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6 May 2026

Merceidez Fabok
U.S. Department of Agriculture
Natural Resources Conservation Service New Mexico
100 Sun Avenue Northeast, Suite 602
Albuquerque, NM 87109-3434

Re: Supplemental Watershed Plan Environmental Assessment (EA) for the Upper Rio Penasco Sites 1, 2, and 3A Dam Rehabilitation Project, Otero County, New Mexico; NMERT Project No. NMERT-5721

The New Mexico Department of Wildlife (Department) would like to thank the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and the Otero Soil and Water Conservation District (Project Sponsor) for the opportunity to comment during the alternatives finalization phase of the Upper Rio Penasco Sites 1, 2, and 3A Dam Rehabilitation Project (Project). The Department acknowledges the Project Sponsor's preference for Alternative 1 (No Federal Action); however, we offer the following comments for Alternatives 2 through 4 provided that the NRCS retains them for potential future use. These comments are provided in addition to those included in the attached New Mexico Environmental Review Tool (NMERT)-generated report for this Project (NMDOW 2026).

Comments to Mitigate Impacts on Wildlife From Alternatives 2-4:

Ground-disturbing Activities

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 Peñasco or ephemeral waterways in the Project area, 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 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, disturbed areas should be re-vegetated using native species as described below for site restoration activities. 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. 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.

- 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.

Trenches and excavation, including associated with culvert installation, structure demolition, and road construction, can unintentionally entrap and cause the unnecessary mortality of amphibians, reptiles, and small mammals, and can cause injury to large mammals. Trapped animals can die from exposure, starvation, crushing from pipe-laying, entombment from trenching or excavation backfilling, drowning, and predation. This unnecessary wildlife mortality can be avoided by implementing conservation measures including: concurrent trenching, pipe-laying, and backfilling operations or filling excavated sites as soon as possible to minimize the amount of trench or other excavated areas left open overnight or longer; construction of escape ramps; and employing biological monitors to remove trapped animals. Periods of highest activity for amphibians and reptiles vulnerable to entrapment include summer months and wet weather, and they can be active both day and night. Small mammals subject to entrapment are active year-round and generally most active at night.

Implementing the general trenching conservation measures outlined in the Department's *Trenching Project Guidelines* (NMDOW 2022) will help minimize unnecessary mortality of wildlife. Best management practices should include, at minimum, the following mitigation measures.

- Whenever possible, locate trenching activities within previously disturbed areas, such as existing road or pipeline right-of-ways. To the extent possible, avoid trenching in undisturbed habitat.

- Trench during the cooler months (October – March).

- Utilize concurrent trenching, pipe- or cable-laying, and backfilling. Keep trenching, pipe- or cable-laying, and backfilling crews as close together as possible to minimize the amount of open trench at any given time. When trenching activities are temporarily halted (e.g., overnight, weekends, holidays, weather shutdowns), protect wildlife from accessing any open trench or excavated area between digging and backfilling operations by using one or more of the methods described below.

- Avoid leaving trenches or other excavated areas open overnight. When trenches or other excavated areas cannot be backfilled immediately, escape ramps should be constructed at least every 90 meters and preferably 30 meters. Escape ramps can be constructed parallel or perpendicular to the existing trench or other excavated area. The escape ramp slope should be less than 45 degrees (1:1). If pipe or cable has been installed but backfilling has not occurred, escape ramps may need to be constructed on both sides of the trench, since, unless the pipe is elevated enough to allow animals to move underneath it, the pipe or cable may block access of amphibians, reptiles, and small mammals to the ramps if only constructed on one side.

- Trenches or other excavated areas that have been left open overnight should be inspected the following day by a qualified biological monitor and trapped animals removed as soon as possible, especially where state- or federally listed threatened or endangered amphibians, reptiles, or small mammals occur. Untrained personnel should not attempt to remove trapped wildlife because of

the potential to injure animals and the possibility of injury from venomous snakes. Required tools for removal will include snake tongs for removing snakes and a dip net for capturing and removing amphibians and small mammals. Many animals trapped in a trench or other excavated area will burrow under loose soil. To the extent possible, the biological monitor should disturb loose soil in the trench or other excavated area to uncover and remove trapped animals. Animals should be relocated at least 50 meters away from the open excavation in undisturbed habitat.

- When pipe has been laid in the trench, end caps should be placed on the open end(s) of the pipe to preclude animals from entering. Pipe staged outside the trench should be capped until placed in the trench or checked for wildlife before being placed into the trench.

- Most wildlife can be protected by constructing silt fence completely around the open trench or other excavated area. Silt fence should be supported from sagging by t-posts, rebar, or stakes and buried at the base to preclude animals from moving below the fence. If construction of a silt fence is a required best management practice for erosion control, then, to preclude the need for a biological monitor, escape ramps, and concurrent backfilling, the guidelines for silt fence installation and maintenance in the *Trenching Project Guidelines* (NMDOW 2022) should be followed.

For Alternatives that include culvert and road construction activities, the Department recommends implementation of its *Bridge and Culvert Construction Guidelines for Stream, Riparian, and Wetland Habitats* (NMDOW 2025) for any rivers, streams, washes, springs, seeps, or riparian areas that fall within the construction impact footprint. These guidelines should assist in minimizing impacts to the local rivers or wetlands and should be incorporated into the standard best management practices for these types of construction activities.

For any Alternatives entailing large amounts of soil removal, the Department recommends surveying the Project area 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.

Erosion Control and Vegetation Considerations

For Alternatives including erosion control actions, the Department recognizes the importance of protecting existing structures and roads but, as much as is feasible, also encourages the use of low-tech, process-based restoration (LTPBR) techniques (i.e., structures such as beaver dam analogs, one-rock dams, media lunas, post-assisted log structures, and Zuni bowls) and the use of native vegetation or buried log structures (rather than rip rap, concrete, gabions, or other hardening substrate/structures) to stabilize stream banks and address issues related to erosion. LTPBR techniques are low in cost, made from natural and locally sourced materials, and have been shown to be effective in restoring fluvial processes and habitats. Native riparian vegetation provides important habitat to a wide diversity of wildlife.

The Department recognizes that natural revegetation is proposed for the Project area; however, we recommend site restoration where feasible to support vegetation recovery. For restoration of the Project area, the Department recommends that only native plant species be used in the restoration seed and plant mix and that the mix be designed to enhance local pollinator habitat. For pollinating insects, including a diversity of flowering plants with flowering times that span spring through fall (March-October), rarer plants, and plants that are not pre-treated with systemic pesticides may be beneficial. The Department also recommends that the seed mix and mulch be certified weed-free to avoid inadvertently introducing non-native species to the restoration site and that sterile seed sources not be used. Any alternative plant species used to substitute for primary plant species that are unavailable at the time of restoration should also be native. When possible, the Department recommends using seeds and plants that are sourced from the same region and habitat type as the restoration site and suggests including seeds and plants from a region that represents potential future climatic conditions at the site. For trees, use of containerized seedlings or poles is recommended over seeds as is selection of more protected planting sites with higher soil moisture to increase likelihood of revegetation success. Planting trees in separated clumps or patches may better match natural regeneration and support greater wildlife diversity. More details on tree seedling selection and planting in upland sites are available from the New Mexico Forestry Division.

For any activities entailing vegetation removal, the Department notes that 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 18, 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.

Other Wildlife Considerations

Specific to Alternative 2, the Department requests clarification on how this alternative will improve wildlife habitat, including how removal is anticipated to impact the local flow regime and thus aquatic species in particular.

Prior to structure demolition, especially demolition of any structures that have not been in recent use, the Department recommends conducting surveys for any roosting bats that might be using the structure as a summer breeding site or a winter hibernation site. Demolition can often be performed in spring or fall when bats are not regularly using such structures either for breeding or hibernating.

The current Project area appears to be within Crucial Habitat as identified in the Crucial Habitat Assessment Tool (CHAT) layers provided in the NMERT (NMDOW 2026). This indicates that a diversity of species of conservation concern and sensitive or important habitats for wildlife is likely to be found in the Project area. The Department recommends the completion of a thorough EA before exercising care during the implementation of Project activities to avoid adverse impacts on sensitive wildlife and habitats.

As mentioned in NMDOW (2026), Department recommends consultation with relevant species leads at the U.S. Fish and Wildlife Service's (USFWS's) New Mexico Ecological Services Office (NMESO), including for federally listed species indicated as being potentially present in the proposed action area based on NMDOW (2026). Species potentially occurring in the area include Mexican spotted owl (*Strix occidentalis lucida*), New Mexican meadow jumping mouse (*Zapus hudsonius luteus*), Sacramento Mountains thistle (*Cirsium vinaceum)*, and yellow-billed cuckoo (*Coccyzus americanus*). The Department also recommends use of the USFWS's Information for Planning and Consultation (IPAC) system (https://ipac.ecosphere.fws.gov/) to confirm where the Project area overlaps critical habitat designated for species listed under the federal Endangered Species Act.

Thank you for the opportunity to review and comment on the proposed Project and for your consideration of these comments. If you have any questions, please contact, please contact Jelsie Kerr, Aquatic Habitat Restoration Biologist, at (505) 637-2811 or jelsie.kerr@dgf.nm.gov.

Sincerely,

Virginia Seamster

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Virginia Seamster
Assistant Chief for Technical Guidance
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References

[NMDOW] New Mexico Department of Wildlife. 2022. Conservation Measures to Avoid Mortality of Wildlife from Trenching Operations. New Mexico Department of Wildlife, Santa Fe, New Mexico, USA. < https://wildlife.dgf.nm.gov/download/trenching-project-guidelines/?wpdmdl=43136&refresh=69bc31b07fd811773941168>.

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