



DIRECTOR AND SECRETARY
TO THE COMMISSION
Michael B. Sloane

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

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7 May 2024

Mr. Bruce Pavlick
Tierra Right of Way Services, Ltd.
7500 Jefferson St. NE UNIT 206
Albuquerque, NM 87109

RE: Starvation Draw. NMERT Project No. NMERT-3387

Dear Mr. Pavlick,

The New Mexico Department of Game and Fish (Department) has reviewed your 4 April 2024 submission of the Starvation Draw project to the New Mexico Environmental Review Tool (NMERT). An auto-generated project report is available for your review in the NMERT.

Since the proposed highway project includes road construction activities near Dam 4 and the construction of new culverts, the Department recommends implementation of its [Bridge and Culvert Construction Guidelines for Stream, Riparian, and Wetland Habitats](#) for any rivers, streams, washes, springs, seeps, or riparian areas that fall within the impact footprint of this project. These guidelines should assist in minimizing impacts to any local rivers or wetlands and the Department recommends their incorporation into the standard best management practices for activities similar to those for the proposed project.

The Department also recommends that preconstruction bat surveys be conducted during summer months to determine if bats occur. If bats are determined to occur at bridge sites, work should be scheduled to avoid impacting bats that may roost there (i.e., conduct work in winter months).

Regarding the proposed action to plug the outlet riser pipe on the west side of Dam 3 with concrete, the Department recommends surveying this pipe for any wildlife, and having a qualified biologist safely remove any wildlife, prior to plugging the pipe. Due to the large amounts of soil proposed for removal, in addition to the burrowing owl surveys recommended in the NMERT-generated report, the Department recommends surveying each site for any burrowing wildlife species prior to the initiation of any soil moving activities. For example, the Arizona Toad (*Anaxyrus microscaphus*) is known to burrow

underground during the day and has been listed by the project report as a species that may be found in the project area. If disturbance of any detected burrowing wildlife cannot be avoided, then a qualified biologist should be engaged to capture and move any such wildlife.

All migratory birds are protected against direct take under the federal [Migratory Bird Treaty Act](#) (16 U.S.C. Sections 703-712), and hawks, falcons, vultures, owls, songbirds, and other insect-eating birds are protected under New Mexico State Statutes (17-2-13 and 17-2-14 NMSA), unless permitted by the applicable regulatory agency. To minimize the likelihood of adverse impacts to migratory birds, nests, eggs, or nestlings, the Department recommends that ground disturbance and vegetation removal activities be conducted outside of the primary migratory bird breeding season of April 15-September 1. Breeding season may begin earlier for raptors or when working in low-elevation habitats such as deserts. If ground disturbing and clearing activities must be conducted during the breeding season, the area should be surveyed for active nest sites (with birds or eggs present in the nesting territory) and avoid disturbing active nests until young have fledged. For active nests, establish 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 list of [New Mexico SGCN](#) (see link, page 14, table 5) and the federal list of [Birds of Conservation Concern](#) should be reviewed to fully evaluate potential effects to migratory birds from your proposed project. Federal agencies are also required under Executive Order 13186 to implement standards and practices that lessen the amount of unintentional take attributable to agency actions. These conservation measures are strongly recommended to ensure persistence of migratory bird species whose populations are small and/or declining within New Mexico.

The Department recommends that you contact Erika Rowe (Erika.Rowe@emnrd.nm.gov) at the [New Mexico Endangered Plant Program](#) of the Energy, Minerals, and Natural Resources Department regarding the potential presence of and conservation needs for state-listed plants. The state endangered plant Night-Blooming Cereus (*Peniocereus greggii* var. *greggii*) has been documented near, and potentially within, the project area footprint. This species may need to be considered and/or mitigated for while designing and implementing project activities.

The current project area appears to be within Crucial Habitat as identified in the Crucial Habitat Assessment Tool (CHAT) layers provided in the NMERT. This indicates that a diversity of species of conservation concern and sensitive or important habitats for wildlife are likely to be found in the project area. The Department recommends completion of thorough environmental assessment prior to, and exercising care during,

implementation of project activities to avoid adverse impacts to sensitive wildlife and habitats.

Thank you for the opportunity to review your project. Please contact Jack Marchetti, Aquatic/Riparian Habitat Specialist, at (505) 479-1269 or jack.marchetti@dgf.nm.gov if you have any questions.

Sincerely,

Virginia Seamster, Ph.D.
Assistant Chief for Technical Guidance