

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
STATEMENT OF BASIS**

PERMITTEE: Oldcastle SW Group, Inc. d/b/a  
Four Corners Materials

FACILITY NAME AND ADDRESS: Four Corners Materials  
Bayfield Pit and Plant  
P.O. Box 1969  
6699 CR 521  
Bayfield, Colorado 81122

PERMIT NUMBER: CO-0034665

RESPONSIBLE OFFICIAL: Kyle M. High, General Manager

FACILITY CONTACT: Matt R. Carnahan, Resource and  
Environmental Manager

PERMIT TYPE: Indian Country, Individual, Renewal

TYPE OF TREATMENT: Settling Ponds

FACILITY LOCATION: T 34 N, R 7 W, S 14U, NW ¼, La Plata  
County, Colorado

DISCHARGE LOCATION: 37.191371° north latitude  
107.586513° west longitude.

## 1. INTRODUCTION

This statement of basis (SoB) is for the reissuance of a National Pollutant Discharge Elimination System (NPDES) Permit to the Four Corners Materials (Permittee), for the Bayfield Pit. The Bayfield Pit is a sand and gravel mining, crushing and washing operation with a currently non-operating ready-mix concrete plant. The Permit establishes discharge limitations for any discharge of water from the Bayfield Pit settling ponds to the Los Pinos River, referred to locally as the Pine River. The SoB explains the nature of the discharges, and the Environmental Protection Agency's (EPA) decisions for limiting the pollutants in the wastewater, as well as the regulatory and technical basis for these decisions.

The EPA Region 8 is the permitting authority for facilities located in Indian country, as defined in 18 U.S.C. § 1151, located within Region 8 states, and implements federal environmental laws consistent with the federal trust responsibility, the government-to-government relationship, and the EPA's 1984 Indian Policy.

## 2. BACKGROUND INFORMATION

The Four Corners Materials Bayfield Pit is located about two miles south of Bayfield, La Plata County, Colorado, west of County Road 521 and east of the Los Pinos River. The treatment facility consists of several settling ponds, which vary in size as different areas are mined for gravel. Discharges to the Los Pinos River are to occur through Outfall 001 or Outfall 002, which are located at the southwest corner of the facility and are the only authorized outfalls. The Bayfield Pit is located within the external boundaries of the Southern Ute Indian Reservation and thus is in Indian country as defined in 18 U.S.C. § 1151. The most recent NPDES discharge Permits the EPA issued to the Bayfield Pit were in 2006 and 2013. The 2013 Permit expired December 31, 2017. The Permittee has timely submitted a complete application for permit renewal.

The EPA has promulgated Effluent Guidelines for Construction Sand and Gravel mining in 40 C.F.R. Part 436, Subpart C. Facilities that mine and process sand and gravel for construction or fill purposes are subject to the effluent guidelines in 40 C.F.R. Part 436, Subpart C.

### 2.1. Facility Description

The La Plata County Assessor's records show the Permittee owns six parcels, totaling approximately 104 acres, on which the Bayfield Pit is sited. The disturbed area, including the inactive ready mix plant and office area, covers approximately 86 acres (Figure 1).

On September 9, 2014, the EPA conducted a permit compliance inspection of the Bayfield Pit. During the inspection, the EPA inspectors confirmed the location of Outfall 001 at the southwest corner of the facility, which then flows through an underground culvert to the Los Pinos River. The inspectors also found monitoring was not consistently done at the outfall's Parshall flume as required by the permit due to thick vegetation around the flume, and that erosion around the flume allows unmeasured discharge water to flow past the flume to the culvert. The inspection findings also show a second, unpermitted, outfall to which some of the flow is diverted when the discharge is greater than 1.5 million gallons per day (MGD). The second outfall (002 on Figure 1) diversion flows through an underground culvert to a ditch, which discharges into the Pine River Canal, just south of the Bayfield Pit.



Figure 1. Facility Aerial Map

## 2.2. Treatment Process

Treatment of process wastewater and stormwater runoff consists of settling in the ponds on site. Excess water in the ponds is discharged to the Los Pinos River through Outfall 001 during discharge flows of less than 1.5 MGD. When discharge flows are greater than 1.5 MGD, discharge also flows through the additional, formerly unpermitted, outfall (now Outfall 002) to the Pine River Canal, which is diverted from the Los Pinos River just downstream of Outfall 001.

## 3. WATER QUALITY CONSIDERATIONS

The headwaters of the Los Pinos River are near Weminuche Pass in the San Juan Mountains. After crossing the Southern Ute Indian Reservation, the river enters New Mexico and joins the San Juan River. River flow in the vicinity of Bayfield Pit is controlled by the Vallecito Reservoir, located about 13 miles upstream. The U.S. Geological Survey (USGS) maintains a gauging station on the Los Pinos River in conjunction with the Southern Ute Indian Tribe. This gauging station is located about 2 miles downstream of the Pine River Canal diversion, which is just downstream of the Bayfield Pit outfalls.

The Southern Ute Indian Tribe developed and adopted Tribal Water Quality Standards (WQS) in 1996. In March 2018, EPA approved the Tribe's application for the CWA § 303(c) Water Quality Standards and §401 Water Quality Certification programs for Tribal Trust lands within the Southern Ute Indian Reservation and is updating their WQS with the intent of submitting them for the EPA's approval.

A requirement to monitor for Total Dissolved Solids has been continued from the 2006 Permit to comply with the Colorado River Basin Salinity Control Forum policy. A numeric limit has not been applied to the facility for dissolved solids as self-monitoring data from the past five years indicate that the facility is discharging less than one ton of salts per day on an annual average, but monthly monitoring of dissolved solids will be required to keep track of the levels being discharged, in accordance with the Forum’s policy.

**4. PERMIT HISTORY**

The Permittee was to submit 20 Discharge Monitoring Reports (DMRs) to the EPA during this Permit period. Of those DMRs, 10 were submitted late with overdue dates ranging from 1 day to 1,258 days and 1 was not submitted at all. Additionally, the Permittee did not report all required parameters on all DMRs. However, none of the monitoring data which was reported contained any effluent limit exceedances (Table 1).

Table 1 – Effluent Data

Date: Month, Year	pH		TSS. mg/l		Al mg/l	TDS mg/l	Oil & Grease mg/l	Fecal Coliform #/100ml	Flow	
	min/max		30day/45day						30day/daily max, MGD	
Mar 13	7.0	8.4	2.4	2.4	NR	155	NR	NR	1.67	1.67
Jun 13	7.2	7.6	6.6	6.6	NR	195	0	NR	NR	NR
Sep 13	8.18	8.39	17.7	17.7	NR	170	NR	NR	1.66	7.21
Dec 13	7.5	8.3	8	8	NR	NR	NR	NR	1.66	1.67
Mar 14	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Jun 14	7.35	8.28	10.4	10.4	NR	160	NR	NR	1.95	2.39
Sep 14	7.3	8.3	8.5	13.6	NR	145	NR	NR	NR	NR
Dec 14	7.0	7.5	12.9	13.5	NR	NR	NR	0	NR	NR
Mar 15	8.4	8.4	5.9	8.6	0.18	115	1	NR	0.36	1.51
Jun 15	8.3	8.4	12.1	15.7	0.33	165	0	7	0.24	1.84
Sep 15	6.95	7.5	20.1	30.7	0.474	225	0	15	0.748	1.25
Dec 15	6.95	7.61	12.8	30.7	0.41	172	0	4	0.155	0.64
Mar 16	7.0	7.4	4.1	6.3	0.09	195	0	2	0.149	0.317
Jun 16	6.5	7.1	8.5	8.5	0.242	205	NR	27	0.0502	3.414
Sep 16	6.95	7.46	12.2	15.8	0.097	155	0	40	1.293	1.51
Dec 16	6.5	7.3	0.38	0.54	0.104	185	0	2	0.203	1.345
Mar 17	6.5	7.4	4	7.3	0.094	160	NR	2	0.435	0.517
Jun 17	6.5	7.1	8.5	8.5	0.242	205	NR	27	0.502	3.414
Sep 17	6.85	7.15	10.3	10.3	0.156	160	NR	40	0.517	0.64
Dec 17	6.65	7.11	6.21	6.21	0.173	165	NR	4	0.569	0.769

**5. MAJOR CHANGES FROM PREVIOUS PERMIT**

The EPA has made the following changes to the Permit based on the Permittee’s compliance history relative to the requirements of the previous Permit and taking in to account the findings of the 2014 permit compliance inspection.

1. Monitoring and reporting for Outfall 001 is being increased from quarterly to monthly.

2. A 30-day average (chronic) effluent limitation is being added for total recoverable aluminum.
3. The general fecal coliform effluent limitation is being replaced with an *E. coli* effluent limitation.
4. Monitoring and limitations are being applied to Outfall 002 to ensure protection of the receiving stream during high facility flows.

## 6. PROPOSED PERMIT LIMITATIONS

### 6.1. Technology Based Effluent Limitations

Construction sand and gravel mining operations, which mine and process sand and gravel products for construction or fill, are subject to the Technology Based Effluent Limitations (TBELs) promulgated in 40 C.F.R. Part 436, Subpart C. This TBEL requires all discharges of either process wastewater or dewatering of any water which collects in the mine, to meet limits on pH within the range of 6.0 to 9.0 standard pH units for both the daily maximum and the average of 30 consecutive days.

This TBEL is less stringent than both the EPA's current aquatic life water quality criteria (WQC) for pH and the pH effluent limitations of 6.5 to 9.0 pH units required by the previous Permit. The anti-backsliding requirements in 40 C.F.R. § 122.44(l)(1) state in part "when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit." Therefore, the EPA is retaining the pH effluent limitations of 6.5 to 9.0 pH units of the previous Permit in this Permit. Neither the EPA nor the Tribes have developed additional TBELs that apply to discharges from this facility.

### 6.2. Water Quality Based Effluent Limitations

Section 301 of the CWA requires the EPA to develop NPDES effluent limits through evaluating WQS and treatment technology standards. In the absence of applicable water quality standards, the EPA must conduct an evaluation of the Federal WQC and the assimilative capacity for the receiving stream (CWA § 304). This evaluation is used to establish water quality based effluent limits (WQBELs) to ensure protection of the receiving stream's water quality and its existing and designated beneficial uses.

Section 101(a)(2) of the Clean Water Act states "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water to be achieved by July 1, 1983." To achieve this Congressional goal in the absence of EPA-approved Tribal WQS on the Reservation, the EPA considers the beneficial uses of the receiving water to include aquatic life and recreation.

The NPDES regulations in 40 CFR § 122.44(d)(1)(i) – (iii) require permit writers to assess effluent with respect to EPA-approved water quality standards, to evaluate the impact of direct dischargers on downstream water quality. This assessment is used to determine permit limitations that are protective of water quality uses. The EPA relied on the authority in CWA § 301(b)(1)(C) in establishing WQBELs based on EPA's CWA § 304(a) recommended WQC to protect the above-mentioned uses in the receiving waters. Reasonable potential (RP) for pollutants in the discharge to cause or contribute to an exceedance of applicable water quality requirements was evaluated for total recoverable aluminum,

fecal coliform and total suspended solids relative to the WQC levels and available dilution in the receiving water.

This quantitative RP evaluation was performed using the Region 8 RP Tool, which assesses RP from effluent data with statistical procedures consistent with EPA’s Technical Support Document for Water Quality Based Toxics Control, March 1991. The U.S. Geological Survey has a gauging station about two river miles downstream of the Facility, where they have collected seventeen years of flow data, October 1999 through March 2018, for the Los Pinos River. Using this data, the EPA calculated an average 7-day, 10-year low flow value (7Q10) for the Los Pinos River of 0.3 cfs. The EPA used the calculated 7Q10, the parameter effluent data from the previous Permit’s DMR history and either the WQC or the previous Permit effluent limit in the RP Tool with a confidence interval of 95% for the RP calculations. The results are presented in Table 2.

Table 2 – Reasonable Potential Evaluation

Parameter	Aquatic Life Water Quality Criteria		Maximum Reported Effluent Concentration b/	Reasonable Potential?	
	Acute	Chronic		Acute	Chronic
Total Suspended Solids, mg/L a/	45	30	30.7	No	No
Aluminum, Total Recoverable, mg/L	0.75	0.087	0.474	Yes	Yes
Fecal Coliform a/	200	N/A	40	No	No

a/ The water quality criteria are narrative in nature, previous Permit effluent limits used in lieu of water quality criteria.

b/ From data reported by the Permittee during the previous permit period.

### 6.3. Final Effluent Limitations

The final effluent limitations are given in Table 3.

Table 3 - Effluent Limitations - Outfall 001 and Outfall 002.

Characteristic	30-Day Average a/	7-Day Average a/	Daily Maximum a/	Limit Basis b/
Total Suspended Solids (TSS), mg/L	30	45	N/A	PP
Aluminum, total recoverable, mg/L	0.087	N/A	0.75	PWQ
<i>E. coli</i> , #/100 mL	N/A	N/A	200	PJ
Oil and Grease (O&G), mg/L	N/A	N/A	10	PJ
The pH of the discharge shall not be less than 6.5 or greater than 9.0 at any time.				PWQ
There shall be no discharge of water which contacts solid or liquid wastes which are not required for the mining and processing of sand and gravel.				
There shall be no discharge of sanitary wastewaters from toilets or related facilities.				

No chemicals shall be added to the discharge unless prior written permission for the use of a specific chemical is granted by permit issuing authority. In granting such use, additional limitations and/or monitoring requirements may be imposed.

There shall be no discharge of floating debris, scum, foam, oil and grease, or other surface materials in quantities sufficient to harm existing beneficial uses of the receiving water.

Bulk storage structures for petroleum products and other chemicals shall have adequate protection so as to prevent any reasonable loss of the material from entering discharged waters or waters of the United States. Dependent on the amount of oil stored, the Permittee may need to prepare a Spill Prevention Control and Countermeasures Plan as required by 40 C.F.R. Part 112.

a/ See Definitions, Part 1.1., for definition of terms.

b/ PP = Limit carried over from previous Permit; PWQ = Limitation based on protecting water quality. PJ = Limitation based on professional judgement.

**TSS:** An RP evaluation of the effluent data of the Bayfield Pit for TSS indicates there is no reasonable potential for the discharge to cause or contribute to an exceedance of the previous Permit's effluent limitation. The previous Permit compliance limits will be maintained in this Permit to comply with the anti-backsliding requirements in 40 C.F.R. § 122.44(l)(1).

**pH:** The minimum pH value of 6.5 and maximum pH value of 8.4 are within the compliance limits of between 6.5 and 9.0 in any single analysis. The previous Permit compliance limits will be maintained in this Permit to comply with the anti-backsliding requirements in 40 C.F.R. § 122.44(l)(1).

**Fecal Coliform:** An RP evaluation of the effluent data of the Bayfield Pit for fecal coliform indicates there is no reasonable potential for the discharge to cause or contribute to an exceedance of the previous Permit's effluent limitation. Since the previous Permit was issued, the EPA has switched bacterial analyses from fecal coliform to *E. coli*, to better reflect the possibility of any bacterial health hazard. The previous Permit compliance limit for fecal coliform is being changed to a compliance limit for *E. coli* in this Permit. This parameter and limit change complies with the anti-backsliding requirements in 40 C.F.R. § 122.44(l)(1) as the new parameter and limit are more protective of human health.

**Aluminum:** An RP evaluation of the effluent data of the Bayfield Pit for total recoverable aluminum indicates there is reasonable potential for the discharge to cause or contribute to an exceedance of the previous Permit's effluent limitation. The previous Permit daily maximum compliance limit of 0.75 mg/L total recoverable aluminum will be maintained in this Permit and a 30-day average compliance limit of 0.087 mg/L total recoverable aluminum is being added to this Permit.

**Narrative Requirements:** All narrative effluent limit requirements from the previous Permit are being maintained in this Permit to be protective of water quality and to comply with the anti-backsliding requirements in 40 C.F.R. § 122.44(l)(1).

## 7. MONITORING REQUIREMENTS

Self-Monitoring Requirements – Outfall 001 and Outfall 002

Monitoring must be conducted according to procedures approved under 40 C.F.R. Part 136 unless another method is required under specific effluent limit guidelines or biosolids requirements. The Permittee will conduct monitoring of Outfall 001 for the parameters and at the intervals given in Table 4

and will be required to monitor Outfall 002 for these parameters when the outfall is utilized for discharges.

Table 4 – Monitoring Requirements

Effluent Characteristic	Frequency	Sample Type <u>a/</u>
Total Flow, mgd <u>b/</u>	Weekly	Instantaneous
Total Suspended Solids, mg/L <u>c/</u>	Monthly	Composite
pH, units	Weekly	Instantaneous
Total Dissolved Solids, mg/L <u>c/</u>	Monthly	Composite
<i>E. coli</i> , #/100 mL	Monthly	Grab
Aluminum, Total Recoverable, mg/L	Monthly	Grab
Oil and Grease, mg/L	Monthly	Grab

a/ See Definitions, Permit Part 1.1., for definition of terms.

b/ Flow measurements of effluent volume shall be made in such a manner that the Permittee can affirmatively demonstrate that representative values are being obtained. The average flow rate in million gallons per day (mgd) during the reporting period and the maximum flow rate observed, in mgd, shall be reported.

c/ The sample for TSS and TDS shall be a flow weighted composite sample.

## 8. STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS

The Permittee was required to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) in the two previous Permits. Because the Bayfield Pit’s treatment ponds collect, and eventually discharge, stormwater in addition to process water and ground water infiltration, the SWPPP requirement is being maintained in this Permit. This Permit requires the SWPPP to be updated to reflect the current conditions and configuration of the site and to be updated as the site conditions and/or configuration changes with mining. Requirements for monitoring, recordkeeping, site inspections, stormwater control structure maintenance and reporting of stormwater related discharge events are incorporated into this Permit.

## 9. REPORTING REQUIREMENTS

Reporting of Monitoring Results: With the effective date of this Permit, the Permittee must electronically report monthly discharge monitoring reports (DMR) on a quarterly frequency using NetDMR. Electronic submissions by permittees must be sent to EPA Region 8 no later than the 28th of the month following the completed reporting period. The Permittee must sign and certify all electronic submissions in accordance with the signatory requirements of the Permit. NetDMR is accessed from the internet at <https://netdmr.zendesk.com/home>.

In addition, the Permittee must submit a copy of the DMR to the Southern Ute Indian Tribe. Currently, the Permittee may submit a copy to the Southern Ute Indian Tribe by one of three ways: 1. A paper copy may be mailed; 2. The email address for Southern Ute Indian Tribe may be added to the electronic submittal through NetDMR; or 3. The Permittee may provide Southern Ute Indian Tribe viewing rights through NetDMR.

## 10. ENDANGERED SPECIES CONSIDERATIONS

The Endangered Species Act (ESA) of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS), that any Federal action carried out by the Agency is not likely to jeopardize the continued existence of any listed endangered or threatened species or result in the adverse modification or destruction of habitat of such species that is designated by the FWS as critical [16 U.S.C. § 1536(a)(2) and 50 C.F.R. Part 402]. When a Federal agency’s action may affect a protected species, the agency is required to consult with the FWS on the species or designated critical habitat which may be affected by the action [50 C.F.R. § 402.14(a)].

### 10.1. Species Evaluation

The U. S. Fish and Wildlife Information for Planning and Conservation (IPaC) website program was utilized to determine federally-listed Endangered, Threatened, Proposed and Candidate Species for the Bayfield Pit site and surrounding area. The IPaC Trust Resource Report findings are provided below (Table 5). The designated area shown in Figure 2 was taken directly from the IPaC system and covers the Bayfield Pit site and surrounding area in La Plata County, Colorado.



Figure 2

Table 5 – IPaC Species Listing

Species	Scientific Name	Status
New Mexico Meadow Jumping Mouse	<i>Zapus hudsonius luteus</i>	Endangered
North American Wolverine	<i>Gulo gulo luscus</i>	Proposed Threatened
Mexican Spotted Owl	<i>Strix occidentalis lucida</i>	Threatened
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	Endangered w/ Final Critical Habitat
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	Threatened
Colorado Pikeminnow	<i>Ptychocheilus lucius</i>	Endangered
Razorback Sucker	<i>Xyrauchen texanus</i>	Endangered
Knowlton’s Cactus	<i>Pediocactus knowltonii</i>	Endangered

#### 10.1.1. Analysis of Effects

The EPA has determined the reissuance of this NPDES Permit will have No Effect on any of the species listed as threatened or endangered for La Plata County. The EPA made this determination utilizing information from the US FWS ECOS-IPaC website and by informal consultation with personnel of the US FWS Colorado Field Office. The specific determinations for each of the species listed in Table 5, above, are as follows:

10.1.1.1. Yellow-billed Cuckoo (*Coccyzus americanus*)

The Yellow-billed Cuckoo is listed as threatened. There is proposed critical habitat for this species, but the location of the Bayfield Pit is outside the proposed critical habitat. Yellow-billed Cuckoos use wooded habitat with dense cover and water nearby, including woodlands with low, scrubby, vegetation, overgrown orchards, abandoned farmland, and dense thickets along streams and marshes. In the West, nests are often placed in willows along streams and rivers, with nearby cottonwoods serving as foraging sites. The area surrounding the Bayfield Pit does not have the sort of habitat that supports the Yellow-billed Cuckoo. As the Permit-authorized discharge does not affect any potential habitat of the Yellow-billed Cuckoo and sets effluent limitations protective of water quality, the EPA has determined reissuing this NPDES Permit will have No Effect on this threatened species.

10.1.1.2. North American Wolverine (*Gulo gulo luscus*)

The North American Wolverine is listed as proposed, threatened and no critical habitat has been designated for this species. Wolverines are found at high elevations with cold, snowy conditions where the snow remains well into the spring. The area around the Bayfield Pit does not contain this type of habitat. For this reason, the EPA has determined the reissuance of this NPDES Permit will have No Effect on this proposed, threatened species.

10.1.1.3. Mexican Spotted Owl (*Strix occidentalis lucida*)

The Mexican Spotted Owl is listed as threatened. There is final critical habitat for this species, but the location of the Bayfield Pit is outside the critical habitat. Spotted owls are residents of old-growth or mature forests that possess complex structural components (uneven aged stands, high canopy closure, multi-storied levels, high tree density). Canyons with riparian or conifer communities are also important components. Owls are also found in canyon habitat dominated by vertical-walled rocky cliffs within complex watersheds, including tributary side canyons. The area around the Bayfield Pit does not contain the type of habitat that supports the Mexican Spotted Owl, therefore, the EPA has determined reissuing this NPDES Permit will have No Effect on this threatened species.

10.1.1.4. New Mexico Jumping Mouse (*Zapus hudsonius luteus*)

The New Mexico Jumping Mouse is listed as endangered. Critical habitat has been designated for this species, but the Bayfield Pit is outside of this critical habitat. The New Mexico Jumping Mouse needs riparian communities along rivers and streams, springs and wetlands, or canals and ditches that contain persistent emergent herbaceous wetlands especially characterized by presence of primarily forbs and sedges such as *Carex* spp. or scrub-shrub riparian areas that are composed of willows (*Salix* spp.) or alders (*Alnus* spp.) with an understory of primarily forbs and sedges and flowing water that provides saturated soils throughout the New Mexico meadow jumping mouse's active season. The area around the Bayfield Pit does not contain the type of habitat that supports the New Mexico Jumping Mouse, therefore, the EPA has determined reissuing this NPDES Permit will have No Effect on this threatened species.

10.1.1.5. Knowlton's Cactus (*Pediocactus knowltonii*)

The Knowlton's Cactus is endangered but no critical habitat has been designated. Habitat supporting this species consists of gravelly hills with Pinyon, Juniper and Sage vegetative cover. The area around the Bayfield Pit discharge does not contain that type of habitat. The US FWS has designated this species current range as "wherever found." Information provided by the US FWS to the EPA during the

informal consultation is that there are no known occurrences of the Knowlton's Cactus in Colorado. For these reasons, the EPA has determined that issuing this NPDES Permit will have No Effect on this endangered species.

10.1.1.6. Colorado Pikeminnow (*Ptychocheilus lucius*)

The Colorado Pikeminnow is listed as endangered wherever found unless listed as an experimental population. Critical habitat has been designated for this species, but the Bayfield Pit area is outside of the critical habitat area. This species is listed as endangered due to water depletion of its stream habitat. The Bayfield Pit does not withdraw water from the Los Pinos River, rather it discharges water to the River. Because reissuing this Permit will not contribute to water depletion of the Los Pinos River and the Permit effluent limits will maintain water quality of the Los Pinos River; the EPA has determined that issuing this NPDES Permit will have No Effect on this endangered species.

10.1.1.7. Razorback Sucker (*Xyrauchen texanus*)

The Razorback Sucker is listed as endangered wherever found. Critical habitat has been designated for this species, but the Bayfield Pit area is outside of the critical habitat area. This species is listed as endangered due to water depletion of its stream habitat. The Bayfield Pit does not withdraw water from the Los Pinos River, rather it discharges water to the River. Because reissuing this Permit will not contribute to water depletion of the Los Pinos River and the Permit effluent limits will maintain water quality of the Los Pinos River; the EPA has determined that issuing this NPDES Permit will have No Effect on this endangered species.

10.1.1.8. Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

The Southwestern Willow Flycatcher is listed as endangered. There is final critical habitat designated for this species and the Bayfield Pit area overlaps the critical habitat. Information provided by the US FWS to the EPA during the informal consultation is that the critical habitat is occupied by the endangered Southwestern Willow Flycatcher. For nesting, this species requires dense riparian habitats (cottonwood/willow and tamarisk vegetation) with microclimatic conditions dictated by the local surroundings. Saturated soils, standing water, or nearby streams, pools are a component of nesting habitat that also influences the microclimate and density vegetation component. Habitat not suitable for nesting may be used for migration and foraging. Loss and degradation of dense riparian habitats are the primary habitat threat to the flycatcher. Southwestern Willow Flycatcher critical habitat in the Bayfield Pit area occurs in the Los Pinos River's riparian area from about the northern boundary of the Southern Ute Indian Reservation, approximately 1½ miles north of the Bayfield Pit, to several miles north of the Town of Bayfield, Colorado. The critical habitat area is close enough to the Bayfield Pit that flycatchers could be found in the area of the discharge. Reissuance of this NPDES Permit will not have any effect on the critical habitat in the area as it does not authorize any land disturbance or removal of riparian vegetation. For this reason, the EPA has determined reissuing this NPDES Permit will have No Effect on this endangered species.

10.2 Conclusion

Because review of species information on the US FWS ECOS-IPaC website and informal consultation with the US FWS shows the reissuing of this NPDES Permit (CO-0034665) for the Four Corners Materials will have No Effect any of the species listed as threatened or endangered for La Plata County or the Southern Ute Indian Reservation nor those species critical habitat, no further consultation with the US FWS is required.

## **11. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS**

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f) requires that federal agencies consider the effects of federal undertakings on historic properties. The U.S. National Park Service's National Register of Historic Places Focus Database was utilized to search for resources of concern in the Bayfield Pit location.

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

The EPA search of the National Park Service's National Register of Historic Places showed the nearest historic features to be near Durango, Colorado, which is approximately 60 miles from the Bayfield Pit. Based upon the information provided by the NPS database, the EPA does not anticipate any impacts on listed/eligible historic properties or cultural resources due to this Permit issuance and discharge related activities from the Facility.

On January 16, 2018, the Southern Ute Tribal Historic Preservation Officer was contacted to ensure that any Tribal historic or cultural sites would not be negatively affected by the conditions of this Permit. On March 1, 2018, the Southern Ute Tribal Historic Preservation Officer concurred with the EPA's conclusion that the described project would not adversely affect any historical properties or cultural resources.

## **12. MISCELLANEOUS**

The effective date of the Permit and the permit expiration date will be determined upon issuance of the Permit. This NPDES Permit shall be effective for a fixed term not to exceed 5 years.

### **ADDENDUM:**

#### **PUBLIC NOTICE AND RESPONSE TO COMMENTS**

The Permit and Statement of Basis were public noticed in the Durango Herald on October 17, 2018. No public comments were received.