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U.S. Department of Agriculture
Forst Service – Santa Fe National Forest
Pecos-Las Vegas Ranger District
1926 7th Street
Las Vegas, New Mexico 87701

Submitted electronically to: District Ranger Sara Amina Sena at comments-southwestern-santafe-pecos-lasvegas@usda.gov

RE: El Porvenir Bridge Replacement and Beaver Creek Restoration.

District Ranger Sena,

The New Mexico Environment Department (NMED) offers a favorable opinion of the projects proposed in the scoping letter: replacement of El Porvenir Bridge and restoration of Beaver Creek. Attached we offer comments for your consideration.

Strong intergovernmental coordination is essential to ensure protection of human health and the environment. In the attachment you find areas of potential environmental impacts identified by NMED for you to evaluate as the process continues.

Please reach out with further questions or concerns you may have and continue to send all comment requests to env.review@env.nm.gov, it helps expedite a timely review of your request.

Sincerely,

Jonas Armstrong, Director
Office of Strategic Initiatives

Attachment (1)

Attachment

Introduction

The purpose of this project is to replace the low water crossing on El Porvenir Creek with a new bridge to allow access to the El Porvenir Campground and private property while maintaining the natural flow regime and allowing for aquatic organism passage. The project proposed action is divided into two parts: replacement/construction of the El Porvenir Bridge and restoration of a section of Beaver Creek Watershed by installing various stream stabilization structures.

Comments

The Drinking Water Bureau (DWB) reviewed the scoping letter for the U.S. Forest Service El Porvenir Bridge replacement and Beaver Creek restoration projects for potential impacts to local public water systems (PWS) and their source waters. The proposed project area is located approximately 10 miles upstream of the Gallinas River diversion dam intake and settling basin that is the primary drinking water source for the City of Las Vegas, NM (PWSID NM3518025). DWB encourages the development and implementation of best management practices to minimize potentially adverse effects from staging areas (e.g., fuel spills) and the installation of stabilization structures that could temporarily remobilize suspended sediment, increasing the turbidity of Beaver Creek and the Gallinas River downstream.

Overall, DWB offers a favorable opinion of the projects because they will reduce the risk of contamination to drinking water supplies by reducing erosion and decreasing the likelihood of fuel spills from vehicles traversing the low water crossing. Additionally, construction of a new bridge will restore consistent access to the El Porvenir Christian Camp PWS (PWSID NM3592125) located approximately ¼ mile to the northwest.

The Surface Water Quality Bureau (SWQB) reviewed the scoping letter provided by the U.S. Forest Service (USFS) focusing specifically on the potential effect to surface water resources around the proposed project and has the following comments.

El Porvenir Creek and Beaver Creek are subject to State water quality standards at 20.6.4.13 and 20.6.4.215 New Mexico Administrative Code (NMAC) and include designated uses for domestic water supply, high-quality cold-water aquatic life, irrigation, livestock watering, wildlife habitat, industrial water supply and primary contact. The projects should be designed and implemented with best management practices (BMPs) to prevent potential impacts to water quality. El Porvenir Creek is currently listed as impaired under Clean Water Act Section 303(d) due to dissolved oxygen and temperature exceedances that do not support high-quality cold-water aquatic life.

SWQB supports both proposed projects, provided that the appropriate Clean Water Act (CWA) Section 402 and 404 permits are obtained, and BMPs are implemented during construction. Properly designed bridges, that maintain stream shape and stream function and separate vehicle traffic from the water course, help protect and maintain water quality. Low water crossings have the potential to cause increased bank erosion which can lead to overly wide and shallow streams that will receive more solar radiation and contribute to increased stream temperatures. Low water crossings also create a direct pathway for pollutants associated with vehicles to enter streams. Beaver Creek restoration activities that improve riparian vegetation and floodplain connectivity will improve water quality.

The U.S. Environmental Protection Agency (USEPA) may require National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) coverage for stormwater discharges from

construction activities (such as clearing, grading, excavating, and stockpiling) that disturb or re-disturb one (1) or more acres. Prior to discharging stormwater, construction operators may need to obtain coverage under an NPDES CGP permit. The CGP, NOI, key requirements, Fact Sheet, Federal Register notice are available at: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities> and <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>.

The CGP permit requires that a Stormwater Pollution Prevention Plan (SWPPP) be prepared for the project, including support and staging areas, and that appropriate best management practices (BMPs) be installed and maintained both during and after construction to prevent to the extent practicable pollutants in stormwater runoff (primarily sediment, oil & grease, and construction materials from construction sites) from entering a water of the U.S (WOTUS). This permit also requires that permanent stabilization measures (revegetation, paving, etc.) and permanent stormwater management measures (stormwater detention/retention structures, velocity dissipation devices, etc.) be implemented post-construction to minimize the long-term entry of pollutants in stormwater runoff to a WOTUS.

USEPA requires that all "operators" (see Appendix A of the 2022 CGP) obtain NPDES permit coverage by submitting a Notice of Intent (NOI) for construction projects. Generally, this means that at least two parties will require permit coverage to ensure compliance with the SWPPP and other permit conditions. The owner/developer of this construction project who has operational control over project specifications, the general contractor who has day-to-day operational control of those activities at the site, and possibly other "operators" will require appropriate NPDES permit coverage for this project. The 2022 CGP Part 9 includes permit conditions applicable to specific states, Indian country lands, or territories. In the State of New Mexico, except on tribal land, permittees must ensure that there is no increase in sediment yield and flow velocity from the construction site (both during and after construction) compared to pre-construction undisturbed conditions (see Part 9.6.1 of the 2022 CGP).

Portions of El Porvenir Creek and all of Beaver Creek located in the Pecos Wilderness are designated as an Outstanding National Resource Water (ONRW). ONRWs are defined in 20.6.4.9 New Mexico Administrative Code (NMAC). Construction projects within ONRWs are not eligible for CGP coverage and will require coverage under a Clean Water Act, Section 402 NPDES Individual Permit. The listing of ONRWs listed in 20.6.4 NMAC can be found at: <https://www.srca.nm.gov/parts/title20/20.006.0004.html>. NPDES Individual Permit application forms can be found at: <https://www.epa.gov/npdes/npdes-applications-and-forms-epa-applications>.

Section 404 of the Clean Water Act (CWA) requires authorization from the U.S. Army Corp of Engineers (USACE) prior to discharging dredged or fill material into a WOTUS. Any person, firm, or agency (including federal, state, tribal and local governmental agencies) planning to work in a WOTUS should first contact the USACE regarding the need to obtain a permit. Failure to receive and implement proper permit coverage would be a violation of the Clean Water Act. More information on the CWA Section 404 permitting process, including how to contact the USACE and how to obtain a permit is available from the USACE at: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>.

CWA Section 401 provides States and Tribes the opportunity to certify CWA Section 404 permits. In New Mexico, this certification process depends on where your project is located and the kind of CWA Section 404 permit. The SWQB Mapper (<https://gis.web.env.nm.gov/oem/?map=swqb>) can help identify Tribal lands. If your project is on non-Tribal lands within New Mexico, then SWQB is the certifying authority.

Portions of El Porvenir Creek and all of Beaver Creek located in the Pecos Wilderness are designated as an Outstanding National Resource Water (ONRW). ONRWs are defined in 20.6.4.9 New Mexico Administrative Code (NMAC). The State of New Mexico water quality certification of the Nationwide Permits (NWP) only allows for NWP27-Aquatic Habitat Restoration, Enhancement, and Establishment Activities in ONRWs. All other NWPs in an ONRW require an individual water quality certification.

SWQB's CWA Section 401 certification ensures that the federal permit is consistent with State law and otherwise complies with Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process (WQMP/CPP), including Total Maximum Daily Loads (TMDLs), and the current Antidegradation Policy. SWQB generally certifies CWA Section 404 permits with conditions, meaning the conditions in the certification, including the use of Best Management Practices (BMPs) to protect water quality, must be followed. More information about NMED's CWA Section 401 process is available at: <https://www.env.nm.gov/surface-water-quality/dredgeandfillactivities/>.