water Commission, U.S. Section  
4191 N Mesa St, El Paso, TX 79902

**Re: Mesilla Valley Bosque State Park Restoration Project; NMERT-2793**

Dear Ms. Verdecchia:

The New Mexico Department of Game and Fish (Department) has reviewed the 90% design phase plans, Basis of Design Report (BODR), Operations and Maintenance Plan (OMP), and Technical Specifications (TS) for the proposed Mesilla Valley Bosque State Park Restoration Project (Project).

As outlined on Page 1 of the BODR, the intent of the Project is to satisfy the U.S. Section, International Boundary and Water Commission's (USIBWC's) obligation for aquatic and riparian habitat restoration projects as required by the 2009 USIBWC Record of Decision for long-term maintenance of the Rio Grande Canalization Project.

The Project aims to build a habitat channel and a mitigation bank channel to promote aquatic and riparian habitat restoration. A diversion structure would redirect water from the Picacho Drain into the habitat channel. Riparian and aquatic species habitat would be created by removing invasive species and planting native riparian and wetland plants along the edge of the habitat channel and installing instream structures to mimic riffles and other features. The mitigation bank channel connected to the habitat channel would backfill when water levels are high and is intended to create additional wetland habitat. The terminus of the habitat channel would reconnect with Picacho Drain and any water not lost to infiltration or evapotranspiration would flow into the Rio Grande via the Drain.

The primary objectives of the Project are outlined on Page 2 of the BODR. These include: "1) remove salt cedar (*Tamarix* spp.) and non-desirable vegetation species from the [P]roject area; 2) install a diversion structure to route Picacho Drain flows to the restoration area; 3) design a natural channel to enhance aquatic rearing habitat; 4) design a natural channel that would maximize recovery of aquatic and riparian habitats with available Picacho Drain flows; 5) maintain existing Picacho Drain alignment and function to convey irrigation return flows and storm flows if future maintenance and operations deem [it] necessary; 6) design a new boardwalk bridge crossing to connect the restoration area to the neighborhood connector trail and overlook area between the Resaca Ponds; 7) design structures that would be stable [in the event of a] Rio Grande 100-yr event, as well as minimize potential sedimentation in the side channel after flood events; 8) provide a planting plan that would diversify and enhance riparian

and wetland communities; 9) designate wildlife habitat restoration areas, public access trails, and interactive spaces to enhance educational and recreational experiences; 10) designate permanent equipment maintenance access areas and provide an operations and maintenance plan to guide future management of the conservation area.”

Page 5 of the OMP states, “The New Mexico Department of Game and Fish (NMDGF) Wildlife Management Division (WMD) is available to discuss coordinating a Department presence at the sluice gate openings during the first few water release events. The NMDGF can support monitoring activities outside the Picacho Drain, including watering of plantings, wildlife monitoring, and removal of sediment and invasive species.” Other maintenance activities preliminarily assigned to the Department are outlined in Table 1 (specifically associated with Sluice Gate and Diversion Structure, Stream Visual Assessment Monitoring, and Irrigation) of the OMP.

While the Department supports the overarching goals of this Project, due to limited capacity and pre-existing commitments, the Department is not able to commit to supporting the long-term maintenance and monitoring activities outlined in the OMP and as described above. This includes being unable to be present at sluice gate release events. The Department requests removal of the above-referenced language in the OMP that explicitly names the Department as a party responsible for Project maintenance, monitoring, and presence at sluice gate openings.

If the Project moves beyond the design phase, then the Department is willing to negotiate an easement agreement with USIBWC for the use of State Game Commission property for the Project. Any such easement agreement can be finalized in a memorandum of understanding (MOU) signed by the Department, USIBWC, and other USIBWC Project partners (e.g., Elephant Butte Irrigation District and New Mexico State Parks) as needed. Accordingly, the Department requests clarification of the language regarding MOU negotiation on Page 3 of the OMP to state that an easement agreement would be the focus of any MOU entered into by the Department.

As is stated in Part 1.19 of Section 01.57.19 of the Project TS document, “Bird species that are protected under the Migratory Bird Treaty Act (MBTA) may nest in areas containing trees or other suitable habitat within the [P]roject limits. When possible, construction activities should be scheduled to occur outside of the migratory bird nesting season. However, if construction activities must occur during the nesting season of birds protected under the MBTA, then the areas proposed for disturbances shall be surveyed and flagged for any nesting birds prior to construction to avoid inadvertent destruction of active nests and eggs.”

The Department concurs with this statement and further recommends that all Project-related plant and tree removal activities be conducted outside the migratory bird nesting season and specifying this season (April – September) in the TS document. Please note that nesting in the Project area may occur before April because of its location so far south in the state. For active nests found in construction and plant removal zones, the Department recommends establishing adequate buffer zones to minimize disturbance to nesting birds. Buffer distances should be at least 100 feet from songbird and raven nests; 0.25 miles from most raptor nests; and 0.5 miles for ferruginous hawk (*Buteo regalis*), golden eagle (*Aquila chrysaetos canadensis*), peregrine falcon (*Falco peregrinus*), and prairie falcon (*Falco mexicanus*) nests. Active nest sites in trees or shrubs that must be removed should be mitigated by qualified biologists or wildlife rehabilitators. Department biologists are available to consult on nest site mitigation and can facilitate contact with qualified personnel.

The proposed Project area occurs within burrowing owl (*Athene cunicularia*) habitat. Burrowing owls are a Species of Greatest Conservation Need (SGCN) in New Mexico and are protected

under the MBTA. Before any ground disrupting activities occur, and during regular channel maintenance and assessments, the Department recommends conducting a burrowing owl survey, according to our [burrowing owl survey guidelines](#), to locate any potential nesting sites. Should burrowing owls be documented in the project area, please contact the Department or USFWS for further recommendations regarding relocation or impact avoidance.

In the Invasive Woody Species Management section on Page 8, the OMP states: “USIBWC will help ensure the long-term persistence of riparian habitats and associated species by removing and controlling invasive species, primarily salt cedar, in the no-mow zones. USIBWC will employ the validated chemical and mechanical methods listed below. USIBWC will also address woody debris left from impacts caused by the salt cedar beetle (*Diorhabda sublineata*). In no-mow zones, the USIBWC will remove invasive woody species using mechanical, herbicide, or a combination of mechanical and herbicide treatment methods.”

Removing invasive vegetation can lead to wildlife habitat loss and permit other invasive species to expand into recently cleared areas if replanting does not occur soon after vegetation removal. The Department recommends replanting cleared areas with native plant species sourced from the same region and habitat type as the Project site or from a region that represents potential future climatic conditions at this site. Additionally, per our guidelines regarding [Habitat Restoration and Management of Native and Non-Native Trees in Southwestern Riparian Ecosystems](#), the Department recommends removing invasive plants and replanting with native plants in stages, which can help to avoid rapid and large-scale habitat loss.

Page 9 of the OMP outlines “Water Resources Protection” and “Soil Protection” best management practices (BMPs) as part of the Mechanical Treatments of Invasive Species Management section. However, “Wildlife Protection” BMPs are not included here as they are in the Herbicide Treatments section (Page 11). The Department requests that the “Wildlife Protection” BMPs from the Herbicide Treatments section be included in the Mechanical Treatments section and that language regarding buffer distances, as described above for the TS document, be added to the “Wildlife Protection” BMPs for both sections.

Page 11 of the OMP states that pile burns will occur as part of vegetation management: “For restoration work where debris collected with mechanical methods is not windrowed and chipped or hauled off in trucks, USIBWC, or USIBWC partners, may conduct pile burns.” The Department requests clarification as to where any pile burns would take place. If a burn is planned on State Game Commission land, the Department requests adequate notification from USIBWC prior to conducting any burns.

Wildlife including small mammals (Goguen et al. 2015), snakes (Sperry and Weatherhead 2010), and birds (Aigner et al 1998) are known to use brush piles for habitat and cover. To avoid unintended wildlife mortality, the Department recommends chipping or masticating all mechanically removed woody plant material on State Game Commission land or, if burning is necessary, burning during the winter.

We appreciate the opportunity to comment on this project. Should you have any questions regarding our comments, please contact Jack Marchetti, Aquatic & Riparian Habitat Specialist, at (505) 479-1269 or [jack.marchetti@dof.nm.gov](mailto:jack.marchetti@dof.nm.gov).

Sincerely,

Matt Wunder, Ph.D.  
Chief, Ecological and Environmental Planning Division

### References

Aigner, P. A., W. M. Block, & M.L. Morrison. 1998. Effect of firewood harvesting on birds in a California oak-pine woodland. *The Journal of Wildlife Management* 62(2):485-496.

Goguen, C. B., R.S. Fritsky, & G. J. San Julian. 2015. Effects of brush piles on small mammal abundance and survival in Central Pennsylvania. *Journal of Fish and Wildlife Management* 6(2):392-404.

Sperry, J. H., & P.J. Weatherhead. 2010. Ratsnakes and brush piles: intended and unintended consequences of improving habitat for wildlife? *The American Midland Naturalist* 163(2):311-317.