

NPDES PERMIT NO. NM0023311

FACT SHEET

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

APPLICANT

City of Las Cruces
Utilities Department
680 N Motel Blvd.
Las Cruces, NM 88005

ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

PREPARED BY

Tung Nguyen
Environmental Engineer
NPDES Permitting Section (6WD-PE)
Water Division
VOICE: 214-665-7153
FAX: 214-665-2191
EMAIL: nguyen.tung@epa.gov

DATE PREPARED

March 1, 2021

PERMIT ACTION

Proposed re-issuance of the current permit issued on September 30, 2015, with an effective date of November 1, 2015, and an expiration date of October 31, 2020.

RECEIVING WATER – BASIN

Rio Grande River – Rio Grande Basin (Segment 20.6.4.101 NMAC)

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
DO	Dissolved oxygen
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FWS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
lbs	Pounds
MG	Million gallons
MGD	Million gallons per day
ML	Method minimum level
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NOEC	No observable effect concentration
NPDES	National Pollutant Discharge Elimination System
SQL	Minimum quantification level
O&G	Oil and grease
POTW	Publicly owned treatment works
RP	Reasonable potential
SS	Settleable solids
SSM	Sufficiently Sensitive Method
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USGS	United States Geological Service
WLA	Waste Load allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan
WWTP	Wastewater treatment plant

I. CHANGES FROM THE PREVIOUS PERMIT

The changes from the current permit issued on September 30, 2015, with an effective date of November 1, 2015, and an expiration date of October 31, 2020, include:

- New limits for PCBs have been added with a compliance schedule.
- Monitoring frequency for % removal has been reduced.
- Monitoring of toxic pollutants have been added.
- Optional MPN unit for E. coli bacteria has been added.
- WET limitation has been established for *Ceriodaphnia dubia* with a compliance schedule.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the facility (Latitude 32° 17' 35.2" N and Longitude 106° 49' 23.94" W) is located at 2851 West Amador, Las Cruces in Dona Ana County, New Mexico.

Under the SIC code 4952, the applicant operates Jacob Hands Memorial WWTF, which has a design flow of 13.5 MGD. It provides sanitary services for approximately 107,885-population, including the same 8 significant industrial users in the previous application. The secondary treatment process mainly consists of equalization basin, primary clarifiers, roughing filters, aeration basins, secondary clarifiers and chlorine contact basin. Effluent is dechlorinated before discharging to a short unnamed ditch, thence to the Rio Grande. Bio-solids are composed at a separate consolidation facility and processed to exceptional quality Class-A standard, then provided to users as a soil enhancer. Since the last permit term, the facility has scheduled improvements in the treatment process. A facility location map is attached.

III. EFFLUENT CHARACTERISTICS

Data submitted in Form 2A is as follows:

Parameter	Max	Avg
	(mg/l unless noted)	
Flow (MGD)	9.5	8.2
pH, minimum, standard units (s.u.)	6.6	N/A
pH, maximum, standard units (s.u.)	6.9	N/A
Temperature (winter), °C	15.1	17.7
Temperature (summer), °C	29.6	28.1
Biochemical Oxygen Demand, 5-day (BOD ₅)	18.00	10.09
Total Suspended Solids (TSS)	26.1	23.0
E. coli (MPN/100 ml)	>2419	82
Ammonia (as N)	0.1	0.03
TRC	0.989	0.008
DO	6.65	6.28
Total Kjeldahl Nitrogen (TKN)	5.7	4.43
Nitrate + Nitrite Nitrogen	35.3	32.2
Oil & Grease	<5.1	<5.0
Phosphorus (Total)	4.8	4.5
TDS	861	843

Since November 1, 2015 there have been exceedances of the effluent limitations in DMR as follows:

Parameter	Date Report	Exceedance, 30-day average, mg/L	Exceedance, daily max., mg/L	Note
pH	11/30/19	6.5 s.u.		
TSS	2/28/17	33.4	46.5	
TSS	11/30/19	30.8		
TSS	12/31/19	32.4	49.3	
TRC	2/28/17		133 ug/L	
TRC	12/31/19		989 ug/L	
E. coli	Many events	Once	Many occurrences	Data available upon request

IV. REGULATORY AUTHORITY/PERMIT ACTION

In November 1972, Congress passed the Federal Water Pollution Control Act establishing the NPDES permit program to control water pollution. These amendments established technology-based or end-of-pipe control mechanisms and an interim goal to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”; more commonly known as the “swimmable, fishable” goal. Further amendments in 1977 of the CWA gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry and established the basic structure for regulating pollutants discharges into the waters of the United States. In addition, it made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions. Regulations governing the NPDES permit program are generally found at 40 CFR §122 (program requirements & permit conditions), §124 (procedures for decision making), §125 (technology-based standards) and §136 (analytical procedures). Other parts of 40 CFR provide guidance for specific activities and may be used in this document as required.

It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a).

V. DRAFT PERMIT RATIONALE AND CONDITIONS

A. OVERVIEW of TECHNOLOGY-BASED VERSUS WATER QUALITY STANDARDS-BASED EFFLUENT LIMITATIONS AND CONDITIONS

Regulations contained in 40 CFR §122.44 NPDES permit limits are developed that meet the more stringent of either technology-based effluent limitation guidelines, numerical and/or narrative water quality standard-based effluent limits, or the previous permit.

Technology-based effluent limitations are established in the proposed draft permit for TSS and BOD and percent removal for each. Water quality-based effluent limitations are established in the proposed draft permit for E. coli bacteria, pH, TRC and PCBs.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. General Comments

Regulations promulgated at 40 CFR §122.44(a) require technology-based effluent limitations to be placed in NPDES permits based on ELGs where applicable, on BPJ in the absence of guidelines, or on a combination of the two. In the absence of promulgated guidelines for the discharge, permit conditions

may be established using BPJ procedures. EPA establishes limitations based on the following technology-based controls: BPT, BCT, and BAT. These levels of treatment are:

BPT - The first level of technology-based standards generally based on the average of the best existing performance facilities within an industrial category or subcategory.

BCT - Technology-based standard for the discharge from existing industrial point sources of conventional pollutants, including BOD, TSS, *E. coli* bacteria, pH, and O&G.

BAT - The most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. BAT effluent limits represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

2. Effluent Limitation Guidelines

The facility is a POTW/POTW-like that has technology-based limits established at 40 CFR Part 133.102, Secondary Treatment Regulation. Pollutants with limits established in this Chapter are BOD, TSS and pH. BOD limits of 30 mg/l for the 30-day average and 45 mg/l for the 7-day average and 85% percent (minimum) removal are found at 40 CFR §133.102(a). TSS limits; also 30 mg/l for the 30-day average and 45 mg/l for the 7-day average, average and 85% percent (minimum) removal are found at 40 CFR §133.102(b). The limit for pH is 6-9 s.u. based on 40 CFR §133.102(c).

Regulations at 40 CFR §122.45(f)(1) require all pollutants limited in permits to have limits expressed in terms of mass such as pounds per day. When determining mass limits for POTWs or similar, the plant’s design flow is used to establish the mass load. Mass limits are determined by the following mathematical relationship:

$$\text{Loading in lbs/day} = \text{pollutant concentration in mg/l} * 8.345 \text{ (lbs)(l)/(mg)(MG)} * \text{design flow in MGD}$$

$$\text{30-day average BOD/TSS loading} = 30 \text{ mg/l} * 8.345 \text{ (lbs)(l)/(mg)(MG)} * 13.5 \text{ MGD} = 3,379 \text{ lbs/day}$$

$$\text{7-day average BOD/TSS loading} = 45 \text{ mg/l} * 8.345 \text{ (lbs)(l)/(mg)(MG)} * 13.5 \text{ MGD} = 5,069 \text{ lbs/day}$$

A summary of the technology-based limits (same ones previously) for the facility is:

Parameter	30-day Avg, lbs/day, unless noted	7-day Max, lbs/day, unless noted	30-day Avg, mg/l, unless noted	7-day Max, mg/l, unless noted
BOD	3,379	5,069	30	45
BOD, % removal ¹	≥ 85	---	---	---
TSS	3,379	5,069	30	45
TSS, % removal ¹	≥ 85	---	---	---
pH	N/A	N/A	6.0 to 9.0 s.u.	6.0 to 9.0 s.u.

¹ % removal is calculated using the following equation: [(average monthly influent concentration – average monthly effluent concentration) ÷ average monthly influent concentration] * 100.

3. Pretreatment Regulation

The facility has eight significant industrial users (SIUs), which are subject to the local limits. The permittee is required to maintain and implement the approved pretreatment program pursuant to 40 CFR 403.8. EPA has not found any modifications to the program since the last permit, so the pretreatment language in the permit will remain the same.

C. WATER QUALITY BASED LIMITATIONS

1. General Comments

Water quality based requirements are necessary where effluent limits more stringent than technology-based limits are necessary to maintain or achieve federal or state water quality limits. Under Section 301(b)(1)(C) of the CWA, discharges are subject to effluent limitations based on Federal or State/Tribe WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State/Tribe WQS and applicable State/Tribe water quality management plans to assure that surface WQS of the receiving waters are protected and maintained or attained.

2. Implementation

The NPDES permits contain technology-based effluent limitations reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included in the NPDES permits. State/Tribe narrative and numerical water quality standards are used in conjunction with EPA criterion and other available toxicity information to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

3. State Water Quality Standards

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC approved on September 12, 2018). The discharge is to Rio Grande River Basin (20.6.4.101 NMAC). The designated uses of the receiving water are irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

4. Permit Action - Water Quality-Based Limits

Regulations promulgated at 40 CFR §122.44(d) require limits in addition to, or more stringent than effluent limitation guidelines (technology based). State WQS that are more stringent than effluent limitation guidelines are as follows:

a. pH

For marginal warmwater aquatic life and primary contact, criteria for pH is between 6.6 and 9.0 s.u. pursuant to 20.6.4.900.D and H(6) NMAC.

b. Bacteria

For primary contact, criteria for E. coli bacteria is at 126 cfu (or MPN)/100 ml monthly geometric mean and 410 cfu (or MPN)/100 ml daily maximum pursuant to 20.6.4.900.D NMAC.

c. TRC

For wildlife habitat, criteria for TRC is 11 ug/l pursuant to 20.6.4.900.G NMAC since the receiving water is effluent dominant. However, if a test result is less than the MQL specified in Part II.A of the permit it can be reported as zero for compliance purpose.

d. Toxics

The CWA in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at 40 CFR §122.44 (d) state that if a discharge poses the RP to cause an in-stream excursion above a water quality criteria, the permit must contain an effluent limit for that pollutant.

All applicable facilities are required to fill out appropriate sections of the Form 2A and 2S, to apply for an NPDES permit or reissuance of an NPDES permit. The new form is applicable not only to POTWs, but also to facilities that are similar to POTWs, but which do not meet the regulatory definition of “publicly owned treatment works” (like private domestics, or similar facilities on Federal property). The forms were designed and promulgated to “make it easier for permit applicants to provide the necessary information with their applications and minimize the need for additional follow-up requests from permitting authorities,” per the summary statement in the preamble to the Rule.

The 4Q3 of 1.06 cfs and harmonic mean flow of 1.019 cfs (same flows previously) provided by NMED at Elephant Butte Irrigation District (EBID) Flow Station: Rio Grande below Picacho near Las Cruces. NMED also provides other ambient data of the receiving water shown in the attached Appendix A. Effluent data submitted in Form 2A by the permittee are used to analyze the RP. The pollutants (in Tables C & D) having test results above the MQLs/WQS are analyzed. Averaged value of data set is utilized in the RP. PCBs results are analyzed using the reported average value (972 pg/L or 0.000972 ug/L) against the applicable WQS (0.00064 ug/L). Attached Appendix A shows RP exist for PCBs, EPA establishes limitations for PCBs with a 3-year compliance schedule (shown in the permit draft and Appendix A). EPA also establishes interim limitations for PCBs (0.0011 ug/L daily max. based on submitted data of 0.001020 ug/L and corresponding mass); this requirement applies to compliance schedule that exceeds one year per 40 CFR 122.47(a)(3).

All the reasonable potentiated parameters below were reported with data of ND (unless noted) at different ML. Summary of the tested methods are compared to the SSM requirement as follow:

Pollutants	Test Result (Method), ug/L	Applicable WQS, ug/L	Suggested Method with SSM Complied MDL, ug/L
Methylmercury	<0.2 (EPA 245.1)	1.11 x 10 ⁻⁴ (or 0.3 mg/kg in fish tissue)	NMED suggests EPA Method 1630
Acrolein	<10 (EPA 624)	9	0.5 (EPA 603)
Acrylonitrile	<20 (EPA 624)	2.5	0.5 (EPA 603)
Benzidine	<10 (EPA 625)	0.002	0.08 (EPA Method 605)
Benzo(a)anthracene	<2.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Benzo(a)pyrene	<2.5 (EPA 625)	0.18	0.023 (EPA Method 610)
3,4-benzofluoranthene	<2.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Benzo(k)fluoranthene	<2.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Chrysene	<2.5 (EPA 625)	0.18	0.023 (EPA Method 610)
Diazinon	<0.5 (EPA 625.1)	0.17	0.13 (EPA Method 507)
Dibenzo(a,h)anthracene	<2.5 (EPA 625)	0.18	0.03 (EPA Method 610)

Pollutants	Test Result (Method), ug/L	Applicable WQS, ug/L	Suggested Method with SSM Complied MDL, ug/L
1,2-Diphenylhydrazine	<2.5 (EPA 625)	2	NA
Endrin	<0.2 (EPA 608.3)	0.036	0.0062 (EPA Method 508)
Ideno(1,2,3-cd)pyrene	<2.5 (EPA 625)	0.18	0.043 (EPA Method 610)
Heptachlor	<0.2 (EPA 608.3)	0.00079	0.0015 (EPA Method 508)
Hexachlorobenzene	<0.2 (EPA 608.3)	0.0029	0.05 (EPA Method 612)

Because the permittee has not demonstrated compliance with the SSM requirement per 40 CFR 122.21(e)(3) for all the parameters in the table above, EPA proposes monitoring for these parameters at once/six months in this permit draft. All the analytical tests must meet the SSM requirement. Optionally during the public comment period, the permittee may submit additional test data (one scan for each pollutant) meeting the SSM requirement for these monitored parameters; EPA would reconsider this monitoring requirement depending on the analyses results. Pollutants shown in Part I.F of the draft permit, applicable to the State WQS that are not listed in Table C of Form 2A, will be tested, if the permit will be reapplied, during the permit term pursuant to 40 CFR 122.21(j)(4)(iv).

e. DO

For marginal warmwater aquatic life, the criteria for DO is 5 mg/L or more pursuant to 20.6.4.900.H(6) NMAC. As a part of the permitting process, EPA used the LA-QUAL water quality model, which is a steady-state one-dimensional model which assumes complete mixing within each modeled element, to develop permit parameters for the protection of the State of New Mexico surface water WQS for DO (i.e., 5 mg/L). Primarily based on the City of Las Cruces Wastewater Treatment Plant’s design flow (13.5 MGD) and the critical flow of the receiving water (1.06 cfs), various BOD5 factors including BOD5 Secondary Treatment Standards were considered and simulated to achieve the DO criterion. A complete characterization of Rio Grande River (i.e., water quality and hydrodynamic data) was not available. Where data were not available, estimates and assumptions are made. The following is a summary of model inputs.

The City of Las Cruces Wastewater Treatment Plant’s design flow is 0.59 m³/sec (13.5 MGD). The discharge location provided in the permit application is located at Latitude 32° 17' 35.2" N (32.2931), and Longitude 106° 49' 23.94" W (-106.8233). Other effluent parameters provided in the permittee’s application and applied in the model include Ammonia (Avg: 0.03 mg/L), DO (Avg: 6.28 mg/L), and effluent temperature (34 C). Effluent Nitrate plus Nitrite Nitrogen (Avg: 1.0 mg/L), and E. Coli (Avg: 10 CFU/100ml) were assumed since no data available.

NMED provided the following information. The critical low flow of Rio Grande River receiving stream is approximately 0.03 m³/sec (1.06 ft³/sec). Other parameters applied in the model include ambient temperature (19.76 C). Ammonia (Avg: 0.14 mg/L), DO (Avg: 6.83 mg/L), Nitrate plus Nitrite Nitrogen (Avg: 1 mg/L) and Ambient E. Coli of 18 CFU/100ml, and the receiving stream average depth of 1 foot (0.33 meter) were assumed since no data available.

EPA used the EPA’s Environmental Justice Screening and Mapping Tool (Version 2019) to estimate the average elevation of the study area and average width of Rio Grande River. The average elevation is approximately 1185 meter (3890feet). The average width of San Juan River is approximately 5 meters (15 ft). And, the studied Rio Grande River segment length is approximately 22.3 kilometers (13.87 miles), which was obtained from the 2020 - 2022 State of New Mexico Clean Water Act §303(d)/§305(b) Integrated List.

The model results show no excursion of the receiving stream DO standard of 5 mg/L when the BOD₅ limits of 30 mg/l for monthly average and 45 mg/l for 7-day maxima were applied (see graph with 30/45 mg/L BOD₅ in Appendix 1; other detail information is available upon request). The model results are based on the assumptions and default values as explained and presented above. Should these conditions change, the model should be updated to provide a more accurate assessment of the water quality within the receiving water body. At this time, the technology-based BOD₅ limits are protective of the DO for this water segment. No DO limitation is needed.

5. Monitoring Frequency for Limited Parameters

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). EPA established the monitoring frequency based on Table 9 (page 34 of the NMIP) for design flow between 1.0 and 5.0 MGD and history compliance.

Parameter	Frequency	Sample Type
Flow	Daily	Totalized Meter
pH	Daily	Instantaneous Grab
BOD ₅	Daily	12-hr Composite
TSS	Daily	12-hr Composite
% Removal	Monthly (reduced per the calculation method)	Calculation
TRC	Daily	Instantaneous Grab
E. coli Bacteria	Daily	Grab
PCBs	Once/two weeks (Quarterly for interim limitations)	12-hr Composite
Toxics	1/six months	12-hr Composite

D. WHOLE EFFLUENT TOXICITY

Procedures for implementing WET terms and conditions in NPDES permits are contained in the NMIP. Table 11 (page 42) of the NMIP outlines the type of WET testing for different types of discharges. The NMIP directs the WET testing for this permit to be a 7-day chronic test using *Ceriodaphnia dubia* and *Pimephales promelas*, once per quarter with a critical dilution of 95%.

During the previous permit cycle, there were nineteen (19) chronic toxicity failures for the invertebrate species, *Ceriodaphnia dubia*, and one (1) chronic failure for the vertebrate species, *Pimephales promelas*. Quarterly monitoring and reporting will continue being a requirement for the vertebrate species. A chronic WET limit of 95% critical dilution is established for the invertebrate species. The limit will become effective 3 years after this permit becomes effective as part of a compliance schedule. The permittee is to continue the TRE work started in the previous permit cycle and submit progress reports every quarter until the limit becomes effective.

The proposed permit requires five (5) dilutions in addition to the control (0% effluent) to be used in the toxicity tests based on a 0.75 dilution series. These additional effluent concentrations must be 30%, 40%, 53%, 71%, and 95%. The low-flow effluent concentration (critical low-flow dilution) is defined as 95% effluent. The permittee shall limit and monitor discharge(s) as specified below:

WHOLE EFFLUENT TOXICITY (7-Day Chronic Static Renewal/ NOEC) *	VALUE	MEASUREMENT FREQUENCY	REPORTING FREQUENCY	SAMPLE TYPE
<i>Ceriodaphnia dubia</i> (LIMIT)	Minimum 95%	Once/Quarter	Monthly	24-Hr Composite
<i>Pimephales promelas</i> (Monitoring and Reporting)	Report	Once/Quarter	Quarterly	24-Hr Composite

*Monitoring and reporting requirements begin on the effective date of this permit. Compliance with the Whole Effluent Toxicity limitation is required 3 years from the effective date of the permit. See Part II of the permit for WET testing requirements and limitation conditions. Grab samples are allowed per method, if needed.

VI. TMDL REQUIREMENTS

The receiving water segment, Rio Grande (NM192 bridge W of Mesquite to Picacho Bridge), was originally categorized under Rio Grande (Anthony Bridge to Picacho Bridge). In 2006, this “old” assessment unit was listed in New Mexico’s 303(d) list of impaired waters because its primary contact designated use was not being supported due to excessive *E. coli* bacteria. An *E. coli* TMDL for the impaired reach was completed and approved in 2007. However, during the planning phase of the 2011 water quality survey, the “old” assessment unit was split to better capture the influences of changing hydrology, land uses, and pollutant sources. As a result, data from the “new” assessment unit (NM192 Bridge W of Mesquite to Picacho Bridge) was reassessed and *E. coli* was removed as a cause of impairment for this stream reach in 2014. However, the TMDL is still effective and the Waste Load Allocation for the Jacob Hands Memorial WWTP is still applicable to the discharge. Regardless of the 2014 assessment and full support determination, limits for *E. coli* in the previous permit are retained in this permit draft to protect in-stream (previously impaired) and downstream water quality (“Anthony Bridge to NM 192 bridge W of Mesquite” is still impaired due to *E. coli*; the same TMDL was established). The permit has a standard reopener clause that would allow the permit to be changed if at a later date additional requirements on new or revised TMDLs are completed.

VII. ANTIDegradation

The NMAC, Section 20.6.4.8 “Antidegradation Policy and Implementation Plan” sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the draft permit are developed from the Tribe/State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The permit requirements and the limits are protective of the receiving water, which is protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

VIII. ANTIBACKSLIDING

The proposed permit is consistent with the requirements to meet Antibacksliding provisions of the Clean Water Act, Section 402(o) and 40 CFR 122.44(l)(2)(i)(B), which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless information is available which was not available at the time of permit issuance. No draft permit condition is less stringent than the previous one.

IX. ENDANGERED SPECIES CONSIDERATIONS

According to a report updated on November 12, 2020 for Dona Ana County, NM obtained from <http://ecos.fws.gov/ipac>, there are four endangered (E) and threatened (T) species: Least tern (E), Southern Willow Flycatcher (E), Yellow-billed Cuckoo (T) and Sneed Pincushion Cactus (E). All species, except Southern Willow Flycatcher (endangered bird), were listed in the previous permit with determination of “no effect”. According to the report, there are no designated critical habitats for all the species downstream from the discharging facility.

According to the Final Recovery Plan for southern willow flycatcher, the bird breeds in a relatively dense riparian tree and shrubs associated with river, swamp and other wetlands. “Destruction and modification of riparian habitats have been caused mainly by: reduction or elimination of surface and subsurface water due to diversion and groundwater pumping; changes in flood and fire regimes due to dams and stream channelization; clearing and controlling vegetation; livestock grazing; changes in water and soil chemistry due to disruption of natural hydrologic cycles; and establishment of invasive non-native plants.” No riparian habitat alterations are expected to be associated with reissuance of this permit. The discharge from the facility is required to protect applicable water quality standards, and the discharge itself ensures water will be available to wildlife in the area. EPA has determined reissuance of the permit will not affect the Southwestern Willow Flycatcher.

In accordance with requirements under section 7(a)(2) of the Endangered Species Act, EPA has reviewed this permit for its effect on listed threatened and endangered species and designated critical habitat. The scope of the Federal Action is limited to the effects of authorizing the discharge and does not include the permittee’s decision to cease discharging. After review, EPA has determined that the reissuance of this permit will have “no effect” on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. The flycatcher has been added to the USFWS list of threatened and endangered species; but there is no critical habitat designation in the area of the discharge since prior issuance of the permit. EPA has concluded that reissuance of the permit for this existing discharge would have no effect.
2. EPA has received no additional information since the previous permit issuance which would lead to revision of its determinations.
3. The draft permit is consistent with the States WQS and does not increase pollutant loadings.
4. EPA determines that Items 1, thru 3 result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have “no effect” on listed species and designated critical habitat.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The reissuance of the permit should have no impact on historical and/or archeological sites since no new construction activities are planned in the reissuance.

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if NMWQS are promulgated or revised. In addition, if the State develops a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that TMDL. Modification of the permit is subject to the provisions of 40 CFR §124.5.

XII. VARIANCE REQUESTS

None

XIII. CERTIFICATION

The permit is in the process of certification by the State Agency following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer of COE, to the Regional Director of FWS and to the National Marine Fisheries Service prior to the publication of that notice.

XIV. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XV. ADMINISTRATIVE RECORD

The following information was used to develop the draft permit:

A. APPLICATION(S)

EPA Application Forms 2A and 2S dated October 2, 2022 and October 14, 2020, respectively. Additional information was received on December 7, 2020.

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, 136, 434

C. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, effective September 12, 2018

State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2018-2020

TMDL For the Main Stem of The Lower Rio Grande dated June 11, 2007

D. MISCELLANEOUS

Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico – NMIP, March 15, 2012

NMED emails dated December 7, 2020; January 26, 2021

Final Recovery Plan for southern willow flycatcher, August 2002