GOVERNOR
Michelle Lujan Grisham

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.dgf.nm.gov

18 June 2025

Justin Riggs
U.S. Army Corps of Engineers (USACE), Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109

RE: U.S. Bureau of Reclamation (Reclamation) River Mile 199 Maintenance Project (SPA-2025-00149); NMERT Project No. NMERT-4721

Dear Mr. Riggs,

The New Mexico Department of Game and Fish (Department) has reviewed the USACE's Agency Notification and request for comments regarding the Reclamation's River Mile 199 Maintenance Project (Project). Please consider this letter as the Department's official comments on the Project.

The Project description fails to take into account the immediate and long term impacts of the proposed Project activities on Federally listed species in the area, such as the Rio Grande silvery minnow (*Hybognathus amarus*), yellow-billed cuckoo (*Coccyzus americanus occidentalis*), and southwestern willow flycatcher (*Empidonax traillii extimus*). The Department agrees with the U.S. Fish and Wildlife Service's (USFWS's) 2016 Final Biological and Conference Opinion, which determined that this Project will "adversely affect" these species. The Department recommends that the USACE and Reclamation develop a comprehensive mitigation plan, in collaboration with the USFWS, that will benefit the Federally listed species impacted by this project.

Due to the large amounts of soil proposed for removal, the Department recommends surveying the project area (e.g., proposed side channel construction) for any burrowing wildlife species prior to the initiation of any soil moving activities. If disturbance of any detected burrowing wildlife cannot be avoided, then a qualified biologist should be engaged to capture and move any such wildlife.

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. Reducing the amount of impervious surfaces and phasing construction will reduce these impacts. To prevent sediment and other pollutants from entering the Rio Grande, the Department recommends developing a Storm Water Pollution Prevention Plan (SWPPP) and provides the following additional recommendations to minimize or eliminate impacts to wildlife and their habitats:

- 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, disturbed areas should be re-vegetated 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., 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 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.

For projects involving the use of herbicide application, the Department has the following recommendations to mitigate impacts to wildlife:

- To mitigate the potential for herbicide drift into sensitive aquatic and native riparian habitats, the Department recommends applying a minimum buffer of 20 ft (for spot applications), 100ft (if using ground application), 350 ft (if using low-altitude aerial spraying), or 1,320 ft (if using high-altitude aerial spraying; USFWS 2007) around all aquatic habitats and native riparian vegetation in the proposed treatment area.
- To mitigate the potential for herbicide drift into sensitive habitats for federally or state-listed species, the Department recommends applying a minimum buffer of 10 ft (for spot applications), 90 ft (if using ground application), 300 ft (if using low-altitude aerial spraying), or 1,320 ft (if using high-altitude aerial spraying) around all known terrestrial habitats for federally or state-listed species. Buffer distances are larger for insect pollinators of federally or state-listed plants (2,640 ft for small pollinators, 10,560 ft for large pollinators such as bumble bees) (USFWS 2007).
- Use mechanical weed removal techniques or individual plant treatments when buffers cannot be implemented and federally or state-listed species habitats are present.
- Apply herbicides directly to target plants, rather than broadly to large areas, whenever possible to avoid harming nearby non-target or native vegetation.
- Avoid herbicide spraying on days when wind speeds are high (> 10 mph) and on days when rain is expected within 48 hours.
- Apply herbicides no later than two months before normal spring runoff and high-water tables are anticipated in the project area and wait until streamflow is back

below normal bank full stage to consider applying herbicides in the late summer or fall.
- Use the lowest concentration possible that will still allow for achievement of the desired result.
- Avoid applying herbicides to and removing vegetation that is being used by birds for nesting. When nesting birds may be present in target vegetation in the project area, herbicides should be applied outside of the breeding bird season (April – September).
- In areas dominated by undesired or non-native plants, habitat loss may occur if herbicide is applied to the entire area, resulting in a total loss of vegetation. To avoid this, apply herbicides in a mosaic pattern, alternating treated and non-treated sites between years.
- The Department recommends not using herbicides that contain the following chemicals that have been found to be slightly to highly toxic to wildlife including birds, fish, and pollinators: 2,4-D, dichlobenil, dichlorprop, fluazifop, glyphosate, oxyfluorfen, propyzamide, quizalofop, sulfometuron, and triclopyr (Michael 2002).

Thank you for the opportunity to review and comment on the Project. Please contact Jack Marchetti, Aquatic/Riparian Habitat Specialist, at jack.marchetti@dgf.nm.gov or 505-479-1269 with any questions.

Sincerely,

Virginia Seamster

Digitally signed by Virginia Seamster
Date: 2025.06.18 16:09:14 -06'00'

Virginia Seamster, Ph.D.
Assistant Chief for Technical Guidance
Ecological and Environmental Planning Section