

benefit the overall recovery efforts of the silvery minnow in the Cochiti reach by increasing the availability and connectedness of habitat in upper reaches of the Middle Rio Grande.

Chapter 4. ENVIRONMENTAL COMMITMENTS

All applicable permits have been obtained prior to implementation of the project, including but not limited to:

- Clean Water Act (CWA), Section 404 as administered by the U.S. Army Corps of Engineers.
- Section 7 of the ESA as administered by the US Fish and Wildlife Service (USFWS). To protect shallow water habitat adjacent to the bank line during construction, a silt curtain will be installed. To protect aquatic habitats from spills or contamination, hydraulic lines will be protected from punctures. Additionally, all fueling will take place outside the active floodplain, and all equipment will undergo cleaning and inspection prior to operation. Equipment will be parked on predetermined locations on high ground away from the project area overnight.
- Should a bald eagle be observed within 0.25 mile, upstream or downstream of the active project site in the morning before project construction activity starts, or following breaks in project construction activity, the construction crew would be required to suspend all activity until the bird leaves on its own volition, or if the Tribal biologist in consultation with the FWS determines that the potential for harassment is minimal. However, if a bald eagle arrives during project construction activities or if a bald eagle is observed beyond the specified distance, construction would not need to be interrupted. If bald eagles are found consistently in the immediate action area during project construction, Santo Domingo would contact the FWS to determine whether formal consultation under ESA is necessary.
- Avoid impacts to birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703) by scheduling construction outside of the normal bird breeding and nesting season (April 15 through August 15) for most avian species or conducting preconstruction breeding surveys and monitoring if construction were to occur during the breeding and nesting season, and consult with FWS if affected species are observed.
- Coyote willow will be collected from Site Two, Four and Five and replanted adjacent to the channel (see page 5, section 2.2.2).
- Compliance with Section 106 of the National Historic Preservation Act (NHPA). Should evidence of possible scientific, prehistorical, historical, or archeological data be discovered during the course of this action, work shall cease at that location and the Area archaeologist shall be notified by phone immediately with the location and nature of the findings. Care shall be exercised so as not to disturb or damage artifacts or fossils uncovered during operations, and the proponents shall provide such cooperation and assistance as may be necessary to preserve the findings for removal or other disposition by the Government.
- The Pueblo of Santo Domingo is committed to monitoring the habitat restoration projects for changes in site conditions and the presence of various fish species using the habitat.



The Pueblo of Santo Domingo will be responsible for notifying the Service if the find silvery minnows using the ephemeral channels or other habitat features or in the event that isolated habitats form in the channel.

Chapter 5. CONSULTATION AND COORDINATION

The USFWS was notified about the proposed action and concurred with the determination that the Project may affect, not likely to adversely affect federal endangered and threatened species potentially occurring in the Project areas. The USACE was consulted regarding CWA 404 permits and compliance and has determined no permits are needed for the proposed action. (Appendix A).

Chapter 6 LIST OF PREPARERS

Gabriel B. Cosyleon, Santo Domingo Tribe-Natural Resources Manager
Ann A. Watson, Santo Domingo Tribe-Ecologist

Chapter 7 APPENDIX A

7.1.1 Correspondence and Coordination

**U.S. Army Corps of Engineers- CWA 404 Jurisdictional
Determination letter**

**U.S. Fish and Wildlife Service- Section 7 Consultation for the
Proposed Santo Domingo Pueblo Restoration Project Phase III-
consultation number 22420-2007-I-0054**

Chapter 8 REFERENCES

16 U.S.C. 470 (Short Title). National Historic Preservation Act of 1966, As amended through 2000. An Act to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes. United States Code.

16 U.S.C. 703. Migratory Bird Treaty Act of 1918. As Amended. United States Code.

42 U.S.C. 4331-4335. National Environmental Policy Act (NEPA). 1970. Title 42 - The Public Health and Welfare; Chapter 55 - National Environmental Policy, Subchapter I – Policies and Goals; Sections 4331-4335. U.S. GPO. U.S. Code Online via GPO Access at <http://www.access.gpo.gov/uscode/uscmmain.html>. Accessed 12-16-04.

FR. 1994b. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Vol. 59, No. 32 / Wednesday, February 16, 1994. pp 7629.

Habitat Restoration Plan for the Middle Rio Grande. 2004. Prepared for: Middle Rio Grande Endangered Species Act Collaborative Program Habitat Restoration Subcommittee. Tetra Tech EM Inc., Albuquerque, New Mexico.



Habitat Restoration Plan for the Middle Rio Grande. 2004. Prepared for: Middle Rio Grande Endangered Species Act Collaborative Program Habitat Restoration Subcommittee. Tetra Tech EM Inc., Albuquerque, New Mexico.

U.S. Fish and Wildlife Service. 2003. Biological and conference opinions on the effects of actions associated with the programmatic biological assessment of the Bureau of Reclamation's Water and River Maintenance Operations, Army Corps of Engineer's Flood Control Operation, and Related Non-Federal Actions on the Middle Rio Grande. Region 2, U.S. Fish and Wildlife Service, Albuquerque, NM.





DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

received
11/06/06

October 31, 2006

Operations Division
Regulatory Branch

Mr. Gabriel B. Cosyleon
Natural Resources Programs Manager
Santo Domingo Tribe
P.O. Box 70
Santo Domingo Pueblo, New Mexico 87052-0070

Dear Mr. Cosyleon:

This replies to your October 27, 2006, submittal regarding your proposed habitat restoration and creation project at three sites adjacent to the Rio Grande at Santo Domingo Pueblo, Sandoval County, New Mexico. We have assigned Action No. 2006 00595 to this activity.

We have evaluated the information you provided and studied the project description and the other records and documents available to us. I also met with you to inspect the project sites on September 13, 2006. The proposed work will involve the excavation of sediment from three side channels to the Rio Grande; and the placement (but not anchoring) of large woody debris (LWD) at several sites along the Rio Grande.

The Rio Grande and its side channels are waters of the United States. The placement of dredged or fill material into these waters will require authorization under Section 404 of the Clean Water Act.

However, based on my site inspection and a review of your submittal, the proposed work will only involve excavation of sediments and the placement of this excavated sediment above the ordinary high water mark (OHWM) of the Rio Grande and the side channels. In addition, the placement, but not anchoring, of LWD is not considered to be a discharge of fill material. Therefore, the proposed project is not regulated under the provisions of Section 404 of the Clean Water Act and a Department of the Army permit will not be required.

Our disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act. Other Federal, state and local laws may apply to your work. Therefore, you may want to also contact other Federal, state and local regulatory authorities to



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determine whether the proposed habitat restoration and creation work may require other authorizations or permits.

This letter contains an approved jurisdictional determination for your proposed project. If you object to this determination, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the South Pacific Division Office at the following address:

Mr. Douglas R. Pomeroy
Division Review Office
(ph (415)977-8035, fax (415)977-8047)
South Pacific Division
333 Market Street
San Francisco, CA 94105

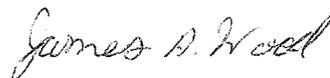
In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by December 30, 2006.

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

This jurisdictional determination will be valid for 5 years from the date of this letter unless new information warrants revision of the determination within that time.

If you have any questions regarding this determination, please feel free to contact me at (505) 342-3280 or e-mail me at james.a.wood@usace.army.mil. For more information about the regulatory program, please see our web site at www.spa.usace.army.mil/reg.

Sincerely,



James A. Wood
Regulatory Project Manager

Enclosure





United States Department of the Interior

FISH AND WILDLIFE SERVICE
 New Mexico Ecological Services Field Office
 2105 Osuna NE
 Albuquerque, New Mexico 87113
 Phone: (505) 346-2525 Fax: (505) 346-3542

April 19, 2007

Cons. #22420-2007-I-0054

Memorandum

To: Area Manager, Albuquerque Area Office, Bureau of Reclamation, Albuquerque, New Mexico

From: Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, New Mexico

Subject: Section 7 Consultation for the Proposed Santo Domingo Pueblo Restoration Project Phase II

Thank you for your Biological Assessment (BA) of March 15, 2007, requesting concurrence for proposed activities associated with the proposed Santo Domingo Pueblo Restoration Project Phase II under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1534 et seq.). The Bureau of Reclamation (Reclamation) determined the proposed project "may affect, is not likely to adversely affect" the threatened bald eagle (*Haliaeetus leucocephalus*) (eagle) and the endangered Rio Grande silvery minnow (*Hybognathus amarus*) (minnow). Reclamation determined that there was "no effect" to all other threatened and endangered species. The proposed project sites are located on Santo Domingo Tribal Lands, Sandoval County, New Mexico.

The proposed projects include three excavation sites on the east side of the Rio Grande (Figure 1), starting 1.5 miles south of SP88 and Bridge No. M102, extending to 3.6 miles south. The project areas include a total of approximately 11 acres. Excavation will be conducted during winter months or dry periods of the year (no equipment will enter the water), and silt fences will be used to minimize the amount of sediment entering the Rio Grande. Large woody debris (LWD) will be placed in the Rio Grande at various locations to reduce water velocity and enhance sediment deposition as a means of improving habitat for the minnow in the Cochiti Reach. Each piece of LWD will be marked with an aluminum tag and monitored for downstream movement, and formation of new habitat.

Bureau of Reclamation



We concur with Reclamation's determinations for the following reasons:

Eagle:

- If a bald eagle is observed within 0.25 mile of the proposed project area in the morning when activity starts, or arrives during breaks in activity, the contractor would be required to suspend all construction activity until the bird leaves on its own volition, or the project biologist, in consultation with the U.S. Fish and Wildlife Service, determines that the potential for harassment is minimal. However, if a bald eagle arrives during construction activities, or is observed more than 0.25 mile from the construction site, activity would not be interrupted.

Minnow:

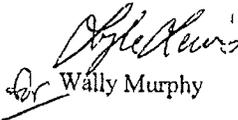
- According to the last documented comprehensive study, minnow have not been captured in this portion of the river since 1995 (Platania 1995). Additionally, habitat in this area is considered poor due to a lack of fine sediment. Therefore, the probability of encountering minnows in the project area is very low.
- Excavation will be conducted during winter months or dry periods of the year.
- No equipment will enter the Rio Grande.
- Silt fences and sandbag walls would be used to isolate the excavation area from the river and minimize the transport of suspended sediment from the work area to the river.
- Standard Best Management Practices (BMPs) will be used to prevent pollution and minimize sediment entering the river. BMPs would be enforced to minimize potential impacts to fish from direct construction impacts and erosion inputs into the river during periods of work. All equipment will be inspected prior to mobilization. Spill cleanup equipment will be kept on-site for containing accidental leaks of fluids.
- The Pueblo of Santo Domingo is committed to monitoring the habitat restoration projects for changes in site conditions and the presence of various fish species using the habitat. The Pueblo of Santo Domingo will be responsible for notifying the Service if they find silvery minnows using the ephemeral channels or other habitat features or in the event that isolated habitats form in the channel.

Please contact the Service to verify the above determinations are still valid if: 1) Future surveys detect listed, proposed or candidate species in habitats where they have not been previously observed; 2) the project is changed or new information reveals effects of the actions to the listed species or their habitats to an extent not considered in these evaluations; or 3) a new species is listed that may be affected by these projects.

This concludes section 7 consultation on the proposed Santo Domingo Pueblo Restoration Project Phase II. Thank you for your concern for endangered species and New Mexico's wildlife



habitats. Please refer to consultation number #22420-2007-I-0054 in all future correspondence regarding this project. If we can be of further assistance, please contact Anne Davis, of my staff at the letterhead address, or at 505-761-4712.


Wally Murphy

cc:

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico

Platania, S.P. 1995. Ichthyofaunal survey of the Rio Grande, Santo Domingo and San Felipe pueblos, New Mexico, July 1994. Report to the U.S. Army Corps of Engineers, Albuquerque, NM. 56 pp.

