

# UPPER PECOS OUTSTANDING WATERS HEARING

Rachel Conn Direct Testimony April 2022 Photos, unless indicated otherwise, are by Jim O'Donnell

# QUALIFICATIONS

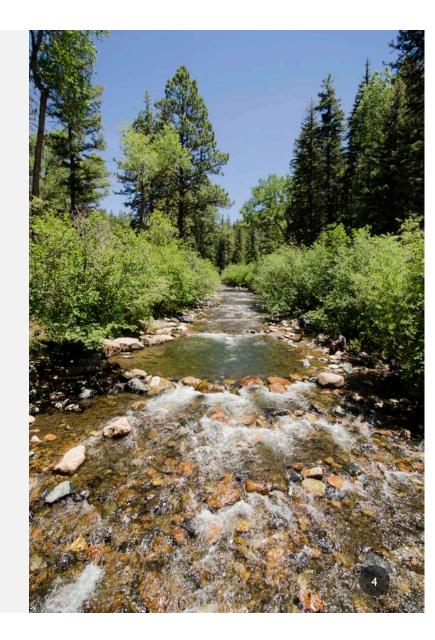
- Deputy Director of Amigos Bravos, statewide water conservation organization.
- Have worked on water quality issues in New Mexico for 22 years.
- Worked for Amigos Bravos for 21 years.
- Served on advisory board of National Clean Water Network for 9 years.
- BA in Environmental Biology from Colorado College.
- Provide trainings on Clean Water Act including water quality standards.
- Co-lead a surface water quality monitoring program and conducts trainings on sampling and monitoring procedures.
- Provided testimony before the Water Quality Control Commission on many occasions, including during the last 4 Triennial Reviews and all previous Outstanding National Resource Waters (Outstanding Waters or ONRWs) hearings.

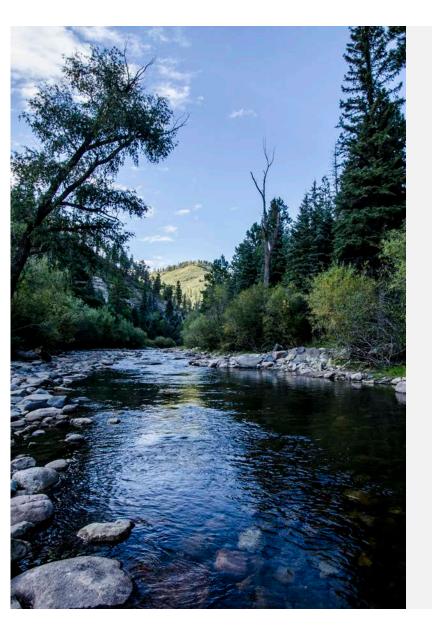


- Water quality standards include three components: Designated Uses, Criteria, and Antidegradation (20.6.4.8 NMAC).
- Antidegradation includes three tiers.
- Outstanding Waters are the third tier.
- Three designations to date:
  - Rio Santa Barbara
  - All waters, including wetlands in Valle Vidal
  - All named perennial waters and wetlands in USFS Wilderness
- Highest level of protection. No degradation allowed except for short term degradation associated with restoration and public safety activities.
- Beneficial to existing uses of the watershed such as acequias, recreation, farming, and ranching.

#### UPPER PECOS WATERSHED OUTSTANDING WATERS PETITION OVERVIEW

- Petitioners: San Miguel County, Village of Pecos, New Mexico Acequia Association, Molino de la Isla Organics LLC, and Upper Pecos Watershed Association.
- Supported by a broad array of local and statewide individuals, organizations, and businesses.
- Who depend on these waters for recreation with their families and to sustain their traditional way of life and their livelihoods,
- Who value these interconnected waters' remarkable beauty and extraordinary ecological and recreational attributes.
- The term "Upper Pecos Watershed" refers to the perennial and non-perennial streams and wetlands nominated in the Petition and identified in Maps I and 2 and Tables I and 2.





#### PETITIONERS HAVE SATISFIED ALL PROCEDURES FOR THIS NOMINATION

There are 6 requirements for nominating an ONRW set forth in Section 20.6.4.9.A NMAC:

(1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries:

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B;

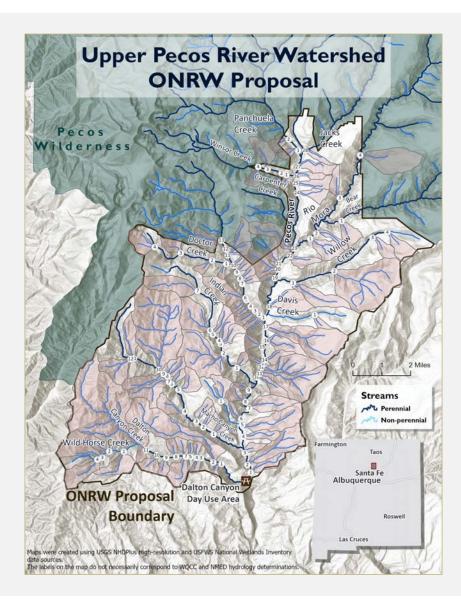
(3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline

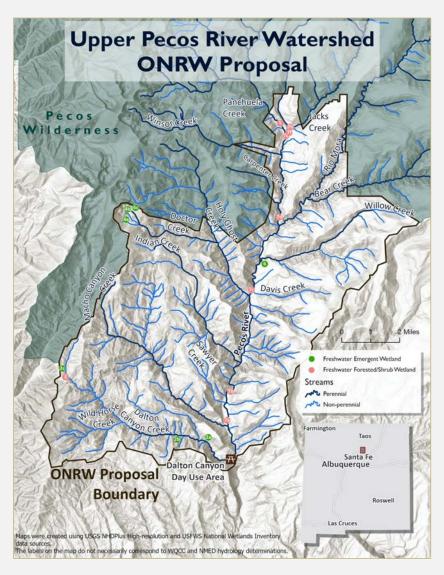
condition for the proposed ONRW; (4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW; (5) any additional evidence to substantiate such a designation, including an analysis of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the

state: and

(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

(1) a map of the nominated surface water of the state, including the location and proposed upstream and downstream boundaries;





Stream	Miles	Downstream boundary	Upstream Boundary	Lat/Long at mouth of stream		
				Latitude	Longitude	
Wild Horse Trib - 1	1.33	Confluence with Wild Horse Creek	Headwaters	35.673	-105.764	
Wild Horse Trib - 2	1.03	Confluence with Wild Horse Creek	Headwaters	35.674	-105.773	
Wild Horse Trib - 3	1.02	Confluence with Wild Horse Creek	Headwaters	35.670	-105.778	
Wild Horse Trib - 4	0.98	Confluence with Wild Horse Creek	Headwaters	35.669	-105.781	
Willow Creek	5.92	Confluence with the Pecos River	Headwaters	35.75803	-105.6718	
Willow Trib - 1	1.75	Confluence with Willow Creek	Headwaters	35.759	-105.661	
Willow Trib - 2	5.60	Confluence with Willow Creek	Headwaters	35.765	-105.635	
Willow Trib - 3	0.59	Confluence with Willow Creek	Headwaters	35.782	-105.612	
Willow Trib - 4	0.60	Confluence with Willow Creek	Headwaters	35.784	-105.603	
Winsor Creek	1.77	Confluence with the Pecos River	Wilderness Boundary	35.81165	-105.659	
Winsor Trib - 1	0.41	Confluence with Winsor Creek	Headwaters	35.813	-105.665	
Winsor Trib - 2	0.17	Confluence with Winsor Creek	Wilderness Boundary	35.814	-105.668	
Winsor Trib - 3	0.19	Confluence with Winsor Creek	Wilderness Boundary	35.815	-105.677	
Winsor Trib - 4	0.11	Confluence with Winsor Creek	Wilderness Boundary	35.817	-105.683	

Total	179.93
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Label	Туре	Acres	Latitude	Longitude
2a	Freshwater Emergent Wetland		35.668	-105.70
2b	Freshwater Emergent Wetland		35.671	-105.720
2c	Freshwater Emergent Wetland	20.91	35.702	-105.79
3	Freshwater Forested/Shrub Wetland	0.66	35.701	-105.790
4a	Freshwater Emergent Wetland		35.781	-105.75
4b	Freshwater Emergent Wetland		35.782	-105.75
4c	Freshwater Emergent Wetland	2.00	35.783	-105.75
5	Freshwater Forested/Shrub Wetland	0.64	35.827	-105.66
6	Freshwater Emergent Wetland	6.24	35.759	-105.67
7a	Freshwater Forested/Shrub Wetland		35.679	-105.69
7b	Freshwater Forested/Shrub Wetland		35.693	-105.68
7c	Freshwater Forested/Shrub Wetland		35.743	-105.67
7d	Freshwater Forested/Shrub Wetland		35.781	-105.66
7e	Freshwater Forested/Shrub Wetland		35.822	-105.65
7f	Freshwater Forested/Shrub Wetland		35.824	-105.65
7h	Freshwater Forested/Shrub Wetland	12.51	35.825	-105.65
	Total	42.96		5

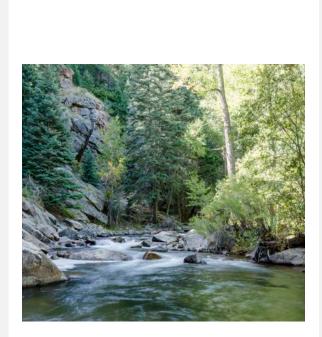
Table I – (excerpt)

Table 2 – (excerpt)

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B; (3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;

### WATER QUALITY DATA

- Chemical water quality data for Dalton Canyon, Doctor, Holy Ghost, Indian, Jack's, Macho Canyon, Panchuela, Pecos, Mora, Willow, and Winsor Creeks;
- Field data for the Pecos River, and Dalton Canyon, Doctor, Holy Ghost, Indian, Jack's, Macho Canyon, Panchuela, Mora, Willow, and Winsor Creeks;
- Geomorphology habitat data for the Pecos River, and Dalton Canyon, Doctor, Holy Ghost, Jack's, Panchuela, Willow, Winsor, and Willow Creeks;
- Benthic data for the Pecos River, and Dalton Canyon, Holy Ghost, Pecos, Mora, and Winsor Creeks;
- Fish ecology data for the Pecos River, and Mora and Panchuela Creeks; and
- Temperature data for Pecos River and Holy Ghost, Panchuela, Mora, Willow, and Winsor Creeks.
- There is no data for Bear Creek, Carpenter Creek, Davis Creek, Sawyer Creek, or Wild Horse Creek or any of the unnamed tributaries and wetlands.



(4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;

# ACTIVITIES THAT COULD IMPACT WATER QUALITY

- Mining
- Development and Roads
- Waste Disposal
- Climate Change
- Poorly Managed Recreational Use



(5) any additional evidence to substantiate such a designation, including an analysis of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and





# ADDITIONAL INFORMATION PROVIDED

- Economic Significance (angling, hunting, species of economic and recreational significance)
- Cultural Significance (Pecos Pueblo, acequias, land grants)
- National Significance



(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

#### AFFIDAVIT OF PUBLICATION

COUNTY OF SAN MIGUEL

STATE OF NEW MEXICO

SS.

Phil Scherer (Editor)

, Being first duly sworn, on oath

states that s/he is a Manager of the Las Vegas Optic, a tri-weekly newspaper of general paid and general circulation in San Miguel county, New Mexico, entered under the second class postal privilege in said county, being the county in which the notice hereto attached is required to be published and said paper has been published in said San Miguel County continuously and uninterruptedly during a period of six months prior to the first issue thereof containing said notice. That the notice of which a copy as published is hereto attached and hereby made a part hereof was published in the English Language in said newspaper once each week for \_\_\_\_\_ consecutive weeks on the following dates, to wit:

First Publication on the1st	day of September	_ 20 21	
Second Publication on the	day of	, 20	
Third Publication on the	day of	_, 20	
Fourth Publication on the	day of	_, 20	

That such notice is a legal notice and was published in said newspaper duly qualified for that purpose within the meaning of the provisions of Chapter 167, session Laws of 1937, and that payment therefor has been made - assessed as Court costs.

Phillip Scherer Editor

Subscribed and sworn to before me this 13th day of September . 20 21 .

Notary Public 9-20-2023 Expires

Official Seal CYNTHIA MARIE FITCH Notary Public State of New Mexico My Commission Expires

#### **AFFIDAVIT OF PUBLICATION**

#### STATE OF NEW MEXICO SS

#### **County of Bernalillo**

of Pecos, the Ne

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pres in support of the non-stabilish a baseline condition is the proposed ONFW, a liscussion of activities that ight contribute to the reduct of writer quality in the pro-ceed ONFW, and additional vidence to substantiate the esignation, including a dis-societ of the economic im-

Journal: September 2, 2021

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Elise Rodriguez, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

09/02/2021



Sworn and subscribed before me, a Natary Public in and for the County of Bernalillo and State of New Mexico this 2 day of September

\$60.67 PRICE .

Statement to come at the end of month.



of 2021

ACCOUNT NUMBER

#### NOTICE OF HEARING

- The State Rules Act require notice in the New Mexico Register at least 30 days before hearing
- Commission's rules require publication of the notice in the New Mexico Register and in a statewide newspaper and local newspaper at least 60 days before hearing
- Notice of the hearing was published in the New Mexico State Register on March 22, 2022, (Exhibit 8)
- Notice of the hearing was published in the Albuquerque Journal on February 5, 2022 and in the Las Vegas Optic on February 4, 2022 (Exhibit 8)



(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B;



CRITERIA FOR DESIGNATION

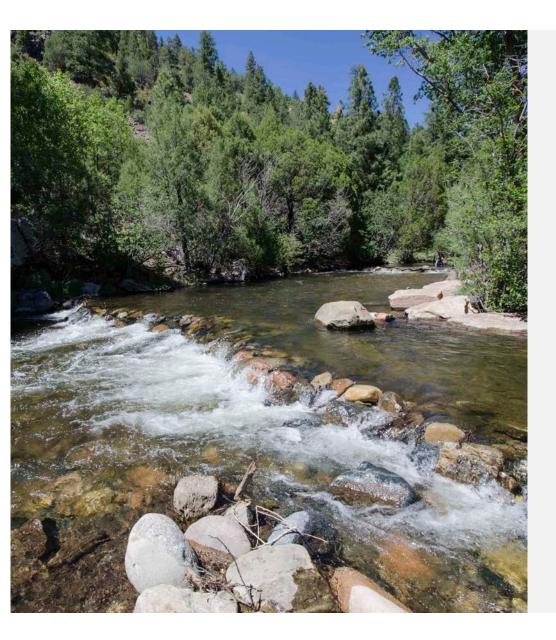
**B. Criteria for ONRWs:** A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, *and*;

(1) the water is a significant attribute of a state special trout water, national <u>or</u> state park, national or state monument, national or state wildlife refuge <u>or</u> designated wilderness area, <u>or</u> is part of a designated wild river under the federal Wild and Scenic Rivers Act; <u>or</u>

(2) the water has exceptional recreational or ecological significance; or

(3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

20.6.4.9.B NMAC (emphasis added).



#### PETITIONERS HAVE SATISFIED THE CRITERIA FOR DESIGNATION

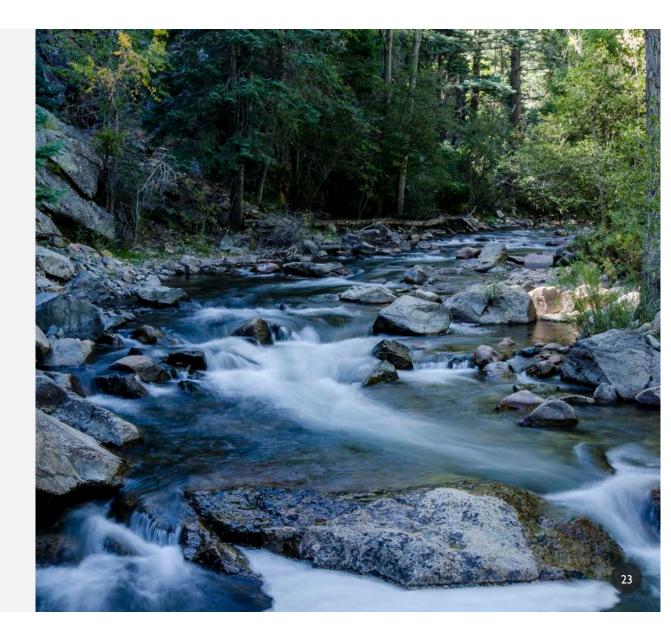
- All nominated waters meet benefit to the state criterion.
- All nominated waters meet ecologically significant criterion.
- All nominated waters meet recreationally significant criterion.
- Many nominated waters meet the water quality criterion.
- Some nominated waters meet the special attribute criterion.
- The Table in Exhibit 4 lays out which waters meet which criteria.



Waterbody/reach	Stream miles and wetland acres	Description	NM Benefit	Exceptional ecological significance 19 SGCN Mexican Spotted Owl habitat - threatened (ESA) Peregrine Falcon - threatened (state) Plants - 1 ESA, 2 special status, 2 state endangered	Exceptional recreational significance 6 SERI 2764 angler days (2003-04)	State special trout water	Wild and Scenic River	Water Quality equal to or better than numeric criteria
Holy Ghost Creek Trib-1–13	6.88 stream miles	From the confluence with the Holy Ghost Creek to the headwaters or the Wilderness boundary, whichever comes first.	Mitigate and adapt to climate change; historical and cultural significance; economic benefit (outdoor recreation/tourism)	State and federal E&T Species and Species of Greatess Conservation Need	Multiple species of recreational and economic importance (SERI)			NOT ASSESSED
				19 SGCN Mexican Spotted Owl habitat - threatened (ESA) Peregrine Falcon - threatened (state) Plants - 1 ESA, 2 special status, 2 state endangered				
Indian Creek	6.62 stream miles	From the confluence with the Pecos River upstream to the headwaters.	Mitigate and adapt to climate change; historical and cultural significance; economic benefit (outdoor recreation/tourism)	State and federal E&T Species and Species of Greatess Conservation Need	Fishing, multiple species of recreational and economic importance (SERI)			YES
				Rio Grande Cuthroat Trout 20 SGCN Mexican Spotted Owl habitat - threatened (ESA) Peregrine Falcon - threatened (state) Plants - 1 special status, 1 state endangered	5 SERI 47 angler days (2001-02)			
Indian Creek Trib-1-7	10.87 stream miles	From the confluence with Indian Creek upstream to the headwaters.	Mitigate and adapt to climate change; historical and cultural significance; economic benefit (outdoor recreation/tourism)	State and federal E&T Species and Species of Greatess Conservation Need	Multiple species of recreational and economic importance (SERI)			NOT ASSESSED
				Rio Grande Cutthroat Trout 20 SGCN Mexican Spotted Owl habitat - threatened (ESA) Peregrine Falcon - threatened (state) Plants - 1 special status, 1 state endangered				
Jack's Creek	1.36 stream miles	From the confluence with the Pecos River to the Wilderness boundary.	Mitigate and adapt to climate change; historical and cultural significance; economic benefit (outdoor recreation/tourism)	State and federal E&T Species and Species of Greatess Conservation Need	Fishing, multiple species of recreational and economic importance (SERI)	YES		YES
				Rio Grande Cutthroat Trout 15 SGCN	8 SERI 1641 angler days (2020-21)			

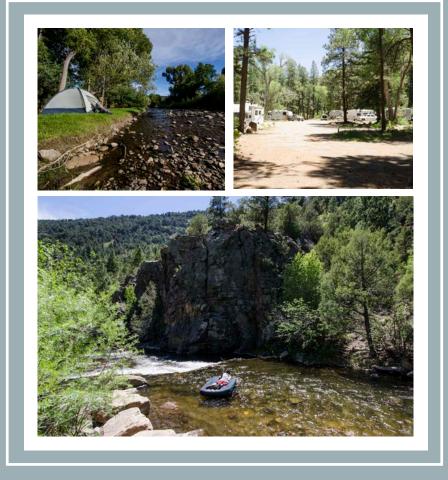
#### WILD AND SCENIC AND SPECIAL TROUT WATERS CRITERIA

- 7 miles of the nominated portion of the Pecos River (from the Wilderness Boundary downstream to the confluence of Davis Creek) is part of the Pecos Wild and Scenic River.
- The nominated waters include the following state special trout waters:
  - Pecos River, from the Rio Mora confluence to Cowles ("Pecos Box"); and
  - Jack's Creek, from the waterfalls located 0.25-miles downstream of New Mexico Highway 63, crossing upstream to its headwaters.



# EXCEPTIONAL RECREATIONAL SIGNIFICANCE

- All nominated waters meet the exceptional recreational significance criterion.
- Annually, thousands of visitors recreate at the seven U.S. Forest Service campgrounds that offer a total of 118 individual sites and three group sites in the nominated area.
- Jack's Creek Campground is listed as one of the top ten campgrounds in the state.





# **RECREATIONAL SIGNIFICANCE FISHING**

- Mainstem Pecos from Dalton Canyon Creek upstream 158,402 angler days.
- This is the second highest fished stream reach in the state.
- Fly fishing guides have named the Upper Pecos number six (out of 11) of the toprated, best places to fly fish in New Mexico.
- The number of angler days on the Pecos River increased by over 17,500 between the 2018-2019 and 2020-2021 fishing years, while fishing on Jack's Creek increased tenfold, and over 10% on the Rio Mora over that same time period.

Table 3	-Trout	by Stream
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Stream	Trout
Bear Creek	brown trout
Carpenter Creek	rainbow trout, brown trout
Dalton Canyon Creek	Rio Grande cutthroat trout
Davis Creek	cutthroat trout
Doctor Creek	Rio Grande cutthroat trout, brown trout cutthroat trout
Holy Ghost Creek	Rio Grande cutthroat trout, brown trout cutthroat trout
Indian Creek	Rio Grande cutthroat trout brown trout
Jack's Creek	Rio Grande cutthroat trout, rainbow trout brown trout, cutthroat trout
Macho Canyon Creek	Rio Grande cutthroat trout, rainbow trout
Panchuela Creek	Rio Grande cutthroat trout, rainbow trout, brown trout, cutthroat trout
Pecos River	Rio Grande cutthroat trout, rainbow trout brown trout, cutthroat trout
Rio Mora	brown trout
Sawyer Creek	Rio Grande cutthroat trout
Wild Horse Creek	Rio Grande cutthroat trout
Willow Creek	cutthroat trout, brown trout
Winsor Creek	Rio Grande cutthroat trout, rainbow trout brown trout, cutthroat trout



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# RECREATIONAL SIGNIFICANCE SERI

All nominated waters have many Species of Economic and Recreational Importance (SERI), as per the NMDGF Environmental Review Tool (ERT) reports (Table 4 and Exhibit 9).



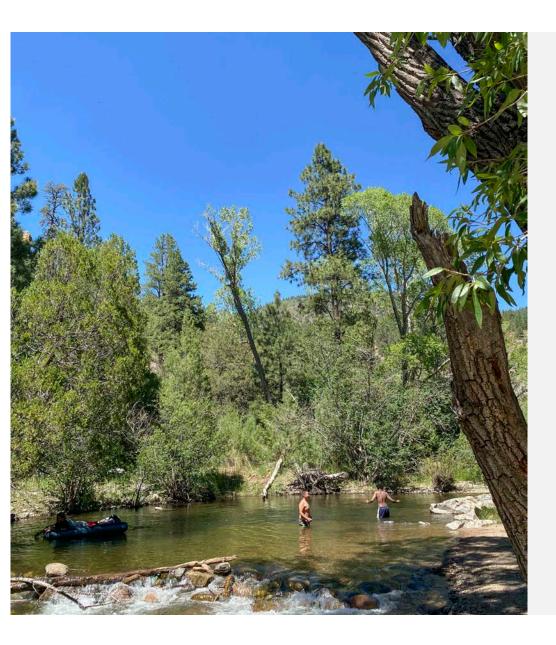
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Stream	#	SERI Species
Bear Creek and tribs	5	black bear, cougar, elk, mule deer, brown trout
Carpenter Creek and tribs	6	black bear, cougar, elk, mule deer, brown trout, rainbow trout
Dalton Canyon Creek and tribs and 4 adjacent wetlands	4	black bear, cougar, mule deer, Rio Grande cutthroat trout
Davis Creek and tribs	5	black bear, cougar, elk, mule deer, cutthroat trout
Doctor Creek and tribs and 3 adjacent wetlands	6	black bear, cougar, elk, mule deer, brown trout, Rio Grande cutthroat trout, cutthroat trout
Holy Ghost Creek and tribs	5	black bear, cougar, mule deer, brown trout, Rio Grande cutthroat trout, cutthroat trout
Indian Creek and tribs	4	black bear, cougar, mule deer, brown trout, Rio Grande cutthroat trout
Jack's Creek and tribs	8	black bear, cougar, elk, mule deer, Rio Grande cutthroat trout, brown trout, rainbow trout, cutthroat trout
Macho Canyon Creek and tribs	5	black bear, cougar, mule deer, Rio Grande cutthroat trout, rainbow trout
Panchuela Creek and tribs and 1 adjacent wetland	8	black bear, cougar, elk, mule deer, Rio Grande cutthroat trout, brown trout, rainbow trout, cutthroat trout
Pecos River and tribs and 8 adjacent wetlands	8	black bear, cougar, elk, mule deer, Rio Grande cutthroat trout, brown trout, rainbow trout, cutthroat trout
Rio Mora	5	black bear, cougar, elk, mule deer, brown trout
Sawyer Creek	4	black bear, cougar, mule deer, Rio Grande cutthroat trout
Wild Horse Creek	4	black bear, cougar, mule deer, Rio Grande cutthroat trout
Willow Creek	6	black bear, cougar, elk, mule deer, brown trout, cutthroat trout
Winsor Creek	8	black bear, cougar, elk, mule deer, Rio Grande cutthroat trout, brown trout, rainbow trout, cutthroat trout

## Table 4 – SERI Species by Stream



# WATER QUALITY

- 7 of the nominated named streams and one segment of the Pecos River meet or exceed water quality criteria associated with aquatic life and contact uses.
- These 7 streams are Doctor Creek, Holy Ghost Creek, Indian Creek, Jack's Creek, Panchuela Creek, Rio Mora, and Winsor Creek.
- Pecos River from Jack's Creek to headwaters Wilderness boundary also meet this criterion.

Waterbody/reach	Uses	Site Specific Criteria	Use support	Impairment	Water Quality is Equal to or Better than Criteria
Dalton Canyon Creek (Perennial gr Pecos R to headwaters) (20.6.4.217 NMAC)	domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the main stem of the Pecos river				NO
	High Quality Coldwater Aquatic Life	20.6.4.900; dissolved oxygen >=6.0 mg/L, 4T3 temp 20°C (68°F), max temperature 23°C (73°F), pH range of 6.6-8., and specific conductance <= 300 μS/cm and 1,500 μS/cm	Not supporting	Specific Conductance 2012 (TMDL EPA approved 9/25/13)	
	Primary Contact	monthly geo mean of E. coli 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less	Fully supporting		
Davis Creek (20.6.4.98 NMAC)	livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact		Not assessed		Not Assessed
	Marginal Warmwater Aquatic Life	20.6.4.900			
	Primary Contact	the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less			
Doctor Creek (Holy Ghost Creek to headwaters) (20.6.4.217 NMAC)	domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the main stem of the Pecos river				YES

## EXISTING WATER QUALITY DATA EXHIBIT 6

# BENEFICIAL TO THE STATE

- Numerous benefits including:
  - Supports rich tradition of acequia irrigation and farming
  - Supports ranching
  - Supports cultural values
  - Economic benefits
  - Watershed protection



## PECOS PUEBLO

- Pecos Pueblo, for generations depended on clean water in the Pecos River for drinking, hunting, farming, fishing and ceremonies.
- Pecos Pueblo is an ancestral pueblo for Pecos descendants at Jemez Pueblo.





# ACEQUIAS, FARMING, AND RANCHING

- Starting in the mid-16<sup>th</sup> century, Spanish settlers arrived in the area and established land grants.
- 55 acequias divert from the Pecos River.
- Many ranchers depend on clean water from the Pecos to water their livestock.

#### ECONOMIC BENEFITS

- Nominated stretch of the mainstem of the Pecos is the second most fished river stretch in the state.
- 2013 San Miguel County-wide annual fishing days, which was 118,814 — generated just over \$6.5 million in spending.
- Upper Pecos Watershed- angler days for 2015-2016 was 86,600.
- 116 jobs fishing and hunting.



#### BENEFIT OF PROTECTING WATERSHEDS

- The essential ecosystem functions and services of watersheds are numerous and include:
- Nutrient cycling, carbon storage, erosion and sediment control, increased biodiversity, soil formation, wildlife corridors, water storage and filtration, flood control, food, timber, forage, recreation, and reduced vulnerability to the effects of climate change.
- By protecting the water quality in the nominated waters of the Upper Pecos Watershed, the watershed as a whole will benefit and this in turn benefits the region and the state as a whole.



Waterbody/reach	Stream miles and wetland acres	Description	NM Benefit	Exceptional ecological significance 19 SGCN Mexican Spotted Owl habitat - threatened (ESA) Peregrine Falcon - threatened (state) Plants - 1 ESA, 2 special status, 2 state endangered	Exceptional recreational significance 6 SERI 2764 angler days (2003-04)	State special trout water	Wild and Scenic River	Water Quality equal to or better than numeric criteria
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Jack's Creek	1.36 stream miles	From the confluence with the Pecos River to the Wilderness boundary.	Mitigate and adapt to climate change; historical and cultural significance; economic benefit (outdoor recreation/tourism)	State and federal E&T Species and Species of Greatess Conservation Need	Fishing, multiple species of recreational and economic importance (SERI)	YES		YES
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