

NPDES PERMIT NO. NM0031226
FACT SHEET

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

APPLICANT

Mineral Acquisitions, LLC
P.O. Box 25201
Albuquerque, NM 87125

ISSUING OFFICE

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

PREPARED BY

Nichole Young
Environmental Scientist
Permitting Section (6WDPE)
Water Division
VOICE: 214-665-6447
EMAIL: young.nichole@epa.gov

DATE PREPARED

March 15, 2021

PERMIT ACTION

It is proposed that the facility be issued an NPDES permit for a 5-year term in accordance with regulations contained in 40 Code of Federal Regulations (CFR) 122.46(a).

40 CFR CITATIONS: Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of January 19, 2020

RECEIVING WATER – BASIN

Bitter Creek (Segment 20.6.4.98) to Gila River of the Upper Gila-Mangas Basin

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
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FCB	Fecal coliform bacteria
F&WS	United States Fish and Wildlife Service
mg/l	Milligrams per liter (one part per million)
ug/l	Micrograms per liter (one part per billion)
MGD	Million gallons per day
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
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publically owned treatment works
RP	Reasonable potential
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
USFWS	United States Fish & Wildlife Service
USGS	United States Geological Service

WLA	Wasteload 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 facility is a new discharger.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, Billali Mine is located in Grant County, New Mexico. Under the Standard Industrial Classification (SIC) Code(s) 1041, the applicant states it operates an underground silica mine that includes small amounts of gold and silver ore.

Billali mine is classified as an underground mine. Prior to mining for silica, gold and silver, it is necessary to pump water from a fault using a diesel-powered generator and submergible 20HR pump, which is the source of the discharge that this permit proposes to authorize. Pumping will be done on a continuous basis until the water levels recedes and every couple days thereafter. This permit authorizes discharges from mine de-watering and does not authorize stormwater or any other discharges including discharges from onsite ponds. Applicant will pursue coverage under the Multi-sector General Permit for Stormwater Discharges for any stormwater discharges. More information is available at <https://www.epa.gov/npdes-permits/npdes-stormwater-program-region-6>.

The discharges from Outfall 001 flow into Bitter Creek (Segment 20.6.4.98) of the Upper Gila-Mangas Basin.

III. EFFLUENT CHARACTERISTICS

Quantifiable Data submitted in Form 2D is as follows:

Outfall 001: Latitude 32° 53' 00.23" N, Longitude 108° 59' 00.74" W

Parameter	Max	Avg
	(mg/l unless noted)	
Flow (MGD)	0.0288	N/A
pH, minimum, standard units (su)	6.7	N/A
pH, maximum, standard units (su)	7.9	N/A
Temperature (Summer)	21°C	N/A
Aluminum	2.1	1.05
Barium	2.5	1.25
Boron	1.1	0.55
Iron	1.0	0.5

Molybdenum	2.3	1.15
Manganese	0.52	0.26
Cadmium	0.050	0.025
Chromium	0.21	0.105
Copper	0.25	0.125
Lead	0.50	0.25
Nickel	0.48	0.24
Selenium	2.0	1.0
Silver	0.060	0.030
Zinc	0.58	0.29
Sulfate	6	3

Additional data obtained from lab reports submitted with the application is as follows

Parameter	Max	Avg
	(mg/l unless noted)	
Arsenic	0.00071	0.00071
Cobalt	0.000907	0.000907

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 EPA administered 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.

In some mining facilities leachate from waste rock site or seepage of mine water settling pond or tailing pond may reach surface water through hydrologic connection. This permit does not authorize any discharge through hydrologic connection nor discharges at locations other than Outfall 001 as specified in the permit.

The application was dated May 27, 2020 . Additional information was received on May 28, 2020, June 2, 2020, June 16, 2020, June 23, 2020, July 28, 2020, August 14, 2020, September 21, 2020 and January 5, 2020; and the application was deemed to be complete. It is proposed that the permit be issued for a 5-year term following regulations promulgated at 40 CFR §122.46(a).

V. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS

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

Regulations contained in 40 CFR §122.44 requires that 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.

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.

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 provisions of Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores of 40 CFR 440 are applicable to discharges from mines that produce silver and gold bearing ores. Application of Subpart J is appropriate since gold and silver will be produced during mining and. In addition the SIC code of the facility, 1041, makes application of Subpart J appropriate. There are no applicable ELGs for Silica. EPA has promulgated regulations under the Clean Water Act (CWA) that establish effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources. The CWA and EPA regulations define when a source is a new source. A discharger is defined as a new source in CWA sections 306(a)(2) and 307(c) and §§ 122.2 (for direct dischargers) and 403.3(m) (for indirect dischargers). In general, a facility is a new source if it begins construction after either the date of promulgation of new source performance standards applicable to the direct dischargers or the date of publication of a proposed new source performance standard applicable to an indirect discharger. The mine began production as early as 1880 and therefore was established prior to the publication date of 40CFR440 (January 17, 1983) therefore new source performance standards do not apply. BPT at §440.102 and BAT at §440.103 will apply.

Pollutants with ELG's established at 40 CFR Part 440.102 (BPT) are Copper, Zinc, Lead, Mercury, pH, and TSS. Pollutants with ELG's established at 40 CFR Part 440.103 (BAT) are Copper, Zinc, Lead, Mercury, and Cadmium. Water quality-based effluent limitations are established in the proposed draft permit for pH. Copper daily maximum limits of .30 mg/l and 30 day average limits of 0.15 mg/l, zinc daily maximum limits of 1.5 mg/l and 30 day average limits of 0.75 mg/l, lead daily maximum limits of 0.6 mg/l and 30 day average limits of 0.3 mg/l, mercury daily maximum limits of 0.002 mg/l and 30 day average limits of 0.001 mg/l, cadmium daily maximum limits of 0.10 mg/l and 30 day average limits of 0.05 mg/l, pH range of 6.0 – 9.0 s.u. and TSS daily maximum limits of 30.0 mg/l and 30 day average limits of 20.0 mg/l are all found at (§440.102(a) and -§440.103(a)).

A summary of the technology- based limits for the facility is:

Effluent Characteristic	Discharge limitations Daily Max (mg/l unless noted)	Discharge Limitations 30-day Avg (mg/l unless noted)
Copper, total	0.30	0.15
Zinc, total	1.5	0.75
Lead, total	0.6	0.3
Mercury, total	0.002	0.001
Cadmium, total	0.10	0.05
pH (range)	6.0 -9.0 s.u	-
TSS	30.0	20.0

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 WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State WQS and applicable State 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 narrative and numerical water quality standards are used in conjunction with EPA criteria 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 effective on May 20, 2020). The discharge is to Bitter Creek, which is classified as an intermittent water (20.6.4.98 NMAC). The designated uses of the receiving water are livestock watering, wildlife habitat, primary contact and marginal warmwater aquatic life.

Designated uses established under the State's Water Quality Standards may be removed or made less stringent only if a Use Attainability Analysis (UAA) demonstrates that attaining the current designated use is not feasible due to one of the factors listed in 40 CFR 131.10(g). A UAA has not been conducted for Bitter Creek; therefore, numeric criteria applicable to designated uses of 20.6.4.98 NMAC applies to this discharge and use-specific criteria in 20.6.4.900 NMAC include numeric criteria for both acute and chronic aquatic life.

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. 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 reasonable potential to cause an in-stream excursion above a water quality criteria, the permit must contain an effluent limit for that pollutant.

Although the permittee had previously discharged, because the discharge was without a permit Form 2D was deemed appropriate. All applicable facilities are required to fill out appropriate sections of the Form 1 and 2D, to apply for an NPDES permit or reissuance of an NPDES permit. 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. These forms became effective December 1, 1999, after publication of the final rule on August 4, 1999, Volume 64, Number 149, pages 42433 through 42527 of the FRL.

Based on the pollutant data provided by the facility and, a water quality screen has been run to determine if discharged pollutant concentrations demonstrate RP to exceed WQS for the various designated uses. If RP exists, the screen would also calculate the appropriate permit limit needed to be protective of such designated uses. The screen is based on the NMIP as of March 15, 2012. The receiving stream hardness value, 20 mg/L, represents the default values, and it was used in

the screen for any hardness-dependent WQS. The water quality screen is included in the Fact Sheet. Receiving stream TSS value of 6 mg/L was used in the water quality screen. NMED sampled the stream for TSS during an unauthorized discharge and provided EPA with the data. EPA typically uses 30 mg/l for intermittent streams, however EPA believes that using the more representative concentration obtained from the sample of the stream would ensure protection.

Aluminum, Cadmium, Copper, Lead, Manganese, Nickel, Silver and Zinc demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Therefore, effluent limitations and monitoring requirements for Total Aluminum, Total Cadmium, Total Copper, Total Lead, Dissolved Manganese, Total Nickel, Total Silver and Total Zinc are established at Outfall 001. In accordance with 40 CFR 122.45(c), total recoverable metal concentration must be established as effluent limitations. The exceptions listed in that sub-section refers to technology-based, not WQ-based, criteria. The permittee must report total or total recoverable metal concentrations for compliance purpose. Because State WQS copper, lead, nickel, silver and zinc were dissolved-based criteria, the linear partition coefficient for copper to convert dissolved copper concentration to total concentration is used to calculate the maximum daily effluent limitation. However, because a partition coefficient for aluminum is not available, the effluent limitation for total aluminum is based on the dissolved criteria.

During the public notice period the permittee may submit data for aluminum, copper, lead, nickel, silver and zinc in the dissolved form for a water quality screening directly with numeric criteria in the proper form. In addition, the permittee may submit receiving stream hardness and TSS data to be using in the water quality screening. In addition, the permit proposes to include monitoring for hardness (CaCO_3) for later RP analysis.

1. Aluminum, total recoverable

Aluminum demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Therefore 30-day average will be limited to 0.151 mg/l and daily max will be limited to 0.151 mg/l. 30 Day average and daily max loading limitations will be .036 lbs/day.

2. Cadmium, total

Cadmium demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Water quality based limits with 30-day average of 0.00014 mg/l and daily max of 0.00014 mg/l are more stringent than technology based limits of 0.10 mg/l daily max and 0.05 30-day average, therefore water quality based limits for cadmium of 0.00014 mg/l 30-day average and daily max of 0.00014 mg/l will be established in the draft permit. 30 Day average and daily max loading limitations will be 0.000034 lbs/day.

3. Copper, total

Copper demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Water quality based limits with 30-day average of 0.006 mg/l and daily max of 0.006 mg/l are more stringent than technology based limit of 0.30 mg/l daily max and 0.15 30-day average, therefore water quality based limits for copper of 0.006 mg/l 30-day average and daily max of 0.006 mg/l will be established in the draft permit. 30 Day average and daily max loading limitations will be 0.0014 lbs/day.

4. Lead, total

Lead demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Water quality based limits with 30-day average of 0.0002 mg/l and daily max of 0.0002 mg/l are more stringent than technology based limits of 0.6 mg/l daily max and 0.3 30-day average, therefore water quality based limits for lead of 0.0002 mg/l 30-day average and 0.0002 mg/l daily max will be established in the draft permit. 30 Day average and daily max loading limitations will be 0.0005 lbs/day.

5. Manganese, dissolved

Manganese demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Therefore 30-day average will be limited to 0.97 mg/l and daily max will be limited to 0.97 mg/l. 30 Day average and daily max loading limitations will be 0.23 lbs/day.

6. Nickel, dissolved

Nickel demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Therefore 30-day average will be limited to 0.013 mg/l and daily max will be limited to 0.013 mg/l. 30 Day average and daily max loading limitations will be 0.007 lbs/day.

7. Silver, dissolved

Silver demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Therefore 30-day average will be limited to 0.0002 mg/l and daily max will be limited to 0.0002 mg/l. 30 Day average and daily max loading limitations will be 0.00016 lbs/day.

8. Zinc, total

Lead demonstrated RP to exceed WQS consistent with the designated uses for the receiving water. Water quality based limits with 30-day average of 0.088 mg/l and daily max of 0.088 mg/l are more stringent than the technology based limit of 1.5 mg/l daily max and 0.75 30-day average, therefore water quality based limits for zinc of 0.088 mg/l 30-day average and 0.0088 mg/l daily max will be established in the draft permit. 30 Day average and daily max loading limitations will be 0.02 lbs/day.

9. Chromium

Chromium III demonstrated RP to exceed WQS when total Chromium was entered to assess for dissolved criteria. Because Chromium III demonstrated RP to exceed water quality standards, when assessed at total chromium levels, monitoring for chromium has been established in the draft permit.

A summary of the water- quality based limits for the facility is:

Effluent Characteristic	Discharge limitations Daily Max (mg/l unless noted)	Discharge Limitations 30-day Avg (mg/l unless noted)	Discharge limitations Daily Max (lbs/day unless noted)	Discharge Limitations 30-day Avg (lbs/day unless noted)
Copper, total	0.006	0.006	0.0014	0.0014
Zinc, total	0.088	0.088	0.02	0.02
Lead, total	0.002	0.002	0.0005	0.0005
Cadmium, total	0.00014	0.00014	0.00003	0.00003

Aluminum, total recoverable	0.151	0.151	0.036	0.036
Nickel, dissolved	0.013	0.013	0.007	0.007
Silver, dissolved	0.0002	0.0002	0.00016	0.00016
Manganese, dissolved	0.97	0.97	0.23	0.23
Chromium, dissolved	Report	Report	N/A	N/A
Hardness, dissolved	Report	N/A	N/A	N/A
pH (range)	6.6-9.0	N/A	N/A	N/A

In addition, discharge from industrial facilities for permits issued to protect NMWQS need to analyze at a minimum certain human health pollutants. Human health testing requirements and one time testing of all pollutants listed on application 2D (Tables A-C) have been added to the draft permit.

c. Critical dilutions

Critical dilutions are used to establish certain permit limitations and conditions. The State of New Mexico WQS allows a mixing zone for establishing pollutant limits in discharges. Both the NMWQS and NMIP establish a critical low flow designated as 4Q3, as the minimum average four consecutive day flow which occurs with a frequency of once in three years. The SWQB of the NMED provided EPA with the 4Q3 for Bitter Creek of 0 cfs. Bitter Creek is classified as an intermittent water

In accordance with NMIP, critical dilution in intermittent or ephemeral streams shall be 100% effluent. The facility is required to do a chronic ~~72-hour~~ WET test using *Ceriodaphnia dubia* and *Pimephales promelas*.

d. 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). Sample frequency is based on the March 15, 2012, Procedures for Implementing NPDES Permits in New Mexico (NMIP). Regulations at 40 CFR Part 136 define instantaneous grab as being analyzed within 15 minutes of collection. Parameters shall be monitored as specified below:

Parameter	Frequency	Sample Type
Flow	1/Day	Estimate
Copper	3/Week	Grab
Zinc	3/Week	Grab
Lead	3/Week	Grab

Mercury	3/Week	Grab
Cadmium	3/Week	Grab
Aluminum	3/Week	Grab
Chromium III	3/Week	Grab
Nickel	3/Week	Grab
Silver	3/Week	Grab
Manganese	3/Week	Grab
Hardness, dissolved	1/Week	Grab
pH (range)	1/Day	Instantaneous Grab*
TSS	3/Week	Grab

*Regulations at 40 CFR Part 136 define "grab" as instantaneous grab, analyzed within 15 minutes of collection.

D. WHOLE EFFLUENT TOXICITY

Based on the nature of the facility and the discharge there is potential for toxicity. In Section above; "Critical Conditions", it was shown that the critical dilution, CD, for the facility is 100%. nature of the receiving water; intermittent, and the critical dilution; 100%, the NMIP directs the WET test to be a ~~7-day~~ chronic test using *Ceriodaphnia dubia* and *Pimephales promelas* at a once per 5 year frequency consistent with the NMIP. The test series will be 0% (control), 32%, 42%, 56%, 75%, and 100%.

During the period beginning the effective date of the permit and lasting through the expiration date of the permit, the permittee is authorized to discharge from Outfall 001. Discharges shall be limited and monitored by the permittee as specified below:

Final Effluent Limits

WHOLE EFFLUENT TOXICITY LIMITS (7-Day Chronic Static Renewal/ NOEC) *	VALUE	MEASUREMENT FREQUENCY	SAMPLE TYPE
<i>Ceriodaphnia dubia</i>	REPORT	1/5 years	24-Hr Composite
<i>Pimephales promelas</i>	REPORT	1/5 years	24-Hr Composite

~~*1-Compliance with the WET limitation is required on the effective date of this permit.~~ See Part II, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions. Test must be performed between November 1 and April 30.

E. OPERATION AND E-REPORTING

The applicant is required to monitor the facility's discharge on a regular basis; and report the results quarterly if discharging. The monitoring results will be available to the public.

Electronic Reporting Rule

The EPA published the electronic reporting rule in the federal register (80 FR 64063) on October 22, 2015. The rule became effective on December 21, 2015. One year after the effective date of the final rule, NPDES regulated entities that are required to submit DMRs (including majors and non-majors, individually permitted facilities and facilities covered by general permits) must do so electronically. All DMRs shall be electronically reported effective December 21, 2016, per 40 CFR 127.16. If you are submitting on paper before December 21, 2016, you must report on the

Discharge Monitoring Report (DMR) Form EPA. No. 3320-1 in accordance with the "General Instructions" provided on the form. No additional copies are needed if reporting electronically, however when submitting paper form EPA No. 3320-1, the permittee shall submit the original DMR signed and certified as required by Part III.D.11 and all other reports required by Part III.D. to the EPA and other agencies as required. (See Part III.D.IV of the permit.). To submit electronically, access the NetDMR website at www.epa.gov/netdmr and contact the R6NetDMR@epa.gov in-box for further instructions. PA and authorized NPDES programs will begin electronically receiving these DMRs from all DMR filers and start sharing these data with each other.

Sufficiently Sensitive Analytical Methods (SSM)

The permittee must use sufficiently sensitive EPA-approved analytical methods (SSM) (under 40 CFR part 136 or required under 40 CFR chapter I, subchapters N or O) when quantifying the presence of pollutants in a discharge for analyses of pollutants or pollutant parameters under the permit. In case the approved methods are not sufficiently sensitive to the limits, the most SSM with the lowest method detection limit (MDL) must be used as defined under 40 CFR 122.44(i)(1)(iv)(A). If no analytical laboratory is able to perform a test satisfying the SSM in the region, the most SSM with the lowest MDL must be used after adequate demonstrations by the permittee and EPA approval.

VI. 303(d) LIST

The receiving stream, Bitter Creek is not listed for impairment in the Integrated List of Surface Waters of 2018-2020. Bitter Creek from Arizona Border to headwaters remains not assessed in the 2020-2022 integrated report, therefore no WQ-based effluent limitations are proposed based on the 303(d) list.

VIII. 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 proposed permit are developed from the 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 waters, which is protective of the designated uses of that water.ch

IX. ENDANGERED SPECIES CONSIDERATIONS

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. According to the most recent county listing of species available for the State of New Mexico, the following species may be present in the Grant County where the proposed NPDES discharge occurs: Mexican Long-nosed Bat (*Leptonycteris nivalis*) (E), Mexican Spotted Owl (*Strix occidentalis lucida*)(T), Southwestern willow flycatcher (*Empidonax traillii extimus*)(E), Yellow-billed Cuckoo (*Coccyzus americanus*)(T), Narrow-headed Gartersnake (*Thamnophis rufipunctatus*)(T), Northern Mexican Garternake (*Thamnophis eques*

megalops)(T), Chiricahua Leopard Frog (*Rana chiricahuensis*)(T), Beautiful Shiner (*Cyprinella formosa*)(T), Chihuahua Chub (*Gila nigrescens*)(T), Gila Chub (*Gila intermedia*)(E), Gila Topminnow (*Poeciliopsis occidentalis*)(E), Gila Trout (*Oncorhynchus gilae*)(T), Loach Minnow (*Tiaroga cobitis*)(E), and the Spikedace (*Meda fulgida*). There are no critical habitats at this location. Because the proposed activity does not include any construction activities that will alter habitat and the draft permit is consistent with WQS, EPA has concluded that the issuance of this permit will have “no effect” on Mexican Long-nosed Bat, Mexican Spotted Owl, Southwestern willow flycatcher, Yellow-billed Cuckoo, Narrow-headed Gartersnake, and the Northern Mexican Garternake. The draft permit is consistent with the States WQS, and therefore protective of species, however, because of the nature of the discharge from the facility and the likelihood that suitable habitat may occur in the project areas, EPA has determined that the issuance of this permit “may effect, but is not likely to adversely affect” the Chiricahua Leopard Frog, Beautiful Shiner, Chihuahua Chub, Gila Chub, Gila Topminnow, Gila Trout, Loach Minnow and Spikedace. An informal consultation has been initiated with the USFWS, to concur with EPA’s findings. EPA will review the USFWS findings before issuing the final permit.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

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

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit when new information, such as effluent characteristics, approval of new State Water Quality Standards, or approval of new TMDL, becomes available.

XII. VARIANCE REQUESTS

No variance requests have been received.

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, Corps of Engineers; to the Regional Director of the U.S. Fish and Wildlife Service 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 proposed permit:

A. APPLICATION(s)

EPA Application Forms 1 and 2D received August 14, 2020.

B. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, July 24, 2020.

Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico, March 2012.

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