



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

February 21, 2024

U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS)
Plant Protection and Quarantine
270 South 17th Street
Las Cruces, New Mexico 88005

Submitted electronically to: Waleska Ramirez (waleska.v.ramirez@usda.gov) and Shawn Carson (shawn.r.carson@usda.gov)

RE: Environmental Assessment NM-24-01 for the Rio Arriba County, New Mexico Rangeland Grasshopper and Mormon Cricket Suppression Program, Environmental Assessment, (January 2024).

Dear State Plant Health Director Ramirez and Mr. Carson,

On behalf of the New Mexico Environment Department (NMED), attached please find our comments on your request for review and comment on the Environmental Assessment NM-24-01 for the Rio Arriba County, New Mexico Rangeland Grasshopper and Mormon Cricket Suppression Program, Environmental Assessment, (January 2024). As our comments note, we are concerned that the proposal may have a significant environmental impact on Outstanding National Resource Waters.

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

Thank you for giving NMED the opportunity to review the project materials you provided. 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**

Jonas Armstrong, Director
Office of Strategic Initiatives

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Armstrong
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Attachment (1)

Attachment

Background

Out of concern for an infestation of grasshoppers or Mormon crickets may occur in the Cebolla area of Rio Arriba County, the Animal and Plant Health Inspection Service (APHIS) announced it may, upon request by land managers or State departments of agriculture, conduct treatments to suppress grasshopper infestations as part of the Rangeland Grasshopper and Mormon Cricket Suppression Program (program) and issued an Environmental Assessment (EA) in January 2024. The EA analyzes potential effects of a proposed suppression program that would take place from April 15 to July 15, 2024. In response to the EA, the New Mexico Environment Department (NMED) offers the following comments:

Comments

The proposed affected area in Rio Arriba County includes the Chama River Canyon Wilderness. The stream segments and wetlands in the Chavez Canyon, Ojitos Canyon, and the Rio Chama within the Chama River Canyon Wilderness are classified as Outstanding Natural Resource Waters (ONRWs) pursuant to the New Mexico water quality standards (NM WQS), Standards for Interstate and Intrastate Surface Waters (found at 20.6.4.9.D(3)(a) NMAC). ONRWs are areas and sites of concern. The Chama River Canyon Wilderness ONRWs should be included in the Environmental Assessment NM-24-01 Appendix E – List of BLM Sensitive Species and Sites of Concern, The Chama River Canyon Wilderness ONRW, including Chavez Canyon, Ojitos Canyon, and the Rio Chama, should be added to the “Area” column of the table of sites of concern with an “Actions/Determination” of an exclusion area of a ¼ mile buffer from these stream segments.

New Mexico Water Quality Standards (NM WQS) include numeric criteria for pollutants applicable to existing, designated, and attainable uses in Standards for Interstate and Intrastate Surface Waters (pursuant to 20.6.4.900.J(1) NMAC). Two of the four insecticides proposed for use in this project are regulated by NM WQS. One, Carbaryl, has NM WQS numeric criteria for acute and chronic aquatic life designed uses. Another, Malathion, has NM WQS numeric criteria for chronic aquatic life designated use. There are no numeric criteria for the other two insecticides, chlorantraniliprole or diflubenzuron, in NM WQS.

Especially in the hot and arid summer months, wetlands, riparian areas, playas, and other waterbodies are magnets for birds and wildlife, and may be used in greater numbers by a variety of species that may be affected by applications of pesticides to control grasshoppers and/or crickets. Pesticide applications should avoid and provide adequate buffer to water bodies, wetlands and riparian zones, playas and internal draining wetlands (depressions), tributaries, arroyos, acequias and other drainageways to water bodies, and wetlands. The buffers proposed in Environmental Assessment NM-24-01 Appendix E – List of BLM Sensitive Species and Sites of Concern are appropriate. Any activities including staging and managing the application of the control pesticides should not be in the vicinity of any water bodies or wetlands.

This project may have a significant environmental impact on ONRWs. APHIS should consult with the U.S. Environmental Protection Agency (USEPA) to determine whether the project is covered by the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) or if a Notice of Intent (NOI) or individual permit application is required. The USEPA Region 6 PGP contact is William Cooper, Cooper.William@epa.gov or 214-665-6443. The PGP regulates point source discharges of biological pesticides and chemical pesticides that leave a residue. The permit covers mosquito and

other flying insect pest control; weed and algae pest control; animal pest control; and forest canopy pest control. The PGP requires that certain operators develop a Pesticide Discharge Management Plan (PDMP). Part 9.6.2 of the 2021 PGP include New Mexico-specific conditions that the project may need to comply with, including:

- Operators must comply with the New Mexico Pesticide Control Act [New Mexico Statutes Annotated (NMSA) 1978 §§ 76-4-1 to -39] and rules authorized by this Act administered and enforced by the New Mexico Department Agriculture. More information on pesticide compliance is available at: <https://www.nmda.nmsu.edu/nmda-homepage/divisions/aes/pesticides/>.
- Operators are not eligible for coverage under the permit for discharges to Tier 3 designated Outstanding National Resource Waters (ONRWs). Prior to pesticide application discharge to an ONRW, Operators shall submit a copy of the NOI, project plan, and Notice of Termination (NOT) to NMED for review. NMED, or the appropriate oversight agency, will review on a case-by-case basis discharges that may result in degradation. In the NOI and project plan, Operators must demonstrate that the degradation from restoration or maintenance activities (1) will be limited to the shortest possible time; (2) will be minimized and controlled by best management practices and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized; (3) will not result in water quality lower than necessary to protect any existing use of the surface water; and (4) will not alter the essential character or special use that makes the water an ONRW. Discharges that will not comply with these antidegradation requirements will be required to seek coverage under an individual permit.
- Operators with coverage under this permit shall meet the additional notification and monitoring requirements outlined in Standards for Interstate and Intrastate Surface Waters, Water Quality Control Commission (Subsection G of 20.6.4.16 NMAC), including written notice to local political subdivisions, local water planning entities, local conservancy and irrigation districts, and local media outlets. Operators shall implement post-treatment assessment monitoring within the application area and provide notice to the public in the immediate and near downstream vicinity of the application prior to and during the application. Operators must comply with applicable notification and removal requirements for spills and adverse incidents in Ground and Surface Water Protection, Water Quality Control Commission, 20.6.2.1203 NMAC, available at: <https://www.srca.nm.gov/parts/title20/20.006.0002.html>. The 2021 PGP is available at: <https://www.regulations.gov/document/EPA-HQ-OW-2020-0005-0079>. The 2021 PGP fact sheet and other supporting documents, including a permitting decision tree, Notice of Intent (NOI) requirements, reporting requirements, and frequently asked questions, is available at: <https://www.epa.gov/npdes/pesticide-permitting-2021-pgp>.

NMED advises all parties involved in the project to be aware of notification requirements for accidental discharges, including large spills of pesticides, as specified by NMED regulation (20.6.2.1203 NMAC).

There are no regulated public groundwater system sources within 1000 feet of the proposed treatment area shown in Appendix B of EA NM-24-01, nor any regulated public surface water system intakes within 10 miles downgradient. While this project is unlikely to have a significant negative impact on any regulated public water system, a wide range of pesticides are regulated contaminants under the National Primary Drinking Water Regulations (40 CFR 141). However, many residents in the program area are served by private wells, for which NMED does not regulate drinking water quality.