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24 April 2024

Mr. James Hirsch  
Wildlife Coordinator/District 4 Environmental Coordinator  
New Mexico Department of Transportation  
1120 Cerrillos Road  
Room 206  
Santa Fe, NM 87505

**RE: NM 434 Bank Stabilization Project; NMERT No. NMERT-3399**

Dear Mr. Hirsch,

The New Mexico Department of Game and Fish (Department) has reviewed your 5 April 2024 submission of the NM 434 Bank Stabilization Project to the New Mexico Environmental Review Tool (NMERT). An auto-generated project report is available for your review in the NMERT. Please note that this project report recommends that you confirm the intersection of the proposed project area with critical habitat for one or more species federally-listed under the Endangered Species Act by using the U.S. Fish and Wildlife Service's (USFWS's) Information for Planning and Consultation (IPAC) system (<https://ipac.ecosphere.fws.gov/>) and then, as relevant, reach out to the appropriate species lead(s) with the USFWS's New Mexico Ecological Services Office.

The Department has recent records of populations of the Narrow-headed Garter Snake (NHGS; *Thamnophis rufipunctatus*) and Loach Minnow (LM; *Rhinichthys cobitis*) occurring upstream of and near the project area in both the Tularosa River and Negrito Creek. These records indicate that these local populations are highly productive. Based on the proximity of these population records to your project area and because both the Tularosa River and Negrito Creek feed into the San Francisco River near the project site, the NHGS and LM are likely present in your project area.

The Department also has records of populations of the Chiricahua Leopard Frog (CLF; *Lithobates chiricahuensis*) occurring upstream, and Spikedace (SD; *Meda fulgida*) occurring downstream, of the project area in the San Francisco River. As a result, both the CLF and SD may also be present in your project area.

Overall, the Department is supportive of this project and foresees it having a positive impact on the LM and SD and their habitat in both the short and long term. The proposed in-stream structures have the potential to reduce turbidity and prevent sedimentation in the river that, if unmitigated, could cover up existing fish habitat. Additionally, the structures would provide stable surfaces for macrophyte growth, which could increase macrophyte diversity and density, thereby increasing invertebrate food availability for both the LM and SD. The Department recommends that construction occurs during the late fall and winter when snakes and amphibians have retreated underground to hibernate and before fish spawning starts in the spring. This would also allow for more growth of young-of-the-year fish before the project starts.

Similar road improvement projects completed upstream of the proposed project on the Tularosa River resulted in the mortality of two NHGS and several juvenile NHGS were discovered under plastic liners used when diverting the river for these projects. As a result, the Department further emphasizes the importance of USFWS project consultation and conducting species surveys prior to project implementation. The Department also recommends having certified biological monitors present while project construction is underway to help prevent unnecessary take of federally-listed species.

The Department recommends developing a Storm Water Pollution Prevention Plan (SWPPP) for this project. Construction areas and other impervious surfaces can have significant impacts on surface waters by increasing the amount of sediment and other pollutants that are washed into surface waters, increasing the velocity and volume of water, and reducing infiltration into groundwater. Minimizing the amount of impervious surfaces and phasing construction will reduce these impacts. The Department provides the following additional recommendations to minimize or eliminate impacts to wildlife and wildlife habitat:

- Divert water around construction site whenever possible.
- Preserve natural areas within the project site. Strive to maintain the natural drainage system of the site, including natural stream channels, wetlands, and floodplains. Design, construct, and maintain the site to protect (or restore) the natural hydrology.
- Following construction, re-vegetate disturbed areas using native species that approximate the pre-disturbance plant community composition or native plant communities appropriate for the site, including from a region that represents potential future climatic conditions at the site, whichever is more beneficial to wildlife. Short-term erosion control seed mixes are available for temporary control of surface erosion during project implementation; native mixes should be used for temporary as well as permanent erosion control. Native plants and materials should also be used for landscaping. All seed mixtures should be certified as weed-free. New Mexico grass ecotypes for commercial seeding are available through the Los Lunas Plant Materials Center and New Mexico State University. Seeding guidelines are available from the Natural Resources Conservation Service and the Colorado Natural Areas Program.

- If erosion control blankets are used post-construction, burying the blanket edges, and using blankets without fused mesh corners (e.g., use woven mesh) can reduce the chances of unintentional wildlife entanglement. Regularly check the erosion control blankets after applying them to identify and release any wildlife that does become entangled.
- Maintain a vegetated buffer zone along all watercourses, including ephemeral arroyos, sufficient to minimize erosion and sediment delivery.
- Use properly engineered drainage swales and other vegetated channel systems instead of storm sewers, lined channels, curbs, and gutters. Vegetated swales should be gently sloped (4:1) so that small wildlife is able to maneuver them.
- Efforts should be made during construction to minimize impacts on local vegetative communities. Existing roads and rights-of-way should be used for all transportation. Off-road driving should be avoided. Staging areas should be located in previously disturbed sites, where possible, and kept as small as possible.

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.

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](mailto:jack.marchetti@dgf.nm.gov) if you have any questions.

Sincerely,

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

cc: Leland Pierce, NMDGF Herpetologist  
Jill Wick, NMDGF Native Fish Program Manager  
Jasmine Johnson, NMDGF Gila/Mimbres Native Fish Biologist