NPDES PERMIT NO. NM0029238
FACT SHEET

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

APPLICANT

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DATE PREPARED

May 31, 2023

PERMIT ACTION

Proposed reissuance of the current NPDES permit issued January 18, 2018, with an effective date of March 1, 2018, and an expiration date of February 28, 2023.

RECEIVING WATER – BASIN

Little Creek; thence to Eagle Creek; thence to Rio Ruidoso of the Pecos River Basin. The Little Creek is considered an intermittent waterbody with WQS reference of 20.6.4.98.

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
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 litter (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
UV	Ultraviolet light
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

Changes from the permit previously issued January 18, 2018, with an effective date of March 1, 2018, and an expiration date of February 28, 2023, are:

A. Added influent data reporting requirements for BOD_5 and TSS on DMRs.

B. Sanitary Sewer Overflows (SSOs), bypass and anticipated bypass events shall be electronically reported to EPA per 40 CFR 127.26(f).

C. Per- and Polyfluoroalkyl Substances (PFAS) monitoring requirements have been added.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the wastewater treatment plant is located eight miles north-northeast of the City of Ruidoso in Lincoln County, New Mexico. The effluent from the treatment plant is discharged into the Little Creek; thence to Eagle Creek; thence to Rio Ruidoso in Segment 20.6.4.208 of the Pecos River Basin. The discharge is located at latitude 33° 25' 22" N, longitude 105° 34' 25.5" W.

Under the Standard Industrial Classification (SIC) Code 4952, the applicant currently operates a private domestic WWTP with an extended aeration activated sludge process with a plant flow design of 0.04 MGD. The treatment consists of seven aeration tanks, one denitrification tank, one re-aeration tank, two final clarifiers, a chlorine contact chamber, three bag filters, and a UV disinfection unit with chlorination as back-up. Additionally, the facility utilizes a lined evaporation pond which also serves as a polishing and holding pond. Effluent from the plant contact chamber is routed through the pond before it's filtered, metered, and UV disinfected.

CDS Rainmakers WWTP

III. EFFLUENT CHARACTERISTICS

A quantitative description of the discharge(s) described in the EPA Permit Application Form 2A received January 17, 2023, are presented below:

POLLUTANT TABLE #1

PARAMETER	Max	Avg.
Flow, million gallons/day (MGD)	0.04	0.03
Temperature, winter, °C*	10.4	8.9
Temperature, summer, °C*	24.1	22.3
pH, minimum, standard units (s.u.)	N/A	6.6 min
pH, maximum, standard units (s.u.)	N/A	9.0 max
Biochemical Oxygen Demand, 5-day (BOD_5), mg/L	45	30
Fecal Coliform (cfu/100mL)	940	206
Total Suspended Solids (TSS), mg/L	45	30

*From previous application

A summary of the last 3-years of pollutant data taken from DMRs shows many exceedances of pollutant limits.

Pollutant/Limit	Month/Year of Exceedances - Value
BOD_5 / 30-day avg	April 2022
TSS/30-day avg. – 30 mg/l	April and September 2022
TSS/7-day avg. – 45 mg/l	September 2022
TSS % removal – 85% minimum	April and September 2022

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.

The permit application was received on January 17, 2023, the application was determined to be complete on January 24, 2023. It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a). The previous permit expired February 28, 2023. The existing permit is administratively continued until this permit is issued.

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 require 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.

Technology-based effluent limitations are established in the proposed draft permit for TSS and BOD_5. Water quality-based effluent limitations are established in the proposed draft permit for TRC, pH and *E. coli* bacteria.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

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.

CDS Rainmakers facility is a privately owned domestic treatment plant that has technology-based ELG's established at 40 CFR Part 133, Secondary Treatment Regulation. Pollutants with ELG's established in this Chapter are BOD, TSS and percent removal for each. BOD limits of 30 mg/l for the 30-day average, 45 mg/l for the 7-day average and 85% (minimum) removal are

found at 40 CFR §133.102(a). TSS limits of 30 mg/l for the 30-day average, 45 mg/l for the 7-day average and 85% (minimum) removal are found at 40 CFR §133.102(b). ELGs for pH are between 6-9 s.u. are found at 40 CFR §133.102(c).

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

Loading in lbs/day = pollutant concentration in mg/l * 8.345 lbs/gal * design flow in MGD
30-day average BOD/TSS loading = 30 mg/l * 8.345 lbs/gal * 0.04 MGD
30-day average BOD/TSS loading = 10 lbs/day

7-day average BOD/TSS loading = 45 mg/l * 8.345 lbs/gal * 0.04 MGD
7-day average BOD/TSS loading = 15 lbs/day

A summary of the technology-based limits for the facility is:
Final Effluent Limits – 0.04 MGD design flow.

EFFLUENT CHARACTERISTICS	**DISCHARGE LIMITATIONS**			
	lbs/Day		mg/l (unless noted)	
Parameter	30-Day Avg.	7-Day Avg.	30-Day Avg.	7-Day Avg.
Flow	N/A	N/A	Measure MGD	Measure MGD
BOD_5 effluent	10	15	30	45
BOD_5 influent	N/A	N/A	Report	N/A
TSS effluent	10	15	30	45
TSS influent	N/A	N/A	Report	N/A
BOD_5 & TSS, % removal minimum	N/A	N/A	$\geq$ 85% (*)	N/A
pH	N/A	N/A	6.0 – 9.0 standard units	

(*) Percent removal is calculated using the following equation: [(average monthly influent concentration – average monthly effluent concentration) / average monthly influent concentration] x 100

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. Water Quality Standards

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC, approved January 19, 2023. Some but not all portions of the 2022 NMWQS submittal have been approved as of January 2023, revisions to aquatic life criteria are not approved at this time. However, revisions to human health criteria are approved. The facility discharges into the Little Creek; thence to Eagle Creek; thence to Rio Ruidoso in Segment 20.6.4.208 of the Pecos River Basin. The Little Creek is an intermittent waterbody with WQS reference of 20.6.4.98. The designated uses of the receiving water are livestock watering, wildlife habitat, warmwater aquatic life 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. Bacteria

New Mexico stream segment (20.6.4.98 NMAC) intermittent waters WQS require *E. coli* bacteria 206 cfu/100mL monthly geometric mean and 940 cfu/100ml daily maximum will continue in this permit.

b. pH

The draft permit shall continue with 6.6 and 9.0 s.u. for pH based on the State's WQS, based on the designated aquatic life use for unclassified intermittent waters (20.6.4.98 NMAC) marginal warmwater aquatic life.

c. Toxics

i. General Comments

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 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 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. 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.

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 facility is designated as a minor and does not need to fill out the expanded pollutant testing section Part D of Form 2A.

ii. Critical Conditions

Critical conditions are used to establish certain permit limitations and conditions. The State of New Mexico WQS allow a mixing zone for establishing pollutant limits in discharges. Both states 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. NMED SWQB has not assessed the unclassified Little Creek. The receiving water is considered intermittent due to the facility's batch wastewater discharge. Therefore, there is not a calculated 4Q3 and a harmonic mean low flow for the facility. For this case the critical dilution is 100% according to the NMIP and no DO model was generated.

iii. TRC

The facility uses UV unit to disinfect the effluent. TRC of 11 µg/l (for wildlife habitat; 20.6.4.900.J NMAC) is established in case chlorine based product is contributed in the treatment process or disinfection of treatment equipment. The effluent limitation for TRC is the instantaneous maximum and cannot be averaged for reporting purposes.

d. Dissolved Oxygen

The plant design flow is 0.04 MGD, with an exceptionally low annual average flow rate of 0.02 MGD and a Critical Dilution of 100%, the EPA believes this discharge will not have a significant impact on the receiving intermittent creek.

e. Per- and Polyfluoroalkyl Substances (PFAS)

As explained at https://www.epa.gov/pfas, PFAS are a group of synthetic chemicals that have been in use since the 1940s. PFAS are found in a wide array of consumer and industrial products. PFAS manufacturing and processing facilities, facilities using PFAS in production of other products, airports, and military installations can be contributors of PFAS releases into the air, soil, and water. Due to their widespread use and persistence in the environment, most people in the United States have been exposed to PFAS. Exposure to some PFAS above certain levels may increase risk of adverse health effects (EPA, EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan, EPA 823R18004, February 2019). The EPA is collecting information to evaluate the potential impacts that discharges of PFAS from wastewater treatment plants may have on downstream drinking water, recreational and aquatic life uses.

Since PFAS chemicals are persistent in the environment and may lead to adverse human health and environmental effects, the draft permit requires that the facilities conduct influent, effluent, and sludge sampling for PFAS according to the frequency outlined in the permit.

The purpose of this monitoring and reporting requirement is to better understand potential discharges of PFAS from this facility and to inform future permitting decisions, including the potential development of water quality-based effluent limits on a facility-specific basis. EPA is authorized to require this monitoring and reporting by CWA § 308(a), which states:

> *"SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this Act—(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require;".*

EPA notes that there is currently not an analytical method approved in 40 CFR Part 136 for PFAS. As stated in 40 CFR § 122.44(i)(1)(iv)(B), in the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. Therefore, the draft permit specifies that until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Draft Method 1633. The draft Adsorbable Organic Fluorine CWA wastewater method 1621 can be used in conjunction with draft method 1633, if appropriate. This is consistent with the December 5, 2022 USEPA Memorandum, Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs, from Radhika Fox.

In October 2021, EPA published a PFAS Strategic Roadmap that described EPA's commitments to action for 2021 through 2024. This roadmap includes a commitment to issue new guidance recommending PFAS monitoring in both state-issued and federally issued NPDES permits using EPA's recently published analytical method 1633. In anticipation of this guidance, EPA has included PFAS monitoring in the draft permit using draft analytical method 1633.

Draft Method 1633 is currently a single lab-validated method. EPA anticipates the method will be multi- lab validated in 2023. If the PFAS monitoring requirement begins before Draft Method 1633 is multi-lavalidated, the current single lab validated Draft Method 1633 shall be used at that time, and then the multi-lab validated Draft Method 1633 shall be used once it is available.

5. 303(d) List Impacts

Little Creek enters Eagle Creek and flows into Rio Ruidoso before the confluence at Rio Bonito, above Rio Hondo. Little Creek (Eagle Creek to Headwaters) is included in the 2022-2024 Integrated Report, and none of the Attainments have been Assessed.

No additional limitations are required to address 303(d) concerns. If at a later time a TMDL is completed, the standard reopener clause will allow additional limitations to be placed in the permit.

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 NMIP. Technology based pollutants; BOD and TSS are proposed to be monitored one time per month and twice per month respectively. Flow is proposed to be monitored daily instantaneous grab. These frequencies are the same as the current permit. Sample type for BOD_5 and TSS are grab which is consistent with the previous permit.

Water quality-based pollutant monitoring frequency for *E. coli* shall be twice per month by grab sample which was suggested by NMED because of the highly variable discharge. TRC and pH shall be monitored five (5) days per week, using instantaneous grab samples. Regulations at 40 CFR §136 define instantaneous grab as being analyzed within 15-minutes of collection. All of these monitoring frequencies are consistent with the NMIP.

E. WHOLE EFFLUENT TOXICITY LIMITATIONS

In Section V.C.4.c.(ii) above; "Critical Conditions", it was shown that the critical dilution, CD, for the facility is 100% because the discharge is to an intermittent water body. Based on the nature of the discharge; privately owned treatment plant, the design flow; less than 0.1MGD, the 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 permit term frequency consistent with the NMIP and the previous permit. The test series will be 0% (control), 32%, 42%, 56%, 75%, and 100%.

Data from the previous permit cycles indicates the facility passed the one/term chronic WET test requirement with a NOEC of 100% for both species. There is no reasonable potential for this facility to exceed the narrative criteria for WET in the Water Quality Standards and no limit is needed. Monitoring will remain the condition for this permit.

Effluent Characteristics	**Value**	**Monitoring Requirements**	
WET Testing (7-day Chronic NOEC *1)	NOEC	Measurement Frequency	Sample Type
Ceriodaphnia dubia	Report	Once/Term	24-Hr. Composite

Pimephales promelas	Report	Once/Term	24-Hr Composite

FOOTNOTES:
*1 Monitoring and reporting requirements begin on the effective date of this permit. See Part II, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions.

VI. TMDL AND OTHER REQUIREMENTS

Little Creek enters Eagle Creek and then flows into Rio Ruidoso before the confluence at Rio Bonito, above Rio Hondo. Little Creek (Eagle Creek to Headwaters) is included in the 2022-2024 Integrated Report, and none of the Attainments have been Assessed. A reopener clause is established in Part II of the permit, which allows the permit to be modified, if necessary, to conform with the approved Water Quality Management Plan (WQMP) final effluent limitations or an approved waste load allocation (WLA) as part of a TMDL.

VII. MONITORING AND E-REPORTING

The EPA promulgated a final rule in 2015 to modernize Clean Water Act reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system. This final rule requires regulated entities to electronically report certain data required by the NPDES permit program instead of filing paper reports. The rule also requires that certain data be entered into EPA's national data system by NPDES Authorized States, Tribes, Territories, and Federal regulators. EPA regulations at 40 CFR 127.26(f) require that all NPDES permits issued on and after Monday, December 21, 2015, contain permit conditions requiring electronic reporting consistent with EPA electronic reporting regulations. These reports must contain the minimum set of NPDES program data identified in Appendix A, 40 CFR part 127. After December 21, 2016, the permittees are required to submit discharge monitoring reports (DMRs), including majors and minor POTWs/POTWS-like, and Sewage Sludge/Biosolids Annual Program Report.
By December 2025 or an alternative deadline established under 40 CFR 127.24 (e) or (f), the following reports must be submitted electronically (unless EPA directs otherwise, or the permittee received a waiver from electronic reporting): Pretreatment Program Annual Reports, and Sewer Overflow/Bypass Event Reports and Anticipated Bypass Notices.

The permittee may seek a waiver from electronic reporting to continue submitting reports on paper. To obtain an electronic reporting waiver, a permittee must first submit an electronic reporting waiver request to EPA Region 6. The waiver request should contain the following details: Facility name; NPDES permit number; Facility address; Name, address and contact information for the owner, operator, or duly authorized facility representative; and Brief written statement regarding the basis for claiming a waiver.

The region will either approve or deny this electronic reporting waiver request within 120 days. Permanent waivers from electronic reporting are only available to facilities owned or operated by members of religious communities that choose not to use certain technologies. The duration of a temporary waiver may not exceed 5 years, which is the normal period for an NPDES permit term. If a permittee wishes to continue coverage under a waiver from electronic reporting, they must re-apply for a new temporary waiver before the expiration of their existing waiver, even if

this NPDES permit is administratively continued. Approved electronic reporting waivers are not transferrable, whether permanent or temporary, are not transferrable and the facility will need to re-apply for a waiver upon any change in facility ownership.

Permittees with an approved and effective electronic reporting waiver must use the forms or formats provided by the region. The permittee must sign and certify all submissions in accordance with the requirements of Part III of this permit ("Signatory Requirements").

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. No expansions or increased loadings are planned for this permit term. 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 assimilative capacity of the receiving waters, which is protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

IX. 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)(i)(A), which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation. The proposed permit maintains the mass loading requirements and limits of the previous permit for all pollutants.

X. ENDANGERED SPECIES CONSIDERATIONS

According to the most recent county listing available at USFWS, Southwest Region 2 website, http://ifw2es.fws.gov/EndangeredSpecies/lists/, three species in Lincoln County are listed as Endangered or Threatened. One of the species is avian, the Mexican spotted owl, and the other listed species is one flowering plant, the Kuenzler hedgehog cactus.

Southwestern willow flycatcher (Empidonax traillii extimus) – Endangered – The Southwestern Willow Flycatcher inhabits riparian deciduous thickets, primarily feeding on insects. The permitted discharge is not anticipated to affect the species.

Mexican spotted owl (Strix occidentalis lucida) – Threatened. The Mexican Spotted Owl inhabits hardwood and coniferous forest habitats, nesting in trees and rock crevices and preying upon small mammals and birds. The permitted discharge is not anticipated to affect its critical habitat. Kuenzler hedgehog cactus (Echinocereus fendleri var. kuenzleri) – Threatened. is a small cactus that is endemic to the Sacramento Mountains in Lincoln County, New Mexico, and the Guadalupe Mountains in Eddy County, New Mexico. Typical Kuenzler hedgehog cactus habitat

includes lower-elevation pinyon-juniper woodlands from about 1,560 to 2,130 meters (m) (5,100 to 6,990 feet [ft]) elevation. The permitted discharge is not anticipated to affect this flora.

The facility currently holds a permit with USEPA. The proposed permit will be for the re-issuance of the current permit issued in 2018, with controls to meet the current state water quality standards for the area of discharge. The proposed permit ensures that the discharge does not cause or contribute to an exceedance of water quality criteria for livestock watering, wildlife habitat, marginal warmwater aquatic life, and primary contact.

After review, EPA has determined that the reissuance of this permit will not change the environmental baseline established by the previous permit, and therefore, EPA concludes that 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. EPA determined a "No effect" during previous permit, issued on January 18, 2018.

2. No additional changes have been made to the US FWS list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.

3. EPA has received no additional information since January 18, 2018, previous permit effective date, which would lead to revision of its determinations.

4. EPA determines that Items 1, 2, and 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.

XI. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

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

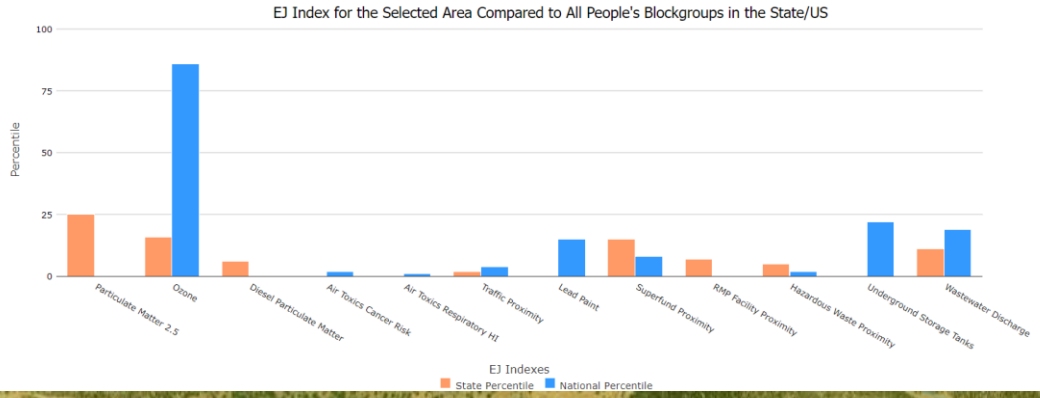
XII. EVIRONMENTAL JUSTICE

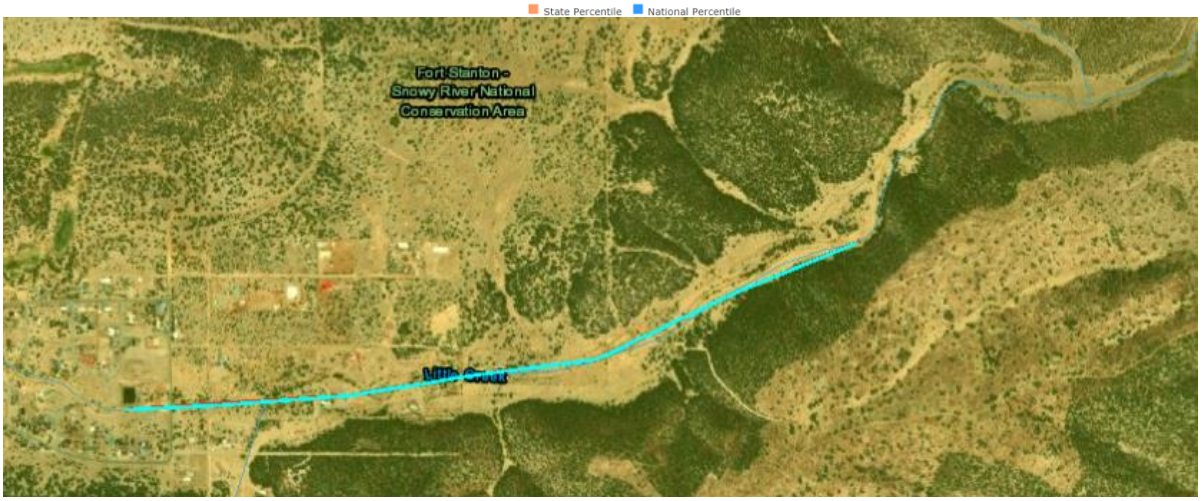
Executive Order 13985, *Advancing Racial Equity and Supporting for Underserved Communities through the Federal Government* signed on January 20, 2021, directs each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities." The EPA strives to enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits, including NPDES permits. "Overburdened" communities can include minority, low-income, tribal, and indigenous populations or communities that potentially experience disproportionate environmental harms and risks. As part of an agency-wide effort, the EPA Region 6 will consider prioritizing enhanced public involvement opportunities for EPA-issued permits that may involve activities with significant public health or environmental impacts on

already overburdened communities. For more information, please visit http://www.epa.gov/ejscreen.

As part of the Permit development process, the EPA conducted a screening analysis to determine whether this Permit action could affect overburdened communities. The EPA used EJScreen 2.1, a nationally consistent geospatial tool that contains demographic and environmental data for the United States at the Census block group level. This tool is used to identify Permits for which enhanced outreach may be warranted.

The study area was chosen drawing a 3-mile radius downstream at the proposed 001 discharge into the Little Creek. The population of the study area is 1,043 aged 5 and above. All twelve (12) State Environmental Justice Indexes were well below the 80th percentile (80%). Furthermore, the ACS summary report indicates that 86% of the population in the Alto Communities study area are white. Also, 90% of the population speak only English at home. These results indicate that all the percentiles are well below the 80 percentile and most of the population speak English at home. From the EJSCREEN guidelines and trainings, this area will not be a concern for Environmental Justice issues at this time.





XIII. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if relevant portions of either States WQS are revised or remanded. In addition, the permit may be reopened and modified during the life of the permit if relevant procedures implementing the State's Water Quality Standards are either revised or promulgated. Should either State adopt a new WQS, and/or develop or amend a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that approved State standard and/or water quality management plan, in accordance with 40 CFR 122.44(d). Modification of the permit is subject to the provisions of 40 CFR 124.5.

XIV. VARIANCE REQUESTS

No variance requests have been received.

XV. 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.

XVI. FINAL DETERMINATION

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

XVII. ADMINISTRATIVE RECORD

The following information was used to develop the proposed permit:

A. APPLICATION(s)

EPA Application Form 2A and 2S received January 2023.

B. 40 CFR CITATIONS

Citations to 40 CFR are as of May 2023.
Sections 122, 124, 125, 133, 136

C. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, as amended through January 2023.

Procedures for Implementing NPDES Permits in New Mexico, May 2011.

Statewide Water Quality Management Plan, December 17, 2002.
State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2022-2024.

D. Other

US Fish and Wildlife Service (USFWS), Southwest Region 2 website, http://www.fws.gov/endangered