October 12, 2021

U.S. Army Corps of Engineers
Attn: Danielle Galloway
Albuquerque District
4101 Jefferson Plaza Avenue NE
Albuquerque, New Mexico 87109-3435

Submitted electronically to: danielle.a.galloway@usace.army.mil

RE: Draft Environmental Assessment of Tortugas Arroyo Storm Drainage Improvements Project

Dear Danielle Galloway,

The New Mexico Environment Department (NMED) has reviewed information submitted for the August 31, 2021, Consultation Letter for *Draft Environmental Assessment Tortugas Arroyo Storm Drainage Improvements Project* and offer the following comments. We have included regulations and requirements that apply to the project as described; however, other environmental regulations administered by NMED may apply depending on the circumstances of your project, in addition to regulations and requirements of other federal, state, Tribal, county, and municipal agencies.

Strong intergovernmental coordination, as required by the National Environmental Policy Act (NEPA), is essential to ensure protection of human health and the environment.

Thank you for providing the opportunity to review the draft application. Please don't hesitate to reach out to us with any further questions or concerns you may have.

Sincerely,

James Kenney
NMED Cabinet Secretary

Attachment (1)

cc: Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Deputy Cabinet Secretary of Administration, NMED
Sandra Ely, Director, NMED Environmental Protection Division
John Rhoderick, Acting Director, NMED Water Protection Division

Attachment

Introduction

The U.S. Army Corps of Engineers (Corps), in cooperation with and at the request of the Southern Sandoval County Arroyo Flood Control Agency (SSCAFCA), is planning to make storm drainage and water quality improvements to the Tortugas Arroyo. The Tortugas Arroyo Storm Drainage Improvements Project addresses storm drainage flows and water quality problems at the Rio Rancho Industrial Park in Southern Sandoval County, New Mexico. Currently, all stormwater runoff and associated contaminants from the industrial park are discharged into the Tortugas Arroyo, which originates on the east side of the Industrial Park. The proposed action in the draft Environmental Assessment (EA) "involves installing a riprap-lined energy-dissipation channel, a water quality pond, and a downstream channel that would discharge runoff in excess of the water quality volume to the Montoyas Arroyo."

Comments

NMED cannot support the proposed action based primarily on the potential impacts to surface water quality described in Comments 1 and 2 below. NMED suggests that the Corps needs to revisit Clean Water Act regulatory applicability as discussed in Comment 3 below. Comments 4 and 5 point to lack of sufficient detail in the draft EA as to whether construction of the project requires air quality permits.

1. The Corps must address how the proposed action will remove the pollutants that originate from the Rio Rancho Industrial Park and describe how those pollutants will be captured, removed and disposed to avoid adverse impacts to surface water quality.

The recommended plan to address storm drainage flows and water quality problems at the Rio Rancho Industrial Park involves installing a riprap-lined energy dissipation channel that will receive discharge stormwater from the Industrial Park Loop and an existing culvert. The riprap-lined channel would discharge to a proposed 2.0-acre-foot stormwater pond that would connect to Montoyas Arroyo through an open water channel with an additional 3.1 acre-feet of storage capacity that includes a weir with a skimmer plate to remove floatables.

The draft EA lists the following pollutants as currently discharging from Rio Rancho Industrial Park: nutrients (phosphorus and nitrogen), bacteria/viruses, oil/grease, metals, organics, pesticides, vector production and oxygen demanding substances. The EA should further explain how the proposed alternative will remove the pollutants that originate from the Rio Rancho Industrial Park. The EA must also explain how effectively each pollutant will be captured in the stormwater ponds and skimmer plate, and what pollutants will potentially infiltrate into the groundwater. Also, the EA must describe how pollutants that are captured in the stormwater ponds or skimmer plate will be removed and disposed of so that they do not mobilize into waterways at a later time.

The proposed stormwater structures are located in portions of Tortugas Arroyo and will redirect Tortugas Arroyo to Montoyas Arroyo through a proposed stormwater channel that will be a more direct route to Montoyas Arroyo. The modified portions of Tortugas Arroyo, including the stormwater structures, will be subject to 20.6.4.98 NMAC (State of New Mexico, Standards for Interstate and Intrastate Surface Waters) with designated uses for livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact.

NMED fully supports the purpose and need of the draft EA, which states, "Currently, there are no facilities to treat these flows or provide flood mitigation, allowing large storm flows and contaminants to flow into the Tortugas Arroyo, and subsequently the Rio Grande, unchecked." However, the proposed action does not address how stormflows will be treated *before* reaching Tortugas Arroyo, and it is unclear in the draft EA if the proposed stormwater pollution ponds will be able to meet surface state water quality standards at 20.6.4 NMAC. NMED requires that pollutant transport be mitigated prior to those pollutants reaching Tortugas Arroyo. Furthermore, creating a stormwater retention and detention facility within a water of the state may not support the water's designated uses. Retention and detention facilities that are built within stream channels result in unnecessary damage to stream function and require regular sediment removal to maintain the structure.

2. The Corps must better address stream function through use of enhanced stream stabilization design to avoid adverse impacts to surface water quality.

Properly functioning streams can filter water and reduce, ameliorate or assimilate pollutants when riparian ecosystems have vegetation, water, soil and the landform needed for riparian functions.[1,2] Water quality deterioration is associated with impervious surfaces.[3,4] The use of riprap to line channels will contribute to disrupted stream function and the access roads and bridges around the proposed stormwater channel will also add to the percentage of impervious surfaces in the Tortugas Arroyo watershed. For these reasons, NMED requires use of enhanced stream stabilization design principles, which have the goal of creating natural channels that have access to floodplains that will support a fluvial system with greater physical, chemical and biological integrity.

Tortugas Arroyo, below Don Julio Road, no longer flows in its original channel. A dirt road was developed across Arroyo Tortugas in past decades and captured the Arroyo. Tortugas Arroyo now flows over the old road in a straight path, and the original channel has been abandoned. The draft EA states that the purpose and need is "to incorporate flood prevention measures that would reduce downstream flow rates before reaching Montoyas Arroyo." However, the draft EA does not describe the role that the numerous roads and other existing infrastructure in the project area play in intercepting runoff and sheet flow and thereby concentrating runoff, which can then quickly exacerbate downstream flow rates and flooding. The Corps must modify the proposed action to directly address the impacts that roads and infrastructure are having on watershed function. Furthermore, project alternatives must prevent pollutants from reaching Tortugas Arroyo and restore Tortugas Arroyo to its natural configuration without lining the channel with artificial riprap to provide greater water resource benefits in the long-term.

[1] https://www.epa.gov/sites/production/files/2015-03/documents/ephemeral_streams_report_final_508-kepner.pdf
[2] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6145829/pdf/nihms-983246.pdf
[3] https://engineering.purdue.edu/SafeWater/watershed/landuse.html#imperviousness
[4] https://www3.epa.gov/npdes/pubs/usw_b.pdf

3. NMED suggests the Corps re-evaluate applicability of the Clean Water Act Section 404 considering the recent change in the applicable definition of Waters of the United States.

On August 30, 2021, a federal judge vacated the Navigable Waters Protection Rule, which defined Waters of the U.S. (WOTUS) more narrowly than prior federal definitions. Before completing the NEPA process, the Corps must revisit Section 3.1.3 of the draft EA and re-evaluate whether Clean Water Act (CWA) Section 404 will apply to the proposed project based on current law and applicable Corps' guidance.[5] If the proposed project requires a CWA Section 404 permit, then the project proponent will likely need to request an individual Water Quality Certification (WQC) from NMED because a general WQC for NWP-43 Stormwater Management Facilities is not in effect at this time.

4. The Corps must seek proper air quality permits for project construction.

Generators, light towers and other equipment powered by diesel, gasoline or natural gas engines may require registration or an air quality permit if the emissions of any criteria air pollutant will exceed ten pounds per hour and ten tons per year. If the proposed project includes this type of equipment, please contact Rhonda Romero of the NMED Air Quality Bureau Permitting Section at (505) 629-3934 to determine if a permit is required. For more information on air quality permitting and modeling requirements, please refer to 20.2.72 NMAC.

5. The Corps must better address reclamation of disturbed areas and utilization of aggregate manufacturing operations to avoid adverse impacts to air quality.

The draft EA does not address reclamation of areas disturbed by earthmoving, construction equipment, and vehicles within and adjacent to the project area. These areas should be reclaimed to avoid long-term problems with erosion and fugitive dust. Furthermore, the draft EA did not mention whether any aggregate-generating processes or facilities will operate on-site during construction. If any asphalt, concrete, quarrying, crushing and screening facilities are constructed or operated on-site, current and proper air quality permits must be obtained by the Corps from NMED.

[5] See https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Related-Resources/CWA-Guidance/.